

# IN THE SUPREME COURT OF INDIA

Justice E ARUN MISHRA and Justice INDIRA BANERJEE

***S. Sarojini Amma      Appellant***  
***vs***  
***Velayudhan Pillai Sreekumar Respondent***

Civil Appeal No. 10785 of 2018<sup>†</sup>, decided on October 26, 2018

**(2019) 11 SCC 391**

**INDIRA BANERJEE, J.**— Leave granted. This appeal has been filed against the judgment and order dated 3-4-2017 passed by the High Court of Kerala at Ernakulam in *Velayudhan Pillai Sreekumar v. S. Sarojini Amma*<sup>1</sup> whereby the High Court was pleased to allow the second appeal filed by the respondent and set aside the judgment and decree passed by the first appellate court in favour of the appellant.

**2.** The short question involved in this appeal is whether a document styled as gift deed but admittedly executed for consideration, part of which has been paid and the balance promised to be paid, can be treated as formal document or instrument of gift. Another related question is whether a gift deed reserving the right of the donor to keep possession and right of enjoyment and enforceable after the death of the executant is a gift or a will.

**3.** The appellant is a childless widow aged 74 years whose husband expired on 6-6-2015. The respondent is the nephew of the appellant (brother's son). In the expectation that the respondent will look after the appellant and her husband and also for some consideration, the appellant executed a purported gift deed in favour of the respondent. The gift deed clearly stated that the gift would take effect after the death of the appellant and her husband.

**4.** According to the appellant, on or about 2-6-1999, the appellant executed Deed of Cancellation No. 1844/1999 cancelling the gift deed. After about eight months, on or about 1-2-2000, the respondent filed Original Suit No. 32 of 2000 in the Court of the learned Munsif, Sasthamcotta for declaration that the cancellation deed executed by the appellant is null and

void and also for declaration of his right over the suit property being the subject-matter of the purported deed of gift.

**5.** On or about 20-3-2000, the appellant filed original suit being OS No. 97 of 2000 before the Court of the learned Munsif, Sasthamcotta for permanent injunction restraining the respondent or his men from trespassing or committing waste or mischief in the suit property. On 12-5-2000, the appellant and her husband filed the written statement in the suit being OS No. 32 of 2000 filed by the respondent. On 25-7-2000, the defendants in OS No. 97 of 2000 filed their written statement contending that the registered Document No. 687/2000 was executed for consideration.

**6.** By a judgment and order dated 11-12-2006, the learned Munsif, Sasthamcotta decreed Original Suit No. 32/2000 and OS No. 97 of 2000.

**7.** Being aggrieved, the appellant filed first appeal being AS No. 30 of 2007 before the District Court, Kollam. The defendants in OS No. 97 of 2000 filed their first appeal before the District Court, Kollam. By an order dated 23-9-2010, the Additional District Judge III, Kollam allowed the application being AS No. 30 of 2007 filed by the appellant and dismissed AS No. 77 of 2000 filed by the respondent in OS No. 97 of 2000.

**8.** The respondent filed regular second appeal against the judgment and decree in AS No. 30 of 2007. By the judgment and order dated 3-4-2017<sup>1</sup>, the High Court allowed RSA No. 757 of 2011 and set aside the judgment and decree in AS No. 30 of 2007.

**9.** On behalf of the appellant, it was contended that the document styled as gift deed was to come into effect only after the death of the appellant and her husband. The question was whether a document in terms whereof the executant of the document retained possession and reserved her right over the property being the subject-matter of the document could be a deed of gift or whether such a document was a document in the nature of a will.

**10.** Section 122 of the Transfer of Property Act, 1882 defines gift as hereunder:

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

**11.** Some of the relevant provisions of the Transfer of Property Act, 1882 with regard to a gift are set out hereinbelow:

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

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

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

**124. *Gift of existing and future property.***—A gift comprising both existing and future property is void as to the latter.

**125. *Gift to several of whom one does not accept.***—A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

**126. *When gift may be suspended or revoked.***—The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

#### *Illustrations*

(a) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B, and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(b) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs 10,000 out of the lakh. The gift holds goods as to Rs 90,000 but is void as to Rs 10,000, which continue to belong to A.”

**12.** Gift means to transfer certain existing movable or immovable property voluntarily and without consideration by one person called the donor to another called the donee and accepted by or on behalf of the donee as held by the Supreme Court in *Naramadaben Maganlal Thakker v.*

*Pranjivandas Maganlal Thakker*<sup>2</sup>. As further held by this Court in *Naramadaben Maganlal Thakker*<sup>2</sup>: (SCC p. 258, para 7)

“7. 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 absolute owner of the property.”

**13.** A conditional gift with no recital of acceptance and no evidence in proof of acceptance, where possession remains with the donor as long as he is alive, does not become complete during lifetime of the donor. When a gift is incomplete and title remains with the donor, the deed of gift might be cancelled.

**14.** In *Renikuntla Rajamma v. K. Sarwanamma*<sup>3</sup> a Hindu woman executed a registered gift deed of immovable property reserving to herself the right to retain possession and to receive rent of the property during her lifetime. The gift was accepted by the donee but later revoked.

**15.** In *Renikuntla Rajamma*<sup>3</sup>, this Court held that the fact that the donor had reserved the right to enjoy the property during her lifetime did not affect the validity of the deed. The Court held that a gift made by registered instrument duly executed by or on behalf of the donor and attested by at least two witnesses is valid, if the same is accepted by or on behalf of the donee. Such acceptance must, however, be made during the lifetime of the donor and while he is still capable of making an acceptance.

**16.** We are in agreement with the decision of this Court in *Renikuntla Rajamma*<sup>3</sup> that there is no provision in law that ownership in property cannot be gifted without transfer of possession of such property. However, the conditions precedent of a gift as defined in Section 122 of the Transfer of Property Act must be satisfied. A gift is transfer of property without consideration. Moreover, a conditional gift only becomes complete on compliance of the conditions in the deed.

**17.** In the instant case, admittedly, the deed of transfer was executed for consideration and was in any case conditional subject to the condition that the donee would look after the petitioner and her husband and subject to the condition that the gift would take effect after the death of the donor. We are thus constrained to hold that there was no completed gift of the property in question by the appellant to the respondent and the appellant was within her

right in cancelling the deed. The judgment and order<sup>1</sup> of the High Court cannot, therefore, be sustained.

**18.** The appeal is allowed and the judgment and order under appeal is set aside.

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- † Arising out of SLP (C) No. 35515 of 2017. Arising from the Judgment and Order in *Velayudhan Pillai Sreekumar v. S. Sarojini Amma*, 2017 SCC OnLine Ker 41624 (Kerala High Court, Ernakulam Bench, RSA No. 757 of 2011, dt. 3-4-2017)
- 1 *Velayudhan Pillai Sreekumar v. S. Sarojini Amma*, 2017 SCC OnLine Ker 41624
- 2 *Naramadaben Maganlal Thakker v. Pranjivandas Maganlal Thakker*, (1997) 2 SCC 255
- 3 *Renikuntla Rajamma v. K. Sarwanamma*, (2014) 9 SCC 445 : (2014) 5 SCC (Civ) 1