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NARAMADABEN MAGANLAL THAKKER

v.

PRANJIVANDAS MANGANLAL THAKKER AND ORS.

SEPTEMBER 10, 1996

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[K. RAMASWAMY, FAIZAN UDDIN AND G.B. PATTANAIK, JJ.]

*Transfer of Property Act, 1882 :*

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*S.122, 123—Gift—Gift deed executed in favour of respondent—Cancelled by a subsequent deed—Thereafter Will executed in favour of appellant and his brother—Conditional gift—To become operative on donor's death—Before his death he executed the Will, after cancelling the gift deed—Held, the gift deed had become ineffective and inoperative—The cancellation deed put an end to the gift deed.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3550 of 1979.

From the Judgment and Order dated 13.9.79 of the Gujarat High Court in F.A. No. 421 of 1974.

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R.P. Bhatt, K.V. Sreekumar, Ms. Reema Bhandari, Ms. Alka Aggarwal and M.N. Shroff for the Appellant.

S.K. Dholakia and H.A. Raichura for the Respondents.

The following Order of the Court was delivered :

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This appeal by special leave arises from the judgment of the Division Bench of the Gujarat High Court made in FA No. 421/74 on September 13, 1979. The admitted facts are that one Motilal Gopalji was the owner of the properties bearing Revenue Survey No. 172/8 situated in Pratapnagar area of the city of Baroda. The property consists of 15 rooms of the chawl and an open land surrounding the same. The appellant is the sister of the First respondent. Motilal Gopalji had executed gift deed, Ex.111 dated May 15, 1965 in favour of the respondent. Thereafter, he had executed another deed, Ex.198 dated June 9, 1965, cancelling the said gift. He executed a Will in favour of the appellant and another brother of the

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appellant on May 17, 1966. Motilal Gopalji died two days thereafter, i.e.,

May 19, 1966. Consequently, the respondent laid a suit in the Court of the Civil Judge, Senior Division in Baroda for declaration of his title to the properties and injunction restraining the appellant and her brother from collecting the rents. The trial court decreed the suit. On appeal, it was confirmed. Thus this appeal by special leave. A

Shri R.P. Bhatt, learned senior counsel appearing for the appellant, contended that a reading of the recitals of the gift deed and the cancellation deed do clearly indicate the intention of the donor and the donee, namely, the gift was not complete. It was a conditional one. He reserved life interest in the property and had not handed over the possession of the property; nor had the donee accepted the gift, thereby, the gift was incomplete. The gift which was duly cancelled became inoperative during the life time of the donor. The donor had cancelled it within one month of the gift. Subsequently, he had executed a Will in favour of the appellant and her brother. Thereby, the courts below were wrong in construing that the gift became operative and by operation of gift deed dated May 15, 1965 the donor Motilal Gopalji was devoid of power to cancel the gift deed. It is contended by Shri Dholakia, learned senior counsel for the respondent, that the view taken by the High Court is correct in law. It is stated that Motilal Gopalji had delivered symbolic possession to the respondent. What he preserved was only right to collect rent for his maintenance and thereafter he had no power to cancel it. The recitals in the cancellation deed are not material. Only the recitals in the gift deed have to be considered. On their own face value they do indicate that Motilal Gopalji had divested himself totally of the right, title and interest in the property, the subject matter of the gift over. Consequently, he had no power to cancel the gift and the Will executed by Motilal Gopalji was inoperative. We find no force in the contention for the respondent. B C D E F

It is now well settled legal position that a document has to be read harmoniously as a whole giving effect to all the clauses contained in the document which manifest the intention of the persons who execute the document. The material part of the gift deed reads as under: G

"The said immovable property as described above with the ground floor and with the ways to pass and with the water disposal and with all other concerned rights, titles is gifted to you and the possession whereof is handed over to you under the following H

A conditions to be observed by you and your heirs and legal representatives as long as the Sun and the Moon shine. Therefore, now I or my heirs or legal representatives have no right on the said property. You and your heirs and legal representatives have become the exclusive owners of the same. You and your heirs and legal representatives are entitled to enjoy, to transfer or to use the said property as you like under the conditions mentioned in this deed. Except myself, there is nobody's right, title, interest or share on the said property : I have not mortgaged the same by any document. Yet however anybody comes forward to claim the right, I shall remove the same.

C The said property is gifted to you on such conditions that and you are made owners by the gift deed of the said property on such conditions that there are 15 rooms on the said property at present. I am rightful to receive the rents and the mesne profit whatsoever accrued from the said rooms throughout my life. I am only entitled to receive the mesne profit of the said property till I live. Therefore, I, the executant, shall be entitled to let out the said buildings (rooms), to receive the rent amount to make all the other arrangement throughout my life. Similarly the said property shall be in my possession till I live. Therefore, I have gifted this property to you by reserving permanently my rights to collect the mesne profit of the existing rooms throughout my life. And by this gift deed the Limited ownership right will be conferred to you till I live. After my death you are entitled to transfer the said property. I shall not give in any way my right to anybody to collect the mesne profit.

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F You may get transferred the said property in your name in support of this deed. This gift deed is executed to you under the aforesaid conditions."

The material part of the cancellation deed reads as under :

G "I have on 15.5.65, executed a conditional gift deed of Rs. 9,000 in words Rupees nine thousand in favour of you. The said deed has been presented in the office of the Sub Registrar, Baroda at Serial no. 2153 of the book no. 1 and it is registered on 15.5.65. The description of the property mentioned in the said deed is as under :"

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"I executed to you a conditional gift deed of the said property from sky to earth. You had promised me to fulfill the oral conditions between us. But immediately after making the gift accordingly, you denied to fulfill the said conditions. The possession of the gifted property is not handed over to you. So in fact, you have not accepted the conditional gift of the property and I am also not willing to act according to the conditional gift. It is also mentioned in the said conditional gift deed that the possession shall be kept with me. And so accordingly my possession is continued. My possession is from the beginning and it is permanent. You are not ready to act according to our conditions. Therefore, I have to execute immediately this deed of cancelling the conditional gift deed between us. Therefore, I hereby cancel the conditional gift deed dated 15.5.65 of Rs. 9,000 in words rupees nine thousand presented at the serial no. 2153 on 15.5.65 in the office of the Sub-Registrar Baroda for registration. Therefore, the said conditional gift deed dated 15.5.65 is hereby cancelled and meaningless. The property under the conditional gift has not been and is not to be transferred in your name. It will be at present and permanently remain in my name."

Section 122 of the transfer of Property Act (for short, the "TP Act") defines 'gift' to mean 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.

Acceptance by or on behalf of the donee must be made during the life time of the donor and while he is still capable of giving.

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. The question is : whether the gift in question had become complete under Section 123 of the TP Act? It is seen from the recitals of the gift deed that that Motilal Gopalji gifted the property to the respondent. In other words, it was a conditional gift. There is no recital of acceptance nor is there any evidence in proof of acceptance. Similarly, he had specifically stated that the property would

A remain in his possession till he was alive. Thereafter, the gifted property would become his property and he was entitled to collect *mesne profits* in respect of the existing rooms throughout his life. The gift deed conferred only limited right upon the respondent-donee. The gift was to become operative after the death of the donor and he was to be entitled to have the right to transfer the property absolutely by way of gift or he would be entitled to collect the *mesne profits*. It would thus be seen that the donor had executed a conditional gift deed and retained the possession and enjoyment of the property during his life time. The recitals in the cancellation deed is consistent with the recitals in the gift deed. He had expressly stated that the respondent had cheated him and he had not fulfilled the conditions subject to which there was an oral understanding between them. Consequently, he mentioned that the conditional gift given to him was cancelled. He also mentioned that the possession and enjoyment remained with him during his life time. He stated, "I have to execute immediately this deed of cancelling the conditional gift deed between us. Therefore I hereby cancel the conditional gift deed dated 15.5.65 of Rs. 9000 in words rupees nine thousand presented at the Serial no. 2153 on 15.5.65 in the office of the Sub-Registrar Baroda for registration. Therefore, the said conditional gift deed dated 15.5.65 is hereby cancelled and meaningless. The property under the conditional gift has not been and is not to be transferred in your name." Thus he expressly made it clear that he did not hand over the possession to the respondent nor did the gift become complete during the life time of the donor. Thus the gift had become ineffective and inoperative. It was duly cancelled. The question then is : whether the appellant would get the right to the property? It is not in dispute that after the cancellation deed dated June 9, 1965 came to be executed, duly putting an end to the conditional gift deed dated May 15, 1965, he executed his last Will on May 17, 1965 and died two days thereafter.

The appeal is accordingly allowed. The judgments and decrees of the trial Court and the appellate court stand set aside. Consequently, the suit stands dismissed. No costs.

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Appeal allowed.

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