**(1981) 04 GUJ CK 0013**

**In the Gujarat High Court**

**Case No :** G.T. Ref. No. 1 of 1976

Shivrajkumar APPELLANT

Vs

Commissioner of Gift Tax RESPONDENT

**Date of Decision :** 22-04-1981

**Acts Referred:**
Income Tax Act, 1958 — Section 2

**Citation :** (1981) 04 GUJ CK 0013

**Hon'ble Judges :** R.C. Mankad, J;M.P. Thakkar, J

**Bench :** Division Bench

**Advocate :** K.C. Patel, for the Appellant; N.U. Raval, for the Respondent

## Judgement

M.P. Thakkar, J.—Does a gift of immovable property complete as soon as the gift deed is executed or only upon its being registered ? When does the transaction become complete so as to be exigible to gift tax under the provisions of the GT Act, 1958 (hereinafter referred to as the Act) ? This question arises by reason of the fact that the charging section under the Act provides inter alia, that there shall be charge for every assessment year commencing on and from the 1st day of April, a tax in respect of the gift if any, made by a person during the previous year at the specified rate. In order to determine as to on which date in a particular year, the assessee would be liable to pay the tax on the gift made by him, a question arises as to when the transaction of gift is complete within the meaning of s. 3 of the Act so as to attract liability to gift tax in a particular year. The GTO took the view that the transaction of gift becomes complete on its registration and the liability to pay the tax on the gift must be determined from the stand-point of the date on which gift-deed was registered under the relevant provisions of the Registration Act, 1908. The AAC of gift tax reversed the decision of the GTO and took the view that the date on which the gift deed was executed was the relevant date and not the date on which the document was registered. The IT Appl. Tribunal, Ahmedabad Bench ''C'' (hereinafter referred to as the Tribunal) allowed the appeal preferred by the Department, turned the decision of the AAC of Gift-tax, and restored the decision of the GTO. Thereupon the present Reference has been made to this Court at the instance of the Assessee.

2. Section 122 of the Transfer of Property Act, 1882, inter alia, provides that a gift can be made by transfer of an immovable property voluntarily and without consideration by donor to the donee. The expression ''transfer'' has to be interpreted in the light of s. 123 of the said Act which provides that for the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument executed in a particular manner. On a combined reading of s. 122 and s. 123 of the Act it is evident that a transaction of gift can be brought about by executing a registered document subject to other conditions being fulfilled. In the present case, the document has been executed in one assessment year, but it has been registered in the subsequent assessment year. Since on a combined reading of ss. 122 and 123 it is evident that the transaction of gift would be complete provided a registered document is executed and other conditions are fulfilled. It cannot therefore be said that the transaction was complete and a gift in the eye of law came to be made by the donor to the donee prior to the registration of the document by which the gift was made. Reliance, however, was placed on s. 47 of the Registration Act. 1908 which provides that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. The true scope of s. 47 has to be realized in order to comprehend its impact. A question pertaining to the scope of this provision arose before the Supreme Court in Ram Saran Lall and Others Vs. Mst. Domini Kuer and Others, , the Superme Court observed that s. 47 of the Registration Act does not say when a sale would be deemed to be complete. It only permits a document, when registered, to operate from a certain date which may be earlier than the date when it was registered. The pertinent observations as regards the scope and object of the section made therein are -

"The object of this section is to decide which of two or more registered instruments in respect of the same property is to have effect."

3. The scope of s. 47 of the Registration Act again came up for consideration before the Supreme Court in Hiralal Agrawal etc. Vs. Rampadarath Singh and Others, etc., . The point was canvassed before the Supreme Court that the title acquired under a document which is subsequently registered would relate back to the date of its execution. This argument was in terms repelled by the Supreme Court in paragraph 11 of its decision, wherein reliance has been placed on its earlier decision in Ram Saran''s case (supra). The relevant passage from paragraph 11 may be quoted;

".................... But Mr. Desai argued that u/s 47 of that Act once registration is effected, the title under the sale deed relates back to the date of its execution and therefore, though registration was completed on November 30, 1964. Assuming therefore that the application was presented on November 26, 1964 the transferee''s title having related back to the date of the execution of the sale deed, the transfer must be deemed to be completed on that date, and, therefore, it was not correct that the right of reconveyance had not accrued to the appellant on November 26, 1954 or that the Collector had no jurisdiction on that date to accept the said application. This contention, however, cannot be accepted in view of the decision in Ram Saran Lall and Others Vs. Mst. Domini Kuer and Others, where this Court rejected an identical contention. Mr. Desai tried to distinguish that case on the ground that it was based on Mohemedan law which by custom applied to the parties there. But the decision is based not on any principle of Mohemedan law but on the effect of section 47 of the Registration Act ............."

4. In view of those two decisions, the view taken by the Tribunal must to sustained. The question referred to us, is therefore, answered in the following manner :

Question Answer Whether, on the facts and in the In the affirmative i.e. in circumstances of the case the favour of the Revenue. Tribunal was justified in law in upholding assessment to gift-tax gift of immovable property by deed dated 31-3-1970 in the assessment year 1971-72 on the ground that the gift was completed only when the deed was registered on 29th July, 1980 which fell during the relevant previous year material for this assessment year ?

5. Reference is disposed of accordingly. There will be no order as to costs.

 