

## **Jagat Singh Chilwal And Anr. vs Dungar Singh on 25 January, 1951**

**Equivalent citations: AIR1951ALL599, AIR 1951 ALLAHABAD 599**

### **JUDGMENT**

Agarwala, J.

1. This is a debts' appeal arising out of a suit for a declaration that a certain deed of gift was void & for possession. The facts briefly stated are these.

2. Dungar Singh, the pltf.-resp., & his wife owned the property in dispute. Both the old persons were issueless & were in search of some one who could look after them & support & maintain them in their old age & to whom they might transfer the property which they possessed. The debts.-appls., husband & wife, persuaded the pltf.-resp. to transfer the property to them & promised that they would support him in his old age. Accordingly on 23-12-1943, two documents were executed, (1) Ex. P-1, a registered deed by Dungar Singh in favour of the debts.-appls., & (2) Ex. P-2, an unregistered agreement whereby it was agreed that the donees would maintain Dungar Singh & his wife till their death & would perform their obsequies on their deaths, & that in case they failed to do so Dungar Singh might revoke the deed of gift or, in the alternative, obtain maintenance allowance. This deed of agreement was signed by Jagat Singh, applt.1, alone & not by his wife. After sometime parties quarrelled & the pltf.-resp. filed the suit which has given rise to this appeal alleging that the debts.-appls. had failed to support him & his wife as agreed to by them & that therefore he had revoked the deed of gift & was entitled to seek a declaration that the deed of gift was null & void & no longer binding upon him. He also claimed relief for possession over the property comprised in the deed of gift.

3. In the written statement which was filed on behalf of both the appls. it was admitted that the agreement was no doubt executed but it was alleged that they had not failed to maintain the pltf.-resp. & his wife, & that, in any case, according to the terms of the agreement the pltf. was not entitled to revoke the deed but was entitled only to recover amount of maintenance. In the plaint the pltf. had stated that both the debts. had entered into the agreement. In the written statement this fact was not denied. Learned counsel appearing on behalf of the debts.-appls. has conceded that in view of the pleadings it was not open to him to place any reliance upon the fact that the agreement was not signed by applt 2. This point, therefore, need not detain us any further. This two main issues arose in the case; (1) Whether the debts. had failed to maintain the pltf. & his wife & (2) whether, if the answer to the first issue was in the affirmative, the pltf. was entitled to revoke the deed of gift & recover possession over the property. A subsidiary point in connection with the second issue also arose, namely, whether the agreement could be admitted in evidence as it was un-registered. Both the Cts. below decided that the debts.-appls. failed to maintain the pltf. & his wife as agreed to by

them in the deed of agreement Ex. P2; that the deed of agreement, though unregistered, was admissible in evidence & lastly, that the pltf. was entitled to revoke the deed of gift & therefore to recover possession over the property in suit.

4. In this second appeal learned counsel has conceded that the deed of agreement, standing by itself, did not require registration & could be received in evidence but has urged that if it was part of the transaction of the gift it required registration & could not be received in evidence. He has further urged that the deed of gift not having contained the clause about the power of revocation could not be revoked.

5. The deed of gift recites the promise of the donees that they would support the donor & his wife. The agreement having been executed on the same day on which the deed of gift was executed it must be held that both the documents formed part of one transaction. The finding of both the Cts. below to the same effect is quite correct.

6. If the deed of gift & the agreement formed part of the same transaction it must be held that the gift was made subject to the condition that the donors would be entitled to revoke the gift or, in the alternative, to claim the amount of maintenance from the donees in case the donees failed to maintain the donor & his wife. Assuming that the agreement was admissible in evidence that transaction read as a whole fell within the purview of Sections 31 & 126, T. P. Act, Section 31 provides :

"Subject to the provisions of Section 12, on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen."

Section 126 lays down :

"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.....

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."

Learned counsel has urged that the term of the agreement that the donees shall maintain the donor & his wife was in the nature of consideration & not a specified event on the happening of which the donor was entitled to revoke the deed of gift as contemplated is the first part of Section 126. In one sense, it could certainly be said that the condition to maintain the donor is a consideration for the deed Ex. P-1. But if it was consideration, the transaction cannot properly be said to be a gift because

a gift is without consideration. He has admitted, however, that the deed EX. P-1 was a gift & we must consider the payment of the maintenance as a condition upon which the gift was made & not as a consideration for the same. The specified event mentioned in Section 126 need not necessarily be one particular happening. It may be a series of happenings. The omission to make the payment agreed upon would constitute the happening of the specified event mentioned in Section 126 & also the happening of the specified uncertain event as mentioned in Section 31.

7. It is not necessary that the term relating to the power of the owner to revoke the deed of gift should be entered in the deed by which the transfer or gift is made. This condition may be recorded in a separate document just as the terms of a contract may be recorded in several documents.

8. The question then is, whether, in a case, where there are two documents one recording the agreement between the parties as to the condition upon which the donor is given the right to revoke the deed of gift & the other by which the donor makes the gift, is it necessary to have both the documents registered, or it is enough that the second document is registered. I think the answer to this question must be that it is enough that the deed by which the transfer is made is registered.

9. The relevant provisions on the point are contained in Section 123, T. P. Act & Sections 17 & 49, Registration Act.

10. Section 123, T. P. Act requires a gift of immovable property to be effected by a registered instrument. Section 17(1)(a), Registration Act, provides that an instrument of gift of immovable property shall be registered. Section 17(1)(b) provides that other non-testamentary instruments which purport or operate to create, declare, assign, limit 'or extinguish, whether in present or in future, any right, title, or interest, whether vested or contingent, of the value of one hundred rupees & upwards, to or in immovable property shall also be registered. Section 17(2)(v) however lays down-that :

"Any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest."

need not be registered. Section 49, Registration Act, provides that a document which is required to be registered by Section 17, Registration Act, or by any provision of the T. P. Act shall not (a) affect any immovable property comprised therein or (c) be received as evidence of any transaction affecting such property unless it is registered.

11. A transaction of gift with a condition superadded that the donor shall be entitled to revoke it on the happening of a certain event undoubtedly consists of two parts. (1) a transfer by the donor to the donee & (2) the condition subject to which the transfer is made.

12. The gift proper consists of the first part i. e., the transfer by the donor to the donee, as a reference to the definition of 'gift' in Section 122, T. P. Act will show. Gift as there defined means, '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.'

When it is laid down in Section 123 that a gift shall be made by a registered deed, the word 'gift' must be construed as having reference to the definition of that word in Section 122. It follows that what is required to be registered under Section 123 is the first part of the transaction & not necessarily the second part. So also, I think, the second part of the transaction does not fall under Section 17(1)(a), Registration Act. It also does not fall under Section 17(1)(b), because the second part by itself does not purport or operate to create declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees & upwards, to or in immovable property It merely prescribes a condition subject to which a gift is made. The document contemplated by Section 17(1)(b), Registration Act, is a document which by its own force creates the interest spoken of.

13. The exception contained in Section 17(2)(v) does not apply to the present case. But because it does not apply, it should not be considered that the present case falls under Section 17(1)(b). The exception contained in Section 17(2)(v) is not exhaustive. There may be other cases not falling under Section 17(2)(v) & yet not falling under Section 17(1)(b) either. I hold that the document containing the agreement between the parties as to the condition upon which the gift made by Dungar Singh was revocable did not require registration.

14. I, therefore, dismiss this appeal but as no one appears on behalf of resp. it is not necessary to make any order as to costs.

15. Leave to appeal under the Letters Patent is refused.