

(1938) 10 MAD CK 0033
In the Madras High Court

Papathi Ammal (deceased) and Others	APPELLANT
Vs	
Doraiswamy Naicker and Others	RESPONDENT

Date of Decision : 07-10-1938

Acts Referred:

Transfer of Property Act, 1882 — Section 122

Citation : AIR 1939 Mad 290 : (1938) 48 LW 764 : (1939) 1 MLJ 337

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This appeal raises a question of the right of a donor to revoke a registered deed of gift of immovable property prior to its

acceptance. The donor is the first defendant. He executed the deed Ex. A dated 14th March, 1917, giving his properties to his mother and his wife

and her issue, if any, with a remainder to a nephew under whom the plaintiff claims. It has been found as a fact that, although this deed was

registered, there was no change of possession and no delivery of the deed to the donees, nor was there any acceptance by them. By Section 122

of the Transfer of Property Act, a gift is made by a voluntary transfer from the donor to the donee, accepted by or on behalf of the donee. The

acceptance must be during the lifetime of the donor and if the donee dies before acceptance the gift is void. u/s 123, if the gift relates to immovable

property, it must be made by a registered instrument, duly signed and attested. In England it is undoubtedly the law that a gift is presumed to have

been accepted by the donee even if the donee knows nothing about it. But I have no doubt that presumption does not apply in India. As has been

pointed out by the Allahabad High Court in the case of Anandi Devi v. Mohan Lal I.L.R.(1932) 54 All. 534 such a presumption as is recognised in

England would be inconsistent with the provision of Section 122 of the Transfer of Property Act that the gift is void if the donee dies before

acceptance. We may take it therefore that the present gift, though the deed was executed and registered by the donor, was an incomplete gift at

the time of its cancellation in 1922 because it had not been accepted. It is contended by Mr. Sitarama Rao for the appellant that even though the

gift is not complete until its acceptance, the registration of the gift deed takes away the power of revocation from the donor. The argument, as I

understand it, is that he having duly executed the deed and having solemnly registered it, he has done all that he ought to do to validate the gift and

cannot take advantage of the non-acceptance of the gift by the donee in order to nullify his own act. This contention appears to be built up mainly

on one sentence in the decision in *Padmavati v. Shrinivasa Kampti* (1917) 7 L.W. 339 where apparently referring to the Full Bench decision in

Venkati Rama Reddi v. Pillati Rama Reddi though the report wrongly refers to the decision in *Gangadara v. Sambasiva* (1916) 33 M.L.J. 51 : ILR

40 Mad. 759 (F.B.), which refers to another matter). *Abdur Rahim, J.*, says that

The Full Bench decision referred to certainly does not go so far. All that it lays down is that if the donor has done all that lies in his power to

complete the gift either by having it registered himself or by handing it to the donee, then he cannot afterwards retract the gift.

2. With great respect to the learned Judge if I am correct in my inference that his observation really relates to the former case it seems to me that

he has somewhat overstated the effect of the Full Bench decision to which he referred. I must remark that the learned Judge himself was a party to

that Full Bench decision and may possibly be speaking with a recollection of things said in the course of the hearing which are not embodied in the

judgment. But the judgment itself relates to a case in which the donor completed the deed of gift and after his death the donee got it registered.

What the learned Judges point out is that in such a case the doctrine that a donor who has left his gift incomplete, cannot be compelled to complete

it, has no application. So far as he is concerned, he has by executing the deed done all that he need do, for registration can be effected even

without his co-operation. This decision has been considered by the Privy Council in (1926) L.R. 54 I.A. 89 (Privy Council) and their Lordships

approve the statement of law subject to the proviso that the gift must have been accepted by or on behalf of the donee during the life time of the donor in order to satisfy the requirements of Section 122. It seems to me apparent that registration cannot convert that which is not a complete transfer into a complete transfer. No one would even contend that if a mortgage deed has been invalidly executed, the mere fact of its registration would give it any validity which it had not got. Similarly, if a gift is complete except for the acceptance of the donee, I do not see how registration can make it anything more than an incomplete gift and if the gift is incomplete for want of acceptance by the donee, I know of no principle of law which would bar the donor from revoking it. Registration is a necessary formality for a gift of immovable property to have full force. But registration will not confer upon any invalid transfer a validity which is lacking in the very substance of the transaction. In the result I dismiss the appeal with costs of the contesting respondent.

3. Leave refused.