

Kali Prasad Singh vs Ram Prasad Singh And Ors. on 9 November, 1973

Equivalent citations: AIR1974SC148, (1974)1SCC182, 1974(6)UJ8(SC), AIR 1974 SUPREME COURT 148, 1974 (1) SCJ 668 1974 (1) SCC 182, 1974 (1) SCC 182

Bench: D.G. Palekar, R.S. Sarkaria, V.R. Krishna Iyer

JUDGMENT

Krishna Iyer, J.

1. The fact of this appeal by the defendant turns on the construction of a simple deed of gift, Ex. A-7. Its language is plain, the intention of the donor is clear and yet it happens that a learned Single Judge of the High Court has in second appeal reversed what we consider to be the obviously correct conclusion reached by the District Judge in first appeal.

2. One Beni Singh had three sons and many properties. On a division among them, the properties set out in the 'B' Schedule to the plaint fell to the share of two of his sons Sheo Dihal Singh and Nepal Singh. Subsequently, a partition inter se of these properties came to be made by decree of court on June 14, 1945 whereby properties in the 'C' schedule to the plaint were allotted to Debi Prasad and Lal Bahadur (second defendant), children of Nepal Singh. 'D' schedule properties with which we are not concerned in this suit were allotted to Kali Prasad (first defendant, also appellant before us). 'E' schedule items were set apart for the sons Sheo Dihal. We are not concerned with these items either. However, Debi Prasad instituted a suit for partition and separate possession of his share in 'C' schedule properties against Lal Bahadur (second defendant) on March 23, 1949. During the pendency of that suit Debi Prasad executed a registered gift deed in favour of the appellant Exhibit A-7 dated January 25, 1950. Later on, a decree for partition of the 'C' schedule properties was passed and the half share of Debi Prasad was allotted to him which is set out in the plaint as 'F' schedule properties. Thus, it is apparent that Debi Prasad had 1/6th share in the 'B' schedule properties which was transformed into 1/2 share in 'C' schedule properties, through the process of two litigations. At the time of the gift, Ex A-7, although a decree allotting the 'C' schedule properties to the donor, Debi Prasad, and his brother, Lal Bahadur, the second defendant, had been passed it would appear that in the revenue records this change had not been notified and going by those records, all the 'B' schedule properties were still shown as belonging jointly to the co-owners including Debi Prasad, the donor. (The learned District Judge has mentioned this fact in his judgment) The gift deed, Ex. A-7, relates to share of Debi Prasad in the 'B' schedule properties, and the question that falls for decision is as to whether the entire 1/6th share in the 'B' schedule properties owned by Debi Prasad, and later concretised into the 'F' schedule properties, were

covered by the gift and transferred to the first defendant, the donee, or whether only a 1/6th share of the 'F' schedule properties was conveyed by the gift. To complete the story, it has to be mentioned that after the execution of Ex. A-7 Debi Prasad purported to convey his 5/6th share in the 'F' schedule properties to the plaintiff and the 7th defendant who brought a suit for recovery of possession in the Munsif's court in 1956, three years after the death of the vendor, Debi Prasad. The Learned Munsif granted a decree to the extent of 5/6th of the 'F' schedule properties on a certain construction of Ex. A-7, while in appeal the learned District Judge dismissed the suit on the ground that Ex. A-7 was a gift of the entire 'F' schedule properties. Fortunes fluctuated in the second appeal where the learned Munsif's decree was restored, and if we may anticipate our conclusion at this stage, we are inclined to uphold the dismissal of the suit agreeing with the views of the learned District Judge.

3. The plaintiff, in the trial court, put forward the extreme plea that the gift was a nominal document but that plea, faintly revived by learned Counsel here, need not detain us as there is no merit in it and three courts have negated it.

4. The only serious contention urged by the appellant and controverted by the respondent is as to the true meaning of Ex. A-7 in regard to the properties conveyed by it. Debi Prasad, the donor, recites in the deed of gift how he and the first defendant had been living together and the latter had been serving him "with all his heart and soul". He has recorded his grateful affection for his brother, the first defendant, and proceeded to state :

Therefore I have the wish to give my property to Kali Prasad for his love and affection showed by him during my life time....

It is obvious from this recital that what the donor intended to give was the whole property and not a fraction thereof. Indeed, the concluding recital which contains the words of conveyance only confirms this inference of intention, as we will presently show. The learned Single Judge himself observed emphatically :

I have no doubt that what Devi Prasad intended was to gift whatever interest he had in the family property.

However, he thought that the operative portion of Ex. A-7 cut back on the quantum of the property transferred by Ex. A-7. We have studied carefully the recitals relied upon by the learned Judge to reach this conclusion and find it impossible to support the inference that has appealed to him.

5. Exhibit A-7 sets out all the items of property in the 'B' schedule and gives its extent as 18-89 acres. The donor proceeds to state that this is the total extent of the properties and continues by mentioning that he has a 1/6th share (ek chhatai hissa). To put matters beyond doubt he added that this 1/6th share is his and is given in gift (yani 1/6 hissa ham muqir ka hai voh hiba kiya). The meaning is unmistakable that the donor states that he has 1/6th share in all the properties set out at the foot of the gift deed (which are items of the 'B' schedule to the plaint) and proceeds to convey

this 1/6th share of his by way of hiba to the donee, his brother. It is inconceivable, in the face of this language, to hold that what was conveyed by Ex. A-7 was 1/6th of the items set out in the gift deed.

6. The only point of obscurity is as to why when there had already been a partition of the 'B' schedule properties & the donor & Lal Bahadur, the second defendant, had been allotted the 'C' schedule properties out of the 'B' schedule properties there should have been no reference to the latter 'C' schedule properties in the gift deed. The explanation apparently is that since in the revenue records the mutation of names indicating the partition and allotment of 'C' schedule properties had not been carried out, the gift deed was drafted on the footing that Debi Prasad was owner of 1/6th of the 'B' schedule properties and that entire share was being gifted away to the first defendant. There is no dispute between the parties that the 1/6th share of the donor in the 'B' schedule properties was converted into half share in the 'C' schedule properties and full ownership of the 'F' schedule properties. It thus follows that Ex. A-7 is a gift in favour of the first defendant of the entire 'F' schedule properties.

7. The learned District Judge was, therefore, right and the learned Single Judge in the High Court was clearly wrong. The appeal succeeds. It is unfortunate that this litigation which has stood an exhausting length of 17 years with alternating fortunes finds the parties out of pocket to considerably more than perhaps the value of the properties themselves, but this sad note on litigation in India cannot deflect us from the rule that costs must follow the event. The appeal is allowed with costs.