

IN THE SUPREMECOURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2401 OF 2002

Sankaran Bhaskaran & Ors. ...Appellants

Versus

Kumaran Sarasamma & Ors. ... Respondents

O R D E R

1. This appeal has been preferred against the impugned judgment and order dated 20.9.2001, passed by the High Court of Kerala at Ernakulam in Second Appeal No. 941/1982-D, by which the High Court has reversed the judgment and decree passed by the trial court as well as by the first appellate court.

2. The case has a chequered history as earlier the matter had come to this court and the judgment of the High Court was set aside in Civil Appeal No. 230 of 1992 by order dated 14.2.2001, remanding the case back to the High Court for reconsideration after formulating the substantial question of law.

3. The High Court reconsidered the case in view of the order passed by this court and various issues had been discussed regarding the law of limitation in filing the suit and allowed the Second Appeal preferred by the respondents dismissing the Suit.

4. During the hearing of the appeal, we came to the conclusion that the "Settlement Deed" document involved therein which has been subject matter of suit and appeal itself had wrongly been considered by the courts below and thus the question arose as what was the nature of the said document executed by the predecessors in interest of the parties.

5. We have heard learned counsel for the parties and the only question that arose for consideration is as to whether a document can be treated as a gift where the executor reserves his interest of maintenance throughout his life with certain other conditions or will or rather a mere settlement of its own kind.

6. The provisions of Section 122 of the Transfer of Property Act, 1882 (hereinafter called as 'Act 1882') defines 'gift' as under:
" 'Gift' is the transfer of certain existing moveable or immoveable 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."

Thus, Section 122 defines 'gift' as gift inter vivos or an absolute gift. An absolute gift, (which is the subject matter under the Act, 1882) or gift inter vivos as distinguished from a testamentary gift or one made in contemplation of death, is one by which the donee becomes in the lifetime of the donor, the absolute owner of the thing given. Further, in case of a gift the provision becomes operative immediately and under transfer in praesenti is intended and comes into effect. Gifts by will are outside the scope of the Act 1882.

Nomenclature is not decisive of the question whether it's a will or a gift or a mere settlement which is neither a gift nor will. Even if a document contains provisions which indisputably show that the disposition must come into existence only on the death of the executant of the document it may be a gift or will or none of them, merely being a settlement in terms thereof.

In terms of Section 122 of the Act 1882, it is necessary that there should be vesting of interest forthwith, though possession and enjoyment of the property may be postponed to a later date. Even if a document is styled and registered as a settlement deed containing the recital of devolution of interest in the properties to vest on the death of a settler after his life time, such a document may be termed only as a 'Will' and not 'gift deed'.

7. The fact that the document purports to reserve a life interest in the property to the donor with certain other terms is a 'Will'. This view stands fully fortified by the judgment of the Privy Council in *Thakur Ishri Singh v. Baldeo Singh* (1883-84) 11 I.A. 135.

While dealing with a similar situation, this Court in *Baby Ammal v. Rajan Asari* (1997) 2 SCC 636, held as under:

"Reading of the above would indicate that the appellant had retained the title to the enjoyment of the property during her lifetime as full owner with all rights. Section 122 of the Transfer of Property Act defines gift executed in the manner indicated thereunder divesting the title to and possession of the donor in the property and vesting the same in the donee under Section 123. These must be proof of delivery and acceptance of possession of the gifted property. In this case, both the title and possession in respect of the property remained with the plaintiff. There is no acceptance of possession by the respondent in the light of above recital. As a consequence, the appellant remained to be the owner during her lifetime. Under these circumstances, it cannot be construed to be a gift deed in favour of the respondents. At best, it would be only a licence in favour of the respondent to remain in possession jointly with the appellant. Therefore, the High Court was not right in concluding that Ex. A-1 is a gift deed and that the appellant has no title to the property for declaration as he had parted with possession."

8. The case at hand is quite distinguishable on facts from the cases in *Naramadaben Maganlal Thakker v. Pranjivandas Maganlal Thakker & Ors.*, (1997) 2 SCC 255; and *K. Balakrishnan v. K. Kamalam & Ors.*, AIR 2004 SC 1257, wherein it has been held that there is no prohibition in executing a gift deed reserving certain rights for the life time of the donor.

9. In view of the above, we are of the view that as the

"Settlement Deed" executed in 1922 is neither a 'Will' nor a gift. However, it did not transfer the title in favour of the second party therein. The executor of the said settlement deed sold the land to the respondents for consideration. The sale deed was valid and appellants could not claim any benefit under the said settlement deed, the title did not vest in favour of their predecessors in interest.

10. Even otherwise, view taken by the High Court cannot be held to be perverse, warranting interference by this Court.

In view of the above, we do not find any force in this appeal. It is accordingly dismissed.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(V. GOPALA GOWDA)

New Delhi,
January 18, 2013

ITEM NO.102-PH

COURT NO.8

SECTION XIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 2401 OF 2002

SANKARAN BHASKARAN & ORS.

Appellant (s)

VERSUS

KUMARAN SARASAMMA & ORS.

Respondent(s)

(With appln(s) for exemption from filing O.T., permission to file additional documents and office report)

Date: 18/01/2013 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Appellant(s) Mr. S. Balakrishnan, Sr. Adv.

Dr. s. Gopakumaran Nair, Sr. Adv.

Mr. T.G. Narayanan Nair, Adv.

Mr. K.N. Madhusoodhanhan, Adv.

For Respondent(s)

Mr. A.K. Ganguly, Sr. Adv.

Mr. M.P. Vinod, Adv.

Mr. V. Giri, Sr. Adv.

Ms. Neelam Saini, Adv.

Mr. K. Rajeev, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

(O.P. Sharma)
Court Master

(M.S. Negi)
Court Master

(Signed order is placed on the file)