

# Can validity of a gift be questioned?

Under the Transfer of Property Act, any immovable property gifted willingly by someone without delivery of possession is considered to be rightfully owned by the donee



## htestates LEGAL REMEDIES

Sunil Tyagi  
htestates@hindustantimes.com

**G**ift of a property is a voluntary transfer of an immovable asset which does not involve any exchange of money or consideration. Legal provisions related to gifting of movable or immovable property have been given in The Transfer of Property Act, 1875, which persons giving or receiving a gift of immovable or moveable property should take into account. In a recent case, one interesting question that came up for consideration of the Supreme Court was whether delivery of possession was necessary for a valid gift of immovable property or not. In this case, a person had executed a gift deed duly registered in favour of one party.

In the gift deed, the donor had reserved for herself the right to use the property and to receive rent during her lifetime. Thereafter, the donor executed a revocation deed to revoke the gift deed earlier executed by her, alleging that

the gift deed executed in favour of the donee was vitiated by fraud, misrepresentation and undue influence. The lower court observed that the said gift deed was duly registered and had been validly made and accepted by the donee. The fact that the donor had reserved the right to enjoy the property during her lifetime did not affect the validity of the gift deed. The same view was affirmed by the appellant court. The high court on appeal declined to interfere in the matter. Therefore, aggrieved by the decision of the high court, the donor approached the Supreme Court for consideration.

The main issue raised was whether the retention of possession of this gifted property for enjoyment by the donor during her lifetime and right to profits in gifted property affect the validity of the gift. There was an apparent conflict in two earlier decisions of Supreme Court which necessitated the reference of this matter to a larger Bench of the Apex Court for an authoritative pronouncement in this regard.

The donor relied on various precedents and argued that a conditional gift made without transferring the possession and right to deal with the

## POINTS TO PONDER

- Legalities involved in respect of gifting of a movable or immovable property have been provided in The Transfer of Property Act, 1875
- It was held that "transfer of possession" of the property is not an essential condition, though it is a pre-requisite under the Hindu law to constitute a valid gift
- The Supreme Court on the basis of precedents concluded that Section 123 of the Act does away with the necessity for the delivery of possession, even if it was required by the strict Hindu law

property was invalid as per the Act. On the other hand, the donee contended that gift of immovable property without delivery of possession was a valid gift under the Act.

The apex court observed that the execution of a registered gift deed, its attestation by two witnesses and acceptance by donee had already been proved in the lower courts. It was also concurrently held by all the three courts below that the donee had

accepted the gift. The recitals in the gift deed also proved the transfer of absolute title in the gifted property from the donor to the donee. What was retained was only the right to use the property during the lifetime of the donor which did not in any way affect the transfer of ownership in favour of the donee. It was held that "transfer of possession" of the property was not an essential condition, though it was a pre-requisite under the Hindu law to constitute a valid gift.

The court on the basis of precedents concluded that Section 123 of the Act did away with the necessity for the delivery of possession.

The apex court opined that the intention of the legislature to make delivery of possession an essential condition was only for gift of moveable property. Thus, it concluded that for gift of immovable property, delivery of possession was not necessary.

*The author is a senior partner at Zeus Law, a corporate commercial law firm. One of its areas of specialisations is real estate transactional and litigation work. If you have any queries, email us at ht@zeus.firm.in and htestates@hindustantimes.com*