

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

% *Judgment Reserved on : August 06, 2015*

Judgment Delivered on : September 02, 2015

+ **RFA (OS) 103/2014**

SEHDEV SINGH VERMAAppellant

Represented by: Mr.R.M.Bagai, Advocate with
Ms.Damini Khaira, Advocate

versus

J P S VERMA & ANR.Respondents

Represented by: Mr.Ved Prakash Sharma, Advocate
with Mr.Mayank Garg and
Ms.Kanika Sabharwal, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. The dispute in the present appeal is between the two sons of Late Sh.Mohinder Singh Verma.
2. The genealogy tree of family of Late Sh.Mohinder Singh Verma is as under:-

Late Sh. Mohinder Singh Verma
(Original Plaintiff)

I

I
J.P.S. Verma
Son/Defendant No.1

I

I
Sehdav Verma
(Son)/Appellant

I
Om Wati Verma
(Wife)/Defendant No.2

I
Vikas Verma
Son

3. Late Sh. Mohinder Singh Verma (hereinafter referred to as the 'Deceased') instituted a suit for declaration, permanent injunction and possession in the year 2007 against his son Mr.J.P.S.Verma and daughter-in-law (wife of his son J.P.S.Verma) in respect of ground floor of property bearing Municipal No.A-2/163, Safdarjung Enclave, New Delhi (hereinafter referred to as the 'Suit Property').

4. Needless to state, the deceased was the plaintiff and his son J.P.S. Verma and daughter-in-law Om Wati Verma were the defendants in the suit. Declaration sought was that registered Gift Deed dated June 10, 1997 executed by the plaintiff in favor of his daughter-in-law Om Wati i.e. defendant No.2 in respect of suit property be declared null and void. Permanent injunction sought was that the defendants be permanently restrained from claiming any right, title or interest in the suit property. In addition thereto, the plaintiff also sought possession of the suit property from the defendants.

5. In our decision we shall be referring to the parties by their nomenclature in the suit.

6. The case set up by the deceased plaintiff in the plaint filed by him has been broadly/succinctly noted by the Single Judge in the impugned judgment in following terms:-

“(i) that the plaintiff executed the Gift Deed aforesaid in favor 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.488/2004 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 favor 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.” **(Emphasis Supplied)***

7. The defence set up by the defendants in the written statement filed by them has been broadly/succinctly noted by the Single Judge in the impugned judgment in following terms:-

“(a) that the suit was barred by time;

(b) no particulars of any fraud or undue influence has 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 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, 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 favor 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.”

8. In the replication filed, the deceased plaintiff essentially stating therein that FIR No.483/2004 got registered by the plaintiff against the defendants was quashed by this Hon’ble Court on account of a concession made by the plaintiff that the FIR in question be quashed, which concession was made by the plaintiff out of his concern for the defendants.

9. From the afore-noted conspectus of facts, it is apparent that the controversy in the present case revolves around the Gift Deed dated June 10, 1997 executed by the deceased plaintiff in favor of defendant No.2 and the same reads as under:-

“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 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 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 the 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.” **(Emphasis Supplied)***

10. During the pendency of suit, the plaintiff expired. Sehdev Verma, the other son of plaintiff, filed an application under Order XXII Rule 3 CPC praying therein that he i.e. Sehdev Verma be substituted in the place of plaintiff in the suit. Substitution was sought by Sehdev Verma on the

basis that during his lifetime the plaintiff had executed the Will dated 25 June, 2007 bequeathing the suit property in his favor.

11. Vide order dated March 19, 2013 the Single Judge allowed the application under Order XXII Rule 3 CPC filed by Sehdev Verma and substituted Sehdev Verma in place of plaintiff in the suit without prejudice to the challenge set up by the defendants to the Will dated June 25, 2007 allegedly executed by the deceased.

12. The defendants had filed an application under Order VII Rule 11 CPC seeking rejection of plaint on the ground that suit is time-barred for the reason as per averments contained in the plaint the cause of action firstly accrued on September 27, 2003 when the defendants allegedly prevented the plaintiff from entering his room in the suit property but the suit was filed on July 04, 2007 i.e. more than three years after the expiry of accrual of cause of action.

13. Sehdev Singh (legal representative of plaintiff) filed an application under Order XII Rule 6 CPC seeking decree on admission essentially on the ground that the defendants have admitted in their written statement that their son Vikas Verma has not accepted the gift and as a result thereof Gift Deed dated June 10, 1997 is nullity in the eyes of law inasmuch as in pith and substance the said Gift Deed was made in favor of Mr. Vikas Verma.

14. Both the afore-noted applications (application under Order VII Rule 11 CPC filed by the defendants and application under Order XII Rule 6 CPC filed by the plaintiff) were listed before Single Judge on March 12, 2014, on which date following order was passed:-

“1. The deceased plaintiff had instituted the present suit pleading that though he had executed and got registered a Gift Deed dated 10th June, 1997 of the ground floor of property No.A-2/163, Safdarjung Enclave, New Delhi in favor of his

daughter-in-law defendant No.2 but for declaration of the same as null and void on the ground of the defendants having got the same executed from the deceased plaintiff by exercising undue influence, fraud and misrepresentation and also on the ground that the Gift Deed is a nullity because the gift in pith and substance was in favor of Mr. Vikas Verma being the son of the two defendants and who had not accepted the gift.

2. The plaintiff who had instituted the suit has since died and his another son was substituted in his place.

3. Arguments were commenced by the counsel for the plaintiff on the application of the defendants under Order VII Rule 11 of the Civil Procedure Code (CPC), 1908 and on the application of the plaintiff under Order XII Rule 6 CPC. The defendants are seeking rejection on the ground of the plaint being barred by time.

4. It has however being enquired from the counsel for the plaintiff as to what are the legal legs for the claim in the suit to stand on; on what basis, the deceased plaintiff having made the gift, is entitled to have the same cancelled on the ground of the defendants being in breach of clause 4A thereof which made the gift conditional upon the plaintiff's right to reside in the front drawing room throughout his lifetime. It has further being enquired, as to how the right, even if any of the plaintiff to reside in the front drawing room of the said ground floor survives the plaintiff. Attention of the counsel for the plaintiff has also been drawn to Sections 10 and 11 of the Transfer of Property Act, 1882.

5. The counsel for the plaintiff seeks time to address on all the said aspects.

6. The counsel for the defendants to also come prepared on the same.

7. List on 21st March, 2014.

8. *Test. Case No.29/2011 which is also listed along with this suit is separated and be listed as per the dates fixed therein.”*

15. Vide impugned judgment and decree dated March 21, 2014 the learned Single Judge has dismissed the suit.

16. Briefly stated the reasons given by the learned Single Judge are as under:-

a) No case has been made out in the plaint that the Gift Deed dated June 10, 1997 was executed by the deceased plaintiff on account of fraud/undue influence being played/exercised by the defendants.

b) The plea of the deceased plaintiff that the consideration (reason) of execution of Gift Deed dated June 10, 1997 was the promise made by the defendants to look after the plaintiff and thus played a fraud as they i.e. the defendants had no intention of performing said promise is barred in view of the fact that no prescription is contained in the Gift Deed dated June 10, 1997 that the deceased plaintiff is gifting the suit property to defendant No.2 on the promise of defendant No.2 to look after the plaintiff and prescription contained in Section 92 of Evidence Act, 1872 that no evidence of any oral agreement or statement shall be admitted for the purpose of contradicting, varying, adding to, or subtracting from, its terms. Rather, from a reading of Gift Deed dated June 10, 1997 it appears that reason which led the plaintiff to gift the suit property to defendant No.2 was the past services rendered by defendant No.2 to the plaintiff.

c) 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 thereof, is of no avail.

d) The case sought to be set up by the deceased plaintiff that the Gift Deed dated June 10, 1997 was executed by him on account of fraud/undue influence being played/exercised by the defendants is in any case barred by time in view of averments contained in the plaint that the deceased plaintiff “within a few months” of execution of Gift Deed dated June 10, 1997 became aware of the fraud/misrepresentation allegedly played/exercised by the defendants and provisions of Articles 58 and 59 of Schedule appended to Limitation Act, 1963. Article 58 provides for three years limitation period for a suit to obtain any declaration (not covered by Articles 56 and 57) to be reckoned from the date when the right to sue first accrues. Article 59 provides for three years limitation period for a suit to cancel or set aside an instrument or decree or for rescission of a contract to be reckoned from the date when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first becomes known to him.

e) Article 66 of the Schedule appended to Limitation Act, 1963 relied upon by the plaintiff has no application in the present case for the reason Article 66 applies to such suits where claim is based upon revocation of gift deed on ground of breach of condition of conditional gift, which is not the position in the instant case. The dictum of law laid down by Supreme Court in the decision reported as (2006) 5 SCC 353 Prem Singh vs. Birbal is that where a suit is filed for cancellation of a transaction on the ground of coercion, undue influence or fraud, Article 59 would apply.

f) The fact that the deceased plaintiff had written clause 4-A of the Gift Deed dated June 10, 1997 in his own handwriting negates the case sought to be made by the deceased plaintiff that the Gift Deed dated June 10, 1997 was executed by him on account of fraud/undue influence being played/exercised by the defendants.

g) Clause 4-A of the Gift Deed dated June 10, 1997 can by no stretch of imagination be read/interpreted to mean that in pith and substance the gift of suit property was in favor of Mr.Vikas Verma, son of defendants. In fact, had the gift been meant for Mr.Vikas Verma the occasion for stipulating in the Gift Deed that the defendant No.2 will give the suit property to Vikas Verma after his marriage would not have arisen.

h) Even if it were to be held that the gift in favor of defendant No.2 was conditional to the defendant No.2 giving the suit property to her son after his marriage, there had been no breach of the said condition on the dates of purported revocation of the gift or institution of the suit inasmuch as son of defendant No.2 was not married on said dates.

i) The condition contained in clause 4-A of the Gift Deed dated June 10, 1997 that defendant No.2 shall give the house to her son Vikas Verma after his marriage is of no avail to the plaintiff in view of prescription contained in Section 11 of Transfer of Property Act, 1882 that 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 was no such direction.

j) Non mutation of the name of the transferee (defendant No.2) in the Municipal records for the purpose of House Tax cannot divest transferee (defendant No.2) of the title which otherwise stands transferred and vested in the transferee. It is settled position in law that mutation entries do not confer or divest a title. Likewise, payments of House Tax and electricity and water charges by the plaintiff in respect of suit property, if any, even after execution of Gift Deed are of no avail to the plaintiff for such payments do not confer or divest title. In this view of the matter, no

useful purpose would be served in setting the suit on trial on the aspect of payments of House Tax and electricity and water charges by the deceased plaintiff in respect of the suit property even after execution of Gift Deed for the reason the same even if proved would not negate the gift. The Courts are not to mechanically set such suits to trial whose outcome is not dependent upon any factual adjudication.

k) Even if Clauses 2, 3 and 4 of the Gift Deed dated June 10, 1997 which prescribe that deceased plaintiff had delivered the physical possession of the suit property to defendant No.2 and that the defendant No.2 had accepted the same; gift made by the plaintiff is absolute and irrevocable and plaintiff is left with no right or title over the gifted property and defendant No.2 shall be at liberty to enjoy the gifted property and to deal with the same independently are held to be inconsistent/repugnant to clause 4-A of the deed prescribing that defendant No.2 shall reside in the front drawing room of the suit property throughout his lifetime they i.e. clauses 2, 3 and 4 shall prevail over clause 4-A in view of settled legal position that in the event of inconsistency between two clauses in a deed, earlier/first of the two inconsistent clause shall prevail. Alternatively, even if rule of harmonious construction were to be applied, the only inference/conclusion which would emerge is that the residence of Donor (deceased plaintiff) in the front drawing room of the suit property would be as licensee or with the permission of Donee (defendant No.2), with the Donee (defendant No.2) having jural and physical possession of the said front drawing room given to her under the Gift Deed and the Donor (deceased plaintiff) having merely a right of residence in lifetime therein. Such right of residence of the Donor (deceased plaintiff) in the suit property cannot be in negation

of the essential requirement of delivery of possession of gifted property under Section 123 of Transfer of Property Act.

l) The argument advanced by the deceased plaintiff that Donor i.e. the deceased plaintiff had not delivered the possession of suit property to Donee i.e. defendant No.2 and thus gift of suit property made to defendant No.2 was incomplete is misconceived for the reason the delivery of possession of gifted property is not necessary to complete the gift of an immovable property.

m) None of the conditions/circumstances prescribed in Section 126 of Transfer of Property Act for suspension/revocation of a gift are fulfilled in the present case. It is neither the case of the deceased plaintiff that the Donor (deceased plaintiff) and Donee (defendant No.2) had agreed that on the happening of any specified event the Donor (deceased plaintiff) may revoke the gift nor any such term is found in the Gift Deed.

17. Aggrieved by the aforesaid, Sehdev Verma (legal representative of deceased plaintiff) has filed the present appeal under Section 96 of Code of Civil Procedure.

18. Arguing the appeal learned counsel for Sehdev Verma, appellant (legal representative of deceased plaintiff) made three broad submissions as under:-

A The gift of suit property by the deceased plaintiff to defendant No.2 was conditional. Clause 4-A of the Gift Deed dated June 10, 1997 categorically prescribes that the deceased plaintiff had gifted the *suit* property with the condition that '*donor (deceased plaintiff) will reside in front (drawing) room throughout his life*'. Admittedly, the defendants had prevented the deceased plaintiff from residing in the front (drawing) room in the suit property thereby committing breach of condition of gift and consequently the gift in question became ineffective and inoperative. In

said regards, counsel placed reliance upon the decision of Supreme Court reported as (1997) 2 SCC 225 Narmadaben Maganlal Thakker vs. Prajivandas Maganlal Thakker & Ors.

B The prescription contained in clause 4-A of Gift Deed dated June 10, 1997 that '*Donee (defendant No.2) will give the house to her son Vikas Verma after his marriage*' clearly shows that in pith and substance the gift was made in favor of Mr.Vikas Verma, son of defendants. Admittedly, Mr.Vikas Verma who was married on September 23, 2009 never accepted the gift in question during the lifetime of Donor i.e. deceased plaintiff. A gift is completed upon execution of a registered gift deed, acceptance of the gift and delivery of property. Since Mr.Vikas Verma never accepted the gift in question during the lifetime of deceased plaintiff the same i.e. gift never got complete, particularly when the deceased plaintiff kept on paying the house tax and electricity and water charges in respect of the suit property during his lifetime.

C The suit filed by the deceased plaintiff was well within time in view of provisions of Article 66 appended to Schedule of Limitation Act, 1963. Article 66 prescribes limitation period of twelve years for suit of possession of immovable property when the plaintiff has become entitled to possession by reason of breach of a condition to be reckoned from the date when the condition is broken. In the instant case, the cause of action accrued on June 01, 2007 when the deceased plaintiff revoked the Gift Deed dated June 10, 1997 on account of breach of condition of Gift Deed by Donee i.e. defendant No.2. In said regards, counsel placed reliance upon the decision of Supreme Court reported as AIR 2001 SC 2340 Thakur Raghunath Ji Maharaj & Anr. vs. Ramesh Chandra.

19. Gift *inter vivos* is gratuitous transfer of ownership between two living persons and is transfer of property within the meaning of Section 5

of Transfer of Property Act, 1882. Section 122 of Transfer of Property Act, 1882 defines ‘Gift’ as under”-

***“122. “Gift” defined.** – “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.*

***Acceptance when to be made.** – Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.*

If the donee dies before acceptance, the gift is void.”

20. The essentials of a valid Gift can be enumerated as under:-

- a) There must be transfer of ownership – As in the case of a sale, there must be a transfer of all the rights in the property by the donor to the donee. However, it is permissible to make conditional gifts. The only restriction is that the condition must not be repugnant to any of the provisions of Sections 10 to 34 of Transfer of Property Act, 1882.
- b) The ownership must relate to a property in existence – Gift must be made of existing movable or immovable property capable of being transferred. Future property cannot be transferred.
- c) The transfer must be without consideration – The word ‘consideration’ refers to monetary consideration and does not include natural love and affection.
- d) The gift must have been made voluntary – The offer to make the gift must be voluntary. A gift therefore should be executed with free consent of the donor. This consent should be untainted by force, fraud or undue influence.
- e) The donor must be a competent person – In a transaction by way of gift the transferor is called a donor and he divests his ownership in the

property so as to vest it in the transferee, the donee. The donor must be a sui juris. He must have attained the age of majority, possess a sound mind and should not be otherwise disqualified.

f) The transferee must accept the gift – The gift must be accepted by the donee himself. Acceptance must be made during lifetime of the donor and while he is capable of giving.

21. Section 123 of Transfer of Property Act, 1882 dealing with making of a Gift reads as under:-

***“123. Transfer how effected.** – For the purpose of making a gift of immovable 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 movable property, the transfer may be effected either by registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.”

22. Section 126 of Transfer of Property Act, 1882 dealing with suspension/revocation of a Gift reads as under:-

***“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.”

23. The deceased plaintiff has admitted the execution of Gift Deed dated June 10, 1997 in respect of suit property in favor of defendant No.2. A meaningful reading of the plaint/written submissions filed by deceased plaintiff/appellant goes to show that essentially the deceased plaintiff sought to revoke the gift of suit property made by him in favor of defendant No.2 on following two counts:-

a) The gift deed dated June 10, 1997 was executed by the deceased plaintiff on account of fraud/undue influence being played/exercised by the defendants.

b) Defendant No.2 committed breach of condition of Gift Deed dated June 10, 1997 by preventing the deceased plaintiff from residing in the front (drawing) room of the suit property during his lifetime thereby entitling the deceased plaintiff (and his legal representative) to revoke the Gift Deed.

24. A gift may be revoked for coercion, fraud, misrepresentation, undue influence in the same way as a contract may be rescinded.

25. Section 17 of the Contract Act defines ‘Fraud’ 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.

26. Under Section 16 of the Contract Act to be said to be induced by ‘undue 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 of the other.

27. Rules of pleadings stand crystallized under various rules of Order VI of Code of Civil Procedure. Rule 2 of Order VI reads as under:-

“2. Pleading to state material facts and not evidence – (1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegations being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.”

28. Highlighting that the mandate of the Rule is that the pleadings must contain a statement in the concise form of the material facts on which the party pleading relies for its claim or defence, it needs however be noted that Rule 4 of the same Order further expands by requiring particulars to be given where necessary. Rule 4 of Order VI reads as under:-

*“4. Particulars to be given where necessary – In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with date and items if necessary) shall be stated in the pleading.” **(Emphasis Supplied)***

29. In a leading pronouncement on the subject of pleadings, being the decision reported as 2011 (6) SCALE 677 Ramrameshwari Devi & Ors. vs. Nirmala Devi & Ors., highlighting how frivolous litigations are being instituted and how these frivolous litigations are choking the stream of justice, with reference to importance of pleadings, in sub-para A of para 52 of the decision, the Supreme Court observed as under:-

“A. Pleadings are foundation of the claims of parties. Civil litigation is largely based on documents. It is the bounden duty and obligation of the trial judge to carefully scrutinize, check and verify the pleadings and documents filed by the parties. This must be done immediately after suits are filed.”

30. In the decision reported as 1987 (2) SCC 555 Ram Sarup Gupta (Dead) by LRs vs. Bishun Narain Inter College & Ors, highlighting the object and purpose of pleadings, in para 6, the Supreme Court observed as under:-

“6. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should settle the essential material facts so that the other party may not be taken by surprise.”

31. With reference to the decisions reported as 1974 (6) BLR 368 Pandu Dhongi Yerudkar vs. Ananda Krishna Patil & Anr. and AIR 1982 Bom 491 M/s Nilesh Construction Company & Anr vs. Mrs. Gangubai & Ors, in the decision reported as AIR 1999 SC 1464 D.M. Deshpande & Ors vs. Janardhan Kashinath Kadam & Ors, in paras 9 and 11, the Supreme Court highlighted that a vague plea does not justify an issue being framed and further, where no material in support of a plea has been set up anywhere in any form, the Court would be justified in not settling an issue requiring the parties to traverse the torturous path of a trial. In said case, the Supreme Court observed qua claim for tenancy that in the absence of a concise statement of material facts relating to the tenancy, the mere raising of a plea of tenancy is not enough for the purpose of raising an issue. The Court cautioned against a pedantic approach to the problem and directed that Courts must ascertain the substance of the pleading and not the form, in order to determine the same. It was observed that pertaining to a claim of tenancy, the exact nature of the

right which is claimed is to be set-forth and no issue pertaining to existence of tenancy could be framed on a vague plea.

32. In the decision reported as 2012 (6) SCALE 340 A. Shanmugam vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam it was held as under:-

“27. The pleadings must set-forth sufficient factual details to the extent it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. If false averments, evasive denials or false denials are introduced, then the Court must carefully look into it while deciding a case and insist that those who approach the Court must approach it with clean hands.”

33. In the decision reported as 2012 (5) SCC 370 Maria Margarida Sequeria Fernandes vs. Erasmo Jack de Sequeria the Supreme Court held as under:-

“72. The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.

74. If the pleadings do not give sufficient details, they will not raise an issue, and the Court can reject claim or pass decree on admission. On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise. Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case.

78. The Court must ensure that the pleadings of a case must contain sufficient particulars. Insistence on details reduces the ability to put forward a non-existent or false claim or defence.”
(Emphasis Supplied)

34. In the instant case, no particulars regarding (alleged) fraud/undue influence played/exercised by the defendants have been given in the

plaint. The plaint is ‘*conspicuously*’ silent regarding the nature of (alleged) fraud/undue influence played/exercised by the defendants. The plaint is silent as to what and when were the representations made by the defendants which led the deceased plaintiff to execute the Gift Deed dated June 10, 1997 and which were ultimately found to be false. Likewise, there is no averment in the plaint that the defendants or any of them were in a position to dominate the will of the deceased plaintiff and used that position to obtain an unfair advantage over the deceased plaintiff.

35. The plaint filed by the deceased plaintiff lacks in material particulars and it has to be held that the so-called pleadings relating to fraud/undue influence being played/exercised by the defendants are no pleadings in the eyes of law. From the afore-noted decisions, it can be safely culled out that a vague plea, sans the particulars thereof, would be no plea in the eyes of law and no issue can be settled between the parties regarding fraud/undue influence being played/exercised by the defendants.

36. This takes us to the question that assuming that the defendants committed breach of condition contained in clause 4-A of Gift Deed dated June 10, 1997 by preventing the deceased plaintiff to reside in the front (drawing) room of the suit property during his lifetime would that be sufficient to revoke the Gift Deed dated June 10, 1997.

37. In order to deal with the said question, let us revisit clause 4-A of Gift Deed dated June 10, 1997:-

“With the 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”

38. In the decision reported as AIR 1962 Ori 130 Tila Bewa vs. Mana Bewa the law relating to revocation of gift upon breach of condition of gift was succinctly stated in following terms:-

“The well settled legal position, based on authorities, is that a gift, subject to the condition that the donee should maintain the donor, cannot be revoked under Section 126 of the Transfer of Property Act for failure of the donee to maintain the donor, firstly for the reason that there is no agreement between the parties that the gift could be either suspended or revoked; and secondly, this should not depend on the will of the donor; again, the failure of the donee to maintain the donor as undertaken by her in the document is not a contingency which should defeat the gift; all that could be said is that the default of the donee in that behalf amounts to want of consideration; Section 126 thus provides against the revocation of a document of gift for failure of consideration; if the donee does not maintain the donor as agreed to by the donee, the latter (donor) could take proper steps to recover maintenance; it is not open to a settler to revoke a settlement at his will and pleasure and he has got to get it set aside in a court of law by putting forward such pleas as bear on the invalidity of a deed of gift. Under Section 122 the Transfer of Property Act, a gift is complete when it is accepted by or on behalf of the donee; where there is evidence that the gift of property by a person to his wife and children was accepted by the donees, the fact,--that the donor, who had no other property,--stayed on the property, even after the gift,--does not show that the gift had not taken effect; where no right in the property is reserved in the donor, the fact that there is a clause in the deed (as in the present case) that the donee should maintain the donor, does not show that the donor continued to be the beneficial owner; a direction in a gift deed that the donee should maintain the donor till his death will not make the gift a conditional one; if the terms of the gift deed were ,that there had been an absolute transfer of the property in favour of the donee, such a direction for maintenance shall be regarded only as an expression of pious wish on the part of the donor.

On the aspect of such pious wishes, the legal position is that where a gift deed, after the operative portion of the deed,

provided that the donee was to render services to the donor and to meet the donor's funeral expenses, such directions are only pious wishes and do not give any right to the donor to revoke the gift if the conditions are not observed; when, therefore, there is an out and out transfer, followed by a direction to the donee to maintain the donor, the latter direction is only a pious wish; on the other hand if the gift deed starts with a statement that it is made with the object of providing for maintenance of the donor, and this statement is followed by the operative clause,--there can be no doubt that the gift is subject to the liability to maintain the donor.

7. This leads me to the construction of the deed of gift, in the present case, in the light of the legal position as stated above. On a plain reading of the document, it is clear that the defendant donor makes a complete gift of the suit lands in the operative portion of the document, making the plaintiff full owner in possession from the date thereof "Aja dina tharu sampuma malik dakhalkar karai" (in vernacular); it is after making the plaintiff full owner, in respect of the suit lands, that the defendant expresses her pious wish later on in the document to the effect that the plaintiff would render to the defendant "Sebadharma and Bharan Poshan," that is to say, to render to the defendant services and maintain her during her lifetime and she further expressed a wish that after her death the plaintiff would perform her funeral rites; then the document ends, by providing that the defendant or her heirs will not have. In any way any right to the suit lands and if they claim any right then on the strength of this document such claim will be invalid in law courts; the only condition attached to the gift as stated in the last sentence is that the plaintiff will not be able to sell or mortgage without the consent of her husband (plaintiff's husband), and that the plaintiff will not alienate the suit lands by sale or mortgage etc. during the lifetime of the defendant, and that if she does so, it will be invalid; thus, reading the document as a whole, it is clear that it was an out and out gift, and that the directions as to her maintenance and Sebadharma are only pious wishes expressed by the defendant in the document.

9. In support of his proposition, that the deed of gift is revocable, the learned counsel for the defendant respondent relied on a decision of the Allahabad High Court in *Balbhadar Singh v. Lakshmi Bai*, holding that under Hindu Law if a person makes a gift to another in expectation that the donee will do more work in consideration of the gift, it follows that if the donee failed to do that which it has conditioned he should do, the gift is revocable. The learned counsel's point is that in order that the defendant may get Sebadharma (services) from the plaintiff she (plaintiff) has to remain in the house; but the plaintiff having remarried, she cannot perform the Sebadharma of the defendant because the plaintiff has left the house of the defendant and remarried. In my opinion, this argument cannot stand, in view of the legal position as stated above. With regard to the decision, relied on by the learned counsel, it appears that the Allahabad High Court observed that it was arguable that in the absence of an express power of revocation for failure of the condition the gift cannot be impugned or revoked. Therefore, the Allahabad decision,--which was decided on the particular facts of the case,--does not support the defendant's contention. In the present case, as is clear from the document itself, there is no agreement that on failure on the part of the plaintiff to perform any of the conditions, namely, Sebadharma etc. the gift will be invalid. In other words, there must be a defeasance or default clause in order to make the gift revocable; if there was a condition that on failure to perform any of the conditions the gift will be void, then certainly the gift could have been revoked; the document "does not make any provision to that effect. Here, the defendant cancelled the gift,--as appears from the deed of cancellation,--in apprehension that the plaintiff might waste the property by transfer; it is not the defendant's case that, by reason of the plaintiff's having failed to perform her Sebadharma etc. that she revoked the deed of gift. **(Emphasis Supplied)**

39. The decision reported as AIR 2003 HP 107 Tokha vs. Smt. Biru & Ors is also an authority on the point of revocation of gift on breach of condition attached to gift. The relevant observations made in said decision are being noted herein under:-

“14. In Murikipudi Ankamma v. Tummalacheruvu Narasayya learned single Judge of Madras High Court held that in the absence of any express reservation of a power of revocation in the gift deed a donor does not continue to have the right to revoke a gift. For if a man will improvidently bind himself up by a voluntary deed, and not reserve a liberty to himself by a power of revocation, a Court will not loose the fetters he has put upon himself and without reservation of power to revoke, gift cannot be revoked under Section 126 of the Transfer of Property Act.

15. In Gandadhara Iyer v. Kulathu Iyer Sankara Iyer AIR 1952 TC 47, a Division Bench of the said Court held that when there is an out-and-out transfer by way of gift followed by a direction to the donee to maintain the donor the latter direction is only a pious wish. On the other hand, if the gift deed starts with a statement that it is made with the object of providing for the maintenance of the donor and this statement is followed by the operative clause, there can be no doubt that the gift is subject to the liability to maintain the donor. Thus, where after the operative portion of the gift deed other clauses providing for the expenses in connection with the donor's funeral ceremonies and for the services expected from the donee are introduced, the directions will not give any right to the donor to revoke the gift if the conditions are not observed.

16. In M.Venkatasubbaiah v. M.Subbamma, AIR 1956 AP 195, learned single Judge held that a gift subject to the condition that the donee should maintain the donor cannot be revoked under Section 125 for failure of the donee to maintain the donor firstly for the reason that there is no agreement between the parties that the gift should be either suspended or revoked: and secondly this should not depend on the will of the donor. Again, the failure of the donee to maintain the donor as undertaken by him in the document is not a contingency which could defeat the gift. All that could be said is that the default of the donee in that behalf amounts to want of consideration. Section 126 itself provides against the revocation of a document of gift for failure of consideration. If the donee does not maintain the donor as agreed to by him, the latter could take proper steps to recover maintenance etc. It is not open to a settler to revoke a

settlement at his will and pleasure and he has to get it set aside in a Court of law by putting forward such pleas as bear on the invalidity of gift deed. Similar view was taken by Judicial Commissioner of Himachal Pradesh in Smt. Gaurju v. Tara Chand AIR 1962 HP 4.

17. A learned single Judge of Orissa High Court in Tila Bewa v. Mana Bewa has also held that gift cannot be revoked for failure of donee to maintain donor under Sections 126 and 122 of the Transfer of Property Act as there was no agreement between the parties that the gift could be either suspended or revoked.

18. In Union Bank Ltd. v. Mst. Ram Rati (Lucknow Bench), learned single Judge has held that a gift would be a valid gift if the gift has been accepted even though the document may not have been registered at the time of the execution of the document and it cannot be revoked subsequently, if the document has been registered. Further it is said that a completed gift takes effect from the date of the execution and not from the date of registration.

19. A Division Bench of this Court in Smt. Shakuntla Devi v. Smt. Amar Devi AIR 1985 HP 109, has held that if the gift not based on fraud, undue influence or misrepresentation its cancellation is not valid under Section 126 of the Transfer of Property Act.

20. In Vannathi Valappil Janaki v. Puthiya Purayil Paru a learned single Judge of Kerala High Court has held that when a gift of immovable property has been accepted by the donees and they are in possession of the property the fact that after making the gift the donors felt that it was a folly or imprudence or want of foresight on their part to have executed the deed of gift will not clothe them with power of revocation of the gift under Sections 126 and 122 of the Transfer of Property Act.

21. A learned single Judge of this Court in Mool Raj v. Jamna Devi AIR 1995 HP 117, has held that when no specific condition of revocation has been made in the deed itself, in the event of failure of the donee to render services to the donor or

maintain the donor the gift cannot be revoked under Section 126 of the Transfer of Property Act.

22. In the case in hand there is no specific condition either for giving maintenance or for revoking of the gift deed in case services are stopped to be rendered by the donee. Anyway, the fact remains, as has been stated in the deed of gift that the gift was in lieu of services meaning thereby that the donee had to render services to the donor-plaintiff but in the absence of any specific condition in the event of failure of the donee to render services, the gift could not be revoked. Thus, the deed of gift Ext. D-1 if considered as an outcome of general law cannot be said to be revocable one when no specific condition for its revocation has been made in the deed Itself in the event of failure of the donee to provide services to the donor or maintain the donor, the gift cannot be revoked.” (Emphasis Supplied)

40. To put it pithily, the position regarding revocation of gift upon breach of condition of gift is this: *‘there must be a defeasance or default clause in order to make the gift revocable; if there was a condition that on failure to perform any of the conditions the gift will be void, then certainly the gift could have been revoked; but the gift could not be revoked where the document does not make any provision to that effect.*

41. In the instant case, there is no specific condition/stipulation in the Gift Deed dated June 10, 1997 that the gift would be revoked in case the deceased plaintiff does not reside in the front (drawing) room of the suit property. In the absence of such specific condition in the Gift Deed dated June 10, 1997, the Gift made by the deceased plaintiff of the suit property in favor of defendant No.2 cannot be revoked on the ground of (alleged) failure of the defendants to allow the deceased plaintiff to reside in the front (drawing) room of the suit property in view of legal position stated above.

42. The submission advanced by the counsel for appellant that in pith and substance the gift in question was made by the deceased in favor of Mr.Vikas Verma, son of the defendants, is wholly misplaced and in teeth of introductory portion of Gift Deed dated June 10, 1997. Further, the prescriptions contained in Gift Deed dated June 10, 1997 that ‘Donor (deceased plaintiff) out of natural love and affection for the above named Donee (defendant No.2) has already declared and made an Gift’ and ‘Donee has been serving the Donor as a Hindu devoted daughter-in-law’ leaves no manner of any doubt that the deceased plaintiff had made the gift in question in favor of defendant No.2.

43. As regards the submission that defendant No.2 did not give suit property to her son Mr.Vikas Verma after his marriage thereby breaching an (essential) condition of Gift, suffice would it be to note provisions of Section 11 of Transfer of Property Act, 1882 which reads as under:-

“11. Restriction repugnant to interest created – Where, on a transfer of property, an interest therein is created absolutely in favor of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose off such interest as if there were no such direction.

Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.”

44. The condition contained in the Gift Deed dated June 10, 1997 that defendant No.2 shall give the suit property to her son Mr.Vikas Verma after his marriage clearly restricts the interest/enjoyment in/of suit property of/by defendant No.2 and in no way can be construed for

purpose of securing beneficial enjoyment of another immovable property, the same i.e. condition that defendant No.2 shall give the suit property to her son Mr.Vikas Verma after his marriage is undoubtedly void and inoperative in view of prescription contained in Section 11 of Transfer of Property Act, 1882 and settled legal position that provisions relating to 'Gifts' contained in Transfer of Property Act, 1882 are subject to provisions of Chapter II of the Act including Section 11 thereof.

45. The decision of Supreme Court in Naramadaben's case (supra) relied upon by the counsel for appellant is clearly distinguishable and not applicable in the facts of present case. In Naramadaben's case (supra) after examining the factual backdrop the Supreme Court concluded that 'gift did not become complete during the life time of the donor and thus had become ineffective and inoperative.' In the instant case, the gift had become complete during the lifetime of donor i.e. the deceased plaintiff.

46. We note that an argument was advanced on behalf of appellant before the Single Judge that gift in question was not complete in the instant case as the deceased had not delivered the possession of the suit property to the defendant No.2 at/after the time of making the gift. In this regards, suffice would it be to note the dictum of law laid down by three-Judge Bench of Supreme Court in the decision reported as (2014) 9 SCC 445 Renikuntla Rajamma vs. K. Sarwanamma that delivery of possession of gifted property is not an essential requirement for making a valid gift of the immovable property.

47. The upshot of the above discussion is that even if the case set up by the deceased plaintiff is assumed to be true in its entirety, the deceased plaintiff (and his legal representative) would not be entitled to revoke the Gift Deed dated June 10, 1997 made by him in respect of suit property in favor of defendant No.2.

48. In these circumstances, the learned Single Judge has rightly nipped the suit instituted by the deceased plaintiff at bud and not setting it for trial.

49. In view of above discussion, the present appeal is devoid of any merit and thus dismissed.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

SEPTEMBER 02, 2015
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