

**(1937) 04 MAD CK 0045**  
**In the Madras High Court**

Malireddi Narayanaswamy

APPELLANT

Vs

Kondapalli Gopalaswamy and Others

RESPONDENT

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**Date of Decision :** 27-04-1937

**Acts Referred:**

**Citation :** AIR 1938 Mad 6 : (1937) 46 LW 258

**Hon'ble Judges :** Varadachariar, J

**Bench :** Division Bench

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## **Judgement**

Varadachariar, J.—The decision of this second appeal turns on the interpretation of Ex. B (dated 22nd April 1922), a deed of gift executed in favour of the plaintiff's deceased wife by her father. The donee died without issue within a couple of years after Ex. B and that led to disputes between the plaintiff and his father-in-law. There are some portions of the document which are not very aptly worded, but, taking the document as a whole, I feel no serious doubt as to the intention of the donor. In interpreting the document, two considerations have to be borne in mind: (1) that a Hindu father making a gift to his daughter ordinarily desires that that property should devolve only on the children born to her and not upon other heirs in her husband's family and (2) that such a parent making a gift to his daughter soon after her marriage thinks it inauspicious to refer in terms to her death without issue and often employs circumlocutory language to indicate that contingency. That portions of Ex. B if read by themselves will amount to the creation of an absolute interest in the donee, there can be no doubt. But the quantum of estate given under a document has to be determined on a construction of the whole document and not merely on the words used in a portion thereof; and decisions beginning with *Bhooban Mohini Debia v. Human Chunder Chowdhary*, (1879) 4 Cal 23 recognize that as a matter of law it is possible to make a gift which in one contingency will carry an absolute estate but (as the result of a gift over clause or of a cesser clause) be out down in effect to a life, interest in other contingencies. Bearing these considerations in mind, it seems to me that the Courts below have put a right construction upon Ex. B in holding that in the events that have happened the plaintiff's wife did not have an

absolute estate which could devolve by inheritance on her husband.

2. On behalf of the appellants, Mr. Lakshmayya contended that the later portions in Ex. B which make an exception against the passing of the estate to other heirs than the donee's descendants must either be regarded as a condition repugnant to the absolute estate already conferred or as amounting to a defeasance on an indefinite failure of issue. If the clause is read in either of the above senses, it will of course be inoperative. But having carefully considered the frame of the document, it seems to me that the object of the exclusion of other heirs is not an attempt to lay down a different rule of succession from the ordinary law in respect of the devolution of an absolute estate, but an attempt to indicate that the lady should take a heritable estate only if she had descendants of her own body to inherit the estate. The three clauses which respectively relate to heritability, power of disposition and the exclusion of particular heirs are all worded as qualifications to the gift in favour of the daughter and all the three may reasonably be read in the context as relating to the period of her ownership and not as involving a condition or limitation intended to be indefinitely imposed. There is thus no reason to read the document as providing for a cessation or defeasance of her interest on an indefinite failure of issue. The authorities relied on by Mr. Lakshmayya emphasize this very distinction, namely between cases where cessation or defeasance of the grantee's interest is to take place on events happening at the death of the grantee and cases where it is to happen on an indefinite contingency. I accordingly agree with the decision of the Courts below and dismiss the second appeal with costs. (Leave refused.)