

(1972) 07 GUJ CK 0012

In the Gujarat High Court

Case No : Letters Patent Appeal No's. 40 and 62 of 1969

Pranlal Jayanand Thakar

APPELLANT

Vs

Vasudev Ramachandra Shelat and Others

RESPONDENT

Date of Decision : 12-07-1972

Acts Referred:

Companies Act, 1913 — Section 28 , 34
Companies Act, 1956 — Section 82
Transfer of Property Act, 1882 — Section 123

Citation : (1973) 43 CompCas 203 : (1973) 14 GLR 363

Hon'ble Judges : Mohanlal Ujamshi Shah, J;B.J. Divan, J

Bench : Division Bench

Advocate : G.P. Thakar, J.M. Thakore, for the Appellant; S.B. Vakil, Public Prosecutor Medh and N.I. Dave, for the Respondent

Judgement

This Judgment has been overruled by : Vasudev Ramchandra Shelat Vs. Pranlal Jayanand Thakar and Others, AIR 1974 SC 1728 : (1975) 45 CompCas 43 : (1974) 2 SCC 323 : (1975) 1 SCR 534

1. That takes us to the question regarding the effect of the gift deed of Bai Ruxmani in favour of Vasudev Shelat. In this connection we have to consider the question from two different angles. Firstly, we have to consider as to what is the legal effect of the registered gift deed, exhibit 815, by which Bai Ruxmani purported to make a gift of the different shares enumerated therein in favour of her brother, Vasudev Shelat. Secondly, we have to consider in the light of the clauses of that gift deed as to what is the effect of share certificates and scripts pertaining to these shares mentioned in the gift deed having been handed over to Vasudev Shelat during the life-time of Bai Ruxmani at or about the time when the registered gift deed, exhibit 815, was executed on March 6, 1948; and, lastly, we have to examine as to what is the legal effect of blank transfer forms having been handed over by Bai Ruxmani to Vasudev Shelat between March 6, 1948, when the registered gift deed was executed by Bai Ruxmani and April 18, 1948, when Bai Ruxmani died. We may mention at this stage that in view of the

findings of fact recorded in the courts below, it must be held and the arguments have also proceeded before us on the footing that these different blank transfer forms are genuine and bear the signatures of Bai Ruxmani in the column meant for transferor's signature and, secondly, we must proceed on the footing that there had been no undue influence, coercion or fraud, etc., when Bai Ruxmani executed the gift deed, exhibit 815; and further we must proceed on the footing that Bai Ruxmani executed the gift deed out of her free will and volition.

2. As is clear, it is a pure question of law that we have to decide regarding the effect in law so far as the handing over of share certificates and the execution of the gift deed, exhibit 815, are concerned. On behalf of Pranal Thakar, it was contended before us that the shares in a company, a special type of property, are capable of being transferred in the special manner prescribed by section 28 of the Indian Companies Act, 1913, which was then in operation and section 34 of the same Act read with regulations 18 and 19 of Table A in the First Schedule of that Act or the relevant articles of association and in no other manner. The second submission on behalf of Pranal was that a gift can only be made by the donor conveying the property to the donee and completely divesting himself of the property gifted and vesting it in the donee. It was lastly contended in this connection, that in case the donor has not completely divested himself of the property gifted and vested it in the donee, there is no transfer of ownership and in such an eventuality there is, at the highest, an agreement to make a gift since by the very nature of the transaction of gift, there is no consideration passing from the donee to the donor. Equity cannot step in and treat that as done which ought to have been done. On the other hand, on behalf of Vasudev Shelat, it was contended by Mr. S. B. Vakil that a gift is not suspended until registration of transfer in the books of the company actually takes place but all that is necessary to complete the gift is that the donor must do everything in his power to complete the gift and to make it effective. Mr. Vakil put forward two contentions. In the first place, in support of his stand, he contended that the gift deed, exhibit 815, itself was an instrument of transfer, which in the light of the provisions of the Companies Act and on the interpretation which was contended for by him, was sufficient to comply with the requirements of the company law and the articles of association and the provisions of regulations 18 of Table A and, therefore, under the provisions of section 123 of the Transfer of Property Act, this gift was complete in itself by exhibit 815. In the alternative and in the event of this contention of his being rejected, his contention was that the gift deed manifested a clear intention on the part of Bai Ruxmani to make a gift of these different shares mentioned in the gift deed in favour of Vasudev Shelat, her brother; and further handing over of the share certificates to Vasudev Shelat on or about March 6, 1948, as mentioned in the gift deed and subsequent handing over of blank transfer forms with the signature of the donor duly put up in the relevant column of each transfer form clearly amounted to doing all that the donor was required to do to effectuate the gift in favour of Vasudev Shelat. In this connection he further contended that there had been a substantial

compliance with the provisions of the Companies Act and regulation 18 of Table A and on the basis of substantial compliance also it should be held, according to Mr. Vakil's contention, that there was a complete gift by Bai Ruxmani in favour of Vasudev Shelat.

3. Before we consider these rival contentions, we must point out that there is a clear-cut distinction between English law regarding the nature of shares and the Indian law on the subject. According to English law, as has been pointed out by all the standard text books on the subject and as also recognised by the leading cases on the point, a share in a company is considered a chose in action, which according to the terminology used by the Transfer of Property Act, can be described as an actionable claim. Unlike that position in England, u/s 28 of the Indian Companies Act, 1913, and the provisions of the Indian Companies Act, 1956, the shares or interest in a company are movable property, transferable in the manner provided by the articles of the company. Under the old Indian Contract Act, sections which were in existence prior to the enactment of the Indian Sale of Goods Act, shares were goods and u/s 2(7) of the Indian Sale of Goods Act, 1930, stocks and shares are included in the definition of goods. Thus, by virtue of the Indian Sale of Goods Act, section 2(7), though stocks and shares may not be goods, they are included in the enlarged definition of the word, "goods"; and the sale of shares and stocks would be governed by the provisions of the Indian Sale of Goods Act, 1930, by virtue of this inclusive definition in the Indian Sale of Goods Act. We may also mention at this stage that the Transfer of Property Act, 1882, does not contain any definition of movable property. Section 3 defines immovable property negatively by mentioning that immovable property does not include standing timber, growing crops or grass. However, by the General Clauses Act, 1897 "immovable property" has been defined in section 3(26) as meaning land, benefits to arise out of land, and things attached to the earth, and u/s 3(36) "movable property" shall mean property of every description, except immovable property. It is true that the meanings which the words have been given by the definitions in the Transfer of Property Act for the purposes of that particular Act should be applied unless there is repugnance in the subject of context. Chapter VIII, which contains sections 130 to 137 (both inclusive) of the Transfer of Property Act deals with transfers of actionable claims. In section 137 of the Transfer of Property Act, it has been mentioned that nothing in the foregoing sections of that Chapter, i.e., sections 130 to 136, applies to stocks, shares or debentures. It was contended in this connection on behalf of Pranalal Thakar that according to the Transfer of Property Act, section 137, shares and stock are actionable claims but the provisions relating to transfer of actionable claims as stated in sections 130 to 136 are not to apply to this particular species of actionable claims. We are unable to accept this contention because it is clear from the provisions of the Companies Act as also from the provisions of the General Clauses Act that so far as shares in a limited company governed by the Indian Companies Act are concerned, they are movable property for the purpose of the Companies Act and they are also goods

for the purposes of the Sale of Goods Act; and in view of the departure which has been made from the position in England, where shares are considered choses in action, it is too late in the day to contend, so far as the courts in India are concerned, that shares or stocks are actionable claims.

4. We will now consider whether the document, exhibit 815, the registered gift deed, executed by Bai Ruxmani on March 6, 1948, itself constitutes an instrument of transfer as contemplated by the Indian Companies Act. In 1948, the provisions of the Indian Companies Act, 1913, were in force. u/s 28 of that Act it was provided :

"The shares or other interests of any member in a company shall be movable property, transferable in manner provided by the articles of the company."

5. Different articles of association of the different companies are on the record of this case but it is common ground between the parties that each of these articles incorporate regulations 18 and 19 of Table A in the First Schedule of the Indian Companies Act, 1913, with minor variations which are not material for the purposes of this judgment. u/s 17 of the Indian Companies Act, 1913, articles of association may adopt all or any of the regulations contained in the First Schedule; and it is, therefore, in the light of the regulations of Table A that we will consider the legal position. Regulations 18 and 19 of Table A to the Act of 1913 provided as follows :

"18. The instrument of transfer of any share in the company shall be executed both by the transferor and the transferee, and the transferor shall be deemed to remain holder of the share until the name of the transferee is entered in the register of members in respect thereof.

19. Shares in the company shall be transferred in the following form, or in any usual or common form which the directors shall approve :

I, A.B. of , in considerations of the sum of rupees paid to me by C.D. of (hereinafter called "the said transferee"), do hereby transfer to the said transferee the share or shares numbered in the undertaking called the company, limited, to hold unto the said transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution thereof, and I, the said transferee, do hereby agree to take the said or shares subject to the conditions aforesaid. As witness our hands the day of

Witness to the signatures of, etc."

6. L.C.B. Gower in his book on The Principles of Modern Company Law, 3rd edition, at page 401, has correctly pointed out the distinction between a transfer as between a transferee and the company on the one hand and as between the transferor and the transferee on the other. At page 401, he has pointed out :

"A question that has caused the courts great difficulty is that of deciding what

precisely is the legal effect of a transfer executed by the transferor and delivered to the transferee but not yet registered by the company. In considering this question it is essential to keep in mind the dual nature of the transaction; on the one hand it is a straightforward assignment of personal property, on the other it is the release of one person from membership, and the admission of another in his place. As between the transferor and the transferee it is the first aspect that is important, while as between the parties and the company it is the second. But, while adherence to this distinction may solve problems arising between one set of contracting parties and the company, it does not necessarily do so when other parties are involved, each claiming priority, for then the problem cannot be solved simply on the basis of either branch of the dual transaction.

So far as the transferor is concerned the transaction is complete as between him and the transferee when he hands over the duly executed transfer and certificate. On a sale and purchase, therefore, it is clear that the beneficial ownership passes then at the latest; indeed, as already suggested, in so far as the contract of sale is specifically enforceable it might be argued that the purchaser has already become the beneficial owner. But the buyer does not become a member or shareholder until the transfer is registered. Moreover, it is the policy of our company law that the company shall not be concerned with the beneficial ownership but shall only be bound or entitled to recognise the person whose name is on the register

Hence the company will continue to recognise the transferor and to disregard the transferee until the transfer is registered, and, if the directors have power to refuse to register, this may never happen. In the meantime it is clear that, in the case of a sale and purchase, the seller holds as trustee for the purchaser and must account to him for any benefit and is entitled to be indemnified against any obligations and, if unpaid, to exercise voting rights as he thinks will best protect his position."

7. Thus, it is clear that so far as the rights as between the transferor and transferee are concerned, if the transferor hands over to the transferee a duly executed transfer and the share certificate, the transaction is complete and the transferee has a legal and equitable title to these shares. This position is made clear in *Colonial Bank v. Cady and Williams*. Lord Watson in his speech has explained the position thus :

"When the endorsed transfer has been duly executed by the registered owner of the shares, the name of the transferee being left blank, delivery of the certificate in that condition by him, or by his authority, transmits his title to the shares both legal and equitable. The person to whom it is delivered can effectually transfer his interest by handing his certificate to another, and the possession of a holder who thinks fit to insert his own name as transferee, and to present the document to the company for the purpose of having his name entered in the register of shareholders and obtaining a new certificate in his own favour."

Thus the relationship as between the transferor and the transferee, once a duly executed deed of transfer and the relevant share certificates are handed over is that the transferor divests himself of all rights as the owner of the shares and the transferee, at least in the eye of equity, becomes the owner of those shares and even though being normally on the register of the company the registered owner may still continue to be the shareholder of the company, all the benefits that he may receive by virtue of his being on the register of shareholders will have to be handed over to the transferee and he must exercise voting, etc., as desired by the transferee. That this is legal position in India was recognised in *R. Mathalone v. Bombay Life Assurance Co.*, where it was held :

"On the transfer of shares, the transferee becomes the sole beneficial owner of those shares sold by the transferor, the legal title to which is vested in him. Thus, the relation of trustees and "cestui que trust" is thereby established between them. The transferor holds the shares for the benefit of the transferee to the extent necessary to satisfy the demands of section 94, Trusts Act, 1882. As the transferee holds the whole beneficial interest and transferor has none, the transferor must comply with all reasonable directions that the transferee may give. In this situation if he becomes a trustee of dividends he is also a trustee of the right to vote because the right to vote is a right to property annexed to the shares and as such the beneficiary has a right to control the exercise by the trustee of the right to vote.

The relationship arises by reason of the circumstance that till the name of the transferee is brought on the register of shareholders in order to bring about a fair dealing between the transferor and the transferee, equity clothes the transferor with the status of a constructive trustee and this obliges him to transfer all the benefits of property rights annexed to the sold shares of the "cestui que trust". That principle of equity cannot be extended to cases where the transferee has not taken active steps to get his name registered as a member on the register of the company with due diligence and in the meantime certain other privileges or opportunities arise for purchase of new shares in consequence of the ownership of the shares already acquired."

Thus the legal position in *Gower* being equally clear, the question that we have to ask ourselves is whether these species of movable property, viz., shares in a company, can be transferred in any manner other than the one contemplated by regulation 18 of Table A.

8. In *Sadashiv Shankar v. Gandhi Sewa Samaj*, the provisions of the Companies Act, 1956, came up for consideration before Kotval J. (as he then was). Section 82 of the Companies Act, 1956, is equivalent to section 28 of the Indian Companies Act, 1913; and it was held by Kotval J. that section 82 of the Companies Act of 1956 clearly provides that the shares in a company shall be capable of being transferred in the manner provided by the articles of the company; and it is well settled that unless the articles otherwise provide, a shareholder has a free right to transfer his shares to whom he chooses.

Therefore, the word "transferable" occurring in section 82 of the 1956 Act and section 28 of the Indian Companies Act, 1913, means capable of being transferred and this movable property, viz., shares in a company, is capable of being transferred in the manner prescribed by the articles of association or by regulations Nos. 18 and 19 of Table A.

9. The principle of law is well settled that where there is a special Act, resort should be had to the Act instead of general provision which is exercisable or which is available ordinarily. For all ordinary transfers of property, the Transfer of Property Act is the appropriate Act to be applied but when in the Indian Companies Act, a special type of property is recognised as movable property viz., shares, and provision is made in that Act for the transfer of this type of property, it is the special provision laid down in the Companies Act which will govern such transfers rather than the general provisions set out in the Transfer of Property Act. This position was recognised by a Division Bench of the Bombay High Court in *Vadilal Sarabhai v. Manekji Pestonji Bharucha* and at page 423, Sir Norman Macleod C.J. has observed :

"Shares are a peculiar kind of movable property which cannot pass from hand to hand like bales of cotton. The property in these shares belonged to the registered shareholder and could not be transferred to another except according to the articles of the company."

10. This decision in *Vadilal's* case was subsequently taken in appeal to the Privy Council and the decision of the Privy Council has not reported under the name *Manekji Pestonji Bharucha v. Wadilal Sarabhai & Co.* Viscount Dunedin delivering the judgment of the Privy Council has not referred to this aspect of the judgment of the Division Bench from which the appeal went to the Privy Council. At page 780 of the report he has observed :

"But, further, there seems to their Lordships good deal of confusion arising from the prominence given to the fact that the full property in shares in a company is only in the registered holder. That is quite true. It is true that what Bharucha had, was not the perfected right of property, which he would have had if he had been the registered holder of the shares which he was selling. The company is entitled to deal with the shareholder who is on the register, and only a person who is on the register is in the full sense of the word owner of the share. But the title to get on the register consists in the possession of a certificate, together with a transfer signed by the registered holder. This is what Bharucha had. He had the certificates and blank transfers, signed by the registered holders. It would be an upset of all stock exchange transactions if it were suggested that a broker who sold shares by general description did not implement his bargain by supplying the buyer with certificates and blank transfers, signed by the registered holders of the shares described. Bharucha sold what he had got. He could sell no more. He sold what in England would have been choses-in-action, and he delivered choses-in-action, But in India, by the terms of the Indian Contract Act, these choses-in-action are goods. By the definition of goods as

every kind of movable property it is clear that, not only registered shares, but also this class of choses-in-action, are goods

So soon, therefore, as Arajania, acting for Bharucha, handed Gora the certificates and transfers and Gora accepted them and gave the cheque, the goods became ascertained goods, the sale was complete and the property passed."

11. Turning now to regulation 18 of Table A, in order that there may be a valid transfer for the purposes of the articles of association, there must be an instrument of transfer and such instrument of transfer must be executed both by the transferor and the transferee. The form laid down in regulation 19 is the form in which the instrument of transfer is to be witnessed by attesting witnesses. When one turns to the registered gift deed, exhibit 815, it is obvious that though there is an acceptance of the gift endorsed on the registered gift deed by Vasudev Shelat by these words : "Signature of Shelat Vasudev Ramchandra. My own signature. I have accepted the gift mentioned above", yet it is obvious that it is in the form of a conveyance - a deed of gift - and not in the form of transfer of shares contemplated by regulation 19. The document sets out the circumstances in which the donor, Bai Ruxmani, came to be the owner of these different shares mentioned at Sl. Nos. 1 to 19 and it mentions that she was giving this property by way of gift to her younger brother, Vasudev. It also mentions the fact that the deceased husband of the donor, i.e., Uttamram, had also a great deal of affection for Vasudev and the donor herself was also extremely fond of Vasudev and she looked upon Vasudev as her own son. The gift deed also mentions that Vasudev had looked after Bai Ruxmani and at the time of execution he was the only person who was looking after her and helping her in every manner; and she was confident that even after the execution of the deed, Vasudev would continue to look after the donor with the same amount of care and affection and would serve her well; and it was under these circumstances that out of natural love and affection she was making a gift of these shares to Vasudev Shelat and Vasudev Shelat had accepted that gift. Thus though this is a conveyance, it is not in the form required by regulation 19, which form we have set out hereinabove. The reason why the document of transfer, exhibit 815, cannot be held to be the instrument of transfer contemplated by regulation 18 is that it is a composite document in respect of different shares in different companies and not an individual deed of transfer. Under the scheme of the Companies Act, particularly u/s 34 of the Companies Act, 1913, an instrument of transfer has to be lodged with the company and it remains on the record of the company. If the shares in 19 different companies are held to be transferred by this particular document, exhibit 815, then it cannot remain on record of 19 different companies. In any event, the form, which is material for the purpose of regulation 19 has not been adhered to and the transferee does not agree to have the shares subject to the conditions of the articles of association of each different company. In a matter of this kind, the rule of substantial compliance cannot apply and in any event there is not even

substantial compliance with the material portions of the form mentioned in regulation 19 of Table A. Under these circumstances, the contention of Mr. Vakil that the gift deed, exhibit 815, itself should be held to be the instrument of transfer cannot be accepted. This special type of property, viz., shares in a company, must be transferred in the manner laid down in the articles of association, i.e., in accordance with regulations 18 and 19; and since exhibit 815, the gift deed, does not conform to the form under regulation 19, it cannot be held to be the instrument of transfer contemplated by regulations 18 and 19.

12. In view of this conclusion, we have to consider as to what is the legal effect of handing over of blank transfer forms together with share certificates and execution of the gift deed. The gift deed itself mentions that share certificates were handed over to Vasudev Shelat at the time of the execution of the gift deed. It says in terms that "the shares, etc., have been handed over in your possession". The gift deed also mentions that the donor agreed to transfer the shares mentioned in the gift deed to the name of the donee, Vasudev, and the document proceeds :

"If for some reason there is any delay in getting the shares transferred to your name or for the sake of convenience if hereafter we obtain any dividend or income on those shares in any circumstances, then it shall be deemed that we have received the income due to you or belonging to you."

Thus, it is undoubtedly true that the deed of gift discloses a clear and unequivocal intention on the part of Bai Ruxmani that Vasudev should become the owner of these shares and he should for all future time enjoy the fruits thereof. It is a well-settled position in law that unless the gift is completed as required by law, mere intention to make a gift cannot pass any title to the donee and does not make the donee the owner of the property gifted by the donor. The registered gift deed itself cannot create any transfer and so it was not competent to the donor to divest the title in her merely by the execution of the gift deed. She was required to execute the regular transfer deeds or instruments of transfer in favour of Vasudev Shelat and hand them over to the donee, Vasudev Shelat, together with the share certificates.

13. The circumstances as clearly emerge and the facts as found by the courts below, go to show that the deed of gift was executed on March 6, 1948, and at the same time the relevant share certificates were handed over by the donor to the donee; and some time between March 6, 1948, when the gift deed was executed, and April 18, 1948, when Bai Ruxmani died, blank transfer forms signed by Bai Ruxmani were handed over by Bai Ruxmani to Vasudev Shelat, the donee. In a situation like this, Gower's comment at page 402 of his book is as follows :

"But what is the position if there is no sale or other valid contract and the transfer is merely by way of gift ? Until recently it appeared on the authority of the leading case of *Milroy v. Lord*, that the gift has to be regarded as incomplete

and therefore ineffectual since there was "no equity in this court to perfect an imperfect gift".

But two more recent cases (both, by a coincidence), namely, *In re Ros*, make it clear that the rule in *Milroy v. Lord* does not mean that a transfer can never be regarded as a perfect gift until it is registered. It suffices if the transferor has done all that is required of him. This normally involves handing over an executed transfer and the share certificate, but may involve further action, for example, to comply with the Exchange Control regulations."

In this connection it will be necessary to examine the five cases which are referred to in all standard text books on company law so far as this aspect of the matter is concerned.

14. *Milroy v. Lord* is to be found reported in All England Reports and the passage from the decision in this case which is most often quoted is from the judgment of Turner L.J. at page 789 of the report :

"I take the law of this court to be well settled, that, in order to render a voluntary settlement valid and effectual, the settlor must have done everything which, according to the nature of the property comprised in the settlement, was necessary to be done in order to transfer the property and render the settlement binding upon himself. He may, of course, do this by actually transferring the property to the persons for whom he intends to provide, and the provision will then be effectual, and it will be equally effectual if he transfers the property to a trustee for the purposes of the settlement, or declares that he himself holds it in trust for those purposes; and if the property be personal, the trust may, as I apprehend, be declared either in writing or by parol; but, in order to render the settlement binding, one or other of these modes must, as I understand the law of this court, be resorted to, for there is no equity in this court to perfect an imperfect gift. The cases, I think, go further to this extent that if the settlement is intended to be effectuated by one of the modes to which I have referred, the court will not give effect to it by applying another of those modes."

15. The next case in this connection is *In re Fry, Deceased : Chase National Executors and Trustees Corporation v. Fry*. In that case, under the Exchange Control Regulations, which were in force in England during the Second World War, consent of the treasury was required for the transfers in question and the transferor had not obtained that sanction before effecting the transfer. It was held by Romer J. applying the principle of *Milroy's* case that everything was not done by the transferor to perfect the gift which the nature of the property required him to do. At page 316 of the report Romer J. observed :

"Had everything been done which was necessary to put the transferees into the position of the transferor ? If these questions (which are suggested by *Roots v. Williamson*) could be answered affirmatively, the transferees would have had more than an inchoate title; they would have had it in their own hands to require registration of the transfers. Having regard, however, to the Defence (Finance)

Regulations it is impossible, in my judgment, to answer the questions other than in a the negative. The requisite consent of the treasury to the transactions had not been obtained, and in the absence of it, the company was prohibited from registering the transfers. In my opinion, accordingly, it is not possible to hold that, at the date of the testator's death, the transferees had either acquired a legal title to the shares in question, or the right, as against all other persons to be clothed with such legal title."

16. As against these principles flowing from *Milroy v. Lord* there are two cases, one in 1948 and the other in 1952, where the question was considered from another angle. In *In re Rose (Deceased) : Midland Bank Executor and Trustee Co. Ltd. v. Rose* 4, the testator bequeathed 500 preference shares and 500 ordinary shares of a private company and handed them over together with the relevant certificates to E.H. The testator died in January, 1946. Shortly before his death, the testator sold his ordinary shares in that company granting an option, which was exercised after his death, to purchase the preference shares in that company. During his lifetime the testator executed the transfer deed of preference shares in August, 1944, but the transfer was not registered by the company till March, 1946. On these facts, Jenkins J. held that the testator had done everything in his power to divest himself of the preference shares of the company in favour of the donee, the shares had been transferred to the donee previously to donor's death, within the meaning of clause 3(g) of the will, and as the donee's title under the transfer was perfected by registration after testator's death, the donee took the shares as a gift inter vivos; and on these facts the decision in *Milroy's* case was distinguished by Jenkins J. The relevant discussion is at page 978 of the report, viz. :

"It is argued on behalf of the residuary legatee that the testator's transfer of the 5,000 preference shares to Mr. Hook was at the time of the testator's death in the state of being an incomplete or inchoate gift, owing to the fact that the transfer was not registered in the testator's lifetime. I was referred to *Milroy v. Lord* and also to *In re Fry : Chase National Executors & Trustees Corporation v. Fry*. Those cases, as I understand them, turn on the facts that the deceased donor had not done all in his power, according to the nature of the property given, to vest the legal interest in the property in the donee. In such circumstances it is well settled that there is no equity to complete the imperfect gift. If any fact remains to be done by the donor to complete the gift at the date of the donor's death, the court will not compel his personal representatives to do that act and the gift remains incomplete and fails."

17. Similarly, in *Rose v. Inland Revenue Commissioners* the Court of Appeal in England had held that merely because the shares were not registered during the lifetime of the donor, it could not be held that the gift by the donor in favour of the donee was not complete. In that case, the deceased by transfer dated March 30, 1943, in consideration of natural love and affection transferred to his wife, the plaintiff in the first action 10,000 shares in an unlimited company. By a

second transfer of the same date, he transferred a further 10,000 shares in the same company to the plaintiffs in the second action as trustees to hold upon the trusts of a settlement of even date. The transfers were in the form required by the company's articles of association. These articles authorised the directors to decline to register any transfer. At the date of their execution, the transfers were handed over with the relative share certificates to the transferees or their agent. The transfers were duly stamped on April 12, 1943, and registered in the books of the company on June 30, 1943. The deceased died on February 16, 1947. The Crown claimed estate duty on the shares on the ground that the gift of the shares was not completed before April 10, 1943, the dates which the parties agreed was the relevant date before which the gifts must have been completed to avoid duty under the combined effect of the provisions of the taxing statutes in England; and it was held on appeal :

"(1) That the deceased having done everything in his power by executing the transfers to transfer his legal and beneficial interest in the shares to the transferees, that transferees had become beneficial owners of the shares and between the date of the execution of the transfers and the registration of the transfers the deceased could not have asserted any beneficial title by virtue of his position as registered holder. Having regard to the form and operation of the transfers, the nature of the property transferred and the necessity of the registration in order to perfect the legal title, coupled with the discretionary power in the directors to withhold registration, pending registration the deceased was in the position of a trustee of the legal title in the shares for the transferees. (2) That the gifts of the shares were completed on March 30, 1943, and on that date bona fide possession and enjoyment of the shares had been assumed by the transferees to the entire exclusion of the deceased of any benefit to him by contract or otherwise."

18. The earlier decision in *Milroy v. Lord* was considered and it was held that the decision in that case did not cover the facts of the case before the Court of Appeal, and it was observed by Lord Justice Jenkins at page 513 of the report :"

"In my view, in order to arrive at a right conclusion in this case, it is necessary to keep clear and distinct the position as between transferor and transferee and the position as between transferee and the company. It is, on doubt, true that the rights conferred by shares are all rights against the company, and it is no doubt true that, in the case of a company with ordinary regulations, no person can exercise his rights as a shareholder vis-a-vis the company or be recognized by the company as a member unless and until he is placed on the register of members. But, in my view, it is a fallacy to adduce from that the conclusion that there can be no complete gift of shares as between transferor and transferee unless and until the transferee is placed on the register. In my view, a transfer under seal in the form appropriate under the company's regulations, coupled with delivery of the transfer and certificate to the transferee, does suffice, as between transferor and transferee, to constitute the transferee the beneficial

owner of the shares, and the circumstances that the transferee must do a further act in the form of applying for and obtaining registration in order to get in and perfect his legal title, having been equipped by the transferor with all that is necessary to enable him to do so, does not prevent the transfer from operating, in accordance with its terms as between the transferor and transferee, and making the transferee the beneficial owner."

19. We may point out that in both these cases of *In re Rose*, the transferor concerned had handed over a duly executed instrument of transfer to the donee or the transferee. Thus, it is clear that, if on the facts of this case, it can be held that Bai Ruxmani had done all that she was required to do in order to transfer the shares from herself to Vasudev Shelat, then the gift can be said to be complete notwithstanding the fact that during Bai Ruxmani's lifetime share were not registered in the record of the company in the name of Vasudev Shelat. At this stage we will have to consider the legal position arising from blank transfers. A great deal of controversy was raised before us as to what is the exact meaning of the words "blank transfer". Does it mean that only the name of the transferee is left blank, the rest of the details having been completed before the transfer form signed by the transferor is handed over to the transferee ? or does it mean that it would be sufficient to constitute a blank transfer form if merely the signature of the transferor is placed in the appropriate column of the transfer form ? On behalf of Pranalal Thakar reliance was placed on the definition of "blank transfer" occurring in Aiyar's Law Terms & Phrases, 6th edition at page 125, viz :

"Blank transfer :- A transfer of stocks or shares, omitting the name of the transferee often given to bankers as security for money lent on such stocks or shares."

20. It was also contended by Mr. Shah on behalf of Pranalal Thakar that ordinarily the name of the transferee requires to be filled in. All other details are not required to be filled in. But this submission of Mr. Shah does not appear to be correct. Reliance was placed by Mr. Vakil on the judgment of a Division Bench of the Bombay High Court in *Official Assignee, Bombay v. Madholal Sindhu*, and at page 836 of the report, Stone C.J. has pointed out that in that particular case the transfers were blank in every sense of the word for they did not state even the shares or the name of the company to which they referred. Yet on the strength of such blank transfer forms when there was a sale of shares by handing over share certificates together forms, when there was a sale of shares by handing over share certificates together with transfer forms, it was held that it was a valid sale. For this purpose reliance was placed on the earlier decision of the Privy Council in *Manekji Pestonji Bharucha's* case; it was held by the Privy Council in that particular case that in India sale of shares by handing over the share certificates together with the blank transfer forms was a good sale and passed the property from the transferor to the transferee. Thus looking to *Manekji Pestonji Bharucha's* case, it is clear that even if share certificates together with blank/transfer forms, which are blank in every respect the

signature of the transferor, are handed over it is a good transfer and it passes property from the transferor to the transferee in a transaction of sale.

21. Looking to all the authorities cited before us, the only case which explains the significance of a blank transfer and what is the correct legal position between the transferor and the transferee in the case of sale of shares is to be found in the decision in *Colonial Bank v. Hepworth* and at page 44 of the report, Chitty J. Observed :

"The plain legal effect of this recognised practice is, that the transferor who executes the transfer in blank confers on the holder of the documents for the time being an authority to fill in the name of the transferee; and each successive holder for the time being, when the documents pass through several hands, passes on this authority. The holders must of course be bona fide holders for value without notice."

22. Again at page 53 of the report, Chitty J. has observed :

"Having regard to the particle proved and the condition in which these documents are when they pass from hand to hand the right principle to adopt with reference to them is to hold that where (as in the case before me) the transfers are duly signed by the registered holders of the shares, each prior holder confers upon the bona fide holder for value of the certificates for the time being an authority to fill in the name of the transferee and is estopped from denying such authority; and to this extent, and in this manner, but not further, is estopped from denying the title of such holder for the time being. By the delivery an inchoate legal title passes, but a title by unregistered transfer is not equivalent to what has been termed "the legal estate" in the shares or to the complete dominion over them."

23. This decision of Chitty J. emphasizes that the implied authority in favour of the transferee to fill in the blanks in a blank transfer form comes into existence when there is a bona fide holder for value without notice. The question that we have to ask ourselves is whether in the circumstances of the present case we can infer an implied authority having been conferred by Bai Ruxmani in favour of Vasudev Shelat to fill in the blanks in the blank transfer forms and thus complete the documents. If it were a commercial transaction in the sense of a sale or mortgage or hypothecation of the shares, there is no doubt that the transferee to whom such blank transfer forms are handed over would get an implied authority to fill in the blanks and having completed the documents, to present them for transfer to the company and get his own name entered on the register of the company. But, in this case before us, the question that we have to ask ourselves is whether there was an implied authority conferred by Bai Ruxmani in favour of Vasudev Shelat to fill in the necessary details in each of these blank transfer forms. The deed of gift, exhibit 815, itself does not confer any express authority on Vasudev to get the necessary deeds executed nor does it contain a promise on the part of Bai Ruxmani to execute the necessary document if and when

required. All that the gift deed states is that the donor would get the shares transferred to the name of the donee but there is no promise on the part of the donor to do whatever might be necessary to get the shares transferred from her name to the name of the donee. Since there is no express authority, we have to ask ourselves whether in the circumstances we can infer that an implied authority was conferred on Vasudev Shelat to fill in the blanks and to complete the relevant documents in order to get shares transferred in the books of the respective companies in his name. The circumstances from which such an implied authority can be inferred, if at all to be inferred, are three : (1) The intention to make a gift of these shares of 19 companies as shown by the gift deed, (2) The fact that the relevant share certificates were handed over by the donor to the donee at the time when the deed of gift was executed on March 5, 1948; and (3) Sometime between March 6, 1948, and April 18, 1948, when she died, she signed on the different blank transfer forms in the column meant for the signature of the transferor and handed over those blank transfer forms to the donee, namely Vasudev Shelat. Of course the gift deed did mention that the donor would get the shares transferred to the name of the donee and the donee was to become the full owner of these different shares mentioned in the deed of gift. We have already mentioned above that mere execution of the deed of gift did not constitute Vasudev Shelat owner of the shares either in equity or in law and by merely executing the deed of gift the donor had not done everything in her power to complete the gift. The concept of implied authority when there is a transfer for valuable consideration passed by the bona fide holder for value, cannot come to the help of the donee in the instant case since there is no consideration. Under these circumstances, the only question is whether, in the circumstances of the present case, we can infer an implied authority being conferred upon Vasudev Shelat by the donor to fill in the blank so as to complete these different documents. We may mention at this stage that the contention of Mr. M. C. Shah and the learned Advocate General on behalf of Pranalal Thakar that, since the names of the individual companies or the numbers of the different shares or the attestation of signature of Bai Ruxmani was not to be found in the different blank transfer forms, these forms could not be said to be duly executed, cannot be supported. In view of the decision of *Official Assignee v. Madholal*, it is clear that so far as a transferee for value is concerned, even merely putting down the signature of the transferor on the blank transfer form with nothing more is sufficient to pass the title from the transferor to the transferee in the case of sale of shares.

24. We may point out that in *Howrah Trading Co. v. Commissioner of Income tax, Hidayatullah J.* (as he then was) has pointed out in paragraph 7 at page 778 of the report as follows :

"But the transfers of shares are common, and they take place either by a fully executed document such as was contemplated by regulation 18 of Table A of the Indian Companies Act, 1913, or by what are known as "blank transfers". In such blank transfers, the name of the transferor is entered, and the transfer deed

signed by the transferor is handed over with the share scrip to the transferee, who, if he so chooses, completes the transfer by entering his name and then applying to the company to register his name in place of the previous holder of the share. The company recognises no person except one whose name is on the register of members, upon whom alone calls for unpaid capital can be made and to who only the dividend declared by the company is legally payable. Of course, between the transferor and the transferee, certain equities arise even on the execution and handing over of a blank transfer", and among these equities is the right of the transferee to claim the dividend declared and paid to the transferor who is treated as a trustee on behalf of the transferee. These equities, however, do not touch the company, and no claim by the transferee whose name is not in the register of members can be made against the company, if the transferor retains the money in his own hands and fails to pay it to him."

Thus, either the completed document may be passed or a blank transfer form with permission to the transferee to complete the document for transfer may be handed over; but in either case a good title will pass from the transferor to the transferee.

25. In *R. Subba Naidu v. Commissioner of Gift-tax*, the Madras High Court held :

"When joint stock is the subject-matter of transfer, the provisions of the Transfer of Property Act are not conclusive and it should be seen whether there is a transfer in accordance with the provisions of the Companies Act. The transfer of the interest in the shares from the transferor to the transferee is independent of the requirement of its registration for purposes of the Companies Act as, without an anterior transfer, there can be no question of applying for registration of it. There should first be a transfer properly made of the board of directors either by the transferor transferee for change of registration in respect of them and unit such a change is effected in the books of the company, the transferor will continue to be the holder of the shares."

26. In that particular case before the Madras High Court, the assessee made a gift of certain shares in P. Ltd. to his daughter under two settlement deeds dated April 11, 1951 and March 31, 1959, but the shares continued to stand in this name in the books of the company as they had not been sent to the company for registration of the transfer. The dividends on these shares continued to be assessed in the hands of the assessee. On the death of the daughter on June 24, 1960. The shares were not treated as part of her estate for estate duty purposes. The value of the shares was subjected to gift-tax for 1959-60 in the hands of the assessee, rejecting his contention that there was no actual transfer of the shares to his daughter as, though under the first deed he had retained a life interest in the shares and by the second deed he had settled them absolutely on her, he had neither executed any deed of transfer nor made any request to the company to effect the transfer of the shares to her name but they continued to stand in his name right through and he was enjoying the dividends therefrom and paying tax thereon. On these facts the Madras High Court held that there was a completed

gift of the shares to the daughter which operated with full force between the assessee and his daughter notwithstanding that, vis-a-vis the company, he continued to be the holder of the shares in the absence of registration of the transfer; and it was held that the inclusion of the total value of the shares as on March 31, 1959, for purposes of gift-tax was correct. In that case, it must be observed that there was a regular deed of settlement by which the shares were transferred to the daughter, the beneficial owner of these shares under the deed of settlement.

27. It is in the light of these decisions that we have to ask ourselves whether on the facts of this case and the different circumstances which we have pointed out above, we can infer that Bai Ruxmani conferred an implied authority on Vasudev Shelat to fill up the blanks in the blank transfer forms. If the blank transfer forms had not been handed over by Bai Ruxmani to Vasudev Shelat, the gift would have been certainly incomplete. The question is whether by handing in over the blank transfer forms signed by her, Bai Ruxmani did everything in her power to complete the gift. The share certificates had, of course, been handed over earlier at the time when the gift deed was executed on March 6, 1948. The intention to create the gift was certainly there. She had promised in the gift deed that she would get the shares transferred to the name of the donee, Vasudev Shelat; but can it be said that handing over of the blank transfer forms without any express authority to Vasudev Shelat whatsoever to complete the blank transfer forms completed the gift ? It is nobody's case that there was any such express authority. No express authority is to be found in the gift deed, exhibit 815; and the only cases of implied authority to fill in the blanks in the blank transfer forms is the Colonial Bank's case, where Chitty J. has emphasized that the implied authority comes into existence when there is a bona fide holder for value. Barring this decision of Chitty J., there is no other decision which discusses this question of implied authority. Ordinarily, such transfer forms are passed in commercial transactions where there is always some consideration moving from the transferee to the transferor and, therefore, the implied authority comes into play, but can we bring in the notion of such implied authority, which is to be found in commercial transactions taking place for consideration, to a non-commercial transaction of a gift made by a sister to her brother. Our learned brother A. D. Desai J. found on the facts and circumstances of this case, viz., the words used in the deed of gift, actual handing over of the share certificates and the blank transfer forms, that an equitable title was created in Vasudev Shelat in respect of the shares to be transferred. We are unable to agree with this conclusion of our learned brother. He has not examined the question from the point of view of implied authority to complete the transfer. The implied authority always comes into existence in a commercial transaction. There is not a single decision which lays down that such implied authority is to be inferred when there is no consideration whatsoever and when there is a question of pure gift. In this connection we may mention that in the gift deed the donor promises to get the shares transferred to the name of the donee, Vasudev Shelat, but that would

involve the execution of the regular deed of transfer complete in every detail and that sentence or that provision in the gift deed, exhibit 815, would not necessarily mean that if and when a blank transfer form signed by the donor was handed over to the donee, an implied authority to fill in the details was also conferred on Vasudev.

28. It is only because of this want of implied authority to fill in the details in the blank transfer forms that we are unable to agree with our learned brother that there was a completed gift by the donor to the donee. The fact that registration of the shares in the books of the respective companies had not taken place cannot detract from the completion of the gift is the want of authority in the donee to fill in the blanks (sic). It is clear that if A signs on a blank sheet of paper and hands over that blank sheet of paper to B, at the same time authorizing B to fill in the promissory note above his signature and if B does so in the manner and to the extent authorised then the document would be binding on A. The reason is that what B, the agent, does with the authority of A, would be binding on the principal, A. It is the same question of authority, express or implied, which comes into play when a blank transfer form is handed over. In the case of commercial transactions where there is valuable consideration passing from the transferee to the transferor, according to Chitty J., such authority is implied but, in the absence of such consideration and where there is no commercial transaction, such authority by the mere fact of handing over of the blank transfer forms cannot be implied. Since the gift was not complied as required by law and looking to the nature of the property involved in this case, viz., shares, the donor not having done everything which she was required to do to complete the transfer, the gift in favour of Vasudev Shelat does not take effect and, in our opinion, the shares would pass to Pranalal Thakar as on intestacy on the death of Bai Ruxmani.

* * * *