

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7116 OF 2014  
(ARISING OUT OF SLP(C) NO.19115/2013)

AJAY KUMAR

Appellant(s)

VERSUS

HAWA SINGH & ORS.

Respondent(s)

O R D E R

Heard counsel for the parties.

Leave granted.

The High Court while dealing with the second appeal noted the questions which were involved in the appeal. Question no.iv raised at the instance of the appellant reads as under:-

"iv) Once the gift deeds have not been proved to have been validly executed and mutations sanctioned on that basis have been set aside, whether the appellant, who is the owners of the suit property, is entitled to a decree for possession?"

Mr. V. Giri, learned senior counsel for the appellant brought to our notice the Trial Court finding as regards the Gift Deed wherein it was found, as under:-

"..The execution of impugned gift Deeds No.1836 to 1838 dated 23.01.1980 has been duly proved by the defendants. The main grounds to challenge these was fraud and misrepresentation but plaintiff has miserably failed to show that any fraud and misrepresentation was practiced while executing these documents because

admittedly when these documents were executed then she was accompanied by her brother Dhanna Ram. Moreover in

the plaint it has been stated that she remained in Dadri for three days for execution of these documents,

1

however, DW 1 Karam Chand has stated that in this regard Mankauri and others visited him only once and this falsifies the version of the plaintiff. The contentions of learned counsel for the plaintiff that the essentials of Sections 122 and 123 of Transfer of Property Tax has not been complied with appear to be forceful. These documents appear to be sale of land in the guise of gifts because consideration to the extent of Rs.15,000/- each for execution of each documents

Signature Not Verified  
Digitally signed by  
Narendra Prasad

Date: 2014.08.07  
17:33:55 IST  
Reason:

(gift deeds) has passed and as per the Section 17 of Indian Registration Act these documents were required to be duly registered but the necessary stamp duty has not been paid, therefore, the same are held to be against the provisions of the Indian Registration Act.."

(Underlining is ours)

The Court ultimately held, as under:-

"..Issue No.3 is decided against the defendants and in favour of the plaintiff. Issue No.4 is replied in terms of my findings on Issue No.3 and Issue No.5 is replied in terms of my findings on Issue No.1"

In fact, issue no.3, which was framed by the Trial Court, reads as under:-

"Whether Smt. Mankauri validly executed gift deed bearing nos. 1836, 1837 and 1838 dated 23rd January, 1980 in favour of the defendants?"

Having noted the above conclusions reached by the Trial Court on the very Gift Deed, which is the question of law raised in question No.iv, in the second appeal, we are constrained to state that the ultimate order of the learned Judge to the effect that the answer to question no.iv was based on disputed questions of fact and the findings of the Courts below was unassailable is palpably not correct.

In our considered opinion, the findings of the Trial Court, which we have noted above disclose that issue no.3 was held in

2

favour of the appellant and in the said circumstances, there was a substantial question of law required to be examined by the High Court in the second appeal as raised before it at the instance of the appellant. Therefore, while setting aside the judgment impugned in this appeal, we remit the matter back to the High Court for framing appropriate substantial questions of law and decide the second appeal on merits. We hasten to add that we have not stated anything on merits of the issues raised in the Second Appeal and the High Court may decide the Second Appeal on its own.

In view of the above, the appeal stands allowed.

.....J.

