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Court : Himachal Pradesh

Decided On : Jan-05-2010

Judge : Dev Darshan Sud, J.

Appellant : Brestu Ram

Respondent : Jalpu Ram

Judgement :

Dev Darshan Sud, J.

1. This is the plaintiff's appeal against the judgment and decree of the learned District Judge dismissing the suit for possession of the suit land and in the alternative for grant of maintenance at the rate of Rs. 2000/- per month for his maintenance.

2. The plaintiff instituted the suit on the allegations that the defendant is the pichlag son of the wife of plaintiff Nirtu Devi i.e. son born to her from her previous marriage. He pleads that the respondent-defendant had been visiting his house and in September, 1986 he assured that he would look after the plaintiff and his day to day needs in case the suit land was gifted to him. In case of the defendant not honouring the commitments made, the plaintiff would be entitled to revoke the gift deed and would be entitled to immediate possession of the suit property. The plaintiff pleaded that he executed a registered gift deed on 1.10.1996 (Ext.PI) gifting the suit land to the respondent-defendant with this condition and stipulation

that in case the defendant would not render services to the plaintiff and look after him, the gift deed would be deemed to be revoked and the suit land would be revert to him. At the time when the gift deed was executed, the plaintiff did not require any assistance or help of the defendant in looking after him but now that the plaintiff had grown old, he is in dire need of the services of the defendant. The defendant refused to maintain him and therefore, he was constrained to file the present suit with a prayer that either the gift deed be revoked or the condition on which the land was gifted be invoked. Earlier, the plaintiff had instituted a civil suit No. 32 of 2003/ titled as Brestu v. Jalpu, in the Court of learned Senior Sub-Judge, Kullu which plaint was returned to the plaintiff for filing in the Court of competent jurisdiction as the value of the suit was beyond the pecuniary jurisdiction of the Court.

3. In defence, the respondent alleged that he has been maintaining the plaintiff and is still maintaining him. Other grounds of maintainability including the ground that the plaintiff is estopped from filing the suit were urged in defence. On merits, the defendant pleads that the plaintiff voluntarily executed the gift deed because he (the defendant) was rendering services to the plaintiff. The gift according to the defendant is unconditional. He pleads that since the daughter, son in law and sister of the plaintiff had settled in the same village, they are encouraging him to revoke the gift so that they can enjoy the property.

4. On the pleadings of parties, the learned trial Court settled five issues of which issue No. 1 and 2 being crucial for the decision of the case i.e. as to whether the plaintiff was entitled for revocation of the gift or in the alternative whether he would be entitled to maintenance at the rate of Rs. 2000/- per month. The trial Court took these issues together for determination and held that the plaintiff has been unable to prove that the defendant was not rendering service to the plaintiff and dismissed the suit. The plaintiff is now in appeal.

5. I have heard learned Counsel appearing for the parties and gone through the record. Learned Counsel appearing for the plaintiff/appellant submits that the learned Court has not correctly appreciated the evidence on record and that it was clear from the evidence that the defendant was not maintaining the plaintiff.

Learned Counsel appearing for the respondent submits that the defendant has pleaded and proved not only that the gift was made voluntarily out of the gratitude by the plaintiff since he (defendant) was looking after him and that he was neither neglected nor neglects looking after the plaintiff or maintaining the plaintiff.

6. It is undisputed and as rightly held by the learned trial Court that the gift deed Ext.P1 carries with it an obligation which is to maintain and look after the appellant during his life time. These terms are clearly spelt out in the gift deed Ext.P1 and need not be repeated here. What requires consideration is as to whether the defendant has been in breach of the promise to look after the plaintiff.

7. Adverting to the evidence on record, the plaintiff who appeared as his own witness and stated that the defendant is a pichlag son of his wife from the previous marriage. He states that Ext.P1 was executed by him with the clear condition incorporated therein that the defendant would maintain him. Initially, the plaintiff-appellant did not feel the need for the defendant for rendering services to him, but at the advanced age which is 72 years, he felt need for support and maintenance. He requested the defendant to do so on the basis of the commitment on which the gift was made. He states that the defendant refused and proclaimed that he was the absolute owner of the suit land and the plaintiff could not do anything to him.

8. PW2 Devi Singh was the Pardhan of Gram Panchayat, Chopasa. He knows both the defendant and the plaintiff. He says that he as also the Up-Pardhan and Numberdar Beli Ram were called by the plaintiff to his house and informed that the defendant was not maintaining him. They tried to persuade the respondent-defendant but he did not heed to their advice saying that he was the absolute owner of the land and therefore, not bound to maintain the plaintiff.

9. PW3 Gian Chand has proved on record notice Ext.P4 sent to the defendant calling upon him to pay a sum of Rs. 2000/- per month as maintenance or in the alternative to vacate the suit land and property.

10. Jalfu Ram appeared as DW1 and has denied the allegations made against him. He states that the plaintiff has only one reason to file the suit and that is that the daughter and son-in-law of the plaintiff are staying with the plaintiff in his house

and he wants to give the suit property to them by revoking the gift deed Ext.PI. He admits in his cross-examination that the plaintiff cannot perform any work in the nature of agriculture operations etc. because of his old age. DW2 Murat Ram says that the plaintiff is being maintained by the defendant and he provides him clothes, food etc. He admits that because of his old age, the plaintiff cannot work. He also admits that he does not know as to how much money was given by the defendant to the plaintiff. He admits that he is brother of the defendant.

11. DW3 Het Ram states in his evidence that the defendant looks after the needs of the plaintiff. To similar effect is the evidence of DW4 Uttam Ram. Though in cross-examination, he also admits that the plaintiff is old and because of his old age, he cannot look after his land. He states in his evidence that the defendant ploughs the land of the plaintiff.

12. The learned trial Court on this evidence held that the plaintiff has been unable to establish his case. I cannot persuade myself to accept the findings of the trial Court. It is undisputed before me that the gift carries with it a condition. In *Panna Lal Hazra v. Fulmoni Hazra and Ors.* : AIR 1987 Calcutta 368, the Court holds that a gift which is made and which is based on a condition that in case donee does not provide maintenance to the dependants of the donor or the donor, is not in contravention of the provisions of Section 11 of the Transfer of Property Act. The Court holds that:

5. But both the Courts have found that under the express terms of the Deed of Gift whereby properties were conveyed to the defendant by his deceased father, the defendant is obliged to maintain his step mother. We do not agree with the learned Advocate for the defendant-appellant that such a condition in the instrument to provide maintenance to the donor and/or his dependants is in any way repugnant to the interest created by the instrument and, in our view, the condition is valid and enforceable and not hit by the provisions of Section 11 of the Transfer of Property Act. We, therefore, agree with the Courts below that the defendant step-son, who is the appellant before us, is bound to maintain his step-mother, the plaintiff-respondent. We accordingly dismiss the appeal and confirm the decree passed by the trial Court, but we make no order as to costs in this appeal. Drawing up of

formal decree is dispensed with.

13. The learned trial Court rightly holds that the gift was subject to the performance of certain conditions and for this purpose relied upon the decision of the Supreme Court in Philip John Plasket Thomas v. Commissioner of Income-tax, Calcutta AIR 1964 SC 587 and decision of this Court in Gehru Ram v. Rohlu, 1998 (1) Shim. L.C. 360. However, the Court was gone awry when considering the evidence on record. I cannot find from the evidence anything to persuade me that the defendant was infact maintaining the plaintiff or that the plaintiff did not make any request for maintenance. Merely saying that the evidence of witnesses of the plaintiff cannot be accepted because they are related to the plaintiff, is not the correct method in law for appreciating evidence. This principle if accepted and applied to the defendant, the evidence of DW6 Nirtu requires to be rejected because she was the natural mother of the defendant. But this apart, this evidence requires to be scrutinized for its coherence and nexus with the facts as stated and required to be proved. The evidence of the Pradhan PW2 has been ignored without any justifiable cause. The old age of the plaintiff necessitating his requirement for maintenance and the absence of any cogent and convincing evidence that the defendant was maintaining the plaintiff were all facts and circumstances requiring adjudication which has not been done. The evidence of the plaintiff is clear and cogent. He admits the gift but stated that the condition on which the gift was made i.e. maintenance of the plaintiff has not been done by the defendant.

14. I do not find anything in evidence of the defendant which would in any manner suggests that the defendant has been maintaining the plaintiff. It is clear that because of the old age, the plaintiff is unable to do any work. Mere statement of the defendant in examination in chief that he is maintaining the plaintiff without in any manner stating as to how and in what manner cannot establish that the he is maintaining the plaintiff. The learned trial Court has not assessed the evidence as required by law. There is nothing on the record to establish that the evidence of the plaintiff suffers from some infirmity or that the facts stated are inherently improbable. This appeal is accordingly allowed. The judgment and decree of the trial Court is reversed. I hold that the plaintiff is entitled for maintenance from the

defendant. For this purpose, the plaintiff shall pay the maintenance at the rate of Rs. 2,000/- per month from the date of filing of the suit. This maintenance will continue to be paid by the defendant to the plaintiff during his life time. There shall be no order as to costs.

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