

SMT. GOMTIBAI (DEAD) THROUGH LRS. AND ORS.

v.

MATTULAL (DEAD) THROUGH LRS.

OCTOBER 1, 1996

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

*Transfer of Property Act, 1882 :*

*Ss. 122 and 123—Gift of immovable property—Held gift of immovable property should be made only for transferring the right, title and interest by donor to donee by a registered instrument signed by or on behalf of donor and must be attested by at least two witnesses—It must also be proved that donee had accepted the property gifted over under the instrument—In the instant case through the transfer of gift was acted upon as per the correspondence and evidence on record, but there is no written instrument executed by donor, and as such the property could not be said to have been legally transferred—Gift is not complete in the eye of law.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1519 (N) of 1980.

From the Judgment and Order dated 7.3.77 of the Bombay High Court in Appeal No. 326 of 1970.

Ashok Kr. Singh for the Appellants Nos. 2-4 and 6.

S.B. Wad, Mrs. J.S. Wad and Abraham N.A. for the Respondents.

The following Order of the Court was delivered :

This appeal by special leave arises from the judgment of the learned single Judge of the High Court of Bombay made on March 7, 1977 in Second Appeal No. 326/70.

The respondent had filed suit against his brother Govinddas on February 1, 1977 for partition of the plaint schedule property into two equal shares and allotment of one such share to the respondent - Mattulal. The plea taken by Govinddas was that the property was gifted over to their cousin sister Kusturibai who had entrusted the property to them for

A cultivation and was giving produce to them and thereby the land is not partible and the suit, therefore, was not maintainable. The Trial Court accepted the plea and dismissed the suit. On appeal, the District Judge reversed the finding and held that the partition deed between the plaintiff and the defendant was only an intention to gift over the land to their cousin sister Kasturibai; it was not in fact executed and, therefore, the gift is not valid and does not bind the respondent. Accordingly, the suit was decreed. In the second appeal, it was confirmed. Thus, this appeal by special leave.

C The only question that arises for consideration is: whether an intention to give the land by gift to their cousin-sister Kasturibai created valid title in law? It is seen from the partition deed executed in 1947 that they intend to gift-over the suit land to Kasturibai and the correspondence subsequent thereto was relied upon to show that the land was allotted to Kasturibai. The question is: whether a valid gift has been executed? In the erstwhile State of Hyderabad, the Hyderabad Transfer of Property Act in *pari materia* with the Transfer of property Act, 1882 was in force. An provision analogous to Section 124 of the Transfer of Property Act was in force in the former State of Hyderabad. Section 122 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. How the gift is to be effective has been stated in Section 123 which envisages that "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."

F Thus, it is seen that the gift of immovable property should be made only for transferring the right, title and interest by the donor to the donee by a registered instrument signed by or on behalf of the donor and must be attested by at least two witnesses. The pre-existing right, title and interest of donor thereby stand divested in the donee by operation of Section 17 of the Registration Act only when the gift deed is duly registered and thereafter the donor would lose title to the property. It must also be proved that the donee had accepted the property gifted over under the instrument. In this case, though the transfer of gift was acted upon by Kasturibai as per the correspondence and evidence on record, but, admittedly, there is no written instrument executed by donor, namely, the plaintiff and the defendant in favour of their cousin sister Kasturibai and it was

got attested by at least two witnesses and registered in accordance with the provisions of the Stamp Act and the Registration Act. In the absence of compliance of these formalities, at best what could be seen from the partition deed is that the original plaintiff and the defendant have expressed their intention to gift over the land to their cousin sister Kasturibai. As held earlier, in the absence of any registered instrument of gift and acceptance thereof by the donee, the said property could not be said to have been legally transferred in favour of their cousin sister; in other words, the gift is not complete in the eye of law. Therefore, the District Court has rightly set aside the decree of the trial Court which was later confirmed by the High Court. We do not find any error of law warranting interference.

The appeal is accordingly dismissed. No costs.

R.P.

Appeal dismissed.