

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 21st March, 2014.

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CS(OS) 1419/2007

**SH. MOHINDER SINGH VERMA
THROUGH LEGAL REPRESENTATIVE**

..... Plaintiff

Through: Mr. R.M. Bagai with Ms. Damini Khaira,
Advs.

versus

J.P.S VERMA & ANR.

.... Defendant

Through: Mr. Ved Prakash Sharma, Mr. Aman
Singh, Ms. Amrit Kaur Oberai & Ms.
Pooja Yadav, Advs.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The deceased plaintiff instituted the present suit (a) for declaration of the registered Gift Deed dated 10th June, 1997 executed by him of the ground floor of his house No.A-2/163, Safdarjung Enclave, New Delhi in favour of his daughter-in-law defendant no.2 Smt. Om Wati Verma as null and void; (b) for permanent injunction restraining the defendants from claiming any right, title, interest in respect of any portion of his house No.A-2/163, Safdarjung Enclave, New Delhi; and, (c) for recovery of possession of the portion of the ground floor in possession of the two defendant, pleading:-

- (i) that the plaintiff executed the Gift Deed aforesaid in favour of the defendant no.2 under the undue influence of the two defendants being his son and daughter-in-law;
- (ii) that the Gift Deed was subject to the conditions (a) that the plaintiff shall be entitled, throughout his life, to live in the front drawing room on the ground floor; and, (b) that the said house shall be given to the defendants' son Mr. Vikas Verma after his marriage;
- (iii) that the defendants had emotionally blackmailed the deceased plaintiffs into executing the Gift Deed by representing that they did not have any immovable property and that their status in life will rise in society if they became owners of the ground floor and the same will also facilitate them in marrying their daughter after a few years;
- (iv) that the defendants had also promised that they will look after the plaintiff very well, taking care of all his needs including food, shelter, clothing etc.;
- (v) that after the execution of the Gift Deed, the defendants initially treated the plaintiff nicely as they were doing prior to the

execution of the Gift Deed “but after few months” they started ignoring the plaintiff; the treatment meted out by the defendants to the plaintiff worsened “within a few months” and the defendants stopped giving food though the plaintiff continued to live in the front drawing room of the ground floor, compelling the plaintiff to go for food to the first floor of the adjoining house of his another son;

- (vi) that in the last week of September, 2003 the defendants also prevented the entry of the plaintiff to the ground floor; a complaint was lodged by the plaintiff with the local Police Station, but no action was taken thereon; the plaintiff then filed Writ Petition (Crl.) No.1188/2003 in this Court, vide order dated 10th September, 2004 wherein the local Police Station was directed to register a criminal case against the defendants; FIR No.483/2004 of offences under Section 341 read with Section 34 of IPC was registered against the defendants;
- (vii) that the Gift Deed is nullity in the eyes of law because in pith and substance the said Gift Deed was made in favour of Mr. Vikas

Verma but the same has not been accepted by him and without which acceptance the Gift Deed is null and void;

- (viii) that the defendants have never acted upon the Gift Deed as the house continues to be mutated in the name of the plaintiff who has been paying House Tax thereon; the electricity and water connections of the house also continue to be in the name of the plaintiff who has been paying bills thereof;
- (ix) that the Gift Deed was conditional with the plaintiff having the absolute right to use the front room throughout his life and the defendants giving the said ground floor to their son Mr. Vikas Verma after his marriage and is liable to be set aside on this ground also;
- (x) that the defendants had committed breach of the conditions on which the Gift Deed was made and the Gift Deed is liable to be set aside on this ground also; and,
- (xi) that the plaintiff had revoked the Gift Deed vide notice dated 1st June, 2007.

accordingly, the suit for the reliefs aforesaid was filed.

2. The defendants contested the suit by filing a written statement, on the grounds:-

- (a) that the suit was barred by time;
- (b) no particulars of any fraud or undue influence had been pleaded; the representations alleged to have been made by the defendants to the plaintiff do not make out a case of undue influence or of fraud;
- (c) that the plaintiff executed the Gift Deed voluntarily and without any undue influence or fraud as is evident from Clause 4-A thereof as under:-

“4-A. With condition that Donor will reside in front (Drawing) room throughout his life and Donee will give the house to her son Vikas Verma after his marriage.”

written by the plaintiff in his own hand.

- (d) that the suit had been filed at the instigation of another son of the plaintiff who is a Police Officer in the Delhi Police;
- (e) that prior to the year 2004, the MCD having jurisdiction over the property had no policy for floor-wise mutation in respect of properties built on leasehold land;

- (f) that the defendant no.2 had been paying the Property Tax with respect to the ground floor;
- (g) that the plaintiff, in January, 1986 had executed a Will whereunder he had bequeathed the ground floor of the property to the defendant no.1 and the first floor to his other son and second floor to his wife; that after the death of the wife of the plaintiff, the plaintiff desired to in his lifetime only give the ground floor to the defendant no.1 and the first and second floors of the house to his other son; that since the defendant no.1 was also an allottee of a residential flat by DDA, the Gift Deed of the ground floor was executed in the name of the wife of the defendant no.1;
- (h) that there were no differences between the plaintiff and the defendants till the year 2003 when the other son of the plaintiff instigated the plaintiff, so as to take the entire property;
- (i) that the plaintiff in his complaint dated 27th September, 2003 to the Police against the defendants did not state that the defendants had got the Gift Deed executed fraudulently or exercising undue influence;

- (j) denying that the defendants had treated the plaintiff shabbily;
- (k) that the FIR lodged against the defendants was quashed by this Court vide order dated 12th December, 2007;
- (l) denying that the gift was intended in favour of Mr. Vikas Verma;
- (m) that the pleas taken in the plaint were barred by Section 92 of the Indian Evidence Act, 1872;
- (n) that though the electricity and water meters of the ground floor remained in the name of the plaintiff but the charges thereof were being paid by the defendants;
- (o) denying that the Gift Deed was conditional; and,
- (p) that Mr. Vikas Verma son of the defendants was at that time still unmarried.

3. The plaintiff filed a replication *inter alia* stating that the FIR against the defendants was quashed on concession made by the plaintiff as a token of his concern for the defendants.

4. The plaintiff died during the pendency of the suit and the application of his other son Shri Sehdev Singh for substitution on the basis of a Will dated 25th June, 2007 of the plaintiff was allowed vide order dated 19th March,

2013, without prejudice to the challenge by the defendants to the Will dated 25th June, 2007 set up by the said Shri Sehdev Singh.

5. The defendants have filed IA No.19242/2013 for rejection of the plaint on the ground of the suit claim being barred by time; it is pleaded that as per the plaint also the cause of action arose first on 27th September, 2003 when the defendants allegedly prevented the plaintiff from entering his room and the suit filed on 4th July, 2007 is barred by time as the limitation therefor expired on expiry of three years from 27th September, 2003.

6. The plaintiff has also filed IA No.4567/2014 under Order 12 Rule 6 of the CPC for decree on admissions, pleading that though Mr. Vikas Verma son of the defendants was married in September, 2009 but has not accepted the Gift Deed.

7. The suit was listed on 12th March, 2014 for consideration of the application of the defendants under Order 7 Rule 11 of the CPC and the application of the plaintiff under Order 12 Rule 6 of the CPC and for framing of issues if any; after hearing the counsels for some time it was enquired from the counsel for the plaintiff as to on what basis the deceased plaintiff, having once made a gift, could claim to be entitled to have the same cancelled; it was further enquired as to how, the right even if any of the plaintiff under Clause

4-A supra of the Gift Deed, to reside in the front drawing room of the ground floor, survived the plaintiff; attention of the counsel for the plaintiff was also invited to Sections 10 & 11 of the Transfer of Property Act, 1882. On request of the counsel for the plaintiff that he had not considered all the said aspects, the suit was posted for today.

8. The counsel for the plaintiff has today at the outset contended that the query raised by this Court on 12th March, 2014 is no longer *res integra*, in view of the dicta of the Supreme Court in ***Naramadaben Maganlal Thakker Vs. Pranjivandas Maganlal Thakker*** JT 1996 (9) SC 273 and in fact in accordance therewith, the plaintiff is entitled to a decree forthwith.

9. The Supreme Court in ***Naramadaben Maganlal Thakker*** supra was concerned with a Gift Deed, the material part whereof was as under:-

"The said immovable property as described above with the ground floor and with ways to pass and with the water disposal and with all other concerned rights, titles is gifted to you and the possession whereof is handed over to you under the following conditions to be observed by you and your heirs and legal representatives as long as the Sun and the Moon shine. Therefore, now I or my heirs or legal representatives have no right on the said property. You and your heirs and your heirs and legal representatives have become the exclusive owners of the same. You and your heirs and legal representatives are entitled to enjoy, to transfer or to use the said property as you like under

the conditions mentioned in this deed. Except myself, there is nobody's right, title, interest or share on the said property: I have not mortgaged the same by any document. Yet however anybody comes forward to claim the right, I shall remove the same.

The said property is gifted to you on such conditions that and you are made owners by the gift deed of the said property on such conditions that there are 15 rooms on the said property at present. I am rightful to receive the rents and the mesne profit whatsoever accrued from the said rooms throughout my life. I am only entitled to receive the mesne profit of the said, property till I live. Therefore, I the executant, shall be entitled to let out the said buildings (rooms), to receive the rent amount to make all the other arrangement throughout my life. Similarly the said property shall be in my possession till I live. Therefore, I have gifted this property to you by reserving permanently my rights to collect the mesne profit of the existing rooms throughout my life. And by this gift deed the limited ownership right will be conferred to you till I live. After my death you are entitled to transfer the said property. I shall not give in any way my right to anybody to collect the mesne profit. You may get transferred the said property in your name in support of this deed. This gift deed is executed to you under the aforesaid conditions."

and held that for a valid / complete gift, execution of a registered Gift Deed, acceptance of the gift and delivery of property is essential as per Sections 122 and 123 of the Transfer of Property Act. On an interpretation of the recitals of the Gift Deed it was held that it was a conditional gift; there was no recital in the Gift Deed of acceptance nor was there any evidence in

proof of acceptance; the stipulation in the Gift Deed that the property would remain in possession of the Donor till his lifetime and that the property would become the property of the Donee after the lifetime of the donor. It was held on the said interpretation of the Gift Deed that the gift was to become operative after the death of the Donor, as the Donee was to have a right to transfer the property absolutely and to collect its *mesne* profits only after the lifetime of the Donor. It was further held that the Donor having retained possession and enjoyment of the property during his lifetime, was entitled to revoke / cancel the Gift Deed.

10. In comparison to the Gift Deed with which the Supreme Court in the judgment aforesaid was concerned, the Gift Deed subject matter of this suit has the following Clauses:-

“AND WHEREAS the above named Donee is the real daughter-in-law and is the wife of Shri J.P.S. Verma, the real son who is in blood relation of the Donor.

AND WHEREAS THE DONOR AND DONEE ARE LIVING TOGETHER in the property in question since last about 20 years and the Donee has been serving the Donor as a Hindu devoted daughter-in-law.

AND WHEREAS the Donor out of natural love and affection for the above named Donee has already declared and made an Gift of the ground floor portion consisting of three rooms, one kitchen, two toilets, one bath room and two stores more fully shown and described in the site plan annexed with this deed.

AND WHEREAS the Donor has made the instant gift to Donee according to his own free and sweet Will and without any fraud, undue influence or threat / pressure from any corner of anybody who so ever.

NOW THIS DEED WITNESSES AS UNDER:-

1. That the Donor in consideration of his natural love and affection for the above named Donee has voluntarily and out of his own free will, without coercion, undue influence from anybody whatsoever do hereby gift, give, convey, transfer unto the above named Donee Mrs. Om Wati Verma wife of Shri J.P.S. Verma, resident of A-2/163, Safdar Jang Enclave, (Ground Floor) New Delhi, ground floor portion morefully shown in the site plan annexed with this deed forming part of property no.A-2/163, Safdar Jang Enclave, New Delhi measuring 125 sq. yards

2. That the Donor has delivered the physical possession of above mentioned ground floor portion of property No. A-2/163, Safdar Jang Enclave, New Delhi to the Donee on the spot, the Donee hereby acknowledge having taken possession of the same from the Donor.

3. That the gift is absolute and irrevocable, the Donor shall have no right or title over the gifted property and ceased to have any right over the ground floor portion which he has gifted to Donee.

4. That the Donee shall be at liberty to enjoy this gifted property on her own will and to deal with the same independently.

4-A. With condition that Donor will reside in front (Drawing) room throughout his life and Donee will give the house to her son Vikas Verma after his marriage.

5. That the Donor, his heirs, besides the Donee have left no claim, interest or title in the donated property to the Donee, and Donee has become the actual owner of the said donated property.

6. That the Donee shall get mutated the above mentioned donated property in the concerned Department on the basis of this Gift Deed in the name of Donee.

7. That all the costs of mutation and registration of the Gift Deed shall be borne and paid by the Donor.”

11. As would be obvious from the above, there is a marked difference between the Gift Deed with which the Supreme Court in the judgment aforesaid was concerned and the Gift Deed with which this suit is concerned. A judgment of the Supreme Court, even though binding on this Court, rendered an interpretation of a document with which that judgment was concerned is not to be mechanically followed, even if the document with which this Court is concerned is materially different.

12. Gift is a form of transfer of property. Once a gift in accordance with law has been made, the property stands transferred from the Donor to the Donee and the Donor is divested of all rights in the property and the property vests absolutely in the Donee and the Donor cannot subsequently revoke / cancel the said transaction, just like once a property is sold, the seller / vendor cannot subsequently revoke or cancel the sale. The only difference between a Sale Deed and a Gift Deed, both of which are forms / modalities of transfer of property, is that while in the Sale Deed the consideration is materialistic, in a Gift Deed the consideration is non-materialistic. To hold that transferer of

property, after affecting the transfer, retains a right to revoke / cancel the transfer would tantamount to unsettling the rights and transactions in immovable property.

13. Of course, a transfer of property, whether it be by way of sale or gift or lease or in any other manner / mode prescribed under the Transfer of Property Act, being but a contract, is void / voidable and can be declared so on the grounds permitted under the Indian Contract Act, 1872. The said grounds include the ground of fraud and undue influence. Section 19 of the Contract Act provides that when consent to an Agreement is caused by fraud, the contract is voidable at the option of the party whose consent was so caused. Similarly Section 19A of the Contract Act makes a contract, the consent of a party whereto is caused by undue influence, voidable at the option of the party whose consent was so caused.

14. Though the plaintiff in the plaint has pleaded fraud and undue influence but it is not the argument of the counsel for the plaintiff today that the matter has to be put to trial on the said aspect. Though in view of the same there is no need for this judgment to deal with the said aspect, suffice it is to state that no case of fraud / undue influence is made out and even if held to be made out, is barred by time.

15. Fraud is defined in Section 17 of the Contract Act as an inducement by a party to the contract by making a suggestion as a fact which is not true or by active concealment of a fact or by making a promise without any intention of performing it or by any other act intended to deceive, to the other party.

16. The plaint is conspicuously quiet on, which of the representations as are pleaded to have been made by the defendants to the deceased plaintiff to make him execute the gift, was false. The only possible ground can be of a promise made without any intention of performing it. The averments in the plaint, of the defendants having prevailed upon the plaintiff to execute the Gift Deed by representing to the deceased plaintiff that they would look after him, do not find any basis in the registered Gift Deed. The Gift Deed does not provide that the deceased plaintiff was gifting the ground floor of the property to the defendant no.2 on the promise of the defendant no.2 to look after the deceased plaintiff. Section 91 of the Evidence Act provides that when the terms of a contract, or of a grant, or of any other disposition of property have been reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property except the document itself. Section 92 provides that where the terms of any such contract, grant or other disposition of the property have been reduced to the

form of a document, have been proved in accordance with Section 91, no evidence of any oral agreement or statement shall be admitted for the purposes of contradicting, varying, adding to, or subtracting from, its terms. The plea of the plaintiff, of the consideration for execution of the Gift Deed being the promise made by the defendants to look after the plaintiff, is thus barred and cannot be considered. Rather, from a reading of the gift deed it appears that the reason therefor *inter alia* was the past services rendered by the defendant no.2 to the deceased plaintiff.

17. For a contract, under Section 16 of the Contract Act to be said to be induced by "unde influence", the relations subsisting between the parties are to be such that one of the parties was in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

18. There is no plea in the plaint, of the defendants or any of them being in a position to dominate the Will of the deceased plaintiff or having used that position to obtain an unfair advantage over the deceased plaintiff. Mere plea of undue influence, without pleading the ingredients which constitute undue influence, is of no avail and this Court would be failing in its duty if mechanically puts the suits with such pleas on trial and it cannot be forgotten that listing for trial of a suit which from its pleadings does not deserve to be

tried, always delays the expeditious disposal of deserving cases. The Supreme Court in *Subhas Chandra Das Mushib Vs. Ganga Prasad Das Mushib* AIR 1967 SC 878, following its earlier dicta in *Ladli Prasad Jaiswal Vs. Karnal Distillery Co. Ltd.* AIR 1963 SC 1279, laid down that with regard to undue influence “a vague or general plea can never serve any purpose; the party pleading must therefore be required to plead the precise nature of the influence exercised, the manner of use of the influence and the unfair advantage obtained by the other”.

19. In this respect, there is also merit in the argument of the counsel for the defendants, of the suit on the ground of fraud and undue influence being barred by time. As per the averments in the plaint, the deceased plaintiff, “within a few months” of the execution of the Gift Deed on 10th June, 1997 became aware of the fraud / misrepresentation claimed to have been exercised by the defendants. Reliance by the counsel for the defendants on Articles 58 & 59 of the Schedule to the Limitation Act, 1963 in this regard is apposite. The same provide limitation of three years commencing from the date when the right to sue first accrues for obtaining any declaration as well as limitation of three years for cancellation or setting aside of an instrument or for rescission of a contract commencing from the date when the facts entitling

the plaintiff to have the instrument cancelled or the contract rescinded first become known to the plaintiff. The counsel for the defendants in this respect has also relied on (i) *Ningawwa Vs. Byrappa Shiddappa Hireknrabar* AIR 1968 SC 956; and, (ii) *Mohan Brothers Cooperative House Building Society Limited Vs. Delhi Development Authority* 114 (2004) DLT 282.

20. Though the counsel for the plaintiff, on the aspect of limitation, has relied on Article 66 of the Schedule to the Limitation Act, prescribing limitation of twelve years for a suit for possession of immovable property when the plaintiff has become entitled to possession by reason of any forfeiture or breach of condition, commencing from the date when forfeiture is incurred or condition is broken, but the same applies to the claim in the suit, on the basis of revocation of the gift deed on the ground of the same being conditional and not to the claim on the ground of same being void, which as aforesaid, the counsel for the plaintiff has not even argued. The Supreme Court in *Prem Singh Vs. Birbal* (2006) 5 SCC 353 has held that where a suit is filed for cancellation of a transaction on the ground of coercion, under influence or fraud, Article 59 would apply.

21. There is merit, also in the plea of the defendants, of Clause 4-A supra of the Gift Deed negating any presumption of fraud or undue influence. The

said Clause 4-A indeed is admittedly in the handwriting of the deceased plaintiff and is indicative of the deceased plaintiff being fully conscious of what he was doing. Had the Gift Deed been prepared and executed under the dictates of the defendants and had the deceased plaintiff been under undue influence of the defendants, the occasion for the deceased plaintiff to have in his own hand scribed Clause 4-A supra would not have arisen.

22. The sole argument of the counsel for the plaintiff is that the instant Gift Deed owing to Clause 4-A supra is conditional and could be revoked. It is argued that a reading of Clause 4-A shows that the possession of the ground floor which was being gifted had indeed not been given by the deceased plaintiff. It is further argued that the same also shows that the gift was meant for Mr. Vikas Verma being the son of the defendants and the said Shri Vikas Verma having not accepted the gift, the gift is bad for this reason. Attention in this regard is invited to para 13 of the plaint and the written statement thereto to contend that the defendants have also admitted to the gift being in favour of their son Mr. Vikas Verma. It is further argued that no mutation was affected in the name of the defendant no.2 and the deceased plaintiff continued to pay the House Tax of the ground floor also.

23. Not only do I not find any admission of the defendants as claimed but even otherwise, as aforesaid it is the registered Gift Deed alone which is to be seen to determine contents and purport thereof. The same unequivocally is of gift in favour of the defendant no.2 who is described as the 'Donee' therein. Clause 4-A of the Gift Deed can by no stretch of imagination be read / interpreted as of gift by the deceased plaintiff in favour of Shri Vikas Verma. The same only requires the defendant no.2 as Donee to give the ground floor which was being gifted to her to her son after his marriage. It is not the case in the plaint that Mr. Vikas Verma had been married on the date of the purported cancellation of the gift or on the date of institution of the suit. In fact his marriage is admitted to be of a subsequent date and on which basis the application under Order 12 Rule 6 of the CPC has been filed by the plaintiff. Even if it were to be held that the gift in favour of the defendant no.2 was conditional to the defendant no.2 giving the property to her son after his marriage, there had been no breach of the said condition on the date of the purported revocation of the gift or on the date of the institution of the suit, for the deceased plaintiff to have become entitled to the reliefs claimed.

24. Though the subsequent event of marriage of Shri Vikas Verma on which ground the application under Order 12 Rule 6 of the CPC has been

filed by the plaintiff is beyond the scope and ambit of the suit and with no pleadings thereon but I may state that as per Section 11 of the Transfer of Property Act, where on a transfer of property, an interest therein is created absolutely in favor of transferee, but the terms of the transfer direct that such interest shall be applied or enjoyed by the transferee in a particular manner, the transferee is entitled to receive and dispose of such interest as if there were no such direction. I have enquired from the counsel for the plaintiff, whether not the condition in Clause 4-A supra of the Gift Deed, that the defendant no.2 will give the house to her son Shri Vikas Verma after his marriage, is not a term within the meaning of said Section 11 which the defendant no.2 can disregard.

25. No answer is forthcoming.

26. On the contrary the counsel for the defendants in this regard has relied on, (i) *Gorachand Mukherjee Vs. Smt. Malabika Dutta* AIR 2002 Calcutta 26; (ii) *Tila Bewa Vs. Mana Bewa* AIR 1962 Orissa 130; and, (iii) *Mt. Brij Devi Vs. Shiva Nanda Prasad* AIR 1939 All 221.

27. The counsel for the plaintiff has argued that reliance on Clause 4-A at the time of institution of the suit was not to contend that the defendant no.2 had breached the condition therein by not giving the property to Shri Vikas

Verma but to contend that the gift, in pith and substance, was to Shri Vikas Verma and not to the defendants.

28. The argument is not borne out from a reading of the entire Gift Deed which unequivocally shows the gift to be to the defendant no.2. Moreover, had the gift, in pith and substance, been to Shri Vikas Verma son of the defendant no.2, the occasion for stipulating that the defendant will give the house to Shri Vikas Verma after his marriage would not have arisen.

29. As far as the plea, of the ground floor having not been mutated in the name of the defendant no.2 and remaining in the name of the deceased plaintiff and of the deceased plaintiff having continued to pay the Property Tax, electricity and water charges of the ground floor are concerned, even if the plaintiff succeeds in proving so, the same are not material for adjudication of the *lis*. Non mutation of the name of the transferee in the records of the Municipality for the purposes of House Tax cannot divest transferee of the title which otherwise stands transferred and vested in the transferee. It is the settled position in law that mutation entries do not confer or divest a title.

30. As far as payment of House Tax and electricity and water charges are concerned, again merely such payment does not confer or divest title. The only claim on this account could have been for recovery thereof.

31. That brings me to the contention of the plaintiff of Clause 4-A being indicative of the possession of the property having not been delivered by the deceased plaintiff as Donor to the defendant no.2 and the effect if any of the condition of the deceased plaintiff being the Donor having a right to reside in the front drawing room of the ground floor throughout his life.

32. I have in this regard invited the attention of the counsel for the plaintiff to Clauses 2,3,&4 preceding Clause 4-A supra and asked that whether not the principle of interpretation of deeds of, in the event of inconsistency, the earlier / first of the two inconsistent Clauses prevailing, as described in detail in *Yogesh Radhakrishnan Vs. Media Networks & Distribution (India) Ltd.* 201 (2013) DLT 773 would apply.

33. Again no answer is forthcoming.

34. Clause 2 unequivocally records that the Donor i.e. the deceased plaintiff had delivered the physical possession of the property to the Donee i.e. the defendant no.2 and that the Donee had accepted the same. Clause 3 provides the gift to be absolute and irrevocable and the Donor having been left with no right or title over the property gifted. Clause 4 provides that the Donee shall be at liberty to enjoy the gifted property and to deal with the same independently. Even if Clause 4-A, providing that the Donor will reside

in the front drawing room throughout his lifetime were to be held to be inconsistent / repugnant to the earlier Clauses of delivery of possession, the Donor having been left with no rights in the said ground floor and the Donee being entitled to deal with the property independently, it will be the Clauses appearing first in the Agreement which will prevail over the latter Clause. Alternatively if the rule of harmonious construction were to be applied, even then also, the only inference / conclusion is that the residence of the Donor in the front drawing room of the ground floor would be as a licensee or with the permission of the Donee, with the Donee having jural and physical possession of the said front drawing room also as given to her under the Gift Deed and the Donor having merely a right of residence in lifetime therein. The recitals to the Gift Deed record that the Donor and the Donee, for nearly 20 years prior to the gift were living together in the property. During the said 20 years prior to the execution of the gift, the jural and physical possession of the property was of the Donor with the Donee having merely a right / license of residence therein. However the position reversed on the execution of the Gift Deed. Such right of residence of the Donor in the property gifted cannot be in negation of the essential requirement of under Section 123 of delivery of possession of property gifted.

35. Significantly, Section 123 of the Transfer of Property Act while providing “Transfer how effected” ,for gift of immovable property, prescribes only execution of a registered document by the Donor and does not prescribe delivery of possession. In fact it has been held by this Court in **Wg. Cdr. (Retd.) R.N. Dawar Vs. Shri Ganga Saran Dhama** AIR 1993 Delhi 19 that mere delivery of possession without registered document cannot tantamount to gift of immovable property. A Division Bench of the Punjab & Haryana High Court in **Indar Singh Vs. Nihal Kaur** AIR 1968 Punjab & Haryana 495 has held that the rule of Hindu Law that delivery of possession is essential to the validity of the gift is abrogated by Section 123, under which deliver of possession is no longer necessary to complete a gift except in case of movable property. Observations to the said effect can also be found in **Nirshi Dhobin Vs. Dr. Sudhir Kumar Mukherjee** AIR 1969 SC 864. Section 122, only requires acceptance of the gift on the part of the Donee and which has been done in the present case by the Donee being a party to the Gift Deed. The argument raised of possession having not been delivered is thus misconceived as there is no requirement of delivery of possession.

36. The Supreme Court in **Naramadaben Maganlal Thakker**, on an interpretation of the terms of the Gift Deed in that case, held the Gift Deed

though registered to be not amounting to transfer of the property in presentie but amounting to a 'promise to transfer in future'. The judgment is in the context of the registered document though christened as a Gift Deed not amounting to transfer of the property and can have no application where the terms of the registered Gift Deed amount to transfer in presentie as in the present case.

37. The counsel for the plaintiff has also argued that the Supreme Court in *Naramadaben Maganlal Thakker* supra also relied on non fulfillment of the oral conditions settled between the Donor and Donee and has argued that those oral promise claimed by the deceased plaintiff to have been made by the defendant no.2 to look after the deceased plaintiff in his lifetime should be permitted to be proved.

38. I am unable to agree. Though undoubtedly the Donor, in the case before the Supreme Court, in the registered document of cancellation recorded that the Donee had failed to fulfill the oral conditions settled between the Donor and the Donee but the Supreme Court cannot be said to have laid down that such oral conditions which otherwise under the law are barred by Sections 91 & 92 supra of the Evidence from being raised can be permitted to negate the terms of the registered documents. On the contrary what

was held was that “the recitals in the Cancellation Deed are consistent with the recitals in the Gift Deed”.

39. Attention of the counsel for the plaintiff at the fag-end of the hearing was also invited to Section 126 of the Transfer of Property Act which provides for “When gift may be suspended or revoked” and the counsel fairly admitted his mistake in not referring to the same. The same provides that the Donor and the Donee may agree that upon the happening of any specified event which does not depend on the will of the Donor, a gift shall be suspended or revoked. It further provides that a gift which the parties agree shall be revocable at the mere will of the Donor is void. The same also permits a gift to be revoked in any of the cases in which, if it were a contract, it might be rescinded. Otherwise it provides that a gift cannot be revoked. None of the conditions / circumstances prescribed in which gift can be revoked are fulfilled in the present case. It is neither the case of the plaintiff that the Donor and the Donee in the present case had agreed that on the happening of any specified event the Donor may revoke the gift nor is any such term found in the registered Gift Deed. As far as the grounds of revocation as permissible under the Contract Act are concerned, the same have already been dealt hereinabove. In fact it has been held in *Tila Bewa*

supra relied upon by the counsel for the defendants that the well settled legal position is that a gift subject to the condition that Donee is to maintain the Donor cannot be revoked under Section 126 for failure of the Donee to maintain Donor for the reason that it does not contain any agreement that the gift could be revoked and also for the reason that revocation dependent upon on the will of the Donor is not permitted.

40. I am therefore unable to find any case in favour of the plaintiff. I am conscious that the suit is being decided finally without framing issues and without evidence. Though no formal issue has been framed but in the order dated 12th March, 2014, the doubt on the aforesaid lines in the mind of the Court was highlighted, recorded in the order of that date and on the request of the counsel for the plaintiff opportunity given to prepare on the said aspect and the matter has been heard today in terms of the said order dated 12th March, 2014. As far as trial is concerned, it is not the argument of the counsel for the plaintiff also that any of the aforesaid reasoning on which the suit is being dismissed requires any trial. The only argument was that in the trial, the factum of payment by the deceased plaintiff of the Property Tax and electricity and water charges with respect to the ground floor even after the gift will be proved. However it having been held that the same even if proved

would not negate the gift, the question of ordering trial on the said aspect also does not arise. The Courts are not to mechanically put all suits to trial, when outcome thereof is not dependent upon any factual adjudication.

41. The suit is therefore dismissed. However in the hope to restore relationship between the families of the two brothers, I refrain from imposing any costs on the plaintiff.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

MARCH 21, 2014

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