

PRIVY COUNCIL

Venkat Subba Srinivas Hegde

Vs.

Subba Rama Hegde

Privy Council Appeal No. 96 of 1926
(Lords Shaw Carson and Sir Lancelot Sanderson. JJ.)

24.01.1928

JUDGMENT

LORD SHAW J.

1. The circumstances of this case need not be referred to further than as follows : The object of the suit was to set aside a certain deed executed by the deceased plaintiff on 26th June 1919. By that deed certain property was transferred to the appellant. The deed was attacked as having been granted and delivered while the grantor was in ill-health and under undue influence ; elements of fraud were also introduced. It may be said at once that the whole of these allegations were tested before the Subordinate Judge and, on appeal from the Subordinate Judge, by the District Court, and all the allegations were disproved. Therefore, that element of attack disappears from the case.
2. There remains, however, this further point which until a few years ago was one of much contention in India. The point is, that the deed, which was a deed of gift of immovable property, was granted and delivered upon a certain day, but was not registered until certain events happened. Those events included the principal one, namely, that the grantor himself seems to have changed his mind. He not only did so, but he brought a suit which contained an application for an injunction against the registration by the donee of the deed of gift.
3. Upon this question of possible stoppage of effect to be given to the deed, the facts in this case are clear : the deed itself was, as stated, delivered to the donee. The donee, therefore, in pursuance of that deed delivered to him, proceeded to register the deed and it was registered pending the litigation which had been raised, of which the present appeal is the outcome. The point at issue is thus expressed by the Judges of the High Court :

Can a donor of immovable property, when the gift can only be effected by a registered document, rescind from his action before the document had been registered, and if the donee refused to give back the document can the donor, obtain an injunction from the Court restraining the donee from proceeding to register the document.

4. In granting leave to appeal in this case the High Court delivered in admirably brief form the reasons why the decision, if allowed to stand, would upset the law in India as now settled, and put it in conflict with the latest decisions.

5. The point of law involved in the case is whether a donor can revoke a gift before the gift deed has been registered on the ground that the gift is not completed until the deed is registered. In the present case this Court decided that the gift was not completed until the deed had been registered. Therefore, the donor could revoke it before the deed was registered. This decision has been overruled by a decision of the Full Bench in *Atmaram Sakharam v. Vaman Janardhan* in which judgment was delivered in October 1924. That was the position in which the appeal was allowed to this Board. But since this happened, the case of *Atmaram Sakharam v. Vaman Janardhan* has been approved in a subsequent case before this Board. A judgment has been pronounced by their Lordships which appears to be completely apt, and entirely in favour of the appellant in the present case. It is the case of *Kalyana Sundaram Pillai v. Karuppa Mooppanar* 6. The headnote is as follows :

A Hindu executed a deed of gift of part of his immovable property and delivered it to the donee. On the following day he adopted a son. Three days later he registered the deed : Held, that the gift was valid against the adopted son. On delivery of the deed to the donee there was an acceptance of the transfer within section 122, Transfer of Property Act 1882, and thereupon the gift became effectual, subject to its registration as required by section 123.

7. Then it records that the case of *Atmaram Sakharam v. Vaman Janardhan* which was referred to by the High Court Judges, was approved.

8. It is not necessary to go over the facts of this case further than is stated, but the following passage is directly in point. With regard to the proposal to prohibit the registrar from registering the deed, as is made in this case, Lord Salvesen, on behalf of the Board, says :

Registration does not depend upon his (the donor's) consent, but is the act of an officer appointed by law for the purpose, who, if the deed is executed by or on

behalf of the donor and is attested by at least two witnesses, must register it if it is presented by a person having the necessary interest within the prescribed period. Neither death, nor the express revocation by the donor, is a ground for refusing registration, if the other conditions are complied with.

9. It would be a waste of words and time to go further than that judgment, and it is sufficient to say that it appears to rule the present case.

10. Their Lordships will accordingly humbly advise His Majesty that , the appeal should be allowed and the decree of the Subordinate Judge restored, with costs in the Courts below and before their Lordships.

Appeal allowed.

Cases Referred.

27 Bom. L. R. 290: A. I. R. 1925 Bom. 210 : 49 Bom. 388 : (F. B.).

A. I. R. 1927 P. C. 42 : 50 Mad. 193 : 54 I. A. 89 (P. C.).