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2024 INSC 965

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8244 OF 2009

SMT. NARESH KUMARI & ORS. ...APPELLANT(S)

Versus

SMT. CHAMELI & ORS. ...RESPONDENT(S)

J U D G M E N T

SUDHANSHU DHULIA, J.

1. The appellants / plaintiffs are before this Court against the judgement of the Punjab & Haryana High Court dated 20.08.2009, whereby the second appeal of the respondents / defendants was allowed and the concurrent decisions of the courts below, which had decreed the suit, were set aside.

The facts are as follows:

2. Land measuring 38 Bighas 8 Biswas (hereinafter "suit land") was gifted by one Rai Bahadur Randhir Singh ("donor") to Sanwalia, Ratiram and Sheochand, all sons of one Chhailu ("donees") in 1953. The oral gift was duly executed and mutation

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was carried out in favour of the donees on 13.12.1953. The possession of this land was also given to the donees on 13.12.1953.

Things remained peaceful, for 45 long years, then a suit was filed in the year 1998 for declaration and for possession, or more precisely for resumption of this property. The case of the plaintiffs was that they are the heirs of the erstwhile donor and that the suit land was gifted in lieu of the services, which had to be rendered by the donees and their heirs to the donor and his heirs lifelong. It was then asserted that since the defendants have stopped rendering these services and since the original donees have died anyway, the suit land should revert to the plaintiffs in terms of the gift condition.

These plaint averments were countered in an extremely dull even unimaginative manner in the written statements of the defendants. Nevertheless, the defendants opposed the plaint averments, contending that though the gift was for services rendered, there was no condition for the gift to revert to the donor upon the death of the donees. Even otherwise, they contended that the plaintiffs have no cause of action as the terms of the gift are being complied with and the defendants have been rendering "all kind of services", to the plaintiffs! It was also asserted that records

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relating to possession and ownership of the suit land have been mutated in their favour since 1953 and that the suit is hopelessly barred by limitation.

3. The Trial Court, after hearing the parties, concluded that what was crucial was that the subject matter of the gift was only a *life interest* in suit land and since the services have been stopped, the land was liable to be reverted in favour of the plaintiffs. Consequently, the suit was held to be within time and as the plaintiffs' title was proved, the suit was decreed. The First Appellate Court agreed with these findings and dismissed the defendant's appeal!

The High Court though allowed the defendant's second appeal and dismissed the suit, largely on the ground of limitation, though it was, *inter alia,* also observed that nowhere in the mutation dated 13.12.1953 is it mentioned that the donees had to serve the heirs of the donor as well and it could be presumed that proper services were rendered to the donor during his lifetime. Further, the plaintiffs failed to disclose what these "services" were and when exactly they were stopped.

Apart from making a bald statement in the plaint that the defendants have stopped rendering services, there is no worthwhile

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evidence placed by the plaintiffs before the Trial Court. On the contrary, evidence has been placed by the defendants in form of DW-1 who has stated that after the death of the donor-Randhir Singh, his children had left the village and nobody from the family of the donor remained in the village and therefore there was no one who could be served. This evidence, however, has not been considered either by the Trial Court or by the First Appellate Court and no reason has been assigned as to why this was done.

4. At the centre of this dispute lies the oral gift, which came to be recorded in the mutation order dated 13.12.1953. The same, as translated to English, is reproduced below:

> In a general meeting Rai Bahadur Randhir Singh donor along with identifier Neki Ram Lambardar who appeared and made a statement that he has gifted the land measuring 38 Bigha 8 Biswas in lieu of services till life to Sanwalia etc. and delivered the possession to them. if donees refused to render the services in that case the land shall revert to the donor or to his heirs. Sanwalia, Rati Ram and Sheo Chand donees are also present who admit the above statement as correct. As such with the consent of the parties the land comprised in Khewat No.64, Khasra Nos. 1169[13-18], 1171[6-11], 1173[7-0], 1174 [10-19] total 38 Bigha 8 Biswas on behalf of Rai Bahadur Randhir Singh donor in favour of donees Sanwalia, Rati Ram, Sheo Chand in equal share.Mutation is sanctioned in favour of donees.

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5. Unfortunately, the courts have lost sight of an important aspect here which has a crucial bearing on the case, which is the background of the transfer of land made in the year 1953.

The transaction which is the subject matter of the dispute admittedly occurred in December, 1953. This was the period immediately after our independence where each State in the country had already framed or was in the process of framing legislations on land reforms with a focus on redistribution of land. Since land was in the State list (List II of the Seventh Schedule of the Constitution of India), such legislation was being brought by almost every State in the country. Punjab was no exception. The land reforms were for acquisition of land from big landlords and zamindars after placing a limit on land holding and then to redistribute it to the landless and the marginal agriculturist. This was being done as this was the pledge given during our freedom movement by the leaders to the nation and immediately after our independence, this was the first task sought to be achieved everywhere in the country.

The reference in our case would be to the Punjab Security and Land Tenures Act, 1953 (hereinafter “1953 Act”), which had become effective on 15th April, 1953. Even prior to this, attempts

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were made to reform land ownership such as the Punjab Act No.12 of 1950 and the Punjab Act No.5 of 1951, which were repealed by the 1953 Act. The big zamindars and big land owners were fully conscious that they would not be able to retain land beyond the ceiling fixed by the Statute, which had an outer limit of 30 standard Acres for a family. The surplus land (beyond 30 acres) was to vest with the State. The land owners, therefore, either were gifting their land to their helpers, agricultural workers, even to priests or to temples, or in any other manner where they thought their best interest would lie. One thing was clear that technically they would not be able to keep land beyond the surplus limit.

During this period, gifting, donation or transfer of land in any possible manner permitted by law was common place, not only in Punjab but in all parts of the country. We have to examine the present transfer of land which took place in December, 1953 with this context and background in our mind. It is true again, that what we have here is a pure civil matter and considerations as we have just referred above are outside the scope of pure civil litigation. The answer to this would be that civil matters will undoubtedly be decided on facts and law as they exist and as they are applicable, but again in order to appreciate the facts we have

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to keep the context in mind. Context is always very important. The above reference was only with that aspect in mind.

6. Another factor which has an extremely important bearing in this case and which has again not been satisfactorily dealt with by the Trial Court and the First Appellate Court is the long delay by the plaintiffs in seeking resumption of their so-called property. It is a settled position of law that in cases of resumption of land or immovable property where there has been long and uninterrupted possession of the defendants, strong evidence is required to be placed by the plaintiffs to set up a claim, when the plaintiff is seeking a decree of possession. In this case, the nature of pleadings have already been referred to in the preceding paragraphs. The entire case of the plaintiffs rests on the proposition that their predecessors-in-interest have gifted this land to the forefathers of the defendants with the condition that the land is being given to them so that they continue to provide lifelong services to the donor as well as to their descendants, and since they have discontinued these services, the land is liable to revert to the descendants/legal heirs of the original donor. This assertion, however, is not backed by any plausible evidence. Moreover, this proposition has legal implications which may go against the plaintiffs.

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7. This suit is based on the aforesaid extremely thin proposition of law and on top of it there is no worthwhile evidence placed by the plaintiffs in their case, except for their reliance on words and phrases in the gift deed, to which unfortunately the defendants have also fallen prey. It is the case of none other but the plaintiffs that the agricultural land, which was the subject matter of the suit, was given in gift to the predecessors-in-interest of the defendants, but it was not an unconditional gift. It was an onerous gift with a condition and since the respondents have violated the conditions of the gift, the land is liable to be reverted to the plaintiffs. Even if we look at this case as a land given as a gift to the defendants or their predecessors-in-interest, the nature of the gift, the context in which it has been given and the entire accumulating circumstances including the fact that the possession of land was handed over the same day goes to show that it was actually an absolute transfer of property with transfer of interest in favour of the donees and their descendants, the only exception being that the donees were not given right over the "common land" of the village, known as "shamlat land".

8. Now the Transfer of Property Act, 1882 (for short "TPA") was not in force in erstwhile Punjab when the gift was executed in

1953[1], yet such provisions in TPA which are based on principles of justice, equity and good conscience have always been enforced by Courts.[2] In any case, before the enforcement of Transfer of Property Act, 1882, the transfer of immovable property in India was governed by the principles of English laws of equity.

Sections 126 and 127 of the TPA where provisions regarding the suspension or revocation of gifts and onerous gifts is defined respectively are quoted below:

> **Section 126. When gift may be suspended or revoked.—** The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked, but a gift which the parties agree shall be revocable wholly or in part at the mere will of the donor is void wholly or in part, as the case may be.
>
> A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.
>
> Save as aforesaid, a gift cannot be revoked.
>
> Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.
>
> *Illustrations*
>
> (a) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case

[1] Parts of Transfer of Property Act, 1882 came to be enforced in erstwhile Punjab vide Gazette Notification No. 1605-R(CH)-55/589 dated March 26, 1955.

[2] *Partap Das v. Nand Singh*, AIR 1924 Lah 729 (1); *Captain Parmodh Singh v. Labh Singh*, AIR 1955 P&H 49.

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B, and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(b) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lakh. The gift holds good as to Rs. 90,000 but is void as to Rs. 10,000 which continue to belong to A.

Section 127. Onerous gifts.—Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

Onerous gift to disqualified person.—A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

Illustrations

(*a*) *A* has shares in *X*, a prosperous joint stock company, and also shares in *Y*, a joint stock company, in difficulties. Heavy calls are expected in respect of the shares in *Y*. *A* gives *B* all his shares in joint stock companies. *B* refuses to accept the shares in *Y*. He cannot take the shares in *X*.

(*b*) *A*, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to *B* the lease, and also, as a separate and independent transaction, a sum of money. *B* refuses to accept

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> the lease. He does not by this refusal forfeit the money.

9. As far back as 1870, the Privy Council in ***Forbes v. Meer Mahomed Tuquee*, 1870 SCC OnLine PC 21** had an occasion to consider broadly a similar case, where the appellant/plaintiff sought resumption of land granted to the defendants. The land was originally granted on the condition of rendering services, which were to keep off the incursion of wild elephants and attend to the safety of tenants in nearby areas. It was the appellants case that since the services are not required any more as the incursion of elephants has itself ceased, the land should revert to him as part of their *zamindari*. Lower Court decreed the suit in favour of the plaintiff on the grounds, *inter alia*, that since the defendants therein have ceased to render the services, the land must revert to the plaintiff therein. This decree of the lower court was reversed by the High Court and the matter finally reached the Privy Council where defendants/grantees argued that they had rendered the services till they were required to do so and since the elephant incursion has stopped on its own, they are no longer bound by the condition. Privy Council considered that grantees had enjoyed peaceful possession of land for a long period of time and they were

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in long cultivation of this land, and hence, the agreement was construed in such a manner that the Sunnad was "…partly as a reward for past, partly as an inducement for future, services."

Similarly in the present case, the gift was for past services but even if it is assumed that it was for some past and some future services, there was no occasion for the defendants to render the services as the appellants had left the village and now, when defendants have been enjoying peaceful possession of land for long, resumption of land in favour of appellants will not be justified. The defendants had produced their witness DW-1 before the Court who gave the evidence that the plaintiffs had left the village long ago, immediately after the death of the Donor, which would be only a few years after the gift deed was executed in 1953 and therefore, there was no question of rendering any further service.

10. The conditional oral gift was executed on 13.12.1953 and all land records pertaining to ownership were transferred in the defendant's names along with possession. The oral gift, as recorded in the Mutation, has a default clause, i.e., *"if the donee refuses to render services in that case the land shall revert to the donor or to his heirs"*. The position regarding revocation of gifts upon breach is a possible condition. However, merely incorporating a defeasance

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clause will not exempt the plaintiff from discharging his burden. The plaintiff has to satisfy the Court and lead evidence to show what exactly was the nature of the services agreed upon, that a demand for these services was communicated and that the defendants refused rendering of services having reneged on the agreement.

11. On a perusal of the material on record, both the plaint and PW-1's deposition are conspicuously silent regarding any specific instances where services were denied by the defendants or their predecessors-in-interest. There was only a vague and conclusory allegation that services have been refused, without any evidence in support of the same.

The defendants primarily asserted that they have continued to render services and did not raise any plea of adverse possession. Their assertion has to be read only to the extent that they continued to render services to the donor or even his heirs, till the time they were physically residing in the village.

12. PW-1 deposed in his cross-examination (on 17.05.2000) that the donor died some 40 to 45 years back. What this means is that the donor passed away in the late 1950s soon after the gift was executed and possession was transferred. However, the plaintiffs

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only filed their suit in 1998, around 45 years after the gift's execution and around 20 years after the last original surviving donee died during the 1970s. While the defendants enjoyed uninterrupted possession throughout this period.

13. Transfer of suit land by way of gift took place in the year 1953 in Jhajjar district of present day Haryana which at that time was a part of the erstwhile State of Punjab, where provisions of TPA were not applicable. All the same, as stated in the preceding paragraphs, even though TPA was not applicable, what would definitely be applicable would be the provisions in TPA which are based on the principles of equity, justice and good conscience.

The admitted case of the plaintiffs is that the land (the subject matter of the case), was given in gift to the defendants (their predecessors-in-interest), in the year 1953. But since the condition in the gift was that the defendants will continue to render services (what was meant by these 'services' has nowhere been explained), and since they are not providing the services anymore, the land should resume to the ownership of the plaintiffs. The plaintiffs i.e., appellants before this Court had asserted that their forefathers / predecessors-in-interest had donated a piece of land to the defendants as a gift which was an onerous gift with a condition

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that it is not only being given for past services but also for future services, the donees and their successors will continue to provide to the donor and his successors and if the services stop, the property will revert to the donor or his successors. Now, since the successors of the defendants have stopped rendering services as claimed by the plaintiffs, the gift is being revoked. This was the precise claim set up in the plaint. A banal written statement was filed by the defendants where it was admitted that their forefathers were donated this property by the forefathers of the plaintiffs and they had a permanent interest in the property, they are its absolute owners. Moreover, they have continued to render "all kinds of services" to the plaintiffs and their successors and therefore, there is no question of property being now revoked in favour of the plaintiffs as no condition of the gift deed has been breached by them.

14. Now admittedly, the TPA which is of the year 1882 and came to be enforced on 01st July, 1882 was not applicable to all parts of India. For our convenience, it must be stated that it was not in force in the State of Punjab (including the present territory of Haryana) in the year 1953 when the gift deed was executed. Nevertheless, the TPA itself is a codification of broad principles

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which were applicable at the relevant point of time, relating to transfer of property, though after codification it also has some new provisions, such as registration of gift deed etc. The TPA was not applicable to Punjab but, as discussed earlier and also held by this Court in various cases, the broad principles in TPA based on equity, justice and good conscience, would definitely be applicable. ***(See: Shivshankara** v. **H.P. Vedavyasa Char 2023 SCC OnLine SC 358** & **Chander Bhan** v. **Mukhtiar Singh 2024 SCC OnLine SC 761)***

One of such principles in TPA based on equity, justice and good conscience is the definition of gift itself which is contained in Section 122 of TPA and reads as under:

> **Section 122. "Gift" defined.—**"Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.
>
> **Acceptance when to be made**.—Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.
>
> If the donee dies before acceptance, the gift is void.

15. Now all conditions for a valid gift deed were in existence when it was made on 13.12.1953. The subject matter of transfer was an

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immovable property (land), and it was without any consideration. There was also an acceptance of this gift deed by the donees, when the donor was alive, as possession of this land was given the very same day to the donees and this undisputed fact is on record.

Another important factor which must be kept in mind is that in a case of gift of land, possession has an extremely important bearing. Although, after the enforcement of TPA, registration became essential in a gift of immoveable property as the transfer will now be seen in terms of Section 123 of TPA, which is as follows:

> **Section 123. Transfer how effected**.—For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.
>
> For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.
>
> Such delivery may be made in the same way as goods sold may be delivered.

16. Under TPA a valid gift can be made without giving immediate possession to the donee as has been held by this Court in ***Renikuntla Rajamma*** *v.* ***K. Sarwanamma (2014) 9 SCC 445*** where it was held that section 123 of TPA supersedes Hindu Law

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and delivery of possession is not an essential requirement for the gift to be valid under provisions of TPA.

Nevertheless, in Punjab and in all other places of North India where Mitakshara law was applicable, gift of land usually was accompanied by handing over possession to the donee, as there was no purpose of enjoying land without being in its possession[3]. In other words, in cases governed by Hindu Law, possession is an extremely important ingredient where validity of the gift is to be determined. Since TPA was not in force, delivery of possession which has been done in the present case has an important bearing. In the present case, the admitted fact is that the plaintiffs have never questioned the validity of the gift given by their forefathers to the defendants. Their entire case, in fact, depends on a valid gift of land of which they admit possession was also given along with the gift deed in the year 1953 itself. Their case is that, the gift has to be revoked now for non-fulfillment of certain conditions. Plaintiffs have also, in other words, admitted that the defendants are in peaceful possession of this land since the date of gift.

There is another aspect to the entire case. What are those conditions of which a violation is being alleged? The condition is

[3] We must note here that both the donor and the donees were Hindus.

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that the defendants have discontinued to serve the successors of the donor i.e. plaintiffs. Can such a condition ever be part of a gift? This is the first question; the Trial Court and the Appellate Court should have asked. Although Section 127 of TPA permits an onerous gift but a gift which is conditioned upon perpetual rendering of services without any remuneration would amount to a "*begar*" or forced labour, even slavery and therefore it is not just wrong or illegal but even unconstitutional, being violative of fundamental rights of the donees. It has to be remembered that this so-called rendering of "services", was to be in perpetuity. It has to go on forever. What would this be, if not *"begar"* or forced labour. We must also remember that when the gift deed was executed the Constitution of India had already been enforced. Article 14 and 21 and more particularly Article 23 prohibits forced labour. Hence, the condition as is being read by the plaintiffs where not only the donees but their successors were to continue giving services to the plaintiffs, that too indefinitely, is nothing short of reading forced labour, as a condition.

But will this make the gift itself void? Our answer would be no. In this case, the validity of gift was never ever questioned, either by the plaintiffs or by the defendants. Therefore, a

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meaningful and purposive interpretation is required here. The only possible way therefore where the donees and their successors have continued to be in peaceful possession of the property for more than 45 years, is that there was never such a condition of rendering continuous services in the gift deed and services here meant only the "past services" rendered by the donees to the donor, or at best it may include services to be rendered by the donees to the original donor Rai Bahadur Randhir Singh, who passed away in the late 1950s. This is the only way it can be construed. In other words, the gift had no condition of continuation of these services till perpetuity as the plaintiffs would like us to read.

17. We must also remember that Section 127 of TPA, which permits onerous gifts, was not in force in present day Haryana which was earlier part of Punjab, as TPA was not applicable there. Nor can we say that such a condition being based on equity, justice & good conscience can be read into the gift deed as a valid condition.

The stipulated condition of "services" and the continuation of the rendering of such services has to be read in the context when the deed was executed. Thus, services shall be understood only as 'past services' rendered, or at most, the services which had to be

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rendered by the original donees to the original donor during his lifetime.

18. Under such facts and circumstances, we have no doubt in our mind that the plaintiffs had absolutely no case. Hence, the impugned judgment calls for no interference by us. We accordingly dismiss this appeal.

19. Interim order(s), if any, shall stand vacated.

20. Pending applications, if any, shall stand disposed of.

..J.
[SUDHANSHU DHULIA]

..J.
[PRASANNA B. VARALE]

New Delhi.
December 11, 2024.