THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.2824 of 2018

ORDER:

This revision, under Article 227 of the Constitution of India, is filed by the petitioner/defendant No.1 aggrieved by the order dated 28.08.2017 passed in O.S.No.613 of 2007 by XIII Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar.

2. Heard learned counsel for the revision petitioner and perused the record.

3. Learned counsel for the revision petitioner would submit that under Mohammedan Law, gift deed transferring title and possession does not require stamp duty. He relied on a decision of the Hon'ble Apex court reported in Hafeeza Bibi and others v. Shaikh Farid (dead) by LRs and others[1].

4. It is evident from the impugned gift deeds dated 09.03.1963 and 14.12.1989 that there is a mention of delivery of possession and transfer of ownership rights and nowhere it is mentioned that a oral gift was made prior to the date of execution of documents. Thereafter, the oral gift was reduced into writing. The Hon'ble Apex Court in Hafeeza Bibi and others (*supra*) has observed as under:

> "27. In our opinion, merely because the gift is reduced to writing by a Mohammadan instead of it having been made orally, such writing does not become a formal document or instrument of gift. When a gift could be made by a Mohammedan orally, its nature and character is not

[1] (2011) 5 Supreme Court Cases 654

> changed because of it having been made by a written document. What is important for a valid gift under Mohammedan Law is that three essential requisites are satisfied constituting a valid gift, the transaction of gift would not be rendered invalid because it has been written on a plain piece of paper. The distinction that if a written deed of gift recites the factum of prior gift, then such deed is not required to be registered but when the writing is contemporaneous with the making of the gift, it must be registered, is inappropriate and does not seem to us to be in conformity with the rule of gifts in Mohammedan Law."

5. A distinction can be drawn between an oral gift made and later reduced into writing. The documents dated 09.03.1963 and 14.12.1989 (Memorandum of Gift Deeds) do not reveal that the oral gift was made at earlier point of time and later they were reduced into writing. It is also relevant to state that in the subject documents there is no specific mention of offer, acceptance and delivery of possession of the property gifted by way of oral gift before the execution of the documents. Under these documents, there is an outright gift of the property in question.

6. Under these circumstances, the Court below had rightly held that the documents require registration and stamp duty. The Court below had rightly exercised its jurisdiction. The revision petition is devoid of merit and is liable to be dismissed.

7. In the result, the Civil Revision Petition is dismissed.

Pending miscellaneous applications, if any, shall stand dismissed in consequence.

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Dr. SHAMEEM AKTHER, J

23rd SEPTEMBER, 2019.

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