

CASE NO.:

Appeal (civil) 1036 of 2000

Appeal (civil) 4770 of 2001

PETITIONER:

K.Balakrishnan

RESPONDENT:

K.Kamalam. & Ors

DATE OF JUDGMENT: 18/12/2003

BENCH:

Y.K.Sabharwal & D.M. Dharmadhikari

JUDGMENT:

J U D G M E N T

K.Kamalam

Vs.

K.Balakrishnan & Ors

Dharmadhikari J.

The only substantial question of law involved in this appeal is whether the appellant, who was minor on the date of execution of the gift-deed dated 24.9.1945, can be held to have legally accepted the property in suit gifted to him and the said gift-deed was irrevocable. The appellant shall hereinafter be described as 'the donee' and his deceased mother as the 'donor.' The relevant dates and facts leading to this appeal preferred against the impugned judgment dated 6.8.1999 of the High Court of Kerala, passed in Second Appeal No.67 of 1992 are thus:-

On 24.9.1945, mother Devyani-donor executed a registered gift-deed of 1/8th share of the property inherited by her from her maternal grandfather in favour of her minor son aged 16 years being the present appellant (donee) and her daughter Kamalam (respondent No.1 herein) who was aged four years. The 1/8th share of the property gifted is described in the schedule of gift-deed i.e. one acre and 25 cents of property in Survey No.7481 & 7482 with school building in Mayyanad Cherry in the State of Kerala. Under the terms of the gift-deed ownership of the property, half and half, to each of the two donees was transferred but the donor retained during her life time the management of the school and the income from the property. The original gift-deed is in Malyalam and rendered into English, it reads thus :-

Gift executed on 8th Kanni 1121 (24-9-1945) Mother Devayani aged 43, Eznava daughter of Narayanan residing at Kamolayan from CL Mandiram ,Eravipuram Pakuthy , Mayyanad Cherry in favour of her children (1) Balakrishnan aged 16 son of Kunju Pillai and (2) Kamalam aged 4 residing at Kamalalayam, Mayyanad Cherry.

You are my children. In consideration of my love and affection towards you, the under-mentioned properties are given to you by way of gift. Accordingly from today you shall enjoy the paddy fields which are obtained my mortgage by being in possession and payment of tax and you can recover mortgage money by filing suit or by receiving it directly after executing a release. You shall also transfer in your name according to law the right in respect of the property in which Mayyanad English School stands as also the buildings and other

movables therein and enjoy the same with all rights forever. The responsibility to sign in regard to the above school and to receive the income will be with me during my lifetime and after my death the above responsibilities will vest in the first named donee.

Schedule (Other items omitted)

1/8share in 1 acre 80 cents in property in Sy. No.7481 & 7482 of the Mayyanad Cherry in which the English school is situated, the entire school buildings and the entire movables in the above."

On 28.3.1970, the donor executed a cancellation deed whereby she cancelled the gift-deed dated 24.9.1945 and thereafter executed a Will on 30.3.1970 bequeathing the same property comprising her 1/8th share in favour of her daughter, first respondent. The donor died on 6.11.1982. The appellant filed the present suit OS No.145 of 1986 in the Court of Quilon claiming declaration of his title to the suit property on the basis of the gift-deed and a further declaration was sought that the cancellation deed dated 28.3.1970 and the Will dated 30.3.1970 are ineffective and void in law.

The trial court dismissed the suit holding inter alia that the donee was a minor and no one has accepted the gift on his behalf. It, therefore, held that the gift deed was invalid and passed no title to the donee. It also recorded a finding that the gift deed was executed by the donor during pendency of a suit against her for recovery of money with intention to save it against execution of the decree which was likely to be passed in that suit.

The appeal preferred by the present appellant to the first appellate court was allowed on 21.7.1992 by the District Judge, Kollam. The first appellate court held that a minor in law is not disqualified from receiving the property under the gift deed and the appellant could accept the gift during minority. Such acceptance could be express or implied. The first appellate court relied on the oral evidence given by the parties and accepted the version of the donor that after execution of the gift-deed and its registration, the document was read by him and kept by his father. It was also held that for valid acceptance of gift, delivery of possession of property was not an essential requirement in law.

The High Court in the impugned judgment took a contrary view and confirming the trial court judgment dismissed the suit of the donee holding inter alia that the terms of the gift-deed do not indicate that any property was transferred thereunder. The High Court held that when the donor reserved to herself the right to sign the papers with respect to management of the school and right to take usufruct from the property where the school is situated, there arose no question of passing over ownership of the property to the donees which the donees could accept.

The High Court further went on to hold that the entire right in the property gifted was reserved by the donor to herself and therefore even when the father had handed over the documents to the plaintiff there arose no question of any acceptance of gift made in respect of the school property. The High Court further held that the same legal position is in respect of property gifted to the minor daughter and no question of acceptance of gift arose in respect of that part of the property as well. The High Court has observed thus :-

"In other words, in respect of the school properties, Ex.A-1 has not taken effect. In respect of all the properties of Devayani other than those found to be

accepted in terms of Ex.A-1, necessarily Ex.B1, settlement-deed and Ex.A3 Will govern the matter of succession."

On the last finding with regard to properties other than the school property, the respondents feel aggrieved and have preferred the connected Civil Appeal No.4771 of 2001 which is being decided with this appeal.

We have heard the learned counsel appearing for the appellant who has challenged the correctness of the judgment of the High Court. The learned counsel appearing for the respondent has tried to support the same.

We have critically examined the contents of the gift deed. To us, it appears that the donor had very clearly transferred to the donees ownership and title in respect of her 1/8th share in properties. It was open to the donor to transfer by gift title and ownership in the property and at the same time reserve its possession and enjoyment to herself during her lifetime. There is no prohibition in law that ownership in property cannot be gifted without its possession and right of enjoyment. Under Section 6 of the Transfer of Property Act "property of any kind may be transferred" except those mentioned in clauses (a) to (i). Section 6 in relevant part reads thus :-

"6. What may be transferred.- Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force,-

(a)

(b) A mere right to re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(c)

(d) All interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(e) A mere right to sue [***] cannot be transferred.

Clause (d) of Section 6 is not attracted on the terms of the gift-deed herein because it was not a property, the enjoyment of which was restricted to the owner personally. She was absolute owner of the property gifted and it was not restricted in its enjoyment to herself. She had inherited it from her maternal father as a full owner. The High Court was, therefore, apparently wrong in coming to the conclusion that the gift-deed was ineffectual merely because the donor had reserved to herself the possession and enjoyment of the property gifted.

The second question which has been posed by the High Court and answered against the donor is regarding acceptance of the gift and its revocability.

A minor in law suffers from certain specified disabilities. A minor is not competent to enter into a contract. Section 11 of the Contract Act states :-

"11. Who are competent to contract. - Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any

law to which he is subject."

A minor suffers disability from entering into a contract but he is thereby not incapable of receiving property. The Transfer of Property Act does not prohibit transfer of property to a minor. Section 122 of the Transfer of Property Act defines 'Gift' thus :-

"122. Gift" defined. \026 "Gift" is the transfer of certain existing moveable 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.

Acceptance when to be made. \026 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."

[Underlining by the Court]

Section 123 of the Transfer of Property Act provides the mode of effecting transfer by gift which reads:-

"123. Transfer how effected. \026 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."

The other relevant Section 126 specifies circumstances under which a gift can be suspended or revoked :-

"126. When gift may be suspended or revoked. \026 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."

[Underlining by the Court]

For understanding the provisions on "Gift" contained in Chapter VII of the Transfer of Property Act, all the sections therein which are interrelated have to be read conjointly to understand their import and effect.

Section 127 throws light on the question of validity of transfer of property by gift to a minor. It recognises minor's capacity to accept the gift without intervention of guardian, if it is possible, or

through him.

"127. Onerous gifts \026 Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

Onerous gift to disqualified person. \026 A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound."

[Underlining by the Court]

The last part of Section 127, underlined above, clearly indicates that a minor donee, who can be said to be in law incompetent to contract under Section 11 of the Contract Act is, however, competent to accept a non onerous gift. Acceptance of an onerous gift, however, cannot bind the minor. If he accepts the gift during his minority of a property burdened with obligation and on attaining majority does not repudiate but retains it, he would be bound by the obligation attached to it.

Section 127 clearly recognises the competence of a minor to accept the gift. The provision of law is clear and precedents clarify the position. See the decisions of Judicial Commissioner in the case of Firm of Ganeshdas Bhiwaraj vs. Suryabhan [1917 XIII Nagpur Law Reports 18]; Munni Kunwar vs. Madan Gopal [1916 (XXXVIII) ILR Allahabad 62 at 69]; and Firm of Geneshdas Bhiwaraj vs. Suryabhan [1917 Vol. 39 Indian Cases 46].

The position in law, thus, under the Transfer of Property Act read with the Indian Contract Act is that "the acquisition of property being generally beneficial, a child can take property in any manner whatsoever either under intestacy or by Will or by purchase or gift or other assurance inter vivos, except where it is clearly to his prejudice to do so. A gift inter-vivos to a child cannot be revoked. There is a presumption in favour of the validity of a gift of a parent or a grandparent to a child, if it is complete [See Halsbury's Laws of England Vol. 5(2) 4th Edn. Paragraphs 642 & 647]. When a gift is made to a child, generally there is presumption of its acceptance because express acceptance in his case is not possible and only an implied acceptance can be excepted.

Section 122 (quoted above and underlined) covers the case of a minor donee being a person under legal disability. The section, therefore, employs the expression - 'accepted by or on behalf of donee'.

As we have seen above, Section 127 (quoted above and underlined in its last part) clearly indicates competence of a minor donee to accept the gift, if he is capable of so doing. Such acceptance of a gift can be made by himself or on his behalf by someone else.

Reverting back to the facts of this case, the mother who is one of the guardians of the donee, was herself the donor and the minor was in her custody living with her in the same house. The minor's father, who is the natural guardian under Section 6 of the Hindu

Minority and Guardianship Act, was also present and living with the minor in the same house jointly with other members of the family. The parties belong to an educated Kerala family. As is apparent from the record, the donee was 16 years of age at the time of making of gift and as stated in the witness box, he understood and had knowledge that her mother had gifted the property to him and his younger sister. According to him after the execution of the gift-deed, the document written in Malayalam was brought to the house which was read by the donee and he handed it over to his father. The document has been produced in the court from the custody of the daughter with whom the father lived at a time of filing of the suit by the minor. A question was put to the father as to whether he had accepted the gift on behalf of his minor son. His reply was that the minor son did not know about execution of the document and the son came to know about it only when his sister, on the basis of the deed of revocation, filed a suit against him for injunction in the year 1985. The father has, however, not stated that he himself had no knowledge of the execution of the gift-deed although he denies the version of the donee that the scribe brought the gift-deed and gave it to his wife and the wife gave it to him for safe custody. The father's reply was that the gift-deed remained with the wife. Since the father lived with the daughter and had supported her case, he naturally denied the version of the minor of his having derived knowledge of the gift deed, its reading by him and handing over to the father.

Where a gift is made in favour of a child of the donor, who is the guardian of the child, the acceptance of gift can be presumed to have been made by him or on his behalf without any overt act signifying acceptance by the minor. In the instant case, mother who is the natural guardian gifted the property to her minor son in the year 1945. The donee was an educated lad of 16 years of age, capable of understanding and living jointly with the donor. Knowledge of the execution of the gift would have been derived in normal circumstances, by the minor, being beneficiary, sooner or later after its execution. Knowledge of gift deed to both the parents as natural guardians and the donee is sufficient to indicate acceptance of gift by the minor himself or on his behalf by the parents. The gift deed was revoked by the mother much after its execution as late as in the year 1970. By that time, the donee had become major and he never repudiated the gift. We have examined the terms of the gift-deed. Non-delivery of possession of the gifted property, non-exercise of any rights of ownership over it, and failure by the donee, on attaining majority, in getting his name mutated in official records are not circumstances negating the presumption of acceptance by the minor during his minority or on his attaining majority. The donor had reserved to herself, under the terms of gift deed, the right to manage, possess and enjoy the property during her life time. Since the possession and enjoyment of the property including management of the school were retained by the donor during her life time, the acceptance of the ownership of the property gifted could be by silent acceptance. Such acceptance is confirmed by its non-repudiation by his parents and by him on attaining majority. As is the evidence on record, mother - the donor was herself the natural guardian of the minor donee. The father was also a guardian and had knowledge of the gift. He also did not repudiate the gift on behalf of the donee. The donee himself was of 16 years of age and could understand the nature of beneficial interest conferred on him. He also had knowledge of the gift-deed and on attaining majority did not repudiate it. These are all circumstances which reasonably give rise to an inference, if not of express but implied acceptance of the gift. Where a gift is made by parent to a child, there is a presumption of acceptance of the gift by the donee. This presumption of acceptance is founded on human nature. 'A man may be fairly presumed to assent to that to which he in all probability would assent if the opportunity of doing so were given to him'. [See

Halsbury's Laws of England 4th Edition 20 paragraph 48].

In the case of Sundar Bai vs. Anandi Lal [AIR 1983 Allahabad 23], the donee was a child and in the care of the donor himself. The High Court held that in such circumstance, express acceptance could not be insisted upon. In the case of Ponnuchami Servai vs. Balasubramanian [AIR 1982 Madras 281], the father himself was the donor and executed a gift deed in favour of his minor son. The parties continued to stay together in the said property even after the gift. In these circumstances it was held that the gift in favour of the minor would be deemed to have been accepted as the father himself was the guardian and had himself executed the gift-deed.

There is one more relevant fact in the present case. In the judgment of the courts below there is a mention that under the contents of the deed of cancellation dated 28.3.1970, there is no mention by the donor of the gift having not been accepted by the donee although it is said therein that 'none of the stipulations in the said gift have come into force.' But she did not revoke the gift deed by specifically mentioning in the recital of the cancellation deed that the gift was not completed due to non-acceptance and she was therefore, making some other arrangement for succession to her property after her death.

In the case of Vannathi Valappil Janaki vs. Puthiya Purayil Paru [AIR 1986 Kerala 110], the donors were real uncles of the donees who were minor children. Subsequently the donors revoked the gift on the ground that the donees were not bestowing proper love and affection on the donors which might endanger their future safety. The High Court of Allahabad on these facts inferred and came to the conclusion that the gift deed in favour of the minor children was definitely accepted or else there would have been mention in the revocation deed that the revocation was necessitated because the children no longer bestowed love and care on the donors. The relevant observations of the High Court deserve to be quoted:-

"When the gift of immovable property is not onerous, only slight evidence is sufficient for establishing the fact of acceptance by the donee. When it is shown that the donee had knowledge of the gift it is only normal to assume that the donee had accepted the gift because the acceptance would only promote his own interest. Mere silence may sometimes be indicative of acceptance provided it is shown that the donee knew about the gift. No express acceptance is necessary for completing a gift. Where the donors who were the real uncles of the donees stated in the deed of revocation that to allow the continued existence of the gift would endanger their future safety as the donees were not bestowing proper love and affection towards the donors which was expected by the donors from the donees as a recompense for the gift, that statement is clear indication that the gift had been accepted by the donees."

In the instant case, non-mention of the fact of non acceptance of the gift by the donee in the cancellation deed reinforces our inference that the donor mother herself, at the time of cancellation of the gift, never assumed that the gift was not accepted and therefore it is revocable.

As seen above, in the case of a minor donee receiving a gift from her parents, no express acceptance can be expected and is possible, and acceptance can be implied even by mere silence or such conduct of the minor donee and his other natural guardian as not to indicate any disapproval or repudiation of it. [See Shankuntala

Devi vs. Amar Devi [1986 Himachal Pradesh 109]; and Narayani Bhanumathi vs. Lalitha Bhai [1973 Kerala Law Times 961].

In our considered opinion therefore, the trial court and the High Court were wrong in coming to the conclusion that there was no valid acceptance of the gift by the minor donee. Consequently, conclusion has to follow that the gift having been duly accepted in law and thus being complete, it was irrevocable under Section 126 of the Transfer of Property Act. Section 126 prohibits revocation of a validly executed gift except in circumstances mentioned therein. The gift was executed in 1945. It remained in force for about 25 years during which time the donee had attained majority and had not repudiated the same. It was, therefore, not competent for the donor to have cancelled the gift and executed a Will in relation to the property.

Consequently, Civil Appeal No.1036 of 2000 filed by the donee succeeds and is hereby allowed. The impugned order of the High Court dated 6.8.1999 passed in Second Appeal No.671 of 1992 and the judgment of the trial court dated 27.9.1989 are set aside. Consequently, the judgment of the first appellate court dated 21.7.1992 is hereby restored.

The connected Civil Appeal No.4770 of 2001 having been preferred by respondent K. Kamalam only against certain findings and observations contained in the impugned judgment of the High Court is dismissed. In the circumstances, parties shall bear their own costs.