



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

(Judgment reserved on 12.07.2022)

(Judgment delivered on 03.08.2022)

FA No. 186 of 2013

1. Shrimati Geeta Bai (Died) through LRs W/o as Per Hon'ble Court Order Dated 18/02/2015.
2. Sudhir Bajaj S/o Shri Banwarilal Bajaj Aged About 52 Years The Son of Deceased, R/o Ageyanagar Bilaspur, Tehsil and District Bilaspur C.G.
3. Sandeep Bajaj S/o Shri Banwarilal Bajaj Aged About 50 Years The Son of Deceased, R/o Ageyanagar Bilaspur, Tehsil and District Bilaspur , Chhattisgarh
4. Smt. Lata Agrawal W/o Shri Rajesh Agrawal Aged About 57 Years R/o Chindwada Nagpur Road Chindwada, Tahsil and District Chindwada, the daughter of the Deceased.
5. Smt. Asha Choudhari W/o Shri V.K. Choudhari Aged About 55 Years R/o Ring Road No. 2, Jari Patka Nagpur, Maharastra - Daughter.
6. Kumari Sopha Bajaj D/o Shri Banwarilal Bajaj Aged About 50 Years The Daughter of The Deceased, R/o Ageya Nagar Bilaspur, Chhattisgarh
7. Shri Banwarilal Bajaj S/o Late Shri Madaulal Bajaj Aged About 44 Years The Husband of the Deceased, R/o Ageyanagar, Bilaspur, Tehsil and District Bilaspur Chhattisgarh. **--- Appellants**

Versus

1. Ramavatar Agrawal S/o Kanhaiyalal Agrawal Aged About 52 Years R/o Kalpana Vihar, Nehru Nagar To Ameri Road, Tahsil and Distt. Bilaspur Chhattisgarh.
2. State of Chhattisgarh through the Collector Bilaspur Chhattisgarh. ----
Respondents

For the Appellants	:	Mr. Manoj Paranjpe, Advocate
For respondent No.1	:	Mr. Ranbir Singh Marhas, Advocate
For the State	:	Mr. Sanjay Pathak, Panel Lawyer.



FA No. 187 of 2013

Shrimati Premrata Bai W/o B.R. Lohiya Aged About 61 Years R/o
Mitra Bihar, Link Road, Shrikant Verma Marga, Tahsil and Distt.
Bilaspur Chhattisgarh
--- Appellant

Versus

1. Shri Nivash Agrawal (Dead) through Legal Representatives as per
Honble Court Order Dated/24-11-2021.

1.2 - Aman Goenka (Minor), S/o Late Shrinivash Agrawal, Aged About 16
Years Through His Mother And Natural Guardian Smt. Neera Goenka, R/o
299, Near Jwala Atta Chakki, Radha Bhavan, Hanuman Ganja Ward,
Murwara, Katni (M.P.) Presently Residing At Nimiya Road, Near Gyatri
Mandir, Katni (M.P.), District : Katni, Madhya Pradesh

2. State of Chhattisgarh through the Collector, Bilaspur District :
Bilaspur, Chhattisgarh

3. Smt. Neera Goenka, W/o Late Shrinivash Agrawal, Aged About 52
Years R/o 299, Near Jwala Atta Chakki, Radha Bhavan, Hanuman
Ganja Ward, Murwara, Katni (M.P.) Presently Residing at Nimiya
Road, Near Gyatri Mandir, Katni District : Katni Madhya Pradesh
--- Respondents

For the Appellants : Mr. Manoj Paranjpe, Advocate.
For the State : Mr. Vinod Tekam, Panel Lawyer.
For respondents 1 & 3 : Mr. B.P. Sharma, Advocate

**DB : Hon'ble Shri Justice Goutam Bhaduri, Judge &
Hon'ble Shri Justice Deepak Kumar Tiwari, Judge**

C.A.V. JUDGMENT

Per Goutam Bhaduri, J

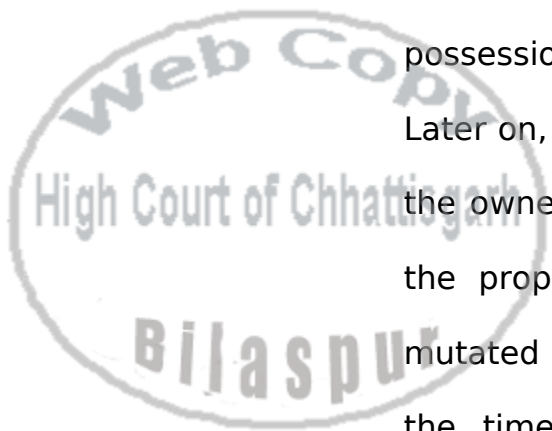
1. Both the appeals are being heard together as similar facts
and issues are involved except the parties to the suit. The
the appeals are by the defendant.

Facts of F.A. No.186 of 2013 (Geeta Bai Versus



Ramavtar Agrawal)

2. This is an appeal arising out of the judgment and decree dated 2nd September, 2013 by the VI Addl. District Judge, Bilaspur, in Civil Suit No.13-A of 2012. The respondent Ramavtar Agrawal filed a suit for declaration and permanent injunction against Smt. Geeta Bai. The pleadings, as made by the plaintiff are that defendant Geeta Bai is real maternal aunt (*Sagi Mousi*). Initially the financial position of the plaintiff was not good when he shifted from Katni to Bilaspur in 1975, therefore, out of love and affection, the defendant gifted him a part of land bearing Kh.No.450/2 admeasuring 0.44 acres situated at village Ameri and the possession thereof was handed over to him after the gift. Later on, the name of plaintiff got mutated in the records as the owner and possessor and consequently, after obtaining the property by gift, Ramavtar Agrawal got his name mutated in revenue records as possessor of the land and at the time of mutation, the gifted property was allotted Kh.No.450/3 admeasuring 0.44 acres equivalent to 0.178 hectares. It is further pleaded that after the said gift, the land was mortgaged with State Bank of India to secure a loan availed by one Sudhir Bajpai, Proprietor of Sudhir Chemicals. The plaintiff wanted to get the land demarcated, as such, he applied for revenue documents like B-1, Khasra Panchshala and copy of map and when he contacted to revenue Patwari on 20.06.2002, for the first time, he came to know that the land was recorded in the name of donor Smt. Geeta. It was revealed that on 30.01.1992, a cancellation deed was executed whereby the initial gift dated 15.10.1982 was





cancelled. The plaintiff further pleaded that unilateral cancellation of registered gift deed could not have been effected without being informed to the plaintiff and it is a nullity and as a result she would not get any title over the property by such mutation of her name . Therefore, prayer was made that the plaintiff be declared as owner of the land and his peaceful possession and enjoyment over the property shall not be disturbed and accordingly, permanent injunction was sought.

Facts of F.A.No.187/2013 (Smt. Premlata Bai Versus Shri Nivas Agrawal and another)

3. The suit was filed by plaintiff Shri Nivas Agrawal against one Premlata Bai for declaration and permanent injunction. Shri Nivas Agrawal was represented through Power of Attorney Holder Ramavtar Agrawal. Subsequently, at the appellate stage, Shri Nivas Agrawal died and his legal representatives were brought on record. It was pleaded by plaintiff Shri Nivas Agrawal that defendant Smt. Prem Lata Bai is her maternal aunt (*Sagi Mausī*) and since the plaintiff was not financially sound, out of love and affection a part of land bearing Kh.No. 450/1 admeasuring 0.44 acres situated at village Ameri P.H.No.95 was gifted to Shrinivas Agrawal. After obtaining the land by gift, Shrinivas Agrawal got his name mutated in revenue records as possessor of the land and at the time of mutation, the gifted property was allotted Kh.No.450/6 admeasuring 0.44 acres equivalent to 0.178 hectares. Thereafter, the gifted land was mortgaged to secure a loan availed by Sudhir Bajaj, Proprietor of Bajaj Chemicals with the State Bank of India. When the power of attorney holder of the plaintiff wanted to get the name





mutated in revenue records in the year 2002, first time, he came to know that the said land was recorded in the name of Smt. Prem Lata Bai and on further enquiry, it revealed that the gift deed dated 15.10.1982 was cancelled by an unilateral cancellation deed dated 30.01.1992. The plaintiff pleaded that the said cancellation of registered gift deed being unilateral is a nullity and does not give any right to the defendant to divest him out of ownership. It was further stated that because of the act of the defendant, it casts cloud on the title of the plaintiff, as such, the suit for declaration and permanent injunction in respect of the property was claimed. The trial Court decreed the suit. Hence this appeal.

4. The common defence was taken in both the civil suits by Geeta Bai and Prem Lata Bai respectively. In defence, it was pleaded by the defendants that no gift deed was executed either by Geeta Bai or Premlata Bai in favour of Ramavatar Agrawal and Shrinival Agrawal. The transfer of possession was also denied. The denial was also to the effect that the names of donees were not recorded in the revenue records and the names of donors were continued in the revenue records. It was further stated in defence that when the defendants came to know that the plaintiffs have got their name recorded, the defendants got corrected entries in the records and the plaintiffs are not entitled for any relief. Since both the cases were decreed in favour of the plaintiffs, the defendant filed two separate appeals.
5. Learned counsel for the appellants would submit that the gift deed Ex.P-1 was cancelled by a subsequent cancellation



deed (Ex.P-5) but such cancellation deed was not challenged by the plaintiffs. He would submit that the defendants who are ladies denied the execution of the gift deed and if cancellation of gift-deed exists, without being challenge to the same, the decree could not have been passed. It is further submitted that the defendants were not given proper opportunity as the right to lead evidence was closed, as such, the rules of natural justices was not followed. He further submits that closure of right to evidence was illegally done as the order sheets of the Court below would show that at one point of time, the defendant-witnesses were present in one case and the evidence could not be recorded because of interim applications filed by the plaintiffs consequently the plaintiffs should have been given proper opportunity of hearing. Further reference was made on a decision of M.P. High Court in *Shyamacharan Raghubar Prasad Versus Sheojee Bhai Jairam Chattri* reported in *AIR 1964 MP 288* to submit that if the ground was available, the interlocutory order can be challenged u/s 105 of CPC and the ground has been taken in memo of appeal. He further refers to a case law reported in *Kamal Sharma Versus Jethi Bai 2014 (2) C.G.L.J. 432* to submit that the ground having been taken in appeal memo, this Court as an appellate Court in exercise of power u/s 105 of Cr.P.C., can very well examine the fact if the order sheets would show that no proper opportunity was granted. He further submits that even if the right to cross examine is not granted that is also held to be the prejudice of principles of natural justice. Consequently, the appeal deserves to be allowed.





6. Per contra, Mr. B.P. Sharma and Mr. Ranbir Singh Marhas, learned counsels appearing for the respective respondents would submit that the parties cannot go beyond the pleading and the appellants have failed to show that what prejudice was caused to them. They would further submit that it is settled proposition that the pleadings are to be read as a whole and no specific denial of gift deed was made by either of the appellants/defendants, therefore, since no specific denial of execution of gift deed was made, it would be deemed to be an admission. They would further submit that a cancellation deed was executed by the defendants which is proved in their evidence but no pleading has been made thereof and reading of language of sections 122, 123 & 126 of Transfer of Property Act shows that unilateral cancellation of the gift deed cannot be done without following the terms embodied therein. They further submit that if the defendants were continuing in their possession according to the averments in the written statement, then what was the necessity of cancellation deed. They would submit that the plaintiffs were not parties to the cancellation deed, as such, mere claim of declaratory relief would be sufficient. They relied on a decision of the Apex Court in ***Satya Pal Anand v. State of M.P. (2015) 15 SCC 263*** and would submit that once the gift deed has been executed, the donor would lose all his rights over the gifted property, therefore, the cancellation of registered gift deed was a nullity. Hence, the judgment and decree passed by the court-below is well merited, which does not call for any interference.

7. We have heard learned counsel for the parties and have also





perused the documents.

8. A perusal of the record would show that a registered gift deed was executed by Geeta Bai in favour of Ramavatar Agrawal in respect of piece of of land bearing Kh.No.450/2 ad-measuring 0.44 acres equivalent to 0.177 hectares situated at village Ameri, R.I. Circle, Bilaspur. Likewise, Smt. Premlata Bai executed a registered gift deed in favour of Shri Nivas Agrawal (since deceased) in respect of part of Kh.No.450/1 area 0.44 acres equivalent to 0.177 hectares situated at the same place i.e., village Ameri by a registered deed.
9. A perusal of the gift-deeds purport that pursuant to execution of gift deeds, possession of the properties were given to the donees i.e., Ramavatar Agrawal and Shri Nivas Agrawal. However, the defendants in their written statement have completely denied the execution of gift deeds. The *Namantran Panji*, a revenue document is exhibited as Ex.P-2 which manifests that the name of Ramavtar Agrawal was recorded in revenue record and at the time of mutation, the gifted land was included in Khasra No. 450/3. Similarly, in case of Shrinivas Agrawal, Ex.P.2 is *Namantran-Panji* whereby his name was recorded. Ex.P-3 is *Kishtbandi Khatauni* which also shows the name of Shrinivas Agrawal and at the time of mutation, the land gifted to him was included in Khasra. No.450/6. Ex.P.5 in both the cases is a cancellation deed which would go to show that there was a unilateral cancellation wherein the donees were not parties.
10. Section 122 of the Transfer of Property Act defines the “gift” which means to say that *gift is the transfer of certain*





existing moveable or immoveable property made voluntarily and without consideration, by one person called the donor, to another, called the donee, and accepted by or on behalf of the donee. The recital of the gift deed shows that when the gift was made on 15.10.1982, the possession of the gifted lands was handed over to the donees which is fortified by the subsequent revenue records wherein the names of donees Shri Nivas Agrawal and Ram Avtar Agrawal were mutated in respect of lands bearing Kh.No.450/1 & 450/2 and at the time of mutation, Khasra numbers were sub-numbered as 450/6 and 450/3 respectively. The aforesaid revenue records were not rebutted by any evidence or cross examination of the plaintiff witnesses. Therefore, the said gifts were within the definition of Section 122 of the T.P. Act. 1882. It further specified the ingredients of section 123 of the Act that if the deed is registered and attested by two witnesses, therefore,, the gift deed so effected would not lose its efficacy unless contrary is proved or rebutted.

11. The defendants (appellants herein) in their written statements made a simplicitor denial that the said gift deeds were never executed. The said gift deed being registered has been proved by P.W.4 who is an officer from the Sub-Registrar's office and he asserted that the said deed was registered in accordance with the statute. The cross examinations of P.W.1 in both the cases do not reflect that such deeds were an outcome of any threat, fraud, coercion or undue influence. The documents having been registered will have a presumptive value of correctness unless proved as otherwise. The defendants in their cross examination



failed to bring to fore any discrepancies of such execution of deed.

12. The Supreme Court in *Asokan Versus Lakshmi Kutti (2007) 13 SCC 210* analyzed the definition of “gift” contained in Section 122 of the T.P. Act which provides the essential elements for creation of valid gift. Paras 13, 14, 15 & 16 are relevant here and quoted below :

“13. We have noticed the terms of the deeds of gift. Ex-facie, they are not onerous in nature. The definition of “gift” contained in Section 122 of the Transfer of Property Act provides that the essential elements thereof are :

- (i) absence of consideration;
- (ii) the donor;
- (iii) the donee;
- (iv) the subject matter;
- (v) the transfer; and
- (vi) the acceptance.

14. Gifts do not contemplate payment of any consideration or compensation. It is, however, beyond any doubt or dispute that in order to constitute a valid gift acceptance thereof is essential. We must, however, notice that the Transfer of Property Act does not prescribe any particular mode of acceptance. It is the circumstances attending to the transaction which may be relevant for determining the question. There may be various means to prove acceptance of a gift. The document may be handed over to a donee, which in a given situation may also amount to a valid acceptance. The fact that possession had been given to the donee also raised a presumption of acceptance. (*See Sanjukta Ray v. Bimelendu Mohanty, AIR 1997 Orissa 131, Kamakshi Ammal v. Rajalakshmi AIR 1995 Madras 415 and Samrathi /Devi v. Parasuram pandey AIR 1975 Patna 140*).



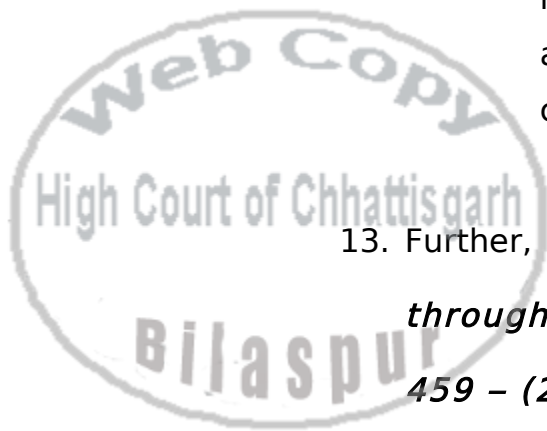


15. Concept of payment of consideration in whatever form is unknown in the case of a gift. It should be a voluntary one. It should not be subjected to any undue influence.

16. While determining the question as to whether delivery of possession would constitute acceptance of a gift or not, the relationship between the parties plays an important role. It is not a case that the appellant was not aware of the recitals contained in deeds of gift. The very fact that the defendants contend that the donee was to perform certain obligations, is itself indicative of the fact that the parties were aware thereof. Even a silence may sometimes indicate acceptance. It is not necessary to prove any overt act in respect thereof as an express acceptance is not necessary for completing the transaction of gift.

13. Further, the Supreme Court in ***Daulat Singh (dead) through LRs Versus State of Rajasthan (2021) 3 SCC 459 – (2021) 3 SCC 459*** reiterated the case law laid down in ***Asokan Versus Lakshmi Kutti*** and held that execution of gift deed registered and attested in accordance with Section 123 Transfer of Property Act and acceptance of such gift makes the gift of immovable property complete. Thereafter, the donor is divested of the title or interest being gifted, and donee becomes owner of the gifted property, estate or interest. Paras 20 to 26 are relevant here and quoted below:

20. Section 123 of the Transfer of Property Act, 1882 provides that for a gift to be valid, it must be gratuitous in nature and must be made voluntarily. The said giving away implies a complete dispossession of the ownership in the property by





the donor. Acceptance of a gift by the donee can be done anytime during the lifetime of the donor.

21. Section 123 provides that for a gift of immovable property to be valid the transfer must be effectuated by means of a registered instrument bearing the signature of the donor and attested by at least two witnesses.

22. A three-Judge Bench of this Court in *Naramadaben Maganlal Thakker v. Pranjivandas Manganlal Thakker (1997) 2 SCC 255* had held that : (SCC p.258, paras 6-7) :

“6. Acceptance by or on behalf of the donee must be made during the life-time of the donor and while he is still capable of giving.

7. It would thus be clear that the execution of a registered gift deed, acceptance of the gift and delivery of the property, together make the gift complete. Thereafter, the donor is divested of his title and the donee becomes the absolute owner of the property.

23. The Division Bench of the High Court in the impugned judgment upheld the findings of the Board of Revenue wherein it held that there was no valid acceptance by the donee. The Additional District Collector held that there was no semblance of acceptance in the gift deed. On appeal, the Board of Revenue held that, “it is irrelevant that after the gift the land remained in possession of the donee or that he got it mutated in his name”. The Division Bench of the High Court, relying on the aforesaid observation, stated that there was no valid acceptance as it seems like the donee was unaware about the gift deed itself.

24. At the outset, it ought to be noted that Section 122 of the Transfer of Property Act, 1882, neither defines acceptance, nor does it prescribe any particular mode for accepting the gift. The word “acceptance” is defined as “is the receipt of a thing





offered by another with an intention to retain it, as acceptance of a gift". (*See Ramanatha P. Aiyar : The Law Lexicon, 2nd Edn., P.19*).

25. The aforesaid fact can be ascertained from the surrounding circumstances such as taking into possession the property by the donee or by being in possession of the gift deed itself. The only requirement stipulated here is that, the acceptance of the gift must be effectuated within the lifetime of the donor itself.

26. Hence, being an act of receiving willingly, acceptance can be inferred by the implied conduct of the donee. The aforesaid position has been reiterated by this Court in *Asokan v. Lakshmikutty* (Supra) : (SCC pp.215-16 Para 14)."

14. Applying the aforesaid principles in the instant case, it would show that there is a valid donor and donee and subject matter of gift is complete. Thereafter, the transfer having been made, it is accepted by the donee and the gift was without any consideration. The acceptance of donee can be presumed from *Namantranpanji* and other revenue documents wherein after execution of gift, names of the donees were recorded. Therefore, the terms of the gift-deed and subsequent revenue documents would show that a valid gift was effectuated by defendants Geeta Bai and Premlata in favour of Ramavtar and Shri Nivas.

15. The appellants herein have raised a ground in defence that they were not given proper opportunity to lead evidence and the right of evidence was closed. The case law relied on by the appellants on a decision of the M.P. High Court in *Shyamacharan Raghubar Prasad Versus Sheojee Bhai Jairam Chattri AIR 1964 MP 288* lays down that an



interlocutory order which has an effect in decree can be challenged u/s 105 of CPC in the appeal. Further reliance was made on a decision of this Court in ***Kamal Sharma V/s. Jethi Bai 2014(2) CGLJ 432*** wherein the law laid down by the Supreme Court in ***Soni Dineshbhai Manilal Vs. Jagjivan Mulchand Chokshi, 2007 13 SCC 293*** was followed to the effect that any order passed on I.As, can be questioned in the grounds taken in appeal and further the grounds can be made to challenge the interlocutory order while the decree is challenged provided the grounds raised in appeal are not in dispute. In this case, the appellants have taken the grounds in memo of appeals. However, the question that would fall for consideration is whether proper opportunity was given to the appellants to examine the witnesses, which they failed, which has caused prejudice to them in terms qua the defence taken in written statement. Therefore, when the records of the court below are examined, it shows Initially the suit was filed in the year 2002. After the amendment, the evaluation was enhanced and as such it was filed in the proper jurisdictional court. Initially the suit was filed before the 3rd Civil Judge, Class II with an amendment in 2009 and for evaluation it came up before the District Judge, Bilaspur.

16. In respect of civil suit filed by Ramavtar Agrawal against Geeta Bai bearing No.13-A/2012 an application was filed to examine the witness Geeta Bai on commission on the ground that the defendant was old and infirm lady and was bed ridden due to illness for the last several months. Accordingly, the commissioner was appointed and the case was fixed for



04.03.2013. Then it went on for further hearing on commissioner report. On 18.04.2013, the report of the Commissioner was received wherein the Commissioner reported that the statement of Geeta Bai could not be recorded as she was not in a position to depose and report was submitted. Thereafter, the case was fixed for defendant evidence on 27.04.2013 and the order sheet of W.P(227) No.40/2013 dated 18.01.2013 is on record. The said petition was filed by Smt. Geeta Bai. The High Court by its order dated 18.01.2013 disposed off the writ petition with a direction to the trial Court to decide the case preferably within six months from the date of receipt of copy of the order. The copy of the order dated 18.01.2013 was received by the Court of 6th ADJ wherein the civil suit was pending. The order sheets of court below would show that on 27.04.2013, defendant witnesses Sandeep Bajaj and Shiv Kumar Jajani were present. However, an application was filed by the plaintiff under Order 16 Rule 3 CPC and the case was fixed for argument on that application and the evidence was not recorded. Thereafter, the case was fixed for different dates on 09.05.2013, 11.06.2013, 19.06.2013, 03.07.2013, 04.07.2013 & 10.07.2013. The order sheet of 10.07.2013 would show that the I.As., filed by the plaintiffs were rejected and the defendants were directed to keep their witnesses present on 26.07.2013. The order sheet dated 10.07.2013 further records the fact that on 18.01.2013 High Court has issued a direction to dispose of the case within six months, copy of which was received on 31.1.2013 and since the stipulated time was going to be expired by 31.07.2013 ,

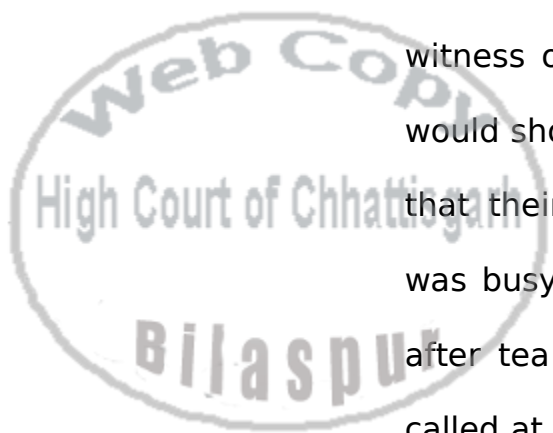




request was made to the High Court for extension of time. The record of High Court would show that an application was preferred for extension of time which was sent on 11.7.2013, but it appears that no extension of time was ever granted. Thereafter, when the case was taken up on 26.07.2013 for evidence of defendant witnesses they were not present. No summons were paid to produce the witnesses. Therefore on 26.07.2013 the court below closed the evidence of defendants.

17. Likewise in suit No.14-A/2012 filed Shrinivas Agrawal, the order sheets would reveal that the plaintiff closed his evidence on 19.02.2013 and the case was fixed for defence witness on 04.03.2013. The order sheet dated 04.03.2013 would show that defendant's counsel has informed the Court that their witnesses are present and because the counsel was busy in a Sessions Case, the matter may be taken up after tea break. However, on that day when the case was called at 3.30 p.m., the defence witnesses remained absent. As such, the case was fixed for defendant witnesses on 26.03.2013. On 26.03.2013, an I.A., was filed by the defendant to get the witness examined on commission and counsel for the plaintiff has expressed that he would not file any reply to the said I.A., and he has no objection. Therefore, the case was fixed for commissioner report and the report was filed.

18. The commissioner report shows that the witness could not be examined as she fell ill and thereafter the case was fixed for evidence of defendant on 11.06.2013. On 11.06.2013, the defendant witnesses were again absent and a further





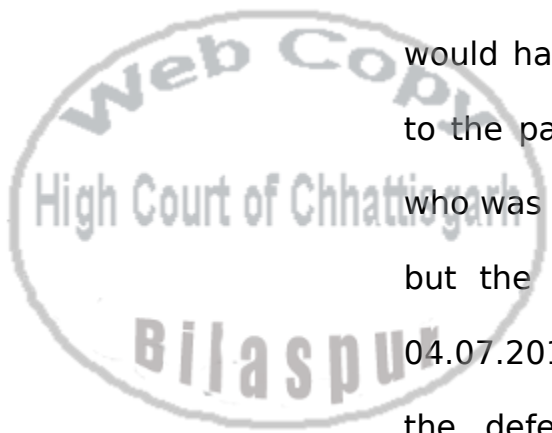
application--I.A.No.2, was filed and the matter was fixed for arguments on the said I.A., on 19.06.2013 and subsequent dates were also fixed for 03.07.2013, 04.07.2013 & 10.07.2013. On 10.07.2013, the I.As., were disposed off by the learned Court below and keeping in mind the fact that a direction was given by the High Court in a petition filed by Premlata bearing W.P (227) No. 41/2013 to dispose of the case within a period of six months and since stipulated time was going to be expired by 31.07.2013, it was decided to send the request for extension of time and at the same time, the Court below directed the defendant's counsel to keep the witnesses present on 26.07.2013 positively or to summon them in accordance with law. Further the record would show that the correspondence was made by the Additional Learned District Judge for extension of time on 11.07.2013 to the High Court but the time was not extended. Eventually on 26.07.2013, neither the witnesses of the defendants were present nor any summons were paid to keep them present through the intervention of the Court. Consequently, the right to lead evidence was closed.

19. On examination of the chronological events along with the pleading of the parties, it shows that the defendants took the defence that they have not executed the gift deed. Except the said pleading, no other pleading exists on the record. As against this, the plaintiff has proved execution of the gift deed along with registration and acceptance by the donee. The further evidence is on record that the said gift deed was acted upon and as per the witnesses P.W.2, the said properties were subject of mortgage to secure a loan



availed by one Sudhir Bajaj, proprietor of Bajaj Chemicals, who is son of Geeta, the donor.

20. That apart, the order sheet would show that the suit was initially filed way back in the year 2003 and after closure of evidence by the plaintiffs in February 2013, on one occasion the witnesses were present in Civil Suit No.13-A whereas in Civil Suit No. 14-A, no witnesses were present. Both the respondents Geeta Bai and Prem Bai filed writ petitions before the High Court against certain interlocutory orders in 2013. The High Court on 18.01.2013 directed that the case be concluded within a period of six months. The said order was received by trial Court on 31.1.2013 and six months would have been expired on 31.07.2013. Therefore looking to the paucity of time, the learned Additional District Judge who was in hold of trial made a request for extension of time, but the same was rejected. As such, the trial Court on 04.07.2013 and 10.07.2013 gave last opportunities to keep the defendant witnesses present on 26.07.2013. The defendants who were petitioners in the High Court were well aware of the fact that the time bound disposal was directed by High Court, but deliberately they failed to keep the witnesses present or even to procure the attendance of the witnesses through the intervention of the Court by payment of summons. As such, the trial Court considering the fact that the case is pending since 2003 closed the evidence.
21. Therefore, considering such facts situation, we are of the view that the defendants/appellants themselves failed to adduce evidence and keep the witnesses present. This fact cannot be ignored by the Court that the lis is pending since





2003, therefore, the closure of evidence in such facts situation cannot be faulted especially when there was a specific direction of the High Court to decide the matter within a period of six months. If the defendants failed to adduce their evidence despite grant of several opportunities as evident from the record of court below, they have to blame themselves and the orders of the Court cannot be taken casually when specific directions are given in old pending matters. In the result, we hold that the closure of evidence by the learned court below was justified in the facts and circumstances of the case especially considering the nature of pleading made by the defendants in defence.

22. Now coming back to the deed of cancellation of the gift Ex.P.5, in both the cases, it shows that unilateral cancellation was made by defendants Geeta bai and Prem Bai. A reading of the contents of Ex.P.5 shows that it is stated therein that even after the gift, the donors are continuing in possession and ownership of the land. We are unable to understand if the donors were still continuing in possession and enjoyment exercising the right of ownership over the subject land of gift, then what was the occasion to execute the deed of cancellation.

23. Section 126 of the Transfer of Property Act is relevant here for adjudicating the issue. It reads as under :

“126. When gift may be suspended or revoked.-- The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked, but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly



or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

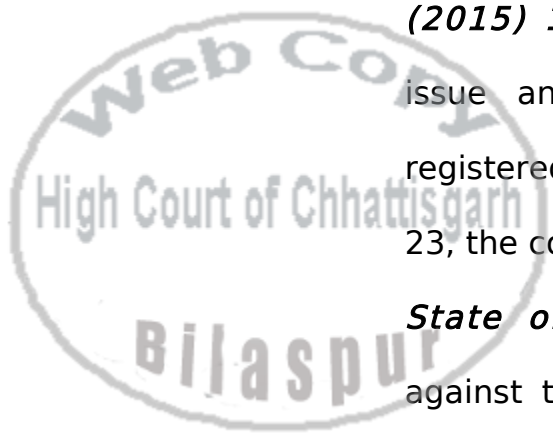
Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice”.

A perusal of Ex.P-5 would show that the contents of the unilateral cancellation of gift deed do not reflect any condition as embodied in Section 126.

24. The Supreme Court in *Satya Pal Anand v. State of M.P. (2015) 15 SCC 263* had occasion to deal with the similar issue and held that unilateral cancellation of a valid registered deed of the like nature is void and nonest. At para 23, the court referred to decision of *Thota Ganga Laxmi v. State of A.P (2010) 15 SCC 207* and observed that against the cancellation deed, a writ remedy can also be availed as the cancellation itself was wholly void and nonest and can be ignored altogether. At para 23, the Court reiterated observations made in *Thota Ganga Lakshmi* and held as under :-

23. In this context, we may refer to a two-Judge Bench decision of this Court in *Thota Ganga Laxmi v. State of A.P.* In the said case, the high Court of Andhra Pradesh had dismissed the writ petition relying on the Full Bench decision in *Yanala Malleshwari V. Ananthula Satyamma 2006 SCC OnLine AP 909*. The father of appellants therein had purchased the plot in question from the fourth respondent by a registered sale deed dated 21.06.1983 and since then they were in possession





and enjoyment of the said property. Subsequently, the fourth respondent unilaterally registered the cancellation deed without any notice to the appellants. A writ petition was filed seeking declaration that the cancellation deed was illegal but the said writ petition was dismissed holding that the appellants should approach the civil court. This Court, in the said factual matrix, opined :(*Thota Ganga Laxmi Case SCC pp 208-09 Para 4*) :

“4. In our opinion, there was no need for the appellants to approach the civil court as the said cancellation deed dated 04.08.2005 as well as registration of the same was wholly void and non-est and can be ignored altogether. For illustration, if A transfers a piece of land to B by a registered sale deed, then, if it is not disputed that A had the title to the land, that title passes to B on the registration of the sale deed (retrospectively from the date of the execution of the same) and B then becomes owner of the land. If A wants to subsequently get that sale deed cancelled, he has to file a civil suit for cancellation or else he can request B to sell the land back to A but by no stretch of imagination, can a cancellation deed be executed or registered. This is unheard of in law”.

(Emphasis supplied)

25. Following the aforesaid principles, in the instant case, the plaintiffs being not parties to the said cancellation deed (Ex.P-5), that would be non-est in the eye of law. Consequently, the declaratory suit filed by the plaintiffs to the effect that he is the owner of the property gifted to him with a further prayer of perpetual injunction would be a valid suit under section 34 the Specific Relief Act.

26. In the result, both the appeals sans merit and are liable to





be dismissed. Accordingly, the appeals are dismissed. The judgment and decree of the learned court below are affirmed.

**Sd/-
(Goutam Bhaduri)
Judge**

**Sd/-
(Deepak Kumar Tiwari)
Judge**

Rao





HEAD-NOTES

Once the gift deed is executed in terms of Sections 122 & 123 of The Transfer of Property Act, then the unilateral cancellation deed by donor is void and non-est.

एक बार संपत्ति अंतरण अधिनियम की धारा 122 तथा 123 के अनुसार दान विलेख निष्पादित हो जाने पर दाता द्वारा किया गया एकतरफा रद्दीकरण विलेख शून्य तथा अस्तित्वहीन होगा।

