

State of Kerala Vs T.C. Oomman and Others

Court: High Court Of Kerala

Date of Decision: Sept. 17, 1991

Acts Referred: Transfer of Property Act, 1882 " Section 123

Citation: (1991) 2 KLJ 655

Hon'ble Judges: M.M. Pareed Pillay, J

Bench: Single Bench

Advocate: E. Thankappan, Government Pleader, for the Appellant; Asok M. Cherian, for 1st Respondent, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M.M. Pareed Pillay, J.

State has filed the Civil Revision Petition challenging the order of the Taluk Land Board, Mannarghat in C.C. 88 of

1973. First Respondent (declarant) was directed to surrender 50.87 acres of land. Revision Petitioner challenges the exemption of 5 acres of land

in favour of the 16th Respondent.

2. First Respondent's case is that 5 acres of land was given to the 16th Respondent as per oral entrustment in return for the services rendered to,

him.

3. Taluk Land Board accepted the enquiry report to the effect that Joy, son of Mathew (16th Respondent) has been in possession of 5 acres of

land in Sy. No. 1549 of Agali Village from 1962 onwards. Learned Government Pleader submitted that the contention of the first Respondent that

the property was given to the 16th Respondent as per oral entrustment in return for his services to the first Respondent should not have been

accepted by the Taluk Land Board as no registered document was executed in favour of the 16th Respondent. It would appear from the

contention of the first Respondent that 5 acres of land was gifted by him to the 16th Respondent orally. The Taluk Land Board was not justified in

recognising the said gift as it is opposed to Section 123 of the Transfer of Property Act.

4. u/s 123 of the Transfer of Property Act a gift of immovable property can only be effected by a registered instrument. A registered deed cannot

be avoided even for a property having small value as in the case of a sale. To be a valid gift, it must be effected by a registered instrument signed

by or on behalf of the donor and attested by at least two witnesses. Section 123 makes the position abundantly clear. A gift deed is not valid even

in a case where it is registered but not attested by two witnesses. A gift of immovable property not satisfying the requirements of Section 123

cannot be considered to be a gift in the eye of law. The Taluk Land Board was not justified in giving exemption of 5 acres of Land. This extent of

land has to be ordered to be surrendered from the account of the declarant.

5. The order of the Taluk Land Board exempting 5 acres of land in Sy. No. 1549 of Agali Village is set aside and it is hereby declared that the

declarant (first Respondent) is liable to surrender the aforesaid extent of property as excess land.

The Civil Revision Petition stands allowed as stated above with no order as to costs.