

(1996) 01 KAR CK 0004

In the Karnataka High Court

Case No : Regular Second Appeal No. 643 of 1985

Smt. Ammajamma

APPELLANT

Vs

Smt. Mahadevamma and Another

RESPONDENT

Date of Decision : 19-01-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145
Hindu Succession Act, 1956 — Section 22, 22 (1), 22 (2)

Citation : (1996) ILR (Kar) 3499 : (1996) 6 KarLJ 139

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Krishna Kumar, for S.V. Raghavachar, for the Appellant; M. Papanna and M. Desappa for R-1 and R-2, for the Respondent

Final Decision : Dismissed

Judgement

Hari Nath Tilhari, J.—This is plaintiff's Second Appeal arising out and from Judgment and decree dated September 23rd 1985, delivered by the District Judge, Tumkur (Sri. P.S. Gundawade), allowing the defendants' First Regular Civil Appeal - R.A.No.4/1974, from the Judgment and decree dated 16.3.1974, delivered by Sri, K.P. Kempegowda, Additional Civil Judge, in Original R.A.No. 32/71, setting aside the Judgment and decree of the Trial Court and dismissing the plaintiff - appellant's Original Suit - No. O.S. 32/71, at the Court of Additional Civil Judge, Tumkur.

2. The plaintiff - appellant filed the suit for decree for declaration declaring that the plaintiff 4s entitled to exercise the right of preemption, i.e., right of preferential acquisition of suit property u/s 22 of Hindu Succession Act, i.e., Act No. 30 of 56, in respect of one half share in the suit schedule properties and for further direction to defendant No. 2, that is, Respondent No. 2, to deliver the possession of items Nos. 1 and 2 of Schedule property to the plaintiff. The plaintiff further claimed a direction to be given to make enquiries as to future mere profits from the date of the suit under Order 20, Rule 12 of the CPC Code,

for short, "Code" in respect of item Nos. 1 to 3, of the suit schedule properties with reference to the 1/2 share of the plaintiff appellant. The plaintiff further claimed a decree for permanent injunction restraining the 2nd defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit property bearing item Nos. 4 and 5 against the defendants. The properties involved in the suit have been mentioned in detail in the plaint schedule with the boundaries given therein. According to the case of the plaintiff, Udase Gowda, the father of the plaintiff had no male issue and the 1st defendant has been the widow of Udase Gowda and was plaintiff's step mother. According to plaintiff's case, after the death of plaintiff's mother, Udase Gowda married the second time. According to plaintiff's case, after her marriage, plaintiff and her husband Gujarappa lived with plaintiff's father, who had no male issues. The plaintiff's father, according to the plaintiff died on June 17th, 1961. That after the death of Udase Gowda, the 1st defendant succeeded him as her daughter and at that time, all were living in house item No. 4 of the Schedule. The plaintiff further alleged that on the death of Udase Gowda, plaintiff and defendant No. 1, became entitled to equal shares in the suit schedule property left by Udase Gowda. Plaintiff claimed herself to be managing the affairs of the property. Plaintiff further alleged that Section 145 of the Criminal Procedure Code, for short, "Cr.P.C." proceedings were initiated by the defendants, but, those proceedings were not necessary to be taken, as the plaintiff was in possession of the land through the tenants. Plaintiff's case is that during the proceedings u/s 145 Cr.P.C., the 1st defendant created a deed in favour of the 2nd defendant styled as a Gift Deed. According to plaintiff's case, a suit was also filed by 1st defendant, namely, O.S.No. 499/1964, on the file of Munsiff, Madhugiri, for declaration of her title and for consequential relief of injunction in respect of suit item No. 4 (the house property). The suit was it appears, later on, withdrawn by the 1st defendant. That plaintiff's case is that defendant. No. 2 had taken the possession of the suit land item Nos. 1 and 3 illegally and unlawfully sometimes in Jan 1965. That according to the plaintiff's case, first defendant had no right to convey or transfer any of the suit properties to the 2nd defendant and the deed styled as Gift Deed was really a deed of transfer for consideration to a stranger to the family, and as such, the said transaction, plaintiff claimed was in contravention and in violation of provisions of Section 22 of Hindu Succession Act. That as such, plaintiff claimed that as said Gift Deed was really a transfer for consideration it was invalid being in breach of Section 22 of Hindu Succession Act and so 2nd defendant, did not derive any right, title, interest in the suit schedule properties under the said so called Gift Deed. Plaintiff claimed himself to be entitled to exercise the preferential right to acquire the property u/s 22 of Act No. 30 of 1956 and preferred the claim to have the recovery of the possession of the suit property item Nos. 1 to 3 and to be also entitled to retain possession of item Nos. 4 and 5 of the suit schedule. The plaintiff further alleged that plaintiff is ready and willing to deposit the consideration for which half share of 1st defendant was transferred to 2nd defendant. The plaintiff asserted the value of the suit property, subject-matter of the Gift Deed to be Rs. 3000/- and the value

of the half share of the plaintiff therein to be 1,500/- rupees.

The plaintiff with the above mentioned allegations and in the context of the above facts and circumstances, filed the suit for declaration of plaintiff's right of acquisition of suit property subject matter the transfer deed made on 25.5.1964, and for other reliefs as mentioned above.

3. The defendants 1 and 2, filed their written statement separately and challenged the plaintiff's claim. The defendants as per their written statement asserted that it was false to allege that the plaintiff and her husband were living with her father. The defendants case is that plaintiff was living with her husband at Hutha Hanumaiahnapalya. The defendants case is that the 1st defendant lived with her husband, at the time of her husband's death and that first defendant alone had succeeded to the estate of her deceased husband. The plaintiff never lived with defendant No. 1, at any time after plaintiff's marriage. The defendants denied the possession of the plaintiff over the suit property and asserted that there was no occasion to dispossess the plaintiff from the schedule property, as the plaintiff was not in possession thereof at all. The defendants contended that the 1st defendant executed the Gift Deed on May 25th, 1964, and that the 1st defendant had a right to convey and to execute the Gift Deed of the suit property. That defendant No. 2 was not a stranger. The defendant No. 1, denied that plaintiff was entitled to any right of pre-emption, or preferential acquisition, instead, asserted that plaintiff was not entitled to claim any such right either u/s 22 of Hindu Succession Act or as right of pre-emption. The defendants further asserted that plaintiff was not entitled to decree for permanent injunction and there has been no cause of action for the suit and on this basis defendant No. 1, asserted that the plaintiff's suit was liable to be dismissed. The 2nd defendant had also filed the written statement and in his written statement, 2nd defendant asserted that the 1st defendant had every right to give the properties to the 2nd defendant and that gift, i.e., Gift Deed had not been for any monetary consideration nor for consideration in terms of money or determinable in terms of money. The second defendant asserted that he was not a stranger to the family of Udase Gowda. The case of defendant No. 2, is that the grand father of 2nd defendant, namely, Arekke Gowda and Udase Gowda were brothers. According to defendants' case, Udase Gowda was the uncle of defendant No. 2, and the mother of 1st defendant and mother of 2nd defendant were full sisters and that plaintiff had no preferential right to acquire the suit properties the 2nd defendant alleged. The 2nd defendant denied the plaintiff's claim for possession of the suit schedule properties. The 2nd defendant claimed himself to be the owner of the suit properties by virtue of the Gift Deed dated May 25, 1964, and asserted that plaintiff has not been entitled to question or challenge the Gift Deed, as such the defendant claimed that the plaintiff's suit was liable to be dismissed.

4. That the Trial Court on a consideration of pleadings of the parties, framed the following issues:

1. Whether after the death of Udase Gowda, the plaintiff and 1st defendant succeeded to the estate of Udase Gowda?
2. Whether 1st defendant had full right to convey the suit schedule properties to the 2nd defendant under a Gift Deed dated 25.5.1964?
3. Whether the plaintiff has a preferential right in the 1st defendant's share in the suit schedule properties and she is entitled to exercise her right of pre-emption in respect of half share in all the suit properties conveyed and transferred under the Gift Deed dated 25.5.1964 executed by 1st defendant in favour of 2nd defendant?
4. Whether the plaintiff is entitled to the possession of items 1 to 3 of the suit schedule property?
5. Whether the plaintiff was in possession of items 4 and 5 of the suit schedule property on the date of suit?
6. Whether the plaintiff is entitled to the relief of permanent injunction?
7. To what future mesne profits is the plaintiff entitled?
8. To what reliefs is the plaintiff entitled?

The Trial Court by its Judgment and decree dated 16.3.1974, decreed the plaintiff's claim after having recorded the following findings:

1. That after the death of Udase Gowda, plaintiff and 1st defendant succeeded to his estate.
2. That 1st defendant had no full or absolute right to convey the suit property to 2nd defendant under Gift Deed dated 25.5.1964. (3) That the plaintiff has a preferential right to acquire the defendants share in the suit property and she had been entitled to exercise her right of pre-emption in respect of half share in the suit properties covered by Gift Deed dated 25.5.1964, executed by defendant No. 1, in favour of 2nd defendant. It held the plaintiff to be in possession of items" 4 and 5 of the suit property on the date of the suit. It further held that the plaintiff is entitled for decree of possession of properties items No. 1 to 3 of the schedule. The Trial Court further held that the plaintiff is entitled for decree of possession of property items No. 1 to 3 of the schedule. The Trial Court further held that plaintiff is and has been entitled to the decree for permanent injunction as well as to half share in future mesne profits from the date of the suit. The Trial Court held plaintiff to be entitled to decree for permanent injunction as prayed for against 1st defendant.

Having thus recorded the above findings, the learned Trial Court decreed the plaintiff's claim as mentioned in the plaint.

That having felt aggrieved from the Judgment and decree of the Trial Court dated 16.3.1974, the 2nd defendant preferred a Regular first Civil Appeal No. 32/1975. The learned Lower Appellate Court allowed the defendant's appeal and set-aside

the Judgment and decree of the Trial Court passed in Suit - No. O.S. 32/71, vide his Judgment dated 23.9.1995. The learned Lower Appellate Court held as under:

(a) that there is no dispute that the suit properties belonged originally to Udase Gowda and he died on 17.6.1961, after coming into force of Hindu Succession Act. He left behind him two heirs, namely, the defendant, that is, his widow and the plaintiff (his daughter) from his pre deceased first wife and both these heirs inherited the properties left by Udase Gowda as Class-I heirs equally as half and half.

(b) It held that as per provisions of Section 22 the Hindu Succession Act if the 1st defendant would have proposed the transfer of her right in properties, plaintiff could have acquired preferential right to acquire her interest proposed to be transferred. In this case, there is no such proposal, transfer by gift has already been effected and therefore, at the stage of plaintiff's conveying his desire to purchase the 1st defendant's share in the suit schedule property is over and as in this case, there is no agreement between the parties and if it is held that plaintiff has a right to acquire and to get the first defendant's half share in the suit property, the Court has to fix value of the suit property. Value mentioned in the Gift Deed for the purpose of registration cannot be considered.

(c) Once it is held that plaintiff is entitled for right of pre-emption and she has to get the property of the 1st defendant's share and the 1st defendant would have moved an application for fixation of the proper value of the property, then there would have been a separate proceeding and might be a final Decree Proceeding after preliminary decree being passed. (d) It further held that the suit in the present form for declaration, declaratory relief that plaintiff is entitled to exercise the right of pre-emption is not in proper form. The lower Appellate Court held that in this case, substantive right of the plaintiff is lost, as the transfer has already been made and the donee has got the property under the Gift Deed and if the right of pre-emption is to be granted, then, the donor's right could be to the extent of receiving value of a share and if the donee has obtained possession, donee will have to redeliver the possession of the share of the 1st defendant which has been gifted to him.

(e) That with the above remedies by way of suit of party seeking to enforce a right of pre-emption u/s 22(1) plaintiff has to seek specific performance and in the present case, no clear cut suit has been brought for specific performance of the right. It was necessary for the plaintiff, the Appellate Court held, to seek relief in initial proceeding in respect of the Gift Deed executed by 1st defendant in favour of 2nd defendant and as this has not been done, the suit is improper.

(f) Normally, the Lower Appellate Court further held, right of preemption comes into play when one of the co-shares intends to sell off or sold the property. Here, the co-sharer has not sold the property, but, she has gifted the property, (g) That the plaintiff's suit is bad for laches and the equitable Court may deny to give him the relief as the plaintiff has not exercised that right for 13 months, (h)

In this case, the plaintiff ought to have sought the relief for cancellation of the Gift Deed executed by the 1st defendant and then, she ought to have sought for the relief, but, the plaintiff has not done so, so, the Lower Appellate Court held that the suit is defective, (i) The suit for mere declaration of such right is improper, the Lower Appellate Court held, as, it is the personal right and does not go with the property. It is after the deposit of the amount fixed by the Court only the co-heir or anybody claiming through that co-heir, the plaintiff could be entitled to the relief on the ground of pre-emption and till the payment is made, donor or the donee have all rights to retain possession of the property and pre-emptor is not entitled to relief for possession, (j) That the Learned Lower Court erred in decreeing the plaintiff's claim for items 1 to 3, as sought, as it ignored the provisions of Section 22(2) totally and even without ordering the payment of value of the half share of the pre-emptor. That the plaintiff is entitled to seek relief for possession as plaintiff has got no right of the possession of the properties, (k) It further held that plaintiff has not been entitled to any decree for possession or injunction, his remedy would be by way of suit for possession.

Having recorded these findings, the Lower Appellate Court allowed the 1st appeal and set aside the Judgment and decree of the Trial Court passed in Suit No. O.S. 32/1971.

5. That having felt aggrieved from the Judgment and decree of the Lower Appellate Court, the plaintiff - appellant has filed the Second Appeal u/s 100 of the Code of Civil Procedure, for short, "Code".

I have heard Learned Counsel for the appellant - Sri.S.R. Krishna Kumar and Sri. M. Papanna, Counsel for Respondent No. 1 and Sri M. Dasappa, Learned Counsel for Respondent No. 2. It has been urged before me by the learned Counsel for the appellant that the Learned Lower Appellate Court committed error of law in taking the view that the plaintiff was not entitled to reliefs for decree sought for in the suit. It was further alleged that the Court below misconstrued the provisions of Section 22 of the Hindu Succession Act and in taking the view that when the completed transfer has already taken place, in the form of the gift, there was no question of seeking any relief u/s 22(1). It was further urged that right conferred u/s 22(1) is not confined to the case of sale, but, was applicable to any transfer. Learned Counsel submitted that plaintiff was entitled to declaration that he acquired the right of pre-emption u/s 22 of Hindu Succession Act and to the relief claimed irrespective of the fact that the transaction was in the nature of gift and it had taken place prior to the filing of the suit. Further, the Learned Counsel for the appellant submitted that under Section 22(1), appellant was entitled to claim prior or preferential right of transfer in his favour and the Court below ought to have decreed the claim, the Court below erred in taking the view that the suit as framed was not proper one or in dismissing it on the ground of laches.

On behalf of the respondents, it was contended by Sri. M. Papanna as well as Sri. Dasappa, that Section 22 of the Act did not apply to the cases where a Gift Deed

is made and the transfer is not for consideration. He submitted that the gift may be a transfer, but, it is for no consideration and scheme of Section 22 per se reveals that it operates with reference to transfer for consideration in terms of money. He further submitted that the transaction of gift as having been completed and the plaintiff even if he had any right of pre-emption, that right came to an end when the transaction of gift had been completed and the Court below rightly dismissed the plaintiff's suit on the ground of laches or delay and on the ground that suit was not maintainable in its present form.

6. I have applied my mind to the contentions made by Learned Counsels on both the sides.

The main question first to be considered in this appeal is: Whether the plaintiff has been entitled to any right of preferential acquisition u/s 22 of Hindu Succession Act. Section 22 of the Hindu Succession Act reads as under:

22.(1):- "Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in Class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the Court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in class I of the schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation:- In this Section, "Court" means the Court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other Court which the State Government may, by notification in the Official Gazette, specify in this behalf."

7. The expression "proposes to transfer" and the expression "proposed to be transferred" have got their material importance and significance in the context of preferential right to acquire the property by a co-heir, as Sub-section (1) of Section 22 indicates that it is prospective in its operation, confers a preferential right to a co-owner and provides that if any immovable property or interest in immovable property of an intestate or any interest in the business carried on by an intestate either solely or in conjunction with others, devolves upon two or more heirs as specified in Class I of the Schedule of the intestate and then, any one of such heirs proposes to transfer his or her interest in the property or

business, then, in those cases, the, other heirs will have a preferential right to acquire the interest proposed to be transferred. The use of expression "proposes to transfer" or "interest proposed to be transferred" indicate that the intention of the legislature is that the preferential right to acquire such interest would arise or would accrue to other heirs in case of transfers, where, the transfer is in the nature of a contract in the form of proposal and acceptance and at the stage when there is a proposal to transfer. The use of these expressions indicate that there should be concept of proposal to transfer from one of the vendors. Proposal as per provisions of the Contract Act means, when one person signifies to another his willingness to do or to abstain from doing anything with the view of obtaining the assent of that another to such act or abstinence, he may be said to make the proposal and when a person to whom the proposal is made, signifies and assents thereto, the proposal is said to be accepted and on acceptance, the proposal becomes a promise, the promise means an accepted proposal and in case of promise or proposal, at the desire of the promisor, a promisee or any other person has done or abstains or abstained from doing or promises to do something, Such act or abstinence or promise is called consideration for the promise and every promise or set of promises which form consideration for each other is called to be an agreement and an agreement enforceable by law is termed to be a contract and all agreements which are made by free consent of the parties competent to contract for a lawful consideration with a lawful object and which are not declared under the provisions of the Contract "Act to be void, it means, all agreements in which there are two parties, who enter into the contract with free consent provided those competent to contract and they have to contract for lawful consideration and object; they are said to enter into a contract. A contract is an agreement between the promisor and the promisee. A contract without consideration is said to be void and is not enforceable u/s 25 of the Contract Act, except, the cases mentioned under Clauses 1, 2 and 3 of the Contract Act.

8. A perusal of Sub-section 2 of Section 22, further indicates that the consideration, for which the interest in property may be transferred under this Section in the absence of any agreement between the parties, is to be determined by the Court on the application being made to it in this behalf and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined such person shall be liable to pay all costs of or incident to the application. Clause (3) further indicates that if there are two or more heirs signifying their intention to acquire any such interest in such property, the heir, who offers highest consideration for transfer shall be preferred. The entire tenor of Section 22 further indicates the concept of consideration, where one of the heirs makes proposal to transfer his interest to someone, then, the other heir will acquire preferential right to acquire the interest which was proposed to be transferred, that is, in respect of which there was offer or proposal to transfer the same. A reading of Section 22, per se reveals that it covers the cases of transfers, where, there are proposal to transfer in the sense of leading to an

agreement for consideration in money or consideration can be of determined or assessed in terms of money, that is, in cases, where there is an offer to transfer the property awaiting an acceptance from the other person resulting in an agreement to transfer for consideration, the preferential right to claim or to acquire the property or interest in property accrues to the other co-heir or co-heirs and then, other co-heirs may claim or express their intention or desire to acquire the interest of the Vendor to transfer. This appears to flow from the scheme of the provisions of Section 22, A gift deed as per Section 122 of the Transfer of Property Act, is defined not as a proposal to transfer, but, it is really, a transfer of certain existing movable or immovable property which is made voluntarily by the donor without any consideration to an another person, who is called donee. There is no period prescribed for acceptance by the donee, it may be made during the lifetime of the donor and while, he is still capable of giving. Gift is not defined as a proposal to transfer, but, it is stated to be a transfer by itself. In Smt. SHAKUNTALA v. STATE OF HARYANA AIR 1979 SC 843, their Lordships of the Supreme Court's observations are under:

"It is therefore one of the essential requirements of a gift that it should be made by the donor "without consideration". The word "consideration" has not been defined in the Transfer of Property Act, but we have no doubt that it has been used in that Act in the same sense as in the Indian Contract Act and excludes natural love and affection. If it were to be otherwise, a transfer would really amount to a sale within the meaning of Section 54 of the Transfer of Property Act, or to an exchange within the meaning of Section 118 for each party will have the rights and be subject to the liabilities of a seller as to what he gives and have the rights and be subject to the liabilities of a buyer as to that which he takes."

9. In *Km. Sonia Bhatia Vs. State of U.P. and Others*, , the law has been laid down to the effect:

"It is, therefore, clear from the statement made in this book that the concept of gift is diametrically opposed to the presence of any consideration or compensation. A gift has aptly been described as a gratuity and an act of generosity and stress has been laid on the fact that if there is any consideration then the transaction ceases to be a gift.

Their Lordships after having made reference to the case reported in *Kulasekaraperumal Vs. Pathakutty Thalevanar and Others*, observed:

The Learned Judge has rightly pointed out that complete absence of consideration is the main hallmark which distinguishes a gift from a grant or for that matter other transactions which may be for valuable or adequate consideration. We find ourselves in complete agreement with the observations, made by Jagadisan, J., in *Kulasekara Perumal's* case (supra) and Sahay, J., in *Debi Saran Koiri and Another Vs. Nandalal Chaubey and Others*, , which correctly represent the character and nature of the gift as contemplated by law."

10. The scheme of the Transfer of Property Act reveals that it is in case of sale of immovable property, there can also be stage for contract for sale as distinct from sale itself. The sale may be said a contract of sale, where, the person transfers and conveys to the other the ownership in exchange for the price paid or promised or partly paid or partly promised, but, prior to that stage, there is and can be stage of a contract for sale or agreement to sell, whereunder, the parties agree and enter into a contract for sale of property that sale of such property shall take place at a future time on terms settled between the parties. When an agreement to sell is entered into, one offers to transfer or, proposes to transfer his property subject to the terms agreed including as to consideration and the like, and when that proposal or offer is accepted and entered into, then, comes into existence an agreement to sell, that is, till that stage, there is an offer to execute the sale deed and other party accepts the offer for execution of the sale deed, the transfer does not takes place till the contract of sale is executed. But, as regards the transaction of transfer of other nature, the scheme of Transfer of Property Act does not per se show any such stage, as the stage of agreement to mortgage or agreement to lease. The provisions relating to gift contained u/s 122 of the Transfer of Property Act, do not contain any such provision or the provisions in the nature of a contract or agreement for gift or agreement to gift. In case of a gift, Section 126 provides that gift may be revocable or suspend able in the circumstances narrated in Section 126. But, for want or failure of consideration, the Gift Deed is not liable to be revoked nor can it be said held to be void for want or failure of any consideration. The section reveals that this right of preferential acquitting is available at the stage of the transfer being proposed and is exercisable at the time when one proposes to make transfer thereof and if it is exercised by proposing to acquire that interest by the other co-heirs, then, that property may be transferred for consideration agreed for that property or interest in property, if Consideration is agreed upon and in case in the absence of agreement about consideration, and if the person proposing to acquire interest, is not willing to acquire it for consideration so determined, then, such person, as per Sub-section 2, it has been provided, shall be liable to pay all costs and incident as to the application. Clause (3) again indicates that if amongst the two or more such heirs proposing to acquire interest, then, the one who offers the highest consideration for transfer shall be preferred. A complete reading of the scheme of Section 22, of the Act really, reveals that the concept of consideration runs all through, that is, in a case, where, there is a proposal to transfer for consideration by one of such heirs of his or her interest in the property or business, at those stages also the other heirs can acquire such interest. That being so in my opinion, it comes out that, where, transfer of interest by one co-owner is not for any consideration, the provisions of Section 22 of Hindu Succession Act conferring preferential right to other co-owner to acquire that interest for consideration, will not arise. In other words, in a case of the gift of his interest or share made by an heir in property or any interest in property, the preferential right to acquire that property will not accrue to other heirs. The natural love and affection for the person or satisfaction and service

rendered by a person with all sense, love and affection towards donor of making gift or providential virtue or blessing after death may constitute the motive for transfer, but, the same cannot be termed to be consideration as per law of contract nor can such thing, namely love and affection or providential benefits for gift be evaluated in terms of monetary consideration for property. When this is how the consideration of property or interest of a person (a co-heir) be determined u/s 22(2) of the Act taking into consideration the motive, i.e., love and affection or providential benefit which plays important role in the matter of gift being done as such feeling constituting motive or intent of gift make object of gift coupled with feeling sentiment, incapable of being evaluated and it cannot be estimated or evaluated in terms of money. Thus considered in my opinion, the rights u/s 22 of Hindu Succession Act will apply to those cases, where, transfer of title or interest in property is proposed to be made or is made for considerations within the meaning of Section 2(d) of the Contract Act. It proceeds and operates on the proposal to transfer or the transactions which provide for the agreement or proposals to transfer, may be contract to sell, but, they pass on from the stage of contract to the stage of conveyance when entered into a completed transaction of conveyances or transfer it ceases to apply as per language of Section 22 of the Act. Section 22, in my opinion, applies at the stage when the transaction has not reached the stage of conveyance itself. It is at the stage of taking the shape of a contract may be in the form of an agreement to sell and if at that stage, the other co-owner offers to acquire, it may be said that cause of action had accrued to him for seeking relief of acquisition of the property in preference to the other transferee for consideration. But in my considered opinion, the gift being a completed transaction or conveyance by itself, not being something as proposal to transfer for consideration and nor there being any such thing as stage of proposal or contract to transfer Section 22 of Hindu Succession Act does not apply to such cases. This appears to be the legislature's intent as indicated by use of expression "propose to transfer" or proposed to be transferred in Section 22 of the Act. Had it been the intent of legislature the preferential right will apply to transfers made as to completed transaction of conveyance by itself, legislature could well have used the expression "proposes to transfer or transfer" in place of simple expression "proposes to transfer" used in Sub-section 1" and it would have used expression "interest proposed to be transferred or transferred" in the last part of Sub-section 1" of Section 22 of the Act Thus considered in my opinion, Section 22(1) of the Act does not apply to transaction such as gift where there is no stage of any proposal and as it can a conveyance without consideration. Thus having considered in my opinion, no right or preferential right to acquire the property or interest in property of the co-sharer and the co-heir can be said to have accrued in favour of the plaintiff/appellant. When such a right has not accrued, the plaintiff has not been entitled to any declaration and the Trial Court or Courts below having taken the view to the contrary, does not appear to be justified. Apart from that in the present case, the Lower Appellate Court has rightly allowed the appeal and dismissed the suit as not being properly framed holding that plaintiff was not entitled to declaration

sought or for injunction. In my opinion, the Court below did not commit any error of law, in taking the view that even in cases where such a right accrues and person exercises that right by communicating his proposal to acquire that property, but where transfer has been made much before by the owner in favour of the 3rd person, in those cases, the proper course for the plaintiff was to obtain decree for enforcement of that right, that is, decree of mandatory injunction directing the vendor as well as subsequent purchasers to execute the Sale "Deed, because in that case, the purchasers may be said to have purchased the property subject to the preferential right of acquisition of the co-sharer. Thus considered in my opinion, the Lower Appellate Court rightly allowed defendant's appeal and dismissed the suit and that First Appellate Court rightly held that the plaintiff/appellant's suit was misconceived in the form it was filed and he was not entitled to the relief as claimed as well. But apart from that in my opinion really, no right had accrued to the plaintiff-appellant u/s 22 of the Act and the plaintiff-appellant has not been entitled to the decree claimed. The second Appeal is as such, without any merits and as such, liable to be dismissed and is being herewith dismissed, affirming the judgment and decree of Lower Appellate Court allowing the defendants 1st appeal and dismissing the plaintiff appellant's suit. No order as to cost.