

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. No.114 of 1990

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 03.02.1990 and 17.02.1990 respectively passed by the learned Additional District Judge, Balesore in S.J.A. No.19/17 of 1988/86-I setting aside the judgment and decree dated 10.01.1986 and 30.01.1986 respectively passed by the learned Additional Subordinate Judge, Balesore in O.S. No.167/115 of 1982-80.

Sri Gangadhar Pradhan

....

Appellant

-versus-

***Sri Brundaban Pradhan (Since
Dead) by his LRs and Others***

....

Respondents

**Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):**

For Appellant

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Mr.Abhijit Pal,
(Advocate)

For Respondents

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Mr.S.P. Mishra,
Senior Advocate For R.1
Mr.S.Chakravarthy
Advocate for R.3 and 4.

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 16.08.2022 : Date of Judgment:26.09.2022

D.Dash,J. The Appellant, by filing this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), has assailed the judgment and decree dated 03.02.1990 and 17.02.1990 respectively passed by the learned Additional District Judge, Balesore in S.J.A. No.19/17 of 1988/86-I.

By the same, the Appeal filed by the original Respondent (Plaintiff) under section 96 of the Code in assailing the judgment and decree dated 10.01.1986 and 30.01.1986 respectively passed by the learned Additional Subordinate Judge, Balesore in O.S. No.167/115 of 1982-80 has been allowed. The First Appellate Court has thereby set aside the order of dismissal of the suit filed by the Respondent (Plaintiff) arraigning the Appellant as the Defendant and in turn has decreed the suit holding the suit land described in Schedule-Ka of the plaint to be a part and parcel of the property of the original Respondent (Plaintiff) by declaring the registered gift deed dated 28.04.1975 executed by the original Respondent (Plaintiff) in favour of the Appellant (Defendant) as illegal and inoperative.

At this stage, it may be stated that the original Respondent having died, his legal representatives having come on record as the Respondent Nos.1(a) to 1(h) had filed an application to implead two persons, namely, Kamala Kanta Malik, Amarendra Kumar Hota and Saraswati Sishu Vidya Mandir represented by its Secretary as the purchasers of the properties during this lis from the Appellant (Defendant) providing the details of the properties purchased by them in the schedules given therein in further stating that those have been sold by the Appellant (Defendant) by registered sale deeds.

This Court, upon hearing the parties, by order dated 23.12.2020, has allowed the same and accordingly those purchasers have been arraigned as Respondents 2 to 4 and they have entered appearance in this Appeal.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Trial Court.

3. Plaintiff's Case:-

One day, finding the Defendant, then a four years male child, on the side of the village lane, being so abandoned, out of compassion and sympathy, the Plaintiff had brought him to his house and he with his wife took all his care and brought him up. The Plaintiff tried his best to educate the Defendant. However, the Defendant did not make much of progress in that line. When things stood thus, the Defendant, on attaining the age of 14-15 years, came out to help the Plaintiff in his cultivation operation and activities. He was also working as a field labour in the village at the time of need. In this way, while living with the Plaintiff, the Defendant reached at the age at which the rural youth normally go for marriage. The Plaintiff then sincerely wanted to get the Defendant married. Since the Plaintiff had no such landed property to his credit and his parentage being not known had no hope of inheriting/succeeding to the property therefrom, difficulties arose on the way of finding out a suitable bride for him as the questions come to be posed as to the future security and living. When the matter was proceeding in this way, one Babu Jena of Village-Kalyani came with a proposal to give his sister in marriage with the Defendant. But, subsequently, when he came to know that the Defendant had no land of his own, he wanted to withdraw.

The Plaintiff states that finding the above difficulty standing on the way of marriage of the Defendant, he executed a deed of gift in respect to Schedule-‘Ka’ property which is a part of his ancestral property in favour of the Defendant. This deed of gift is thus said to be a nominal one and only for the purpose as above. The deed was executed on 28.04.1975 and it was registered. The purpose of this gift is said only to settle the marriage of the Defendant. The gift is said to have not been

acted upon. The Defendant, after his marriage, lived with the Plaintiff in his house for some time and thereafter, due to dissention and dispute, he left the house of the Plaintiff. It is further stated that the deed of gift in original had been kept by the Plaintiff and when the Defendant left the house, he somehow managed to take away the said original deed of gift. He thereafter when attempted to transfer the land covered thereunder, the Plaintiff filed the suit for a declaration that the suit property is a part and parcel of his ancestral property and the so-called deed of gift dated 28.04.1975 is void, invalid and no such right, title and interest in respect of the suit land has been thereby been clothed upon the Defendant. He also prayed for confirmation of his possession over the suit land.

4. The Defendant, in his written statement, while traversing the plaint averments, has denied the fact that the Plaintiff is in possession of the suit land. It is further stated that the Plaintiff, after consulting his relations, had executed the deed of gift and pursuant to the same had delivered the possession of the suit land to the Defendant. The Defendant thus claims to be in possession of the suit property by paying the rent to the State. He asserted that the gift was not at all a nominal one. He has also stated that he had not brought the original registered gift deed from the custody of the Plaintiff. It is stated that the Defendant intended to construct a house over the land in Schedule-‘Ka’ of the plaint and as then it was found that there was no passage to go over that land, he requested the Plaintiff to give him some land for passage but that was denied. So, at the intervention of village gentries, the Plaintiff agreed to exchange that land in Schedule-‘Ka’, with another piece of land and give it to the Defendant for his occupation and enjoyment in substitution of the gifted land. However, some time thereafter the

Plaintiff played hide and seek even though the Defendant, accepting the arrangement, proceeded to the extent as required from him.

5. On the above rival pleadings, the Trial Court framed as many as six issues. Rightly proceeding first to answer issue nos.4 and 5 together, which are interlinked and mainly concern with the validity of the deed of gift and passing of title over the property covered thereunder; upon examination of evidence and their evaluation, the answer has been returned in upholding the said deed of gift and consequentially, the passing of the title over the property in question to the hands of the donee, the Defendant has been so held.

The suit thus being dismissed, the unsuccessful Plaintiff having carried the First Appeal has, however, been successful in getting all his prayers allowed and in obtaining a decree in the suit.

The First Appellate Court has passed the following order:-

“The judgment and decree passed by the learned court below stand hereby set aside. Original Suit No.167/115 of 1982-80-I be and the same is hereby decreed on contest against the defendant. The suit land, as described in schedule ‘Ka’ of the plaint, is hereby declared to be a part and parcel of the plaintiff’s property and the registered gift deed dated 28.04.1975 executed in respect thereof by the plaintiff in favour of the defendant is declared to be illegal and inoperative against the interest of the plaintiff. Plaintiff’s possession over the suit land is hereby confirmed. Under the circumstances of the case, parties to bear their own costs throughout.”

6. The present Appeal has been admitted on 12.09.1990 to answer the substantial questions of law as raised in Ground-B and C of the Memorandum of Appeal. Those read as under:-

“A. Whether gift of undivided interest of a Mitakshara joint family by the Karta or father of the family is void or not would depend on further case of the parties that such gift was with or without with the consent of other coparceners?; and

B. Whether the learned lower appellate court was correct in holding that Ext.A being void in law, there is no question of application of law of limitation of three years.”

Both the above questions concern with the validity of the deed of gift and thereby, the benefit accruing in favour of the donee, if any. This Court is, therefore, feels it apposite to proceed to examine as to whether the Plaintiff had the authority to execute the deed of gift and if by executing the said registered deed of gift (Ext.A) in respect of the properties covered thereunder, there being valid acceptance, as such the title over the properties, has passed on to the hands of the so-called donee, i.e, the Defendant.

7. Mr.Abhijit Pal, learned counsel for the Appellant submitted that here the First Appellate Court having not examined the very deed of gift (Ext.A) and the evidence concerning the execution of the said deed of gift as also to the dealing of the properties as well as the conduct of the parties as are emerging from evidence, has simply been swayed away by the proposition of law that the Plaintiff being the Karta of a joint undivided Hindu family governed by Mitakshara School of Hindu Law could not have gifted away the coparcenary property to the Defendant. He further submitted that the First Appellate Court having not examined as to whether the said deed of gift was with the consent of other coparceners, when has recorded the findings in favour of the Plaintiff in declaring the registered deed of gift void, the same is vulnerable. He also submitted that the principles of law as enunciated in the decisions referred to by the First Appellate Court in case of Dwarampudi

Nagaratanamba –V- Kunu Kurumaya and others; AIR 1968 SC 253 and China Sahuani and another –V- Rukuna Sahu and another; 1988 (I) OLR 309, have no applicability to the facts situation of the case at hand. He, therefore, submitted that here the First Appellate Court ought not to have held that the said registered deed of gift (Ext.A) as invalid in the eye of law. He thus submitted that by setting aside the order of dismissal of the suit filed by the Plaintiff as passed by the Trial Court, the First Appellate Court has erred both on facts and law.

8. Mr.S.Chakravarty, learned counsel for the Respondents 3 and 4, reiterating the above, contended that they having purchased the property from the Defendant, who is the owner/donee, who had got it by a valid gift, they have the right, title and interest over their respective purchased lands.

None appeared on behalf of the Respondent No.2 despite notice and opportunity in that regard.

9. Mr.S.P.Mishra, learned Senior Counsel for the Respondents (the legal representatives of original Respondent (Plaintiff) submitted all in favour of the decision rendered by the First Appellate Court. Inviting the attention of this Court to the relevant averments made in the plaint as well as the written statement, he submitted that with the obtained evidence and since the gift made by the Plaintiff was not with the consent of other coparceners, keeping in view Para-256 of the Mulla's Principles of Hindu Law and the decisions referred to; the First Appellate Court is right in ruling that the said deed of gift is void and having said that the suit has been rightly held to be maintainable. He, therefore, submitted that the First Appellate Court did commit no

mistake in decreeing the suit granting the reliefs as prayed for by the Plaintiff.

10. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below. I have also gone through the plaint and written statement. This Court has also extensively travelled through the evidence on record, both oral and documentary.

11. It has been stated in paragraph-4 of the plaint that when the Plaintiff being interested to perform the marriage of the Defendant and was in search of a suitable bride for him, one Babu Jena agreed to give his sister in marriage with the Defendant provided the Plaintiff gives some properties to the Defendant. Then the Plaintiff states that on 28.04.1975, he without the knowledge of his two sons executed a nominal deed of gift in favour of the Defendant in respect of Schedule-‘Ka’ property and got it registered.

The Defendant, while denying the fact that said gift was without the knowledge of the sons of the Plaintiff, has asserted in paragraph-5 of the written statement that the Plaintiff with the knowledge of his wife, sons, relations and neighbours and as advised by them, had executed the said registered deed of gift and delivered the possession of the said land to the Defendant.

12. Indisputedly, the parties are Hindus and governed by the Mitakshara School of Hindu Law. It has been stated by the Plaintiff in the plaint that the properties described in Schedule-‘Ka’ of the plaint, which is the gifted land and as such covered under the deed of gift dated 28.04.1975 (Ext.A) are the ancestral properties. This has remained uncontroverted from the side of the Defendant.

13. Plaintiff is the Karta of the family consisting of himself, his wife and sons who had not been arraigned as parties to the suit. However, they have come on record during pendency of this second appeal and now support the judgment and decree passed by the First Appellate Court.

The Plaintiff, being the so-called donor in the present suit, has impeached the gift. The First Appellate Court has held the gift to be void and invalid for the reason that it was not with the consent of the coparceners of the family, i.e., the sons when admittedly the property is the ancestral joint family property. So, the first question arises is whether the gift made by the Plaintiff to the Defendant under the facts and circumstances is invalid for being so declared as void. The next one also arises as to whether the alienation of the joint family property in favour of the Defendant by way of gift by the Plaintiff is voidable only at the instance of the non-consenting sons of the Plaintiff, who are coparceners whose consent had not been obtained prior to said alienation as is said by the Plaintiff or it can also be so avoided by the Plaintiff-Donor too.

14. It is trite law that Karta/Manager of a joint family may alienate joint family property in three situations, namely, (i) legal necessity, or (ii) benefit of the estate or (iii) with the consent of all the coparceners of the family. In our given case, the gift of the portion of the joint family property under Ext.A was not with the consent of all the coparceners as has been concurrently held by the Courts below.

15. At this place, before proceeding further, it would be apt to take a look at the principles of Hindu Law on the subject. We may refer to the relevant Paras of Mulla Hindu Law by Sir Dinshaw Fardunji Mulla (24th

Edition). Coming to Para 256 which has been relied upon by learned Senior Counsel for the Respondent (Plaintiff) reads:-

“256. Gift of undivided interest:-

According to *Mitakshara* law as applied in all the states, no coparcener can dispose of his undivided interest in coparcenary property by gift. Such transaction being void altogether, there is no estoppel or other kind of personal bar which precludes the donor from asserting his right to recover the transferred property. He may, however, make a gift of his interest with the consent of other coparceners.”

The above deals with disposition of a coparcener's undivided interest in the coparcenary property by gift. We are not concerned with the gift of Plaintiff's (Donor) undivided interest in the coparcenary property. Here, the gift is in respect of specific property which is a part of the ancestral joint family property.

The Para-254 of Mulla Hindu Law by Sir Dinshaw Fardunji Mulla (24th Edition) reads as under:-

“Alienation by father:

A Hindu father as such has special powers of alienating coparcenary property, which no other coparcener has. In the exercise of these powers he may:

- (1) make a gift of ancestral movable property to the extent mentioned in Para 223, and even of ancestral immovable property to the extent mentioned in Para 224;
- (2) sell or mortgage ancestral property, whether movable or immovable, including the interest of his sons, grandsons and great-grandsons therein, for the payment of his own debt, provided the debt was an antecedent debt, and was not incurred for immoral or illegal purpose (Para 294)

Except as aforesaid, a father has no greater power over coparcenary property than any other manager, i.e., he cannot

coparcenary property except for legal necessity or for the benefit of the family.”

Now Para 224 of Mulla Hindu Law by Sir Dinshaw Fardunji Mulla (24th Edition) says:-

“224. Gift by father or other managing member of ancestral immovable property within reasonable limits

A Hindu father or other managing member has the power to make a gift within reasonable limits of ancestral immovable property for ‘pious purposes’. However, the alienation must be by an act *inter vivos*, and not by will.

16. In Guramma Vrs. Mallappa; AIR 1964 SC 5, upon examination of the whole question, it has been held that it was competent for a father to make a gift of immovable property to a daughter, if the gift is of a reasonable extent having regard to the properties held by the family. The emphasis here is on gift of a reasonable extent. If, on the facts, it is found that the gift was not within the reasonable limit, such a gift would not be upheld.

17. In case of Ammathayee @ Perumalakkal & another –v- Kumaresan @ Balakrishnan & Others; AIR 1967 SC 569, the Hon’ble Apex Court has summarized the Hindu Law on the question of gifts of ancestral properties in the following terms:-

“Hindu law on the question of gifts of ancestral property is well settled. So far as moveable ancestral property is concerned, a gift out of affection may be made to a wife, to a daughter and even to a son, provided the gift is within reasonable limits. A gift for example of the whole or almost the whole of the ancestral moveable property cannot be upheld as a gift through affection. (See Mulla’s Hindu Law, 13th Edn., p.252, para 225). But so far as immovable ancestral property is concerned, the power of gift is much more circumscribed than in the case of moveable ancestral property. A Hindu father or any other managing member has

power to make a gift of ancestral immovable property within reasonable limits for pious purposes; (see Mulla's Hindu Law, 13th Edn., para 226, p. 252). Now what is generally understood by pious purposes is gift for charitable and/or religious purposes. But this Court has extended the meaning of pious purposes to cases where a Hindu father makes a gift within reasonable limits of immovable ancestral property to his daughter in fulfillment of an ante-nuptial promise made on the occasion of the settlement of the terms of her marriage, and the same can also be done by the mother in case the father is dead. (See Kamala Devi v. Bachu Lal Gupta, 1957 SCR (AIR 1957 SC 434).

18. In Kamla Devi Vrs. Bechulal Gupta; AIR 1957 SC 434; the Apex Court considered the question of the extended meaning given in numerous decisions to be expression 'pious purpose'.

19. In fact, in case of Tara Sahuani V Raghunath; AIR 1963 Orissa 59, our High Court has held that father can make a gift of a small portion of ancestral immovable property to his daughter at or after her marriage, if the extent is reasonable and particularly if she is in poor circumstances.

20. In case of Thimmaiah & others –V- Ningamma & another; (2000) 7 SCC 409, it has been said:-

“The Karta is competent or has the power to dispose of coparcenary property only if (a) the disposition is of a reasonable portion of the coparcenary property and (b) the disposition is for a recognized pious purpose. The High Court has not come to any conclusion as to whether the gift of items 3 to 6 by Hiri to the respondent No. 2 was within reasonable limits or in fulfillment of an antenuptial promise made on the occasion of the settlement of the terms of the respondent No.2s marriage. It must be taken, therefore, that the findings of the lower Courts on both counts were accepted. That being so, Hiri could not have donated items 3 to 6 to respondent No. 2 and the deed of gift dated 9.6.71 was impermissible under

Hindu Law. The question is - could such an alienation be made with the consent of the appellant No. 1? It is arguable that there is a distinction between a void disposition and a voidable one, and that the gift in favour of the respondent No. 2 being void cannot be made even with the consent of the appellant No.1. However, it is not necessary to decide the issue in the view that we have taken in this case. This Court in *Guramma V. Mallappa* AIR 1964 SC 510 has envisaged three situations of voidable transactions. It was held that a managing member may alienate joint family property in three situations namely: (i) legal necessity, or (ii) benefit of the estate or (iii) with the consent of all the coparceners of the family. Where the alienation is not with the consent of all the coparceners, it is voidable at the instance of the coparcener whose consent has not been obtained. Needless to say where there is only a sole surviving coparcener and no other member of the family who has a joint interest in the property, there are no fetters on the alienation of the property.”

21. In our case at hand, if we trace the factual background from the very time of Defendant's entry to the Plaintiff's house, it is seen that the Plaintiff, out of compassion and sympathy, showing his great gesture as a pious personality of extra-ordinary quality, finding that abandoned male child, the Defendant, on the side of the road, instead of putting him in a place of shelter or elsewhere, had brought him to his own house where not only he, but his wife and all other members of the family joined together on the march in that direction in taking all care of the Defendant and the Defendant remained as a foster son to the Plaintiff. The Plaintiff, in order to discharge his moral obligation as such foster father, finally got him married by taking part therein as the Karta to which all other family members too had their full support and acceptance. Thereafter, the Plaintiff and his family members have allowed the married couple to continue in the said house as before as the members of the family. They having acted in such manner, the gift in question, in my view is certainly to be traced to a charitable and/or

religious purpose, if we keep in mind what has been written in our Hindu Scriptures and preached by great Hindu Sages any many Greatmen that that “SERVICE TO MANKIND IS SERVICE TO GOD”.

The gift at hand thus cannot be said to have been made out of love and affection which does not come within the scope of the term “Pious Purpose”. The Defendant, although was a stranger to the family at the time of his birth, came to the family not at his desire or request nor with permission, but by voluntary act of the Plaintiff and under the situation, he lived, married and continued there for some time and when the Plaintiff, being the Karta of the family and as the representative of the said family, performed his marriage in order to see that he is married, the property had been gifted. When the Plaintiff was facing the difficulty to arrange a bride for the Defendant as many a time the question as to the future security of the Defendant arose as he had then no such sufficient income of his own and was almost like a dependant of the Plaintiff and his parentage was not known, there was also no hope of inheriting/succeeding to any property from that source so as to inspire confidence upon the bride side to satisfy themselves that the couple would be satisfied that they would somehow have a smooth sail in future with the sense of security, the deed of gift has been executed by him. The Plaintiff has clearly stated that he wanted that the Defendant should get married and that he performed as the guardian to see that the Defendant had a happy married life. Even after the marriage, the Defendant with his wife stayed for some time in the house of the Plaintiff with the other members of the family as the members of the said family. Thus it is also seen to be a moral obligation of the Plaintiff, which he discharged by making such gift. Said gift, if we do not say to

be for Pious Purpose, it would, in my view, be causing vidence upon the expression “Pious Purpose”. Here, it is not a case of gift by the Plaintiff as the Karta of the family to the son or daughter-in-law or grandson or grand daughter, but to the Defendant about whose positioning and setting in the family has already been stated in detail and needs no repetition.

22. As has been said that it being a duty of the father or his representative to marry the daughter, any gift to the daughter in respect of reasonable portion of the joint family property being for pious purpose is valid when the daughter is no more remaining as a living member in the family being not for love and affection which is not so in case of a daughter-in-law becoming a member of the family of her father-in-law after marriage who is having her entitlement after her marriage in her own right to the ancestral immovable property in certain circumstances, I also find all the reasons that the gift of joint family immovable property made under Ext.A to this Defendant should also be treated at par with that as are held valid in the case of a daughter being done under the circumstances as noted above provided its extent is reasonable.

23. The decision cited by the learned Senior Counsel for the Respondent (Plaintiff) so as to support the conclusion arrived at by the First Appellate Court in case of China Sahuani and after her, Kishore Chandra Sahu & another -V- Rukuna Sahu & Another; 1988 (I) OLR 309 being carefully gone through is found to have been rendered totally on different factual settings of that case and the challenges there were also on so many counts. The facts and circumstance of the other case cited, i.e., “Dwarampudi Nagaratnamba -V- Kunuku Ramayya &

Others; AIR 1968 SC 253” are quite distinguishable from our case as also the considerations that we take up. Thus, the same do not come to the aid and assistance of the case of the Plaintiff.

24. Now, let us also proceed to the other point, which automatically arise for consideration and it appears that the Courts below perhaps not being so contended before them have not touched upon the same. The question here is whether the First Appellate Court, is right in holding straightway that since the immovable property being ancestral in nature, the Plaintiff had no authority/power to make a gift of the portion of the ancestral property in favour of the Defendant.

At this juncture, adverting to the earlier discussion made as regards reasonableness, the object is to see that the non-consenting coparceners are not prejudiced and face great deprivation. It may be kept in mind that the Plaintiff has not stated anywhere in the plaint or in his evidence as to what was the total extent of ancestral joint family properties and that has not been placed on the table of the Court in order to even remotely infer that the extent of property covered under the gift is not of a reasonable portion of the total holding of the family but is quite unreasonable in its extent, which in otherway to take care of the plight of the non-consenting coparceners and the hardship that they have faced by any such serious deprivation, if any, in judging the impact. The Plaintiff having neither so pleaded as required nor proved; this gift also cannot be said to be not of reasonable portion of the total holding of the ancestral joint family.

25. Coming to another question, peculiar to the present case is that here Plaintiff being the donor has questioned the gift made by him and it is in a suit filed against the donee (the Defendant) without joining the

other coparceners. Those coparceners had come to be joined as parties only at the stage of this Second Appeal in view of the death of the Plaintiff (Respondent). They are now supporting the case of the original Plaintiff; in other words now they say that they had no consent for the said gift made by their father, the Plaintiff.

It is settled law that where such gift is not made with the consent of all the coparceners, it is voidable at the instance of coparceners whose consent has not been obtained but it is not void abinitio as it is in case of gift of an undivided interest in the coparcenary property. Therefore, for the present even keeping aside the conclusion that I have already recorded favouring the gift in question as saved, this gift here was voidable at the instance of the coparceners, who are now the substituted Plaintiffs, but not at the instance of the original Plaintiff. The suit as framed for the reliefs claimed thus is not entertainable.

The registered deed of gift executed by the original Plaintiff in favour of the Defendant is dated 28.04.1975. The present Second Appeal has been filed on 18.04.1990. The legal representatives of the Plaintiff have come on record in the Second Appeal by order dated 03.04.1996. None of them have as yet filed any suit for declaration that the gift in question made by the original Plaintiff is void. Under the circumstance, now even the challenge of the gift from their side in this Second Appeal is not entertainable in law and is barred.

26. In view of the aforesaid, without least hesitation, this Court, dealing the case at hand, also holds that said gift by the Plaintiff could have only been challenged by the non-consenting coparceners in asserting that they had no consent, the same being voidable at their instance. By the time, when these substituted Plaintiffs have come on record, there has already been lapse of more than two decades since the

gift, the challenge even by them as the suitors to the said gift here is not entertainable being wholly barred by limitation when also a fresh suit, at their instance, is barred. So, for this reason also, the suit is liable to be dismissed. The Courts below have clearly lost sight of all these aspects. The First Appellate Court, without going deep into the facts and circumstances, simply on the basis of the said decisions, as have been referred to, has decreed the suit.

27. For the discussion and the reasons stated above, the substantial questions of law being accordingly answered, I accept the Appeal and set aside the judgment and decree passed by the First Appellate Court. Consequently, the judgment and decree passed by the Trial Court are restored although for different reasons and the suit filed by the Plaintiff stands dismissed.

28. In the result, the Appeal is allowed. There shall, however, be no order as to cost.

**(D. Dash),
Judge.**

Basu