

Mutation Order Cannot Be Based On Title Deed When Title To Property Under Dispute: Andhra Pradesh High Court

2022 LiveLaw (AP) 129

HIGH COURT OF ANDHRA PRADESH

RAVI NATH TILHARI; J.

WRIT PETITION No.1198 of 2022; 28.09.2022

Dr. P. Pranjali versus State of Andhra Pradesh

Counsel for the Petitioner: Sri K. Koutilya; Counsel for the respondent No.3: Smt V. Seshakumari

J U D G M E N T

Heard Sri K. Koutilya, learned counsel for the petitioner and Smt V. Seshakumari, learned counsel for the 3rd respondent.

2. This writ petition is filed under Article 226 of the Constitution of India for the following reliefs:

“.....it is prayed that this Hon’ble Court may be pleased to issue a Writ Order or direction more particularly one in the nature of Writ of Certiorari calling for the records relating to Proceedings Roc No 5454/2017/A6 dated 30.12.2021 from the file of 2nd Respondent and after perusing the same quash the impugned Proceedings dated 30.12.2021 by declaring it as arbitrary, illegal, without jurisdiction, *malafide* and contrary to law and consequently direct 2nd Respondent to cancel the Mutation Order issued vide Proceedings No MC/1012004612 dated 08.08.2017 and restore my name in the relevant records and with all other consequential benefits and pass orders.”

3. Sri K. Koutilya, learned counsel for the petitioner submitted that the petitioner is widow of late B. Madan Mohan Reddy and the 3rd respondent is the widow of late B. Giris Babu Reddy. Late Sri B. Madan Mohan Reddy and late Sri B. Giris Babu Reddy were the real brothers. Sri B. Madan Mohan Reddy was the absolute owner of the building bearing Door No.20-2-268/A2 (Assessment No.1012035118) situated at Koriagunta/Maruthi Nagar, Chittoor District in short the building, as per the ownership certificate dated 17.02.2004 issued by the Revenue Officer of the Municipal Corporation, Tirupati-2nd respondent and has been paying regularly the property tax. He died on 14.02.2007 leaving behind the petitioner and two minor children. Even after the death of Sri B. Madan Mohan Reddy, the 2nd respondent issued demand bill dated 06.06.2017 for the assessment year 2017-2018 and also the receipt dated 29.07.2017 in his name. The 3rd respondent filed an affidavit dated 29.07.2017 before the 2nd respondent wrongly stating therein that the said building was in her possession and enjoyment and as per the registered settlement deed Document No.712806 dated 14.11.2006 i.e the gift deed by B. Madan Mohan Reddy, in favour of her husband, late Sri B. Giris Babu Reddy, he was the absolute owner and requested to make mutation in her name, in place of Sri B. Madan Mohan Reddy, upon which, without any opportunity of hearing to the petitioner, the 2nd respondent passed the proceedings No.MC/1012004612 dated 08.08.2017 in favour of the 3rd respondent. He further submitted that Sri B. Madan Mohan Reddy had executed a registered gift deed No.7128/2006 dated 14.11.2006 in favour of Sri B. Giris Babu Reddy, but after the death of Sri B. Giris Babu Reddy on 07.06.2010, Sri B. Madan Mohan Reddy vide registered deed of revocation No.4646/2010 dated 07.09.2010 revoked/cancelled the gift deed dated 14.11.2006, however, this fact of cancellation of the gift deed was not brought to the notice of the 2nd respondent by the 3rd respondent.

4. Learned counsel for the petitioner further submitted that the 3rd respondent had filed O.S.No.199 of 2015 against Sri B. Madan Mohan Reddy seeking partition of the building which was later on withdrawn by her on 11.09.2017 without seeking any permission to file any fresh suit, but, again she filed O.S.No.458 of 2017 on the file of the Additional Senior Civil Judge, Tirupati, for permanent injunction on 22.10.2017, based on the order of mutation dated 08.08.2017 against the petitioner. In the suit an ad-interim injunction was refused. From the summons issued to the petitioner of the suit, she came to know about the mutation proceedings and the order dated 08.08.2017. The petitioner thereafter filed representation/objection dated 23.12.2017 and also filed Writ Petition No.45043 of 2017 challenging the order dated 08.08.2017. In the writ petition, initially an interim order dated 24.04.2018 was passed directing the 3rd respondent not to create any third party interest in respect of the building pursuant to the order of mutation dated 08.08.2017. Pending Writ Petition No.45043 of 2017, the 2nd respondent issued a show cause notice in Roc No.1652/2020 dated 18.04.2020 to the petitioner to submit necessary documents to consider her case for mutation. The 3rd respondent was also issued a show cause notice in Roc.No.5054/2017/A6 dated 30.05.2020 to submit the explanation as to why the mutation order dated 08.08.2017 be not cancelled for the alleged misrepresentation of facts. However, as no final order was passed by the 2nd respondent, the petitioner filed another Writ Petition No.19220 of 2021 for direction to the 2nd respondent to pass final orders. Both the writ petitions were disposed of by this Court vide common order dated 22.02.2021 directing the 2nd respondent to pass final orders after issuing notice to both the parties and after affording them the opportunity of hearing. The 2nd respondent issued notice to the petitioner and to the 3rd respondent as well pursuant to which they filed their respective documents and after affording them opportunity of hearing, the 2nd respondent passed the order dated 30.12.2021 directing mutation in favour of the 3rd respondent.

5. Smt V. Sheshakumari, learned counsel for the 3rd respondent submitted that the Southern part of the building was purchased by B. Madanmohan Reddy and the Northern portion was purchased by B. Giris Babu Reddy in their respective names. B. Madan Mohan Reddy was entitled to the mutation only of the Southern portion of the building, at that point of time, and mere issuance of the ownership certificate in the name of B. Madanmohan Reddy did not create any title or right in his favour for the entire building. She further submitted that B. Madanmohan Reddy, executed registered gift deed dated 14.11.2006 in favour of B. Giris Babu Reddy who thus became the owner of the entire property, both Northern and southern portions. The registered gift deed dated 14.11.2006 could not be revoked or cancelled vide document dated 07.09.2010 and that too after the death of B. Giris Babu Reddy on 07.06.2010.

6. Learned counsel for the 3rd respondent further submitted that Smt B. Pushpavathamma, mother of B. Madanmohan Reddy and B. Giris Babu Reddy, had no right to execute the gift deed in respect of the building in favour of B. Madanmohan Reddy as the alleged Will dated 09.05.2010 by B. Giris Babu Reddy in favour of his mother Smt B. Pushpavathamma was forged and fabricated for which the 3rd respondent had filed a criminal complaint in Crime No.54 of 2017. In fact, B. Giris Babu Reddy had executed Will dated 01.06.2010 in favour of the 3rd respondent. Smt B. Pushpavathamma therefore had no right to execute the gift deed dated 28.06.2013 in favour of Sri B. Madanmohan Reddy or to execute new gift deed dated 07.06.2017

in favour of the petitioner after cancellation of the earlier gift deed dated 28.06.2013, vide deed of cancellation dated 07.06.2017.

7. Learned counsel for the 3rd respondent further submitted that the 3rd respondent was in constructive possession of the building and all the issues as raised herein are subject matter of O.S.No.458 of 2017. The order dated 30.12.2021 is perfectly justified, which was passed on consideration of all the relevant facts. The writ petition is liable to be dismissed.

8. Learned counsel for the petitioner then submitted that in O.S.No.458 of 2017, by order dated 09.11.2018 the petitioner's application not to admit the copy of the alleged Will dated 01.06.2010 and also the Forensic Science Laboratory (in short F.S.L) report, in evidence, was rejected against which C.R.P.No.6894 of 2018 filed by the petitioner was allowed on 05.02.2019 by this court directing the court below not to admit those documents in evidence.

9. Challenging the impugned order dated 30.12.2021 learned counsel for the petitioner submitted that the same cannot be sustained as it is based upon the gift deed dated 14.11.2006 by B. Madan Mohan Reddy in favour of B. Giris Babu Reddy whereas the same had already been cancelled vide registered deed dated 07.09.2010. He submitted that the unilateral cancellation dated 07.09.2010 was perfectly legal. The gift deed dated 14.11.2006 could be cancelled unilaterally before the amended rule 26(k) of the Andhra Pradesh Registration Rules, 1960 (in short, Rules, 1960) framed under the Indian Registration Act, 1908. The Commissioner had no jurisdiction to hold the deed of cancellation of the gift contrary to law or to observe that it was for the petitioner to approach the civil Court. Instead, it is for 3rd respondent to approach the civil court.

10. Learned counsel for the petitioner placed reliance in the case of **Smt P. Veda Kumari and others vs. The Sub Registrar, Banjara Hills, Hyderabad and others**¹.

11. Learned counsel for the 3rd respondent submitted that the gift deed could not be revoked after the death of Sri B. Giris Babu Reddy. The Commissioner has rightly passed the order based on the gift deed dated 14.11.2006.

12. I have considered the submissions advanced by the learned counsels for the parties and perused the material on the record.

13. The Commissioner-2nd respondent in its order dated 30.12.2021 came to the conclusion that the cancellation of gift settlement document dated 14.11.2006 by Sri B. Madan Mohan Reddy on 07.09.2010 was against the rules, observing that any property once gifted through registered gift deed could not be revoked or cancelled, except with the order of the court of law and in case of any grievance the petitioner may approach the competent court of law.

14. In view of the contrary submissions advanced on the point of revocation of gift, this court deems it appropriate to discuss the legal position on revocation of gift.

15. Section 122 of the Transfer of Property Act, 1882 (in short, the T.P. Act) defines 'Gift' as under:

"122. "Gift" defined.—"Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

¹ (2017) 5 ALT 614

Acceptance when to be made.—Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void.”

16. Section 123 of the Transfer of Property Act, 1882 provides for the mode of effecting transfer by gift as under:

“123. Transfer how effected.—For the purpose of making a gift of immoveable 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 moveable 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.”

17. Section 126 of the Transfer of Property Act provides for the circumstances when a gift can be suspended or revoked as under:-

“126. When gift may be suspended or revoked.—The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor it 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.

Illustrations

(a) A gives a field to B, reserving to himself, with B’s assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A’s lifetime. A may take back the field.

(b) A gives a lakh of rupees to B, reserving to himself, with B’s assent, the right to take back at pleasure Rs. 10, 000 out of the lakh. The gift holds good as to Rs. 90, 000, but is void as to Rs.10, 000, which continue to belong to A.”

18. In **Renikuntla Rajamma vs. K. Sarwanamma**², the larger bench of the Hon’ble the Apex Court while dealing with ‘gift’ observed and held as under in paras 9 to 11:

“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 life time 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 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:

² (2014) 9 SCC 445

“123. Transfer how effected – For the making of a gift of immoveable 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 moveable 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.”

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 life time 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 [Transfer of Property Act, 1882](#).”

19. In **K. Bala Krishnan vs. K. Kamalam**³, the Hon’ble Apex Court held 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 the circumstances mentioned therein. It was not competent for the donor to have cancelled the gift and executed a will in relation to the gifted property.

20. It is apt to refer Paragraph No.31 of **K. Balakrishnan** (supra) as under:

“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 execute a Will in relation to the property.”

21. In **Renikuntla Rajamma** (supra), the Hon’ble Apex Court clarified the apparent conflict between its two earlier decisions in **K. Balakrishnan** (supra) and **Naramadaben Maganlal Thakker v. Pranjivandas Maganlal Thakker**⁴. It was held that if the gift was conditional and there was no acceptance of the donee it would not operate as a gift. The judgment in **Maganlal Thakker** (supra) was held distinguishable which rest on the facts of that case and could not be read to be an authority for the proposition that delivery of possession is an essential requirement for making a valid

³ (2004) 1 SCC 581

⁴ (1997) 2 SCC 255

gift. The statement of law in **K. Balakrishnan** (supra) that delivery of possession of the gifted property is not essential for validity of a gift, was upheld.

22. In **Aasokan v. Lakshmikutty and others**⁵, the Hon`ble Apex Court held that once a gift is complete it cannot be rescinded, for any reason whatsoever. The subsequent conduct of a donee cannot be a ground for rescission of a valid gift.

23. In **S. Sarojini Amma vs. Velayudhan Pillai Sreekumar**⁶, the Hon`ble Apex Court observed as under:

“15. In **Reninkuntla Rajamma** (supra), this Court held that the fact that the donor had reserved the right to enjoy the property during her lifetime did not affect the validity of the deed. The Court held that a gift made by registered instrument duly executed 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. Such acceptance must, however, be made during the lifetime of the donor and while he is still capable of making an acceptance.

16. We are in agreement with the decision of this Court in **Reninkuntla Rajamma** (supra) that 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.

Moreover, a conditional gift only becomes complete on compliance of the conditions in the deed.”

24. In **M. Venkat Subbaiah vs. M. Subbamma and others**⁷, the Andhra Pradesh High Court observed and held as under:

“**13.** The present case cannot be brought within the ambit of the section firstly for the reason that there is no agreement between the parties that the gift should be either suspended or revoked and secondly this should not depend on the will of the donor. Again, the failure of the donee to maintain the donor as undertaken by him in the document is not a contingency which could defeat the gift

“**14.** All that could be said is that the default of the donee in that behalf amounts to want of consideration. Section 126 itself provides against the revocation of a document of gift for failure of consideration. If the donee does not maintain the donor as agreed to by him, the latter could take proper steps to recover maintenance etc. **It is not open to a settlor to revoke a settlement at his will and pleasure and he has to get it set aside in a Court of law by putting forward such pleas as bear on the invalidity of gift deed.**”

25. In **Garagaboyina Radhakrishna and another vs. District Registrar, Visakhapatnam and others**⁸, this court, held that when the gift deed is executed, it is almost a unilateral transaction devoid of any consideration and the donor chooses to transfer his title in favour of the donee out of love and affection. The donor is entitled to cancel the gift deed as long as the gift is not accepted by the donee. Once the gift is accepted the right of the donor to unilaterally cancel the gift deed ceases to exist. The gift deed can be cancelled only with the consent or participation of the donee or by filing a suit.

⁵ (2007) 13 SCC 210

⁶ (2019) 11 SCC 391

⁷ 1955 SCCOnline AP 202

⁸ (2012) 5 ALD 228

26. At this stage, Rule 26(i)(k) of the A.P. Rules under the Registration Act, 1908 upon which much emphasis was laid by the petitioner's counsel be also referred to and reproduced as under:

"26. (i) Every document shall, before acceptance for registration, be examined by the Registering Officer to ensure that all the requirements prescribed in the Act and in these rules have been complied with, for instance:

- (a) xxx
- (b) xxx
- (c) xxx
- (d) xxx
- (e) xxx
- (f) xxx
- (g) xxx
- (h) xxx
- (i) xxx
- (j) xxx

(k)(i) The registering officer shall ensure at the time of presentation for registration of cancellation deeds of previously registered deed of conveyances on sale before him that such cancellation deeds are executed by all the executant and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing mutual consent or orders of a competent Civil or High Court or State or Central Government annulling the transaction contained in the previously registered deed of conveyance on sale;]

Provided that the registering officer shall dispense with the execution of cancellation deeds by executant and claimant parties to the previously registered deeds of conveyances on sale before him if the cancellation deed is executed by a Civil Judge or a Government Officer competent to execute Government orders declaring the properties contained in the previously registered conveyance on sale to be Government or Assigned or Endowment lands or properties not registerable by any provision of law.

Note: See Govt. Memo RC No. G1/10866/2006 dt.. 14- 03-2008.

(ii) Save in the manner provided for above no cancellation deed of a previously registered deed of conveyance on sale before him shall be accepted for presentation for registration."

27. The aforesaid amendment by insertion of clause (k) in Rule 26(i), was made on 14.03.2008.

28. Rule 26(i)(k) of the Rules, is by way of an abundant precaution that a unilateral cancellation, of a deed already executed and registered, is not got registered with the Registrar. The revocation of the gift is governed by Section 126 of the Transfer of Property Act. It is not that in view of Rule 26(i)(k), the registered gift deed cannot be cancelled unilaterally only after the insertion of Rule 26(i)(k) and prior thereto the gift deeds could be cancelled unilaterally. The gift once completed cannot be cancelled/revoked, subject to Section 126 of T.P.Act which provides for the circumstances under which it can be cancelled. The donor and donee must have agreed that it shall be revocable wholly or in part on the happening of any specified event. It cannot be revoked, unilaterally at the will of the donor.

29. In Thota Ganga Laxmi and another vs. Government of Andhra Pradesh and others⁹, the facts were that the registered sale deed was unilaterally cancelled by executing the cancellation deed which was registered without any notice to the transferee/vendee. The Hon'ble Apex Court held that there was no need for the appellants (vendee) to approach the civil court as the cancellation deed as well as its registration was wholly void and non est and could be ignored altogether. It was illustrated that if 'A' transfers a piece of land to 'B', then if it is not disputed that 'A' had a title to the land, that title passes to 'B' on the registration of the sale deed retrospectively from the date of execution of the sale deed and 'B' then becomes the owner of the land. If 'A' wants to subsequently get the sale deed cancelled, he has to file a civil suit for cancellation of sale deed or else he can request 'B' to sell the land back to 'A' but by no stretch of imagination, can cancellation deed be executed or registered as this is unheard of any law. The Hon'ble Apex Court referred to Rule 26(i)(k) of the A.P. Rules, 1960 framed under the Registration Act and observed that the said rule supported the view taken that it is only when a sale deed is cancelled by a competent court that the cancellation deed can be registered and that too after notice to the parties concerned.

30. It is apt to refer paragraphs 4 and 5 of Thota Ganga Laxmi (supra) as follows:

“4. In our opinion, there was no need for the appellants to approach the civil court as the said cancellation deed dated 4-8-2005 as well as registration of the same was wholly void and non est and can be ignored altogether. For illustration, if A transfers a piece of land to B by a registered sale deed, then, if it is not disputed that A had the title to the land, that title passes to B on the registration of the sale deed (retrospectively from the date of the execution of the same) and B then becomes the owner of the land. If A wants to subsequently get that sale deed cancelled, he has to file a civil suit for cancellation or else he can request B to sell the land back to A but by no stretch of imagination, can a cancellation deed be executed or registered. This is unheard of in law.

5. In this connection, we may also refer to Rule 26(k)(i) relating to Andhra Pradesh under Section 69 of the Registration Act, 1908, which states:

“(i) The registering officer shall ensure at the time of preparation for registration of cancellation deeds of previously registered deed of conveyances on sale before him that such cancellation deeds are executed by all the executant and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing natural consent or orders of a competent Civil or High Court or State or Central Government annulling the transaction contained in the previously registered deed of conveyance on sale:

Provided that the registering officer shall dispense with the execution of cancellation deeds by executant and claimant parties to the previously registered deeds of conveyances on sale before him if the cancellation deed is executed by a Civil Judge or a government officer competent to execute government orders declaring the properties contained in the previously registered conveyance on sale to be government or assigned or endowment lands or properties not registerable by any provision of law.”

A reading of the above Rule also supports the observations we have made above. It is only when a sale deed is cancelled by a competent court that the cancellation deed can be registered and that too after notice to the parties concerned. In this case, neither is there any declaration by a competent court nor was there any notice to the

⁹ (2010) 15 SCC 207

parties. Hence, this Rule also makes it clear that both the cancellation deed as well as registration thereof were wholly void and non est and meaningless transactions.”

31. In Satya Pal Anand vs State of Madhya Pradesh and others¹⁰, the Hon’ble Apex Court held that **Thota Ganga Lakshmi** case (supra) shall apply to the State of Andhra Pradesh.

32. In Kolli Rajesh Chowdary Vs. State of Andhra Pradesh¹¹, this court held that there cannot be a unilateral cancellation of registered document and that a cancellation deed cancelling a registered document can be registered only after the same is cancelled by a competent Civil Court, after notice to the parties concerned, and in the absence of any declaration by a competent Court or notice to parties, the execution of deed of cancellation as well as its registration are wholly void and non est.”

33. In Pinnama Raju Ranga Raju vs. The State of Andhra Pradesh represented by its Principal Secretary to Revenue, Secretariat Hyderabad W.P.No.15003 of 2014 decided on 21.05.2020, this Court on consideration of Rule 26(i)(k) as well, held that the unilateral cancellation of the registered gift deed is against law.

34. It is apt to refer paragraph 11(j) of **Pinnama Raju Ranga Raju** (supra) as under
“(j) Thus, on a conspectus of the jurisprudence, the judicial opinion consistently is that Rule 26(k)(i) though not specifically refers to other forms of conveyance other than Sale Deed, still the said rule applies to such conveyances like gift deed, Agreement to Sale-cum-General Power of Attorney (GPA) etc. For this reason, the contention of learned counsel for respondents that in conveyance of sale, the rights of the parties will be crystallized but in gift that is not the case and therefore, gift can be revoked at any time and further, Rule 26(k)(i) has no specific application to gift deeds cannot be accepted. In gift also the rights will be crystallized in favour of the donee. In this case, the cancellation was executed long after the gift deed was registered. Therefore, such unilateral cancellation is a procedural violation and against the tenets of law and revocation deed is liable to be set aside. It must be reiterated that the revocation or cancellation deed in this case is liable to be set aside not on merits but for procedural violation of Rule 26(k)(i). Consequently the Settlement Deeds executed by the 4th respondent in favour of respondents 6 to 12 which documents depend upon the validity of cancellation deed are also liable to be set aside. However, the parties are at liberty to question the validity of Gift Deed on the ground of fraud etc. by resorting to common law Court.”

35. In Chellu Boyina Nagaraju vs. Molleti Ramudu and another Second Appeal No.216 of 2020 decided on 13.04.2022, this Court held that the cancellation of gift deed unilaterally by donor is contrary to the rules under the Registration Act. Such cancellation does not extinguish the right of the donee.

36. From the aforesaid judicial pronouncements some of the settled legal propositions on gift are as under:

i) Gift is a transfer of certain existing movable or immovable property made on behalf of and without consideration by one person (donor) to another (donee) and accepted by or on behalf of the donee.

ii) In order to constitute a valid gift, acceptance must be made during the life time of the donee and while he is still capable of giving acceptance. The gift is void or incomplete if the donee dies before acceptance.

¹⁰ (2016) 10 SCC 767

¹¹ 2019 (3) ALD 229

- iii) Gift of immovable property must be effected by a registered instrument signed by or on behalf of the donor and attested by atleast two witnesses.
- iv) The transfer of possession of the gifted immovable property is not sine qua non for making a valid gift.
- v) In the case of movable property, it can be affected either by a registered instrument in the same manner as in case of a gift of immovable property, or by delivery of the movable property.
- vi) There is transfer of absolute title in the gifted property from the donor to the donee on the completion of the gift.
- vii) Once a gift is complete, it becomes irrevocable and cannot be revoked for any reason except under the circumstances specified in Section 126 of the T.P.Act.
- viii) The donor and the donee must have agreed that on the happening of any specified event, the gift shall be suspended or revoked. Such specified event does not depend on the will of the donor and any such agreement for revocation of the gift, wholly or in part at the mere will of the donor, is void, wholly or in part as the case may be.
- ix) A gift may also be revoked in any of the cases in which, if it were a contract, it might be rescinded, but not for want or failure of consideration.
- x) A gift deed can be got cancelled by a competent court of law and unless so cancelled or revoked as per Section 126 of T.P.Act, the donee cannot be divested of his title to the gifted property, except by fresh deed of conveyance.
- xi) The cancellation deed can be registered only after notice to the other party.
- xii) Any cancellation of the gift deed by the donor contrary to Section 126 even if by a registered deed, would be wholly void, non est and not a meaningful transaction. The donee in such a case need not approach the civil court for cancellation of the cancellation deed.
- xiii) Rule 26(i)(k) of A.P. Registration Rules, 1960 is only procedural, in the matter of registration of a cancellation deed cancelling a deed of conveyance registered previously. It only supports the settled position on revocation or cancellation of the registered deed, including the deed of gift.
- xiv) Even prior to rule 26(i)(k) of the Rules, 1960, the gift deed could not be revoked/cancelled contrary to Section 126 of the T.P. Act.

37. In **P. Veda Kumari** (supra), upon which the learned counsel for the petitioner placed much reliance, this Court held that the unilateral execution of a document of deed of cancellation, cancelling the earlier registered document and registration of the same by registering authority prior to the amendment i.e amendment of rule 26(k) of the A.P. Rules can be validly done by the registering authority and the aggrieved party can challenge such action, whereas after amendment, the registering authority cannot register a document of cancellation without following the amended rule 26(k) of the Rules.

38. It is apt to refer paragraph No.17 of **P. Veda Kumari** (supra) as under:

“In view of the above discussion, it is held that the unilateral execution of a document of deed of cancellation, cancelling the earlier registered document and registration of the same by the registering authority prior to the amendment can validly be done by the Registering Authority and the aggrieved party can challenge such action, whereas after the amendment the

Registering Authority cannot register a document of cancellation without following the amended Rule 26(k) of the Rules.”

39. The proposition of law in **P. Veda Kumari** (supra) reproduced above, to the extent that unilateral execution and registration of the deed of cancellation of earlier registered document, could be validly done before the amendment, prima facie, appears to this Court to be contrary to the law laid down by Hon’ble the Apex Court in **Thota Ganga Lakshmi** (supra) as in that case the registered sale deed was dated 21.06.1983 and its unilateral cancellation by cancellation deed was dated 04.08.2005, i.e prior to the amendment of rule 26 of the A.P. Rules, 1960 but by the time the case was decided, rule 26(i)(k)(i) was inserted. The Hon’ble Apex Court taking note of the same provision observed that the same rule supported the view taken. The view taken by the Hon’ble Apex Court was that it is only when a sale deed is cancelled by a competent court that the cancellation deed can be registered and that too after notice to the parties concerned. **Thota Ganga Lakshmi case** is with respect to the unilateral cancellation deed executed and registered even prior to insertion of rule 26(k) in AP Rules, under the Registration Act, 1908.

40. Since the present matter pertains to the State of Andhra Pradesh, this court is of the view that the law as laid down in **Thota Ganga Lakshmi** (supra) shall apply. **41.** In **P. Veda Kumari** (supra) Section 126 of the Transfer of Property Act which is specifically on the point of revocation of the gift does not find consideration. **42.** Even applying **P. Veda Kumari** (supra), the cancellation deed dated 07.09.2010 in the present case not of a date prior to the amendment of rule 26(k) of the A.P. Rules, but after wards. The judgment in **P. Veda Kumari** (supra) is therefore of no help to the petitioner. **43.** The contention of the learned counsel for the respondent No.3 that after the death of B. Giris Babu Reddy, the gift deed dated 14.11.2006 could not be cancelled, prima facie in view of illustration (a) to Section 126 of T.P. Act cannot be accepted as an absolute proposition.

44. In the facts of the case as narrated above, the matter involves determination of an intricate question of title to the property in question, requiring evidence and proof of the documents of title upon which both the sides rest their claim respectively.

45. The execution of the gift deed dated 14.11.2006 by B. Madan Mohan Reddy to B. Giri Babu Reddy is admitted to both the sides. However, the determination of title of the parties is not dependant upon this document alone, which has formed the basis of the impugned order passed by the Commissioner. The reason being that it is the specific case of the petitioner that the gift deed dated 14.11.2006 was cancelled on 07.09.2010. The validity of the cancellation deed dated 07.09.2010 again depends upon proof of the fulfillment of the conditions under Section 126 of the T.P.Act. Even if it be taken that the gift deed dated 14.11.2006 was valid and its cancellation dated 07.09.2010 was contrary to law having no affect on the transfer of title on late B. Giris Babu Reddy, the further question that would require consideration would be as to upon whom the ownership would devolve on the death of B. Giris Babu Reddy. The petitioner’s case is of a will dated 09.05.2010 by B. Giris Babu Reddy in favour of his mother Smt B. Pushpavathamma from whom the petitioner claims to have acquired title under the gift deed dated 07.06.2017 in petitioner’s favour. If the will dated 09.05.2010 by B. Giris Babu Reddy is genuine and is proved as per law, the succession, on the death of B. Giris Babu Reddy would be governed differently. May be in favour of the petitioner even if the deed of cancellation of gift deed dated 14.11.2010 be contrary to law and unrecognized. On the other hand, if there is no will

dated 09.05.2010 or the same is not proved or there is a genuine and proved will dated 01.06.2010 in favour of the 3rd respondent or even if there is no Will in favour of 3rd respondent, if revocation of gift deed dated 14.11.2006 vide deed of revocation dated 07.09.2010 is contrary to law, on the death of Sri G. Giris Babu Reddy, her widow 3rd respondent may become the title holder as the gift in favour of B. Giris Babu Reddy dated 14.11.2006 is an admitted fact.

46. It is well settled in law that the proceedings before the Commissioner of the present nature are for the purpose of collection of the property tax etc. The said proceedings are not the regular proceedings but are only summary one which are not for determination of title. Any determination of title if made in mutation proceedings will be of no legal affect on title of the rightful owner of the property.

47. In **H. Laskhmaiah Reddy and others vs. L. Venkatesh Reddy**¹², the Hon'ble Apex Court held that the mutation entries do not convey or extinguish any title and those entries are relevant only for the purpose of collection of land revenue.

48. It is apt to refer relevant paragraph No.8 of **H. Laskhmaiah Reddy** (supra) as under:

"8. As rightly contended by the learned senior counsel appearing for the appellants, 1st defendant did not relinquish or release his right in respect of the half share in the suit property at any point of time and that is also not the case pleaded by the plaintiff. **The assumption on the part of the High Court that as a result of the mututation, 1st defendant divested himself of the title and possession of half share in suit property is wrong. The mutation entries do not convey or extinguish any title and those entries are relevant only for the purpose of collection of land revenue.** The observations of this Court in Balwant Singh's case (supra) are relevant and are extracted below :

"21. We have considered the rival submissions and we are of the view that Mr Sanyal is right in his contention that the courts were not correct in assuming that as a result of Mutation No. 1311 dated 19-7-1954, Durga Devi lost her title from that date and possession also was given to the persons in whose favour mutation was effected. In **Sawarni vs. Inder Kaur** (1996) 6 SCC 223, Pattanaik, J., speaking for the Bench has clearly held as follows: (SCC p. 227, para 7) "7. ... **Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question.** The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment."

22. Applying the above legal position, we hold that the widow had not divested herself of the title in the suit property as a result of Mutation No. 1311 dated 19-7-1954. The assumption on the part of the courts below that as a result of the mutation, the widow divested herself of the title and possession was wrong. If that be so, legally, she was in possession on the date of coming into force of the **Hindu Succession Act** and she, as a full owner, had every right to deal with the suit properties in any manner she desired."

In the circumstances, we are of the opinion that the High Court erred in concluding that the 1st defendant by his conduct had acquiesced and divested himself of title of his half share in suit property and the said erroneous conclusion is liable to be set aside."

49. In **Municipal Corporation, Aurangabad vs State of Maharashtra and another**¹³, the Hon'ble Apex court held that the mutation does not confer any right

¹² (2015) 14 SCC 784

¹³ (2015) 16 SCC 689

and title in favour of any one or the other nor cancellation of mutation extinguishes the right and title of the rightful owner. Normally, the mutation is recorded on the basis of possession of the land for the purposes of collecting revenue.

50. It is apt to refer paragraph 13 of **Municipal Corporation, Aurangabad** (supra) as under:

“13. It is settled that the mutation does not confer any right and title in favour of any one or the other nor cancellation of mutation extinguishes the right and title of the rightful owner. Normally, the mutation is recorded on the basis of the possession of the land for the purposes of collecting revenue.”

51. It is only in the case of undisputed document of title that mutation can be made based on the title deed, but where it is a contested case of title based on so many documents, as in the present case, the Commissioner had no jurisdiction to hold the gift deed dated 14.11.2006 as valid and its cancellation deed dated 07.09.2010 as contrary to rule.

52. In **Kalawati vs. Board of Revenue and others**¹⁴, the Allahabad High Court on consideration of various judgments laid down certain exceptions under which a writ petition may be entertained against the orders passed in mutation proceedings. It is apt to refer paragraph No.40 of **Kalawati** (supra) as under:

“40. Having regard to the foregoing discussion the exceptions under which a writ petition may be entertained against orders passed in mutation proceedings would arise where :

(i) the order or proceedings are wholly without jurisdiction;

(ii) rights and title of the parties have already been decided by a competent court, and that has been varied in mutation proceedings;

(iii) mutation has been directed not on the basis of possession or on the basis of some title deed, but after entering into questions relating to entitlement to succeed the property, touching the merits of the rival claims;

(iv) rights have been created which are against provisions of any statute, or the entry itself confers a title by virtue of some statutory provision;

(v) the orders have been obtained on the basis of fraud or misrepresentation of facts, or by fabricating documents;

(vi) the order suffers from some patent jurisdictional error i.e. in cases where there is a lack of jurisdiction, excess of jurisdiction or abuse of jurisdiction;

(vii) there has been a violation of principles of natural justice.” 53. The impugned order of mutation in favour of the 3rd respondent could not be legally passed based upon title in view of the gift deed dated 14.11.2006. The order is passed not on the basis of possession but on the title deed with respect to which there was contest.

54. Undisputedly Sri B. Giris Babu Reddy died in the year 2010. The property was standing in the name of Sri B. Madan Mohan Reddy in the municipal records. The ownership certificate in favour of Sri B. Madan Mohan Reddy was also issued by the Corporation on 17.02.2014, who had been paying the property tax regularly. The question of mutation arose on the death of Sri B. Madan Mohan Reddy. There is no dispute that the petitioner is the widow of Sri B. Madan Mohan Reddy and in

¹⁴ (2022) 4 All LJ 26: 2022 AIR CC 1814

possession. The 3rd respondent was claiming mutation based on the document of title i.e gift deed dated 14.11.2006 in favour of her husband, which prima facie was cancelled on 07.09.2010. There was also no declaration of title in favour of 3rd respondent from any competent court of law. The 3rd respondent is claiming only constructive possession as per paragraph 7 of her counter affidavit. One suit is also pending between the parties.

55. Under the aforesaid circumstances, the Commissioner ought to have mutated the name of the petitioner for the purpose of collection of the property tax etc. and directed the parties to get adjudication of title from the competent court of law.

56. It is clarified that it is only in order to consider the submission of the learned counsels for the parties, this court has discussed the legal position on gift and its cancellation or revocation. Any observation, in this judgment, shall not be taken as on the merits of the validity or otherwise of the title deeds of the respective parties as involved in the case and the same shall not affect the merits of the parties case as set up before the civil court in the pending O.S.No.458 of 2017 or such other suit.

57. In the result, the Proceedings Roc.No.5454/2017/A6 dated 30.12.2021 are quashed and for the reasons in paras in 54 and 55. The following directions are also issued:

- i) The 2nd respondent-Commissioner shall mutate the name of the petitioner in its records.
- ii) The same shall not have the effect of any declaration of title in her favour or denial of the claim of title by the 3rd respondent which shall abide by the decision on title in the suit by the competent court of law.
- iii) It is open to both the parties to get the declaration of title from the competent civil court.
- iv) None of the parties shall create any third party interest, based on their respective documents upon which they claim title or on the basis of the order of mutation.
- v) The 2nd respondent shall pass necessary consequential orders within a period of fifteen days from the date of receipt of copy of this judgment.

58. The writ petition is allowed in the aforesaid terms. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.