

December 2024

## **Revocation of gift deeds: The Supreme Court's interpretation of Section 126 of the Transfer of Property Act, 1882**

The Hon'ble Supreme Court of India ("Supreme Court") recently in *N. Thajudeen vs. Tamil Nadu Khadi and Village Industries Board*<sup>1</sup>, examined the questions around revocation of a gift deed *inter alia* in terms of Section 126 of the Transfer of Property Act, 1882 ("TOPA"). At the outset, the Hon'ble Supreme Court concluded that the gift deed in question: (a) was accepted by the donee as stated in the deed itself; (b) had no provisions to indicate of any agreement on its revocation under any circumstances or at will; and (c) was not in the form of a contract that could otherwise be rescinded. Accordingly, the test under Section 126 of TOPA were not satisfied for valid revocation, and the Supreme Court hence concluded that the revocation of the gift deed in the said matter was *void ab initio* and dismissed the appeal on that and other grounds.

### **Brief facts**

The appellant in this case ("Appellant") executed a Gift Deed dated March 5, 1983 ("Gift Deed") gifting a property situated in Cuddalore district of Tamil Nadu in favour of The Tamil Nadu Khadi and Village Industries Board ("Respondent"). In terms of the Gift Deed, the property was gifted for the purpose of manufacturing khadi-lungi, khadi yarn, etc, with the condition that the Respondent must not transfer the said suit property for its own self-interest. The Appellant executed a Revocation Deed dated August 17, 1987 ("Revocation Deed") revoking the gift made pursuant to the Gift Deed.

The Respondent filed a suit for declaration of title and recovery of possession of the said property, which was dismissed by the trial court on the ground that the Gift Deed was not valid as it was never accepted and acted upon. The Respondent preferred an appeal before the district court, which reversed the order of the trial court and decreed the suit. In decreeing the suit, the district court held that the gift had been accepted, acted upon, was valid and that in the absence of any clause in the Gift Deed authorising revocation, the Gift Deed could not have been revoked. The second appeal filed by the Appellant before the Madras High Court was dismissed. Thereafter, the Appellant filed a special leave petition before the Supreme Court.

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<sup>1</sup> Civil appeal no. 6333 of 2013

## Issues

The following substantive issues came up for consideration before the Supreme Court:

1. whether the Gift Deed was accepted and the gift valid? and
2. whether the Gift Deed had been validly revoked *vide* the Revocation Deed?

## Analysis and findings

On the first issue, the Supreme Court examined the Gift Deed and certain other facts to ascertain if the gift had been accepted. The Supreme Court noted that the Gift Deed itself stated that the gift stood accepted by the Respondent from the date of the Gift Deed and that the suit property had been accepted for the purpose of manufacturing khadi-lungi, khadi-yarn, etc. The Supreme Court determined that this was sufficient proof of acceptance. Further, the Supreme Court noted that pursuant to the acceptance of the Gift Deed, the Respondent had applied for the mutation of its name to the revenue authorities; and had also issued a memo on September 16, 1983 which proved that the Respondent had taken possession of the suit property and had proceeded to construct on it. Basis the aforesaid, the Supreme Court concluded that the gift had been accepted and duly acted upon by the Respondent and hence cannot be held to be invalid for want of acceptance.

On the second issue relating to the revocation, the Supreme Court noted from the facts that: (a) as per the Gift Deed, neither the Appellant nor his legal heirs would have or continue to have any right or interest in the suit property from the time and date of the Gift Deed; (b) the gift was with the Appellant's full consent and from the date of the gift itself; and (c) the Respondent had accepted the suit property for the use and purpose specified therein. Accordingly, the Supreme Court concluded that the gift was absolute with no right reserved for its revocation in any contingency.

Further the Supreme Court held that a gift that is validly made can be suspended or revoked only under certain contingencies as contemplated under Section 126 of the TOPA. As per Section 126 of the TOPA: (a) a gift may be suspended or revoked, as agreed between the donor and donee, on the happening of any specified event which does not depend on the will of the donor; and (b) 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. Section 126 of the TOPA also states that a gift in which the parties agree that it can be revoked at the mere will of the donor will be void wholly or in part.

The Supreme Court analysed whether any of the contingencies under Section 126 of the TOPA are applicable to the present case and noted that: (a) there is no indication under the Gift Deed that the Appellant and the Respondent have agreed for the revocation of the Gift Deed for any reason, much less on the happening of any specified event. Hence the first exception permitting revocation of the Gift Deed was not attracted; and (b) the Gift Deed was not in the form of a contract that could be rescinded and hence the second exception was also not attracted. Basis the above, the Supreme Court held that the revocation was invalid and the Revocation Deed was *void ab initio* and of no consequence.

Separately, the Supreme Court also held that the non-utilisation of the suit property for the stated purpose (i.e. manufacturing khadi-lungi, khadi-yarn, etc.), and keeping it vacant, while being a disobedience of the object of the gift, by itself would not attract the power to revoke the Gift Deed. Particularly, such revocation would not be valid if there is no stipulation in the Gift Deed that the gift could be revoked if the suit property was not utilised for the stated purpose.

In addition to the aforesaid substantive issues, the Supreme Court also considered the Appellant's argument that the suit filed by the Respondent is barred by limitation since it was not filed within 3 (three) years from the date of Revocation Deed. On this issue the Supreme Court held that once the Gift Deed was validly executed and had resulted in the absolute transfer of title in favour of the Respondent, the same was not liable to be revoked, and as such the Revocation Deed was meaningless especially for the purposes of calculating the period of limitation for instituting the suit. In the case at hand, the Supreme Court noted that the suit was not simply for the declaration of title but rather for a further relief for recovery of possession. Accordingly, the Supreme Court held that in a suit for declaration of title, when an additional relief is claimed beyond the mere declaration, the declaration of title becomes ancillary to the primary relief sought. For the purposes of limitation, the suit is governed by the limitation period applicable to the

additional relief claimed. As the further relief sought was for the recovery of possession based on title, the limitation would be 12 (twelve) years in terms of Article 65 of the Schedule to the Limitation Act, 1963. The Supreme Court hence held that the present suit was within the prescribed limitation period.

## Conclusion

The Supreme Court thus held that: (a) in the present case since the Gift Deed was accepted and acted upon, it could not be revoked since there was no express right to do revoke included in the deed; and (b) in any case the provisions under Section 126 of the TOPA were not satisfied for such revocation. Accordingly, the Revocation Deed was *void ab initio* and of no legal effect. The Supreme Court further noted that while the suit property was not used for the intended purpose (i.e. manufacturing of khadi goods), this by itself would not attract the power to revoke the Gift Deed since the Gift Deed did not stipulate revocation for non-utilisation of the suit property for the stated purpose.

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Our clients comprise a broad cross-section of Indian and International, Institutional & private entities, including Developers, Real Estate advisers, Banks, Real Estate Funds, high net worth Investors, Governments, Major Retailers, Hotel owners & operators and others.

We are primarily involved in legal and regulatory issues for various types of Real Estate projects, including in relation to construction and development of hotels, malls, residential & commercial complexes, warehouses, IT & Industrial Parks and Special Economic Zones.

We have been involved in conducting legal due diligence in relation to such projects and have drafted/ reviewed various types of documents including transaction documents such as (a) Shareholders/ Subscription/ Share Purchase Agreements; (b) Development Agreements; (c) Joint Venture Agreements and other related documents/ agreements.

During the course of our practice, we have also been involved in the drafting/ reviewing of (a) Agreements for Sale; (b) Conveyance Deeds; and (c) Lease Deeds.

**This Prism has been prepared by:**



**Varun Sriram**  
Partner



**Varsha Srinivasan**  
Principal Associate



**Bharkavi S**  
Senior Associate



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