Daulat Singh (D) Thr. Lrs. vs The State Of Rajasthan on 8 December, 2020

Equivalent citations: AIR 2021 SUPREME COURT 394, AIRONLINE 2020 SC 888

Author: N.V. Ramana

Bench: Surya Kant, S. Abdul Nazeer, N.V. Ramana

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No.5650 OF 2010

DAULAT SINGH (D) THR. LRS. … APPELLANTS

VERSUS

THE STATE OF RAJASTHAN & ORS. … RESPONDENTS

JUDGMENT

N.V. RAMANA, J.

1. The present appeal arises out of the impugned judgment dated 25.04.2008, passed by the High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Special Appeal No. 264 of 1999 (Writ) wherein the Division Bench of the High Court allowed the appeal preferred by the respondents and upheld the order dated 02.07.1990 passed by the Board of Revenue while setting aside the order dated 02.04.1997 of the Single Judge.

2. The facts underlying the appeal are as follows: Daulat Singh (since deceased and now represented through his legal representatives and who shall hereinafter for the sake of convenience be referred to as the appellant) was owner of 254.2 Bighas of land. On 19.12.1963, he gifted away 127.1 Bighas of land to his son, Narpat Singh. After the said transfer, the appellant was left with 17.25 standard

acres of land, which was below the prescribed limit under the Ceiling Act.

3. Although, a proceeding was initiated under the ceiling law, the same was dropped on 15.04.1972 by the Court of Deputy Sub-Divisional Officer, Pali, Rajasthan. While dropping the proceedings, the Court observed that, the amendment of Section 30DD of the Rajasthan Tenancy Act, 1955 (hereinafter "Tenancy Act of 1955") was effective from 31.12.1969, and since the gift deed was executed before the aforesaid amendment, the aforesaid transfer was valid.

4. However, by notice dated 15.03.1982, the Revenue Ceiling Department re-opened the case of the appellant. The Revenue Ceiling Department while issuing the aforesaid notice stated that the earlier order dated 15.04.1972, passed by the Court of Deputy Sub-Divisional Officer, Pali was rendered without investigating whether the land transfers are recognizable as per the provisions of Section 30 of the Tenancy Act of 1955. The same being in contravention of the provisions, needs to be reopened.

5. The Court of Additional District Collector, Pali vide order dated 28.10.1988, declared that the mutation of the land done in favour of the son of the appellant was invalid as there was no acceptance of the gift. It was declared therein that the appellant was holding 11 standard acres of extra land over and above the ceiling limit. The Collector, therefore, directed the appellant to handover vacant possession of the aforesaid 11 standard acres of extra land to the Tahsildar, Pali.

6. Aggrieved by the aforesaid order, the appellant preferred an appeal before the Board of Revenue. Vide order dated 02.07.1990, the Board of Revenue, modified the earlier order dated 28.10.1988, and upon re-calculation held that the appellant is holding 4.5 standard acres of land in excess of the ceiling limit.

7. Aggrieved, the appellant preferred a Writ Petition under Article 227 of the Constitution of India, 1950 before the High Court. Vide order dated 02.04.1997, the learned Single Judge of the High Court allowed the writ petition preferred by the appellant. The Court held that the case was beyond the purview of Section 6 of The Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (hereinafter "Ceiling Act of 1973") because the land was transferred by way of gift before 26.09.1970. It was further held that the aforesaid transfer of land, by the appellant in favour of his son by virtue of a registered gift deed, being bona fide, was valid in the eyes of law. The learned Single Judge, therefore held that there is no surplus land which is available with the appellant which can be resumed.

8. Thereafter, the respondents preferred an appeal against the above order before the Division Bench, which allowed the appeal holding that the gift deed was invalid as the son of the appellant was unaware about the same. The Division Bench vide impugned judgment dated 25.04.2008, held that the learned Single Judge passed the judgment in ignorance of the provisions of Section 30C and 30D of the Tenancy Act of 1955. Therefore, the Division Bench of the High Court set aside the order passed by the Single Judge Bench for being untenable and upheld the order passed by the Board of Revenue.

9. Aggrieved, the appellant has preferred the present appeal by way of Special Leave Petition before this Court.

10. The counsel on behalf of the appellant argued that the transfer of land was effectuated way back in 1963. The Division Bench clearly erred in not recognizing the transfer of 17.25 acres in favor of the appellant's son Narpat Singh, who was a major at the time the gift deed was executed, during his lifetime, as per the requirements of Section 122 of the Transfer of Property Act, 1882. There was an implied acceptance because this is a case of transfer between father and son. On the basis of facts of this case, it is proved that the son was living separately with his family. Moreover, such a transfer does not violate the provisions of Section 30C and Section 30D of the Tenancy Act of 1955. Lastly, the counsel also pleaded that the notice given for reopening of the ceiling case was beyond the period of limitation.

11. On the other hand, the counsel on behalf of the Respondents argued that the Division Bench rightly upheld the order passed by the Board of Revenue which was passed after detailed assessment of the facts and appropriate reliance upon Section 30C and 30D of the Tenancy Act of 1955. The respondents submitted that the findings of facts could not be interfered with in a writ proceeding. The respondents also stated that, issue of limitation was never argued by the appellant in the Courts below. Be that as it may, the notice was issued within the limitation period.

12. Having heard the learned counsel, three important issues arise for our consideration:

i. Whether reopening of the case was beyond the period of limitation?

ii. Whether the registered gift deed executed by the appellant is valid in the eyes of law?

iii. Whether the judgment of learned Single Judge is in ignorance of the provisions of Sec 30C and 30D of the Tenancy Act of 1955?

ISSUE NO.1

13. Section 15 of the Ceiling Act of 1973 confers upon the State Government the power to re□open the cases, if it is satisfied that the earlier order was in contravention with the provisions of the Act and is prejudicial to the State interest. The aforesaid direction to re□open cases must be preceded by a show□cause notice served upon the person concerned. However, the proviso clause states that no notice can be issued after the expiry of five years from the date of the final order sought to be re□ opened or after the expiry of 30 th June 1979, whichever is later.

14. Therefore, the provision mandates that, after the expiry of five years from the date of final order sought to be re□opened, or after the expiry of 30th June 1979, whichever is later, no notice for re□ opening of such cases can be issued. Therefore, the relevant dates for determination of the issue of limitation is the date of order sought to be reopened and the date of issuance of show□cause notice under Section 15 of the Ceiling Act of 1973.

15. During the course of the hearing and on a query raised by the Bench, the respondents have brought to our notice the xerox copy of the Notice dated 20.11.1976 issued by Deputy Government Secretary, Revenue (Billing), Rajasthan.

16, It ought to be noted that, the aforesaid notice was sent to the appellant on 20.11.1976, that is within five years of the earlier order dated 15.04.1972. Further, the notice also satisfied the requirements as provided under Section 15 of the Ceiling Act of 1973, and hence was valid in the eyes of law. The case was, thus, re□opened within the time period stipulated under Section 15 of the Ceiling Act of 1973. Therefore, issue no.1 is answered in favour of the respondent□State.

ISSUE NO.2

17. The High Court, while passing the impugned order, held the registered gift deed dated 19.12.1963 to be invalid on the basis that it did not meet the requirements as provided under Section 122 of the Transfer of Property Act, 1882. The Division Bench while upholding the observations of the Board of Revenue, further observed that a perusal of the gift deed does not show acceptance of gift by the donee, rather it seems that donee was even unaware of the gift.

18. Section 122 of the Transfer of Property Act, 1882 provides that:

> 122. "Gift" defined. — "Gift" is the transfer of certain existing movable or immovable 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.

19. Section 123 of the Transfer of Property Act, 1882 provides that:

> 123. Transfer how effected. —For the purpose of making a gift of immovable 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 movable 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.

20. Section 122 of the Transfer of Property Act, 1882 provides that for a gift to be valid, it must be gratuitous in nature and must be made voluntarily. The said giving away implies a complete dispossession of the ownership in the property by the donor. Acceptance of a gift by the donee can be done anytime during the lifetime of the donor.

21. Section 123 provides that for a gift of immovable property to be valid, the transfer must be effectuated by means of a registered instrument bearing the signature of the donor and attested by at least two witnesses.

22. A three□Judge Bench of this Court in the case of Naramadaben Maganlal Thakker v. Pranjivandas Maganlal Thakker, (1997) 2 SCC 255 had held that:

> 6. Acceptance by or on behalf of the donee must be made during the lifetime of the donor and while he is still capable of giving.
>
> 7. It would thus be clear that the execution of a registered gift deed, acceptance of the gift and delivery of the property, together make the gift complete. Thereafter, the donor is divested of his title and the donee becomes the absolute owner of the property.

(emphasis supplied)

23. The Division Bench of the High Court in the impugned judgment upheld the findings of the Board of Revenue wherein it held that there was no valid acceptance by the donee. The Additional District Collector held that there was no semblance of acceptance in the gift deed. On appeal, the Board of Revenue held that, "it is irrelevant that after the gift the land remained in possession of the donee or that he got it mutated in his name.". The Division Bench of the High Court, relying on the aforesaid observation, stated that there was no valid acceptance as it seems like the donee was unaware about the gift deed itself.

24. At the outset, it ought to be noted that Section 122 of the Transfer of Property Act, 1882 neither defines acceptance, nor does it prescribe any particular mode for accepting the gift.

25. The word acceptance is defined as "is the receipt of a thing offered by another with an intention to retain it, as acceptance of a gift." (See Ramanatha P. Aiyar: The Law Lexicon, 2nd Edn., page 19).

26. The aforesaid fact can be ascertained from the surrounding circumstances such as taking into possession the property by the donee or by being in the possession of the gift deed itself. The only requirement stipulated here is that, the acceptance of the gift must be effectuated within the lifetime of the donor itself.

27. Hence, being an act of receiving willingly, acceptance can be inferred by the implied conduct of the donee. The aforesaid position has been reiterated by this Court in the case of Asokan v. Lakshmikutty, (2007) 13 SCC 210

14. Gifts do not contemplate payment of any consideration or compensation. It is, however, beyond any doubt or dispute that in order to constitute a valid gift acceptance thereof is essential. We must, however, notice that the Transfer of Property Act does not prescribe any particular mode of acceptance. It is the circumstances attending to the transaction which may be relevant for

determining the question. There may be various means to prove acceptance of a gift. The document may be handed over to a donee, which in a given situation may also amount to a valid acceptance. The fact that possession had been given to the donee also raises a presumption of acceptance.

(emphasis supplied)

28. In the present case, the gift deed itself contained certain recitals as mentioned below:

> "...Out of the aforesaid land in all the khasra's 1/2 part means 50 percent I am giving you in gift being my younger son with my pleasure. My elder son Shri Babu Singh has no objection to this gift ... From today you are the owner of the half of the land gifted to you and you will have possession hereafter. You have the complete right over the aforesaid land for cultivation from today onward. Now you get the gifted land mutated in your name... These lands have not been sold or under Will or under the gift earlier. Further I state that the aforesaid land is free from any debt liability... The registration of the aforesaid gift has been done by me in my sound physical and mental health with consent without any undue coercion and pressure from anyone. I have gifted the aforesaid land with my sweet will and wish..." These recitals clearly indicate that donor intended to part with ownership and possession immediately after the execution of the gift deed.

29. In order to show acceptance, the counsel for the appellant drew our attention to the mutation records. The Mutation entry in the Revenue Record of Gram Sedriya, District Pali dated 28.10.1968 clearly reflects that half portion of appellant's land was bestowed as a gift by the appellant to his son through a registered instrument of gift dated 19.12.1963.

30. Furthermore, the statement dated 31.08.1984, rendered by the appellant□donor before the Court of Additional District Magistrate indicates that the donee was already a major at the time of the execution of the gift deed. He further stated that after execution of the gift deed the donee started cultivating on the same.

31. The aforesaid statement of the appellant□donor is completely supported by the statement made by the donee on 15.12.1988 before the Court of Additional District Magistrate. Therein, the donee clearly stated that, as he did not get along with his step□mother, he started living separately and the land was transferred to him by virtue of gift deed was under his possession and he was cultivating the same.

32. Therefore, the abovementioned circumstances clearly indicate that there was an acceptance of the gift by the donee during the lifetime of the donor. Not only the gift deed in itself contained recitals about transfer of possession, but also the mutation records and the statements of the both the donor and donee indicate that, there has been an acceptance of the gift by conduct.

33. The respondents failed to bring on record any evidence to rebut the fact that the donee was in enjoyment of the property. In light of the same, the learned Single Judge Bench took a plausible

view that, it was a transfer between a father and a son and there was a valid acceptance of the gift when the donee□s son started living separately. Lastly, it ought to be noted that apart from the point of acceptance by the donee as held above since the deed is registered, bears the signature of the donor and has been attested by two witnesses, the requirements under Section 123 of the Transfer of Property Act, 1882 have been satisfied. In line with the aforementioned observations, issue no.2 is answered in favour of the appellant.

ISSUE NO.3

34. The learned Division Bench, while setting aside the judgment of the learned Single Judge observed that the learned Single Judge passed the order in ignorance of the provisions of Section 30C and 30D of the Tenancy Act of 1955. However, the counsel on behalf of the appellant has argued that the transfer of land made by the appellant to his son does not violate the terms of Section 30C and Section 30D as contained in Chapter III□B of the Tenancy Act of 1955 (since repealed by the Rajasthan Imposition of Ceiling on Agricultural Holdings Act,1973) as such a transfer satisfies the test of Section 30DD of the Tenancy Act of 1955.

35. Chapter III B of the Tenancy Act of 1955, comprising of Sections 30B to 30J deals with restrictions on holding land in excess of ceiling limit. Section 30C indicates the extent of ceiling area. This section provides that for a family consisting of five or less members, the ceiling area would be thirty standard acres. When a family exceeds five members, five acres of ceiling area shall be extended for every additional member, however, such area cannot extend beyond sixty standard acres.

36. Section 30D provides that all transfers, except those which are specified under sub□section (1) are not to be recognized for determination of holding with respect to the ceiling area. Thereafter, Section 30DD, a subsequent amendment to the Tenancy Act of 1955 provides further exceptions to the general bar under Section 30D.

37. It is pertinent for us to have a look at the relevant Sections 30D and 30DD. The Sections read as follows:

> 30D. Certain transfers not to be recognised for fixing ceiling area under Section 30C.□□(1) For the purpose of determining the ceiling area in relation to a person under Section 30C, any voluntary transfer effected by him on or after 25□2□1958, otherwise than□
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> (i) By way of partition, or
>
> (ii) In favour of a person who was a landless person before the said date and continued to be so till the date of transfer, of the whole or a part of his holding shall be deemed to be a transfer calculated to defeat the provisions of this Chapter and shall not be recognised and taken into consideration; and the burden of proving whether any such transfer falls under clause (i) or clause (ii) shall lie on the

transferor:

Provided that if by way any such transfer as is mentioned in clause (ii) land in excess of the ceiling area applicable to the transferee has been transferred to him, such transfer to the extent of such excess shall not be recognised or taken into consideration for the purpose of this sub□section:

Provided further that no such transfer as is mentioned in clause (ii) shall also so taken into consideration or recognised if it has been made after 9□12□1959.

... 30DD. Certain transfers to be recognized.□□Notwithstanding anything to the contrary contained in Section 30D, for the purpose of determining the ceiling area in relation to a person under Section 30C,□

(i) every transfer of land not exceeding thirty standard acres made by a person upto the thirty first day of December, 1969 in favour of an agriculturist domiciled in Rajasthan or in favour of his son or brother intending to take to the profession of agriculture and capable of cultivating land personally and who had attained the age of majority on or before the said date; and

(ii) every transfer to the extent as aforesaid made by a person before the first day of June, 1970 of land comprised in groves or farms of the nature referred to in clauses (a), (b), (d) and (e) of sub□section (1) of Section 30□J as it stood prior to the commencement of the Rajasthan Tenancy (Second Amendment) Act, 1970 and acquired before the first day of May, 1959 in favour of his son or brother fulfilling the conditions mentioned in clause (i) and who attains the age of majority on or before the first of the aforementioned dates, shall also be recognized.

Explanation □I The expression "agriculturist" in this section shall mean a person who earns his livelihood wholly or mainly from agriculture and cultivates land by his own labour or by the labour of any member of his family or along with such labour as aforesaid with the help of hired labour or servant on wages payable in cash or in kind and shall include an agricultural labourer and a village artisan.

II. The expression "domiciled in Rajasthan" in this section shall mean a person who permanently resides in Rajasthan since before the commencement of this Act.

38. As discussed earlier, Section 30C of the Tenancy Act of 1955 provides for the ceiling limit of 30 standard acres for a family of five members or less. The appellant admittedly was having a family of less than five members and was originally holding around 34.4 standard acres. Subsequently, by virtue of registered gift deed dated 19.12.1963, the appellant had transferred around 17.25 standard acres to his son.

39. Section 30D provides that any transfer, on or after 25.02.1958, other than the ones provided in sub-section 1(i) and 1(ii) shall be deemed to have been entered to defeat the purpose of ceiling act. Such transactions were declared to be void. The aforesaid two exceptions being transfer by partition and transfer to a landless person.

40. However, Section 30DD provides further exceptions to Section 30D as it recognizes certain transfer after the cut-off date provided under Section 30D. Section 30DD recognizes transfers of area up to 30 standard acres made in favour of an agriculturalist, his son or brother who are capable of doing agriculture and also intend to take up agriculture as a profession. However, such transfer must have been made before 31.12.1969 and the transferee must have attained the age of majority on or before the aforesaid date.

41. In the present case, the respondents have submitted that the transfer is barred under Section 30D, therefore the State has a right of resumption over the excess area of 4.5 acres as per Section 30C. On the contrary, the appellant has argued that the transfer was protected under Section 30DD.

42. Our attention is drawn again to the registered gift deed dated 19.12.1963. The gift deed itself contains the recitals that "...The aforesaid land which is of my khatedari (ownership) and on which I am carrying out cultivation and is in my possession. Out of the aforesaid land in all the khasra's 1/2 part means 50 percent I am giving you in gift being my younger son with my pleasure....From today you are the owner of the half of the land gifted to you and you will have possession hereafter. You have the complete right over the aforesaid land for cultivation from today onward. Now you get the gifted land mutated in your name." (emphasis supplied)

43. It is, thus, apparent that the legislature has carved out two separate categories of lands, one which is includable and other which is outside the purview of ceiling laws. Once such a classification has been made, with their being no challenge to its vires, it is the solemn duty of every authority to give full effect to the same, in both letter and spirit. Although, it is possible that there can be a voluntary transfer which would meet the qualifications of both Sections 30D and Section 30DD, however, it is significant to note that Section 30DD opens up with a non-obstante clause with overriding effect on Section 30D, as a result of which, any land included within its purview would be protected from the rigors of Section 30D of the Tenancy Act of 1955. Therefore, if the appellant succeed in its endeavor to establish that the transfer was covered under Section 30DD of the Tenancy Act of 1955, then such transferred land has to be exempted from computation of confiscable land, irrespective of the fact that it falls within the ceiling limit as prescribed under Section 30D of the Tenancy Act of 1955.

44. Another significant piece of evidence is the statement of the transferor-appellant dated 31.08.1984, wherein he has stated that the transferee-son was living separately and was cultivating the aforesaid gifted property. It is also mentioned that the transferee is in possession of an ox and equipments for ploughing and agriculture. The aforesaid facts have been reiterated by the transferee as well vide his statement dated 15.12.1988, wherein he has clearly stated that, he is in independent possession of the gifted property and has been cultivating the said land.

45. The aforesaid pieces of evidence clearly indicate that due to certain family issues, the appellant and his son were living separately. During such separation, when the transferee-son had already attained the age of majority, the appellant-owner of the land, who was an agriculturalist himself, transferred the aforesaid land in favour of his son, so as to enable him to cultivate the same. The statements of transferor and the transferee clearly indicate that the transferee had the equipment and skills and was sustaining himself as an agriculturalist.

46. Lastly, it must be taken into consideration that, the aforesaid transfer was executed way before the cut-off date stipulated under Section 30DD i.e. 31.12.1969. Therefore, the registered gift deed dated 19.12.1963 was a bona fide transfer squarely covered within the ambits of Section 30DD, which intended to protect the rights of agriculturalists. Issue no. 3, stands answered in favour of the appellant, as the transfer is not invalid as it stands protected as per the provision of Section 30DD of the Tenancy Act of 1955.

47. In light of the aforesaid findings, the decision rendered by the Division Bench of the High Court is liable to be set aside. The transfer of the land being valid under Section 30DD of the Tenancy Act of 1955, the ceiling area of the appellant falls within the ceiling limit as provided under Section 30C.

48. There is no gainsaying that Section 6 of the Ceiling Act of 1973 also does not advance the case of the State. Firstly, the repeal of Chapter III-B of the Tenancy Act of 1955 through Section 40 of the Ceiling Act of 1973 is not retrospective. Hence, the provisions of the Ceiling Act of 1973 are not attracted in the present case as the case was re-opened and decided under the provisions of the of Tenancy Act of 1955. Secondly, Section 6 of the Ceiling Act of 1973 declares that every transfer of land including by way of gift, made on or after 26-09-1970 and before 01-01-1973, shall be deemed to have been made to defeat the provisions of the Ceiling Act of 1973. In the instant case, the gift deed was executed on 19-12-1963, that is much before 26-09-1970. Therefore also, Section 6 of the Ceiling Act of 1973 does not affect the transfer of land by the appellant-donor in favour of the donee-son. Thirdly, there is no finding that the gift deed in the present case was actuated upon any extraneous consideration. Hence, it constitutes a bona fide transfer which are exempted from the rigors of Section 6 of the Ceiling Act of 1973.

49. The appeal stands allowed in the aforesaid terms. Pending applications, if any, stand disposed of.

……J (N.V. RAMANA) ……J (S. ABDUL NAZEER) .....J (SURYA KANT) NEW DELHI;

DECEMBER 08, 2020.