

2012 Y L R 1021

[Lahore]

Before Muhammad Ameer Bhatti, J

MUHAMMAD JAVED---Appellant

Versus

NISAR AHMED through L.Rs.---Respondent

Regular Second Appeal No.39 of 2001, heard on 31st October, 2011.

Specific Relief Act (I of 1877)---

---S. 8---Suit for possession---Gift---Proof---Exclusion of other legal heirs---House in question was owned by father of parties and after the death of their father, plaintiff sought recovery of possession of the house on the basis of a registered gift deed executed in his favour---Suit was decreed in favour of plaintiff by Trial Court but Lower Appellate Court allowed the appeal and suit was dismissed---Validity---No witness deposed as to why gift was made in favour of plaintiff and donor used to live with him---No evidence was available about health of the donor till his death and types of special services rendered by the plaintiff---No reason was on record as to why other children were divested of their legitimate rights and were denied their rightful claim---Act of making a gift was a prerogative of an owner and it should not have been a covert exercise but an overt recital on the beat of a drum---Purported gift was brought in the notice of heirs after death of the donor which also cast doubt on the transaction---If such was intention of the donor, it would have seen the light of the day during his lifetime, so that the donor himself could have defended and endorsed execution of gift deed---Suit was brought after the death of the donor and averments of plaint were sufficient to hold that gift was kept secret and after the death of donor, suit was filed through which not only possession was claimed but mesne profits were claimed from the date of execution of purported gift deed, notwithstanding the fact that donor remained alive till year, 1983, whereas purported gift deed was got registered in year, 1980---No witness had uttered a single word about execution of the document in his presence---Even testimony of commission did not establish execution of purported gift as it was not found in evidence that donor had signed before him or he made any determination about gift---High Court declined to interfere in the judgment and decree passed by Lower Appellate Court---Second appeal was dismissed in circumstances.

Province of the Punjab through Collector District Khushab, Jauharabad and others v. Haji

Yaqoob Khan and others 2007 SCMR 554; Reham Ali and another v. Abdul and 3 others 1980 CLC 1110; Saida v. Pinnu and another PLD 1979 SC (AJ&K) 245; Mst. Sardaran Bibi v. Taj Din PLD 1993 Lah. 411; Khursheedul Islam v. Mrs. Qamar Jahan 1989 CLC 1467; Amirullah Khan and another v. Muhammad Akram 2004 YLR 709; Auqaf Department v. Javed Shuja and others 1995 CLC 1173; Hoshiair Ali v. Ghulam Sabir 1993 CLC 2476; Mst. Allah Jawai and others v. Maqbool Shah and others 2005 MLD 261; Barrister Ch. Muhammad Abdus Saleem and 4 others v. Mst. Tanveer Mirza and 3 others 1996 SCMR 351 and Province of the Punjab through Secretary, Irrigation and Power Department, P.W.D, Secretariat Old Anarkali Lahore and 3 others v. Ch. Mehraj Din and Co. through Proprietor 2003 CLC 504 distinguished.

Ch. Muhammad Arshad Bajwa for Appellant.

Khalid Aziz Malik for Respondent.

Date of hearing: 31st October, 2011.

JUDGMENT

MUHAMMAD AMEER BHATTI, J.---Through this second appeal, the appellant has challenged the judgment and decree dated 21-5-2001 passed by the learned First Appellate Court whereby the appeal was accepted by setting aside the judgment and decree of the learned trial Court and the suit of the present appellant was dismissed.

2. Brief facts of the case necessary for the just decision of this appeal are that the suit for possession with mesne profit @ Rs.500 per month since September, 1980 was filed by the appellant against the respondent. The claim as per averments contained in the plaint was that the plaintiff is entitled to recover the possession of the house as well as mesne profit being the owner of house through a duly registered (before the Sub-Registrar, Lahore) gift deed dated 28-8-1980 executed by his father.

3. The suit was resisted by the present respondents by filing their written statement by denying the averments of the plaint. From the divergent pleadings of the parties, five issues were framed

including the relief.

4. Parties led their evidence according to their onus on issue. Appellant produced as many as four P.Ws. and in the shape of documentary evidence brought on record site plan, death certificate, suit for partition filed by the respondents and order of the learned Civil Judge. In addition to that a rent note was also placed on record as Mark 'A'. The respondents produced D.W.1 and D.W.2 and also appeared as D.W.3. Learned trial Court after evaluating the evidence of the parties, decreed the suit vide judgment dated 8-11-2000. The respondents assailed this judgment and decree before the learned First Appellate Court which was set aside through the impugned judgment dated 21-5-2001, hence this second appeal.

5. Learned counsel for the appellant contends that well-reasoned judgment of the learned Trial Court has been reversed by the learned First Appellate Court without giving any cogent reason, hence the judgment impugned is not tenable in the eye of law. He further contended that the judgment of the learned First Appellate Court is based on surmises and conjectures, as he has failed to consider the available record of the case. Further contends that the burden of issue No.4 was on the respondents who have failed to discharge the same as there is no evidence available on record but even then, the suit of the appellant has been dismissed. Learned counsel for the appellant contends that the appellant has proved on record the delivery of possession and execution of gift-deed but this aspect of the case has not been properly appreciated. He has relied on Province of the Punjab through Collector District Khushab, Jauharabad and others v. Haji Yaqoob Khan and others (2007 SCMR 554), Reham Ali and another v. Abdul and 3 others (1980 CLC 1110), Saida v. Pinnu and another (PLD 1979 SC (AJ&K) 245, Mst. Sardaran Bibi v. Taj Din (PLD 1993 Lahore 411), Khursheedul Islam v. Mrs. Qamar Jahan (1989 CLC 1467), Amirullah Khan and another v. Muhammad Akram (2004 YLR 709), Auqaf Department v. Javed Shuja and others (1995 CLC 1173), Hoshiar Ali v. Ghulam Sabir (1993 CLC 2476), Mst. Allah Jawai and others v. Maqbool Shah and others (2005 MLD 261), Barrister Ch. Muhammad Abdus Saleem and 4 others v. Mst. Tanveer Mirza and 3 others (1996 SCMR 351), Province of the Punjab through Secretary, Irrigation and Power Department, P.W.D, Secretariat Old Anarkali Lahore and 3 others v. Ch. Mehraj Din and Co. through Proprietor (2003 CLC 504) in support of his case.

6. Conversely, learned counsel for the respondents contends that the appellant has failed to prove the factum of execution of gift, hence the learned First Appellate Court has rightly decided the Issues Nos.4 and 4-A against the appellant and delivery of possession which were the necessary ingredients for completion of the gift was rightly found lacking, hence judgment of the learned First Appellate Court is in consonance with the provision of law. The judgment of the learned First Appellate Court is based on evidence available on record, hence this appeal is meritless and liable to be dismissed.

7. I have heard the arguments of the learned counsel for the parties and perused the available record.

8. From the evidence of plaintiff, the court drew the presumption that the gift deed has been proved. He himself claimed the mesne profit from the date of gift. Moreover, P.W.1 admitted that respondent never paid any rent. The startling aspect of the affair is that the reason for the gift has been described in lieu of services rendered by appellant to the donor. To any prudent mind, if any person renders any services to his old-ailing parents, he fulfils his sanctified obligations enjoined by the God Almighty and His Prophet (Peace be upon him), which is otherwise the mark of a civilized society and in return, he is not entitled to any extra share from the property of his parents because such services are rendered to incur the pleasure of Almighty Allah:

"And we have enjoined on man (to be good) to his parents: in travail upon travail did his mother bear him, and in years twain was his weaning: (hear the command), "Show gratitude to Me and to thy parents: to Me is (thy final) Goal." (Quran 31:14)

So, if any person claims more than his due right of inheritance, he is doomed to lose the divine reward for tending his parents. Even otherwise, a man must be mindful of the fact parents provide protection, food and clothing to the newly-born. The mother sacrifices her comforts and sleep to provide comfort to her children. The father works hard to provide for their physical, educational and psychological (and spiritual) needs. So, a man must feel a sense of gratitude towards parents because their favours cannot be repaid in terms of material and physical services. After Allah our parents deserve our thanks and obedience for the favours they had done us.

9. Now about the other aspect of the present case no evidence is available which could be considered sufficient to hold that the factum of gift stands proved. No witness could succeed to prove its contents as nothing has been disclosed about its contents. No witness deposed as to why this gift was made in favour of the appellant. No evidence has been brought about the fact that the donor used to live with the appellant, about his health and if he was healthy till his death, then what types of special services have been rendered by the appellant.

10. Another aspect worth-mentioning here is that for non-acceptance of this gift deed, the other

children have been divested of their legitimate rights. No reason has brought on record, why the other children have been denied their rightful claim. There is no denying the fact that the act of making a gift is the prerogative of an owner but it should not be a covert exercise but an overt recital on the beat of a drum. The purported gift was brought in the notice of the heirs after the death of the donor which also cast doubt on the transaction. If it was the intention of the donor, it would have seen the light of the day during his life-time, so that he himself could have defend and endorsed its execution. The suit has been brought after the death of the donor. The averments of the plaint are sufficient to hold that the gift was kept secret and after the death of the donor, the present suit was filed through which not only the possession was claimed but the mesne profit were claimed from the date of execution of purported gift deed, notwithstanding the fact that the donor remained alive till 1983 whereas the purported gift deed was got registered in 1980.

11. No witness has uttered a single word about the execution of the document in his presence. Even the testimony of commission does not establish the execution of the purported gift as it is not found in the evidence that the donor had signed before him or he made any determination about the gift. The case-laws referred to by the learned counsel for the appellant cannot come to his rescue for changing the fate of his case, which are otherwise distinguish-able from the facts and circumstances of the case of the appellant.

12. I have minutely inspected the gift deed which could be manipulated at ease and document could be prepared effortlessly. After the threadbare scrutiny, I find that neither any verification has been made before the appointment of local commission nor any reason has been brought on record. From bare perusal of gift deed, it is evident that the same has been executed without due care and caution, thus rendering it a dubious deed.

13. For the above discussion, this appeal fails having no merits and dismissed accordingly.

14. Before parting with judgment, I take this opportunity to dilate on the factum of registration of deeds through local commission. There must have been some specific reason for non-appearance of the original owner, thus making it a routine exercise which in turn gives way to fraud. No legal formalities are observed before issuing the commission and thereafter no scrutiny of the commission's act is carried out whether proper verification has been made or not? Moreover, at the time of registration of the document, some affidavit of the local commission should have been brought on record where he should disclose about identification of the executant as also all particulars and verification about executant's non-appearance before the Registrar.

M.H./M-28/L

Appeal dismissed.