

CASE NO.:
Appeal (civil) 6972 of 1999

PETITIONER:
THAKUR RAGHUNATH JI MAHARAJ & ANR.

Vs.

RESPONDENT:
RAMESH CHANDRA

DATE OF JUDGMENT: 11/05/2001

BENCH:
S. Rajendra Babu & Shivaraj V. Patil

JUDGMENT:

W I T H
CIVIL APPEAL NO. 6973 OF 1999

J U D G M E N T

Shivaraj V. Patil J.
L...I...T.....T.....T.....T.....T.....T.....T...J

The defendants are the appellants before this Court in Civil Appeal No. 6972/1999 challenging the correctness and validity of the judgment and decree passed in the second appeal No. 1020/97 by the High Court of Judicature at Allahabad. The plaintiff is the appellant in Civil Appeal No. 6973/1999 challenging the impugned judgment to the extent of granting one year time to the defendants for constructing college building in the suit land. The Plaintiff was bhumidhar of the suit plot of land No. 233 measuring 1.98 acres. He executed a gift deed in favour of the defendant Thakur Raghunath Ji Maharaj, Virajman Shri Ram Mandir Chutar Teka Village Sakitara, District Mathura on 16.8.1971 for the purpose of construction of college building on the said plot of land. On the same day, a deed of agreement was executed to the effect that the land was gifted for building of degree college and the said building should be constructed within the period of six months from the date of the execution of the gift deed failing which the plaintiff would have the right over the suit plot of land. College building was not constructed within the said period inspite of repeated requests and demand by the plaintiff. Finally, notice was sent by the plaintiff on 16.10.1985 to comply with the conditions of the agreement but the defendants refused to do so. The plaintiff also stated that his possession over the land continued as there were two 'samadhis of his father and mother existing on the land.

The defendants filed written statement resisting the said suit contending that the suit filed by the plaintiff was barred by time; the plaintiff executed the gift deed in favour of defendant no. 1 without any conditions and that there was no agreement between the plaintiff and the defendant for the construction of degree college on the disputed land. The trial court held that the suit filed by

the plaintiff was beyond the period of limitation and the defendant had not executed any agreement dated 16.8.1971. In this view, the suit was dismissed. Aggrieved by the judgment and decree of the trial court, the plaintiff filed the first appeal, which was allowed, decreeing the suit of the plaintiff holding that the suit was filed within time and that the agreement mentioned above was executed. The defendants approached the High Court by filing the second appeal, aggrieved by the judgment and decree passed by the first appellate court.

The High Court by the impugned judgment concurred with the view taken by the first appellate court; however, noticing that the suit plot was still vacant, instead of directing the defendants to return the suit plot, gave an opportunity to the defendants to establish a degree college within a period of one year. It is made clear that in case the college is established and the building is constructed on the said plot of land within the time allowed, the defendants need not comply with the decree passed by the first appellate court and its operation shall be deemed to have been stayed for a period of one year. Hence this appeal.

The learned counsel for the appellants urged that the suit filed by the plaintiff is clearly barred by time; the gift deed executed by the plaintiff was unconditional and absolute and the so-called agreement could not defeat the rights conferred under the gift deed on the defendants. The learned counsel for the respondents argued supporting the impugned judgment.

As to the execution and validity of the agreement, the first appellate court recorded a categorical finding based on the pleadings and evidence that it was a genuine document. The finding of fact recorded by the first appellate court was not interfered with by the High Court in the second appeal and rightly so. The gift deed and agreement were executed on the same day. Having regard to the evidence, the High Court and the first appellate court were right in taking the view that both formed the part of one transaction. It is not disputed that the gift deed did not contain any conditions in regard to the building of college on the suit plot but in the agreement it is clearly stated that in the suit land, there are built up chabutaras of 'samadhis' of the father and mother of the plaintiff, shall be maintained in the same condition; the suit land shall be used for the construction of a degree college and not for any other purpose; if the college is not built within six months, the gift deed will be deemed to have come to an end and that the plaintiff shall be considered to be the owner of the land; the possession will be of the plaintiff till the degree college is not built; in case the college building is not constructed within the said period, the plaintiff will be entitled to take appropriate action in the court of law and in the event the degree college is constructed, the plaintiff will have no right over the land. From these terms contained in the said deed of agreement, it is clear that the gift was not absolute and/or unconditional. The gift deed and the agreement forming one transaction are to be read together and given effect to accordingly. In other words, the defendants had to take both the benefit and burden. They could not reap the benefit and avoid to unload the burden. Since the defendants did not construct a college building on the suit

land, the gift did not come into effect.

Before the High Court, the learned counsel for the defendants contended that the substantial question of law that arose for consideration was whether Article 54 or Article 66 of the Limitation Act would apply to the suit. Article 54 of the Limitation Act relates to specific performance of a contract. It has no application at all to the present suit, as the suit filed was not for specific performance but one for possession based on reason of forfeiture by breach of condition. Article 66 prescribes period of limitation as 12 years for filing a suit for possession of immovable property when the plaintiff has become entitled to possession by reason of any forfeiture on breach of condition and the time begins to run when the forfeiture is incurred or the condition is broken. 'Samadhis of parents of the plaintiff exist in the land which were to be maintained; the land could not be used for any purpose other than constructing building for degree college and that the possession of the land shall continue with the plaintiff so long the college is not built. According to the plaintiff, the defendants finally refused to construct degree college building in the land on 16.10.1985, giving rise to immediate course of action. Hence the suit filed immediately thereafter in the year 1985 itself was not barred by time, as rightly accepted by the first appellate court. The same was not disturbed in the second appeal by the High Court. Having regard to the pleadings, facts and circumstances of the case, evidence placed on record and the nature of transaction between the parties, we are of the view that the suit was not barred by time.

Further the relationship between the plaintiff and the defendants was fiduciary as the suit property was gifted for a specific charitable purpose and the condition attached to the gift that in case college building was not constructed within a specified time, the plaintiff would be entitled to the property, was a valid condition; the donee continued to be trustee and the donor could claim back property on the breach of conditions mentioned in the agreement. The High Court rightly relied on the decision of this Court in State of Uttar Pradesh vs. Banshi Dhar and Ors. (AIR 1974 SC 1084) which fully supports the case of the respondent in regard to his claim for possession of the property. In the said judgment, it was held that the donation given by Dubey was conditional; the Government was a mere custodian of the cash till condition was complied with and if the performance thereof was defeated by the Government, the gift did not take effect. It was further held that the transaction was not a gift simpliciter but was subject to certain conditions; as conditions were not carried, the State could not keep the money and the suit was liable to be decreed.

In the present case, the land was given for charitable purpose in the public interest as already noticed above. The High Court was right and justified in giving concession to the defendants to construct building within a period of one year and staying the decree of first appellate court for a period of one year. The High Court has also indicated that in case the defendants take necessary steps and start constructing college building over the land and for no fault of them, the construction of the college building is not completed within the time allowed, it is open to them to seek further extension. The High Court, having agreed with

the findings recorded by the first appellate court, however, in the larger public interest to serve charitable purpose and to adjust equities has granted time to the defendants to construct the college building as stated above. Since substantial justice has been done, the impugned judgment does not call for any interference at the hands of this Court. Thus, we see no merit in these appeals. Hence they are dismissed. No costs.

JUDIS