

(2022) 09 GUJ CK 0188
In the Gujarat High Court
Case No : R/Second Appeal No. 101 Of 1994

Parvatiben Ishwarbhai

APPELLANT

Vs

Kashiben Chaturbhai Patel & 8 Other(S)

RESPONDENT

Date of Decision : 30-09-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 100
Transfer Of Property Act, 1882 — Section 122, 123, 124, 125, 126, 127, 128, 129
Registration Act, 1908 — Section 17(2)

Citation : (2022) 09 GUJ CK 0188

Hon'ble Judges : Dr. A. P. Thaker, J

Bench : Single Bench

Advocate : HR Prajapati, BS Patel, Chirag B Patel, Ranjan B Patel

Final Decision : Dismissed

Judgement

Dr. A. P. Thaker, J

1. The present Second Appeal under Section 100 of the Code of Civil Procedure is preferred by the original defendant against the judgment and decree dated 28.12.1993 passed by the Assistant Judge, Bharuch in Regular Civil Appeal No.95 of 1988 reversing the judgment and decree passed by the learned Civil Judge, Junior Division at Bharuch in Regular Civil Suit No.374 of 1984 dismissing the suit of the plaintiff. It is contended that the Appellate Court has erred in reversing the judgment and decree of the Trial Court which has dismissed the suit of the plaintiff. It is contended that the Appellate Court has erred in holding that the predecessor of the original plaintiff had no right, title or interest, to execute the gift deed of his share in favour of the original plaintiff. It is contended that it ought to have been held that the plaintiff is the owner of the one half of the suit property and he is entitled to get his share by metes and bounds of the suit properties. It is also contended that the Appellate Court ought to have held that the original defendants have failed to prove that the suit property has come to them by process of oral partition. It is also contended that

the Appellate Court has not properly considered the oral evidence as well as not interpreted the gift deed at exhibit 55. It is also contended that the Appellate Court has failed to hold that the executor of the gift deed Mr.Mohanlal was having right title or interest to gift the suit property in the year 1979. It is also contended that the Appellate Court has erroneously held that the properties were partitioned prior to the year 1975 between the predecessors of both the sides and that what ever portion remains unpartitioned was finally partitioned by family arrangements as per exhibit 52 and as such the gift deed by Mr.Mohanlal has no right to execute the same.

2. It appears from the record that one Ms.Parvatiben has filed a Civil Suit No.374 of 1984 before the Court of Civil Judge at Bharuch contending that the property in question was jointly belonging to her father-in-law Mr.Mohanlal and their defendant Mr.Chaturbhai Amardas Patel. It is also alleged that all are Hindu and therefore Hindu Succession Act,1956 applies. It is contended that Mr.Mohanlal and the defendant Mr.Chaturbhai had one half share in the suit property. It is contended by the plaintiff that on 14.05.1979, by a registered gift deed, Mr.Mohanlal has given it to her and she is in possession. It is contended that she is having equal half share and enjoying it with the defendant. It is contended that on the said, she has informed the defendant for actual partition of the property. The defendant denied to do so. On this basis, the plaintiff has filed the suit for actual partition of the said property and for possession of her share.

3. The defendant has resisted the suit. It appears that during the pendency of the proceedings, the defendant has died and therefore their heirs came to be joined in the suit. The defendant side have filed a written statement, at exhibit 20 wherein they have denied the correctness of the plaintiffs averments. According to the defendants, the property nos.214 and 185 were mutually divided among them by oral partition on 08.12.1975 and out of property no.185, the plaintiff's father-in-law were given 102/33 feet while the defendant's father was given 88/33 feet and as the defendant's father was given less land area from the property no.185 and with a view to divide the equal share, property no.214 was given to the defendant's father by mutual partition of both these properties, the remaining property was divided among the brothers on 08.12.1975 in presence and by beneficiary of one Mr.Veribhai Prabhudas and Mr.Chaturbhai and writing was also made to that effect and after that no property was left undivided among the brothers. According to the defendants, the property nos.185 and 214 were mutually divided on 08.12.1975. It is also the stand of the defendants that merely because the suit property runs in the joint name in records, the plaintiff had compelled her father-in-law to execute a gift deed in her favour to harass the defendants. The defendant has also stated that the plaintiff has also served him notice and it was replied and thereafter, the defendant has made constructions of residences on the disputed property and at that time, the plaintiff has not raised any objections. It is the stand of the defendants that the suit is barred by law of limitations and as the property no.214 was given to the defendant by mutual partition, the donor has no right to give a very property to

the plaintiff in gift and therefore the defendants have requested to dismiss the suit with cost.

4. On the basis of the pleadings, the Trial Court has framed following issues at exhibit 21:-

(i) Whether the plaintiff proves that he is the owner of the half share of the suit property?

(ii) Whether the plaintiff is entitled to get his share by metes and bounds?

(iii) Whether the defendants prove that they are the owners of the suit property as it has come to them in the oral partition?

(iv) Whether the plaintiff proves that the ownership of the suit property in view of the gift deed dated 14.05.1979?

(v) What order?

5. On the basis of the evidence on records and the submissions made on behalf of both the sides, affidavits, the Trial Court has answered the issue nos.1, 2 and 4 in affirmative and no.3 in negative and has ultimately decreed the suit of the plaintiff and directed the defendants to put the plaintiff in possession of one half share of the suit property i.e. gabhan no.214. He has also directed the Collector, Bharuch to divide the property in question by metes and bounds in the equal share as decreed.

6. Being aggrieved and dissatisfied with the judgment of the Trial Court, the original defendants have preferred Regular Civil Appeal No.95 of 1988 before the District Court, Bharuch. The said appeal came to be heard by the learned Assistant Judge, Bharuch who by its impugned judgment and decree dated 28.12.1993 allowed the appeal and set aside the judgment and decree passed by the learned Civil Judge, Junior Division, Bharuch in Regular Civil Suit No.374 of 1984 and the suit of the plaintiff ordered to be dismissed. It appears from the impugned judgment of the Appellate Court that while deciding the appeal, the Appellate Court has framed the following points of determination in para 3, thereof:-

(i) Whether the appellant proves that the judgment of the Trial Court is illegal, arbitrary one and not at law? Whether it requires any modification?

(ii) Whether the appellant proves that the respondents have no right title or interest in the suit property?

(iii) Whether the appellant proves that the predecessors of respondent i.e. Mr.Mohanbhai was having no right title or interest to execute the gift deed of his share in favour of the respondent?

(iv) Whether the appellant proves that the defendant was not competent to file the suit?

(v) What order and decree?

7. The Appellate Court has decided the aforesaid point no.1, 2 and 3 in affirmative and point no.4 in negative and has ultimately passed the order of dismissing the suit and alienate the appeal.

8. Being aggrieved with the aforesaid judgment and decree of the First Appellate Court, the original plaintiff has preferred the present Second Appeal.

9. The present Second Appeal has been admitted to decide the following substantial questions of law:-

“Whether in the facts and in the circumstances of the case, lower Appellate Court erred in construing and interpreting the gift deed at exhibit 55 as well as the deed of partition at exhibit 62?”

10. For the brevity and convenience, the parties are referred to herein as plaintiff and defendant as per their status before the Trial Court.

11. Heard learned advocate Mr.H.R.Prajapati for the appellant-plaintiff and learned advocate Mr.C.B.Patel for the respondent-defendant at length. Perused the judgment of both the Courts below as well as material placed on record and the decisions cited at bar.

12. Learned advocate Mr.H.R.Prajapati for the plaintiff has submitted that the plaintiff has filed the suit for partition for the two plots. He has submitted that the plaintiff is daughter-in-law of the donor. He has stated that the land is known as gabhan and there were two gabhans. According to him, there was a joint possession of both the parties to both the gabhan nos.185 and 214. He has submitted that as per the exhibit 55 registered gift deed, the deceased has given half portion of the gabhan land which was of his share in the joint property to the plaintiff by gift deed. He has submitted that the defence of the defendant is regarding oral partition in the year 1975 and there was a writing to that effect wherein there is no mention of gabhan no.214. He has also submitted that according to the defendant as land of said gabhan no.214 was already partitioned orally between two brothers, same was not mentioned in the writing executed for partition of the property. It is submitted that this is not believable. According to him, the story put up by the defendant regarding excess land given to the plaintiff's father-in-law, for other land is concocted one and the story of prior oral partition is also not believable. According to him, the learned Trial Court has rightly not believed the oral partition and has rightly passed the decree in favour of the plaintiff-appellant. Learned advocate has vehemently submitted that the First Appellate Court has completely loss sight of this fact that there is no evidence of any oral partition between the two brothers regarding the disputed property. He has also submitted that as per Section 122 of the Transfer of Property Act, 1882, the deceased has validly gifted the land in question in favour of the plaintiff which is registered one. He has submitted that even in case of gift deed, there is no need of actual possession of immovable property given

to the donee. It is his submission that since it is registered gift deed, there is no need of any actual possession of property to be handed over to the donee by the donor at the time of execution of gift deed. He has submitted that the Appellate Court has clearly misread the evidence on record and has committed error of facts and law in reversing the decree passed in favour of the plaintiff and dismissing the suit of the plaintiff. He has prayed to allow the present appeal and set aside the impugned order of the First Appellate Court and to restore the decree of the Trial Court in favour of the plaintiff. He has relied upon the decision of the Apex Court in case of Renikuntla Rajamma (D) By Lrs. V/s K. Sarwanamma reported in 2014 (9) SCC 445 for his proposition regarding the gift deed, especially in para nos. 6, 7, 8, 9, 10,11, 13 and 15 as under:-

"6. When the special leave petition came up for preliminary hearing before a Division bench of this Court, the only question which was urged on behalf of the appellant was whether retention of possession of the gifted property for enjoyment by the donor during her life time and the right to receive the rents of the property in any way affected the validity of the gift. That a gift deed was indeed executed by the donor in favour of the donee and that the donee had accepted the gift was not challenged and the finding to that effect has not been assailed even before us. So also the challenge to the gift on the ground of fraud, misrepresentation and undue influence, having been repelled by the Courts below, the gift stands proved in all material respects. All that was contended on behalf of the appellant was that since the donor had retained to herself the right to use the property and to receive rents during her life time, such a reservation or retention rendered the gift invalid. A conditional gift was not envisaged by the provisions of the Transfer of Property Act, argued the learned counsel of the appellant. Inasmuch as the gift deed failed to transfer, title, possession and the right to deal with the property in absolute terms in favour of the donee the same was no gift in the eyes of law, contended learned counsel for the appellant.

Reliance in support of that submission was placed by the learned counsel upon the decision of this Court in Naramadaben Maganlal Thakker v. Pranjivandas Maganlal Thakker and Ors. (1997) 2 SCC 255.

7. On behalf of the respondents it was per contra argued that the validity of the gift having been upheld by the Courts below, the only question that remains to be examined was whether a gift which reserved a life interest for the donor could be said to be invalid. That question was, according to the learned counsel, squarely answered in favour of the respondents by the decisions of this Court in K. Balakrishnan v. K. Kamalam & Ors. (2004) 1 SCC 581.

8. Reliance was also placed by the learned counsel upon Bhagwan Prasad & Anr. v. Harisingh AIR 1925 Nagpur 199, Revappa v. Madhava Rao AIR 1960 Mysore 97 and Tirath Singh v. Manmohan AIR 1981 Punj. & Haryana 174 in support of the submission that transfer of possession was a condition under the Hindu Law for a valid gift which Rule of Hindu Law stood superseded by Section 123 of The Transfer of Property Act.

9. Chapter VII of the Transfer of Property Act, 1882 deals with gifts generally and, inter alia, provides for the mode of making gifts. Section 122 of the Act defines 'gift' as a 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. In order to constitute a valid gift, acceptance must, according to this provision, be made during the life time of the donor and while he is still capable of giving. It stipulates that a gift is void if the donee dies before acceptance.

10. Section 123 regulates mode of making a gift and, inter alia, provides that a gift of immovable property must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. In the case of movable property, transfer either by a registered instrument signed as aforesaid or by delivery is valid under Section 123. Section 123 may at this stage be gainfully extracted:

"123. Transfer how effected – For the making of a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered."

11. Sections 124 to 129 which are the remaining provisions that comprise Chapter VII deal with matters like gift of existing and future property, gift made to several persons of whom one does not accept, suspension and revocation of a gift, and onerous gifts including effect of non-acceptance by the donee of any obligation arising thereunder. These provisions do not concern us for the present. All that is important for the disposal of the case at hand is a careful reading of Section 123 (supra) which leaves no manner of doubt that a gift of immovable property can be made by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. When read with Section 122 of the Act, a gift made by a registered instrument duly signed by or on behalf of the donor and attested by at least two witnesses is valid, if the same is accepted by or on behalf of the donee. That such acceptance must be given during the life time of the donor and while he is still capable of giving is evident from a plain reading of Section 122 of the Act. A conjoint reading of Sections 122 and 123 of the Act makes it abundantly clear that "transfer of possession" of the property covered by the registered instrument of the gift duly signed by the donor and attested as required is not a sine qua non for the making of a valid gift under the provisions of Transfer of Property Act, 1882. Judicial pronouncements as to the true and correct interpretation of Section 123 of the T.P. Act have for a fairly long period held that Section 123 of the Act supersedes the rule of Hindu Law if there was any making delivery of possession an essential condition for the completion of a valid gift. A full bench comprising five Hon'ble Judges of the High Court of

Allahabad has in *Lallu Singh v. Gur Narain and Ors.* AIR 1922 All. 467 referred to several such decisions in which the provisions of Section 123 have been interpreted to be overruling the Hindu Law requirement of delivery of possession as a condition for making of a valid gift. This is evident from the following passage from the above decision where the High Court repelled in no uncertain terms the contention that Section 123 of the T.P. Act merely added one more requirement of law namely attestation and registration of a gift deed to what was already enjoined by the Hindu Law and that Section 123 did not mean that where there was a registered instrument duly signed and attested, other requirements of Hindu Law stood dispensed with:

"7. Dr. Katju, on behalf of the appellant, has strongly contended that by Section 123 it was merely intended to add one more requirement of law, namely, that of attestation and registration, to those enjoined by the Hindu Law, and that the Section did not mean that where there was a registered document duly signed and attested, all the other requirements of Hindu Law were dispensed with. Section 123 has, however, been interpreted by all the High Courts continuously for a vary long period in the way first indicated, and there is now a uniform consensus of opinion that the effect of Section 123 is to supersede the rule of Hindu Law, if there was any, for making the delivery of possession absolutely essential for the completion of the gift. We may only refer to a few cases for the sake of reference, *Dharmodas v. Nistarini Dasi* (1887) 14 Cal. 446, *Ballbhadra v. Bhowani* (1907) 34 Cal. 853, *Alabi Koya v. Mussa Koya* (1901) 24 Mad. 513, *Mudhav Rao Moreshvar v. Kashi Bai* (1909) 34 Bom. 287, *Manbhari v. Naunidh* (1881) 4 All. 40, *Balmakund v. Bhagwandas* (1894) 16 All. 185, and *Phulchand v. Lakkhu* (1903) 25 All.

358. Where the terms of a Statute or Ordinance are clear, then even a long and uniform course of judicial interpretation of it may be overruled, if it is contrary to the clear meaning of the enactment but where such is not the case, then it is our duty to accept the interpretation so often and so long put upon the Statute by the Courts, and not to disturb those decisions, vide the remarks of their Lordships decisions, of the Privy Council in the case of *Tricomdas Cooverji Bhoja v. Sri Sri Gopinath Thakur* AIR 1916 P.C. 182. We are, therefore, clearly of opinion that it must now be accepted that the provisions of Section 123 do away with the necessity for the delivery of possession, even if it was required by the strict Hindu Law."

13. A plain reading of the above made it manifest that the "rules of Hindu law" and "Buddhist Law" were to remain unaffected by Chapter VII except to the extent such rules were in conflict with Section 123 of the Transfer of Property Act. This clearly implied that Section 123 had an overriding effect on the rules of Hindu Law pertaining to gift including the rule that required possession of the property gifted to be given to the donee. The decisions of the High Courts referred to in the passage extracted above have consistently taken the view that Section 123 supersedes the rules of Hindu law which may have required delivery

of possession as an essential condition for the completion of a gift. The correctness of that statement of law cannot be questioned. The language employed in Section 129 before its amendment was clear enough to give Section 123 an overriding effect vis-a-vis rules of Hindu Law. Section 129 was amended by Act No. 20 of 1929 whereby the words "or, save as provided by Section 123, any rule of Hindu or Buddhist Law" have been deleted. Section 129 of the T.P. Act today reads as under:

"129. Saving of donations mortis causa and Muhammadan Law – Nothing in this Chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law."

15. The matter can be viewed from yet another angle. Section 123 of the T.P. Act is in two parts. The first part deals with gifts of immovable property while the second part deals with gifts of movable property. Insofar as the gifts of immovable property are concerned, Section 123 makes transfer by a registered instrument mandatory. This is evident from the use of word "transfer must be effected" used by Parliament in so far as immovable property is concerned. In contradiction to that requirement the second part of Section 123 dealing with gifts of movable property, simply requires that gift of movable property may be effected either by a registered instrument signed as aforesaid or "by delivery". The difference in the two provisions lies in the fact that in so far as the transfer of movable property by way of gift is concerned the same can be effected by a registered instrument or by delivery. Such transfer in the case of immovable property no doubt requires a registered instrument but the provision does not make delivery of possession of the immovable property gifted as an additional requirement for the gift to be valid and effective. If the intention of the legislature was to make delivery of possession of the property gifted also as a condition precedent for a valid gift, the provision could and indeed would have specifically said so. Absence of any such requirement can only lead us to the conclusion that delivery of possession is not an essential prerequisite for the making of a valid gift in the case of immovable property."

13. Per contra, learned advocate Mr. Patel for the respondent-defendant has supported the impugned judgment of the Appellate Court and has submitted that the partition deed at exhibit 62 dated 08.12.1975, has not been challenged by the plaintiff in any manner. He has submitted that the family arrangement was already made in the year 1975 i.e. prior to the alleged gift deed. He has also submitted that the notice issued by the plaintiff has already been replied by the defendant in the year 1979. He has also submitted that even in the year 1981, the panchayat has permitted construction over the land to the defendant and it was never objected by the plaintiff. He has also stated that even in the year 1981, there was a construction made of three storey building and this was erected with the permission of panchayat. He has also submitted that thereafter suit came to be filed in the year 1984 without challenging the family arrangement made in the year 1975. He has submitted that since there was

already family arrangement made in the year 1975, now the plaintiff cannot claim any one half share in the property. He has submitted that the plaintiff is relying upon the gift deed of 1979 whereas the entire land was in possession of the defendants and on that basis, he has got the necessary permission of construction in the year 1981 and the construction was made therein by the defendants. He has also submitted that father-in-law of the plaintiff was never in possession of the land no.214 after the oral partition in the year 1975. He has submitted that the earlier decision relied upon by the learned advocate Mr.Prajapati of (2014) 9 SCC 445 has been recently considered by the Hon'ble Apex Court in the decision reported in (2021) 3 SCC 459 and earlier decision has not been endorsed by the Apex Court in the recent decisions. Learned advocate Mr.Prajapati has also relied upon the decision reported in (2020) 9 SCC 706. He has prayed to dismiss the appeal and has submitted that the judgment of the Trial Court was perverse one and therefore the First Appellate Court has rightly passed the impugned order allowing the appeal of the defendant respondent and dismissed the suit of the plaintiff.

14. In rejoinder, Mr.Prajapati has submitted that the as there was joint possession of both, there is no need of seeking any possession at the relevant point of time. He has prayed to allow the present appeal.

(i) The Apex Court in case of Ravinder Kaur Grewal And Others Vs. Manjit Kaur and Others reported in (2020) 9 SCC 706 in para 25, 26, 28 and 30 held as under:-

"25. Be that as it may, the High Court has clearly misapplied the dictum in the relied upon decisions. The settled legal position is that when by virtue of a family settlement or arrangement, members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once and for all in order to buy peace of mind and bring about complete harmony and goodwill in the family, such arrangement ought to be governed by a special equity peculiar to them and would be enforced if honestly made. The object of such arrangement is to protect the family from long drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family, as observed in Kale (supra). In the said reported decision, a three- judge Bench of this Court had observed thus:-

"9. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successionis so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile

litigation is able to devote its attention to more constructive work in the larger interest of the country. The courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits.”

26. In para 10 of the said decision, the Court has delineated the contours of essentials of a family settlement as follows:-

“10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

“(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangement may be even oral in which case no registration is necessary;

(4) It is wellsettled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.”

28. While rejecting the argument regarding inapplicability of principle of estoppel, the Court observed as follows: -

"38. ... Assuming, however, that the said document was compulsorily registrable the courts have generally held that a family arrangement being binding on the parties to it would operate as an estoppel by preventing the parties after having taken advantage under the arrangement to resile from the same or try to revoke it."

And in paragraph 42, the Court observed as follows:-

42. In these circumstances there can be no doubt that even if the family settlement was not registered it would operate as a complete estoppel against Respondents Nos. 4 and 5. Respondent No. 1 as also the High Court, therefore, committed substantial error of law in not giving effect to the doctrine of estoppel as spelt out by this Court in so many cases."

30. A priori, we have no hesitation in affirming the conclusion reached by the first appellate Court that the document Exhibit P6 was nothing but a memorandum of a family settlement. The established facts and circumstances clearly establish that a family settlement was arrived at in 1970 and also acted upon by the concerned parties. That finding of fact recorded by the first appellate Court being unexceptionable, it must follow that the document Exhibit P6 was merely a memorandum of a family settlement so arrived at. Resultantly, it was not required to be registered and in any case, keeping in mind the settled legal position, the contesting defendants were estopped from resiling from the stated arrangement in the subject memorandum, which had recorded the settlement terms arrived at in the past and even acted upon relating to all the existing or future disputes qua the subject property amongst the (signatories) family members despite absence of antecedent title to the concerned property."

(ii) The Apex Court in case of Daulat Singh (Dead) through Legal Representatives Vs. State of Rajasthan And Others reported in (2021) 3 SCC 459, in para 24, 25, 26 AND 30 has held as under:-

"24. At the outset, it ought to be noted that Section 122 of the Transfer of Property Act, 1882 neither defines acceptance, nor does it prescribe any particular mode for accepting the gift. The word "acceptance" is defined as "is the receipt of a thing offered by another with an intention to retain it, as acceptance of a gift." (See Ramanatha P. Aiyar: The Law Lexicon, 2nd Edn., page 19).

25. The aforesaid fact can be ascertained from the surrounding circumstances such as taking into possession the property by the donee or by being in the possession of the gift deed itself. The only requirement stipulated here is that, the acceptance of the gift must be effectuated within the lifetime of the donor itself.

26. Hence, being an act of receiving willingly, acceptance can be inferred by the

implied conduct of the donee. The aforesaid position has been reiterated by this Court in the case of *Asokan v. Lakshmikutty*, (2007) 13 SCC 210

14. Gifts do not contemplate payment of any consideration or compensation. It is, however, beyond any doubt or dispute that in order to constitute a valid gift acceptance thereof is essential. We must, however, notice that the Transfer of Property Act does not prescribe any particular mode of acceptance. It is the circumstances attending to the transaction which may be relevant for determining the question. There may be various means to prove acceptance of a gift. The document may be handed over to a donee, which in a given situation may also amount to a valid acceptance. The fact that possession had been given to the donee also raises a presumption of acceptance.

30. Therefore, the abovementioned circumstances clearly indicate that there was an acceptance of the gift by the donee during the lifetime of the donor. Not only the gift deed in itself contained recitals about transfer of possession, but also the mutation records and the statements of the both the donor and donee indicate that, there has been an acceptance of the gift by conduct."

15. Having considered the submissions made on behalf of both the sides coupled with the material placed on record and the decisions cited at bar. It is found that there is no dispute of relationship between the parties. There is also no dispute regarding the factum of two properties being 185 and 214 of gabhan land. The dispute is revolving upon the facts as to whether there was prior oral partition between the parties in respect of the properties between the father-in-law of the plaintiffs and defendants. If the factum of prior partition between the parties are proved then there would be no question of gift of property by the father-in-law to the plaintiff subsequently.

16. In this regard, on perusal of the evidence on record it transpires that the plaintiff herself has not come into the witness box, in her behalf one Harmanbhai Chaturbhai and Chandubhai Asavbhai have been examined. On perusal of the evidence of Ishwar Mohan at exhibit 53 reveals that he has admitted that his wife-plaintiff is mentally sick and suffering from hysteria since last 10 years. According to this witness, his wife was admitted in the mental hospital at Baroda as well as Surat also. However, he has stated that at the time of filing of the suit she was not lunatic on the date of filing of the suit. However, whether the plaintiff was lunatic or not is not a question to be decided in the present appeal as the question posed for determination in this appeal is regarding the consideration and interpreted the gift deed at exhibit 55 as well as deed of partition at exhibit 62.

17. In this regard, it reveals from the record that the case of the plaintiff is that her father-in-law Mohanbhai and predecessor of Chaturbhai were having equal share in the property known as gabhan no.214 admeasuring 748 squareyards situated at village Vagra. Against this, the stand of the defendant is that gabhan no.214 came to the share of the deceased defendant after partition. In this

regard, on perusal of the evidence of Harman Chaturbhai at exhibit 67, reveals that the original owner of the suit gabhan was Amidas Kalidas who was having two sons Monahbhai and Chaturbhai admittedly, Mohanbhai was father-in-law of the plaintiff while Chaturbhai was the predecessor of the defendants. Witness has also stated that subsequently partition was to be placed between the two brothers Mohan and Chaturbhai in the year 1975 to substantiate this stand, the partition deed has been produced at exhibit 62. It is on the plain paper. It appears that it is a family arrangement. This document shows that there were some clauses subsequent to the partition and further arrangements were made pertaining to unpartitioned properties. This family arrangement took place on 08.12.1975, the same has been signed by the deceased Chaturbhai as well as the plaintiff along with the attesting witness. Even the evidence of Ishwar Mohanbhai at exhibit 53 reveals that the said gabhan was partitioned between 1975 and therefore it was not referred to in exhibit 62.

18. It also appears from the record that the plaintiff has heavily relied upon the gift deed at exhibit 55, which is made by the father-in-law of the plaintiff in favour of the plaintiff. This gift deed is dated 14.05.1979. Now, it appears from exhibit 73 that the gram panchayat allowed the deceased Chaturbhai to construct the house in his own property on 06.01.1981 and exhibit 75 is a certificate to that effect and it is in the name of Kashiben Chaturbhai and others. It also reveals from the exhibit 72 that Mr.Chaturbhai sought permission to construct a new house on 04.12.1980.

19. On perusal of the exhibit 62, it clearly reveals that it was a family arrangement only for the properties which remained unpartitioned between the parties. Under these circumstances, there might be earlier oral partition between the parties before the date of this document i.e. 08.12.1975. As observed hereinabove, even the plaintiff witness at exhibit 53 has admitted in his cross-examination that the suit gabhan was partitioned prior to the year 1975. Thus, when the alleged gift deed at exhibit 5, which was executed on 14.05.1979, there was no any proprietary right pertaining to the suit gabhan in favour of the father-in-law of the plaintiff. Under these circumstances, on conjoint reading of both the documents coupled with the admission on the part of the plaintiff witness, it clearly transpires that when the alleged gift deed came to be executed by the father-in-law, exhibit 55 dated 14.05.1979, in favour of the plaintiff, in reality he had no any right title over the suit gabhan land as prior to that there was a partition of the property.

20. It is the stand of the plaintiff that by the virtue of gift deed, she was in possession of the suit gabhan and has one half share thereof. Even, if the legal aspects that there is no need of handing over of the property where the registered gift deed is executed in favour of the donee is accepted, the facts and circumstances of this Case, clearly reveals that even on the date of execution of such gift deed, deceased Mohanbhai was not having any right title or even possession of the suit gabhan land. Had really, the plaintiff was in possession of

the suit gabhan on the basis of the gift deed as alleged by her, when the panchayat granted permission of construction of house in favour of deceased Chaturbhai, she would have definitely objected to, and have taken recourse thereof. However, no such sought of thing has happened in the matter. It appears from the records that the defendant is in possession of the land in question and has also constructed a house over it.

21. On perusal of the entire material placed on record and the impugned judgment of the Appellate Court, it clearly transpires that the Appellate Court has not committed any error of facts and law in interpreting the documents of gift deed at exhibit 55 as well as family arrangement deed at exhibit 62. The Appearance Court has properly considered the entire facts and circumstances of the case and has properly passed the impugned judgment and decree and has rightly dismissed the suit of the plaintiff as the donor i.e. father-in-law of the plaintiff had no right title or interest in the property at the time of executing gift deed in favour of the plaintiff.

22. Therefore, in view of the above discussions, my answer to the substantial question posed in para 9 above is in negative.

23. In view of the above discussions, I pass the following final order in the interest of justice.

ORDER

- (i) The present Second Appeal stands dismissed.
- (ii) Parties are directed to bear respective cost of this appeal.
- (iii) Decree to be drawn accordingly in this appeal.
- (iv) Along with the copy of this judgment and decree, Records and Proceedings be sent back to the Trial Court.