

Andhra High Court

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Shaik Khadaru Masthan. vs Smt.Sayyed Fathimun Bee. on 13 September, 2007

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Civil Revision Petition No : 2430 of 2007

13-09-2007

SHAIK KHADARU MASTHAN.

SMT.SAYYED FATHIMUN BEE.

Counsel for the Petitioner: MR.B.CHINNAPA REDDY.

Counsel for the respondent : MR.NASARAIHAH GOLLA

:ORDER:

1. The plaintiff in O.S.No.171 of 2001 on the file of Principal Junior Civil Judge, Sattenapalli is the revision petitioner. He filed the revision assailing the order dated 9.3.2007 passed in O.S.No.171 of 2001 whereby and where under the learned Principal Junior Civil Judge upheld the objection of the defendant and refused to receive document dated 15.6.1982 in evidence.

2. Facts of the case, in brief, giving rise to filing of this revision by the plaintiff in O.S.No.171 of 2001 on the file of Principal Junior Civil Judge, Sattenapalli are:

The plaintiff filed the suit for injunction simplicitor against the defendant in respect of the suit schedule property which comprises two items; item No.1 admeasures Ac.0.55 cents and item No.2 admeasures Ac.0.5.5 cents. It is the case of the plaintiff that his mother gifted the suit schedule property in the year 1982 and put him in possession. He accepted the gift thereafter his mother executed a gift deed on 2.5.2001. The revenue authorities issued Pattedar Pass Book in his favour. The defendant is no other than his sister. The defendant in order to grab the suit schedule property resorted to creating forged and fabricated document. Therefore, he filed the suit for injunction against the defendant. The defendant filed written statement disputing the gift deed set up by the plaintiff. It is the plea of the defendant that the plaintiff concocted the document to lay a claim over the suit property. The plaintiff is no other than her own brother and their parents have six issues. Their father Mahaboob Saheb died about 15 years back. Their mother- Shaik Katum Bee resided in the house of the plaintiff and died on 2.7.2001. On 6.8.1984 the said Shaik Katum Bee executed a registered gift deed in her favour in respect of Ac.2.30 cents of land and 5.5 cents of house site. The defendant accepted the gift and thereupon the donor put her in possession of the gifted property. On 17.11.1988 the defendant executed the registered gift deed in favour of her mother and her younger brother's son viz. Shaik Shahjahan in respect of 0.75 cents and delivered the possession to Shaik Katum Bee. The said Shaik Katum Bee has only life interest over the said 0.85 cents. After her death the property has to devolve on Shaik Shahjahan with absolute rights. The registered gift deed dated 2.5.2001 set up by the plaintiff is collusive and invalid.

3. The trial Court settled the issues. During the course of evidence on behalf of the plaintiff, he sought to file document-dated 15.6.1982 styled as gift deed. The defendant raised an objection for marking the document on the ground that it is inadmissible for want of proper stamp duty and registration. The learned Principal Junior Civil Judge upheld the objection of the defendant by an order-dated 9.3.2007. The said order is under challenge in this revision by the plaintiff.

4. This revision came to be admitted on 22.6.2007 and an order of interim stay also came to be granted on the said date. The respondent/defendant entered appearance and moved C.M.P.No.4289 of 2007 with a prayer to vacate the interim order dated 22.6.2007 passed in C.M.P.No.3155 of 2007. When the vacate stay petition came up for consideration, both the counsel consented for disposal of the main revision itself. Hence, heard learned counsel for the parties.

5. Learned counsel appearing for the petitioner submits that the parties are muslims and the law governing the parties does not require the gift to be evidenced by a document and even if the gift is evidenced by a document, the same is not required to be registered. A further submission has been made that an unregistered gift deed can be received in evidence for collateral purpose under the proviso to Section 49 of the Registration Act, 1908. In support of his submissions, reliance has been placed on the decisions of Supreme Court in MAHBOOB SAHAB V. SYED ISMAIL1 and RAM NIWAS TODI AND ANOTHER V. BIBI JABRUNNISSA AND OTHERS2.

6. In the first cited decision the Supreme Court held that under section 148 of the Principles of Mahomedan Law by Mulla it is essential, to the validity of a gift, that the donor should divest himself completely of all ownership and dominion over the subject of the gift. Under S. 149, three essentials to the validity of the gift should be, (i) a declaration of gift by the donor, (ii) acceptance of the gift, express or implied, by or on behalf of the donee, and (iii) delivery of possession of the subject of the gift by the donor to the donee as mentioned in S. 150. If these conditions are complied with, the gift is complete. Section 150 specifically mentions that for a valid gift there should be delivery of possession of the subject of the gift and taking of possession of the gift by the donee, actually or constructively. Then only gift is complete. Section 152 envisages that where donor is in possession, a gift of immovable property of which the donor is in actual possession is not complete unless the donor physically departs from the premises with all his goods and chattels, and the donee formally enters into possession. It would, thus, be clear that though gift by a Mohammadan is not required to be in writing and consequently need not be registered under the Registration Act; a gift to be complete, there should be a declaration of the gift by the donor; acceptance of the gift, expressed or implied, by or on behalf of the donee, and delivery of possession of the property, the subject-matter of the gift by the donor to the donee. The donee should take delivery of the possession of that property either actually or constructively. On proof of these essential conditions, the gift becomes complete and valid. In case of immovable property in the possession of the doner, he should completely divest himself physically of the subject of the gift.

7. In the second cited decision, the Supreme Court held that oral gift by delivery of possession under Mohammedan Law is valid.

8. There cannot be any quarrel with regard to the proposition of law laid down in the above referred two decisions that gift by a Mohammedan is not required to be in writing and consequently need not be registered under Registration Act. What is required is delivery of possession to complete the gift.

9. Learned counsel appearing for the respondent submits that when once the gift of immoveable property is reduced into writing it requires registration under section 17 of the Registration Act and unless the document is registered it cannot be admitted in evidence. In support of his submission, reliance has been placed on the decision of our High Court in RANGA REDDY v. SADHU PADAMMA AND OTHERS3.

10. The document in question has been placed on record along with the material papers. It is an unregistered and unstamped document. The recitals of the document are explicit that the mother of the plaintiff gifted the property under the document. When once the gift of immovable property worth more than Rs.100/- is evidenced by a document it attracts section 17 of the Registration Act. The same issue fell for consideration before a single Judge of this Court in third cited decision, wherein it has been held that an unregistered gift deed effecting immoveable property cannot be admitted in evidence even for collateral purpose. The cited decision squarely applies to the facts of the case on hand.

11. The trial Court considered the text of the document sought to be marked on behalf of the plaintiff in right perspective and came to the conclusion that the document is a compulsorily registerable one and since the same is not registered it is inadmissible in evidence. Indeed the trial Court relied on the decision of a Division Bench of this court in 1997(2) ALT 259 (DB) wherein it has been held that when possession of a property has been handed over by a document in question by a Mohammedan and the same is not registered, it is invalid and does not convey any title to the property to the donee.

12. In view of the settled proposition of law in the third and fourth cited decisions, I do not see any flaw in the order impugned in this Civil Revision Petition warranting interference of this Court in exercise of the powers under Article 227 of the Constitution of India.

13. Accordingly, this Civil Revision Petition fails and the same is dismissed. No costs.

?1 AIR 1995 SC 1205

2 (1996) 6 SCC 444

3 2002 (6) ALD 752