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

% **Date of decision: 9th January, 2018.**

\+ **CS(OS) 272/2017**

PREM PRAKASH GUPTA ..... **Plaintiff**

Through: Mr. T.K. Ganju, Sr. Adv. with Mr. Bharat Gupta and Mr. Varun Tyagi, Advs.

Versus

SANJAY AGGARWAL ..... **Defendant**

Through: Mr. Mohit Chaudhary and Ms. Garima Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit, pleading:

(i) that the plaintiff is 82 years of age and is the owner of property No.47/35, Punjabi Bagh West, New Delhi admeasuring 666.66 sq. yds.;

(ii) that the plaintiff, along with his wife and two sons has been residing in the aforesaid property; after the marriage of the plaintiff's younger son, the plaintiff allowed the younger son and his wife to reside in a small portion of the house; the younger son of the plaintiff and his wife however made the life of the plaintiff and the plaintiff's wife miserable, so much so the elder son of the plaintiff shifted to a tenanted premises;

(iii) that the younger son of the plaintiff and his wife started a chain of litigations against the plaintiff and the plaintiff also sued for recovery of possession of the portion of the property aforesaid in their possession;

(iv) that the behavior of the elder son and his wife also towards the plaintiff was not so good;

(v) that the plaintiff, to teach a lesson to his sons and their wives and without there being any intention on the part of the plaintiff to "bequeath" the property in favour of anyone, executed a Deed of Gift dated 7th December, 2009 in favour of the defendant who is one of the sons of an old friend of the plaintiff;

(vi) that the plaintiff also executed and registered a Will dated 8th December, 2009 bequeathing all his properties including the property aforesaid to the defendant;

(vii) that the plaintiff, in December, 2009 also executed a General Power of Attorney (GPA) authorising the defendant to deal with all the properties of the plaintiff;

(viii) that the plaintiff has also given all original documents including original title documents of the property aforesaid to the defendant;

(ix) that the plaintiff did all the aforesaid, only to force his younger son and his wife to fall in line and withdraw the litigations and show love, care and affection to the plaintiff and to force the elder son and his wife to become loving and caring to the plaintiff;

(x) that in the aforesaid circumstances, the plaintiff did not get the Gift Deed and the GPA registered, despite knowing very well that the

Gift Deed and GPA have no value in the eyes of law, without registration;

(xi) that the plaintiff never had intention to gift the property aforesaid to the defendant;

(xii) that the defendant also had no intention to accept or own the property and thus the Gift Deed and GPA were never registered, as the plaintiff had told the defendant that it was all a ploy by the plaintiff to make his sons and daughter-in-law mend their ways;

(xiii) that the defendant was also not given actual, physical possession of the property and only a statement was made, to create fear in the minds of the sons of the plaintiff;

(xiv) that the plaintiff however got the Will in favour of the defendant registered, as the plaintiff knew that the Will can be revoked any time and that till the plaintiff is alive, the defendant will not get any right thereunder;

(xv) that the younger son of the plaintiff, in the year 2014 started living with the plaintiff and became good and caring towards the plaintiff;

(xvi) that the plaintiff asked the defendant to return the original documents, as the plaintiff wanted to bequeath the property in favour of his son-in-law and to execute a Power of Attorney in favour of his son-in-law; the plaintiff also informed the defendant that the plaintiff wanted to cancel and revoke the GPA in favour of the defendant;

(xvii) that the attitude of the defendant changed and the defendant then revealed his true colours; the defendant did not return the original documents;

(xviii) that on the plaintiff realizing the same, the plaintiff revoked the GPA executed in favour of the defendant, vide a Deed of Revocation or cancellation which was duly registered on 6th March, 2014;

(xix) that the plaintiff also executed and registered a Will dated 6th February, 2014 bequeathing all his properties in favour of his son-in-law;

(xx) that that plaintiff has also executed and registered a Special Power of Attorney in favour of his son-in-law;

(xxi) that the plaintiff also got published in the newspapers of 14th March, 2014 a public notice informing about revocation of GPA in favour of the defendant;

(xxii) that in May, 2017, the plaintiff has learnt that the defendant was attempting to sell the property and on making enquiries also learnt that the defendant had paid stamp duty of Rs.17,70,187/- on the Deed of Gift and obtained a copy of the Gift Deed with stamp of payment of stamp duty;

(xxiii)that the plaintiff also learnt that there is another Gift Deed purportedly bearing the signatures of the plaintiff and the defendant, available in the office of the Sub Divisional Magistrate but different from the Gift Deed executed by the plaintiff in favour of the defendant and apprehends that the defendant had forged and fabricated another Gift Deed.

2. The plaintiff, on the pleas aforesaid has claimed the reliefs of (A) declaration that the Deed of Gift dated 7th December, 2009 executed by the plaintiff in favour of the defendant is a nullity and does not create any right, title or interest in favour of the defendant with respect to the property aforesaid; (B) of permanent injunction restraining the defendant from alienating, encumbering or interfering with the possession of the plaintiff of the property aforesaid; and, (C) of mandatory injunction directing the defendant to return back the original documents pertaining to the property.

3. The suit was entertained and vide *ex-parte* ad-interim order dated 30th May, 2017, the defendant directed to maintain *status quo* qua title of the property and restrained from interfering with possession of the plaintiff of the said property.

4. The defendant has contested the suit by filing a written statement, pleading:

(a) that the plaintiff has no cause of action; the reliefs claimed are undervalued and the suit claim is barred by time;

(b) that the suit claim is barred by Sections 34 & 41 of the Specific Relief Act, 1963;

(c) that the suit is barred by principles of estoppel and the plaintiff has no *locus standi* in the suit;

(d) that owing to the close relationship enjoyed by the plaintiff and the father of the defendant, the defendant has spent his childhood and much part of his adult life in the property aforesaid and the same is also the address of the defendant in most of the official documents of the defendant;

(e) that the defendant has also been taking care of the plaintiff's family and helping the plaintiff financially and in business affairs;

(f) that the defendant has also nursed the plaintiff during the illness of the plaintiff and helped the plaintiff in marrying off his two daughters;

(g) that it is the plaintiff who arranged the marriage of the defendant;

(h) that the plaintiff executed the Deed of Gift dated 7th December, 2009 out of love and affection for the defendant;

(i) that the plaintiff, by execution of the Deed of Gift dated 7th December, 2009, transferred all his rights, title and interest in the property aforesaid to the defendant;

(j) that the Deed of Gift dated 7th December, 2009 was duly attested by the Notary Public, Delhi;

(k) that the Gift Deed was not registered, as both, the defendant and the plaintiff, due to financial difficulties were unable to pay the stamp duty thereon; however as soon as the defendant was able to make some arrangement, he deposited the appropriate stamp duty along with penalty in the office of Collector of Stamps on 4th May, 2017;

(l) that the plaintiff has admitted the contents of the Gift Deed before various judicial forums; the plaintiff in the suit for partition filed by his younger son, admitted that the plaintiff had transferred the property by executing a Gift Deed in favour of the defendant and had handed over possession to the defendant;

(m) that the defendant, on the basis of the Deed of Gift and the stand of the plaintiff in various legal proceedings and before the Police, has transacted with the property and had also entered into a Memorandum of Understanding (MoU)/Agreement to Sell dated 12th April, 2017 with Praveen Chaudhary and Bhajan Lal Singla;

(n) that while the plaintiff, in Will dated 6th February, 2014 in favour of his son-in-law, has claimed that the defendant had mistreated the plaintiff, the plaintiff in the plaint in the present suit has stated that the plaintiff never had intention to gift or Will the property to the defendant;

(o) reliance is placed on Sections 122 & 123 of the Transfer of Property Act, 1882 and Sections 47 & 49 of the Indian Registration Act, 1908;

(p) reliance is placed on ***T.V. Kalyanasundaram Pillai Vs. Karuppa Mooppanar*** AIR 1927 PC 42.

5. The plaintiff has filed replication but the need to refer thereto is not felt.

6. The plaintiff filed applications for impleadment of Praveen Chaudhary and Bhajan Lal Singla with whom the defendant in his written statement claimed to have entered into MoU/Agreement to Sell dated 12th April, 2017 and for carrying out consequential amendments in the plaint and to also

restrain the said Praveen Chaudhary and Bhajan Lal Singla from further dealing with the property. However, the said applications were dismissed on 3rd January, 2018, observing that since the MoU/Agreement to Sell dated 12th April, 2017 was admittedly unregistered and since according to the plaintiff, the defendant himself had no title to the property, execution of a document by a person who himself/herself has no title cannot create any right in favour of any other person.

7. The suit, on 3rd January, 2018 was also ripe for framing of issues. During the hearing of the applications aforesaid, it having transpired that there was no dispute that the Gift Deed dated 7th December, 2009 with respect whereto the suit has been filed is unregistered, it was enquired from the counsel for the defendant, how the defendant, on the basis of an unregistered Gift Deed, could claim any right in the property and as to why the suit should not be decreed under Order XV of the Code of Civil Procedure, 1908 (CPC), granting the reliefs claimed. On request of the counsel for the defendant, the hearing was adjourned to today.

8. Order XIV of the CPC provides that issues arise when a material proposition of fact or law is affirmed by one party and denied by the other and that material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence. Order XV of the CPC provides that where, at the first hearing of a suit, it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

9. This Court in ***Lakshmikant Shreekant (HUF) Vs. M.N. Dastur & Company Pvt. Ltd.*** 1998 (44) DRJ 502 held that an issue need not be framed on a point of law which is perfectly clear and that the Court is required to apply its mind and understand the facts before framing the issue and that if a plea is *mala fide* or preposterous or vexatious, and can be disposed of without going into the facts, or is contrary to law or the settled legal position, the Court will not be justified in adopting a hands off policy and allow the game of the defendant to have its sway. In ***Zulfiquar Ali Khan Vs. Straw Products Limited*** 87 (2000) DLT 76 also, it was observed that a litigant often takes all sorts of false or legally untenable pleas and legal process should not be allowed to be exercised by such persons and only such pleas which give rise to clear and *bona fide* dispute or triable issues should be put to trial and not illusory, unnecessary or *mala fide,* based on false or untenable pleas.

10. The plaintiff has instituted this suit *inter alia* for declaration that the unregistered Deed of Gift dated 7th December, 2009 does not create any right, title or interest in favour of the defendant and for permanent injunction restraining the defendant from professing any right, title or interest in the property and from dealing therewith. The plaintiff has also sought return of the original documents. If the legal position were to be clear, as it appeared to me on 3rd January, 2018, that an unregistered Gift Deed did not amount to a gift and did not create any right in favour of the defendant and the defendant having not claimed any other right except under the said document and having not sought specific performance (if at all possible in law), it was felt that there is no need to frame any issue in the suit and the decree, as sought, including of mandatory injunction, could be passed forthwith.

11. The counsel for the defendant also, on enquiry, affirms that "the defendant is not enforcing the gift" and for this reason he did not address on, whether an unregistered Gift Deed can be treated as an agreement to gift, as has been held with respect to unregistered sale deed in ***Kalavakurti Venkata Subbaiah Vs. Bala Gurappagari Guruvi Reddy*** (1999) 7 SCC 114 and can be enforced.

12. The argument of the counsel for the defendant however is that under Sections 122 & 123 of the Transfer of Property Act, on execution of the Gift Deed dated 7th December, 2009, the transaction of gift stands completed. Attention is invited to the portions of the unregistered Gift Deed recording (a) "…that in consideration of his natural love and affection for done, the donor transfers, conveys unto the done his above property…unto the done absolutely for ever", (b) "The donee accepts the said transfer and has thus received the physical possession of the said property except one room common passage in sharing basis and kitchen in sharing basis on the first floor provided to the younger son of doner namely Pankaj Kumar on the licence basis however has received and accepted the legal right to get vacated the same premises vacated by due process of law", (c) "…the doner has executed deed of gift and be delivered the same to the done who has accepted the same in token of acceptance…".

13. Attention is also invited to the Will dated 8th December, 2009 i.e. one day after the day of gift executed by the plaintiff, whereunder the plaintiff has bequeathed the property and which Will also records the factum of the defendant having been put in possession of the property and having been authorized to deal with the property.

14. Attention is next invited to the written statement dated August, 2009 filed by the plaintiff in CS(OS) No.598/2011 of this Court titled ***Master Pranav Gupta Vs. Shri Prem Prakash & Ors.***, where the plaintiff has stated as under:

> *"8. That the suit is bad for non-joinder of parties and is liable to be dismissed on this ground. The property bearing No.47/35, Punjabi Bagh, New Delhi, has been gifted by the answering defendant in favour of Shri Sanjay Aggarwal s/o Shri Subhash Chand R/o B-3/34, Rajasthali Apartments, Pitampura, Delhi-1100034 in the month of December, 2009 out of love and affection and for the services he has provided during the lifetime of the answering defendant and the possession of the property has also been handed over to said Shri Sanjay Aggarwal; however, the plaintiff has deliberately failed to implead Shri Sanjay Aggarwal as a party to the present suit despite being in knowledge of the fact of transfer. The suit cannot proceed on failure to implead Shri Sanjay Aggarwal who is both a son of late Jai Narain were admitted as partners in the said firm. On 03.04.1959, the four partners executed a fresh partnership deed to readjust the profit and loss ratio of the parties w.e.f. 01.04.1959 wherein it was agreed that the share of each partner would be 25%. It was further agreed vide clause 6 of the said partnership deed that in case of death of the parties of the First Part i.e. Shri Govind Sahai and Smt. Champa Devi and his second son Shri Prem Prakash, the answering defendant only would be entitled to inherit the share of the said parties in the said firm including the capital standing in the books of the firm at that time. The said clause No.6 in the partnership dated 03.04.1959 was not only a term of agreement between the parties but also the will of late Govind Sahai."*

15. I have however drawn the attention of the counsel for the defendant to Sections 122 & 123 of the Transfer of Property Act as under:

*"**122. "Gift" defined.**—"Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.*

__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.

***123. Transfer how effected.**—For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.*

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

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

and enquired, that Section 123 having provided that for the purposes of making a gift of immoveable property, the transfer must be affected by a registered instrument, how it can be said that on a mere execution of an unregistered document titled 'gift', a gift of immoveable property can be said to be completed.

16. The counsel for the defendant has drawn attention to Sections 23, 25 & 47 of the Registration Act, 1908 as under:

*"**23. Time for presenting documents**.—Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution:*

Provided that a copy a of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.

25. Provision where delay in presentation is unavoidable.— *(1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in [India] is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.*

(2) Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

47. Time from which registered document operates.— *A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.*

and has contended that though Section 23 provides the period of four months from the date of execution, for presentation of a document for registration but Section 25 aforesaid permits the Registrar of Documents to condone the delay. It is argued that the power to decide, whether the delay in presenting the Gift Deed dated 7th December, 2009 for registration can be condoned or not can only be exercised by the Registrar and not by the Civil Court. It is further contended that the defendant, owing to non-availability of funds, was unable to pay the stamp duty on the Gift Deed for its registration and as soon as has been able to arrange funds, has paid the stamp duty and is within the time prescribed by Section 25 supra, to present the Gift Deed dated 7th December, 2009 for registration and it is for the Registrar of Documents to decide, whether to condone the delay or not. On enquiry, as to how Section 25 of the Registration Act can be applied, when the same empowers the Registrar only where the delay in presentation does not exceed four months and when more than eight years have passed since the date of execution of the Gift Deed, it is argued that the time of four months begins to run only after the "unavoidable accident" within the meaning of Section 25 supra i.e. in this case the inability to pay the stamp duty ceases. It is informed that the defendant, as soon as he was able to arrange for funds for payment of stamp duty, applied to the Collector of Stamp for adjudication of the stamp duty and penalty payable on the Deed of Gift dated 7th December, 2009 and the stamp duty has been paid on 4th May, 2017 only and the defendant is within the time to present the Gift Deed to Registrar of Documents for registration. It is contended that the defendant is competent under Section 32 of the Registration Act, to present the document for registration.

17. The counsel for the defendant also relies on ***T.V. Kalyanasundaram Pillai*** supra approving the dicta of the Full Bench of the High Court of Bombay in ***Atmaram Sakharam Kalkya Vs. Vaman Janardhan Kashelikar*** AIR 1925 Bom 210 holding that

"where the donor of immovable property has handed over to the donee an instrument of gift duly executed and attested, and the gift has been accepted by the donee, the donor has no power to revoke the gift prior to the registration of the instrument"

and further holding, (i) that the only way Section 123 of the Transfer of Property Act and Section 47 of the Registration Act can be reconciled, is by holding that while registration is a necessary solemnity in order to enforce a gift of immovable property, it does not suspend the gift until registration actually takes place; (ii) when the instrument of gift has been handed by the donor to the donee and accepted by him, the former has done everything in his power to complete the donation and to make it effective; (iii) registration does not depend upon his consent, but is the act of an officer appointed by law for the purpose, who, if the deed is executed by or on behalf of the donor and is attested by at least two witnesses, must register it if it is presented by a person having the necessary interest, within the prescribed period; and, (iv) that neither death, nor the express revocation by the donor, is a ground for refusing registration, if the other conditions are complied with.

18. The counsel for the defendant also places reliance on dicta of the Full Bench of the Madras High Court in ***Venkati Rama Reddi Vs. Pillati Ram Reddi*** MANU/TN/0167/1916, holding that there is nothing in Section 123 of the Transfer of Property Act which requires the donor to have the deed registered and that all that is required is that he should have signed the registered instrument; once such an instrument is duly executed, the Registration Act allows it to be registered even though the donor may not agree to its registration and upon registration, the gift takes effect from the date of execution. It was further held, that the doctrine that a donor who has left his gift incomplete cannot be compelled to complete it, has no application to a case where the donor, by executing the deed has done all that he needs to do; registration can be effected even without his cooperation.

19. I have enquired from the counsel for the defendant, that if the interpretation of Section 123 of the Transfer of Property Act and Section 47

of the Registration Act as canvassed by the defendant were to be accepted, whether not it will open the doors for all purchasers of immoveable property to avoid payment of stamp duty on the sale deeds and become owners only on the basis of executed unstamped and unregistered sale deed and claim to be unable to pay the stamp duty and have liberty to pay the stamp duty whenever they desire. I may in this regard notice that Section 54 of the Transfer of Property Act pertaining to sales is at par with Sections 122 and 123 of the Act pertaining to gifts.

20. I may in this context also record that per Section 17 of the Indian Stamp Act, 1899, instruments chargeable with stamp duty and executed by any person in India have to be stamped before or at the time of execution and per Section 29(c) thereof, in the absence of an agreement to the contrary, the expense of providing the proper stamp duty is to be borne, in the case of a conveyance and which would include a gift, by the grantee i.e. donee as the defendant claims to be in the present case.

21. The senior counsel for the plaintiff has referred to Section 49 of the Registration Act as under:

> *"**49. Effect of non-registration of documents required to be registered.—**No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 882)], to be registered shall—*
>
> *(a) affect any immovable property comprised therein, or*
>
> *(b) confer any power to adopt, or*
>
> *(c) be received as evidence of any transaction affecting such property or conferring such power,*
>
> *unless it has been registered:*

> *[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.]"*

and has contended (a) that till date the possession of the property is with the plaintiff; (b) the property, in all records, stands in the name of the plaintiff; (c) the property tax of the property has been paid by the plaintiff; and, (d) though the electricity connection to the property has been disconnected, but the last bill was paid by the plaintiff.

22. I have enquired from the counsel for the defendant, whether the defendant is claiming to be in actual physical possession of the property.

23. The counsel for the defendant, in a vague manner states that as recorded in the Gift Deed and in the Will executed by the plaintiff and as pleaded by the defendant in the written statement, the defendant is in possession.

24. The senior counsel for the plaintiff has further contended that Section 25 of the Registration Act permits the document to be presented for registration beyond four months from the date of execution prescribed in Section 23, only within maximum further period of four months i.e. within eight months from the date of execution and which time has long past expired.

25. Though the senior counsel for the plaintiff also drew attention to Section 126 of the Transfer of Property Act, providing for "when gift may be

revoked" but on my putting to the senior counsel for the plaintiff that the question of revocation would arise only when the plaintiff admits the gift to have been effected and/or come into effect, the senior counsel for the plaintiff stated that the plaintiff is not seeking revocation of the gift.

26. The senior counsel for the plaintiff referred to:

(I) ***Wg. Cdr. (Retd.) R.N. Dawar Vs. Shri Ganga Saran Dhama*** AIR 1993 Delhi 19 holding that mere delivery of possession without written instrument cannot convey title;

(II) ***Gomtibai Vs. Mattulal*** (1996) 11 SCC 681, holding that in the absence of any registered instrument of gift and acceptance thereof by the donee, the property could not be said to be legally transferred and the gift could not be said to be complete in the eye of law;

(III) ***Mathai Samuel Vs. Eapen Eapen*** (2012) 13 SCC 80, holding that a composite document which has characteristics of a Will as well as gift, it may be necessary to have that document registered, otherwise that part of the document which has the effect of a gift cannot be given effect to;

(IV) ***Nasir Vs. Govt. of NCT of Delhi*** MANU/DE/3170/2015, where I have held that on the basis of an unregistered gift deed, no title can be claimed;

(V) ***Raj Kumar Dey Vs. Tarapada Dey*** (1987) 4 SCC 398, holding that the cumulative effect of Sections 23&25 of the Registration Act read together is that total period of eight months is available for registration;

(VI) ***Subhash Chander Ahuja Vs. Ashok Kumar Ahuja*** 116 (2005) DLT 125, holding that the Registration Act prescribes that a document must be presented for registration within four months of its execution and thereafter may be done within a further period of four months but with special leave;

(VII) ***S. Kaladevi Vs. V.R. Somasundaram*** (2010) 5 SCC 401, holding that when an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence, making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the Registration Act and that an unregistered sale deed can be received in evidence to prove the agreement between the parties, though it may not itself constitute a contract to transfer the property;

(VIII) ***Aspire Investments P. Ltd. Vs. Nexgen Edusolutions P. Ltd.*** 220 (2015) DLT 316, to contend that under Section 25 of the Registration Act, maximum eight months period is available for registration from the date of execution of a document and failure to have the same registered tantamounts to an abandonment of the contract and waiver of rights.

27. The counsel for the defendant**,** in rejoinder, contrary to his earlier categorical stand that the defendant is not seeking enforcement of the gift, argued that the suit be put to trial to determine the intention of the parties. It is also argued that it is to be determined in trial, as to who is in possession of the property. It is further contended with reference to the public notices got

issued by the plaintiff in newspapers of 14th March, 2014, that the same revoke only the GPA and not the gift deed.

28. I have given thought to the matter.

29. Not only is the defendant as per his written statement not enforcing the gift, and for which, in any case a counter-claim would have been required to be filed, and pegging his defence on the gift being complete, but the counsel for the defendant in his opening arguments also, on specific query, stated that the defendant is not enforcing the gift. The question thus, of putting the suit to trial to determine the intention of the parties, does not arise.

30. As far as the other reasons given for having the issues framed in the suit and having the suit put to trial, of the monies for deposit of house tax having been borne by the defendant and the defendant being in possession of the property are concerned, it is not the plea or argument of the defendant that the suit is bad, for the plaintiff having not demanded possession of the property. According to the plaintiff, he is in physical possession of the property and the defendant is not in possession of the property. Similarly, if it were to be held on an interpretation of the statutory provisions hereinabove cited that the defendant, under the Deed of Gift dated 7th December, 2009 has not acquired any rights in the property, then the reliefs claimed in the plaint would follow and there is no need to determine, whether the monies for payment of house tax, though in the name of the plaintiff, came from the coffers of the defendant.

31. Though I have hereinabove held that there is no need to determine the intention of the parties but since the counsel for the defendant himself had emphasized and drew attention to the execution of the Will dated 8th

December, 2009, I cannot but highlight that the argument of the counsel for the defendant, of the transaction of gift having stood concluded on 7th December, 2009, is inconsistent to the aforesaid Will relied upon by the defendant. The Will is of a date after the Deed of Gift. If, on execution of the Gift Deed, the defendant had acquired rights in the property and the plaintiff stood divested therefrom, there would have been no need for the plaintiff to execute the Will with respect to the property in favour of the defendant. The two admitted documents are conclusive of the fact that the parties, at the time of execution thereof, very well understood that owing to the Gift Deed being unregistered, the defendant had not become owner of the property and the property remained of the plaintiff and could be bequeathed under a Will by the plaintiff.

32. As far as the contention of the counsel for the defendant, that it is the Registrar of Documents who is competent to determine, whether the delay in presenting the document for registration is to be condoned or not and this Court should not foray there into, is concerned, I may state that though the Registrar may have the power to determine, whether to condone the delay or not but it is well within the ambit of the power of this Court to interpret Section 25 and if it were to be said, as held in the judgments cited by the senior counsel for the plaintiff, that the Registrar has such power only when the document is presented for registration though not within four months of execution of the document but within a further period not exceeding four months, then again, there is no need for this Court to await the decision of the Registrar. The intent of the defendant, by making such contentions, appears to be, to somehow or the other keep the cloud on the title of the plaintiff to the property hanging.

33. I will first take up the aspect deal with in the judgments of the Privy Council and of the Full Bench of the Madras High Court relied upon by the counsel for the defendant.

34. My research shows that in ***Ram Saran Lall Vs. Mst. Domini Kuer*** AIR 1961 SC 1747, it was held that Section 47 of the Registration Act does not say when a sale would be deemed to be complete; it only permits a document, when registered, to operate from a certain date which may be earlier than the date when it was registered. It was further held, that Section 47 applies to a document only after it has been registered and has nothing to do with the completion of the sale, when the instrument is one of sale; a sale which is admittedly not completed until the registration of the instrument of sale is completed, cannot be said to have been completed earlier because by virtue of Section 47, the instrument by which it is effected, after it has been registered, commences to operate from an earlier date. The same view was reiterated in ***Hiralal Agrawal Vs. Rampadarath Singh*** AIR 1969 SC 244 and in ***Har Narain Vs. Mam Chand*** (2010) 13 SCC 128.

35. In ***Commissioner of Gift-Tax Vs. Aloka Lata Sett*** (1991) 190 ITR 556, a Division Bench of the High Court of Calcutta, applying the aforesaid judgments, held (i) that Sections 122 & 123 of the Transfer of property Act leave no room for doubt that a transaction of transfer of immovable property will be complete only by executing a registered document; (ii) it cannot be said that the transaction was complete and a gift in the eyes of law came to be made by the donor to the donee, prior to the registration of the document by which the gift was made; (iii) that under Section 47 of the Registration Act, a registered document operates from the date of its execution and not

from the date of its registration; (iv) that registration of a document relates back to the date of its execution, between the parties thereto, but as regards third parties, it is effective from the date of registration; (v) that where an instrument, which purports to transfer title to property is required to be registered, the title does not pass until registration has been effected; no new title is created by registration—it only affirms a title which has been created by the deed; (vi) that a gift of immovable property cannot be completed, without a registered instrument.

36. Dicta of the Privy Council in ***T.V. Kalyanasundaram Pillai*** supra was noticed in ***Aloka Lata Sett*** supra and referring to a subsequent judgment of the Privy Council in ***Venkat Subba Srinivas Hegde Vs. Subba Rama Hegde*** AIR 1928 PC 86, it was held (a) that ***T.V. Kalyanasundaram Pillai*** supra does not directly deal with the effect of Section 47 and the ratio thereof only is that a transaction of gift made by a document, subsequently registered, became operative from the date on which the document of gift was executed; (b) that the transfer is not effective until registration of the deed of transfer and the effective date would be the date of registration and not the date of execution; (c) that before registration of the deed, Section 47 has no application and before registration of the deed, the gift does not become effective; (d) that the date of registration of the date of gift would be relevant for the purpose of gift tax assessment.

37. Reference in this regard can also be made to ***John Vs. Thaikkad Panchayat*** 1990 SCC OnLine Ker 225, also holding that a gift of immovable property can be held to be valid only if there is document a satisfying the requirements of law.

38. I respectfully agree with the dicta aforesaid of the Division Bench of the Calcutta High Court in ***Aloka Lata Sett***.

39. The judgments relied upon by the counsel for the defendant, all dealt with a situation where the Deed of Gift was ultimately registered. In the present case, the Deed of Gift has not been registered and the judgments relied upon by the counsel for the defendant thus, have no application.

40. That brings me to the next question, i.e. interpretation of Section 25 of the Registration Act.

41. In my view, a plain reading and the literal interpretation of Section 25 of the Registration Act permits of no ambiguity. It empowers the Registrar, only "where the delay in presentation does not exceed four months". The only meaning which can be ascribed to the said words is that the document must be presented within further four months, after the expiry of four months' time from execution provided for registration in Section 23 of the Registration Act. The language of Section 25 of the Registration Act, can in no manner be stretched to read the same as meaning four months from the date when the "urgent necessity or unavoidable accident" ceases.

42. Besides the judgments relied upon by the senior counsel for the plaintiff, reference may also be made to ***Nexgen Edusolutions Pvt. Ltd. Vs. Aspire Investments Pvt. Ltd.*** 2015 SCC OnLine Del 12431 (DB); ***Ram Singh Sant Ram Vs. Jasmer Singh Hardit Singh*** AIR 1963 P&H 100 (DB) and ***G. Kadambari Vs. District Registrar of Assurance, Hyderabad*** 2008 SCC OnLine AP 921.

43. It has thus to be held that the power of the Registrar of Documents under Section 25 of the Registration Act is not available for invoking, after

expiry of eight months from the date of execution of the document and which time has long since lapsed.

44. Though the question of specific performance of an agreement of gift, in the circumstances aforesaid, does not arise but my curiosity in this respect drew me to ***Hiralal Chimanlal Vs. Gavrishankar Ambashankar*** AIR 1928 Bom 250 (DB) and to ***S.P. Muthusamy Vs. V. Thayammal*** MANU/TN/1101/2002, both holding that no specific performance of an agreement to gift can be claimed.

45. In view of the aforesaid, the plaintiff is entitled to a decree under Order XV of the CPC.

46. A decree is accordingly passed, in favour of the plaintiff and against the defendant

(I) of declaration, declaring the Deed of Gift dated 7th December, 2009 as a nullity and not creating any right, title or interest in favour of the defendant with respect to the property No.47/35, Punjabi Bagh West, New Delhi;

(II) of permanent injunction, restraining the defendant from professing any right, title, claim or interest in property No.47/35, Punjabi Bagh West, New Delhi and from executing any document with respect thereto and from otherwise dealing with the property;

(III) of permanent injunction, restraining the defendant from interfering with the possession of the plaintiff with respect to property No.47/35, Punjabi Bagh West, New Delhi; and,

(IV) of mandatory injunction, directing the defendant to return back to the plaintiff all the original documents pertaining to property No.47/35, Punjabi Bagh West, New Delhi.

I refrain from imposing any costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

JANUARY 09, 2018
'bs'