

Ragini Devi vs Kamalakshy (Dead) on 30 January, 2020

Bench: Sanjay Kishan Kaul, K.M. Joseph

1

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5725/2009

RAGINI DEVI

VERSUS

KAMALAKSHY (DEAD) & ORS.

O R D E R

We have heard learned counsel for the parties. We had put to learned counsel for the appellant as to whether the gift deed in question met with the requirement of Section 122 of the Transfer of Property Act, 1882. In this behalf we have drawn the attention of learned counsel for the appellant to the para set out in the gift deed i.e. it authorized the appellant to make necessary indentures at the village office in order to make it in her own name and to get the patta deed in her favour and also to make necessary improvements in the property. Undisputedly, nothing of that sort has happened.

Learned counsel for the appellant seeks to contend by a reference to the judgment of this Court in *K. Balakrishnan v. K. Kamalam & Ors.* - (2004) 1 SCC 581 that there is no specific acceptance required and such non-mention ought not to defeat the gift. We may notice that this judgment deals with the issue of onerous gifts under Section 127 and also a donee being minor and the consequences thereafter. In the present case, we are not concerned with either a onerous gift or a gift to a minor. We may also take note of another fact as emerging in the impugned order that though the original owner of the property passed away in 1980 and the cancellation of the gift deed was executed by her husband in 1981 who also passed away in 1982, the suit was filed by the appellant only in the year 1990. The impugned order records that the appellant claimed that the knowledge of cancellation was only derived at in 1990. It is observed that it may have been possible but then very critically the appellant did not even step into the witness box and only her attorney PW-1 had stepped into the box who did not know anything about the facts prior to the filing of the suit. The appellant, by her own laxity, has not been able to prove that the knowledge was derived only in 1990.

The appellate Court also takes note of the consequences of the donee not being examined in Court and the original documents not being produced by the plaintiff and that appears to have also weighed with the High Court. In view of the facts recorded aforesaid, we are not inclined to interfere

with the concurrent findings of the Courts below.

The appeal is dismissed.

.....J. [SANJAY KISHAN KAUL]J.
[K.M. JOSEPH] NEW DELHI;

JANUARY 30, 2019.

ITEM NO.102

COURT NO.11

SECTION XI-A

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

Civil Appeal No(s). 5725/2009

RAGINI DEVI

Appellant(s)

VERSUS

KAMALAKSHY (DEAD) & ORS.

Respondent(s)

([PART-HEARD BY HON'BLE SANJAY KISHAN KAUL AND HON'BLE K.M. JOSEPH, JJ.] [REMAIN ON BOARD] IA No. 7891/2020 - EXEMPTION FROM FILING O.T.) Date : 30-01-2020
This appeal was called on for hearing today. CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL HON'BLE MR. JUSTICE K.M. JOSEPH For Appellant(s) Mr. M. P. Vinod, AOR For Respondent(s) Mr. Haris Beeran, Adv.

Mr. Mushtaq Salim, Adv.

Mr. Usman Ghani Khan, Adv. Mr. Azhar Assees, Adv.

Mr. Adhil Saifudeen, Adv. Mr. Radha Shyam Jena, AOR UPON hearing the counsel the Court made the following O R D E R The appeal is dismissed in terms of the signed order.

Pending application stands disposed of.

(ASHA SUNDRIYAL)

(ANITA RANI AHUJA)

COURT MASTER

COURT MASTER

[Signed order is placed on the file]