Supreme Court of India
M/S. Taraknath & Anr vs Sushil Chandra Dey By Lrs.& Ors on 8 April, 1996
Equivalent citations: 1996 SCC (4) 697, JT 1996 (5) 272
Author: K Ramaswamy
Bench: Ramaswamy, K.

PETITIONER:
M/S. TARAKNATH & ANR.

Vs.

RESPONDENT:
SUSHIL CHANDRA DEY BY LRS.& ORS.

DATE OF JUDGMENT: 08/04/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
1996 SCC (4) 697 JT 1996 (5) 272
1996 SCALE (4)332

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Leave granted.

We have heard learned counsel on both sides. This appeal by special leave arises from the judgment and order dated 24.7.1995 made in L.P.A. No.10/93 of the High Court of Guwahati. The admitted facts are that the property originally belonged to one Syed Md. Mahibullah After his demise, the property passed on to his widow five daughters and five sons. His widow died in 1971. Subsequently, it would appear that the sisters have relinquished their rights in the properties in favour of their five brothers. It is the case of the appellant that at a family settlement among the brothers on December 6, 1977, the suit property was allotted to Syed Baitul Alam who had sold the said property under registered sale deed to the appellant on August 6, 1979. He laid the suit for declaration of his title and for ejectment of the respondent. The trial Court decreed the suit. On first appeal, the learned single Judge confirmed the decree. The Division Bench in the above L.P.A. reversed the decree and dismissed the suit. The Division Bench came to the conclusion that relinquishment of the property

would operate as a gift by the sisters and delivery of possession is a pre-condition. Since possession was not delivered to the brothers, the gift by the sisters is not valid in law. As regards the family settlement between the brothers, the Division Bench has held that since there is no dispute pending or prospective, between the brothers, the family settlement is not valid in law and, therefore, the appellants cannot derive any title from one of the brothers to whom the property had fallen to his share through the said settlement. Consequently, the sale to the appellants on August 6, 1979 is not also valid. On that premise, the suit came to be dismissed.

It is contended by Mr. P.K. Goswami, learned Senior counsel appearing for the respondents, that from the evidence it is clear even assuming that the dispute between the brothers has not been properly existing, since one of the brothers who is admittedly staying in London did not participate to settle the dispute and even in the plaint his address was of Guwahati while he was staying in London, it is not a bona fide settlement. It is also contended that the sisters having not delivered possession of the property to the brothers under the personal law, the gift is not complete. Therefore, the appellant cannot get any valid title. Since the respondent have not acknowledged the title of the appellants, there is no estoppel under section 116 of the Indian Evidence Act. Since the appellant get derived no title it would be open to the respondent to assail the validity of the sale. The High Court, therefore, was right in dismissing the suit.

Having regard to the contention the question arises: whether the High Court was correct in law in upsetting the judgment of the learned single Judge and the trial Court in dismissing the suit? It is true that there is no actual delivery of the possession pursuant to the gift said to have been made by five sisters in favour or five brothers. The property admittedly belonged to father Syed Md. Mahibullah who died in 1954. Thereby all the brothers and sisters become owners to the extent of their shares they had succeeded to the property. Thus all of them are co-owners. It would be open to the sisters to relinquish their right by way of gift, even oral, which is valid in personal law. Since the tenant has been in occupation, it would be constructive delivery of the possession. Delivery of the physical possession to the brothers, in the circumstances, is not warranted. As regards the family settlement of the brothers, it would open to the brothers to resolve the prospective dispute by way of family settlement. The brothers having agreed for the settlement, though they have been impleaded as party-respondents to the suit, they have not challenged the family settlement nor have they contested the validity thereof. It is not necessary, in the circumstances, that all the brothers be present at the settlement. One of the brothers living in London can authorize his other brothers to settle the dispute and he was a consenting party to it. Under those circumstances, we are of the view that the brothers obviously had a settlement pursuant to which the demised property has been allotted to the share of Syed Baitul Alam who had sold the property to the appellant under the sale deed dated August 6, 1979. The sale deed is a registered conveyance for valid consideration. Under those circumstances, by operation of section 17 of the Registration Act, the appellant gets valid title to the property. The pre-existing right, title and interest in the property of Syed Baitul Alam and his brothers stood extinguished by operation of the law. Thereby, the appellants get valid title to the property. Since the respondent was continuing as a tenant, obviously, he is bound by the title since the suit has been laid for eviction of the respondent and decree for eviction was rightly granted.

The appeal is accordingly allowed. The order of the Division Bench is set aside and the order of the learned single Judge stands restored. Six months time from today is granted to the respondents to vacate the premises on filing usual undertaking within four weeks from today. No costs.