

**SUPREME COURT OF INDIA**

S.Sarojini Amma

Vs.

Velayudhan Pillai Sreekumar

C.A.No.10785 of 2018

(Arun Mishra and Indira Banerjee,JJ.,)

26.10.2018

**JUDGMENT**

**Indira Banerjee,J.,**

SLP(C)No.35515 of 2017

1. Leave granted.

2. This appeal has been filed against the judgment and order dated 03.04.2017 passed by the High Court of Kerala at Ernakulam in R.S.A. No. 757/2011 whereby the High Court was pleased to allow the Second Appeal filed by the respondent and set aside the judgment and decree passed by the First Appellate Court in favour of the appellant.

3. The short question involved in this appeal is whether a document styled as gift deed but admittedly executed for consideration, part of which has been paid and the balance promised to be paid, can be treated as formal document or instrument of gift. Another related question is whether a gift deed reserving the right of the donor to keep possession and right of enjoyment and enforceable after the death of the executant is a gift or a will.

4. The appellant is a childless widow aged 74 years whose husband expired on 06.06.2015. The respondent is the nephew of the appellant (brother's son). In the expectation that the respondent will look after the appellant and her husband and also for some consideration, the appellant executed a purported gift deed in favour of the respondent. The gift deed clearly stated that the gift would take effect after the death of the appellant and her husband.

5. According to the appellant on or about 02.06.1999, the appellant executed the deed of cancellation No. 1844/1999 cancelling the gift deed. After about eight months, on or about 01.02.2000, the respondent filed Original Suit No. 32/2000 in the Court of the learned Munsif Sasthamcotta for declaration that the cancellation deed executed by the appellant is null and void and also for declaration of his right over the suit property being the subject matter of the purported deed of gift.

6. On or about 20.03.2000, the appellant filed Original Suit being O.S. No. 97/2000 before the Court of the learned Munsif, Sasthamcotta for permanent injunction restraining the respondent or his men from trespassing or committing waste or mischief in the suit property.

7. On 12.05.2000, the appellant and her husband filed the written statement in the suit being O.S. No. 32/2000 filed by the respondent. On 25.07.2000, the defendants in O. S. No. 97/2000 filed their written statement contending that the registered document No. 687/2000 was executed for consideration.

8. By a judgment and order dated 11.12.2006, the learned Munsif, Sasthamcotta decreed Original Suit No. 32/2000 and O.S. No. 97/2000.

9. Being aggrieved, the appellant filed First Appeal being A.S. No. 30/2007 before the District Court Kollam. The defendants in O.S. No. 97/2000 filed their First Appeal before the District Court Kollam. By an order dated 23.09.2010, the Additional District Judge III, Kollam allowed the application being A.S. No. 30/2007 filed by the appellant and dismissed A.S. No. 77/2000 filed by the respondent in O.S. No. 97/2000.

10. The respondent filed Regular Second Appeal against the judgment and decree in A.S. No. 30/2007. By the judgment and order dated 03.04.2017, the High Court allowed the R.S.A. No. 757/2011 and set aside the judgment and decree in A.S. No. 30/2007.

11. On behalf of the appellant, it was contended that the document styled as gift deed was to come into effect only after the death of the appellant and her husband. The question was whether a document in terms whereof the executant of the document retained possession and reserved her right over the property being the subject matter of the document could be a deed of gift or whether such a document was a document in the nature of a will.

12. Section 122 of the Transfer of Property Act 1882 defines gift as hereunder:-

"122. "Gift" defined. - "Gift" is the transfer of certain existing moveable or immoveable 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."

13. Some of the relevant provisions of the Transfer of Property Act, 1882 with regard to a gift are set out herein-below:-

123. Transfer how effected. - For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery. Such delivery may be made in the same way as goods sold may be delivered.

124. Gift of existing and future property. - A gift comprising both existing and future property is void as to the latter.

125. Gift to several of whom one does not accept.-A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

126. When gift may be suspended or revoked.- The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be. A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

#### Illustrations

(a) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(b) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lakh. The gift holds goods as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.

14. Gift means to transfer certain existing moveable or immovable property voluntarily and without consideration by one person called the donor to another called the donee and accepted by or on behalf of the donee as held by the Supreme Court in *Naramadaben Maganlal Thakker Vs. Pranivandas Maganlal Thakker and Others*<sup>1</sup>. As further held by this Court in *Naramadaben Maganlal Thakker (supra)* "It would be clear that the execution of a registered gift deed, acceptance of the gift and delivery of the property together make the gift complete. Thereafter, the donor is divested of his title and the donee becomes absolute owner of the property."

15. A conditional gift with no recital of acceptance and no evidence in proof of acceptance, where possession remains with the donor as long as he is alive, does not become complete during lifetime of the donor. When a gift is incomplete and title remains with the donor the deed of gift might be cancelled.

16. In *Reninkuntla Rajamma Vs. K. Sarwanamma*<sup>2</sup> a Hindu woman executed a registered gift deed of immovable property reserving to herself the right to retain possession and to

receive rent of the property during her lifetime. The gift was accepted by the donee but later revoked.

17. In *Reninkuntla Rajamma* (supra), this Court held that the fact that the donor had reserved the right to enjoy the property during her lifetime did not affect the validity of the deed. The Court held that a gift made by registered instrument duly executed by or on behalf of the donor and attested by at least two witnesses is valid, if the same is accepted by or on behalf of the donee. Such acceptance must, however, be made during the lifetime of the donor and while he is still capable of making an acceptance.

18. We are in agreement with the decision of this Court in *Reninkuntla Rajamma* (supra) that there is no provision in law that ownership in property cannot be gifted without transfer of possession of such property. However, the conditions precedent of a gift as defined in Section 122 of the Transfer of Property Act must be satisfied. A gift is transfer of property without consideration. Moreover, a conditional gift only becomes complete on compliance of the conditions in the deed.

19. In the instant case, admittedly, the deed of transfer was executed for consideration and was in any case conditional subject to the condition that the donee would look after the petitioner and her husband and subject to the condition that the gift would take effect after the death of the donor. We are thus constrained to hold that there was no completed gift of the property in question by the appellant to the respondent and the appellant was within her right in cancelling the deed. The judgment and order of the High Court cannot, therefore, be sustained.

20. The appeal is allowed and the judgment and order under appeal is set aside.

Judgment Referred.

<sup>1</sup>(1997) 2 SCC 0255

<sup>2</sup>(2014) 9 SCC 0445