

# **N.Thajudeen vs Tamil Nadu Khadi And Village Industries ... on 24 October, 2024**

**Author: Pankaj Mithal**

**Bench: Bela M. Trivedi, Pankaj Mithal**

2024 INSC 817

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 6333 OF 2013

N. THAJUDEEN

...APPELLANT(S)

VERSUS

TAMIL NADU KHADI AND VILLAGE  
INDUSTRIES BOARD

...RESPONDENT(S)

JUDGMENT

PANKAJ MITHAL, J.

1. Ms. T. Archana, learned counsel for the appellant and Mr. Vipin Kumar Jai, learned counsel for the respondent were heard at length.

2. The plaintiff-respondent, Tamil Nadu Khadi and Village Industries Board, instituted a suit for declaration of its title over the suit property measuring about 3750 square feet comprising in Survey No. 16/1 situated in Kotlambakkam Panchayat, District Cuddalore and for recovery of its possession. The said suit was filed on the basis of a registered gift deed dated 05.03.1983 allegedly executed by the defendant-appellant which was said to have been accepted by the plaintiff-respondent.

3. The suit was dismissed by the Trial Court vide Judgment and order dated 23.08.1994 primarily on the ground that the alleged gift deed was not valid as it was never accepted and acted upon. Aggrieved by the aforesaid decision, the plaintiff- respondent preferred an appeal before the District Judge which was allowed vide Judgment and order dated 05.08.1997. The appellate Court reversed the judgment and order of the court of first instance and decreed the suit. The second appeal filed by the defendant-appellant was dismissed on 11.01.2011 by the High Court. In decreeing the suit, the gift was held to be valid with a finding that it was acted upon and accepted and as such in the absence of any clause in the gift deed authorizing revocation, it could not have been revoked as

alleged vide revocation deed dated 17.08.1987.

4. The delay of 207 days in filing the Special Leave Petition was condoned and the leave to appeal was granted vide order dated 05.08.2013. Thus, the civil appeal has come up for consideration before us.

5. The moot question which arises for our consideration in this appeal is whether the registered gift deed dated 05.03.1983 was duly acted upon and accepted and is a valid document which continue to exist despite its revocation on 17.08.1987 as the donor had not reserved the right to revoke the same.

6. The registered gift deed dated 05.03.1983 is Exhibit A-1. It has been executed by the defendant-appellant. A perusal of the gift deed reveals that the donor has gifted the suit property in favour of the plaintiff-respondent for the purposes of manufacturing of Khadi Lungi and Khadi Yarn etc., with the condition that the plaintiff-respondent shall not transfer the suit property for its own self-interest. The gift deed stipulates that neither the donor nor his legal heirs have any right or interest or will continue to have any right or interest in the suit property from the time and date of the gift deed. The gift deed further states that the gift is with full consent of the donor and that from the date of the gift itself, the plaintiff-respondent accepts the suit property for the use as aforesaid.

7. A simple and complete reading of the aforesaid gift deed would reveal that the gift is absolute with no right reserved for its revocation in any contingency. The only purpose stipulated therein is that the property gifted shall be used for manufacturing Khadi Lungi and Khadi Yarn etc.

8. It is worth noting that the gift deed itself states that from the date of the gift deed the suit property is accepted by the plaintiff-respondent for the purpose of manufacturing Khadi Lungi and Khadi Yarn etc., which duly proves that the gift was accepted. It was also acted upon as pursuant thereof the plaintiff-respondent had applied for mutation to the revenue authorities. In addition to the above, the plaintiff-respondent issued a memo on 16.09.1983, Exhibit A-4 which also proves that the possession of the suit property was taken over and that it proceeded to raise construction thereon.

9. Exhibits A-2 to A-4 prove that the possession of the suit property was taken over by the plaintiff-respondent on the date of the gift itself which is sufficient evidence that the gift was acted upon and accepted by the plaintiff-respondent. The plaintiff-respondent, pursuant to the aforesaid gift deed and its acceptance has even applied to the revenue authorities for the mutation of its name which further fortifies the fact that the gift was duly accepted.

10. Considering the above, in view of the findings recorded by the first appellate Court and the High Court that the gift deed was duly acted upon and accepted by the plaintiff-respondent, the conclusion is that the said gift deed cannot be held to be invalid for want of acceptance. Thus, on the basis of the aforesaid gift deed, the plaintiff-respondent acquired absolute right and title over the suit property.

11. Now the question arises as to whether the aforesaid gift deed has been validly revoked vide revocation deed dated 17.08.1987, and if so, what would be its impact upon the rights of the plaintiff-respondent in respect of the suit property.

12. No doubt, the gift validly made can be suspended or revoked under certain contingencies but ordinarily it cannot be revoked, more particularly when no such right is reserved under the gift deed. In this connection, a reference may be made to the provisions of Section 126 of the Transfer of Property Act, 1882 which provides that a gift cannot be revoked except for certain contingencies enumerated therein.

13. It is important to reproduce Section 126 of the Act, which reads as follows:

“126. When gift may be suspended or revoked.-

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

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

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.” Hereinafter referred to as ‘the Act’

14. Section 126 of the Act is drafted in a peculiar way in the sense that it contains the exceptions to the substantive law first and then the substantive law. The substantive law as is carved out from the simple reading of the aforesaid provision is that a gift cannot be revoked except in the cases mentioned earlier. The said exceptions are three in number; the first part provides that the donor and donee may agree for the suspension or revocation of the gift deed on the happening of any specified event which does not depend on the will of the donor. Secondly, a gift which is revocable wholly or in part with the agreement of the parties, at the mere will of the donor is void wholly or in part as the case may be. Thirdly, a gift may be revoked if it were in the nature of a contract which could be rescinded.

15. In simpler words, ordinarily a gift deed cannot be revoked except for the three contingencies mentioned above. The first is where the donor and the donee agree for its revocation on the happening of any specified event. In the gift deed, there is no such indication that the donor and donee have agreed for the revocation of the gift deed for any reason much less on the happening of any specified event. Therefore, the first exception permitting revocation of the gift deed is not attracted in the case at hand. Secondly, a gift deed would be void wholly or in part, if the parties agree that it shall be revocable wholly or in part at the mere will of the donor. In the present case,

there is no agreement between the parties for the revocation of the gift deed wholly or in part or at the mere will of the donor. Therefore, the aforesaid condition permitting revocation or holding such a gift deed to be void does not apply. Thirdly, a gift is liable to be revoked in a case where it is in the nature of a contract which could be rescinded. The gift under consideration is not in the form of a contract and the contract, if any, is not liable to be rescinded. Thus, none of the exceptions permitting revocation of the gift deed stands attracted in the present case. Thus, leading to the only conclusion that the gift deed, which was validly made, could not have been revoked in any manner. Accordingly, revocation deed dated 17.08.1987 is void ab initio and is of no consequence which has to be ignored.

16. The non-utilisation of the suit property for manufacturing Khadi Lungi and Khadi Yarns etc., the purpose set out in the gift deed, and keeping the same as vacant may be a disobedience of the object of the gift but that by itself would not attract the power to revoke the gift deed. There is no stipulation in the gift deed that if the suit property is not so utilised, the gift would stand revoked or would be revoked at the discretion of the donor.

17. In the end, we come to another limb of the argument that the suit as filed by the plaintiff-respondent is hit by limitation and as such the first appellate court and the High Court manifestly erred in decreeing the same.

18. In context with the point of limitation, the court of first instance has formulated issue no. 4 which reads as under:

“Whether the suit is barred by limitation?”

19. Admittedly, the present suit for declaration and recovery of possession of the suit property was filed by the plaintiff-respondent on 25.09.1991. The court of first instance held that as the same was not filed within three years from the date of revocation of the gift deed, i.e., 17.08.1987 (Exhibit B-2), the suit is barred by limitation.

20. Once it is held that the gift deed was validly executed resulting in the absolute transfer of title in favour of the plaintiff-respondent, the same is not liable to be revoked, and as such the revocation deed is meaningless especially for the purposes of calculating the period of limitation for instituting the suit.

21. The limitation for a suit for declaration is provided under Part III of the Schedule to the Limitation Act, 1963. It is governed by Articles 56-58 of the Schedule to the Limitation Act. Under all the aforesaid three Articles, the limitation for a suit for declaration is three years. The limitation provided under Articles 56 and 57 of the Schedule to the Limitation Act is in respect to declaration regarding forgery of an instrument issued or registered and validity of the adoption deed. Article 58 of the Schedule to the Limitation Act prescribes the limitation for decree of declaration of any other kind and therefore, the suit for declaration of title would essentially fall under Article 58 of the Schedule to the Limitation Act and the limitation would be three years from the date when the right to sue first accrues.

22. In the case at hand, the suit is not simply for the declaration of title rather it is for a further relief for recovery of possession. It is to be noted that when in a suit for declaration of title, a further relief is claimed in addition to mere declaration, the relief of declaration would only be an ancillary one and for the purposes of limitation, it would be governed by the relief that has been additionally claimed. The further relief claimed in the suit is for recovery of possession based upon title and as such its limitation would be 12 years in terms of Article 65 of the Schedule to the Limitation Act.

23. In C. Mohammad Yunus vs. Syed Unnissa And Ors<sup>2</sup> it has been laid down that in a suit for declaration with a further relief, the limitation would be governed by the Article governing the suit for such further relief. In fact, a suit for a declaration of title to immovable property would not be barred so long as the right to such a property continues and AIR 1961 SC 808 subsists. When such right continues to subsist, the relief for declaration would be a continuing right and there would be no limitation for such a suit. The principle is that the suit for a declaration for a right cannot be held to be barred so long as Right to Property subsist.

24. Even otherwise, though the limitation for filing a suit for declaration of title is three years as per Article 58 of the Schedule to the Limitation Act but for recovery of possession based upon title, the limitation is 12 years from the date the possession of the defendant becomes adverse in terms of Article 65 of the Schedule to the Limitation Act. Therefore, suit for the relief of possession was not actually barred and as such the court of first instance could not have dismissed the entire suit as barred by time.

25. No other point was raised and argued before us.

26. Thus, in the totality of the facts and circumstances of the case, we do not find any error or illegality on part of the first appellate court and the High Court in decreeing the suit of the plaintiff-respondent.

27. Accordingly, the appeal is dismissed as devoid of merit.

28. Pending application(s), if any, stands disposed of.

..... J.

(PANKAJ MITHAL) ..... J.

(UJJAL BHUYAN) NEW DELHI;

OCTOBER 24, 2024.