

## **Nature and Incidents of a Gift in Indian Law**

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### **Introduction**

Gift defined as a Gift is the transfer of certain existing movable or immovable property made voluntary and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void.

### **Absence of consideration:**

The essential element in a gift is the absence of consideration. A transfer out of natural love and affection is a gift, for consideration excludes natural love and affection.

### **Necessity of acceptance by donee :**

Acceptance by the donee is necessary to complete the gift. Such acceptance is to be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance the gift is void. Acceptance need not be express and may be implied from conduct. If an instrument is on the face of it a testamentary character, the mere circumstance that the testator calls it irrevocable does not alter its quality.

### **Possession of Gift Deed :**

Limitation Act, 1963, Art. 65 – Halsbury Laws of England. Acceptance of gift must be made during life-time of donor and while he is still capable of giving. Acceptance of gift by donee is to be presumed until his dissent is signified, even though he is not aware of gift. Debatable question as to whether a donor can be permitted to take the plea of adverse possession against donee. Even if such plea is available, it has to be specifically pleaded and established to the satisfaction of Court. Suit for declaration that gift deed executed by plaintiff in favour of defendant, his foster sister, was not acted upon and for consequential injunction. Plea of defendant that the very fact that original gift deed was delivered to her and continued to be in her possession should be treated as acceptance of gift by her and unless it is sought to be annulled on any ground, relief cannot be granted to plaintiff. Held that there was valid conveyance of suit schedule property in favour of defendant under Ex. A-I/ B-5. Without seeking cancellation of gift deed, plaintiff could not have raised plea of adverse possession. Plaintiff did not plead any other ground of having acquired right, title or interest over suit schedule property .

**Contractual incompetency of donee :** When the donee is incompetent to contract the acceptance may be by or on behalf of the donee. After attaining contractual competency, the donee may repudiate the acceptance. A gift may be made to a child in utero and accepted on its behalf. Where the donee is not yet in existence, a gift can be made only through the

medium of a trust or there must be a gift to a beneficiary in the interim.

**Subsequent conduct :** Once a gift is complete, same cannot be rescinded. Subsequent conduct of a donee cannot be a ground for rescission of a valid gift.

**Family settlement Commercial settlement :** In *Hari Shankar Sungamma v. Gaur Hari Sungama* it was held that family settlement to be treated on different footing when compared to formal commercial settlement.

**Failure to accept by one of joint donees :** A gift of a thing to two or more donees of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

**Relinquishment :** A document purporting to be a relinquishment may operate as a gift. If so registration is necessary ?

**Appointment under Power :** An appointment in pursuance of a power may involve a transfer of property. It cannot, however, be described as a gift and so need not be effected by a registered instrument.

**Formalities :** A gift of a immovable property must be effected by a registered instrument, signed by or on behalf of the donor, and attested by a least two witnesses. In the case of movable property, delivery to the donee is sufficient to complete the gift. A mere credit entry in the accounts of a person, however, does not operate as a valid gift.

**Gift when complete :** The gift becomes effective on acceptance by the donee though it can be enforced only on registration. So it cannot be revoked after acceptance by the donee although by the time of revocation, registration had not been effected. On the other hand, it can at any time be revoked until acceptance by the donee, though the instrument of gift has been registered.

**Requirement of registration :** Registration Act, 1908, Sec. 17 (1)(b) and Hindu Adoptions and Maintenance Act, 1956, Sec. 3 – Transfer of property in favour of daughter by way of *Pasupu Kumkuma* – Gift- Document whether requires registration. Decision of the Supreme Court in AIR 1964 SC 510 and the Full Bench Decision of this court in 2001 (5) ALT 130 considered. Question whether the FB decision is binding in view of the

Supreme Court decision. Civil Revision Petition referred into for decision by an appropriate Bench.

**Family settlement, partition, compromise of disputed claims.** : Relying on AIR 1967 SC 1595 in Zoroastrian Co-op Housing Society Limited v. District Register, Co-op Societies, it was held that partial restraints imposed by family settlement, partition, compromise of disputed claims, on alienation would be valid.

**Gift and will** : Gift and will do not stand at par as far as proof of execution of such documents is concerned.

**Pasupu Kunkuma** : Transfer of Property by way of pasupu kunkuma requires registration.

**Execution of registered gift** : Execution of registered gift deed by donor purporting to donate shares in various companies standing in her name. donor also executing several blank transfer forms to enable donee to obtain transfer of shares and share certificates in his own name. Death of donor to obtain transfer of shares in the registers of the companies concerned.

**Mental capacity of donor, a question of fact** : in Nur Bhanu v Abdul Amin Bhuiya, it was held that in relation to execution of gift deed, the donor's mental capacity at the time of execution being a question of fact, such findings not be interfered with in second appeal.

**Surrender or forfeiture of an interest** : Gift Tax Act, 1958, Sec. 2(xii) and 4 and Registration Act, 1908, Ext. 17 – A transfer by reason of Section 17 of the Registration Act can only be by way of by clause (c) of Section 4 of the Gift Tax Act or vesting of any property in another person as contemplated by clause (d) of that Section in respect of immovable property would attract the provisions of Section 17 of the Registration Act. What is important is that there has to be a valid transfer of property and whether that transfer amounts to a gift or not would bring into the question of the application of the provisions of the Gift Tax Act. Appeal was allowed accordingly.

**Deemed gift : Levy of tax** : In M/s Khode Eswarasa & Sons vs. Commissioner of Gift Tax, the Tribunal as well as the High Court clearly fell into an error in upholding the levy of gift tax on the capitalized value of the gift taking the gift as for five years and treating as irrelevant the clause providing for termination at six months notice and also taking into consideration the fact that the agreement was not

cancelled within the period of five years. In our view, that is of no consequence. The language of Rule 11 (1) is clear. It does not admit of any no two interpretations.

**Time of Registration** : Registration may be effected even after the donor's death. If acceptance took place in his life-time.

**Mahomedan Law** : Under the Mahomedan law delivery of possession is essential to the validity of a gift.

**Acceptance by the Donee** : Acceptance by the donee may be completed although the need of gift is not delivered to the donee and gifted property continues to be in the donor's possession.

**Effect of unregistered Gift** : If the donor fails to execute a registered gift deed, but allow the donee to enter into possession of the gifted property, the donee acquires a perfect title as against the donor's heirs by remaining in possession for twelve years. An unregistered deed of gift does not by itself create title in favour of the donee.

**Power of revocation** : Gift – Once a gift is accepted and in the absence of power of revocation, the gift deed cannot be revoked. The physical delivery of the property gifted is not contemplated. What is contemplated is the acceptance by donee or on behalf of the donee.

**Validity of Gift** : Suit for declaration that the deed of gift of suit land was void and illegal – Gift made orally. Courts below held it to be valid. Question – Whether deed of gift was void ab initio. A deed of gift of immovable property must be registered one and must be signed by two attesting witnesses. Circumstances indicated. Deed of gift ipso facto a null and void document.

### **Conclusion**

The gift deed of property in India is just another legal document containing the express details of such transfer of property though gift. In the case of donee being a minor, a natural guardian can accept a gift on his behalf. The guardian acts as a manager of the gifted property.

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