



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR JUSTICE N S SANJAY GOWDA

CIVIL REVISION PETITION NO. 582 OF 2023 (IO)

BETWEEN:

1. MRS GEETHA
W/O LATE. GILBERT CORREYA,
AGED ABOUT 51 YEARS,
OCC. HOUSE WIFE,
R/O NO. 137, 1ST MAIN, 5TH CROSS,
NAGASANDRA, HMT LAYOUT,
BENGALURU - 560075.

...PETITIONER

(BY SRI. SHEKARAPPA B., ADVOCATE)

AND:

1. MR JOHNSON CORREYA
S/O GILBERT CORREYA,
AGED ABOUT 54 YEARS,
OCC. BUSINESS,
R/O NO. 66, CORREYA HOUSE,
AMARAVATHI LAYOUT,
BENGALURU - 560073.
2. MR. JENSEN CORREYA
S/O GILBERT CORREYA,
AGED ABOUT 49 YEARS,
OCC. BUSINESS,
R/O NO. 3, NANJUNDESHWARA LAYOUT,
NEAR PARLE BISCUIT FACTORY,
CHIKKABIDARAKALUU,
NAGASANDRA POST, BENGALURU - 560073.

...RESPONDENTS

(BY SMT.RUPA RON., ADVOCATE)



THIS CRP IS FILED UNDER SECTION 115 OF CPC., AGAINST THE ORDER DATED 28.08.2023 PASSED ON IA NO.5 IN OS NO.3210/2018 ON THE FILE OF XI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY., DISMISSING THE IA NO.5 FILED UNDER ORDER VII RULE 11(a) and (d) OF CPC., FOR REJECTION OF PLAINT, ETC.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The respondents – petitioners herein instituted a suit seeking for a declaration that the gift deed dated 16.10.2012 executed by their father in favour of the sole defendant V.Geetha was null and void. They also sought for a decree to direct the defendant to hand over possession and ultimately they sought for a decree of partition and claimed half a share to each of them.

2. In this suit, the plaintiffs themselves stated as follows-

“20. It is also pertinent to submit that on 05.04.2013 when the father of the plaintiffs learnt about the alleged execution Will dated 11.10.2012 and the Gift Deed dated 16.10.2012, by him, he immediately executed the Codicil to



the Will, canceling the Will, on 15.04.2013 as the said Will dated 11.10.2012 was got executed without his knowledge. The plaintiffs' father has thereafter on 20.05.2013 filed the suit in O.S. No.3596/2013 before this Hon'ble Court seeking for the reliefs of declaration of the Gift Deed as null and void, amongst other reliefs. Hence the very execution of the Codicil, cancelling the Will, even after the alleged registered gift deed dated 16.10.2012 also clearly demonstrates that the plaintiffs' father was never aware of the execution of Gift Deed by him in favour of defendant herein and hence the suit in O.S. No.3596/2013 was filed by the plaintiffs father."

3. It is also stated in the very same plaint as follows –

"24. It is submitted that it is also clear that the Defendant, in view of her dominating position as a concubine of the plaintiffs father and by coercion, undue influence and fraud, made the father of the plaintiffs withdraw the suit in O.S. No.3596/2013 on the ground that the matter was settled out of Court. Moreover, where a question/assertion of fraud involved, there is no question of the parties settling the said issue out of Court."



4. It is, therefore, clear that the plaintiffs clearly admitted that their father had executed a registered gift deed in favour of the defendant and had also filed a suit seeking for its cancellation, but ultimately he withdrew the suit on the ground that the issue between him and the defendant was settled out of Court.

5. In the present suit filed for declaration by the children of the donor, the beneficiary i.e., defendant filed an application seeking for rejection of the plaint on the ground that when the donor himself has filed the suit and had withdrawn the said suit, his children could not be permitted to challenge the gift deed executed by their father.

6. This request has, however, been rejected by the Trial Court and hence, the present petition.

7. Learned counsel for the petitioner submitted that when the donor had admitted the execution of the gift deed by filing a suit for cancellation and had subsequently



withdrawn it, the question regarding the validity of the gift deed became final and conclusive. He also submitted that the question as to whether the gift deed was valid or not would rest between the donor and the donee and the children of the donor would have no right in respect of the said gift.

8. Learned counsel for the respondents – plaintiffs, however, submitted that the donor himself had stated in his plaint that he was a cancer patient and was under medication which did not allow him to think rationally, it will have to be held that the filing of the suit and the withdrawal of the suit would be *non est* and the children of donor would be entitled to seek for a declaration that the gift deed was obtained by fraudulent means.

9. The argument of the learned counsel for the respondents – plaintiffs that the donor could not have been permitted to withdraw the suit, since by his own averments he was unwell, cannot be accepted. It is not in dispute that the respondents were aware of the withdrawal



of the suit and yet did not seek to challenge the said order by which their father was permitted to withdraw the suit. Having accepted withdrawal of the suit, the respondents – plaintiffs cannot be permitted to get over the same by filing a fresh suit for cancellation.

10. In my view, the arguments of the respondents – plaintiffs cannot be accepted. A gift is between the donor and the donee. If, in a given case the donor, subsequent to the execution of the gift deed, institutes a suit for for cancellation of the gift deed that he had executed, but subsequently chooses to withdraw the same, the question as to whether the gift deed was valid comes to an end against the Donor. If the donor had accepted the gift, his children, after his death cannot be permitted to contend that the withdrawal of the suit by the donor was improper or that the gift deed was executed by their father was under fraudulent circumstances. The Trial Court without noticing this basic aspect of the matter that there was no cause of action has refused to reject the application which



cannot be sustained. I am, therefore, of the view that the impugned order cannot be sustained and the same is set aside. The plaint, as a consequence, shall stand rejected. The Revision is, accordingly, ***allowed.***

**Sd/-
JUDGE**

HNM
List No.: 1 SI No.: 39