

(2018) 11 J&K CK 0119

Jammu & Kashmir High Court (Srinagar Bench)

Case No: Other Writ Petition (OWP) No. 2006 Of 2018, IA No. 01 Of 2018

Muneer Ahmad Butt
@APPELLANT@Hash State Of
Jammu & Kashmir And Others

APPELLANT

Vs

RESPONDENT

Date of Decision: Nov. 30, 2018

Acts Referred:

- Constitution Of Jammu And Kashmir, 1956 - Section 103
- Constitution Of India, 1950 - Article 226

Hon'ble Judges: Sanjeev Kumar, J

Bench: Single Bench

Advocate: A.H Naik, Mutahir, N.H Shah, M.A Qayoom, Manzoor Ahmad Dar, M.Y Bhat

Final Decision: Dismissed

Judgement

1. Petitioner invokes the writ jurisdiction of this Court in terms of Article 226 of the Constitution of India read with Section 103 of the Constitution of

J&K, for issuance of writ of certiorari, quashing Gift Deed and Mutation No.2663 attested by revenue authorities, giving effect to gift deed.

Agreement to Sell dated 04th October, 2017, executed between respondents (Atta-ullah Butt and Mohd. Ashraf Butt) is also assailed.

2. Before proceeding further, it would be appropriate to reproduce the prayer clause of writ petition, to understand the nature of reliefs sought for by

petitioner, hereunder:

“In the premises, it is therefore, most humbly prayed that for the reasons stated herein above and those to be urged at the time of hearing, this

Honâ€™ble Court may be pleased to issue an appropriate writ, order or direction including one in the nature of:

A. Certiorari quashing the gift deed having shown to have been registered forming annexure-B to the writ petition.

B. Certiorari quashing the mutation No. 2663.

C. Certiorari quashing the deed of agreement to sell dated: 4th October 2017 between the respondents Atta-ullah Butt and Mohammad Ashraf.

D. Mandamus commanding the respondent No. 1 to 4 to conduct an enquiry and investigation with respect to the aforesaid gift deed and the authenticity of the aforesaid gift deed.

E. Mandamus commanding the respondents not to act on the basis of the gift deed and the subsequent documents made on this gift deed and subsequent copies.

F. Mandamus commanding the respondents not to interfere in to the possession and occupation of the petitioner with his property directly or indirectly which is joint property between the petitioner and the respondents.â€™

3. From bare reading of prayer clause, it is clear that petitioner has made an attempt to settle a private dispute, pure and simple between him on one

hand and private respondents on the other hand. Further perusal of contents of writ petition would reveal that the estate of the father of petitioner and

private respondents, namely, Ghulam Mohammad Bhat, and distribution thereof is a bone of contention between petitioner and private respondents.

The petitioner has laid foundation in writ petition to assail validity of Gift Deed on the ground that the same is a sham document and even if it is not so,

it is in violation of principles of Mohamman Law. A specific grievance has been raised by petitioner against respondent No.4 (Sub Registrar,

Srinagar) who has registered impugned Gift Deed. It has been pointed out that Sub Registrar, Srinagar, who was enjoined to register a document,

committed flagrant violation of the Registration Act and the Rules framed thereunder and registered the document even when no attesting witness

was present at the time of registration. On the foundation of aforesaid logic and reasoning, petitioner claims that mutation attested by revenue

authorities giving effect to impugned gift deed was equally bad and unsustainable in law.

4. The writ petition is vehemently opposed by respondents 5&6, who in their objections, besides taking preliminary objection to maintainability of writ petition, have contested the pleas of the petitioner on merit.

5. Having heard learned counsel for parties and perused the record, I am of the considered view that the validity of gift deed as also mutations cannot be made subject matter of adjudication in writ jurisdiction. The determination of validity or otherwise of the gift deed is a matter of trial where the parties have the opportunity to lead evidence in support of their respective claims. The plea of the petitioner in the writ petition that the impugned gift deed is a fraudulent document, cannot be determined without any evidence, in that whether or not gift is a sham or fraudulent document is a question of fact. Since respondents have denied aforesaid assertion of petitioner, it becomes a disputed question of fact.

6. Similar is the position with regard to the plea of petitioner that gift deed, even if assumed to be a valid document, has not been properly registered by respondent No.4 following mandatory provisions of the Registration Act and the Rules framed thereunder. It is stated by petitioner that registering authority registered the document on mere presentation by late father of petitioner in absence of attesting witnesses.

7. I have gone through the provisions of the Registration Act and the Rules framed thereunder and I am of the prima-facie view that the presence of the attesting witnesses is not mandatory for valid registration of the document. It is enough if the executant presents a document and he is sufficiently identified to the satisfaction of the registering authority. I need not dwell on this issue anymore and hold the registration good or bad, lest it would prejudice either party. The Civil court, if approached to assail the validity of the gift deed, is competent to adjudicate as to whether registration done by respondent No. 4 is in accordance with law or not.

8. Insofar as challenge to the mutation is concerned, the same would also fail for two reasons. First, that mutation is only a fiscal entry aimed at reflecting the changes in the record of rights pertaining to the land as defined under the J&K Land Revenue Act, 1996. The impugned mutation, in essence, has only given effect to the gift deed. If a competent Court holds Gift Deed bad, as a necessary consequence the mutation would also go.

Second, that mutation attested under Land Revenue Act is assailable by way of an Appeal and Revision as provided under Land Revenue Act. There is a complete hierarchy available under the Land Revenue Act to settle the disputes arising out of the rights created by the Land Revenue Act and the Rules framed thereunder. Writ, in any case, is not the remedy available to aggrieved person to challenge the mutation(s).

9. The reliance placed by learned counsel for petitioner on the Division Bench judgment of Allahabad High Court rendered in the case of Mst. Noor

Jahan Begum Vs. Muftkhar Dad Khan and another, AIR 1970 Allahabad 170, is also misplaced given the context and nature of controversy raised in

this writ petition. The judgment of Allahabad High Court (supra) explains and deals with the essentials of a valid Gift Deed under Mohammadan Law.

In the aforesaid judgment, the Division Bench of Allahabad High Court has held that one of the three essentials of a valid gift under Mohammadan

Law is the delivery of possession of the subject of the gift by the donor to the donee and registration of a deed of gift does not cure the want of

delivery of possession nor is the mutation of names a valid substitute for delivery of possession. Before the aforesaid judgment relied upon by the

learned Senior Counsel for the petitioner could be applied, it is first necessary to determine as to whether or not there was delivery of possession of

the subject of the impugned gift. As stated above, whether or not there was a delivery of possession of the subject matter of impugned gift is again a

very complicated disputed question of fact. The recital of Gift Deed placed on record contains a stipulation that the possession has been handed over

to the donee but the petitioner disputes the aforesaid stipulation in the gift deed and submits that there was no delivery of possession and the aforesaid

fact is substantiated by the relevant revenue record.

10. Be that as it may, the factum of delivery of possession cannot be determined in these proceedings. I am persuaded to accept the plea of the

learned counsel for the respondents 5&6 that in view of complicated disputed question of fact involved in the controversy raised, writ petition is not the

proper remedy. Such disputes between the parties, can only be determined by the Civil Court in a full-fledged trial to be conducted in accordance with

the provisions of Code of Civil Procedure and the Evidence Act. No writ lies to declare a document executed between the parties as null and void.

The view aforesaid taken by me is fortified by the Four Bench Judgment of the Supreme Court in the case of D.L.F Housing Construction (P) Ltd.

Vs. Delhi Municipal Corpn. and others, (1976) 3 SCC 160. Paragraph no. 20 of the judgment, which is relevant, is reproduced hereunder:

“20. In our opinion, in a case where the basic facts are disputed, and complicated questions of law and fact depending on evidence are involved the

writ court is not the proper forum for seeking relief. The right course for the High Court to follow was to dismiss the writ petition on this preliminary

ground, without entering upon the merits of the case. In the absence of firm and adequate factual foundation, it was hazardous to embark upon a

determination of the points involved. On this short ground while setting aside the findings of the High Court, we would dismiss both the writ petition

and the appeal with costs. The appellants may, if so advised, seek their remedy by a regular suit.”

11. To the similar effect is the judgment of the Supreme Court in the case of Mohan Pandey and another v. Usha Rani Rajgaria (Smt.) and others,

(1992) 4 SCC 61. Paragraph no.6 of aforesaid judgment is advantageous to be reproduced hereunder:

“6. Mr. Arun Jaitley, the learned counsel appearing on behalf of respondent no. 1 has supported the impugned judgement on the ground that prayer

for issuing a direction against Delhi Administration and Commissioner of Police who were respondent nos. 1 and 2 was also made. It has to be

appreciated that the present appellants were respondent nos. 3 and 4 before the High Court; and the High Court has by the impugned order,

considered it fit to allow the prayer of the respondents against them for removal of the grills for access to the backyard. According to the stand of the

landlord-respondent, since the police were taking a partisan attitude against her, the filing of a writ petition became necessary. We are unable to follow

this argument. There is no doubt that the dispute is between two private persons with respect to an immovable property. Further, a suit covering either

directly a portion of the house-property which is in dispute in the present case or in any event some other parts of the same property is already

pending in the civil court. The respondent justifies the step of her moving the High Court with a writ petition on the ground of some complaint made by the appellants and the action by the police taken thereon. We do not agree that on account of this development, the respondent was entitled to maintain a writ petition before the High Court. It has repeatedly been held by this court as also by various High Courts that a regular suit is the appropriate remedy for settlement of disputes relating to property rights between private persons and that the remedy under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of a statutory authority is alleged. And in such a case, the court will issue appropriate direction to the authority concerned. If the grievance of the respondent is against the initiation of criminal proceedings, and the orders passed and steps taken thereon, she must avail of the remedy under the general law constitutional jurisdiction to be used for deciding disputes, for which remedies, under the general law, civil or criminal, are available. It is not intended to replace the ordinary remedies by way of a suit or application available to a litigant. The jurisdiction is special and extra-ordinary and should not be exercised casually or lightly. We, therefore, hold that the High Court was in error in issuing the impugned direction against the appellants by their judgement under appeal. The appeal is accordingly allowed, the impugned judgement is set aside and the writ petition of the respondents filed in the High Court is dismissed. There will be no order as to costs.â€

12. In view of the aforesaid legal position, it is deducible that the remedy of writ for challenging the validity of Gift Deed, its registration as also the mutation is not available to the petitioner. The dispute between the petitioner and the private respondents is a civil dispute, pure and simple and involves complicated disputed facts. The private rights between the parties are not amenable to be settled in the writ jurisdiction. A proceeding under Article 226 of the Constitution, is not the appropriate recourse for adjudication of property disputes or disputes relating to title inasmuch as the writ jurisdiction is extraordinary in nature and is not meant for declaring the private rights of the parties.

13. The writ petition is, therefore, found to be devoid of any merit and is, accordingly, dismissed along with connected IA. Interim direction(s), if any, shall stand vacated.