2025 INSC 388

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4312 OF 2025
(Arising out of SLP (C) No. 698 of 2023)

N.P. SASEENDRAN ...APPELLANT(S)

VERSUS

N.P. PONNAMMA & ORS. ...RESPONDENT(S)

J U D G M E N T

R. MAHADEVAN, J.

Leave granted.

2. This appeal has been filed against the final judgment and decree dated 10.06.2019 passed by the High Court of Kerala at Ernakulam[1] in R.S.A. No.1338 of 2004, whereby the High Court allowed the said Regular Second Appeal and set aside the concurrent findings of the Courts below, besides granting a decree in favour of the plaintiff / Respondent No.1 declaring her right, title and interest over the suit schedule property by virtue of Ext.Al settlement deed dated 26.06.1985. The High Court also declared that cancellation deed (Ext.A2) dated 19.10.1993 and sale deed (Ext.A3) dated 19.10.1993 both executed by Defendant

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Reason:

[1] Hereinafter referred to as "the High Court"

No.1 would not bind the plaintiff as far as her right, title and interest over the suit schedule property is concerned.

3. The Respondent No.1 was the plaintiff (daughter) in O.S.No.27 of 1994 filed before the Sub Court, Cherthala[2] and the appellant was Defendant No.2 (son) in the said suit. Alleging that the suit schedule property was gifted by her father, who was Defendant No.1 in the suit, *vide* registered deed dated 26.06.1985, the Respondent No.1 / plaintiff filed the said suit for declaration of right, title and interest over the suit schedule property and also for a declaration that the cancellation deed and sale deed dated 19.10.1993 executed by the Defendant No.1 / father in favour of the appellant / Defendant No.2 are null and void and for consequential injunction. During the pendency of the suit, the Defendant No.1 / father died on 06.01.1995 and his legal heirs *viz.*, Respondent Nos.2 and 3 herein were impleaded as Defendant Nos.3 and 4 therein. The trial Court, after due contest by the parties, accepted the defence put forth by the appellant / Defendant No.2 that the deed executed in 1985 was only a Will and not a gift, and dismissed the suit by judgment dated 28.05.2001. Challenging the same, the Respondent No.1 / plaintiff preferred an appeal being A.S.No.109 of 2001 before the Additional District Court, Fast Track Court No.II, Alappuzha[3]. The First Appellate Court *vide* judgment dated 20.12.2003, affirmed the findings of the trial Court and dismissed the appeal suit. Aggrieved by the same, the Respondent

[2] Hereinafter referred to as "the trial Court"
[3] Hereinafter referred to as "the First Appellate Court"

No.1 / plaintiff preferred a Regular Second Appeal being R.S.A. No. 1338 of 2004 before the High Court. By judgment dated 10.06.2019, the High Court upset the concurrent findings of the Courts below and granted a declaratory decree in favour of the Respondent No.1 / plaintiff, by construing the document of 1985 as a gift deed. Aggrieved by the judgment passed by the High Court, the appellant / Defendant No.2 is before us with the present appeal.

4. During the pendency of this appeal, the Respondent No.2 died and her legal heirs were brought on record. Taking note of the same, the name of Respondent No.2 was deleted from the array of parties, *vide* order dated 24.11.2023 and cause title was accordingly, amended.

5. The learned counsel for the appellant contended that the document executed by the Defendant No.1 / father in 1985 was only a Will and not a gift deed, since there was no immediate transfer of ownership; possession of the suit schedule property was retained by the Defendant No.1 / father and was never handed over to the Respondent No.1 / plaintiff (daughter).

5.1. Adding further, it is submitted that the main test to find out whether the document constitutes a Will or a gift is to see whether the disposition of interest in the property is in praesenti in favour of the settlee or whether the disposition is to take effect on the death of the executant. If the disposition is to take effect on the death of the executant, it would be a Will. But, if the executant divests his interest in the property and vests his interest in praesenti on the settlee, the document will be a settlement [Refer: *Ramaswami Naidu and another v.*

Gopalakrishna Naidu and others[4] *as confirmed by this Court in P.K.Mohan Ram v. B.N. Ananthachary and Others*[5]]. In the instant case, the Defendant No.1 / father never intended to transfer the ownership of the suit schedule property while executing the document of 1985 and hence, the same can only be construed as a Will and not a gift deed as claimed by the Respondent No.1 / plaintiff and thus, he had the right to revoke his will and consequently, convey the suit schedule property in favour of the appellant / Defendant No.2 by way of a sale deed without any impediment.

5.2. According to the learned counsel, it is borne out by the evidence that the Defendant No.1 / father had sent a legal notice to the Respondent No.1 / plaintiff (daughter) demanding / calling her to return the Will executed on 26.06.1985, which clearly shows that the Respondent No.1 / plaintiff (daughter) was holding the Will against the wishes of the testator i.e., Defendant No.1/father. Even assuming that the document in question was a gift deed, the same was never accepted by the Respondent No.1 / plaintiff during the lifetime of the Defendant No.1/ father and therefore, the gift was not acted upon.

5.3. Referring to the decision of this Court in *Baby Ammal v. Rajan Asari*[6], it is submitted that going by the recitals in the document of 1985, the Defendant No.1 / father had retained the title to the enjoyment of the property during his lifetime as full owner with all rights. That apart, the Respondent No.1 / plaintiff

[4] AIR 1978 Madras 54
[5] (2010) 4 SCC 161
[6] 1997 (2) SCC 636

failed to prove that she had accepted the alleged gift. On the other hand, the appellant / Defendant No.2 took possession of the suit schedule property, effected mutation and paid necessary taxes, pursuant to the sale deed dated 19.10.1993 executed in his favour and that he has been in possession and enjoyment of the same since then. Taking note of all these factors, the trial Court and the First Appellate Court had rightly dismissed the suit filed by the Respondent No.1 / plaintiff. However, the High Court set aside the concurrent judgments of the Courts below and granted the declaratory decree in favour of the plaintiff, by the judgment impugned herein, which has to be set aside, as the same is contrary to law, facts of the case and evidence on record.

6. To begin with, the learned counsel for the Respondent No.1 / plaintiff submitted that there is no substantial question of law involved in this case. According to the learned counsel, the suit schedule property belongs to the Respondent No.1 as per the gift deed dated 26.06.1985 bearing Document No.3148 of 1985 executed by Defendant No.1 / father. It was stated in the said gift deed that the right to take income was reserved in favour of the settlor (father) and also during the lifetime of mother of Respondent No.1; and that the settlor was having the right to mortgage the property upto a sum of Rs.2,000/-, but possession of the property was transferred to Respondent No.1. However, claiming that he continued to be the owner of the property, Defendant No.1 / father on 19.10.1993, executed a cancellation deed of the gift deed *vide* Document

No.4233 of 1993 as well as a sale deed bearing Document No.4234 of 1993 in favour of the appellant / Defendant No.2. The suit filed by the Respondent No.1/ plaintiff came to be dismissed by the trial Court as affirmed by the First Appellate Court. Yet, the High Court correctly set aside the judgments of the Courts below and granted the declaratory reliefs in favour of the Respondent No.1 / plaintiff.

6.1. Elaborating further, the learned counsel submitted that the ownership of the existing property has been transferred voluntarily to Respondent No.1 (donee) without any consideration and the same was also accepted by Respondent No.1 during the lifetime of Defendant No.1 by presenting the deed for registration, *vide* Document No.3148 of 1985, on the file of SRO, Cherthala and hence, all the requirements in accordance with section 122 of the Transfer of Property Act have been satisfied.

6.2. The learned counsel also submitted that the tone and tenor of the document will clearly show that it was a gift deed, as the recitals of the deed indicate that only limited rights were reserved to the settlor i.e., right to take income during the lifetime of the father and mother of Respondent No.1 and a provision, which enabled the settlor to mortgage the property upto a sum of Rs.2,000/-. Apart from the said two conditions, there was no restriction placed on the absolute ownership and enjoyment of the property by Respondent No.1. Therefore, upon valid execution of the gift deed, the same was also duly presented by the Respondent No.1 for registration, which itself amounts to acceptance of gift.

6.3. Referring to the decision of this Court in *Reninkuntala Rajamma (Dead) v. K.Sarwanamma*[7], the learned counsel submitted that transfer of possession of property is not necessary for the acceptance of a valid gift deed.

6.4. The learned counsel further submitted that Ext.A1 deed was accepted in 1985 and the same was acted upon by the Respondent No.1. After the period of 7 years, the Defendant No.1 / father executed a cancellation deed of the said gift deed and a sale deed in respect of the subject property, without any notice to the Respondent No.1. According to the learned counsel, Ext.A1 is a gift deed and it cannot be unilaterally revoked as per section 126 of the Transfer of Property Act. In this regard, reliance was placed on the decision of this court in *K. Balakrishnan v. K. Kamalam and others*[8].

6.5. It is also submitted that the Respondent Nos.2 and 3 (Defendant Nos.3 and 4 in the suit) supported the case of the Respondent No.1 and they stated in their written statement that the Defendant No.1 never had any right to cancel the document and the appellant / Defendant No.2 had no right over the suit schedule property.

6.6. Regarding the appellant's contention that after execution of the sale deed, revenue record was mutated and he has been in possession of the suit property since then, the learned counsel submitted that mutation of the property in the

[7] (2014) 9 SCC 445
[8] (2004) 1 SCC 581

revenue record does not create or extinguish title nor has it any presumptive value on title, and it only enables the person in whose favour mutation is ordered to pay the land revenue in question. In this regard, reference was made to the decision of this Court in *Sawarni v. Inder Kaur*[9] and *P.Kishore Kumar v. Vittal K. Patkar*[10]. Therefore, such contention of the appellant is incorrect and deserves to the rejected by this court.

6.7. Pointing out the above submissions, the learned counsel prayed for dismissal of this appeal filed by the appellant / Defendant No.2.

7. We have considered the rival submissions made by the learned counsel and perused the materials available on record, more particularly, Ext.A1 dated 26.06.1985.

8. Primarily, the learned counsel for Respondent No.1 has contended that there is no substantial question of law to entertain this appeal. We do not agree with the same because the right to appeal under Section 100 or 109 of the Code of Civil Procedure and Article 133 of the Constitution of India can basically be on the same premise of existence of a substantial question of law and if the question raised before us is not substantial, the High Court could not have interfered with the concurrent findings without substantial question of law. A substantial question of law is always of general importance. That apart, we are invigorated with the authority under Article 142 of the Constitution to do

[9] (1996) 6 SCC 223
[10] Civil Appeal No.7210 of 2011

complete justice, though bridled with a responsibility to be exercised in appropriate cases. Hence, we proceed to decide the question of law raised in the facts of the present case.

9. The relationship between the parties is not in dispute. Seemingly, the father of the appellant originally executed a document in 1985 titled as "Dhananischayaadharam" in respect of the suit schedule property, in favour of Respondent No.1 (daughter). Subsequently, he cancelled the said document and executed a sale deed for valid consideration on 19.10.1993 in favour of the appellant (son). Claiming that the document of 1985 was a gift deed, Respondent No.1 instituted a suit for declaration and consequential injunction. Pending the suit, Defendant No.1/ father died on 06.01.1995; and the suit was dismissed by the trial Court as affirmed by the First Appellate Court by construing the document of 1985 as Will. But the High Court set aside the concurrent judgments of the Courts below and granted the declaratory reliefs to Respondent No.1, interpreting the said document as settlement. Therefore, this appeal came to be filed by the appellant before us.

10. The question to be decided herein is twin fold, whether the document of the year 1985 is a gift or Settlement or Will? and whether the requirements under law or conditions in the deed have been satisfied to vest a legal right?

11. Before proceeding further, it is necessary to analyze the nature, scope and provisions dealing with the above document in brief. Section 122 of the Transfer of Property Act, 1882 defines "Gift". Article 33 of the Indian Stamp Act, 1899

and Article 31 of the Kerala Stamp Act, 1959, defines “Gift” as an instrument of, not being settlement, will or transfer. Therefore, a valid Gift, as defined would refer to an instrument by which there is voluntary disposition of one’s existing property either movable or immovable, without consideration to another, the acceptance of which should be made during the lifetime of the donor, implying imminent vesting of the right upon acceptance. Section 123 states, how a gift is to be made. It has two parts. The earlier part deals with immovable property and the later, with movable property. Insofar as an immovable property is concerned, registration is mandatory, which is in tune with Section 17 of the Registration Act. Whereas, it is not only mandatory to register a gift of a movable property, it also can be effected by delivery. Section 126 states, as to when a gift can be suspended or revoked. This section bars unilateral revocation. Section 127 enables the donor to impose any condition in the deed, which has to be accepted for the gift to take effect or in other words, the donee without accepting the obligation, cannot be said to have accepted the gift. Section 128 deals with the liability of the donee for the debts of the donor to the extent of the property comprised therein. A conspicuous reading of the provisions would disclose that for a gift of an immovable property to be valid, it has to be registered, universal cancellation of the gift is impermissible and delivery of possession is not a condition *sine qua non* to validate the gift.

11.1. Insofar as a settlement deed is concerned, Section 2(b) of the Specific Relief Act, 1963, defines the same to be a non-testamentary instrument whereby,

there is a disposition or an agreement to dispose of any movable or immovable property to a destination or devolution of successive interest. “Settlement” under the Indian Stamp Act and the Kerala Stamp Act under Section 2(q) refers to a non-testamentary disposition of any movable or immovable property in writing, in consideration of marriage or for the purpose of distributing the property of the settlor among his family or to those to whom he desires to provide or for the purpose of providing for some person dependent on him or for any religious or charitable purpose and includes an agreement in writing to make such a disposition. However, insofar as immovable properties, the registration is mandatory under Section 17 of the Registration Act. From the above definitions, it can be discerned that a settlement would mean a disposition of one’s property to another directly or to vest in any such person after successive devolution of rights on other(s). Further, the circumstances and reasons that led to the execution of such a settlement deed are described as its consideration, which need not necessarily be of any monetary value. More often than not, it consists of love, care, affection, duty, moral obligation, or satisfaction, as such deed are typically executed in favour of a family member. Also, a settlor is entitled to reserve a life interest either upon himself or upon others and impose any condition. The person in whose favour, a life interest is created, is permitted to use and enjoy the income arising out of such property during his life time, but has no right of alienation as the property had already vested in the settlee. The breach of any condition in the settlement, would then render the settlement void. However, there are restrictions

under the Transfer of Property Act,1882 on the conditions that can be imposed. Section 11 of the Transfer of Property Act, 1882 states that when by virtue of a transfer, absolute right and interest has been vested in a party, any condition restricting or directing that the property must be enjoyed in a particular manner would be void as it is repugnant to the original grant. Similarly, any condition restraining or limiting the transferee from enjoying the property is also void to that extent. Though under both the situations, the conditions are void, the interest vested already can be enjoyed absolutely as per the will of the transferee.

11.2. Will is a testamentary document dealt under the Indian Succession Act, 1925. Part VI of the Act deals with the Testamentary Succession. We will consider only the relevant provisions applicable to this case. Will is defined under Section 2(h) as a legal declaration of the intention of the testator to be given effect after his death. Such declaration is with respect to his property and must be certain. As per Section 59, every person of sound mind, not being a minor, may dispose of his property by executing a Will. Section 61 states the circumstances under which a Will is void. Section 62 enables a person to revoke or alter a Will at any time while he is competent to dispose of his property by will. Needless to say, since the Will comes into effect only after his life time, he is at full liberty to revoke or alter his earlier Will any number of times as long as he is in sound state of mind and not hit by the circumstances enumerated under Section 62. Section 63 deals with execution of the Will. As per this section, a Will must be signed by the testator or have his mark affixed by him, or by any other person in his presence

and under his direction. It must also be attested by at least two witnesses in the presence of the testator, either by actually witnessing the execution of the Will by the testator or by receiving an acknowledgment from the testator that he or a person authorized by him has signed or affixed his mark. It is not necessary for the witnesses to attest at the same time. Section 70 speaks about the revocation of unprivileged will which can be revoked by marriage or by execution of another will or codicil or by writing in some other instrument clearly expressing his intention to revoke the will or by destroying the will by burning or tearing or in some other form by the testator or by his authorised person in his presence with the intention to revoke the same. Chapter VI of Part VI deals with construction of wills. The provisions consider the various rules regarding the construction of wills to determine the true intention of the testator and to ensure that object of such testament is achieved. The rules prescribe the remedy to deal with certain errors and circumstances like misdescription, misnomer and the need for causes omisus. They also lay down that the meaning is to be discerned from the contents of the entire will and every attempt must be made to give effect to every clause. Section 89 states that the later clause will prevail in case of the two conflicting clauses of gifts in the will, if they are irreconcilable.

Interplay between Gift and Settlement

11.3. As we have already seen, the primary difference between the Gift and the Settlement is the existence of consideration in the settlement. Consideration is

nothing but the *quid pro quo*, that each party to a contract is to perform or render a part of their obligation under the contract. In view of the fact that a gift is a voluntary disposition, it is essentially not an agreement and hence, the element of consideration is taken away from it. Settlement on the other hand is always coupled with consideration as it is mostly executed in favour of a family member. The gift or settlement of an immovable property has to be registered as per Section 17 of the Registration Act. The conditions regarding acceptance, reservation of life interest and restriction on revocation are applicable to both "gift and settlement". The vesting of the right also takes place in praesenti in both the cases. Therefore, there is an element of gift in every settlement. At this juncture, it will be useful to refer to the recent judgment of this court in *Ramachandra Reddy (dead) through LRs and others v. Ramulu Ammal through LRs*[11], in determining, what a "consideration" is or can be, *qua* a "settlement deed" in the following paragraphs:

> ***"15.*** *Since the point which the High Court in its wisdom found to be the determining factor qua the nature of the deed is the element of consideration and its adequateness, let us consider the same.*
>
> *15.1 It shall be useful to refer to certain provisions of the Indian Contract Act, 1872. The relevant part of the interpretation clause thereof says -*
>
> *"2…*
>
> *(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;*

[11] 2024 SCC Online SC 3304

(e) Every promise and every set of promises, forming the consideration for each other, is an agreement;

(f) Promises which form the consideration or part of the consideration for each other are called reciprocal promises;…"

15.2 The discussion regarding the meaning of the word 'consideration' made in CITv. Ahmedabad Urban Development Authority,[5] is relevant for our purposes here:

*"**165.** The term "consideration" however is broader. The plain meaning is a monetary payment, for something obtained, in the form of goods, or services. In CCE v. Fiat India (P) Ltd. [CCE v. Fiat India (P) Ltd., (2012) 9 SCC 332 : (2012) 12 SCR 975] this Court explained the meaning of that term : (SCC pp. 360-61, paras 68-73)*

"68. ... Consideration means something which is of value in the eye of the law, moving from the plaintiff, either of benefit to the plaintiff or of detriment to the defendant. In other words, it may consist either in some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility, given, suffered or undertaken by the other, as observed in Currie v. Misa [Currie v. Misa, [L.R.] 10 Exch. 153].

69. Webster's Third New International Dictionary (unabridged) defines, "consideration" thus:

> *'Something that is legally regarded as the equivalent or return given or suffered by one for the act or promise of another.'*

70. In Vol. 17 of Corpus Juris Secundum (pp. 420-21 and 425) the import of "consideration" has been described thus:

> *'Various definitions of the meaning of "consideration" are to be found in the textbooks and judicial opinions. A sufficient one, as stated in Corpus Juris and which has been quoted and cited with approval is "a benefit to the party promising or a loss or detriment to the party to whom the promise is made…."*
>
> *At common law every contract not under seal requires a consideration to support it, that is, as shown in the definition above, some benefit to the promisor, or some detriment to the promisee.'*

71. In Salmond on Jurisprudence, the word "consideration" has been explained in the following words:

> *'A consideration in its widest sense is the reason, motive or inducement, by which a man is moved to bind himself by an agreement. It is for nothing that he consents to impose an obligation upon himself, or to abandon or transfer a right. It is in consideration of such and such a fact that he agrees*

> *to bear new burdens or to forego the benefits which the law already allows him.'*
>
> *xxxxxxxxx*
>
> *73. From a conspectus of decisions and dictionary meaning, the inescapable conclusion that follows is that "consideration" means a reasonable equivalent or other valuable benefit passed on by the promisor to the promisee or by the transferor to the transferee. Similarly, when the word "consideration" is qualified by the word "sole", it makes consideration stronger so as to make it sufficient and valuable having regard to the facts, circumstances and necessities of the case."*
>
> *(Emphasis supplied)*
>
> *15.3 Chidambara Iyer v. P.S. Renga Iyer which cites similar authorities is also important for our consideration.*
>
> *15.4 What flows from the above-cited judgments as also provisions of law, is that 'consideration' need not always be in monetary terms. It can be in other forms as well. In the present case, it is seen that the transfer of property in favour of Govindammal was in recognition of the fact that she had been taking care of the transferors and would continue to do so while also using the same to carry out charitable work. Although the deed stands reproduced supra, for immediate recollection the relevant extract is once again reproduced hereinbelow:*
>
> > *"...execute this Settlement deed that you are the only daughter of Bagi Reddi and that we do not have any wife or children or legal heirs and you happened to be the daughter of our elder brother Chenga Reddi and that since we do not have any wife or children and you happened to have looked after us very well till now and that herein after you will look after our food and shelter needs and in the belief that you would do all the charitable work."*
>
> *15.5 In that view of the matter, the High Court has erred in taking such a constricted view of 'consideration', especially taking note of the fact that this settlement was between the members of a family."*

Further, in both the cases, unilateral revocation is not permitted as evident from Section 126 of the Transfer of Property Act, 1882. There can be a clause permitting such revocation in the deed. Similarly, the creation of a life interest would not affect the grant and change the character of the document. Similarly, the delivery of possession is not mandatory as in both cases. In case of a gift or

settlement, it is sufficient if the donee/settlee had accepted the same during the life time of the executor of the document and such acceptance can be either express or implied, but must be visible from the conduct of the parties. Putting the donee/settlee into possession or handing over the document to the recipient can also be recognised as valid acceptance. The registration of the gift by the donee and the possession of such document will also amount to valid acceptance. At this point it will be useful to refer to the following judgements of this court:

(i) K. Balakrishnan v. K. Kamalam[12]

> ***"10.*** *We have critically examined the contents of the gift deed. To us, it appears that the donor had very clearly transferred to the donees ownership and title in respect of her 1/8th share in properties. It was open to the donor to transfer by gift title and ownership in the property and at the same time reserve its possession and enjoyment to herself during her lifetime. There is no prohibition in law that ownership in a property cannot be gifted without its possession and right of enjoyment. Under Section 6 of the Transfer of Property Act "property of any kind may be transferred" except those mentioned in clauses (a) to (i). Section 6 in relevant part reads thus:*
>
> *"6. What may be transferred.—Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force.*
>
> *(a) ****
>
> *(b) A mere right to re-entry for breach of a condition subsequent cannot be transferred to anyone except the owner of the property affected thereby.*
>
> *(c) ****
>
> *(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.*
>
> *(e) A mere right to sue cannot be transferred."*
>
> ***11.*** *Clause (d) of Section 6 is not attracted on the terms of the gift deed herein because it was not a property, the enjoyment of which was restricted to the owner personally. She was absolute owner of the property gifted and it was not restricted in its enjoyment to herself. She had inherited it from her maternal father as a full owner. The High Court was, therefore, apparently wrong in coming to the*

[12] (2004) 1 SCC 581 : 2003 SCC OnLine SC 1428

conclusion that the gift deed was ineffectual merely because the donor had reserved to herself the possession and enjoyment of the property gifted.
……

31. *In our considered opinion, therefore, the trial court and the High Court were wrong in coming to the conclusion that there was no valid acceptance of the gift by the minor donee. Consequently, conclusion has to follow that the gift having been duly accepted in law and thus being complete, it was irrevocable under Section 126 of the Transfer of Property Act. Section 126 prohibits revocation of a validly executed gift except in circumstances mentioned therein. The gift was executed in 1945. It remained in force for about 25 years during which time the donee had attained majority and had not repudiated the same. It was, therefore, not competent for the donor to have cancelled the gift and executed a Will in relation to the property."*

(ii) Renikuntla Rajamma v. K. Sarwanamma[13]

"9. *Chapter VII of the Transfer of Property Act, 1882 deals with gifts generally and, inter alia, provides for the mode of making gifts. Section 122 of the Act defines "gift" as a transfer of certain existing movable or immovable 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. In order to constitute a valid gift, acceptance must, according to this provision, be made during the lifetime of the donor and while he is still capable of giving. It stipulates that a gift is void if the donee dies before acceptance.*

10. *Section 123 regulates the mode of making a gift and, inter alia, provides that a gift of immovable property must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. In the case of movable property, transfer either by a registered instrument signed as aforesaid or by delivery is valid under Section 123. Section 123 may at this stage be gainfully extracted:*

*"**123. Transfer how effected**.—For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.*
For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.
Such delivery may be made in the same way as goods sold may be delivered."

[13] (2014) 9 SCC 445 : (2014) 5 SCC (Civ) 1 : 2014 SCC OnLine SC 565

11. *Sections 124 to 129 which are the remaining provisions that comprise Chapter VII deal with matters like gift of existing and future property, gift made to several persons of whom one does not accept, suspension and revocation of a gift, and onerous gifts including effect of non-acceptance by the donee of any obligation arising thereunder. These provisions do not concern us for the present. All that is important for the disposal of the case at hand is a careful reading of Section 123 (supra) which leaves no manner of doubt that a gift of immovable property can be made by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. When read with Section 122 of the Act, a gift made by a registered instrument duly signed by or on behalf of the donor and attested by at least two witnesses is valid, if the same is accepted by or on behalf of the donee. That such acceptance must be given during the lifetime of the donor and while he is still capable of giving is evident from a plain reading of Section 122 of the Act. A conjoint reading of Sections 122 and 123 of the Act makes it abundantly clear that "transfer of possession" of the property covered by the registered instrument of the gift duly signed by the donor and attested as required is not a sine qua non for the making of a valid gift under the provisions of the Transfer of Property Act, 1882.*

12. *Judicial pronouncements as to the true and correct interpretation of Section 123 of the TP Act have for a fairly long period held that Section 123 of the Act supersedes the rule of Hindu law if there was any making delivery of possession an essential condition for the completion of a valid gift.*

……

16. *The matter can be viewed from yet another angle. Section 123 of the TP Act is in two parts. The first part deals with gifts of immovable property while the second part deals with gifts of movable property. Insofar as the gifts of immovable property are concerned, Section 123 makes transfer by a registered instrument mandatory. This is evident from the use of word "transfer must be effected" used by Parliament insofar as immovable property is concerned. In contradiction to that requirement the second part of Section 123 dealing with gifts of movable property, simply requires that gift of movable property may be effected either by a registered instrument signed as aforesaid or "by delivery". The difference in the two provisions lies in the fact that insofar as the transfer of movable property by way of gift is concerned the same can be effected by a registered instrument or by delivery. Such transfer in the case of immovable property no doubt requires a registered instrument but the provision does not make delivery of possession of the immovable property gifted as an additional requirement for the gift to be valid and effective. If the intention of the legislature was to make delivery of possession of the property gifted also as a condition precedent for a valid gift, the provision could and indeed would have specifically said so. Absence of any such requirement can only lead us to the conclusion that delivery of possession is not an essential prerequisite for the making of a valid gift in the case of immovable property.*

……

18. *We are in respectful agreement with the statement of law contained in the above passage in K. Balakrishnan case [(2004) 1 SCC 581] . There is indeed no provision in law that ownership in property cannot be gifted without transfer of possession of such property. As noticed earlier, Section 123 does not make the delivery of possession of the gifted property essential for validity of a gift. It is true that the attention of this Court does not appear to have been drawn to the earlier decision rendered in Naramadaben Maganlal Thakker [(1997) 2 SCC 255] where this Court had on a reading of the recital of the gift deed and the cancellation deed held that the gift was not complete. This Court had in that case found that the donee had not accepted the gift thereby making the gift incomplete. This Court further held that the donor cancelled the gift within a month of the gift and subsequently executed a will in favour of the appellant: on a proper construction of the deed and the deed cancelling the same this Court held that the gift in favour of the donee was conditional and that there was no acceptance of the same by the donee. The gift deed conferred a limited right upon the donee and was to become operative after the death of the donee. This is evident from the following passage from the said judgment: (Naramadaben Maganlal Thakker case[(1997) 2 SCC 255] , SCC p. 258, para 7)*

"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. The question is whether the gift in question had become complete under Section 123 of the TP Act? It is seen from the recitals of the gift deed that Motilal Gopalji gifted the property to the respondent. In other words, it was a conditional gift. There is no recital of acceptance nor is there any evidence in proof of acceptance. Similarly, he had specifically stated that the property would remain in his possession till he was alive. Thereafter, the gifted property would become his property and he was entitled to collect mesne profits in respect of the existing rooms throughout his life. The gift deed conferred only limited right upon the respondent donee. The gift was to become operative after the death of the donor and he was to be entitled to have the right to transfer the property absolutely by way of gift or he would be entitled to collect the mesne profits. It would thus be seen that the donor had executed a conditional gift deed and retained the possession and enjoyment of the property during his lifetime."

……

20. *In the case at hand as already noticed by us, the execution of registered gift deed and its attestation by two witnesses is not in dispute. It has also been concurrently held by all the three courts below that the donee had accepted the gift. The recitals in the gift deed also prove transfer of absolute title in the gifted property from the donor to the donee. What is retained is only the right to use the property during the lifetime of the donor which does not in any way affect the transfer of ownership in favour of the donee by the donor."*

(iii) Daulat Singh v. State of Rajasthan[14]

> ***"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 the 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 [Asokan v. Lakshmikutty, (2007) 13 SCC 210] : (SCC pp. 215-16, para 14)*
>
> *"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 raises a presumption of acceptance."*
>
> *(emphasis supplied)"*

(iv) In *Satya Pal Anand v. State of M.P.*[15], this court after considering the scope of the Registration Act, held that even if fraud is pleaded or claimed, the authorities under the Registration Act cannot unilaterally cancel the document and the parties should only approach the jurisdictional Civil Court, in the following words:

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[14] (2021) 3 SCC 459 : (2021) 2 SCC (Civ) 197 : 2020 SCC OnLine SC 1004

[15] (2016) 10 SCC 767 : (2017) 1 SCC (Civ) 1 : 2016 SCC OnLine SC 1202

> ***"36.*** *If the document is required to be compulsorily registered, but while doing so some irregularity creeps in, that, by itself, cannot result in a fraudulent action of the State Authority. Non-presence of the other party to the extinguishment deed presented by the Society before the Registering Officer by no standard can be said to be a fraudulent action per se. The fact whether that was done deceitfully to cause loss and harm to the other party to the deed, is a question of fact which must be pleaded and proved by the party making such allegation. That fact cannot be presumed. Suffice it to observe that since the provisions in the 1908 Act enables the Registering Officer to register the documents presented for registration by one party and execution thereof to be admitted or denied by the other party thereafter, it is unfathomable as to how the registration of the document by following procedure specified in the 1908 Act can be said to be fraudulent. As aforementioned, some irregularity in the procedure committed during the registration process would not lead to a fraudulent execution and registration of the document, but a case of mere irregularity. In either case, the party aggrieved by such registration of document is free to challenge its validity before the civil court."*

Interplay between Gift and Will

11.4. As we have seen, a will is the declaration of the intention of the testator to give away his property. Such will comes into force after the death of the testator. The most important requirement for a valid will is that it must again be a voluntary disposition in sound mind, which must be explicit from the instrument itself. Therefore, it can be concluded that every will also has an element of gift, with the difference being the disposition deferred until the death of the testator. Insofar as the revocation is concerned, the testator is at liberty to revoke or alter the will any number of times until his demise, but it is essential that he remains of sound mind while doing so.

Interplay between Gift, Settlement and Will

11.5. The element of voluntary disposition is common to all the three deeds. The element of gift is traceable to both "settlement" and "will". As settled in law, the nomenclature of an instrument is immaterial and the nature of the document is to be derived from its contents. While so, a voluntary disposition can transfer the interest in praesenti and in future, in the same document. In such a case, the document would have the elements of both the settlement and will. Such document, then has to be registered and by operation of the doctrine of severability, becomes a composite document and has to be treated as both, a settlement and will and the respective rights will flow with regard to each disposition from the same document. It is pertinent to mention here that the reservation of life interest or any condition in the instrument, even if it postpones the physical delivery of possession to the donee/settlee, cannot be treated as a will, as the property had already been vested with the donee/settlee.

12. At this juncture, it will be useful to refer to a few judgements on the subject:

(i) In *Navneet Lal @ Rangi v. Gokul and others*[16], after analysing the entire case laws on the subject, this Court highlighted the essential principles that should guide the courts in interpreting Wills, distinguishing from other types of documents, as follows:

[16] [1976] 1 SCC 630

(i) The fundamental rule is to ascertain the intention of the testator from the words used, the surrounding circumstances for the purpose of finding out the intended meaning of the words which have been employed;

(ii) The court, in doing so is entitled to put itself into the armchair of the testator and is bound to bear in mind also other matters than merely the words used and the probability that the testator had/would have used the words in a particular sense, in order to arrive at a right construction of the Will and ascertain the meaning of the language used;

(iii) The true intention of the testator has to be gathered not by attaching importance to isolated expression but by reading the Will as a whole, with all its provisions and ignoring none of them, as redundant or contradictory, giving such construction as would give to every expression some effect rather than that which would render any of the expressions inoperative;

(iv) Where apparently conflicting dispositions can be reconciled by giving full effect to every word used in a document, such a construction should be accepted instead of a construction which would have the effect of cutting down the clear meaning of the words used by the testator;

(v) It is one of the cardinal principles of construction of Wills that to the extent that it is legally possible effect should be given to every disposition contained in the Will, unless the law prevents effect being given to it. If even there appear to be two repugnant provisions conferring successive interests and the first interest created is valid the subsequent interest cannot take effect, the court will proceed to the farthest extent to avoid repugnancy, so that effect could be given as far as possible, to every testamentary intention contained in the Will."

12.1. The aforesaid principles were reiterated in the decisions subsequently rendered by this Court [Refer: *Arunkumar & another v. Shriniwas & another*[17], and *Bajrang Factory Ltd. & another v. University of Calcutta & others*[18].

13. This Court in *P.K. Mohan Ram v. B.N. Ananthachary*[19], referred to the broad tests or characteristics as to what constitutes a will and what constitutes a settlement. The relevant paragraphs of the said decisions are reproduced below

[17] AIR 2003 SC 2528
[18] Civil Appeal No. 3374/2006
[19] (2010) 4 SCC 161 : (2010) 2 SCC (Civ) 78 : 2010 SCC OnLine SC 361 at page 172

for ready reference:

> *"13. Having noticed the distinction between vested interest and contingent interest, we shall now consider whether Ext. A-2 was a settlement deed or a will. Although, no straitjacket formula has been evolved for construction of such instruments, the consistent view of this Court and various High Courts is that while interpreting an instrument to find out whether it is of a testamentary character, which will take effect after the lifetime of the executant or it is an instrument creating a vested interest in præsenti in favour of a person, the Court has to very carefully examine the document as a whole, look into the substance thereof, the treatment of the subject by the settlor/executant, the intention appearing both by the expressed language employed in the instrument and by necessary implication and the prohibition, if any, contained against revocation thereof. It has also been held that form or nomenclature of the instrument is not conclusive and the court is required to look into the substance thereof.*
>
> *14. Before proceeding further, we may notice the judgments on which reliance was placed by learned counsel for the parties. In Gangaraju v. Pendyala Somanna (supra), the learned Single Judge was called upon to construe deed dated 27.2.1917 executed by one Kristnamma. The learned Single Judge referred to the contents of the document and observed:*
>
> *"The document on the face of it is of a non-testamentary character. It was so stamped and so registered. It is called a dakal dastaveju, which means a conveyance or settlement deed. It is true that a document which is not a Will in form, may yet be a Will in substance and effect; but as was held in Mahadeva Iyer v. Sankarasubramania Iyer, if an instrument is a deed in form, in order to hold that it is testamentary or in the nature of a Will, there must be something very special in the case; and unless there are circumstances which compel the Court to treat an instrument in the form of a deed as a Will, the Court will not do so. The leading argument of the appellant is that the document created no estate in praesenti. A more literal translation of the fourth sentence in para 2 of the document is:*
>
> *Therefore, on account of my affection for you, I have arranged that after my death the property shall belong to you.*
>
> *It is certainly very difficult to derive from these words any immediate interest created in favour of the plaintiff. But the line between a Will and a conveyance reserving a life estate is a fine one, and it would be hard to define in some cases where the document has been held to be non-testamentary, wherein the personal interest which was transferred consists. A more easily applied test is that of revocability. There is nothing in the suit document to show that Kristnamma*

reserved the right to revoke it. On the contrary there is an undertaking not to alienate any part of the property during his lifetime. I consider that this is equivalent to a promise not to revoke the instrument, because if the executant intended to reserve that right he could not consistently have parted with the right to alienate. The same intention to give finality to the deposition is suggested by Ex.3, which is a conveyance of a portion of the property executed jointly by Kristnamma and the plaintiff. The fact that the plaintiff was required to join is significant, and in the schedule the property is described as that which was conveyed by Kristnamma to him. This document seems also to lend some colour to the view that an immediate conveyance of interest was intended in Ex.F. I think that Kristnamma had the intention not to revoke the conveyance and this has always been regarded as one of the most important tests."

(emphasis supplied)

16. In Ramaswami Naidu v. Gopalakrishna Naidu (supra), the High Court laid down the following broad test for construction of document:

"The broad tests or characteristics as to what constitutes a will and what constitutes a settlement have been noticed in a number of decisions. But the main test to find out whether the document constitutes a will or a gift is to see whether the disposition of the interest in the property is in praesenti in favour of the settlees or whether the disposition is to take effect on the death of the executant. If the disposition is to take effect on the death of the executant, it would be a will. But if the executant divests his interest in the property and vests his interest in praesenti in the settlee, the document will be a settlement. The general principle also is that the document should be read as a whole and it is the substance of the document that matters and not the form or the nomenclature the parties have adopted. The various clauses in the document are only a guide to find out whether there was an immediate divestiture of the interest of the executant or whether the disposition was to take effect on the death of the executant."

"If the clause relating to the disposition is clear and unambiguous, most of the other clauses will be ineffective and explainable and could not change the character of the disposition itself. For instance, the clause prohibiting a revocation of the deed on any ground would not change the nature of the document itself, if under the document there was no disposition in praesenti."

20. In Vynior's case (supra) Lord Coke said "if I make my testament and last will irrevocable, yet I may revoke it, for my act or my words cannot alter the judgment of the law to make that irrevocable which is of its own nature revocable." This statement of law was relied upon by the Division Bench of Calcutta High Court in Sagar Chandra Mandal v. Digamber Mandal and others (supra). In that case, the court was called upon to consider the true character of the instrument which

was described as a Will. After noticing the contents of the documents, the Division Bench referred to Vynior's case and observed:

"As to the true character of the instrument propounded by the appellant, we think there can be no reasonable doubt that it is a will. A will is defined in section 3 of the Indian Succession Act as the legal declaration of the intention of the testator with respect to his property which he desires to be carried into effect after his death. Section 49 then provides that a will is liable to be revoked or altered by the maker of it, at any time when he is competent to dispose of his property by will. If therefore an instrument is on the face of it of a testamentary character, the mere circumstance that the testator calls it irrevocable, does not alter its quality, for as Lord Coke said in Vynior's Case. "If I make my testament and last will irrevocable, yet I may revoke it, for my act or my words cannot alter the judgment of the law to make that irrevocable which is of its own nature revocable."

The principal test to be applied is, whether the disposition made takes effect during the lifetime of the executant of the deed or whether it takes effect after his decease. If it is really of this latter nature, it is ambulatory and revocable during his life. [Musterman v. Maberley, and in Bonis v. Morgan]. Indeed, the Court has sometimes admitted evidence, when the language of the paper is insufficient, with a view to ascertain whether it was the intention of the testator that the disposition should be dependent on his death. [Robertson v. Smith]. Tested in the light of these principles, there can be no doubt that the instrument now before us is of a testamentary character. It is described as a will and states explicitly that as after the death of the testator, disputes might arise among his relations with regard to the properties left by him, he made the disposition to be carried into effect after his demise. The terms and conditions are then set out, paragraph by paragraph, and in each paragraph the disposition is expressly stated to take effect after his demise. Against all this, reliance is placed on the sixth paragraph, in which the testator says that he would be at liberty to mortgage the properties and not to sell them absolutely. Such a restraint as this upon his own power of alienation during his lifetime would be obviously void. It does not indicate any intention to make the deed irrevocable. The principal test to be applied is, whether the disposition made takes effect during the lifetime of the executant of the deed or whether it takes effect after his decease. If it is really of this latter nature, it is ambulatory and revocable during his life. [Musterman v. Maberley, and in Bonis v. Morgan]. Indeed, the Court has sometimes admitted evidence, when the language of the paper is insufficient, with a view to ascertain whether it was the intention of the testator that the disposition should be dependent on his death. [Robertson v. Smith]. Tested in the light of these principles, there can be no doubt that the instrument now before us is of a testamentary character. It is described as a will and states explicitly that as after the death of the testator, disputes might arise among his relations with regard to the properties left by him, he made the

disposition to be carried into effect after his demise. The terms and conditions are then set out, paragraph by paragraph, and in each paragraph the disposition is expressly stated to take effect after his demise. Against all this, reliance is placed on the sixth paragraph, in which the testator says that he would be at liberty to mortgage the properties and not to sell them absolutely. Such a restraint as this upon his own power of alienation during his lifetime would be obviously void. It does not indicate any intention to make the deed irrevocable."

14. In *Mathai Samuel v. Eapen Eapen*[20], while examining a composite document, this Court outlined the requirements for both a Will and a gift, which read as under:

"16. We may point out that in the case of a will, the crucial circumstance is the existence of a provision disposing of or distributing the property of the testator to take effect on his death. On the other hand, in case of a gift, the provision becomes operative immediately and a transfer in praesenti is intended and comes into effect. A will is, therefore, revocable because no interest is intended to pass during the lifetime of the owner of the property. In the case of gift, it comes into operation immediately. The nomenclature given by the parties to the transaction in question, as we have already indicated, is not decisive. A will need not be necessarily registered. The mere registration of "will" will not render the document a settlement. In other words, the real and the only reliable test for the purpose of finding out whether the document constitutes a will or a gift is to find out as to what exactly is the disposition which the document has made, whether it has transferred any interest in praesenti in favour of the settlees or it intended to transfer interest in favour of the settlees only on the death of the settlors.

17. A composite document is severable and in part clearly testamentary, such part may take effect as a will and other part if it has the characteristics of a settlement and that part will take effect in that way. A document which operates to dispose of property in praesenti in respect of few items of the properties is a settlement and in future in respect of few other items after the deaths of the executants, it is a testamentary disposition. That one part of the document has effect during the lifetime of the executant i.e. the gift and the other part disposing the property after the death of the executant is a will. Reference may be made in this connection to the judgment of this Court in M.S. Poulose v. Varghese [1995 Supp (2) SCC 294].

18. In a composite document, which has the characteristics of a will as well as a gift, it may be necessary to have that document registered otherwise that part of the document which has the effect of a gift cannot be given effect to. Therefore, it is not unusual to register a composite document which has the characteristics of a gift as well as a will. Consequently, the mere registration of document cannot have any determining effect in arriving at a conclusion that it is not a will. The document which may serve as evidence of the gift, falls within the sweep of Section 17 of the

[20] (2012) 13 SCC 80

> *Registration Act. Where an instrument evidences creation, declaration, assignment, limitation or extinction of any present or future right, title or interest in immovable property or where any instrument acknowledges the receipt of payment of consideration on account of creation, declaration, assignment, limitation or extinction of such right, title or interest, in those cases alone the instrument or receipt would be compulsorily registerable under Section 17(1)(b) or (c) of the Registration Act, 1908. A "will" need not necessarily be registered. But the fact of registration of a "will" will not render the document a settlement. Exhibit A-1 was registered because of the composite character of the document."*

14.1. Thus, the legal position is well settled. There must be a transfer of interest in praesenti for a gift or a settlement and in case of postponement of such transfer until the death of the testator, the document is to be treated as a will. The fact that a document is registered, cannot be the sole ground to discard the contents and to treat the document as a gift, just because the law does not require a will to be registered. The act and effect of registration depends upon the nature of the document, which is to be ascertained from a wholesome reading of the recitals. The nomenclature given to the document is irrelevant. The contents of the document have to be read as a whole and understood, while keeping in mind the object and intent of the testator. What is not to be forgotten is that in case of a gift, it is a gratuitous grant by the owner to another person; in case of a settlement, the consideration is the mutual love, care, affection and satisfaction, independent and resulting out of the preceding factors; in case of a will, it is declaration of the intention of the testator in disposition of his property in a particular manner. Therefore, even when there is any ambiguity in understanding the nature of the documents from its contents, we are of the view that the subsequent conduct of the executant must also be considered to take a decision. It is possible that in a

single document, there could be multiple directions in different clauses though seemingly repugnant but in reality, it could only be ancillary or a qualification of the earlier clause. Therefore, the document must be harmoniously read to not only understand the true intent and purport, but also to give effect to each and every word and direction.

15. In light of the aforesaid legal principles, let us examine Ext.A1 document dated 26.06.1985 executed by Defendant No.1 / father in favour of Respondent No.1 / plaintiff (daughter). It was categorically stated therein that the suit schedule property belonged to Defendant No.1/ father and he had been in possession and enjoyment of the same with full rights. The following statements in the document are important in determining the nature of the document:

> *"In consideration of my love and affection towards you, the schedule below properties are herein conveyed to you, for your subsistence and for residence after constructing a house, subject to the conditions herein below. Till my lifetime, I shall be in possession of the schedule properties and shall take the yields from it and if necessary I shall have the right to pledge the schedule properties for a sum not exceeding Rs.2000/- and to avail loan on that basis. After my lifetime, Janaki Amma, who is my wife and your mother, shall have the right to possess the property and take income from the property and utilize the same according to the will and wishes of the said Janaki Amma till the end of her lifetime and you have no right to restrain the said rights of Janaki Amma for any reasons. Now onwards, you have every right to make the necessary constructions in the scheduled property, pay taxes to the Government and obtain Purchase Certificate for the same. In case of creation of any encumbrances by me as aforesaid, the same should be cleared by you and I hereby accord my consent for you to possess and enjoy the scheduled property along with the usufructuaries situated in it and reside therein by constructing a house after the lifetime of me and Janaki Amma with all freedom including the rights to transfer the same. The scheduled property is included in Purchase Certificate No. 199 and having a value of Rs. 8000/- Rupees Eight Thousand Only including the above said amount and there is no other encumbrances over the property and accordingly I hereby assign all the*

rights and liabilities over the scheduled property to you after excluding the rights of taking and enjoying the income from the properties and my right to create encumbrances as aforesaid."

15.1. The above contents of the document would clearly reveal that there is consideration, conveyance, imposition of conditions and reservation of life interest by the executant, Defendant No.1/father satisfying the requirements to classify the document as a "settlement". The conditions to construct a house, to reside in the house, retention of life interest, the right of mortgage up to a sum of Rs.2,000/- and avail loan on that basis, cannot alter the gift, by which in unequivocal terms, the property stood vested in the plaintiff by earlier part. The condition, creating a life interest in favour of father and mother and the restriction regarding mortgage, would further imply that Defendant No.1 had ceased to be the absolute owner. The postponement of delivery by creation of life interest is not an anathema to absolute conveyance in praesenti. It is pertinent to mention here that Defendant No.1 has not only expressed that the property is being conveyed on account of love and affection, by vesting the rights in the property in praesenti in favour of the plaintiff, but also enabled the plaintiff to construct the house from then on and no outer time has been fixed for the construction of the house. Since the life interest was reserved in favour of Defendant No.1 and his wife, Defendant No.1 was only holding an ostensible possession and ownership as contemplated under Section 41, while the true owner being the plaintiff, after the clear conveyance by earlier clause.

15.2. In the present case, the doubt has arisen in view of three conflicting sentences, namely "*In consideration of my love and affection towards you, the schedule below properties are herein conveyed to you, for your subsistence and for residence after constructing a house", "Now onwards, you have every right to make the necessary constructions in the scheduled property, pay taxes to the Government and obtain Purchase Certificate for the same" and " I hereby accord my consent for you to possess and enjoy the scheduled property along with the usufructuaries situated in it and reside therein by constructing a house after the lifetime of me and Janaki Amma with all freedom including the rights to transfer the same".* Seemingly, the first part affirms the conveyance in consideration of love and affection. The second part enables the plaintiff to commence the construction at any time after the execution of the instrument, confirming that there is an absolute conveyance. We have already held that reservation of life interest is permissible in a disposition by settlement and such retention cannot affect the rights already vested. That apart, the executant has limited his right to mortgage the property only up to a particular sum and has also permitted the plaintiff to mutate the records. Though the later part on the first blush would look to be a contradiction, in reality, it is not. The third part, according to us, is not repugnant to the earlier part and is only an ancillary clause that qualifies the plaintiff to reside in the property after the cessation of the life interest of both the executant and his wife with all freedom including the right of alienation, which even without any specific mention is likely to happen, in view of the clear disposition and vesting in the earlier part.

The direction in the third part enabling the plaintiff to reside in the property is again a qualifying clause. Even assuming for a moment that the third part is repugnant to earlier part, by postponing the rights granted earlier until the death of Defendant No.1 and his wife, the same only has to be discarded or treated as void as per Section 11 of the Transfer of Property Act and the earlier clause will prevail over the later clause. At this juncture, it will be useful to refer to the following judgments:

(i) Mauleshwar Mani v. Jagdish Prasad[21]

> ***"10.*** *In Ramkishorelal v. Kamalnarayan [AIR 1963 SC 890 : 1963 Supp (2) SCR 417] it was held that in a disposition of properties, if there is a clear conflict between what is said in one part of the document and in another where in an earlier part of the document some property is given absolutely to one person but later on, other directions about the same property are given which conflict with and take away from the absolute title given in the earlier portion, in such a conflict the earlier disposition of absolute title should prevail and the later directions of disposition should be disregarded. In Radha Sundar Dutta v. Mohd. Jahadur Rahim [AIR 1959 SC 24 : 1959 SCR 1309] it was held where there is conflict between the earlier clause and the later clauses and it is not possible to give effect to all of them, then the rule of construction is well established that it is the earlier clause that must override the later clauses and not vice versa. In Rameshwar Bakhsh Singh v. Balraj Kuar [AIR 1935 PC 187 : 1935 All LJ 1133] it was laid down that where an absolute estate is created by a will in favour of devisee, the clauses in the will which are repugnant to such absolute estate cannot cut down the estate; but they must be held to be invalid.*
>
> ***11.*** *From the decisions referred to above, the legal principle that emerges, inter alia, are:*
>
> *(1) where under a will, a testator has bequeathed his absolute interest in the property in favour of his wife, any subsequent bequest which is repugnant to the first bequeath would be invalid; and*
>
> *(2) where a testator has given a restricted or limited right in his property to his widow, it is open to the testator to bequeath the property after the death of his wife in the same will.*

[21] (2002) 2 SCC 468 : 2002 SCC OnLine SC 113

12. *In view of the aforesaid principles that once the testator has given an absolute right and interest in his entire property to a devisee it is not open to the testator to further bequeath the same property in favour of the second set of persons in the same will, a testator cannot create successive legatees in his will. The object behind is that once an absolute right is vested in the first devisee the testator cannot change the line of succession of the first devisee. Where a testator having conferred an absolute right on anyone, the subsequent bequest for the same property in favour of other persons would be repugnant to the first bequest in the will and has to be held invalid. In the present case the testator Jamuna Prasad under the will had bequest his entire estate, movable and immovable property including the land under self-cultivation, house and groves etc. to his wife Smt Sona Devi and thereafter by subsequent bequest the testator gave the very same properties to nine sons of his daughters, which was not permissible. We have already recorded a finding that under the will Smt Sona Devi had got an absolute estate and, therefore, subsequent bequest in the will by Jamuna Prasad in favour of the nine daughters' sons was repugnant to the first bequest and, therefore, invalid. We are, therefore, of the view that once the testator has given an absolute estate in favour of the first devisee it is not open to him to further bequeath the very same property in favour of the second set of persons."*

(ii) Sadaram Suryanarayana v. Kalla Surya Kantham[22]

"20. *Time now to refer to the provisions of the Succession Act, 1925, Chapter VI whereof deals with construction of wills. Some of the principles of interpretation of wills that are statutorily recognised in Chapter VI need special notice. For instance, Section 84 provides that if a clause is susceptible of two meanings, according to one of which it has some effect and according to the other it can have none, the former shall be preferred. So also, Section 85 provides that no part of a will shall be rejected as destitute of meaning if it is possible to put a reasonable construction on the same.*

21. *Section 86 provides that:*

"86. Interpretation of words repeated in different parts of will.—If the same words occur in different parts of the same will, they shall be taken to have been used everywhere in the same sense, unless a contrary intention appears."

Section 87 makes it clear that the intention of the testator shall not be set aside merely because it cannot take effect to the full extent, and that effect is to be given to it as far as possible. Section 88 provides that if there are two clauses of gift in a

[22] (2010) 13 SCC 147 : (2010) 4 SCC (Civ) 812 : 2010 SCC OnLine SC 1198

will, which are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

22. *It is evident from a careful reading of the provisions referred to above that while interpreting a will, the courts would as far as possible place an interpretation that would avoid any part of a testament becoming redundant. So also the courts will interpret a will to give effect to the intention of the testator as far as the same is possible. Having said so, we must hasten to add that the decisions rendered by the courts touching upon interpretation of the wills are seldom helpful except to the extent the same recognise or lay down a proposition of law of general application. That is so because each document has to be interpreted in the peculiar circumstances in which the same has been executed and keeping in view the language employed by the testator. That indeed is the requirement of Section 82 of the Succession Act also inasmuch as it provides that meaning of any clause in a will must be collected from the entire instrument and all parts shall be construed with reference to each other.*

23. *Coming then to the facts of the case at hand it is evident from a careful reading of Clause 6 of the will extracted above that the same makes an unequivocal and absolute bequest in favour of the daughters of the testatrix. The use of words like "absolute rights of sale, gift, mortgage, etc." employed by the testatrix make the intention of the testatrix abundantly clear. The learned counsel for the plaintiff-respondents herein also did not have any quarrel with the proposition that the testatrix had in no uncertain terms made an absolute bequest in favour of her daughters. What was argued by him was that the bequest so made could be treated as a life estate not because the testament stated so but because unless it is so construed the second part of Clause 6 by which the female offspring of the legatees would get the property cannot take effect. It was on that premise contended that the absolute estate of Smt Sadaram Appalanarasamma ought to be treated only as a life estate. The contention though attractive on first blush, does not stand closer scrutiny. We say so because the ultimate purpose of interpretation of any document is to discover and give effect to the true intention of the executor, in the present case the testatrix.*

24. *We are not here dealing with a case where the testatrix has in one part of the will bequeathed the property to A while the same property has been bequeathed to B in another part. Had there been such a conflict, it may have been possible for the respondent-plaintiffs to argue that the latter bequest ought to take effect in preference to the former. We are on the contrary dealing with a case where the intention of the testatrix to make an absolute bequest in favour of her daughters is unequivocal. Secondly, the expression "after demise of my daughters the retained and remaining properties shall devolve on their female children only" does not*

stricto sensu amount to a bequest contrary to the one made earlier in favour of the daughters of the testatrix.

25. *The expression extracted above does not detract from the absolute nature of the bequest in favour of the daughters. All that the testatrix intended to achieve by the latter part of Clause 6 was the devolution upon their female offspring all such property as remained available in the hands of the legatees at the time of their demise. There would obviously be no devolution of any such property upon the female offspring in terms of the said clause if the legatees decided to sell or gift the property bequeathed to them as indeed they had every right to do under the terms of the bequest. Seen thus, there is no real conflict between the absolute bequest which the first part of Clause 6 of the will makes and the second part of the said clause which deals with devolution of what and if at all anything that remains in the hands of the legatees.*

26. *The two parts of Clause 6 operate in different spheres, namely, one vesting absolute title upon the legatees with rights to sell, gift, mortgage, etc. and the other regulating devolution of what may escape such sale, gift or transfer by them. The latter part is redundant by reason of the fact that the same was repugnant to the clear intention of the testatrix in making an absolute bequest in favour of her daughters. It could be redundant also because the legatees exercised their rights of absolute ownership and sale thereby leaving nothing that could fall to the lot of the next generation, females or otherwise. All told, the stipulation made in the second part of Clause 6 did not in the least affect the legatees being the absolute owners of the property bequeathed to them. The corollary would be that upon their demise the estate owned by them would devolve by the ordinary law of succession on their heirs and not in terms of the will executed by the testatrix".*

(iii) Madhuri Ghosh v. Debobroto Dutta[23]

"7. *Shri Dhruv Mehta, learned Senior Counsel appearing on behalf of the appellants, contended before us that first and foremost there was no pleading of life interest by the defendants and that therefore, this question ought not to have been raised in the second appeal. He went on to state that it was clear that a will must first be read as a whole, and if various parts of it appear to conflict with each other, they ought to be harmoniously construed. In the event that this cannot be done, then if there is an absolute bequest in an earlier part of the will, which cannot be reconciled with a subsequent bequest of the same property in a latter part of the will, the subsequent portion of the will, will have to be declared as invalid. For this proposition, he cited three judgments of this Court before us. He also argued that it is well settled that if a will contains one portion which is illegal and another*

[23] (2016) 10 SCC 805 : (2017) 1 SCC (Civ) 208 : 2016 SCC OnLine SC 1271 at page 809

which is legal, and the illegal portion can be severed, then the entire will need not be rejected, and the legal portion can be enforced. He also argued that in any case Section 14 of the Hindu Succession Act, 1956 would come to the rescue even if a life interest was created in favour of the widow, inasmuch as the deceased had really provided for her share in the said immovable property in lieu of maintenance.

……..

***11.** However, it remains to consider the argument on behalf of the respondent that the will should be read as a whole and that the testator's intention should be given effect so that the grandchildren are "not on the road" as is argued by the counsel for the respondents. In law, the position is that where an absolute bequest has been made in respect of certain property to certain persons, then a subsequent bequest made qua the same property later in the same will to other persons will be of no effect. This is clearly laid down in Ramkishorelal v. Kamal Narayan [Ramkishorelal v. Kamal Narayan, 1963 Supp (2) SCR 417 : AIR 1963 SC 890] as follows: (AIR pp. 893-94, para 12)*

"12. The golden rule of construction, it has been said, is to ascertain the intention of the parties to the instrument after considering all the words, in their ordinary, natural sense. To ascertain this intention the court had to consider the relevant portion of the document as a whole and also to take into account the circumstances under which the particular words were used. Very often the status and the training of the parties using the words have to be taken into consideration. It has to be borne in mind that very many words are used in more than one sense and that sense differs in different circumstances. Again, even where a particular word has, to a trained conveyancer, a clear and definite significance and one can be sure about the sense in which such conveyancer would use it, it may not be reasonable and proper to give the same strict interpretation of the word when used by one who is not so equally skilled in the art of conveyancing. Sometimes it happens in the case of documents as regards disposition of properties, whether they are testamentary or non-testamentary instruments, that there is a clear conflict between what is said in one part of the document and in another. A familiar instance of this is where in an earlier part of the document some property is given absolutely to one person but later on, other directions about the same property are given which conflict with and take away from the absolute title given in the earlier portion. What is to be done where this happens? It is well settled that in case of such a conflict the earlier disposition of absolute title should prevail and the later directions of disposition should be disregarded as unsuccessful attempts to restrict the title already given. (See Sahebzada Mohammad Kamgarh Shah v. Jagdish Chandra Deo Dhabal Deb [Sahebzada Mohammad Kamgarh Shah v. Jagdish Chandra Deo Dhabal Deb, AIR 1960 SC 953] , AIR p. 957.) It is clear, however, that an attempt should always be made to read the two parts of the document harmoniously, if possible. It is only when this is not possible e.g. where an absolute title is given is in clear and unambiguous terms and the later provisions trench on the same, that the later provisions have to be held to be void."

12. *This judgment was referred to with approval and followed in Mauleshwar Mani v. Jagdish Prasad [Mauleshwar Mani v. Jagdish Prasad, (2002) 2 SCC 468] as follows: (SCC p. 473, paras 9-11)*

"9. The next question that arises for consideration is, the validity of the second part of the will whereby and whereunder the testator gave the very same property to nine sons of his daughters.

10. In Ramkishorelal v. Kamal Narayan [Ramkishorelal v. Kamal Narayan, 1963 Supp (2) SCR 417 : AIR 1963 SC 890] it was held that in a disposition of properties, if there is a clear conflict between what is said in one part of the document and in another where in an earlier part of the document some property is given absolutely to one person but later on, other directions about the same property are given which conflict with and take away from the absolute title given in the earlier portion, in such a conflict the earlier disposition of absolute title should prevail and the later directions of disposition should be disregarded. In Radha Sundar Dutta v. Mohd. Jahadur Rahim [Radha Sundar Dutta v. Mohd. Jahadur Rahim, AIR 1959 SC 24] it was held where there is conflict between the earlier clause and the later clauses and it is not possible to give effect to all of them, then the rule of construction is well established that it is the earlier clause that must override the later clauses and not vice versa. In Rameshwar Bakhsh Singh v. Balraj Kuar [Rameshwar Bakhsh Singh v. Balraj Kuar, 1935 SCC OnLine PC 41 : AIR 1935 PC 187] it was laid down that where an absolute estate is created by a will in favour of devisee, the clauses in the will which are repugnant to such absolute estate cannot cut down the estate; but they must be held to be invalid.

11. From the decisions referred to above, the legal principle that emerges, inter alia, are:

(1) where under a will, a testator has bequeathed his absolute interest in the property in favour of his wife, any subsequent bequest which is repugnant to the first bequeath would be invalid; and

(2) where a testator has given a restricted or limited right in his property to his widow, it is open to the testator to bequeath the property after the death of his wife in the same will."

13. *Needless to add, it is settled law that the fact that Clause 4 has been declared by us to be of no effect would not impact the bequest made under Clause 2, and the rest of the will, therefore, would have to be given effect to. In view of the aforesaid, we do not deem it necessary to go into the other questions raised by Shri Dhruv Mehta, learned Senior Counsel, namely, the absence of pleading and the effect of Section 14 of the Hindu Succession Act, 1956. The appeal is, accordingly allowed and the judgment [Debobroto Dutta v. Madhuri Ghosh, 2013 SCC OnLine All 13769 : (2013) 6 All LJ 6] of the High Court is set aside."*

(iv) Bharat Sher Singh Kalsia v. State of Bihar[24]

> ***"26.*** *Thus, the Court is required to interpret harmoniously as also logically the effect of a combined reading of the afore-extracted clauses. As such, our endeavour would, in the first instance, necessarily require us to render all three effective and none otiose. In order to do so, this Court would test as to whether all the three clauses can independently be given effect to and still not be in conflict with the other clauses.*
>
> ***32.*** *We are of the considered opinion that all three clauses are capable of being construed in such a manner that they operate in their own fields and are not rendered nugatory. That apart, we are mindful that even if we had perceived a conflict between Clauses 3 and 11, on the one hand, and Clause 15 on the other, we would have to conclude that Clauses 3 and 11 would prevail over Clause 15 as when the same cannot be reconciled, the earlier clause(s) would prevail over the latter clause(s), when construing a deed or a contract. Reference for such proposition is traceable to Forbes v. Git [Forbes v. Git, (1922) 1 AC 256 (PC)] , ["The principle of law to be applied may be stated in few words. If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause is to be rejected as repugnant and the earlier clause prevails. In this case the two clauses cannot be reconciled and the earlier provision in the deed prevails over the later. Thus, if A covenants to pay 100 l. and the deed subsequently provides that he shall not be liable under his covenant, that later provision is to be rejected as repugnant and void, for it altogether destroys the covenant. But if the later clause does not destroy but only qualifies the earlier, then the two are to be read together and effect is to be given to the intention of the parties as disclosed by the deed as a whole." (AC p. 259)(emphasis in original)], as approvingly taken note of by a three-Judge Bench of this Court in Radha Sundar Dutta v. Mohd. Jahadur Rahim [Radha Sundar Dutta v. Mohd. Jahadur Rahim, 1958 SCC OnLine SC 38: AIR 1959 SC 24] . However, we have been able, as noted above, to reconcile the three clauses in the current scenario."*

16. In the instant case, the clear and unambiguous language employed in the first part, reveals a clear disposition by Defendant No.1/father to the plaintiff, by only retaining a life interest in the second part. Therefore, the instrument of 1985, according to us, is a gift by settlement. Ascertainment of the nature of the

[24] (2024) 4 SCC 318 : 2024 SCC OnLine SC 87 at page 327

document is different from validity. We have already held that Defendant No.1 was only holding an ostensible possession by way of life interest. Though, in cases of settlement, possession is deemed to be transferred along with the title, since we have held that there is an element of gift in every settlement, we deem it necessary in the facts of the present case to ponder further and examine, whether the gift was accepted and acted upon.

17. In this connection, we may refer to the following decisions, in which the effect of non-acceptance during the life time of the donor has been discussed:

(i) Naramadaben Maganlal Thakker v. Pranjivandas Maganlal Thakker & Ors[25]

> *"5. Section 122 of the Transfer of Property Act, 1882 (for short, "the TP Act") defines 'gift' to mean the transfer of certain existing moveable or immovable 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.*
>
> *6. Acceptance by or on behalf of the donee must be made during the lifetime 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. The question is whether the gift in question had become complete under Section 123 of the TP Act? It is seen from the recitals of the gift deed that Motilal Gopalji gifted the property to the respondent. In other words, it was a conditional gift. There is no recital of acceptance nor is there any evidence in proof of acceptance. Similarly, he had specifically stated that the property would remain in his possession till he was alive. Thereafter, the gifted property would become his property and he was entitled to collect mesne profits in respect of the existing rooms throughout his life. The gift deed conferred only limited right upon the respondent- donee. The gift was to become operative after the death of the donor and he was to be entitled to have the right to transfer the property absolutely by way of gift or he would be entitled to collect the mesne profits. It would thus be seen that the donor had executed a conditional gift deed and retained the possession and enjoyment of the property during his lifetime. The*

[25] (1997) 2 SCC 255

recitals in the cancellation deed is consistent with the recitals in the gift deed. He had expressly stated that the respondent had cheated him and he had not fulfilled the conditions subject to which there was an oral understanding between them. Consequently, he mentioned that the conditional gift given to him was cancelled. He also mentioned that the possession and enjoyment remained with him during his lifetime. He stated, "I have to execute immediately this deed of cancelling the conditional gift deed between us. Therefore I hereby cancel the conditional gift deed dated 15-5-1965 of Rs 9000 in words rupees nine thousand presented at Serial No. 2153 on 15-5-1965 in the Office of the Sub-Registrar, Baroda for registration. Therefore, the said conditional gift deed dated 15-5-1965 is hereby cancelled and becomes meaningless. The property under the conditional gift has not been and is not to be transferred in your name". Thus he expressly made it clear that he did not hand over the possession to the respondent nor did the gift become complete during the lifetime of the donor. Thus the gift had become ineffective and inoperative. It was duly cancelled. The question then is whether the appellant would get the right to the property? It is not in dispute that after the cancellation deed dated 9-6-1965 came to be executed, duly putting an end to the conditional gift deed dated 15-5-1965, he executed his last Will on 17-5-1965 and died two days thereafter."

(ii) Khursida Begum (D) by Lrs vs. Mohammad Farooq (D) by Lrs[26]

"17. ...gift of immovable property is not complete unless the donor parts with the possession and donee enters into possession but if the property is in occupation of tenants, gift can be completed by delivery of title deed or by request to tenants to attorn to the done or by mutation."

(iii) Sarojini Amma v. Velayudha Pillai Sreekumar[27]

"14. Gift means to transfer certain existing moveable or immoveable property voluntarily and without consideration by one person called the donor to another called the donee and accepted by or on behalf of the donee as held by the Supreme Court in Naramadaben Maganlal Thakker Vs. Pranivandas Maganlal Thakker & Ors. As further held by this Court in Naramadaben Maganlal Thakker (supra) "It would 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 done becomes absolute owner of the property.

15. A conditional gift with no recital of acceptance and no evidence in proof of acceptance, where possession remains with the donor as long as he is alive, does

[26] C.A. No. 2845-2845/2006
[27] C.A. No 10785/2018

not become complete during lifetime of the donor. When a gift is incomplete and title remains with the donor the deed of gift might be cancelled.

..

18. ... there is no provision in law that ownership in property cannot be gifted without transfer of possession of such property. However, the conditions precedent of a gift as defined in Section 122 of the Transfer of Property Act must be satisfied. A gift is transfer of property without consideration.

19. In the instant case, admittedly, the deed of transfer was executed for consideration and was in any case conditional subject to the condition that the donee would look after the petitioner and her husband and subject to the condition that the gift would take effect after the death of the donor. We are thus constrained to hold that there was no completed gift of the property in question by the appellant to the respondent and the appellant was within her right in cancelling the deed."

18. The ratio in the above judgments would have to be applied considering the facts of the case. It is settled law that delivery of possession is not *sine qua non* to validate a gift or settlement. Therefore, for the document to be valid, it is sufficient if it is proved that the same was acted upon during the life time of the executant. In the present case, it is not in dispute that the plaintiff has registered the instrument. Such registration by the plaintiff is possible only if the document was handed over by Defendant No.1. The factum of acceptance can be derived from the conduct of the parties. This Court in the judgment in *Daulat Singh (Supra)* has held that the possession of the gift itself would amount to acceptance. The plaintiff, when the suit was filed, was in possession of the original title deed. The stand of the defendants that the plaintiff took away the document later is unbelievable. Even assuming that the original deed was returned after registration, the fact that it was already acted upon, cannot be altered. Once a gift

has been acted upon, the same cannot be unilaterally cancelled. As already held by us, delivery of possession is only one of the methods to prove acceptance and not the sole method. The receipt of the original document by the plaintiff and registration of the same, would amount to acceptance of the gift and the transaction satisfies the requirement of Section 122 of the Transfer of Property Act, 1882. The creation of life interest with rights to enjoy the income from the property is a plausible and justifiable reason for the plaintiff not to reside in the premises. Once the document is declared as "gift", Defendant No.1 had no right to cancel the same unilaterally and the Sub Registrar had no right to register the cancellation deed. Once the document is categorized as a gift, in the absence of any clause or reservation to cancel, the executant has no right to cancel the same. The reasons for cancellation or revocation of gift have to be proved in a court of law. Therefore, according to us, the unilateral cancellation of the document is void and as a natural corollary, the sale deed dated 19.10.1993 executed by Defendant No.1 / father also, is invalid.

19. The facts on record also reveal that the other family members, namely, Defendant Nos.3 and 4 supported the case of Respondent No.1/plaintiff cannot be ignored. Furthermore, the recitals in the document apparently demonstrate and satisfy the requirement to classify the document as a "settlement".

20. In view of the foregoing discussion, we find that the trial Court as well as the First Appellate Court had erroneously come to the conclusion that Ext.A1 document was a Will, without appreciating the law. However, the High Court

rightly set aside the concurrent judgments of the Courts below by treating the document as settlement in the judgment impugned herein.

21. Accordingly, this appeal is dismissed, confirming the judgment passed by the High Court. The parties shall bear their own costs. Connected Miscellaneous Application(s), if any, shall stand disposed of.

…….J.
[J.B. Pardiwala]

……J.
[R. Mahadevan]

NEW DELHI;
MARCH 24, 2025.