



A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

SA No.252 of 1996

(In the matter of an appeal under Section 100 of the Code of Civil Procedure, 1908)

Ignesh Kerketta

....

Appellant

-versus-

Johan Kispatta & Others

....

Respondents

For Appellant

-

Mr. G.Mukherji, Sr. Advocate
Mr. S.D.Ray, Advocate

For Respondents

-

Mr. B.Das, Advocate
On behalf of
Mr.N.C.Pati, Advocate

CORAM:

MR. JUSTICE A.C.BEHERA

Date of Hearing :16.01.2025:: Date of Judgment :25.02.2025

A.C. Behera, J. This Second Appeal has been preferred against the reversing judgment.

2. The appellant in this Second Appeal was the sole plaintiff before the Trial Court in the suit vide T.S. No.23 of 1990 and respondent before the 1st Appellate Court in the first appeal vide T.A. No.9 of 1993.

The respondents in this 2nd Appeal were the defendants before the Trial Court in the suit vide T.S. No.23 of 1990 and appellants before the 1st Appellate Court in the 1st appeal vide T.A. No.9 of 1993.



3. The suit of the plaintiff (appellant in this 2nd Appeal) vide T.S. No.23 of 1990 was a suit for declaration and recovery of possession, if he (plaintiff) is dispossessed from the suit properties during the pendency of the suit.

4. As per the pleadings of the plaintiff, the suit properties are Ac.0.10 decimals i.e. Sabik plot No.2167/1 under Sabik Khata No.94 in village Kumarkela under Rajgangpur Tahasil in the district of Sundargarh, which corresponds to Hal Plot No.2701/3547 under Hal Khata No.408/470. The said suit properties originally belonged to Sabina Eka, who was a teacher. That Sabina Eka was residing in the suit properties constructing a khapar house thereon. She (Sabina Eka) was a bachelor (unmarried). She (Sabina Eka) adopted plaintiff as her son as per Caste and custom of her Oraon community and kept him (plaintiff) with her as her son.

Accordingly, She (Sabina Eka) brought up plaintiff in her house as her son and made him (plaintiff) educated impacting education by her guidance and solemnized his marriage as his mother. The plaintiff modified the Khapar house in the suit properties into RCC roof making constructions over some more areas within the boundaries of the suit properties and took electric connection to the said house and paid electric bills and water taxes.



5. While the plaintiff was staying as an adopted son of Sabina Eka in the suit house with Sabina Eka in the year 1979, the defendant No.1 managed to execute a gift deed in respect of the suit properties in his favour from Sabina Eka fraudulently without the knowledge and consent of Sabina Eka and the plaintiff remained silent without disclosing about the same. Much thereafter i.e. in the year 1987, the defendant No.1 expressed for the first time that, the suit properties has already been mutated to his name through a mutation case on the strength of a gift deed No.270 dated 27.06.1979 executed by Sabina Eka in his favour. For which, on 09.03.1987, Sabina Eka executed and registered a deed of cancellation vide cancellation deed No.101 dated 25.03.1987 (Ext.3) cancelling the so called gift deed No.270 dated 27.06.1979 (Ext.B) in favour of defendant No.1 in respect of the suit properties and subsequently, she (Sabina Eka) executed a deed of correction vide correction deed No.38 dated 12.04.1989 (Ext.4) correcting some minor defects in the cancellation deed No.101 dated 25.03.1987 (Ext.3). Thereafter, Sabina Eka executed and registered a will on dated 21.01.1989 (Ext.2) in respect of the suit properties in favour of the plaintiff. As such, the plaintiff has been possessing the suit properties described in Schedule "A" for more than 30 years. When, Sabina Eka died on 05.04.1989, leaving behind him (plaintiff) as her son and successor, then, after the death of Sabina Eka, the suit properties devolved upon him



(plaintiff). For which, he (plaintiff) applied for mutation of the suit properties to his name on the basis of will executed by Sabina Eka in his favour by filling mutation Case No. 557/89 and the same was allowed by the Tahasildar, Rajgangpur as per order dated 08.12.1989 and direction was given for correction of Patta/R.o.R. to his name, but, subsequently, when, the Tahasil office pointed out that, as per the order dated 28.7.1989 passed in mutation case No.365/89, the said suit properties have already been mutated in favour of the defendant No.1, then, Tahasildar reviewed his order passed in mutation case No.557 of 1989 on dated 8.12.1989 as per order dated 09.05.1990 and did not make any correction of the R.o.R of the suit properties from the name of defendant No.1 to his name (plaintiff). The other defendants are the keen relatives of defendant No.1. When all the defendants created disturbances in the possession of the plaintiff over the suit properties, then, the plaintiff approach the Civil Court by filling the suit vide T.S. No. 23 of 1990 against the defendants praying for a declaration that, the registered gift deed No.270 dated 27.6.1979 said to have been executed by Sabina Eka in respect of the suit properties in favour of the defendant No.1 as void and the same is not binding upon him (plaintiff) and if in the meanwhile, he (plaintiff) is found dis-possessed from the suit properties by the defendants, then, his possession be restored/recovered from them (defendants).



6. Having been noticed from the Trial Court in the suit vide T.S. No.23 of 1990 filed by the plaintiff, the defendants challenged the same by filing their written statement jointly denying the averments made by the plaintiff in his plaint taking their stands therein that, Sabina Eka was serving as a teacher in Rajgangpur and she was the owner of the suit Sabik Plot No.2167/1 under Sabik Khata No.94, Ac.0.10 decimals corresponding to Hal Khata No.408/470 Hal Plot No.2701/3547. Sabina Eka and defendant No.1 both had made joint construction to a khapar house on the suit plot and had constructed boundary walls around the same. He (defendant No.1) and Sabina Eka both were jointly staying in that suit house. Sabina Eka has never adopted plaintiff as her son. She (Sabina Eka) being a unmarried lady was not permitted to adopt a child in their Christian community, because, no adoption is permissible in the Christian community.

It is false to say that, the plaintiff is paying electric bill, water taxes and holding taxes of the suit house. Sabina had validly executed gift deed No.270 dated 27.6.1979 (Ext.B) in respect of the suit properties in favour of the defendant No.1.



The so called cancellation deed of gift is neither valid nor legal after execution of the valid gift deed No.270 dated 27.6.1979 (Ext.B) in respect of the suit properties in favour of the defendant No.1.

7. Sabina Eka had no legal right to execute the willnama vide Ext.2 in respect of the suit properties in favour of the plaintiff. For which, that so-called willnama (Ext.2) is not binding upon him (defendant No.1). He (defendant No.1) along with his family members are staying in some portions of the suit house and its rest portion thereof has been let out by him (defendant No.1) to the tenants. The Tahasildar, Rajgangpur has validly passed order, mutating the suit properties on the strength of the valid gift deed No.270 dated 27.06.1979 (Ext.B) executed by Sabina Eka in his favour rejecting the application for mutation of the plaintiff, as the plaintiff has no right, title, interest and possession over the suit properties. He (defendant No.1) is the sole and exclusive owner over the suit properties on the strength of the valid gift deed No.270 dated 27.6.1979.

Therefore, the suit of the plaintiff is not maintainable against them (defendants). For which, the same is liable to be dismissed against them (defendants).



8. Basing upon the aforesaid pleadings and matters in controversies between the parties, altogether twelve numbers of issues were framed by the Trial Court in the suit vide T.S. No. 23 of 1990 and the said issues are:-

I s s u e s

1. Whether the suit is maintainable in its present form?
2. Whether the suit is undervalued?
3. Whether there is proper cause of action?
4. Whether the suit is bad for mis-joinder/non-joinder of parties and absence of cause of action?
5. Whether the plaintiff is in possession over the suit land and the house standing thereon for more than 30 years as the adopted son of Sabina Eka?
6. Whether Sabina Eka acquired the suit land having her title thereto?
7. Whether Sabina Eka executed a gift deed in respect of the suit land in favor of the defendant No.1 and whether such gift deed is valid and binding against the plaintiff?
8. Whether Sabina Eka executed a registered deed of cancellation vide cancellation deed No.101 dated 25.03.1987 cancelling the gift deed in favour of the defendant No.1 and whether such cancellation is valid and binding?
9. Whether the defendant No.1 is in the possession over the suit land as of his own right?
10. Whether the defendant No.1 entered into the suit land and the house by force without any authority on 18.7.90?
11. Whether the plaintiff has title over the suit land?
12. To what relief?

9. In order to substantiate the aforesaid relief(s), sought for by the plaintiff against the defendants, the plaintiff examined altogether seven numbers of witnesses from his side including him as P.W.3 and relied upon the documents vide Exts.1 to 6.



On the contrary, in order to nullify/defeat the suit of the plaintiff, the defendants examined three numbers of witnesses on their behalf including defendant No.1 as D.W.3 and exhibited several documents from their side vide Exts.A to K.

10. After conclusion of hearing and on perusal of the materials, evidence and documents available in the record, the Trial Court answered issue Nos.1 and 5 to 11 in favour of the plaintiff and against the defendants and basing upon the findings and observations made by the Trial Court in the said issue Nos.1 and 5 to 11 in favour of the plaintiff and against the defendants, the Trial Court decreed the suit of the plaintiff vide T.S. No.23 of 1990 on contest against the defendants as per its judgment and decree dated 14.12.1992 and 08.01.1993 respectively and declared the title of the plaintiff over the suit properties under Sabik Khata No.94 Plot No.2167/1 corresponding to Hal Khata No.408/470 and Hal Plot No.2701/3547 and also declared that, the gift deed bearing registration No.270 dated 27.06.1979 (Ext.B) said to have been executed by Sabina Eka in favour of the defendant No.1 is null and void and the same is not binding upon the plaintiff assigning the reasons that, the suit of the plaintiff is maintainable, the plaintiff is in possession over the suit land and the house standing thereon and the so-called gift deed No.270 dated 27.06.1979 (Ext.B) said to have been executed by Sabina Eka in



favour of the defendant No.1 is tainted with fraud and the same was managed to have been executed in favour of the defendant No.1 without the knowledge of Sabina Eka and the cancellation of that gift vide cancellation deed No.101 dated 25.03.1987 is valid and the same is binding upon the defendant No.1 and neither the defendant No.1 nor other defendants has any interest and possession in the suit properties.

11. On being dissatisfied with the aforesaid judgment and decree dated 14.12.1992 and 08.01.1993 respectively passed by the Trial Court in the suit vide T.S. No.23 of 1990 in favour of the plaintiff and against the defendants, they (defendants) challenged the same by preferring the 1st Appeal vide T.A. No.09 of 1993 being the appellants against the plaintiff arraying him (plaintiff) as respondent after taking several grounds in their appeal memo.

12. After hearing from both the sides, the 1st Appellate Court allowed that first appeal vide T.A. No.09 of 1993 of the defendants and set aside the judgment and decree dated 26.07.1996 and 01.08.1996 respectively passed by the Trial Court in T.S. No.23 of 1990 and dismissed that suit vide T.S. No.23 of 1990 of the plaintiff assigning the reasons that, as per the materials on record, the plaintiff has not been able to prove the allegations of fraud alleged against the defendant No.1 for the execution



and registration of the gift deed No.270 dated 27.06.1979 (Ext.B) by Sabina Eka in favour of defendant No.1, because, there is no sufficient material and evidence in the record on behalf of the plaintiff to establish that, the said gift deed vide Ext.B was executed fraudulently without the knowledge of its donor Sabina Eka. Rather, the execution and registration of the deed of cancellation of gift vide cancellation deed No.101 dated 25.03.1987 (Ext.3) and the contents of that Ext.3 are ultimately establishing due and proper execution and registration of the gift deed No.270 dated 27.06.1979 vide Ext.B in respect of the suit properties by Sabina Eka in favour of the defendant No.1. Acceptance of such gift deed by him (defendant No.1) and transfer of ownership of the suit properties from Sabina Eka to the defendant No.1 through the gift deed vide Ext.B has been corroborated/supported through the R.o.R. vide Ext.D after mutation of the same to his name. For which, the title and possession of the defendant No.1 over the suit properties has been duly established on the basis of the Exts.B, 3 and D, in which, the plaintiff has no interest. Therefore, the 1st Appellate Court set aside the judgment and decree of the Trial Court and dismissed the suit of the plaintiff vide T.S. No.23 of 1990 on contest.

13. On being aggrieved with the aforesaid judgment and decree passed by the 1st Appellate Court in dismissing the suit of the plaintiff after setting



aside the judgment and decree passed by the trial court, he (plaintiff) challenged the same by preferring this 2nd appeal being the appellant against the defendants arraying them (defendants) as respondents.

14. This 2nd Appeal was admitted on formulation of the following substantial questions of law i.e.:-

1. Whether the suit is barred by limitation, when there is evidence in the record that, plaintiff was in possession over the suit property till 1990?
2. Whether the genuineness of the deed of gift can be ascertained in the absence of the front page of the alleged original gift deed, more so, when the deed had subsequently been cancelled on the ground that, conditions imposed in the gift deed had not been fulfilled by the defendant No.1?
3. Whether adverse inference should be drawn for non production of front page of gift deed?

15. I have already heard from the learned counsels of both the sides.

16. In support of the judgment and decree passed by the 1st Appellate Court, the learned counsel for the respondents (defendants) relied upon the following decisions i.e.

Ladli Prasad Jaiswal Vrs. Karnal Distillery Co., Ltd.,& Others reported in 1963 AIR 1279 and Eswari Vrs. The Sub Registrar & Others passed in W.P(MD) No.18592 of 2015 and M.P. (MD) Nos.1 and 2 of 2015.



17. When, as per the pleadings of the parties and the findings and observations made by the Trial Court and 1st Appellate Court in their respective judgments and decrees, the above three formulated substantial questions of law are interlinked having ample nexus with each other, then, the aforesaid three formulated substantial questions of law are taken up together analogously for their discussion hereunder:-

18. During the course of hearing of the appeal, the learned counsel for the appellant (plaintiff) contended following grounds for making the execution of the gift deed No.270 dated 27.06.1979 vide Ext.B in favour of the defendant No.1 as suspicious and doubtful i.e.

(i) The defendant No.1 failed to produce the first page of the so-called original gift deed vide Ext.B, though, he produced the second page thereof.

(ii) The execution of deed of cancellation of gift vide Cancellation deed No.101 dated 25.03.1987 (Ext.3) by Sabina Eka cancelling the gift deed vide Ext.B and non-filing of any mutation case by the defendant No.1 for mutation of the suit properties to his name during the lifetime of Sabina Eka and filing of the same after her death.

19. Now, it is to be seen, whether the above two grounds raised by the learned counsel for the appellant (plaintiff) are sufficient to nullify the



findings and observations made by the 1st Appellate Court about the due and proper execution of the gift deed vide Ext.B by Sabina Eka in respect of the suit properties in favour of the defendant No.1.

20. Ext.A to A/9, i.e. the copies of the register of the gift deed vide Ext.B copied into the volume of the sub register's office in due process of the official business have been proved on behalf of the defendants before the Trial Court during the trial of the suit by one staff of the Rajgangpur sub-register's office i.e. P.W.1 and the certified copy of the said gift deed has been marked as Ext.C.

So, from the said Exhibits vide Ext.A to A/9 and Ext.C (duly copied from the volume of the Sub-Register's office), no adverse inference can be drawn against the defendant No.1 for non-filing of the first page of the gift deed vide Ext.B, because, from the aforesaid documents vide Exts.A to A/9, B and C, the execution and registration of the gift deed vide Ext.B cannot be held doubtful.

21. It appears from the contents of the above documents vide Exts.A to A/9, B and C that, the gift deed vide Ext.B in respect of the suit properties was executed by the donor Sabina Eka in favour of the defendant No.1 unconditionally without reserving any right over the gifted suit properties with her (Sabina Eka). Because, the contents of the Exts.A to A/9, B and C



are also clearly and unambiguously going to show that, the donor Sabina Eka has executed such gift deed vide Ext.B voluntarily in favour of the defendant No.1 and has transferred the ownership and possession of the gifted suit properties in favour of the defendant No.1 through that gift deed vide Ext.B placing him (donee, defendant No.1) as owner of the suit properties like her (donor Sabina Eka) and the defendant No.1 has accepted the said gift after signing on that gift deed.

22. The contents of deed of cancellation of the gift vide Ext.3 unilaterally executed by Sabina Eka is going to show that, the said deed of cancellation of gift was executed on 25.03.1987, seven and half years, after the execution of the gift deed vide Ext.B.

23. Reasons of the cancellation of the gift deed vide Ext.3 indicated in that Ext.3 are as follows:-

“The gift deed was executed with an impression and presumption that, the donee (Johan Kispata, defendant No.1) shall help her in her old age, since she is unmarried and childness”.

24. The above words used in the deed of cancellation vide Ext.3 is going to show that, Sabina Eka has executed the gift deed No.270 dated 27.06.1979 (Ext.B) in respect of the suit properties in favour of the defendant No.1 voluntarily.



As such, due/proper as well as voluntary execution of the gift deed vide Ext.B by Sabina Eka in favour of the defendant No.1 has been established on the basis of the aforesaid admissions of the donor (Sabina Eka) in the deed of cancellation of gift vide Ext.3, because, the said admissions of Sabina Eka in the contents of Ext.3 are ultimately going to show that, the gift deed vide Ext.B was executed by Sabina Eka in respect of the suit properties in favour of the defendant No.1 voluntarily and unconditionally.

25. The propositions of law on this aspect in the like nature cases has already been clarified by the Hon'ble Courts and Apex Court in the ratio of the following decisions:-

(i) *In a case between Kamakshi Ammal Vrs. Rajalakshmi & Others reported in AIR 1995 (Madras) 415 in Para 20* that, putting signature of the donee in the gift deed indicates her acceptance of gift.

(ii) In a case between *China Sahuani and after her, Kishore Chandra Sahu & another Vrs. Rukuna Sahu & Another reported in 1988 (1) OLR 309 in Para 12* that, Production of the document by the donee is evidence of acceptance.

(iii) In a case between *Mohinder Singh Verma Through Legal Representative Vrs. J.P.S. Verma & Another reported in 2015 (1) C.C.C. 289 (Delhi)* that, Once a gift in accordance with law as per Sections 122 and 123 of the T.P. Act, 1882 has been made, donor is divested of from the gifted property.



When, a gift is subject to the condition that, donee is to maintain the donor, the said gift cannot be revoked under Section 126 for failure of the donee to maintain donor.

(iv) In a case between ***Subodh Nath & Others Vrs. Fulu Rani Devi reported in 2016 (II) Civil Law Times 150 (Gauhati)*** that, the burden to prove to the validity of a registered gift deed is quite heavy, as a registered document carries with it a presumption that, it was validly executed.

(v) In a case between ***Kanchan Dakuani Vrs. Tarini Dakuani reported in 1992 (1) OLR 287 in Para 5*** that, a direction for maintenance to the donor indicated in the gift deed shall be regarded as only a pious wish on the part of the donor and the donor has no power to revoke th gift for failure of the donee to maintain the donor.

(vi) In a case between ***Asokan Vrs. Lakshmikutty & Others reported in 2008(1) OLR (S.C.) 166 in Para 31*** that, once a gift is complete, the same cannot be rescinded, for any reason. The subsequent conduct of a donee cannot be a ground for rescission of a valid gift.

(vii) In a case between ***Randhir Kaur (deceased) through her LRs Vrs. Balwinder Kaur & Others reported in 2020 (II) CLR (S.C.) 111*** that, once the registered gift deed had been executed without reserving any right of the donor in the suit property, it could not be revoked by the donor.

(viii) In a case between ***Daulat Singh (D) through LRs Vrs. The State of Rajasthan & Others reported in 2021 (1) Civ.C.C. (S.C.) 163*** that, not only the gift deed in itself contained recitals about transfer of possession, but also, the mutation records and the statements of both donor and donee indicate that, there has been an acceptance of the gift by conduct.

(ix) In a case between ***N.Thajudeen Vrs. Tamil Nadu Khadi and Village Industries Board reported in 2025(1) Civ.C.C.535 (S.C.) in Para 20*** that, once it is held that gift deed was validly executed resulting in the absolute transfer of title in favour of



the donee, the same is not liable to be revoked, as such, the revocation deed is meaningless.

26. When, as per the discussions and observations made above, it has been held that, being an educated woman that too a school teacher, the donor (Sabina Eka) has executed the gift deed vide Ext.B in respect of the suit properties in favour of the defendant No.1 voluntarily and the defendant No.1 (donee) has accepted the same and the donor (Sabina Eka) has absolutely transferred the title and possession of the gifted suit properties in favour of the defendant No.1 through that gift deed vide Ext.B without reserving her any right in the suit properties with her (donor Sabina Eka), then, at this juncture, by applying the principles of law enunciated in the ratio of the aforesaid decisions, it is held that, the cancellation of the deed of gift vide Ext.3 executed unilaterally by the donor (Sabina Eka) is nonest under law. Because, prior to the execution of Ext.3, the title and possession of the suit properties had already been transferred to the defendant No.1 from its donor Sabina Eka on the basis of the execution and registration of the irrevocable deed of gift vide Ext.B.

27. As per the discussions and observations made above, when, it is held that, the defendant No.1 is the owner and in possession over the suit properties on the basis of the gift deed vice Ext.B and he (defendant No.1) along with his family members i.e. other defendants are residing on the



same and the plaintiff has no interest in the suit properties, then at this juncture, the Judgment and decree passed by the 1st Appellate Court in setting aside the judgment and decree passed by the Trial Court in T.S. No.23 of 1990 in dismissing that suit vide T.S. No.23 of 1990 of the plaintiff cannot be held as erroneous.

For which, the question of interfering with the same through this second appeal filed by the appellant (plaintiff) does not arise.

Therefore, there is no merit in the appeal of the appellant (plaintiff). The same must fail.

28. In result, the appeal filed by the appellant (plaintiff) is dismissed on contest against the respondents (defendants) without cost.

The judgment and decree passed by the 1st appellate Court in T.A. No.09 of 1993 setting aside the judgment and decree of the Trial Court in dismissing the suit of the plaintiff vide T.S. No.23 of 1990 against the defendants is confirmed.

(A.C. Behera),
Judge

Orissa High Court, Cuttack
25th of February, 2025/ Binayak Sahoo//
Junior Stenographer