

MADHYA PRADESH HIGH COURT

Munni Bai

Vs.

Abdul Gani

Letters Patent Appeal No. 40 of 1955, Decided on 28.8.1958 from appellate decree of
P.P. Deo, J., in S. A. No. 227 of 1954
(M. Hidayatullah, C.J. and G.P. Bhutt, J.)

03.03.1955. 28.08.1958

JUDGMENT

G.P. Bhutt, J.

1. This is a letters patent appeal against the judgment in Second Appeal No. 227 of 1954 decided by Deo, J.
2. The appellants were mortgagees in possession of a house situate at Gobra-Nawapara Rajim, tahsil and district Raipur, by a mortgage deed, dated 24-7-1946, executed by one Mst. Dhapli for a consideration of Rs. 1000/-. Mst. Dhapli made an oral gift of the equity of redemption to the respondent on 27-10-1946. He instituted the suit, out of which this appeal arises, against the appellants for redemption. The claim was allowed by the trial court and the decree passed by it was maintained in the first and also in second appeal.
3. It has been concurrently found by the Courts below that Mst. Dhapli had orally made a declaration of gift on 27-10-1946 in favour of the plaintiff who was then a minor and was living with her under her guardianship. She had at that time executed a document, Ex. P-1, in his favour, which is reproduced below :-

"Mst. Dhapu wife (widow) of Suleman Teli resident of Udepur. It is nine months that my husband died a natural death. At his fortieth day ceremony in the presence of the community members and panchayat. I had a turban wrapped on Ghani son of Aladin Chauhan, my husband's sister's daughter's son, and who has been brought up since childhood by me. He has been made the owner of my

property moveables and immoveable. At this time I am in bad health too. God forbid; what might happen. Therefore, during my life I (declare) give oral permission that Ghani has also become the owner of the house, situate in Rajim Nayapara, tahsil and district Raipur, which was purchased from Shio Prasad son of Akhurai, caste Sonar, mohalla Kaseran. None has an objection to it. Should any one raise an objection, it shall be regarded as false before the Government, Court and Panchayat. In full possession of senses and consciousness, I have executed this as evidence to serve when required."

This document was delivered to the respondent and was produced in the suit by his father Alaudin (P.W. 1) who acted as his next friend in the suit. These findings are based on evidence and were not contested before us. It was, however, contended that these facts do not establish a valid gift under the Mahomedan Law.

4. The three conditions which are necessary for a valid gift under the Mahomedan Law are the following:

- (1) Manifestation of the wish to give on the part of the donor;
- (2) Acceptance of the done, either expressly or impliedly; and
- (3) Taking of possession of the subject-matter of the gift by the donee, either actually or constructively.

See *Mohammad Abdul Ghani v. Fakhr Jahan Begam*¹ Condition (1) here is satisfied by an oral declaration of gift by Mst. Dhapli. As regards condition (2), it was not disputed before us that the respondent was not precluded by minority from accepting the gift : see also *Mt. Fatma v. Mt. Autun*,² When, therefore, Ex. P-1 was delivered by Mst. Dhapli to the respondent and accepted by him it would amount to acceptance of the gift on his part. The question is whether there was delivery of possession of the Subject-matter of the gift by the respondent.

5. It appears from Ex. P-1 that the respondent was practically adopted as a son by Mst. Dhapli and was living under her guardianship at the time of the gift. The condition of delivery of possession in the case of gift by a guardian to his ward had not been strictly construed by the Courts of Law. In *Ameeroonnissa Khatoon v. Abedoonissa Khatoon*,³ it was observed by their Lordships of the Privy Council that under the Mahomedan Law, where there is on the part of a Father or other guardian a real and

bona fide intention to make a gift, the law will be satisfied without change of possession and will presume the subsequent holding of the property by the father or other guardian to be on behalf of the minor done. This principle was applied in *Mohammad Sadiq Ali Khan v. Fakhr Jahan Begam*, ⁴ to a case of gift by a Mahomedan in favour of his wife where there was no change of possession or mutation of names during the life time of the husband even though the property was susceptible of physical delivery of possession. We see no reason why the same principle-should not apply to the present case. Even if, therefore, there was, on the part of Mst. Dhapli, no attempt to get the house mutated in the name of the respondent that would not vitiate the gift.

6. However, delivery of possession can be made in such manner as the subject of the gift is susceptible of : see *Sadik Hussain Khan v. Hashim Ali Khan*, ⁵ In a case of gift of the equity of redemption when the mortgage is usufructuary, there can be no delivery of physical possession of the property. In these circumstances, execution of Ex. P-1 by Mst. Dhapli, by which, after making an oral declaration of gift, she recognized the respondent as owner of the house and delivered the document to him in token thereof, is sufficient delivery of possession.

It has been held in *Muhummad Mumtaz Ahmad v. Zubaida Jan* ⁶ that a mere declaration by the donor in the deed of gift that possession has been given binds his heirs. Recognition of the respondent in Ex. P-1 as the owner of the house and a stipulation that "should any one raise an objection, it shall be regarded as false before the Government, Court and Panchayat", are, in our opinion, sufficient evidence of change of ownership, which includes change of possession such as the subject of the gift was susceptible of. The gift was, therefore, rightly held to be valid.

7. The appeal accordingly fails and is dismissed with costs. Hearing fee Rs. 50/-.
Appeal dismissed.

Cases Referred.

1. 49 Ind App 195 at p. 209: (AIR 1922 PC 281 at p. 288)
2. AIR 1944 Sind 195
3. 2 Ind App 87 (PC)
4. 59 Ind App 1

5. 43 Ind App 212 at p. 221

6. 16 Ind App 205 (PC)