

SRIDHAR & ANR.

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v.

N. REVANNA & ORS.

(Civil Appeal No. 1209 of 2020)

FEBRUARY 11, 2020

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[ASHOK BHUSHAN AND NAVIN SINHA, JJ.]

Transfer of Property Act, 1882 – ss. 10, 13 – Two gift deeds were executed in favour of defendant no.1 by his grandfather, who was also great grandfather of plaintiffs, with a condition that donee and his younger brothers hereafter had no right to alienate the scheduled property – Defendant no.1 executed three sale deeds in favour of defendant nos. 2-5 – Defendant nos. 6 & 7 were tenants of the premises – Suit was filed by appellants-plaintiffs against defendants inter alia for declaration that the alienations in favour of defendants 2-5 are null and void – Dismissed – High Court partly decreed the suit – Held: One of the conditions in the gift deed was that “the donee or his younger brothers who may be born hereafter have no right to alienate the schedule property in any manner whatsoever by way of sale, gift mortgage or otherwise” – s.10 expressly provides that where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void – Thus, the condition in the gift deed that defendant no.1 shall not alienate the property is a void condition – Further, the gift was not in favour of any unborn person but in favour of defendant no.1 who was a minor, five years old – Condition was put on the donee and his younger brothers who may be born after the execution of the gift deed – Condition put on person unborn is entirely different from execution of gift deed in favour of a person who is not born – Thus, gift clearly being in favour of defendant no.1 and not in favour of unborn person, s.13 also has no application in the facts of the present case – High Court erred in holding that defendant no.1 was not entitled to transfer the property received by gift deed – Plaintiffs were not entitled for declaration sought in the suit.

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A **Dismissing the appeal, the Court**

HELD: 1.1 One of the conditions which was enumerated in the gift deed was that “the donee or his younger brothers who may be born hereafter have no right to alienate the schedule property in any manner whatsoever by way of sale, gift mortgage or otherwise”. [Para 14][730 E-H]

1.2 Section 10 expressly provides that where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void. According to Section 10 any condition restraining the transferee the right of alienation is void. A plain reading of Section 10 of Transfer of Property Act makes it clear that the condition in the gift deed dated 05.06.1957 that defendant No. 1 shall not alienate the property is a void condition.

D A perusal of the gift deed indicates that the grandfather gifted the immovable property to his grandson. Gift was not in favour of any unborn person rather gift was in favour of who was a minor, five years old. The reference of donee and his younger brothers or their male children was made while enumerating the conditions as contained in the gift deed. The condition was put on the donee and his younger brothers who may be born after the execution of the gift deed. The condition put on person unborn is entirely different from execution of gift deed in favour of a person who is not born. Thus, the gift was clearly a gift in favour of defendant No.1 and not in favour of unborn person, thus, Section 13 has no application in the facts of the present case. [Paras 17, 21][731 D-F; 733 D-G]

1.3 The High Court erred in holding that defendant No.1 was not entitled to transfer the property which was received by gift deed dated 05.06.1957. The plaintiffs were not entitled for declaration as sought for in the suit. [Para 25][735-C]

G *Smt. Brij Devi v. Shiva Nanda Prasad and others, AIR 1939 Allahabad 221; Smt. Prem Kali v. Deputy Director*

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of Consolidation, Sitapur and others 2016 (116) ALR 794; F.M. Devaru Ganapathi Bhat v. Prabhakar Ganapathi Bhat (2004) 2 SCC 504 : [2003] 6 Suppl. SCR 1265 – referred to.

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<u>Case Law Reference</u>		
AIR 1939 Allahabad 221	referred to	Para 18
2016 (116) ALR 794	referred to	Para 19
[2003] 6 Suppl. SCR 1265	referred to	Para 22

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1209 of 2020.

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From the Judgment and Order dated 18.01.2012 of the High Court of Karnataka at Bangalore in Regular First Appeal No. 69 of 2002.

Jayant Kumar Sud, Sr. Adv., B. Vishwanath Bhandarkar, Sarbendra Kumar, Karunakar Mahalik, H.K. Naik, Suraj Prakash Ahlawat, M. Umashankar, Naresh Kumar, Advs. for the Appellants.

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S.S. Javali, Sr. Adv., P. R. Ramasesh, Abdul Azeem Kalebudde, Advs. for the Respondents.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.

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1. This appeal has been filed by the plaintiffs against the judgment dated 18.01.2012 of the High Court of Karnataka in Regular First Appeal No. 69 of 2002 by which the High court partly allowed the Regular First Appeal of the plaintiffs-appellants.

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2. Brief facts of the case for deciding this appeal are:

The parties shall be referred to as described in the suit. One Shri Muniswamappa, great grandfather of the plaintiffs and grandfather of defendant No.1, was the absolute owner of the suit schedule property. Shri Muniswamappa executed two gift deeds dated 05.06.1957 in favour of defendant No.1, N. Revanna. The gift deed was executed by Muniswamappa in favour of his grandson, N. Revanna. The gift deed also contained a condition that donee and his younger brothers hereafter had no right to alienate the scheduled property. Defendant No. 1, N. Revanna executed sale deeds dated 07.10.1985, 08.10.1985 and 10.10.1985 in favour of defendant Nos. 2 to 5. Defendant Nos.6 and 7

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A were the tenants of the premises. Original Suit No. 11133 of 1995 was filed by the plaintiffs-appellants against N. Revanna, defendant No.1, vendees as defendant Nos. 2 to 5 and defendant Nos.6 and 7 in which following reliefs have been claimed:

"PRAYERS:

- B (a) to declare that the plaintiffs are the absolute owners of the suit schedule properties or in alternative to declare that the plaintiffs are the revert loners in interests of the suit schedule properties;
- C (b) to declare the alienations in favour of defendants 2 to 5 by the first defendant dated 7.10.1985, 8.10.1985 and 10.10.1985 are null and void and set aside the same as the same is not binding on these plaintiffs;
- (c) to grant for permanent injunction restraining the defendants 2 to 5 from taking possession of the suit schedule properties from the defendants 6 and 7 and also restraining the defendants 2 to 5 dismantling the suit schedule properties;
- D (d) to direct defendants 2 to 5 deliver the vacant possession of properties comprised in item No.1 of the schedule properties which they have taken possession from Sri Subramanayam and Sri Selvaraj; and
- E (e) award costs and such other reliefs as this Hon'ble Court may deems fit in the circumstances of the case."
- F 3. The case of the plaintiffs was that N. Revanna received the suit properties by registered gift deed dated 05.06.1957 from his grandfather, Muniswamappa and as per the gift deed defendant No.1 and his younger brothers who may be born had no right to alienate the suit schedule property. It was pleaded that sale deed executed by defendant No.1 is void and the plaintiffs being sons of defendant No.1 and great grandsons of Muniswamappa are the absolute owners of the property.
- G Both the plaintiffs were minors and the suit was filed by their next friend and guardian paternal grandmother, Smt. Jayamma.
- H 4. Defendant No.1 filed written statement supporting the case of the plaintiffs stating that as he was in dire need of money and proceeded under the bona fide belief that there was no legal impediment to sell the property. Defendant No.7 also filed written statement. Defendant

Nos. 2 to 5 filed a common written statement questioning the bona fide of the plaintiffs and their guardian. They pleaded that the plaintiffs have been set up by the vendor. Defendant No.1 acting in addendum in seeking to avoid the sale on a specious plea that there was a condition that the property could not have been alienated by defendant No.1. Trial Court framed the following five issues:

- “1] Whether the plaintiff proves that plaintiffs have got absolute right over the suit schedule properties?
- 2] Whether the plaintiff proves that defendant No.1 has no right to alienate suit schedule property in favour of Defendant No. 2 and Defendant No. 5 and that said alienation is not binding on the plaintiffs?
- 3] Whether the defendants prove that condition of restraint on alienation is void in law?
- 4] Whether the plaintiffs are entitled to the relief sought?
- 5] What order or decree?”

5. Issue Nos. 1 and 2 were answered in negative and Issue No. 3 was answered in affirmative. The trial court held that the plaintiffs have failed to prove that they have got absolute right over the suit schedule property and they have also failed to prove that defendant No.1 had no right to alienate the property. The suit of the plaintiffs was dismissed by the trial court vide its judgment and decree dated 21.11.2001.

6. A Regular First Appeal was filed by the plaintiffs in the High Court. The High Court held that the trial court was clearly in error in holding that the condition imposed on defendant No.1 was void. The High Court took the view that the benefits that defendant No.1 received by virtue of sale deed had to be given back to the plaintiffs. The High Court partly decreed the suit by passing the following order:

“The plaintiffs’ condition that the property was worth multiple times the sale price for which it was sold, is an unfortunate circumstance. The interest of justice would demand that the plaintiffs be entitled to nothing more than what Revanna had received under the sale Deeds. It is this alone which the plaintiffs shall be entitled to and it is accordingly decreed that the plaintiffs are entitled to the sale consideration received by Revanna under the Sale Deeds. The plaintiffs are entitled to recover the same

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- A from defendant No. 1. Further, since defendant Nos. 2 to 5 were equally responsible for creation of this circumstance, it would meet the ends of justice if nominal costs are imposed on them, which in the opinion of this court would be in the order of Rs. 25,000/- payable to the plaintiffs, jointly; though in law, the condition was not to be held void, in which event, though the plaintiffs could then claim ownership to the property, having regard to the sequence of events and the present circumstance, the claim of the plaintiffs to recover the property necessarily has to be denied. The order of temporary injunction granted earlier stands vacated.”
- C 7. The plaintiffs aggrieved by the judgment of the High Court have come up in this appeal.
- B 8. Shri Jayant Kumar Sud, learned senior counsel appearing for the appellants submits that the High Court even after deciding all the issues in favour of the plaintiffs erred in law in not declaring the sale deeds null and void and returning the property to the plaintiffs. It is submitted that when the High Court held that the condition in the gift deed executed by the Muniswamappa in favour of defendant No. 1 that donee shall not be entitled to alienate the schedule property was held to be a valid condition the sale deeds executed by defendant No. 1 automatically became void and were liable to be declared so. He submits
- D that defendant No. 1 in the gift deed executed by his grandfather had only a life stake who could not have alienated any of the properties.
- E 9. Learned counsel for the appellant further submits that the gift deed executed in favour of defendant No. 1 on 05.06.1957 was not a valid gift deed. It being gift deed in favour of defendant No. 1 and for the benefit of unborn person was void under Section 13 of the Transfer of Property Act.
- F 10. Shri S.S. Javali, learned senior counsel, appearing for the respondents refuting the submissions of the learned counsel for the appellants contends that the gift deed dated 05.06.1957 was a valid gift deed and was not hit under Section 13 of the Transfer of Property Act.
- G He further submits that the condition of gift deed dated 05.06.1957 that donee shall not be eligible to alienate the property, was a void condition. He has placed reliance on Section 10 of the Transfer of Property Act, 1882. Learned counsel for the respondents submits that the High Court committed an error in holding that condition of non-alienation was not void.

11. We have considered the submissions of the learned counsel of A the parties and perused the records.

12. The short question to be considered and answered in this appeal is “as to whether defendant No.1 had right under gift deed dated 05.06.1957 to alienate the suit properties”? The trial court has held that the condition in the gift deed that the donee shall not be eligible to alienate the property was void and defendant No.1 has validly executed the sale deeds in favour of defendant Nos. 2 to 5. The trial court has resultantly dismissed the suit. The High Court had taken the contrary view that the above condition of the gift deed was not void. Further, the High Court did not annul the sale deed rather granted limited relief to the plaintiffs that the plaintiffs are entitled to receive back the consideration which was received by defendant No.1 by execution of three sale deeds dated 07.10.1985, 08.10.1985 and 10.10.1985. The suit of the plaintiffs for rest of the prayers was dismissed.

13. Before we proceed to consider the respective submissions, it is necessary to look into the relevant portions of the gift deed dated 05.06.1957. The gift deed was executed by Muniswamappa claiming to be sole and absolute owner of the premises bearing Municipal No. 324 and 325. Defendant No.1, N. Revanna was a minor aged five years represented by his father, a natural guardian, M. Narayanappa. The relevant portion of the gift deed is as follows:

“NOW THIS INDENTURE WITNESSETH that in pursuance of the aforesaid agreement and in consideration of extreme love and affection which the donor cherishes for the donee his grandson and the donee’s, offspring’s and the donee’s young brothers and their male offspring’s who may be born hereafter he the donor doth hereby grant, convey, makeover and transfer by way of gift to the donee above name the immovable property described in the schedule hereunder given which bears Municipal No. 324, Old Poor House Road Civil Station Bangalore, to be taken by his as a gift subject to the conditions hereinafter mentioned.

The donor covenants with the donee, that on the date of these presents, the property that is now endowed as a gift is free from all encumbrances, liens, charges, attachments from Court and lis pendens and that he has absolute and unimpeachable right

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- A to grant it as a gift and that no one else has any right to question the same.

The donor has this day handed over possession of the property hereby gifted to the donee, in accordance with Law which the donee shall enjoy on and from this date, over which she can

- B exercise all rights of ownership subject to the conditions detailed hereinafter namely:-

1. The Donee or his younger brothers who may be born hereafter have no right to alienate the schedule property in any manner whatsoever by way of sale, gift mortgage or otherwise.

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2. The donee or his younger brothers who may be born hereafter shall enjoy the property during his or their life time as the case may be and on his or their demise it shall devolve on his or their male children then surviving who shall be at liberty to deal with the property mentioned in the schedule hereunder in any mentioned

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her their to do with unstructured gifts.

3. In case the Donee or his younger brother or brothers who may be born hereafter die issue-less, the said

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property hereby gifted shall devolve on Sri SOMESWARASWAMY of Sri Someswara Temple Ulsoor Civil Station Bangalore, for the benefit of the said Temple.”

14. The gift deed categorically states: “donor doth hereby grant,

- F convey, makeover and transfer by way of gift to the donee above named the immovable property described in the schedule hereunder”. The gift deed in favour of the donor was absolute and who was to exercise rights of ownership subject to the conditions detailed in the gift deed. One of the conditions which was enumerated in the gift deed was that “the

- G donee or his younger brothers who may be born hereafter have no right to alienate the schedule property in any manner whatsoever by way of sale, gift mortgage or otherwise”.

15. The gift deed further stated that “donee or his younger brothers

- H who may be born hereafter shall enjoy the property during his or their life time as the case may be and on his or their demise it shall devolve on his or their male children then surviving who shall be at liberty to deal with the property mentioned in the schedule hereunder in any manner”.

16. The question to be answered is as to whether defendant No.1 who was gifted the schedule property had no right to alienate the schedule property in any manner whatsoever. The reliance has been placed by the counsel of the respondents on Section 10 of the Transfer of Property Act which is to following effect:

“10. Condition restraining alienation.—Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him:

Provided that property may be transferred to or for the benefit of a women (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.”

17. Section 10 expressly provides that where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void. According to Section 10 any condition restraining the transferee the right of alienation is void. A plain reading of Section 10 of Transfer of Property Act makes it clear that the condition in the gift deed dated 05.06.1957 that defendant No. 1 shall not alienate the property is a void condition.

18. Learned counsel for the respondents has rightly placed reliance on the judgment of Allahabad High Court in **Smt. Brij Devi vs. Shiva Nanda Prasad and others, AIR 1939 Allahabad 221**, wherein the High Court had occasion to consider Sections 10 and 126 of the Transfer of Property Act. In the above case also gift deed came into consideration which contained a condition that “The donee or his successors will have no right to transfer or mortgage”. The Division Bench of the High Court had laid down:

“Now the law of conditions in regard to the transfer of property is contained in Ch. 2 of the T.P. Act. No condition therefore, in our judgment, imposed upon a donee can be valid if it is consonant with the provisions of Section 10 of the Act. The contention, of learned Counsel for the plaintiffs that Section 126

- A is an absolute exception to Section 10 and that in view of the terms of the former Section the donor was entitled to impose a condition entitling him to revoke upon any event happening including an alienation by the donee, provided that event did not depend on the will of the donor in our judgment is unsound. It is the duty of the Court to give full effect to every Section of an enactment. We see no difficulty in reconciling the provisions of Sections 10 and 126. Section 10 embodies the general principle that a transfer of immovable property may not impose a condition restraining the transferee from alienating the interest conveyed to him absolutely except in the case of a lease where the condition is for the benefit of the lessor. This general provision, in our judgment, applies to all transfers including gifts. Apart from the condition restraining alienation by a lessee, there is no other exception.”
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- D 19. The Allahabad High Court in the subsequent judgment in **Smt. Prem Kali vs. Deputy Director of Consolidation, Sitapur and others, 2016 (116) ALR 794**, followed the earlier judgment of the High Court. In paragraph 15 following was laid down:

- E “15. A bare reading of Sections 10 and 126 of Act, 1882, shows that Section 10 lays down that in a transfer, the condition restraining alienation, cannot be inserted. Section 126 of Act, 1882 lays down that on happening of certain condition, not depended on the will of the donor, the gift can be suspended or revoked. Present case is not covered under Section 126. According to the respondent, gift can be conditional. But there is no question as to whether a gift can be conditional but the real question is that condition, which has been specifically prohibited under Section 10 of Act, 1882 can be imposed in the gift or not. There is no reason to hold that the condition which is specifically prohibited under Section 10 of Act, 1882 is not applicable to gift. This question came for consideration before various Courts in under noted cases from time to time, viz Re Dugdale (1888) 38 Ch D 176; Nabob Amiruddaula Vs Nateri (1876) 6 Mad HC 356 (Mohomedan Law); Anantha Vs Nagamuthu (1882) ILR 4 Mad 200; Ali Hasan Vs Dhirja : (1882) ILR 4 All 518; Bhairo Vs. Parmeshri: (1885) ILR 7 All 516; Muthukamara Vs. Anthony (1915) ILR 38 Mad 867, 24 IC 120; Narayanan Vs Kannan (1884) 7 Mad 315, Brij Devi v. Shiv Nanda Prasad: AIR 1939 All 221; Giani Ram Vs Balmakand H

:(1956) 58 Punj LR 114 :AIR 1956 Punj 255; Ramasamy and ors Vs. Wilson Machine Works AIR 1994 Madras 222 (NOC), Jagdeo Sharma Vs. Nandan Mahto: AIR 1982 Pat. 32 and Gorachand Mukherji Vs. Smt. Malabika Dutta: AIR 2002 Cal 26. This Court has already taken the view that condition restraining donee from alienation of gift, cannot be imposed and such a condition is void under Section 10 of the Act, 1882. I respectfully agree with the aforesaid view taken in Brij Devi (supra).

20. Now, we come to the submission of the learned counsel for the appellants that gift deed was hit by Section 13 of the Transfer of Property Act. Section 13 of the Transfer of Property Act provides:

“Section 13. Transfer for benefit of unborn person.—Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.”

21. A perusal of the gift deed as noted above indicates that Muniswamappa gifted the immovable property to his grandson, N. Revanna. Gift was not in favour of any unborn person rather gift was in favour of N. Revanna who was a minor, five years old. The reference of donee and his younger brothers or their male children was made while enumerating the conditions as contained in the gift deed. The condition was put on the donee and his younger brothers who may be born after the execution of the gift deed. The condition put on person unborn is entirely different from execution of gift deed in favour of a person who is not born. Thus, the gift was clearly a gift in favour of defendant No.1 and not in favour of unborn person, thus, Section 13 has no application in the facts of the present case.

22. Learned counsel for the appellants has placed reliance on the judgment of this Court in **F.M. Devaru Ganapathi Bhat vs. Prabhakar Ganapathi Bhat, (2004) 2 SCC 504**, in support of his submission based on Section 13 of the Transfer of Property Act. The gift deed which came into consideration in the aforesaid case has been reflected in paragraph 4 of the judgment which is to the following effect:

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- A **“4.** In the gift deed, the donor retained Property Survey No. 306 for her livelihood till demise. The contention is that on true construction of the gift deed on demise of Mahadevi, the appellant became the absolute owner of Property Survey No. 306. The respondent has no right over it. The answer would depend upon the construction of the gift deed. The original gift deed is in Kannada language. When translated in English, it reads as under:

“THIS DEED OF GIFT OF IMMOVABLE PROPERTIES AND HOUSE in village is executed on this, the 9th day of September, 1947, by Smt Mahadevi, w/o Subraya Bhat, aged about 25 years, occupation, housewife, belonging to Havyaka community, r/o Keramane, Yalugar village of Siddapur taluk, in favour of Devaru Ganapathi Bhat, aged about 13 years, r/o Keramane, Yalugar village of Siddapur taluk.

- D WHEREAS, I am the owner of the below-mentioned immovable properties and house. In order to protect the interest of the below-mentioned properties and house, I am thinking to gift all the properties by way of a gift to a suitable person. As you are my brother's son and also you have gained love and affection of mine and also as the land and house were previously your ancestral property, hence I have decided to gift the immovable property and house therein to you.

E In case any male children are born to your parents, you shall enjoy the described immovable property and house with those male children as a joint holder. Therefore, this deed of gift of immovable properties, house etc. has been executed”

- F 23. The gift deed in the above case was also in favour of Devaru Ganapathi Bhat, aged about 13 years, this Court held that Section 13 has no applicability to the facts of the above case. In paragraph 12 following has been laid down:

G **“12.** There is no ban on the transfer of interest in favour of an unborn person. Section 20 permits an interest being created for the benefit of an unborn person who acquires interest upon his birth. No provision has been brought to our notice which stipulates that full interest in a property cannot be created in favour of an unborn person. Section 13 has no applicability to the facts and circumstances of the present case. In the present case, the donor

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gifted the property in favour of the appellant, then living, and also stipulated that if other male children are later born to her brother, they shall be joint holders with the appellant. Such a stipulation is not hit by Section 13 of the Act. Creation of such a right is permissible under Section 20 of the Act. The respondent, thus, became entitled to the property on his birth. In this view, there is also no substance in the second contention.

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24. The above judgment of this Court clearly supports the submission of the learned counsel for the respondents that Section 13 has no application in the present case.

25. In view of the foregoing discussions, we are of the clear opinion that the High Court erred in holding that defendant No.1 was not entitled to transfer the property which was received by gift deed dated 05.06.1957. The plaintiffs were not entitled for declaration as sought for in the suit. There is no merit in the appeal. The appeal is accordingly dismissed.

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Divya Pandey

Appeal dismissed.