

**(2019) 09 OHC CK 0001**

**In the Orissa High Court**

**Case No :** Criminal Miscellaneous Petitions No. 1500 Of 2016

Sri Sri Dadhibaban Mahaprabhu Bije

APPELLANT

Vs

Paramananda Sahu

RESPONDENT

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**Date of Decision :** 16-09-2019

**Acts Referred:**

Transfer Of Property Act, 1882 — Section 5, 123

Indian Stamp Act, 1899 — Section 35

Indian Stamp Act, 1899 — Article 33

**Citation :** (2019) 09 OHC CK 0001

**Hon'ble Judges :** Dr. A.K.Rath, J

**Bench :** Single Bench

**Advocate :** Baibaswata Panigrahi, Amit Prasad Bose

**Final Decision :** Allowed

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## **Judgement**

Dr. A.K.Rath, J

1. The seminal question that hinges for consideration as to whether a gift deed in favour of a deity requires registration?

2. Plaintiff-petitioner instituted C.S. No.81 of 2014 in the court of the learned Civil Judge (Junior Division), Bargarh, for permanent injunction. The

case of the plaintiff is that the suit land had been orally gifted by one Bhajana Sahu Gountia to the plaintiff-deity. He executed a deed of

acknowledgement on 21.04.1956.

3. The defendant filed written statement denying the assertions made in the plaint. In course of hearing of the suit, the unregistered gift deed dated

21.4.1956 was sought to be exhibited. Defendant filed objection. Learned trial court has assigned the following reasons and rejected the application on

14. 9.2016

xx xx. A gift of immovable property requires compulsory registration and necessary stamp duty as per Indian Stamp Act, 1899 is

required to be affixed. Article 33 of the Indian Stamp Act, 1899 says that a deed of gift is required the same stamp duty as required in

conveyance. In this case, the gift deed dated 21.04.1956 has been scribed on a plain paper and no necessary stamp duty has been affixed.

Sec.35 of the Indian Stamp Act bars to admit in evidence such instruments which are chargeable with duty, unless the instrument is duly

stamped. Hence, the deed of gift dated 21.04.1956 being unstamped document cannot be marked as exhibit unless impounded.

4. Heard Mr.Baibaswata Panigrahi, learned Advocate for the petitioner and Mr.Amit Prasad Bose, learned Advocate for the opposite party.

5. Criticizing the order, Mr.Panigrahi, learned Advocate for the petitioner submits that Bhajana Sahu Gountia, son of Mukha Sahu had orally gifted the

land in favour of the deity. Thereafter, he executed a plain paper agreement in token of acknowledgment of gift deed. Even if the said document is

construed to be a gift deed, the same does not require registration. To buttress the submission, he places reliance on the decision of the apex Court in

the case of Sainath Mandir Trust v. Vijaya & Ors., AIR 2011 SC 389.

6. Per contra, Mr. Bose, learned Advocate for the opposite party submits that the suit property had not been gifted in favour of the deity. He further

submits that u/s.123 of the Transfer of Property Act, 1882, the gift deed requires registration. In the instant case, it is a plain paper gift deed. Learned

trial court has rightly impounded the same.

7. In Sainath Mandir Trust, the apex Court held that:

14. It is no doubt true that the gift deed was an unregistered instrument and no title could pass on the basis of the same under Section

123 of the Transfer of Property Act. However, when the document is in the nature of a dedication of immovable property to God, the same

does not require registration as it constitutes a religious trust and is exempt from registration. We have taken note of a Full Bench decision

of the Madras High Court reported in AIR 1927 Mad. 636 in the case of Narasimhaswami vs. Venkatalingam and others, wherein it was

held that Section 123 of the Transfer of Property Act does not apply to such a case for God is not a living person and so the

transaction is not a "transfer" as defined by Sec.5 of the Transfer of Property Act. Thus, a gift to an idol may be oral and it may be

effected also by an unregistered instrument. But a different view has been taken in the case of Bhupati Nath vs. Basantakumari, AIR 1936

Cal. 556 ; Chief Controlling Revenue Authority vs. Sarjubai, AIR 1944 Nag. 33. In the Full Bench decision of the Madras High Court in the

matter of Narasimhaswami (supra), it had been argued that a gift to idol of lands worth over Rs.100 requires registration and that a mere

recital in the deed of gift which had been made, would not pass property. But it had been held by the Full Bench that dedication of property

to God by a Hindu does not require any document and that property can be validly dedicated without any registered instrument. In the

aforsaid case, the deed of gift was not to a specified idol but to the Almighty Sri Kodanda Ramachandra Moorti. Dealing with this matter,

the Full Bench took note of the observation in the matter of Pallayya vs. Ramavadhanulu, reported in 1903 (13) M.L.J. 364 wherein it was

held by Benson and Bhashyam Aiyangar, JJ. that a declaration of trust in relation to immovable property for a public religious purpose is

not governed by the Indian Trusts Act which by S. 1 declares it inapplicable to religious trusts. It was also held that S.123 of the Transfer of

Property Act has no application to dedication of land to the public as the section only applied to cases when the donee is an ascertained or

ascertainable person by whom or on whose behalf a gift can be accepted or refused. Taking notice of several authorities, it was held that

no document was necessary for the dedication of property to charity. The Full Bench recorded as follows: "We have not been referred to

any case where it has been held that an oral gift for a religious purpose requires registration. In this connection, I may point out that S.123

of the Transfer of Property Act only applies to transfer by one living person to another". S.5 of the Act runs as follows: "In the

following sections, "transfer of property" means an act by which a living person conveys property, in present or in future, to one or

more other living persons, or to himself and one or more other living persons and "to transfer property" is to perform such act. The

learned Judges noted that a gift to God which in the said case was Sri Kodanda Ramachandra Moorti cannot be held to be a gift to a living

person. It had been argued in the said matter that an idol in law is recognised to be a juristic person capable of holding property and it

must be held that a gift to an idol is a gift to a living person. But it was held therein that the Almighty by no stretch of imagination, legal or

otherwise, can be said that the Almighty is a living person within the meaning of the Transfer of Property Act. The learned Judges of the

Full Bench saw no reason to differ from the Madras case cited in that matter where the law had been settled for several years as it was

observed that the principle of “stare decisis” should be applied unless there are strong reasons to the contrary as otherwise it would

unsettle many titles. Concurring with this view, Chief Justice Reilly held that if the gift is not intended to a living person within the meaning

of S.5 of the Transfer of Property Act, the document would not require registration. This judgment surely has a persuasive value to the issue

with which we are confronted in the instant matter and tilts the scale of justice in favour of the appellant-trust as the plot was essentially

dedicated to Sai Baba for a charitable purpose, although the same was in the form of an unregistered deed of gift.”

8. The ratio in Sainath Mandir Trust proprio vigore applies to the facts of the case.

9. In the wake of aforesaid, the impugned order is quashed. The petition is allowed. No costs.