(1929) 07 PAT CK 0033

Patna High Court

Case No: None

Debi Saran Koiri and Another		APPELLANT
	Vs	
Nandalal Chaubey and Others		RESPONDENT

Date of Decision: July 23, 1929

Acts Referred:

- Transfer of Property Act, 1882 - Section 122, 123, 5

Citation: AIR 1929 Patna 591

Hon'ble Judges: Kulwant Sahay, J; James, J

Bench: Full Bench

Judgement

Kulwant Sahay, J.

The plaintiffs-appellants instituted the suit out of which the present appeal arises for a declaration of their title and for recovery of possession in respect of 139 acres of land bearing survey plot 25 in mauza Dalsagar. This land formed a part of the kasht lands of one Bulaki Koeri. The plaintiffs'' case was that on the death of Bulaki Koeri, they inherited his estate and acquired title to the land in dispute. The land was held in rehan by a third party and the plaintiffs redeemed the rehan. They alleged that their possession was disturbed by the defendants and they accordingly instituted the present suit for a declaration of their title and for recovery of possession

2. The defence of the defendants was that they had title to 1 bigha of the land in dispute and they disclaimed all title to the remaining portion of plot 25. They claimed the 1 bigha by virtue of two dans of 10 cottas each alleged to have been made by Bulaki Koeri, one on the occasion of the death of his wife and the other a few days before his own death. As regards the first dan alleged to have been made on the occasion of the death of Bulaki''s wife, the learned Mansif found that the title of the plaintiffs had been extinguished by lapse of time inasmuch as the dan had taken place more than 12 years before the suit and defendants had been in possession thereof. As regards the second dan of the 10 cottas which was alleged to have been made a few days before the death of Bulaki, the learned Munaif found

that if was a gift and that it was invalid for want of a registered document.

3. On appeal the learned Additional Sub-ordinate Judge has held that the dan of 10 cottas was valid, even though it was not under a registered document, and he accordingly dismissed the plaintiffs'' suit in respect of this 10 cottas also.

4. The plaintiffs have, therefore, preferred the present appeal in respect of the 1 bigha of land which the defendants claimed under the two dans.

5. As regards the first dan alleged to have been made at the time of the death of Bulaki''s wife, the learned advocate for the appellants does not press the appeal. The title of the defendants to the 10 cottas of land which was given in dan by Bulaki Koeri on the occasion of his wife''s death will, therefore, hold good.

As regarding the remaining 10 cottas, the learned Subordinate Judge has held that it was not a gift without consideration u/s 122, T.P. Act. He finds that it was a transfer in lieu of conferring spiritual benefit to the deceased and he is of opinion that such a transfer does not require to be in writing and registered, delivery of possession being sufficient to pass title to the defendants and reliance was placed by him on Ramalinga Chetti v. Siva Chidambaram Chetty [1919] 42 Mad. 440. Now, Section 122, T.P Act defines "gift" as a transfer of certain existing moveable or immovable 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. Section 123 then provides the mode of effecting a transfer by way of gift and it enacts:

For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

6. In the present case it is admitted that the transfer of the 10 cottas was not for or in lieu of any valuable consideration. What the learned Subordinate Judge finds is that the consideration was the conferring of certain spiritual benefit to the deceased. To my mind consideration in Section 122, T.P. Act, means valuable consideration and not consideration in the shape of conferring spiritual benefit to the donor. If valuable consideration be not the consideration referred to in Section 122, I fail to understand bow any gift can be made without consideration at all. There must be some sort of consideration in every gift, for instance, a consideration of an expectation of spiritual or moral benefit or consideration of love and affection. Such considerations are not considerations contemplated in Section 122. The consideration there contemplated must be valuable consideration, that is consideration either of money or of money''s worth.

7. It is next contended on the authority of Ramaling a Chetty''s case [1919] 42 Mad. 440 just referred to, that a gift for religious purposes does not require a registered document under the Hindu Law. The Hindu Law, however, in the case of gifts has

been expressly abrogated by Section 129, T.P. Act, and a gift under the Hindu law must be made in accordance with Section 123, T.P. Act. In Ramalinga Chetty''s case no reference was made to the provisions of Section 129, T.P. Act: It was there contended that the gift was not to a sentient being but to a temple and, therefore, u/s 5, T.P. Act, the provisions of Section 123 did not apply. In the present case, however, the gift is to a sentient being and even if we accept the decision in Ramalinga Chetty''s case as correct, that decision is clearly distinguishable. I am of opinion that the gift as regards the 10 cottas was invalid for want of a registered document. It is not seriously disputed that the dan of the second 10 cottas was really in the nature of a gift. "Dan" literally means gift.

8. According to the dictionary it means gift, alms, charity, the alms on which a Brahmin pronounces a charm before it is given away. It is a gift for all material purposes and is governed by the provisions of the Transfer of Property Act. The second gift, therefore, was invalid and the plaintiffs are entitled to recover possession of this 10 cottas of land.

9. The appeal, therefore, partially succeeds as regards the second 10 cottas. As regards the first 10 cottas, the appeal must be dismissed. Having regard to the circumstances of the case, each party will bear his own costs throughout.

James, J.

10. I agree.