

**HIGH COURT OF TRIPURA  
AGARTALA**

**RFA NO.18 OF 2018**

**1. Shri Mouna Brata Sarkar,**  
Son of Late Chitta Ranjan Sarkar,

**2. Smt. Maya Deb(Sarkar),**  
Wife of Sri Mouna Brata Sarkar

-Both residents of village: Madhyapara  
(formerly known as Basar Mia's Colony),  
PS & PO: Belonia, District: South Tripura, Tripura.

....Defendant-appellants

Versus

**1. Shri Subrata Sarkar,**  
Son of late Chitta Ranjan Sarkar,  
Resident of village: Madhyapara  
(formerly known as Basar Mia's Colony)  
P.S & P.O; Belonia, District: South Tripura, Tripura.

----- Plaintiff Respondent(s)

---

For the Appellant(s)	: Mr. D.K. Daschoudhury, Advocate.
For the Respondent(s)	: Mr. S. Bhattacharjee, Advocate.
Date of hearing	: 02.03.2021
Date of delivery of Judgment & Order	: 20.04.2021.
Whether fit for reporting	: YES.

---

**HON'BLE MR. JUSTICE ARINDAM LODH**  
**J U D G M E N T & O R D E R**

Shri Mouna Brata Sarkar and his wife Smt. Maya Deb (Sarkar) have presented this first appeal under Section 96 of the Code of Civil Procedure against the judgment dated 30.07.2018 and decree dated 08.08.2018 passed by the learned Civil Judge (Senior Division), Belonia, South Tripura in connection with T.S. 01 of 2015.

2. The factual panorama involved in this case, in a nutshell, may be stated hereunder:-

2.1. The plaintiff-respondent, Shri Subrata Sarkar (here-in-after referred to as *plaintiff*) instituted the suit for declaration of title and recovery of possession of the suit land from the defendant-appellants (here-in-after referred to as *defendants*). It is the pleaded case of the plaintiff that he purchased the entire 'A' schedule land including the suit land under schedule 'B' of the plaint measuring 3 gandas 3 kara in the name of his mother Arati Sarkar. The defendant Nos.1 and 2 are the brother and sister-in-law (brother's wife) of the plaintiff. The plaintiff constructed huts and kitchen over the land under the schedule. The plaintiff also constructed single storey building consisting of two rooms. Defendant No.1 requested him to accommodate him with his spouse in that building. The defendant No.1 also purchased a plot of land from one Kanti Lal Dasgupta to make their own home. But, they were in no mood to shift their place of residence. The mother of the plaintiff had transferred the land under the schedule by dint of a gift deed dated 09.07.2012. The mother was not satisfied with the activities and behaviour of the defendants and expressed that if the defendants are allowed to stay in the same house along with her, then, she would die of mental depression. The plaintiff requested the defendants to shift their place of residence, but they denied. The plaintiff issued a notice upon them to vacate the rooms under their

possession. But, they neither vacated nor replied to the notice. The defendants never spent a coin for the benefit of their mother. The defendants have been occupying three rooms forcibly. Since they denied to vacate the building and the rooms therein, the cause of action of filing the instant suit arose. It has further been pleaded that defendant No.2 being in service in the administrative department of the Government of Tripura had made a mischievous attempt to prevent the plaintiff from recording his name as 'raiyat' in the record of right in a mutation proceeding. To substantiate his claim, the plaintiff has adduced the following documents:-

- 1) the original sale deed bearing No.1-635 for the year 1988;*
- 2) gift deed bearing number 1-842 for the year 2012 executed by his mother;*
- 3) certified copy of mutation proceeding;*
- 4) certified copy of the finally published khatian in the name of the mother of the plaintiff.*

2.2. On being summoned, the defendants appeared and contested the suit by filing written statement stating that the suit is barred by limitation and the suit land was jointly purchased by the plaintiff and the defendant No.1 in the name of their mother and constructed the house thereon. The defendants have asserted that taking advantage of simplicity and innocence of an old woman, the plaintiff managed to obtain the gift-deed for his wrongful gain. The said gift deed was nothing but a mere paper transaction.

2.3 Based on the aforesaid pleadings, the learned Trial Court framed the following issues:-

*“i) Whether the suit is maintainable in its present form and nature?*

*ii) Whether the plaintiff has right, title and interest over the suit land?*

*iii) Whether the delivery of suit property was necessary upon the gift deed being made?*

*iv) Whether the plaintiff is entitled to get recovery of khas possession of the suit land?*

*v) Whether the plaintiff is entitled to get any other relief or reliefs?”*

2.4. After framing of issues, evidences were recorded by the respective parties. Having heard the learned counsels and on consideration of the documents, the learned Trial Judge decreed the suit in favour of the plaintiff asking the defendants to deliver possession in favour of the plaintiff as he is entitled to get recovery of khas possession of the suit property from the defendants. It is further held by the learned Trial Court that the gift deed has been duly executed and the plaintiff is entitled to the delivery of the suit property by virtue of the gift deed. It is further held that the plaintiff has been able to establish his title over the suit land.

3. Feeling aggrieved and dissatisfied with the judgment and decree passed by the learned Civil Judge, Senior Division, the defendants have preferred the present first appeal.

4. I have heard Mr. D.K. Daschoudhry, learned counsel appearing on behalf of the appellants as well as Mr. S. Bhattacharjee, learned counsel appearing on behalf of the plaintiff-respondent.

5. Mr. Daschoudhary, learned counsel appearing for the appellants had attacked the judgment and decree passed by the learned Trial Court mainly on the ground that the learned Trial Judge had failed to appreciate the term '*consideration*'. Referring to Section 2(d) of the Contract Act, Mr. Daschoudhury, learned counsel argued that a gift had to be made without any '*consideration*'. According to Mr. Daschoudhury, learned counsel, the term '*consideration*' has to be emanated from the recitals of deed itself. It does not always mean that '*consideration*' means monetary transaction. According to learned counsel, the gift deed itself proves that it was executed on consideration that since the plaintiff purchased the suit land on payment of consideration money from his own source of income, and the promise being made by the mother to return the suit property, she had gifted the same

in favour of the plaintiff. Learned counsel would contend that since the gift deed had been transacted out of that promise constituting the basis of '*consideration*', the said gift deed suffered from illegality and *void ab initio* and for that reason, it could not confer any title upon the plaintiff. As such, since the suit of the plaintiff was based on title and title had not been proved, he could not ask for declaration of title on the basis of such void gift deed and claim recovery of khas possession, evicting the defendants from the suit property.

6. At the same time, Mr. Daschoudhry, learned counsel has submitted that the suit land was purchased both by the plaintiff and the defendant No.1 in the name of their mother and lion share of the '*consideration*' money was paid by defendant No.1. It was further argued that taking advantage of the old age of their mother, the plaintiff somehow had managed to obtain the gift deed, executed by their mother.

7. On the other hand, Mr. S. Bhattacharjee, learned counsel appearing for the plaintiff-respondent would contend that the interpretation made by the learned counsel for the appellants in regard to the term of '*consideration*' was not correct proposition of law and was liable to be rejected. The plaintiff had been able to prove the gift deed. Mr.

Bhattacharjee, learned counsel for the plaintiff defended the judgment and decree as passed by the learned Civil Judge, Senior Division.

8. In view of the submission of the learned counsel for the appellants, I have looked for the definition of the term '*consideration*' as contemplated under Section 2(d) of the Contract Act, 1872, which reads as under:-

*" 2.(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise."*

9. The term '*promisor*' and '*promisee*' are defined under Section 2(c) of the Contract Act, 1872 as under:-

*"2.(c) The person making the proposal is called the "promisor", and the person accepting the proposal is called the "promisee";*

In other words, when the proposal is accepted, the person making the proposal is called as '*promisor*' and the person accepting the proposal is '*promisee*'.

10. From the aforesaid definition, the learned counsel for the appellants tried to persuade this Court that at the desire of

the plaintiff, his mother Arati Bala Sarkar had agreed to purchase the suit land in her name, though '*consideration*' money would be paid by the plaintiff. However, simultaneously, the mother promised to return the said purchased suit land in favour of the plaintiff subsequently or as and when the plaintiff would raise his demand to return the said purchased land in favour of him. Thus, being a proposal maker, the plaintiff became '*promisor*' and the mother Arati Bala Sarkar being executed his proposal, became '*promisee*'. Further, the agreement to return the purchased land as and when it would be demanded by the plaintiff was nothing but a '*consideration*' and out of that '*consideration*', the mother Arati Bala Das executed the gift deed in favour of the plaintiff.

11. Now, proceeding to decide the merits of the submission as addressed by learned counsel for the appellants, it would be relevant to keep in mind the settled proposition as defined under Section 122 of the Transfer of Property Act that it is the essence of a gift that it should be without '*consideration*' of the nature as envisaged in Section 2(d) of the Contract Act. It leads me to give a bird's eye view to the deed of gift (*Exbt-1*). There is no dispute regarding the valid execution and registration of the gift deed. The only question

raised by the learned counsel of the appellants is that the gift deed was transacted on the basis of the promise made by the mother of the plaintiff that it would be returned to the plaintiff as and when such demand would be raised, and on the basis of that promise, the mother, Smt. Arati Bala Sarkar transferred the suit land to the plaintiff by way of gift.

12. In my opinion, *it should be the normal rule of interpretation that the contents of a deed or document have to be read and construed in the language as encrypted in the said deed or document itself and the Courts shall not be guided or influenced by any superfluous imagination.* As such, from the recitals of the gift deed, I am to evaluate the only point of controversy as agitated before me as to *whether the gift of the suit land which was made on account of mutual love and affection, could be said to be transferred on 'consideration' out of her promise made in past to return the suit property as and when demand would be raised by the plaintiff.*

**(emphasis supplied)**

13. Section 5 of the Transfer of Property Act defines "transfer of property" to mean an act by which a living person conveys property, in present or in future, inter alia, to one or

*more other living persons. Such transfer of property may be made by one of the several modes known to law, e.g. by sale, exchange or gift, etc.*

14. Section 122 of the Transfer of Property Act defines the "gift" as under:-

*" 'Gift' is the transfer of certain existing movable 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.*

*It is therefore one of the essential requirements of gift that it should be made by the donor "without consideration". The word "consideration" has not been defined in the Transfer of Property Act, but we have no doubt that it has been used in that Act in the same sense as in the Indian Contract Act and excludes natural love and affection."*

15. Meaning and definition of the word, 'consideration' is available in Black's Law dictionary where it defines thus:-

*"The inducement to a contract. The cause, motive, price, or impelling influence which induces a contracting party to enter into a contract. The reason or material cause of a contract. Some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility, given, suffered, or undertaken by the other."*

16. Black's Law Dictionary also defines the words, 'good consideration' and 'valuable consideration' as under:-

*"Good Consideration" means 'such as is founded on natural duty and affection, or on a strong moral*

*obligation. A consideration for love and affection entertained by and for one within degree recognized by law. Motives of natural duty, generosity, and prudence come under this class. The term is sometimes used in the sense of a consideration valid in point of law, and it then includes a valuable or sufficient as well as a meritorious consideration. However 'generally, good is used in antithesis to valuable consideration (q.v)' which has necessarily to be excluded in the case of a gift by virtue of its definition in Section 122 of the Transfer of Property Act."*

17. In **Currie V. Misa** reported in **(1875) LR10 Ex 153**, the Court was asked to define what valuable consideration is, and defined thus:-

*" A valuable consideration, in the sense of the law, may consist either in some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility, given, suffered or undertaken by the other".*

The definition has been approved and accepted by their Lordship of Judicial Committee of the Privy Council as the Appeal of **Fleming Vs. Bank of New Zealand L.R.(1900) A.C. 557 at 586**, from the Supreme Court of New Zealand.

A Division Bench of Bombay High Court in **Ramacharya Venkatramanacharya vs Shrinivasacharya**, reported in **(1918) 20 BOMLR 441** had relied upon the meaning of 'valuable consideration' as defined in **Currie(supra)**.

18. Reverting to the questioned gift deed, it is recited, *"That my younger son Sri Subrata Sarkar had brought that aforesaid land from Sri Indu Bhushan Sarkar & others in my name on the basis of a registered sale-deed no:1-635 dated 14.03.1988 AD last by his own earned money by working as a typist in the Belonia court & office premises from 1982 AD and working as a clerk under the advocate Sri Sanjib Datta. Later when I prayed for mutation of the purchased land in my own name as it was under my possession by means of that out and out sale deed,....."*

19. In continuity thereof, there is a general description of the land and the number of sale deed. Thereafter, she recited, *"You, the vendee of the deed is my younger son, I am at my old stage of life. You the vendee by crossing all sorts of hindrances from your young age had become self dependent and you are properly performing your duties by helping your brothers and sisters and had been taking care of me with much respect. I am very much happy and satisfied by your respect for your mother. You have purchased the aforesaid land in my name by your self-earned money at your sole wish. Thinking that it is my sole duty to hand over this land to your favour during my lifetime and in future so that you should not have to*

*face any problem with your children. I have decided to satisfy myself by giving that property to your as a token to love from me. On being written over, I do divest myself from all sorts of title and possession from ever from the gifted land described in the schedule.....”*

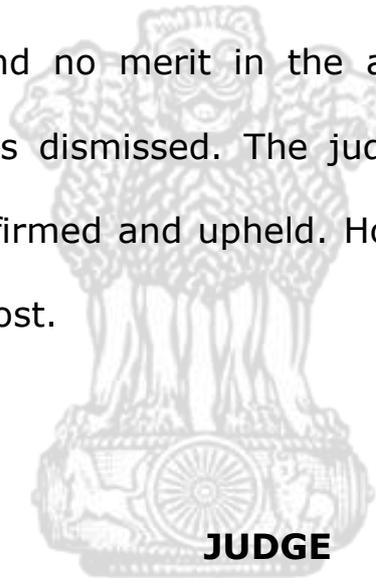
20. On plain reading of the above recitals as extracted here-in-above from the gift deed (*Exbt-1*), in my opinion, it cannot be said that on the basis of some valuable consideration, the donor, Smt. Aarti Bala Sarkar had gifted the suit property in favour of the plaintiff. It was only out of her love and affection and considering his old age and on clear understanding of her moral duty, she transferred the suit land in favour of the plaintiff by way of gift deed. This ‘*consideration*’ should not in any way be termed as ‘*valuable consideration*’ but it should be considered as ‘*good consideration*’ and ‘*good consideration*’ is not prohibited under Section 122 of the Transfer of Property Act, for ‘*good consideration*’ is the antithesis of ‘*valuable consideration*’. In furtherance thereof, the recitals in the gift deed aptly proves that it was made by the donor Arati Bala Sarkar in favour of plaintiff-donee voluntarily and without any valuable consideration.

21. Further, from a careful reading of the deed of gift, I find no apparent material to consume that at the desire of the plaintiff, his mother Arati Bala Sarkar promised to return the suit land in his favour as and when the plaintiff would raise demand for such transfer. Even, no such question was put forth to the plaintiff in regard to this fact. In furtherance thereof, there is no evidence that the plaintiff had ever demanded the return of the suit land from his mother, Arati Bala Sarkar to fulfil her promise as argued by the learned counsel for the appellants.

22. Lastly, though not seriously argued by the learned counsel for the appellants about the purchase of the suit land or the execution and the registration of the gift deed, I have perused the evidence and materials on record afresh. Sale deed as well as the gift deed have properly been proved in accordance with the established procedure of law. The defendants have failed to plead that any fraud was committed in execution and registration of the gift deed. There is no evidence that Arati Bala Sarkar, executed and registered the gift deed (*Exbt-1*) under any undue influence or coercion. The attesting witnesses have confirmed the execution of the gift deed. There is necessary endorsement, and being satisfied with

the proper execution of the deed, the competent authority, registered the deed of gift which has been accepted by the plaintiff being a *donee*.

23. In view of the above analysis, the elements as crystallized in the definition of "*valuable consideration*" *ex facie* are found to be absent in the recitals of the gift deed in contra, the elements of '*good consideration*' predominate the recitals of the deed executed by the mother of the plaintiff, Arati Bala Sarkar and for the reasons discussed here-in-above on both points of law and facts, I find no merit in the appeal, and accordingly, the appeal stands dismissed. The judgment and decree of the Trial Court is affirmed and upheld. However, the parties are to bear their own cost.



सत्यमेव जयते