Indranarayan vs Roop Narayan & Anr on 7 May, 1971

Equivalent citations: 1971 AIR 1962, 1971 SCR 796, AIR 1971 SUPREME COURT 1962, 1971 JABLJ 715, 1972 MAH LJ 241, 1972 MPLJ 305, 1971 SCD 799

Author: K.S. Hegde

Bench: K.S. Hegde, A.N. Grover

PETITIONER:
INDRANARAYAN

Vs.

RESPONDENT:
ROOP NARAYAN & ANR.

DATE OF JUDGMENT07/05/1971

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
GROVER, A.N.

CITATION:
1971 AIR 1962 1971 SCR 796

ACT:
Hindu Joint family-Member separating from-Presumptions and proof.
Transfer of Property-Gift-Amounts deposited in fixed deposits in joint names of father and son-Property of father-If and when gift in favour of son can be inferred.

HEADNOTE:
The appellant filed a suit against the first respondent for partition of their deceased father's properties. The suit was partly decreed by the High Court in appeal. Both parties appealed to this Court. The first respondent contended inter alia that: (1) the appellant had separated himself from the family as far back as 1936 and therefore was not entitled to any share; and (2) the amounts of the fixed deposits in a Bank and a Company had been gifted away to him by the father since the father, a few days before his death, instructed the Bank and the Company to transfer the

fixed deposit amounts from his single name to the joint names of himself and the first respondent.

HELD:(1) The law presumes that the members of a Hindu family are joint, a presumption which is stronger in the case of a father and his sons, and it is for the party who pleads that a member of the family had separated himself to prove it satisfactorily. For the existence of a joint family, the family as such need not possess any property since it is not property, but relationship, that knits the members of a family together.

In the present case, the appellant, the first respondent, and their father were members of a joint family, though the family possessed no property, all the properties being the self-acquired properties of the father. There was a great deal of disagreement between the appellant and his father, the former expressing now and then that he was not, interested in his father's estate, and the latter threatening to disinherit the appellant. But apart from such mere emotional outbursts there was no evidence at all to show that he had at any time made any unequivocal declaration that the appellant had separated himself from his family nor had he communicated any such intention to separate himself either to the karta or to any of the members of the family. [804E-G]

(2) (a) There was no evidence to show the genuineness of the letters allegedto have been written by the father requesting the Bank and the Companyto transfer the deposits in his name to the joint names of himself and the first respondent.

(b) But even if such letters were in fact written by the father, there was no evidence of the general intention on the part of the father to give those amounts exclusively to the first respondent. In fact about two months before his death the father executed a will disinheriting the appellant but revoked it very soon thereafter. Therefore a mere direction to the bank to put the amounts in the joint names to himself and the

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first respondent given by the father when he was seriously ill might be only a prudent step for facilitating collection, and does not show an intention to make over the amounts to the first respondent. Since the father continued to be the owner till his death and there was nothing to show that the father intended that the amounts should go to the first respondent exclusively and in pursuance of such an intention transferred the deposits to the joint names of himself and the first respondent, there was neither a gift nor an advancement. [807F.]

Guran Ditta v. Ram Datta, I.L.R. 55 Cal. 944(P.C.) Pandit Shambhit Nath Shivpuri v. Pandit Pushkar Nath, L.R. 71 I.A. 197, Young Sealey, [1949] 1 All. E.R. 92, Mrs. Avis Fitzalah Cowdrey v. Imperial Bank (1)If India, A.I.R. 1956 Mad. 56 and Dalvi Nagarajamma v. State Bank of India, A.I.R.

1962 A.P. 260, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1096 and 1097 of 1969.

Appeals from the judgment and decree dated March 24, 1964 of the Madhya Pradesh High Court, Indore Bench in first appeal No. 36 of 1959.

M.V. Paranjpe, K. Rajendra Chodhary and K. R. Chaudhuri, for the appellant (in C. A. No. 1096 of 1969) and the res- pondent (in C.A. No. 1097 of 1969).

S.T. Desai, B. Datta, P. C. Bhartari and J. B. Dadachanji, for the respondents (in C.A. No. 1096 of 1969) and appellants (in C.A. No. 1097 of 1969).

The Judgment of the Court was delivered by Hegde J,-These appeals arise from a partition suit between two brothers. The plaintiff is the cider brother and the 1st defendant is his younger brother. The second defendant is the wife of the 1st defendant. The plaintiff and the 1st defendant are the sons of Dr. Sudarshan Pandit, a medical practitioner who practised at Indore. Dr. Pandit had extensive practice. He died on April 6, 1949 leaving behind him extensive properties. His wife had died in 1918. Dr. Pandit had three daughters. We are not concerned with them in this case. The contest is mainly between the plaintiff and the 1st defendant. There is also a dispute as regards the ownership of a deposit of Rs. 50,000 made by Dr. Pandit in the name of the second defendant.

The contention of the 1st defendant was that the plaintiff had separated himself from the rest ;of the family as far back as 1936 and therefore he is not entitled to any share in the suit properties. Further he took the plea that deposits of Rs. 41,000 in the Bank of Indore and Rs. 50,000 in Binod Mills which stood in the name of Dr. Pandit till about the third week of March, 1949 had been gifted to him. According to him Dr. Pandit 'gifted the four deposits totalling Rs. 41,000 in the Bank of Indore on March 25, 1949 and the deposit of Rs. 50,000 in the Binod Mills on March 30, 1949. The deposit of Rs. 50,000 made by Dr. Pandit in the name of the second defendant was claimed by the second defendant as her exclusive property. She claimed that amount as a gift from her father-in-law. The properties with which we are concerned in this suit have been held to be the self-acquired properties of Dr. Pandit. That finding was not questioned before us.

The trial court dismissed the plaintiff's suit on the sole ground that he had separated himself from his father as far back as 1936 whereas the 1st defendant continued to be joint with his father. It held that as he was separate from his father the plaintiff had no right in the properties left behind by Dr. Pandit. In appeal the High Court substantially reversed the decree of the trial court. The High Court came to the conclusion that there was no evidence to show that the plaintiff had separated himself from the family. It also came to the conclusion that the deposits of Rs. 91,000 referred to earlier are the properties of the joint family and hence divisible. But it upheld the claim of the 1st defendant in respect of a sum of Rs. 25,000 which had been made over to him by his father on March 21, 1949. In

respect of the deposit of Rs. 50,000 in the name of the second defendant, the High Court came to the conclusion that it was her exclusive property. The 1st defendant has appealed against the High Court's decree to the extent it went against him and the plaintiff has appealed against the finding of the High Court that the sum of Rs. 25,000 given to the 1st defendant on March 21, 1949 is his exclusive property. He also challenged the finding of the High Court that the deposit of Rs. 50,000 in the name of the second defendant is her exclusive property. Both the appeals were brought on the strength of the certificates issued by the High Court.

Dr. Pandit originally hailed from Jaora, an Indian State. He practised at Indore. He had extensive practice in Central India. He lost his wife in 1918 leaving behind her three daughters and two sons. The eldest son, the plaintiff in this case was hardly 7 years old when his mother died and the younger son was three years' old. Dr. Pandit appears to have been extremely anxious that his eldest son should step into his shoes and should become an eminent medical practitioner. In 1927, he took the plaintiff, when hewas hardly 16 years old to England and put him to school.. He gave him liberal allowance in the initial stages. It appears from the record that he was sending him annually about pound 300. Unfortunately the plaintiff did not make much progress in his studies. Dr. Pandit was disappointed. The evidence discloses that at first he tried to induce the plaintiff to work hard. But the plaintiff showed no progress. It is clear from the correspondence that passed between the father and the son that the father was feeling that the son was not applying himself seriously to the studies but the son was feeling that he is being goaded to do something for which he was not cut out. Gradually Dr. Pandit began to adopt a stiffer attitude towards the plaintiff. He was apprehending that his dreams were not coming true, but he was not prepared to retrace his steps. Evidently he thought that what he could not achieve by persuasion, he could do by adopting a stiffer attitude. Thereafter the letters that he wrote to the plaintiff were couched in rude language. He went on calling the plaintiff a waster, one lacking in efforts and in short a wholly useless character. It is clear from his letters that Dr. Pandit was under the impression that the plaintiff was lacking in efforts and he could make him to put in his best by an extra doze of rudeness. Plaintiff's reactions to his father's biting letters was one of bitterness and hostility. He wrote to his father that he was a tyrant and that he was lacking in affection. He called him a worshipper of Mammon. He attributed his failures to his father's unkindness. The correspondence that passed between Dr. Pandit and the plaintiff from 1936 to 1940 make a very sad reading. There is no doubt that Dr. Pandit was an affectionate father. His one all absorbing ambition was that his soil should excel him. Things did not work out in the way he wanted. 'But he was not the person to reconcile him to the inevitable and chalk out a new path for his son. His obsession of making his son a good medical practitioner was such that he just ignored the realities and went ,on driving the plaintiff to desperation. The plaintiff was an obstinate type. He was blind to his father's affection' He appears to have been unduly touched by his father's harsh words. Possibly because of want of parental affection in the formative period of life he was insolent, resentful and insulting to his father. He repeatedly wrote to his father that his life was blasted by him. There is no doubt that the plaintiff was a highly sensitive type. He was no less rude. than his father.

It is unnecessary to refer in detail to the various letters that passed between the father and the son which have been produced into court. In the. initial stages Dr. Pandit was sending to his son about pound 300 a year. Later on he cut it down to pound 200 a year. Evidently Dr. Pandit thought that if

the allowance of his son is cut down, he would give 'more attention to his studies. But that circumstance again appears to have had an adverse effect. The plaintiff, was- evidently, unable to make two ends meet with the allowance that he %us getting. From his letters it is- clear that thereafter he was more worried about his day to- day living than his studies. He began to send cables after cables to his father asking for more remittances but the father continued to be strict. Obviously Dr. Pandit was a very strong willed man. On March 6, 1936, Dr. Pandit in his letter (Ex. D-

122) to the plaintiff wrote thus :

> "You may return you may not return has nothing to do with me. But on your return you cannot stay so long as I live in our family and wish to disinherit you from all your claims in future from what little share you could have-."

It is seen from that letter that the plaintiff had asked his father to give him at least an allowance of pound 4/6 S. a week. In 1936 Dr. Pandit made it clear to the plaintiff that he would proVide him with funds only for three more years to complete his studies and thereafter all remittances would be stopped. The correspondence between Dr. Pandit and the plaintiff between 1936 to 1940 show that the war of words between the father and the son continued. Even after 1936 the plaintiff made little progress in his studies. In 1940 Dr. Pandit wanted the plaintiff to come back from England and for that purpose he deposited With Thomas Cook & Co., sufficient amount for his passage home with instructions to them not to pay that amount to the plaintiff but only to provide him with the passage. The plaintiff refused to return to India. Thereafter Dr. Pandit is said to have stopped remittances to the plaintiff. But remittances to the plaintiff were made by the 1st defendant as well as by his sister Dr. Shanti Kamath. There is reason to believe that those remittances were made in the names of the 1st defendant and Dr. Shanti Kamath by Dr. Pandit himself. Ultimately the plaintiff came back to India in 1948. At that time the 1st defendant was working at Kolhapur. The plaintiff did not go to Indore where his father was living but he went to Kolhapur where his brother was stationed. Thereafter he got a job in Calcutta and- he went to Calcutta. The plaintiff's relationship with the 1st defendant and his sisters were extremely cordial as. disclosed by the letter$ that passed between the plaintiff and the 1st defendant and his sisters. When the plaintiff returned to India evidently Dr. Pandit was very anxious to meet him but he was unwilling to show to his son that he was the first to yield. He wanted that the plaintiff should repent and make amends. The plaintiff was too arrogant a person to submit to his father. The first defendant, evidently at the instance of his father tried to induce the plaintiff to meet his father. He wrote to him to say that mistakes had been 'made by both sides and the time has come for both of them to forget the past. But the plaintiff was not sure that his father had softened. He wanted to be satisfied that his father had in fact repented for his folly. When things stood thus Dr. Pandit fell ill with an attack of Cancer of the lungs. He was shifted to Bombay for treatment in February 1949. The 1st defendant informed this fact to the plaintiff. The plaintiff took leave and went to Bombay and was by the side of his father till his father was in Bombay. In the middle of March 1949, the Doctors at Bombay advised the relations of Dr. Pandit that his end was near and it was best that they shifted him to Indore. Dr. Pandit was removed to Indore on March 14, 1949. The plaintiff, the 1st defendant and the other relations of Dr. Pandit went along with him. The plaintiff remained in Indore till about the last week of March and then returned to Calcutta. The condition of Dr. Pandit deteriorated day by day and he passed away on the early

morning of April 6, 1949. The High Court was of the opinion that when the plaintiff was at Indore during the illness of his father he was treated as the paraiah of the family and it was because of that reason he did not come back to Indore after the death of his father.

At Indore Dr. Pandit remained in a Nursing Home till his death. Before proceeding to set out what happened at Indore between the 14th of March and 6th of April, 1949, it is necessary to refer to one circumstance. On February 21, 1949, Dr. Pandit executed a Will and registered the same at Indore (Ex. P-13) under which he bequeathed to each of his daughters Rs. 60,000 and the residue to the 1st defendant. There is evidence to show that ever since he executed the Will, Dr. Pandit was uneasy in mind and repenting. He was anxious to revoke that Will. When he was in Bombay he got a revocation deed prepared by a solicitor and executed it. He was not prepared to leave it unregistered. He insisted that it should be registered and it was registered, This conduct of his shows that despite the fact that he was wholly dissatisfied with the conduct of the plaintiff, he was not prepared to cut him off. This shows the innate affection of Dr. Pandit to his obstinate and wayward son, despite his seeming hostility towards him. The 1st defendant's explanation that the Will in question was brought about by the father-in-law of one of the widowed daughters of Dr. Pandit has not been accepted by the High, Court nor are we convinced about It.

After Dr. Pandit was shifted to Indore many things happened in quick succession. Everybody knew that Dr. Pandit's end was near. His condition was deteriorating day by day. Medical evidence adduced- in the case shows that there was gradual deterioration in the physical as well as in the mental condition of Dr. Pandit. R. D. Joshi (D.W. 8) owed Dr. Pandit a sum of Rs. 25,000. It is said that Dr. Pandit wanted Joshi to return that money. On the 21st March 1949 Joshi gave him a cheque for Rs. 25,000. That she was sent to the Bank of Indore for being cashed and credited to the account of Dr. Pandit. On the same day Dr. Pandit issued a. cheque for Rs. 25,000 in favour of the 51-1 S. C. India/71 1st defendant. On that very day the first defendant opened an account in the Bank of Indore and credited the amount covered by the cheque into his account and thereafter on that day itself he issued a cheque for Rs. 15,000 to R. D. Joshi.

Dr. Pandit had four different fixed deposits covering a sum of Rs. 4 1,000 in the Bank of Indore. On March 25, 1949, it is said that Dr. Pandit wrote to the Bank of Indore to transfer all those fixed deposits to the joint names of himself and the 1st defendant. We were told that that direction was carried out. Dr. Pandit had a fixed deposit of Rs. 50,000 in the Binod Mills Ltd. A letter was said to have been sent to the said Mills by Dr. Pandit on March 30, 1949 requesting the Mills to transfer the fixed deposit to the joint names of Dr. Pandit and the 1st defendant. In 1948, Nawab of Jaora gave to Dr. Pandit who was his family physician a sum of Rupees one lakh. Out of that he deposited a sum of Rs. 50,000 in the name of his daughter-in-law, the second defendant and the balance of Rs. 50,000 he deposited in his own name. According to the evidence of the second defendant, she had accompanied her father-in-law to Jaora when the amount in question was received. After the receipt of the amount her father-in-law gave her Rs. 50,000 but she left that amount with him requesting him to invest the same. Accordingly Dr. Pandit deposited that sum in her name and informed her about that fact by means of a letter and sometime thereafter when he went to Kolhapur, he gave that deposit receipt to her. After the death of Dr. Pandit, 1st defendant wrote several letters to the plaintiff informing him about the state of affairs at Indore. He wrote to him about the various details

connected with the affairs of the household but he did not inform him about the transfer of the deposits mentioned earlier. From those letters it is clear that the 1st defendant was keeping his brother informed about the family affairs. it appears that sometime after the death of his father, the plaintiff came to know that the 1st de- fendant was claiming that his father had left a Will bequeathing all his properties to him. It is likely that this information was given to him by his brother-in-law Kamath who was also stationed at Calcutta 'Me plaintiff was quite indifferent about the matter. At that stage his mood was such that he did not care to have even a "brass-button' from his father's estate But yet he, was curious to know whether in fact his father had left a Will. In about the end of May 1949, the 1 st defendant sent a copy of the alleged Will to the plaintiff but the plaintiff was anxious to see the original Will. evidently with the lapse of time, the plaintiff began to take more interest in his father's estate. In June 1949, the 1st defendant and the second defendant went to Calcutta and showed to the plaintiff the Will alleged to have been executed by Dr. Pandit. The ist defendant was insistent that the plaintiff should execute a deed of relinquishment but the plaintiff refused to walk into the trap. On April 4, 1950, the plaintiff caused a lawyer's notice to be issued to the 1st defendant requiring him either to get the alleged Will of his father probated or refer the matter to the arbitration of some disinterested person. To this notice the 1st defendant caused a reply to be sent on May 10, 1950. The material portion of that reply reads thus:

> "My client firmly relies on the Will made by his father. The original document has been inspected by Mr. 1. N. Pandit. He has had opportunity of satisfying himself that the Will bears the signature of the late Dr. Pandit. It is attested by respectable persons who could have no motive in conspiring to benefit my client. Under the circumstances the effort in your letter to throw doubt on the genuineness of the Will has no point. The late Dr. Pandit dealt with his cash and the Bank account subsequent to the making of the Will and consistently with his intention to exclude Mr. 1. N. Pandit which is writ large on the document."

It is necessary to notice that in May 1950 i.e. about a year after the death of Dr. Pandit, the stand taken by the 1st defendant was that he was entitled to the entire estate left by Dr. Pandit because of the Will left by Dr. Pandit. In the registered reply notice, there is no reference to the separation of the plaintiff from the family ; nor is there any reference to the gifts later on put forward by the 1st defendant.

The plaintiff filed the suit from which these appeals arise on April 12, 1951. The 1st defendant filed his written statement on September 16, 1951. In this written statement, there is no reference to the Will left by Dr. Pandit. The alleged Will completely disappeared from the scene. On the other hand the 1st defendant took the plea that the plaintiff is not entitled to any share in the properties left by Dr. Pandit as he had separated himself from Dr. Pandit as far back as 1936. The other plea taken up by him was that by transferring the fixed deposits that were standing in Dr. Pandit's name to the joint names of Dr. Pandit and himself Dr. Pandit made a gift of the amounts covered by those deposits to him and therefore he is exclusively entitled to those amounts. The second defendant claimed that the deposit made by boar fatherinlaw in her name was a gift to her. At this stage we may mention that the alleged Will of Dr. Pandit was not produced into court. As seen earlier in his reply to the registered notice the 1st defendant had asserted that the Will had been signed by Dr.

Pandit and attested by respectable witnesses. But when cross. ,examined about that will the 1st defendant first stated that it was only a draft. When pressed further he stated that it was pencil draft with numerous erasions but all the same signed by Dr. Pandit and attested by respectable witnesses. There is hardly any doubt that the story of the Will is a faked one. It was evidently a ruse to get a relinquishment deed from the plaintiff who was at one time indifferent about his share in his father's estate. But the story of the said Will has great significance when we come to examine the defence put up by the 1st defendant.

The first question that has to be decided is whether there was a separation between the plaintiff and the members of his family. The plea taken in the written statement is a,somewhat curious one. There is no allegation that the plaintiff had separated from his family. On the other hand what was pleaded is that the plaintiff had separated from his father. No members of a Hindu family can separate himself from one member of the family and remain joint with others. He is either a member of the joint family or he is not. lie cannot be joint with- some and separate from others. It is true that for the existence of a joint family, the family need possess no property. The chord that knits the members of the family together is not property but the relationship. There is no gainsaying the fact that Dr. Pandit and his sons were members of a joint family though that family as such possessed no property. All properties possessed by Dr. Pandit were his self-acquired properties. We agree with the finding of the High Court that there was no separation between the plaintiff and his family. The law presumes that the members of a Hindu family are joint. That presumption will be stronger in the case of a father and his sons. It is for the party who pleads that a member of a family has separated himself from the family to prove it satisfactorily. There is not an iota of evidence in this case to show that the plaintiff had at any time made any unequivocal declaration that he had separated himself from his family much less there is any evidence that he communicated his intention to separate himself from the family either to the karta or to any of the members of the family. There is no doubt that there was great deal of disagreement between Dr. Pandit and the plaintiff. It is also true that as far back as 1936 Dr. Pandit had threatened to disinherit the plaintiff but these facts by themselves do not prove the factum of separation. The fact that the plaintiff was now and then expressing that he was not interested in his father's estate do not amount to a declaration of his intention to separate from the family. The High Court rightly considered these statements as emotional outbursts. We have earlier seen that in the reply notice sent on behalf of the 1st defendant there is not even a whisper of the plaintiffs separation from the family. Therefore the plea of the 1st defendant that the plaintiff had separated from the family is clearly ;in after thoughts' It is based on no evidence. To prove that the plaintiff had separated himself from the family. reliance was placed on the testimony of Col. Madhav. His evidence is too vague and too slender to found a case of separation. All that he says in his deposition is:

> "I was at Kolhapur about a month at that time. He said about the finance of his younger son's frame business. I do not know the details but I gathered that whatever he possessed he was going to make in the joint name of himself and his younger son."

Even if we accept the evidence of this witness as reliable, it is much to vague and inconclusive. Further it does not bear on the question of separation.

Now coming to the question of gifts, it is necessary to re- member the fact that in February 1949, Dr. Pandit did make a Will but within six days after making that Will, he revoked the same. Dr. Pandit was a highly educated man. He had the assistance of influential friends. He had even the assistance of a solicitor at Bombay. He knew that his end was near but yet he did not choose to make a Will. These circumstances generally speaking militate against the plea of gifts put forward by the 1st defendant. Further as seen earlier in the registered reply notice sent on behalf of the 1st defendant, there is no reference to these gifts. Therefore the evidence relating to those gifts will have to be ,examined very closely.

Let us first,take up the alleged gift of Rs. 41,000. We have earlier seen that Dr. Pandit had four fixed deposits in the Bank of Indore. The first defendant's case is that on March 25, 1949, with the intention of gifting the amounts covered by those deposits, Dr. Pandit instructed the bank to transfer the deposits to their joint names thereby making it possible to realise the amounts when they become due by either of them or by the survivor. The evidence relating to the letter said to have been sent by Dr. Pandit to the bank is somewhat suspicious. Medical evidence shows that Dr. Pandit was mostly unconscious during the last days of his life. It appears that the secondaries had affected his brain. Dr. Akbarali deposed that some days after his return from Bombay Dr. Pandit was found eating cotton-wool in the bathroom. It may be as elicited from Dr. Akbarali that on some day he might have been conscious. Under these circumstances, we have to examine the evidence relating to transfer of deposits with great ,deal of caution. The evidence relating to transfer of deposits bad not been examined by the trial court. The trial court dismissed the plaintiffs suit solely on the ground that he had separated, himself from the family. After carefully examining the evidence bearing on the point, the High Court has not found it possible to accept the 1st defendant's case as regards the gift of Rs. 41,000. The request by Dr. Pandit to transfer the deposits in the Bank of Indore was said to have been made on March 25, 1949. The main witness examined to prove the letter said to have been sent by Dr. Pandit is R. D. Joshi (D.W.

8). According to him he wrote the letter in question. His version is that he had been to the Nursing Home in which Dr. Pandit was, on March 21, 1949 in connection with the payment of the amount due from him to Dr. Pandit and it was on that occasion he under instructions from Dr. Pandit wrote out that letter and after getting it signed by him, it was delivered at the bank. According to him that letter was sent on March 21, 1949. He goes further and says that after the 21 st of March, he did not go to the Nursing Home nor did he see Dr. Pandit. The original letter that was alleged to have been sent to the bank of Indore is not forthcoming. Its genuineness is sought to be proved by the testimony of R. D. Joshi, the Accountant of the bank and its General Manager. The version given by the General Manager of the bank is that after receiving summons from court, be picked out the letter and kept it in safe custody but he says that from safe custody the letter has disappeared. This is somewhat surprising. R. D. Joshi's evidence throws a great deal of doubt on the genuineness of the letter. The letter referred to by R. D. Joshi is purported to have been sent to the bank on the 21st March. But the copy of the letter that was produced before the court bears the date 25th March. There is no explanation for this discrepancy. In view of the evidence of the bank officials, the High Court accepted the 1st defendant's version that Dr. Pandit did send a letter to the bank on March 25, 1949 asking the bank to transfer the deposits to the joint names of himself and the 1st defendant but all the same it came to the conclusion that the evidence on record is not sufficient to show that Dr.

Pandit wanted to make a gift of the amount covered by those deposits to the 1st defendant. We are unable to agree with the High Court that the evidence adduced in this case is satisfactory enough to prove that Dr. Pandit had sent any letter to the bank on March 25, as alleged by the 1st defendant.

Assuming that Dr. Pandit had sent the letter in question yet from the evidence on record, we are unable to come to the conclusion that by doing so Dr. Pandit intended to make a gift of the amounts in question to the 1st defendant. The 1st defendant has not taken a consistent stand as regards the alleged gifts. In the registered reply sent, as seen earlier, there was no reference to these gifts. In the written statement the case taken is one of gifts but the case pleaded in court is one of advancement. The dis- tinction between gift, benami and advancement has not been clearly home in mind by the High Court.

The transfer with which we are concerned in this case cannot be gift because Dr. Pandit continued to be the owner of the amounts in question till his death. There is no presumption of advancement in this country but yet if there had been satisfactory evidence to show that the transfers in question are genuine and further that Dr. Pandit intended that the amounts in question should go to the 1st defendant exclusively after his death, we would have held that the advancement put forward had been satisfactorily proved and the presumption rebutted.

It was for the 1st defendant to establish that there was a general intention on the part of Dr. Pandit to benefit him and in pursuance of that intention he transferred the deposits to the joint names of himself and the 1st defendant. If he had proved those facts, he would have made good his plea-See Young and anr. v. Sealev(1) Mrs. Avis Fitzalah Cowdrew v. Imperial Bank of India and anr.(2) Dalvia Nagarajamma v. State Bank of India, Cuddapah and ors. (3).

In Guran Ditta and anr v. Ram Ditta, (1) the Judicial Com- mittee held that the deposit made by a Hindu of his money in a bank in the joint names of himself and his wife, and on the terms that it is to be payable to either or the survivor, does not on his death constitute a gift by him to his wife. There is a resulting trust in his favour in the absence of proof of a contrary intention, there being in India no presumption of an intended advancement in favour of a wife. The same view was expressed by the Judicial Committee in Pandit Shambhu Nath Shivpuri v. Pandit Pushkar Nath and ors.(4) But the difficulty in this case is firstly that there is no satisfactory proof of the alleged letter sent by Dr. Pandit to the Bank of Indore. Secondly there is no evidence of the general intention on the part of Dr. Pandit to give those amounts exclusively to the 1st defendant. In the letter said to have been sent by Dr. Pandit to the bank all that is said is that he wanted to put the amount in the joint names of himself and the 1st defendant as he was seriously ill. There is nothing in that letter to show that he intended to make over that amount to the 1st defendant. As noticed earlier Dr. Pandit was in his death bed. Therefore he might have thought it prudent to transfer the deposits to the joints names of himself and this 1st defendant to facilitate collection. That being so we are unable to uphold the plea of the 1st defendant regarding those deposits. (1) [1949] 1, All. B. R. P. 92.

(2) A.I.R. 1956 Mad. 56.

(3) A.I.R. 1962 A. P. 260.

(4) I.L,R. 55, Cal. 944.

(5) I.L.R. 71, I.A. 197.

Now coming to the deposit in the Binod Mills Ltd., the letter said to have been sent by Dr. Pandit has been produced in this case but the contention of the plaintiff is that the letter in question must have been typed on a blank letter-head of Dr. Pandit bearing his signature' There is some basis for this contention. The plaintiff has beep able to produce two blank letter-heads of Dr. Pandit bearing hall signatures. There is reason to think that Dr. Pandit was signing on blank letter-heads for one reason or the other. The signature that is found on the letter sent to Binod Mills Ltd. shows that the signatory's hand was firm and not shaky. This letter is said to have been sent on 30th March 1949, hardly six days before Dr. Pandit's death. The medical evidence shows that at about that time Dr. Pandit was passing through critical days. At this juncture it is necessary to recall the fact that when Dr. Pandit sent the cheque given to him by R. D. Joshi on March 21, 1949, after endorsing the same to the bank along with his cheque to defendant No. 1, the Manager not being sure of the genuineness of those signatures as they appeared to have been made by a shaky hand sent his assistant to the Nursing Home to find out from Dr. Pandit as to whether those signatures were his. Dr. Pandit's hands could not have become more firm nine days after the 21st of March. We have seen the signature on the letter said to have been sent by Dr. Pandit to the Binod Mills on the 30th of March. It appears to have been made by a perfectly firm band. Further as seen from the medical evidence Dr. Pandit's mental condition was likely to have been far from satisfactory on 30th March. Dr. Akbarali deposed that he would be surprised that if someone told him that Dr. Pandit signed any paper during the week before he died. Hence we are unable to pronounce in favour of the genuineness of that letter. Even if we had come to the conclusion that the letter is genuine it affords no evidence of the fact that Dr. Pandit wanted to make over the deposit to the 1st defendant. The letter says that the transfer to joint names is desired because of Dr. Pandit's illness. Hence the case as regards the alleged transfer of the deposit in question does not stand on a better footing than that relating to the transfer of the deposits in the bank of Indore.

Now coming to the appeal filed by the plaintiff, we shall first take up the cheque issued by Dr. Pandit to the 1st defendant on March 21, 1949 There is no doubt as regards the genuineness of that cheque. There is reliable evidence to show that on that day Dr. Pandit was quite conscious. The circumstances under which the transfer was made clearly indicate that Dr. Pandit wanted to give that amount to the 1st defendant. The High Court has come to the conclusion that it was a gift by Dr. Pandit to his son. The surrounding circumstances of the case to which reference has been made earlier support that conclusion. There is nothing surprising if Dr. Pandit wanted to give a sum of Rs. 25,000 to his son who has been Very helpful to him. So far as the deposit in the name of the second defendant is concerned, the High Court's finding in our opinion is unassailable. It is clear from the evidence that Dr. Pandit was very fond of his daughter-in-law. The evidence of the second defendant has been believed by the High Court. Out of the amount received from the Nawab of Jaora, Dr. Pandit deposited Rs. 50,000 in his own name and Rs. 50,000 in his daughter-in-law's name. Thereafter he wrote to her that he has made the deposit in question. Subsequently he handed over the deposit receipt to his daughter-in-law. All these circumstances show that Dr. Pandit wanted to give that money to his daughter-in-law for whom he had great affection. That evidence of the second

defendant that her father-in-law had made a present of Rs. 50,000 to her is clearly acceptable.

There was some controversy in the High Court as regards the jewels but all that the plaintiff's Counsel wanted us was to correct an erroneous statement of fact in the judgment of the High Court to the effect that the second defendant had filed a list of jewels that were given to her. Beyond that no other change in the judgment of the High Court was sought. It is admitted that the second defendant had not filed any list of the jewels given to her. Subject to this correction, the High Court's decision on this point is affirmed.

It was urged on behalf of the plaintiff that he had been kept out of the estate of his father for over 22 years and therefore we may direct the 1st defendant who is now in possession of the properties as court receiver to pay to him at least half the cash amount that was there at the time of Dr. Pandit's death. This request appears to us to be a reasonable one. It is not necessary to determine at this stage the exact cash amount that was there at the time of the death of Dr. Pandit. Suffice it if we direct the 1st defendant as receiver either to transfer the fixed deposits of the value of Rs. 50,000 or to pay to the plaintiff a sum of Rs. 50,000 within a month from this date. This sum will be adjusted at the time of the final decree.

In the result both these appeals fail and they are dismissed. Under the circumstances of the case we direct the parties to bear their own costs in this Court.

V.P.S. Appeals dismissed.