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

Date of decision: 23rd JANUARY, 2025

IN THE MATTER OF:

\+ **CS(OS) 3361/2015**

BIMAL ROY GAMBHIR .....Plaintiff

Through: Mr. Sunil Kumar Agarwal and Ms. Neelam Agarwal, Advocates.

versus

DILIP GAMBHIR & OTHERS .....Defendants

Through: Mr. Mohit Gupta, Ms. Anisha Gupta, Mr. Vishal Saxena, Ms. Seema Ali Fatima and Mr. Dhruv Mehta, Advocates.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Plaintiff has approached this Court with the following prayers:-

> *"(i) Pass a Decree of Declaration in favour of the plaintiff and against the defendants thereby declaring absolutely false, forged and fabricated Gift Deed dated 16.01.1987 and registered at Sub-Registrar, Delhi on 16.01.1987 as document no. 529 entered in Additional Book No. 01, Volume No. 5071 on pages 168 to 171, Conveyance Deed dated 17.01.2002 from DDA and registered at Sub-Registrar-VII, New Delhi on 18.01.2002 as document no. 19896 entered in Additional Book No. 01, Volume No. 704 on pages 98 to 99, Mutations by Delhi Development Authority, Municipal Corporation of Delhi, Delhi Jal Board and Electricity Department of the suit property of Plot No. 31, Block B-1, in the layout plan of The Mianwali District Cooperative House Building Society Limited measuring 322.95 Sq. Yards situated at Village*

Nangloi Jat & Gurhi Piraa, Delhi in favour of the defendant no. 1 as null and void and of no effects whatsoever.

(ii) Pass a preliminary decree of Partition of 1/4th (One-fourth) share in the suit property of Plot No. 31, Block B-1, in the layout plan of The Mianwali District Cooperative House Building Society Limited measuring 322.95 Sq. Yards situated at Village Nangloi Jat & Gurhi Piraa, Delhi in favour of the plaintiff and against the defendants, and

Grant a final decree of Partition in favour of the Plaintiff and against the Defendants thereby partitioning the suit properties of Plot No. 31, Block B-1, in the layout plan of The Mianwali District Cooperative House Building Society Limited measuring 322.95 Sq. Yards situated at Village Nangloi Jat & Gurhi Piraa, Delhi by metes and bounds into four equal shares and awarding the separate actual physical possession of 1/4th (one-fourth) of the suit property to the plaintiff and allowing the plaintiff to enjoy his complete 1/4th (one-fourth) share in the suit property.

If the partition of the suit property by metes and bounds is not feasible, then the suit property may ordered to be sold by public auction through Court and proceeds thereof be divided between the parties to the suit in accordance with their share and entitlement.

(iii) Award the costs of this suit to the plaintiff as against the defendants jointly and severally.

(iv) Grant any other suitable relief, which this Hon'ble Court may deem just and proper in the circumstances of the case in favour of the plaintiff and against the Defendants."

2. The plaint has been filed by the Plaintiff through his brother-in-law i.e., the brother of the Plaintiff's wife, who is the Power of Attorney of the Plaintiff. It is stated in the plaint that the Plaintiff is the son of late Rikhi Kesh, R/o B1/31 Mianwali Nagar, New Delhi. It is stated that Defendant No.1 is the brother of the Plaintiff. Defendant No.2 is the mother, i.e., wife of late Rikhi Kesh. Defendant No.3 is the sister of the Plaintiff.

3. It is stated that the father of the Plaintiff, i.e., Rikhi Kesh passed away on 15.09.2014 and as per the averments made in the plaint, the Rikhi Kesh died intestate. It is stated that the Plaintiff and the Defendants are the only legal heirs of late Rikhi Kesh.

4. It is the case of the Plaintiff that at the time of his death, late Rikhi Kesh was the absolute owner of the plot bearing Plot No.31, Block B-1, Mianwali Nagar, New Delhi in the layout plan of The Mianwali District Cooperative House Building Society Limited. The plot measures about 322.95sq. yds. and is situated at Village Nangloi Jat & Gurhi Piraa, Delhi. It is stated that the Perpetual Sub-Lease was registered on 21.05.1981 in favour of late Rikhi Kesh before the Sub-Registrar, Delhi *vide* Registration No.2474 in Additional Book No. I, Volume No. 3792 on Page No.45 to 53.

5. It is stated that upon the death of Rikhi Kesh, the suit property devolved on his legal heirs, i.e., the Plaintiff and the Defendants and each of the legal heirs is entitled to the 1/4th share in the property in question.

6. It is stated that the Plaintiff demanded that the suit property be partitioned. It is stated that since the request of the Plaintiff to partition the property was not accepted, the Plaintiff got issued a legal notice dated 27.05.2015 to Defendants No.1 to 3 calling upon Defendants No.1 to 3 to

partition the suit property by metes and bounds and deliver the vacant possession of the 1/4th share in the suit property.

7. It is stated that a reply dated 06.06.2015 was received from the Counsel for the Defendants stating that late Rikhi Kesh had executed a Gift Deed in the year 1987 in favour of Defendant No.1. It is alleged in the plaint that the gift deed is forged and fabricated. It is stated that on the basis of the false and fabricated gift deed, Defendant No.1 got the property mutated in his name by misleading the DDA and has illegally gotten a conveyance deed in his name. It is stated that on the basis of the mutation and the conveyance deed which has been procured by Defendant No.1 illegally, he has also gotten the electricity and water connections from the Delhi Jal Board and the electricity department in his name. It is stated that the gift deed is forged and fabricated as there was no reason for late Rikhi Kesh to exclude all other Defendants and execute the gift deed only in the name of Defendant No.1.

8. It is stated that late Rikhi Kesh got all his children married between the years 1983-1985. It is stated in the plaint that the Plaintiff was struggling with his business therefore he went abroad for employment. It is stated that Defendant No.1 got employment in Engineers India Limited in the year 1987. It is stated that the Plaintiff and the Defendants had a very cordial relationship and the Plaintiff also had a cordial relationship with his late father. It is stated that whenever the Plaintiff used to visit India, he visited his father, uncle and relatives and he was never told about the fact that the property had already been gifted to Defendant No.1. It is stated that neither late Rikhi Kesh nor Defendant No.1 obtained any No Objection Certificate or relinquishment deed etc. from the Plaintiff or Defendants No.2 and 3.

9. It is stated that late Rikhi Kesh was in possession of the suit property

as the absolute owner till his death on 15.09.2014 and thereafter the Plaintiff and Defendant No.1 and 3 are in joint constructive possession. On such averments, the Plaintiff has approached this Court with the prayers seeking declaration that the Gift Deed dated 16.01.1987 and registered at Sub-Registrar, Delhi on 16.01.1987 as document no. 529 entered in Additional Book No. 01, Volume No. 5071 on pages 168 to 171, Conveyance Deed dated 17.01.2002 from DDA and registered at Sub-Registrar-VII, New Delhi on 18.01.2002 as document no. 19896 entered in Additional Book No. 01, Volume No. 704 on pages 98 to 99, Mutations by Delhi Development Authority, Municipal Corporation of Delhi, Delhi Jal Board and Electricity Department of the suit property of Plot No. 31, Block B-1, in the layout plan of The Mianwali District Cooperative House Building Society Limited measuring 322.95 Sq. Yards situated at Village Nangloi Jat & Gurhi Piraa, Delhi in favour of the defendant no. 1 as null and void and absolutely false, forged and fabricated and pass a preliminary decree of partition of 1/4th share in the suit property in favour of the Plaintiff.

10. Defendant No.1 passed away on 24.06.2016. The Plaintiff filed I.A. No. 11561/2016 for bringing on record the LRs of Defendant No.1 which was allowed *vide* Order dated 19.09.2016. The wife and children of Defendant No.1 have been arrayed as the Legal Representatives. It is stated that due to some errors in the plaint, an amended plaint was filed on 19.09.2017 but there was no change in the basic averments in the plaint or the prayers made.

11. It is stated that the Plaintiff had knowledge of the registration of the Gift Deed. It is stated that Defendant No.2, i.e., widow of late Rikhi Kesh, signed the Gift Deed as a witness and consented to the execution of the Gift

Deed. It is stated that the DDA *vide* letter dated 19.03.1987 confirmed that on the basis of Gift Deed dated 16.01.1987, the suit property has been mutated and transferred in favour of Defendant No.1 in the records of the DDA. The DDA *vide* letter dated 19.03.1987 requested the Mianwali District Cooperative House Building Society Limited to make necessary changes in its records and on the basis of letter dated 19.03.1987 the names were changed in the records of the society also.

12. An amended written statement was filed on behalf of the LRs of Defendant No.1 and Defendant No.2. In the amended written statement, it has been stated that the Delhi Administration (Land & Building Department), Delhi executed a Perpetual Sub-Lease Deed dated 21.04.1981 in favour of late Shri Rikhi Kesh in respect of land measuring 322.95 sq. yds. bearing Plot No. 31, Block No. B-1 situated at Mianwali District Cooperative House Building Society Limited, New Qutub Road and presently known as Mianwali Nagar, Peera Garhi, Delhi-110087. The Perpetual Sub-Lease Deed was registered on 21.05.1981 before the Sub-Registrar, Delhi *vide* Registration No. 2474 in Additional Book No. I, Volume No.3792 on Page No. 45 to 53. The amended written statement also states that after obtaining necessary permission from the concerned authorities, late Rikhi Kesh executed a Gift Deed on 16.01.1987 in favour of Defendant No.1 and the Gift Deed was duly registered with the Sub-Registrar, Delhi *vide* Registration No. 529 in Additional Book No. I, Volume No. 5071 on Page No. 168 to 171.

13. It is stated that subsequently, Defendant No.1 has converted the property from leasehold to freehold in his name and a Conveyance Deed dated 17.01.2002 has been executed in favour of Defendant No.1 and

Defendant No.1 has gotten the building plans approved and raised construction on the said plots. It is stated that after obtaining necessary permission from the concerned authorities, Defendant No.1 got electricity and water connections issued in his name. It is stated that Defendant No.1 being the owner of the suit property, has been assessed for payment of property tax in the records of the MCD and the property tax is being paid by Defendant No.1 during his lifetime and now by his legal heirs.

14. It is stated that since Defendant No.1 is the absolute and lawful owner in exclusive possession of the property in question and is residing along with Defendant No.2, the Plaintiff does not have any right, title or interest in the suit property and he does not have any claim to the same. It is pertinent to mention here that with Defendant No.2, i.e., mother of the Plaintiff and Defendant No.1, the amended written statement has been filed on behalf of the LRs of Defendant No.1.

15. Written statement was filed by Defendant No.3. Defendant No.3 accepted that she had the knowledge of the gift deed executed in favour of Defendant No.1. In the written statement, Defendant No.3 has stated that Defendant No.1 became the absolute owner of the suit property. The written statement on behalf of Defendant No.3 also acknowledges the fact regarding the transfer of the lease deed in favour of Defendant No.1 on the basis of the gift deed and it also acknowledges that it was Defendant No.1 who has converted the suit property from leasehold to freehold and a Conveyance Deed dated 17.01.2002 was issued by the DDA in favour of Defendant No.1. Written statement of Defendant No.3 also states that after getting building plan sanctioned from the concerned authorities construction on the property was raised. The written statement of Defendant No.3 categorically

states that late Rikhi Kesh has not executed any Will during his lifetime for the suit property.

16. The Plaintiff in order to prove his case filed;

i. The registered Sub-Lease Deed dated 30.01.1985 in favour of late Rikhi Kesh, a letter dated 02.07.1994 from the Assessment & Collection Department, MCD by which late Rikhi Kesh Gambhir was asked to attend the office of Assessment & Collection Department, MCD to substantiate that the property continue to be in the his name.

ii. A legal notice dated 27.05.2015 was issued by the Plaintiff to the Defendants.

iii. The reply to the said legal notice was given by Defendants No.1 and 2. The Power of Attorney on behalf of the Plaintiff is in the name of Dharam Sarup Khanduja to file the plaint.

17. The Defendants have filed;

i. The copy of the Perpetual Sub-Lease Deed dated 21.04.1981,

ii. The copy of the gift deed dated 16.01.1987,

iii. A copy of the letter dated 19.03.1987 issued by the DDA to the Hony. Secretary, Mianwali District Cooperative House Building Society Limited, copies of the which were marked to late Rikhi Kesh and Defendant No.1 herein. The said letter dated 19.03.1987 states that changes be made in the records of the Mianwali District Cooperative House Building Society Limited in view of the fact that the gift deed executed on 16.01.1987 by late Rikhi Kesh in favour of Defendant No.1.

iv. Conveyance Deed dated 17.01.2002 executed by the DDA in favour of Defendant No.1 converting the property from leasehold to freehold,

v. Sanction letter dated 20.03.1987 granting sanction to Defendant No.1 for carrying out the construction in the said property, Form-C dated 12.06.1987 issued by the DDA for inspection of underground/drainage sanitary and other pipeline before covering the line.

vi. Copy of the Appendix-D for final inspection of sanitary/water supply work, house tax receipts, water bills, electricity bills in the name of Defendant No.1 have also been filed by the Defendants.

18. On the basis of the plaint, written statement and the documents filed by both sides, the following issues were framed on 22.11.2018:-

> *"1. Whether the plaintiff is entitled to decree of declaration as sought in prayer (i) of the plaint? OPP*
>
> *2. Whether the plaintiff is entitled to decree of partition of 1/4th share in the property bearing No.B-1/31, Mianwali Nagar, New Delhi-87, as prayed for? OPP*
>
> *3. Whether the suit is within limitation? OPP*
>
> *4. Whether the defendant no.1 is the absolute and lawful owner in exclusive possession of the suit property residing along with defendant no.2? OPD 1 & 2"*

19. Evidence has been led by the parties. From the side of the Plaintiff, the Power of Attorney holder Dharam Sarup Khanduja was examined as PW-1. The wife of Defendant No.1, Ms.Madhubala Gambhir, who was impleaded as the LR of Defendant No.1 has examined herself as DW-1.

DW2-Ms. Priya Yadav, Dy. Director (CS), Delhi Development Authority, DW4- Mr. Sunil Dang, R/o A-7/31, Mianwali Nagar, New Delhi-110087, DW5- Mr. Mukesh Kumar, BSES Rajdhani Power Limited, BSES Bhawan, Nehru Place, New Delhi, DW6- Mr. Shankar Singh from the Office of Sub Registrar, INA, Vikas Sadan, DW7- Sh. Sanjeev Kumar, Engineer from the BSES, DW8- Mr. Sudhir Kumar, Junior Secretariat Assistance Deptt. Assessor and Collector, Zone Rohini, Sub Zonal Office Rohini, DW9- Mr. Naveen Gandas, Record Keeper, office at Department of Delhi Archives, 18-A Satsang Vihar Marg, Special Institutional Area, New Delhi have been examined.

20. It is the case of the Plaintiff that late Rikhi Kesh has died intestate leaving behind his wife, i.e., Defendant No.2, Plaintiff, Defendant No.1, who has also passed away and is being represented through his LRs and Defendant No.3, who is the sister of the Plaintiff. It is stated that there existed a cordial relationship between family members and there was no occasion for late Rikhi Kesh to execute a gift deed. It is stated that the gift deed is completely fabricated. It is stated that the Defendants have not proved the gift deed in accordance with law inasmuch as the attesting witnesses to the gift deed have not been examined. It is stated that unless the attesting witnesses are examined and unless the gift deed is not proved in accordance with law, the suit property is available for partition.

21. *Per contra*, learned Counsel for the Defendants relies on all the documents stating that late Rikhi Kesh has executed the gift deed. In fact, it was acknowledged by Defendant No.2, who is the wife of late Rikhi Kesh, is also a signatory to the gift deed and Defendant No.3, who is the sister of the Plaintiff has also acknowledged the same. It is stated that on the basis of

the gift deed, the DDA transferred the lease in favour of Defendant No.1. Letters were sent by the DDA to the Mianwali District Cooperative House Building Society Limited for consequent change in the records of the society. Learned Counsel for the Defendants places reliance on the Conveyance Deed dated 17.01.2002 by which the property was converted from leasehold to freehold. He states that permission for construction was taken in the name of Defendant No.1 and therefore all the documents prove that Defendant No.1 had become absolute owner of the property and the property was not available for partition on the death of his father, i.e., late Rikhi Kesh.

22. Heard learned Counsel for the parties and perused the material on record.

23. The Plaintiff has not entered into the witness box. A reading of the deposition of PW-1, who is the Power of Attorney of Plaintiff, shows that he had no idea of any of the documents. This Court is not going into the question as to whether the Power of Attorney is valid or not since no issue has been framed on that regard.

24. The witness of the Plaintiff states that he got to know about the dispute in the property only after the death of late Rikhi Kesh in the year 2014. The witness states that he does not have any document for the property in dispute which had been filed by Defendant No.1. The witness has stated that he does not know as to whether the Plaintiff has discussed his case with his Advocate or not. It is not stated as to whether the witness himself has discussed the case with the Advocate of the Plaintiff or not. Material on record therefore reveals that the witness is not aware of the case. He states that he does not remember where the Plaintiff lived in the year

1987. The Plaintiff would have been the best person to depose whether he knew about the execution of the gift deed. The Power of Attorney has not been able to lead any evidence on this and the onus was on the Plaintiff to show that the gift deed has been executed by way of fraud. No evidence has been led by the Plaintiff to show that everything was cordial between him and his father late Rikhi Kesh. No material has been shown as to whether the gift deed is surrounded by any suspicious circumstance.

25. Defendant No.1 passed away during the pendency of the present suit. Ms. Madhubala Gambhir, i.e., the wife of Defendant No.1 and sister-in-law of the Plaintiff, has examined herself as DW-1. She states that Defendant No.1 was living in the society along with late Rikhi Kesh. She has also stated that the relationship between the Plaintiff and late Rikhi Kesh was not very cordial. This deposition has gone virtually uncontroverted.

26. The Defendants have examined Ms. Priya Yadav, the Dy. Director (CS), Delhi Development Authority as DW-2. She has brought the following:-

(i) Sanction letter by DDA in respect of the suit property in favour of Dilip Kumar Gambhir,

(ii) Gift deed permission letter dated 19.03.1987 issued by the Deputy Director (CS),

(iii) Conveyance deed dated 17.01.2002 registered with the Sub-Registrar-VII vide Registration No. 19896 in Additional Book No.I, Vol.704, on Page No.98-99 on18.01.2002

(iv) Form-C dated 12.06.1987

(v) Appendix-D on Form-D dated 21.03.1998

The evidence of DW-2 shows that the gift deed has been implemented. The copy of the sanction letter had been given to late Rikhi Kesh.

27. Similarly, Mr. Sunil Dang, Resident of A-7/31, Mianwali Nagar, New Delhi-110087 has been examined as DW-4. DW-4 has brought complete records/files pertaining to property No.B-1/31, Mianwali Nagar, New Delhi-110087 and has got the list of members of the Society wherein Sh. Dilip Kumar Gambhir is registered as the member of the society bearing Membership No.524marked as Mark-A, Mark-B and Mark-C, respectively.

28. Mr. Mukesh Kumar, from BSES Rajdhani Power Limited, BSES Bhawan, Nehru Place, New Delhi has been examined as DW-5. He has brought copy of the application moved for obtaining electricity connection along with attached documents which are collectively marked as Mark-X (Colly) and copy of bill having due date of 15.07.2022 which is marked as Mark-Y and copy of accounts statement which is marked as Mark-Z.

29. Mr. Shankar Singh, Office of Sub Registrar, INA, Vikas Sadan has been examined as DW-6. He has brought the original Conveyance Deed dated 17.01.2002 in favour of Sh. Dilip Kumar Gambhir, registered with Sub-Registrar-VII, New Delhi vide registration No. 19896,in Additional Book No.I, Vol.704, on page no.98-99 on 18.01.2002.

30. Sh. Sanjeev Kumar, Engineer from the BSES was examined as DW-7. He brought a certified copy of application moved for obtaining electricity connection along with attached documents. They are exhibited as Exhibit DW-7/A. He has also brought the bill dated 31.10.2022 of CA No. 102505838 of the property B-1/31, Mianwali Nagar, Paschim Vihar, New Delhi-110041, and the same is exhibited as Exhibit DW-7/B.

31. Mr. Sudhir Kumar, Junior Secretariat Assistance Deptt. Assessor And Collector, Zone Rohini, Sub Zonal Office Rohini, was examined as DW-8, who has brought:-

(i) Certified copy DNC Register of the property bearing No. B-1/31,Mianwali Nagar, Paschim Vihar, New Delhi-110041

(ii) Certified copy of the receipt dated 31.01.1996 of payment of house tax by Sh. Dilip Kumar Gambhir of Property No. B-1/31, Mianwali Nagar, Paschim Vihar, New Delhi-110041.

(iii) Certified copy of the receipt dated 29.06.2007 of payment of house tax by Sh. Dilip Kumar Gambhir of Property No. B-1/31, Mianwali Nagar, Paschim Vihar, New Delhi-110041.

(iv) Certified copy of the receipt dt. 30.06.2011 of payment of house tax by Sh. Dilip Kumar Gambhir of Property No. B-1/31, Mianwali Nagar, Paschim Vihar, New Delhi-110041 for the year 2011 - 2012.

(v) Certified copy of the receipt of Computer Generated tax payment details showing payment of house tax by Ms. Madhu Bala Gambhir of Property No. B-1/31, Mianwali Nagar, Paschim Vihar, New Delhi-110041, for the year 2017-18, 2018-19 & 2019-2020.

(vi) Certified copy of the receipt dated 05.07.2021 of payment of house tax by Ms. Madhu Bala Gambhir of Property No. B-1/31, Mianwali Nagar, Paschim Vihar, New Delhi-110041, for the year 2021 - 2022.

(vii) Certified copy of the PTR (Property Tax Return) for F/y 2019-2020of Property No. B-1/31, Mianwali Nagar, Paschim Vihar, New Delhi-110041.

32. Mr. Naveen Gandas, Record Keeper, office at Department of Delhi Archives, 18-A Satsang Vihar Marg, Special Institutional Area, New Delhi, was examined as DW-9. He has brought the original gift deed dated16.01.1987, registered as Document No.529 in Book No.l, Vol. 5071 on pages 168 to 171, copy of which has already been exhibited as Exhibit PW-1/D2.

33. The gift deed is executed by late Rikhi Kesh in favour of Defendant No.1 and the same is a registered gift deed. The gift deed shows that it has been signed by two witnesses. It has been endorsed by the Sub-Registrar wherein it has been stated that the document has been explained to the parties who have understood its contents. DW-5 has produced attached certified copies of documents pertaining to ownership of Defendant No.1 of the property in question. Letters issued by the DDA to the Hony. Secretary communicating the mutation of the plot in the name of Defendant No.1 has been produced. DW-8, who is the Junior Secretariat Assistance Deptt. Assessor and Collector, Zone Rohini, Sub Zonal Office Rohini has deposed to the effect that the property stands mutated in favour of Defendant No.1. DW-7/C is the sanction letter under Section 12 of the DDA Act in favour of Defendant No.1 for sanction for the construction of the suit property.

34. On the basis of the communication from the DDA, the record of the society has been changed. DW-9 is the officer from the Department of Delhi Archives who brought the original gift deed dated 16.01.1987 and he has

deposed that PW-1/D2 is the exact copy of the gift deed. The gift deed is dated 16.01.1987. On the basis of the gift deed, letter dated 19.03.1987 has been issued by the DDA. Copy of the said letter was marked to Rishi Kesh. The father of the Plaintiff, late Rikhi Kesh was alive till 2014. Neither late Rikhi Kesh nor his wife, i.e., Defendant No.2 herein and nor his daughter, i.e., Defendant No.3 raised any objection to the gift deed or to the letter dated 19.03.1987 issued by the DDA.

35. The Plaintiff did not get himself examined and the Power of Attorney holder of the Plaintiff, who is the only witness examined on behalf of the Plaintiff has not been able to depose as to whether the Plaintiff knew or did not know about the gift deed. Adverse inference has to be drawn against the Plaintiff as the Plaintiff has not entered into the witness box. It is averred in the plaint that everything was cordial. If this is true it is not possible to believe that the Plaintiff was not aware of the gift deed especially when the sister of the Plaintiff was aware of the gift deed. It also cannot be said that the Plaintiff was not aware that Defendant No.1 has got the property constructed.

36. Even though the gift deed has not been proved by the Defendants in accordance with Section 63 of the Indian Succession Act and Section 68 of the Evidence Act yet that would not be fatal to the case of the Defendant for the reason that neither the father of Plaintiff, i.e., late Rikhi Kesh, nor the sister of the Plaintiff, i.e., Defendant No.3 herein, has challenged the gift deed. The mother of the Plaintiff is the signatory of the gift deed, who has supported the case of Defendant No.1. Non-examination of the witnesses to the gift deed alone will not be fatal to the case of the Defendants.

37. Section 122 of the Transfer of Property Act, 1882, reads 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."

38. Section 123 of the Transfer of Property Act, 1882, reads as under:-

*"**Section 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 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.

Explanation. - The word "attest" has the same meaning in this section as in section 59.

39. Section 122 of the Transfer of Property Act, 1882 provides that for a gift to be valid, it must be gratuitous in nature and must be made voluntarily. The said giving away implies a complete dispossession of the ownership in

the property by the donor. Acceptance of a gift by the donee can be done anytime during the lifetime of the donor.

40. Section 123 provides that for a gift of immovable property to be valid, the transfer must be effectuated by means of a registered instrument bearing the signature of the donor and attested by at least two witnesses.

41. The facts clearly indicates that there has been a gift of acceptance by the donee during the lifetime of the donor. The gift deed contains recital about the transfer of possession. Mutation on records clearly indicates the transfer and as stated earlier the donee in his lifetime has accepted the gift. The sister is also aware of the gift and has filed a written statement supporting the case. The gift has been given effect to and the ingredients of Section 122 & 123 of the Transfer of Property Act have been fully complied with.

42. The three-Judge Bench of this Court in Naramadaben Maganlal Thakker v. Pranjivandas Maganlal Thakker, **(1997) 2 SCC 255**, has held that acceptance or on behalf of the donee must be made during the lifetime of the donor and while he is still capable of giving and it would thus be clear that the execution of a registered gift deed, acceptance of the gift and delivery of the property, together make the gift complete. Thereafter, the donor is divested of his title and the donee becomes the absolute owner of the property.

43. Material on record does not indicate that the Plaintiff has contributed anything to the purchase of the house and rather the sanction letter is in the name of Defendant No.1. No evidence has been given by the Power of Attorney of the Plaintiff as to where the Plaintiff was staying in the year 1987. On the other hand, the un-rebutted evidence given by DW-1 is that the

relationship between late Rikhi Kesh and the Plaintiff was not cordial. In view of the material on record, the unescapable conclusion that can be arrived at by this Court is that the Plaintiff has miserably failed to prove that the gift deed was forged, fabricated and fraudulent, especially, because late Rikhi Kesh has not questioned the conveyance deed which was executed by the DDA in favour of Defendant No.1 converting leasehold to freehold in his name. The Plaintiff has chosen not to enter the witness box and the Plaintiff would have been the best person to say as to whether he is aware of these documents or not.

44. In view of the unimpeachable evidence produced by the Defendants, this Court is of the opinion that the Plaintiff is not entitled to the partition as sought for in the present suit. This Court is not going into the question of limitation which is Issue No.3, as the Plaintiff and Defendant No.1 has not been able to show whether the Plaintiff was aware of these documents at all or not. In the absence of any material to the contrary, this Court is not inclined to invoke Article 113 of the Limitation Act.

45. The suit is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JANUARY 23, 2025
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