

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO.7710 OF 2009**

**CHANDRASHEKHAR**

**...APPELLANT**

**VERSUS**

**RAHUL SHIKSHAN PRASARAK MANDAL  
SANSAR NAGAR, AURANGABAD**

**...RESPONDENT**

**WITH**

**CIVIL APPEAL NO.7709 OF 2009**

**ORDER**

1. These appeals pose a challenge to the judgment and order dated 23/24.11.2006 rendered by the High Court of Judicature of Bombay, Bench at Aurangabad thereby dismissing the RSA No.166 of 1986 and RSA No.379 of 1998, both preferred by the appellant herein.
2. In essence, by the determination of the High Court as above, suit being RCS No.539 of 1979 filed by the appellant seeking permanent injunction was dismissed and the suit being RCS No.174 of 1985 instituted by the respondent for declaration of its title/ownership in the suit property and recovery of possession thereof has been decreed.
3. We have heard Mr. Nishant Ramakantrao Katneshwarkar, learned counsel for the appellant.

4. The background facts leading to the appeals before the High Court need a brief narration to comprehend the issues seeking adjudication. The appellant, claiming to have purchased the suit property from one Sonaji Ganoji Sonavane (hereafter referred to as "Sonaji") by registered sale deed dated 18.01.1974, which was followed by another sale deed dated 11.04.1978 due to an alteration in the layout of the area, instituted a suit being RCS No.442 of 1974 against the then Municipal Council, Aurangabad to invalidate a notice issued by the latter requiring demolition of the basement on the suit land. In this suit, the appellant prayed for a declaration that the order/notice of demolition was null and void. He also prayed for permanent injunction against the Municipal Council from demolition of the structure as mentioned in the said notice. No written statement was filed by the Municipal Council in the suit and the evidence of the witnesses of the appellant also remained unrefuted in absence of any cross-examination on its behalf. The suit was decreed on 26.06.1980 and the Municipal Council was permanently restrained from demolishing the property/structure as referred to in the notice questioned in the suit.

5. The appellant next filed suit being RCS No.539 of 1979 against the respondent herein alleging that the latter on 18.09.1979 with the help of some labourers had started excavation works in the suit

property by encroaching thereupon. Incidentally this suit too was for a decree for perpetual injunction to restrain the respondent, its office bearers etc., from causing obstruction or interference in the enjoyment and possession of the suit property by the appellant.

6. In its written statement in the said suit, the respondent/Trust denied the ownership and possession of the appellant and asserted that Sonaji, who admittedly was the owner of the suit property had conveyed the same to it (the respondent/Trust) by registered gift deed dated 29.08.1973 and had also delivered the possession thereof to it, which was duly accepted by the Trust and that it had been in possession thereof since then. The respondent/Trust repudiated the sale deeds dated 18.01.1974 and 11.04.1978 to be null and void and of no consequence in law as on the date of purported execution thereof, the vender Sonaji had no subsisting title or interest in the suit property in the face of the gift deed dated 29.08.1973, executed earlier in point of time. In categorical terms, the respondent/Trust pleaded that it was a Registered Society having its Registration No.38/1973 and was also registered as a public trust with the Assistant Charity Commissioner. Noticeably there was neither any replication nor any rejoinder by the appellant controverting, in particular the averment, that the respondent/Trust was a registered society and was also a registered public trust with the registration number as mentioned in

its written statement. This suit was after a regular trial decreed on 31.01.1984 for permanent injunction against which the respondent/Trust preferred appeal being RCA No.49 of 1984 in the Court of III, Additional District Judge, Aurangabad.

7. Subsequent thereto, the respondent/Trust filed a suit being RCS No.174 of 1985 in the Court of the Civil Judge, Junior Division, Aurangabad praying for a decree for declaration as lawful and exclusive owner of the suit property and also for recovery of vacant possession thereof. Relief by way of permanent injunction was also sought for against the appellant. In its plaint, the respondent/Trust pleaded that Sonaji had executed a registered gift deed No.1656 in its favour on 29.08.1973 and had delivered the possession thereof on 07.08.1973 and that the respondent/Trust had duly accepted the gift as well as had continued in possession of the suit property on and from that date. The respondent/Trust asserted that the appellant had never been in possession of the suit property, but in the year 1978 some persons from the neighborhood started encroaching thereon and endeavoured to raise constructions of basement during the night. It referred to the suit, RCS No.539 of 1979 earlier filed by the appellant and the order of injunction obtained on the basis of incorrect facts. According to the trust, the cause of action for its suit arose on 09.12.1984 when the appellant and one Shaikh Gulab Shaikh Imam

(impleaded as defendant No.2) refused to vacate the suit property and handover the possession thereof to it.

8. The appellant in his written statement in this suit did not plead against the maintainability thereof and preferred not to offer any comment on the particulars of the respondent/Trust as furnished in its pleadings. He however narrated the facts pertaining to the two suits filed by him earlier and reiterated his claim on the suit property on the basis of the two sale deeds dated 18.01.1974 and 11.04.1978. He contended that the gift deed was false and invalid and that the possession of the suit property had not been handed over to the respondent/Trust as claimed by the latter.

9. In the suit filed by the respondent/Trust i.e. RCS No.174 of 1985 it examined Ms. Shilla, its Secretary and Ms. Indumati, one of its members, who duly proved the execution of the gift deed. Whereas Ms. Shilla proved her signature on the said document as well as the thumb impression of the donor i.e. Sonaji along with the signature of amongst others Ms. Indumati (the other witness), Ms. Indumati proved her signature on the gift deed as one of the attesting witnesses. Both these witnesses of the respondent/Trust unshakingly testified that the gift was accepted and the possession of the suit property was delivered to the respondent/Trust on 07.08.1973 by the donor and that since then the respondent/Trust had been in possession thereof.

10. The learned Trial Court decreed the suit of the respondent/Trust and the appeal preferred by the appellant being RCA No.156 of 1996 was also dismissed. Mentionably, the appeal filed by the respondent/Trust against the decree in the suit instituted by the appellant was also allowed. It is against the decisions in these two appeals that the second appeals, in which the impugned judgment has been rendered, were preferred by the appellant.

11. As the decision of the High Court assailed in the present appeals would disclose, it was contended on behalf of the appellant that the suit filed by the respondent/Trust was barred by limitation. The High Court by observing that a question of limitation is a mixed question of law and facts mentioned that neither there was any foundation of this plea in the pleadings nor any prayer was made to frame this issue and nor any ground to this effect was taken in the appeal before the First Appellate Court. The demur based on bar of limitation was thus negated.

12. On an exhaustive analysis of the pleadings and the evidence on record, the High Court concluded that the subject matter of the gift deed and the sale deeds was one and the same. With a detailed reference to Sections 122 and 123 of the Transfer of Property Act (for short hereafter referred to "TP Act") and Section 68 of the Indian Evidence Act, 1872 (for short hereafter referred to "Act 1872") it was

held as well that the statutory prerequisites of a valid gift had been duly complied with in conveying the property by the gift deed dated 29.08.1973 which was followed by acceptance thereof and delivery of possession. It held that the execution of the deed of gift not having been denied by the donor. It noticed as well the proviso to Section 68 of the Act 1872 which mandates that unless the execution of a document, not being a Will, is denied by the executant, it would not be necessary to call an attesting witness in proof of execution of any document which otherwise is required by law to be attested. The High Court recorded that the execution of the gift deed had not been denied by Sonaji during his lifetime or thereafter by his legal heirs and that further even otherwise the said document had been proved by two witnesses PW1-Ms. Shilla and PW2-Indumati.

**13.** It noticed as well that the delivery of possession of the suit property had also not been challenged or denied by the donor. It therefore affirmed the finding of the First Appellant Court that the gift deed was a valid document of transfer of right, title and interest in the suit property in favour to the respondent/Trust. As a corollary it held that in view of the fact that the gift deed was earlier in point of time, the sale deeds dated 18.01.1974 and 11.04.1978 did not convey any title in favour of the appellant that all the statutory preconditions for a valid gift as prescribed by Section 123 of the TP Act have been

satisfied. It was held as well that the rejection of the application filed by the respondent/Trust for its impleadment in the suit filed by the appellant against the Municipal Council and the decree of perpetual injunction granted in the next suit filed by the appellant could not be construed to be a bar for the suit filed by the respondent/Trust for declaration of ownership and recovery of possession. *Ex consequenti*, the suit filed by the appellant was dismissed and the one instituted by the respondent/Trust was decreed.

14. The learned counsel for the appellant has strenuously urged that the gift in favour of the respondent/Trust is invalid in law as the same at the time of such conveyance, was not a registered body. Further the gift deed has not been proved in terms of Section 68 of Act 1872 and therefore the very foundation of the claim of the respondent/Trust being non-existent, the impugned judgment is palpably illegal and is liable to be set aside.

15. According to him, the trust, at the relevant time being an unregistered body was not recognizable in law to be qualified as a donee. Further no attesting witness having proved the execution of the gift deed, it cannot enure to the benefit of the respondent/Trust.

16. We have extended our thoughtful consideration to the above assertions. Having regard to the pleadings of the parties and the evidence on record as recited hereinabove, both these contentions are

unsustainable in law and on facts. Firstly, to recall, the respondent/Trust in its written statement in the suit filed by the appellant i.e RCS No.539 of 1979 had in categorical terms stated that it was a registered society having its Registration No.38/1973 and was also registered as a public trust with the Assistant Charity Commissioner. This verified statement was not refuted or disputed by the appellant by filing any replication or rejoinder. Further in the suit filed by the respondent/Trust i.e. RCS No.174 of 1985 as well, the appellant preferred to abstain from either raising this plea or questioning its maintainability on this count. We are therefore disinclined to entertain this contention. Even otherwise our attention has not been drawn to any provision of law prohibiting gift of immovable property to an association of persons not constituted as a registered trust.

17. It is overwhelmingly clear that Sonaji, the person from whom both the parties claim their title had neither denied the execution of the gift deed nor the delivery of the possession of the suit property in favour of the respondent/Trust during his lifetime. His legal heirs, after his death also did not express any reservation in this regard. Unmistakably, the gift deed is earlier in point of time to the sale deeds claimed by the appellant. To repeat, PW2-Ms. Indumati, a member of the respondent/Trust has claimed to have witnessed the execution of

the gift deed by the donor and also has proved her signature as an attesting witness thereon. The execution of the deed has also been proved by PW1-Ms. Shilla, the Secretary of the respondent/Trust. She too has proved her signature on the gift deed. Even otherwise in absence of denial of execution of the gift deed by the donor, examination of any attesting witness was unnecessary in view of the proviso to Section 68 of the Act 1872. On an overall consideration of the pleadings of the parties and the evidence on record with regard to the execution of the gift deed, acceptance of the gift and delivery of possession of the suit property, the assailment of the gift too cannot be sustained.

18. Considering the sequence of events and in particular the nature and frame of the suits filed by the appellant and the reliefs claimed therein, we are in full agreement with the conclusion of the High Court that neither the suit of the respondent/Trust i.e RCS No.174 of 1985 was barred by limitation nor was it in any way not maintainable in law or on facts. The suit of the respondent/Trust being based on a valid instrument of transfer of immovable property and for the relief of declaration of ownership and the consequential relief of recovery of possession and permanent injunction, it was maintainable. On an analogy of reasoning, the rejection of its application for impleadment in the suit filed by the appellant against the Municipal Council for

injunction also cannot be construed to be an impediment in law against the institution of its suit for declaration, possession and injunction.

19. The High Court, in our view, has undertaken an in-depth analysis of the facts and law in the correct perspectives and the resultant findings recorded in the impugned judgment and order are valid and do not merit any interference. The appeals thus fail and are dismissed. Costs easy.

.....**J.**  
**[R.K. AGRAWAL]**

.....**J.**  
**[AMITAVA ROY]**

**NEW DELHI;**  
**OCTOBER 05, 2017.**

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 7710/2009

CHANDRASHEKHAR

Appellant(s)

VERSUS

RAHUL SHIKSHAN PRASARAK MANDAL SANSAR  
NAGAR AURANGABAD

Respondent(s)

WITH

C.A. No. 7709/2009

Date : 05-10-2017 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.K. AGRAWAL

HON'BLE MR. JUSTICE AMITAVA ROY

For Appellant(s) Mr. Nishant Ramakantrao Katneshwarkar, AOR  
Ms. Deepa Kulkarni, Adv.For Respondent(s)  
Mr. Shishir Deshpande, AOR  
Ms. Sujata Kurdukar, AORUPON hearing the counsel the Court made the following  
O R D E R

Heard learned counsel appearing for the parties.

The appeals are dismissed in terms of the signed order.

Pending application, if any, stands disposed of.

(ANITA MALHOTRA)  
COURT MASTER(CHANDER BALA)  
COURT MASTER

(Signed order is placed on the file.)