

Achhra Singh vs. Sher Singh and others (Mital, J.)

and his minor sons and that H.U.F. was recognised and continued to be assessed as such from 1963 till 31st March, 1973 in spite of the death of Ram Chander Paliwal, which took place on 3rd September, 1963. The point before the aforesaid authorities was not whether the H.U.F. could be an assessee or not. Even from the question referred, it is clear that there is an H.U.F. and what is to be determined is whether a partial partition of the H.U.F. assets was valid or not.

(5) It has been settled by the highest Court that a H.U.F. can become partner of another concern. Once the H.U.F. continued to be an assessee till 31st March, 1973 there can be partial partition of the H.U.F. assets and that is, what has been done in this case. Partial partition of H.U.F. assets in the partnership firm of M/s Ram Narain Sat Narain was carried out by Ram Narain and since his mother was entitled to share the assets equally with him, she was also given equal share and memorandum of partition was drawn up. Under the circumstances, on a reading of section 171 of the Income Tax Act, we do not find any impediment in the way of the assessee to claim partial partition of H.U.F. assets. It would hardly matter whether mother was entitled to claim partition or not, and even if Ram Narain was the sole male co-partner, he could effect partition. The Income tax law and particularly section 171 of the Act does not envisage that if members of H.U.F. are mother and son, such H.U.F. is debarred in law in effecting complete or partial partition of H.U.F. assets. On this process of reasoning, we are of the opinion that on the facts and circumstances of this case, the Tribunal was not right in holding that there could not be a valid partial partition of H.U.F. assets between a widow mother and her son, and answer the referred question in the negative i.e., in favour of the assessee and against the department.

(6) The reference stands disposed of with no order as to costs.

N.K.S.

Before R. N. Mittal, J.

ACHHRA SINGH,—Appellant
versus

SHER SINGH AND OTHERS,—Respondents.

Regular Second Appeal No. 1532 of 1976

December 19, 1985.

Transfer of Property Act (IV of 1882)—Section 3 Explanation 1, 10, 41 and 126—Absolute gift made of immovable property—Condition imposed by donor in the gift deed restricting the right of the

donee from alienating the property—Such condition—Whether void or protected by section 126—Gift deed not required to be registered as the provisions of the Act not applicable to the area in question—Transferees from the donee—Whether required to search the records of the department in order to get benefit of Section 41.

Held, that a bare reading of section 10 of the Transfer of Property Act, 1882 makes it clear that at the time of transfer of property, no limitation can be imposed by the transferor restricting the transferee from alienating the property and if such a condition is imposed, that would be void. The reason is that such conditions are considered opposed to public policy. Section 10 is a general section and applies to all alienations and section 126 is a specific section and applies to gifts only. However, section 126 does not exclude the applicability of section 10 in the case of gifts. There is no conflict between these two sections and both can exist simultaneously but it is difficult to define in what circumstances section 10 will apply and in what circumstances section 126 would come into play though it is clear that the condition restricting the right of donee to alienate the subject-matter of a gift is void and such a condition is not protected by section 126 of the Act.

(Paras 9 & 12)

Held, that a reading of Explanation I to Section 3 of the Act makes it clear that a person can be said to have notice of a transaction relating to immovable property from the date of registration if that transaction was required by law to be effected by a registered instrument and not otherwise. If the transferees from the donees do not search the books of registration, it does not make any difference if the gift was not required by law to be registered. If the document required no registration, registration of such a document would not raise a constructive notice against the purchaser of such a property, as under the law he was not bound to search the registration office, to find out whether the property proposed to be purchased was the subject matter of a contract and whether the same was registered. When oral transactions are permitted by law inspection of records in the registration office is not *sine qua non* while granting protection to the alienee under section 41. Thus, if gift is not required by law to be registered the transferees from the donee are not required to search the records of the department in order to get the benefit of section 41 of the Act.

(Paras 14)

Regular Second Appeal from the decree of the Court of the Additional District Judge (II), Ludhiana, dated the 1st day of April, 1976, reversing that of the Sub-Judge, 1st Class, Ludhiana, dated the

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5th day of October, 1974, and dismissing the suit of the plaintiff, with costs.

K. L. Jagga, Advocate with S. K. Aggarwal, Advocate, for the Appellant.

V. K. Jhanji, Advocate, for Respondent No. 1 to 4.

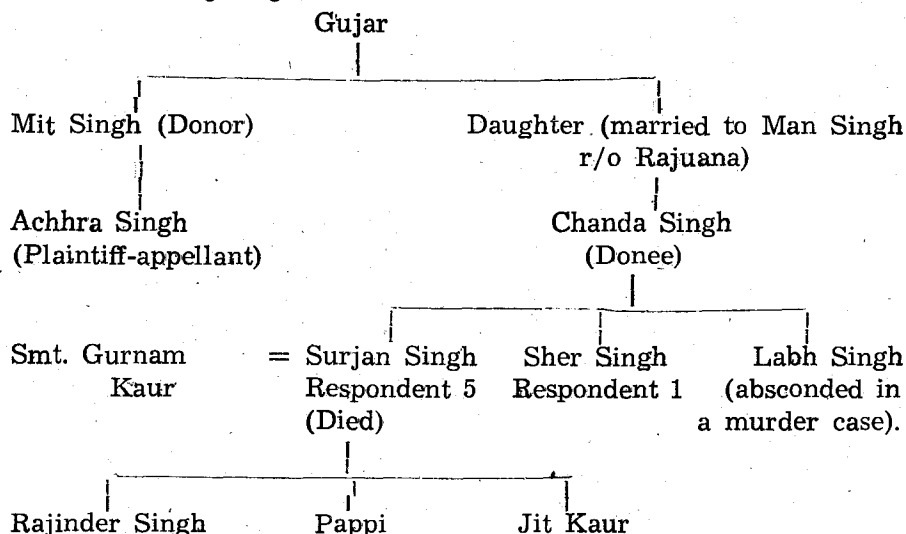
Satrajit, Advocate, with Arihant Jain, Advocate with Naresh Kumar, Advocate, for Respondent No. 6 and L.R.'s of Respondent No. 7.

JUDGMENT

Rajendra Nath Mittal, J.

(1) This second appeal has been filed by the plaintiff against the judgment and decree of the Additional District Judge, Ludhiana dated 1st April, 1976.

(2) The following pedigree-table will be helpful in appreciating the facts of the case :



Mit Singh was the owner of land measuring 41 *bighas* 6 *biswas* situated in village Dhamot. He gifted it,—vide registered gift deed

dated 29 Chet 1963 Sambat (10th April, 1906), Exhibit P-1 in favour of Chanda Singh, his sister's son. It is alleged that it was specifically mentioned in the gift deed that Chanda Singh would be entitled to enjoy the usufruct of the land only but he would not be entitled to alienate it. Mit Singh died about 55 years back, leaving behind the plaintiff as his son. Chanda Singh also died about 50 years back, leaving behind Sher Singh respondent No. 1, Surjan Singh respondent No. 5 and Labh Singh as sons. Labh Singh absconded in a murder case. Consequently his share was attached by the State and was transferred in the name of Punjab State. Sher Singh defendant against the terms of the gift deed mortgaged with possession 1/6th share out of 1/3rd share in the land in favour of Kartar Singh respondent No. 2 for an ostensible consideration of Rs. 5,500,—vide registered mortgage deed dated 13th July, 1971. He mortgaged the remaining 1/6th share in favour of Avtar Singh respondent No. 3 and Charan Singh respondent No. 4 for an ostensible consideration of Rs. 6,000,—vide registered mortgage deed dated 13th July, 1971. Surjan Singh defendant sold 1/3rd share in the land to Niranjana Singh respondent No. 6 and Chanan Singh respondent No. 7 for an ostensible consideration of Rs. 33,000,—vide registered sale deed dated 15th July, 1971. It is alleged that in view of the terms of the gift deed, they could not mortgage or sell their share. Consequently the plaintiff filed a suit for possession of the land in dispute, which was given during consolidation proceedings in lieu of 2/3rd share of the gifted land.

(3) The defendants contested the suit and *inter alia* pleaded that the conditions mentioned in the gift deed restricting the rights of the donee to alienate the property were void and that they were *bona fide* purchasers/ mortgagees for consideration and thus they were protected under section 41 of the Transfer of Property Act. They also averred that the vendors were full owners of property and had right to alienate the same. Some other pleas were also taken but they do not survive in the second appeal.

(4) The trial Court held that the conditions mentioned in the gift deed were valid, that the alienors were not the full owners of the property and that the mortgagees/purchasers were not *bona fide* mortgagees purchasers for consideration. Consequently it decreed the suit in favour of the plaintiff.

(5) In appeal the Additional District Judge reversed the finding of the trial Court on both the questions. Consequently, he

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accepted the appeal and dismissed the suit of the plaintiff. He has come up in second appeal to this Court. During the pendency of the appeal Surjan Singh and Chanan Singh respondents have died and their legal representatives have been brought on the record.

(6) The first contention of Mr. Jagga Singh is that the condition in the gift deed that the donee was not entitled to alienate the land is a valid condition as the donor made a gift of usufruct of the land and not of the ownership rights. He further submits that the alienation is, therefore, void and the appellant has become entitled to its possession.

(7) I have duly considered the argument but do not find any substance in it. In order to determine the question it is necessary to read the gift deed which is as follows :

"I, the executant, have no male or female issue. Shri Chanda Singh.....is my real *bhanja* (sister's son). He has been serving me for the last six or seven years. Life is mortal. Therefore, I, the executant, having made a gift of land measuring 41 *bighas* 6 *biswas*.....in favour of Chanda Singh.....do hereby declare that Shri Chanda Singh, donee shall not be entitled to mortgage with possession sell or mortgage without possession etc. the land.....to any other person. He shall only continue paying Government revenue and doing *karbagar* and enjoying the usufruct. Shri Chanda Singh and his issues should continue to pay the Government revenue having been in continuous possession and being *malquzar*. But they shall not be entitled to mortgage and sell. Moreover, his no near relative can be in possession of this land and be *malquzar*. Later on, I, the executant, would be the owner....."

(8) From the language of the gift deed it is evident that an absolute gift had been made by Mit Singh in favour of Chanda Singh. However, he imposed certain conditions on the latter regarding alienation of the land. The question arises whether these conditions are valid or not. Section 10 of the Transfer of Property Act deals with such matters. It reads as follows :

"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 woman (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."

(9) A bare reading of the section makes it clear that at the time of transfer of property, no limitation can be imposed by the transferor restricting the transferee from alienating the property and if such a condition is imposed, that is void. The reason is that such conditions are considered opposed to public policy.

(10) In the above view I am supported by *Mt. Brij Devi v. Shiva Nanda Prasad and others*, (1), *Giani Ram Narsingh v. Balmakand & another* (2) and *Jagdeo Sharma v. Nandan Mahto and others* (3). In *Mt. Brij Devi's case* a gift was made and similar conditions were incorporated in the gift deed. It was observed by a Division Bench that the gift conferred upon the donee full proprietary title to the land which was subject-matter of the conveyance deed. Therefore, the condition restraining the donee from alienating the property was void. In *Giani Ram's case* (supra) it was observed by Kapur, J. (as he then was) that if an absolute gift was made subject to a condition that the donee did not have the right to alienate the gifted property by sale or by mortgage or in any other way, the condition was void. The same view was expressed in *Jagdeo Sharma's case* (supra). I am in respectful agreement with the view expressed therein. Mr. Jagga, learned counsel for the appellant, placed reliance on *State of U.P. and another v. Sayed Abdul Jalil*. (4). The facts of that case were different. Therein absolute gift was not made by the former Nawab in favour of the alleged donee. Consequently the observations therein do not apply to the present case.

(11) It is true that the Transfer of Property Act was not enforced to the erstwhile States of Pepsu and Punjab but it is well settled

- (1) AIR 1939 All 221.
- (2) AIR 1956 Pb. 255.
- (3) AIR 1982 Patna 32.
- (4) AIR 1972 S.C. 1290.

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that its provisions applied to the said States. Reference in this regard may be made to *Nand Singh v. Mahant Pratap Das and another* (5), wherein it was held that section 10 embodies an equitable principle which applies to Punjab.

(12) Faced with this situation Mr. Jagga has argued that Section 126 of the Transfer of Property Act provides that some restriction can be put on the rights of the donee and the present condition is covered under the said section. I am not impressed with this submission as well. Section 10 is a general section and applies to all alienations and section 126 is a specific section and applies to gifts only. However, section 126 does not exclude the applicability of section 10 in the case of gifts. It is well settled that if there is some conflict in different provisions of a statute those should be interpreted harmoniously. Both the sections, in my view, can exist simultaneously but it is difficult to define in what circumstances section 10 will apply and in what section 126 but it is clear from the catena of authorities that the condition restricting the right of donee to alienate the subject-matter of a gift is void. A condition imposed on the donee that he will be liable to maintain the donor during his lifetime and in case he fails to do so, the subject-matter of the gift shall revert to the donor, is protected under section 126 (see *Mt. Putnia Kurmi v. Manindra Nath Mahanti* (6) *M/s Potti Swami and Brothers v. Rao Saheb D. Govindarapulu* (7), and *Jagat Singh Chilwal v. Dungar Singh* (8)). Each case has to be decided taking into consideration the facts and circumstances thereof. This matter has been considered in *Mt. Brij Devi's case* (supra) and it was observed as follows :—

“Section 10 refers specifically to condition restraining alienation by the transferee. The provision of the Section declaring such a condition void is made to apply to every transfer of proprietary interest in immovable property. One exception only is made in the Section itself, namely in the case of a lease, where the condition is for the benefit of the lessor or those claiming under him. Now Section 126 permits a donor in certain circumstances

(5) AIR 1924 Lahore 674.

(6) AIR 1968 Assam and Nagaland 50.

(7) AIR 1960 AP. 605 .

(8) AIR 1951 All. 599.

to impose a condition entitling the donor to revoke the gift. This Section, it was contended by the learned counsel for the plaintiffs, was in equally general terms and therefore conferred upon the donor in the present instance the right to restrain alienation on the part of the donee, such alienation being 'an event happening' not dependent upon the will of the donor. We are unable to sustain this argument. It appears to us that the condition imposed upon a donee must, before it can be valid, be consistent with the general principles in regard to conditions in transfers contained in Ch. 2 of the Act, and in particular in Section 10 thereof."

The view has been followed in *Giani Ram's case* (supra). Therein the District Judge had held that a condition restricting the right to alienate the gifted property by sale or by mortgage or in any other way was protected by section 126. The learned Judge reversed that finding and held that the case was covered by section 10 and not section 126. With great respect I agree with the observations made in the aforesaid cases. The conditions imposed on the donee in the present case are not such which fall within the purview of section 126 of the Act. Consequently I reject the submission. After taking into consideration all the aforesaid circumstances, I am of the view that Mit Singh did not make a gift only of usufruct of the land but of the ownership rights therein and that the condition in the gift deed that the donee was not entitled to alienate the land was void.

(13) Mr. Jagga has next contended that the appellate Court erroneously held that the transferees from respondents Nos. 1 and 5 acted in good faith. He submits that it was their duty to have searched the records of the Registration Department before entering into the transactions as registration of a document was a notice to the public.

(14) I do not find any substance in this submission as well. The Act was not applicable to the erstwhile Pepsu State where the property was situated. It was, therefore, not necessary that the transaction of gift should have been effected by a registered instrument. The expression "a person is said to have notice" has been defined in section 3. An explanation has been added to the section which reads as follows :

"*Explanation I.*—Where any transaction relating to immovable property is required by law to be and has been effected by

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a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of Section 30 of the Indian Registration Act, 1908 (XVI of 1908) from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated :

From a reading of the Explanation it is clear that a person can be said to have notice of a transaction relating to immovable property from the date of registration if that transaction was required by law to be effected by a registered instrument and not otherwise. In the present case if the transferees did not search the books of registration, it does not make any difference as the gift was not required by law to be registered. This view finds support from *Hirendra Nath Dutta Roy and others v. Rajendra Chandra Roy and others* (9), *Hiralal Agarwala v. Bhagirathi Gore and others* (10) and *Avtar Singh v. Hazura Singh and others* (11). In *Hirendra Nath's case* (supra) it was observed that there was no provision of law enjoining that transactions in the nature of partition of immovable properties must be affected by registered instruments, and unless there was such a provision the transaction in the nature of partition would not be covered by Explanation I to section 3. In *Hiralal's case* (supra) a Division Bench of Calcutta High Court observed that if the document required no registration, registration of such a document would not raise a constructive notice against the purchaser of such a property, as under the law he was not bound to search the registration office, to find out whether the property proposed to be purchased was the subject-matter of a contract and whether the same was registered. Same view was taken by this Court in *Avtar Singh's case* (supra) wherein it was said that when oral transactions were permitted by law inspection of records in the registration office was not *sine qua non* while granting protection to the alienee under section 41.

(9) AIR 1974 Gauhati 43.

(10) AIR 1975 Cal. 445.

(11) AIR 1984 Pb. and Hry. 211.

It is also well settled that if a person enters into a transaction on the faith of revenue records he is protected under section 41. I am fortified in the above view by *Smt. Asharfi Devi v. Tirlok Chand and others* (12) and *Avtar Singh's case* (supra).

(15) Adverting to the facts of this case it is admitted that the land had been mutated in the name of the donee before his death who died near about 1920 and his inheritance was mutated in the name of his three sons, namely, Surjan Singh, Sher Singh and Labh Singh. They were being shown as owners after the death of their father. Niranjn Singh defendant appeared as a witness and deposed that before purchasing the property he looked up the *jamabandis*. It is also relevant to point out that Labh Singh absconded in a murder case and his land was mutated in the name of the Punjab State. No objection was raised by the plaintiff at that time. It was his duty to raise an objection at the time when the land was mutated in the name of the Punjab State. After taking into consideration all the aforesaid circumstances, I find that the finding of the appellate Court that the transferees were protected under section 41 is unassailable and consequently I affirm the same.

(16) For the aforesaid reasons there is no merit in the appeal and consequently I dismiss the same with costs.

N.K.S.

Before: S. P. Goyal and D. V. Sehgal, JJ.

SAMITA DAHIYA AND ANOTHER,—*Petitioners.*

versus

M. D. UNIVERSITY, ROHTAK AND OTHERS,—*Respondents.*
Amended Civil Writ Petition No. 4297 of 1985

January 21, 1986.

Constitution of India. 1950—Articles 14 and 15—Maharishi Dayanand University Act (XXV of 1975)—Sections 9-A(5), 10 and 13—Admissions to medical college made on the basis of entrance exami-

(12) AIR 1965 Pb. 140.