2025 INSC 14

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. of 2025
(@ SLP (C) Nos. 10558-59 of 2024)

Sri Mahesh

...Appellant(s)

Versus

Sangram & Ors.

...Respondent(s)

J U D G M E N T

C.T. RAVIKUMAR, J.

1. Leave granted.

2. In the captioned appeals by Special Leave the appellant calls in question the common judgment dated 14.02.2024 of the Karnataka, High Court, Dharwad Bench, passed in RFA Nos.100168 and 100247, of 2018 which emanated from the judgment and preliminary decree dated 31.03.2018 in OS No.122 of 2009 of the Court of IIIrd Additional Senior Civil Judge, Belagavi.

3. The self-same appellant was the plaintiff in OS No.122 of 2009 filed for partition of the suit schedule properties and separate possession against the

defendants. Respondent Nos.1 to 4 herein were the original defendant Nos. 2 to 5 respectively in the said suit. Pending the first appeals, respondent No.5/defendant No.6 died and consequently, his legal representatives were impleaded as additional respondent Nos.5A to 5F and they are respondent Nos.5 to 10 in these appeals.

4. The facts of the case necessary for disposal of the captioned appeals are as follows:-

One Bhavakanna Shahapurkar was the original owner of the suit schedule properties and original defendant No.1-Smt. Parvatibai was his legally wedded wife. They had no issues in their wedlock and hence, with the consent of defendant No.1 the said Bhavakanna married one Laxmibai without dissolving his first marriage with defendant No.1. In his wedlock with Smt. Laxmibai, Bhavakanna Shahpurkar got two children, namely, Parashuram and Renuka. On 04.03.1982, Bhavakanna Shahapurkar died leaving behind two widows. After his demise, OS No.266/1982 was filed by defendant No.1 against Laxmibai, and her children Parashuram and Renuka for partition and separate possession of suit schedule properties. Based on a compromise, a decree was drawn in the said suit and

later, in the final decree proceedings defendant No.1 was allotted and thereby acquired 9/32 share in schedule 'A' and 'D' properties. The appellant herein/the plaintiff was adopted by defendant No.1-Parvatibai on 16.07.1994. The adoption deed was signed and got registered by his natural father and the adoptee mother (defendant No.1) and other witnesses. Later, the appellant came and started residing with defendant No.1 as her adopted son after relinquishing all his rights in his natural family. At the time of his adoption the appellant was aged 21 years. The case of the appellant/plaintiff in OS No.122 of 2009 is that on being adopted he became the legal heir of Bhavakanna and, therefore, entitled to half share in the suit schedule properties. According to him, in such circumstances, defendant No.1 was not having absolute right or title to execute sale deed dated 13.12.2007 in favour of defendants 2 and 3 without his consent as also to execute gift deed dated 27.08.2008 in favour of defendant Nos.4 and 5. Earlier, the appellant demanded for partition of the suit schedule properties. However, defendant No.1 refused to effect partition which made him to institute the aforementioned Original Suit. In fact, in the said suit beside seeking partition and separate possession of the suit schedule properties he

also sought to set aside a sale deed executed on 13.12.2007 by defendant No.1 in favour of defendant Nos.2 and 3 (respondent Nos.1 and 2 herein) and a gift deed dated 27.08.2008 made by defendant No.1 in favour of defendant Nos.4 and 5 as null and void.

5. Defendant No.1 filed written statement stating, *inter alia,* that the suit schedule properties are wrongly described. While admitting the adoption of the appellant/plaintiff on 16.07.1994 as also the fact that subsequently, he came to stay with her, defendant No.1 would state that she became the full and absolute owner of the suit schedule properties after the death of her husband Bhavakanna and further that by virtue of adoption of the appellant/plaintiff she was not divested off her ownership over the suit schedule properties. She had also refuted the claims of the appellant/plaintiff that without his consent she could not have sold the property covered under sale deed dated 13.12.2007 and that she had played fraud in creating gift deed dated 27.08.2008 in respect of properties described in para 1B and C of the plaint, in favour of defendant Nos.4 and 5 viz., respondent Nos.3 and 4. Above all, defendant No.1 denied the claim of acquisition of half share of the suit schedule properties by virtue of his adoption by her and

thereby becoming the legal heir of her husband Sri Bhavakanna Shahapurkar.

6. Defendant Nos.2 and 3 jointly filed a separate written statement, but adopting the contentions raised by defendant No.1. They claimed that they are in possession of suit schedule property covered by the sale deed dated 13.12.2007 from the date of its purchase.

7. Defendant Nos.4 and 5 also jointly filed a separate written statement, essentially, reiterating the stand of defendant Nos.1 to 3 regarding the absolute ownership of defendant No.1 over the suit schedule properties and especially, stating that defendant No.1 was having absolute right and title over the property gifted to them under gift deed dated 27.08.2008 and that since its execution they became the absolute owners of the same.

8. Defendant No.6 filed a separate written statement even denying the adoption of the appellant/plaintiff by defendant No.1. He would further state that based on the compromise decree in OS No.266/1982 filed by defendant No.1 whereunder she consented to give him half share in each of the suit schedule properties and after the demise of defendant No.1 he became the only legal heir of Bhavakanna and defendant No.1 as his sister Renuka died in her early age itself on 12.05.1990.

9. Based on the rival pleadings the trial Court framed the following issues and additional issues:-

"**ISSUES**

1) Whether the plaintiff is entitled for ½ share in the suit schedule property?

2) Whether the plaintiff proves that the sale deed executed on 13/12/2007 is not at all binding upon the plaintiff?

3) Whether the defendant No.1 was competent to sell the suit schedule property to the defendant No. 2 and 3?

4) What other relief is the plaintiff entitled to?

5) What order or decree?

Additional issue dtd: 10/02/2012

1] Whether the plaintiff proves that he is the only legal representative of the deceased defendant No. 1?

Additional Issues dtd: 20/10/2012.

1) Whether the plaintiff proves that he is the only legal representatives of deceased defendant No. 1?

2) Whether the defendants No. 4 and 5 prove that they are the only legal representatives of the deceased defendant No. 1?

3) Whether the defendants No. 4 and 5 prove that they became the absolute owners of the properties mentioned in para 1B and 1C of

the plaint by virtue of the gift deed executed by deceased defendant No.1 in their favour on 27/08/2008 and the said gift deed is valid and so the plaintiff has no right over the said properties?

Additional issues framed on 29/07/2017:

1) Whether the defendant No. 6 proves that the plaintiff got executed an adoption deed dtd: 19/07/1994 fraudulently, by force by taking undue advantage of the old age of defendant No.1?

2) Whether the defendant No.6 proves that the defendant No.2 and 3 got executed a sale deed dtd: 13/12/2007 with respect to "A" schedule property from defendant No.1 by undue influence and coercion?

10. It is to be noted that during the pendency of the suit the defendant No.1 died.

11. As per judgment dated 31.03.2018 in OS No.122/2009, the suit was partly decreed and declared gift deed executed by defendant No.1 dated 27.08.2008 in favour of respondent Nos.3 and 4 (defendant Nos.4 and 5) as null and void and granted the entire suit schedule B and C properties to the appellant as he being the sole legal heir of defendant No.1. However, the trial Court rejected his claim in regard to suit schedule A

property and thereby, upheld the sale deed executed by defendant No.1 in favour of respondent No.1 and 2 viz., defendant Nos.2 and 3. In such circumstances, RFA No.100247/2018 was filed by the appellant herein and RFA No.100168/2018 was filed by defendant Nos.4 and 5 wherein the plaintiff is the respondent No. 1 and defendant Nos.2,3 & 6 were respondent Nos.2 to 4 respectively. On perusing the records and considering the rival submissions, the High Court formulated the following points for consideration:-

1) Whether the plaintiff is entitled for half share in the suit schedule properties.
2) Whether the plaintiff proves that defendant No.1 is not competent to sell 'A' schedule property in favour of defendant Nos.2 and 3 under registered sale deed?
3) Whether plaintiff proves that defendant No. 1 had no right to execute the gift deed in respect of 'B' and 'C' schedule properties in favour of defendant Nos.4 and 5 and the gift deed is not binding on the plaintiff?
4) Whether the plaintiff proves that dismissal of the suit for the relief of declaration that registered sale deed executed by defendant No.1 in favour of defendant Nos. 2 and 3 is arbitrary and erroneous?

5) Whether defendant Nos.4 and 5 prove that judgment and decree passed by the trial court declaring that registered gift deed executed by defendant No. 1 in favour of defendant Nos.4 and 5 as null and void, is arbitrary and erroneous?
6) What order or decree?

12. While considering the first point formulated the High Court took note of the compromise decree passed in OS No.266/1982 filed by defendant No.1 which was followed Ext.D14 and the consequential allotment of shares in favour of defendant No.1 Paragraph 22 of the impugned common judgment would reveal that as per Ext.D14 only 9/32 share in schedule 'A' to 'D' properties were allotted to and acquired by the defendant. Ultimately, the High Court found that as relates to the properties acquired pursuant to Ext.D14, the defendant No.1 became its absolute owner.

13. As per the impugned common judgment dated 14.02.2024 the High Court, dismissed RFA No.100247/2018 filed by the appellant herein and allowed RFA No.100168/2018 filed by respondent Nos.4 and 5, and the judgment and decree by the trial Court was set aside. Consequent to the setting aside of the

decree the suit filed by the appellant viz., OS No.122/2009 was dismissed. In view of the dismissal of RFA No.100247/2018, the Interlocutory Application being IA No.1/2018 therein for temporary injunction was held as not surviving and consequently the same was also dismissed. It is in the said circumstances that the appellant herein who was the plaintiff filed the captioned appeals.

14. In view of the narration of the facts as above, before considering the rival contentions, we think it apposite to refer to the relevant provisions of law as well as the law settled in regard to the questions involved in this matter. Section 14(1) of the Hindu Succession Act, 1956 (for short 'the Act') reads thus:-

> "14. **Property of a female Hindu to be her absolute property**.—(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.
>
> *Explanation.*—In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by

purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as *stridhana* immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

15. Section 13 of the Act reads thus:-

"13. **Computation of degrees**.—(1) For the purposes of determining the order of succession among agnates or cognates, relationship shall be reckoned from the intestate to the heir in terms of degrees of ascent or degrees of descent or both, as the case may be.

(2) Degrees of ascent and degrees of descent shall be computed inclusive of the intestate.

(3) Every generation constitutes a degree either ascending or descending."

16. We will firstly consider the law relating to adoption in view of the case of the appellant that he was adopted by defendant No.1. Though there was an attempt on the part of the defendants to defy adoption concurrently it was found that defendant No.1 had adopted the

appellant/the plaintiff as her son. The trial Court and the High Court found that plaintiff has succeeded in proving adoption orally and by producing Ext.P1 registered adoption deed. The Courts have also found that defendant No.1 in her written statement admitted that she had taken plaintiff in adoption. In the contextual situation, it is relevant to refer to the decision in ***Mst. Deu and Ors. v. Laxmi Narayan and Ors.***[1], where this Court held by virtue of Section 16 the Hindu Adoptions and Maintenance Act, 1956 (for brevity 'The Act of 1956'), that wherever any document registered under the law is produced before the court purporting to record an adoption made and is signed by the persons mentioned therein, the court should presume that the adoption has been made in compliance with the provisions of the said statute unless and until it is disproved. It was further held therein in view of Section 16 of the Act of 1956 that it would be open to the persons who challenge the registered deed of adoption to disprove the same by taking independent proceedings. As noticed hereinbefore in the case on hand the appellant plaintiff had succeeded in proving the factum of his adoption by

[1] (1998) 8 SCC 701

defendant No.1 and in that regard, he had produced and proved Ext.P1 which is a registered deed of adoption and above all defendant No.1 herself admitted the factum of his adoption in her written statement. In such circumstances, the position is that the appellant/plaintiff was indisputably adopted by defendant No.1 on 16.07.1994.

17. We have already extracted Sections 14(1) of the Hindu Succession Act. For a proper consideration of the questions involved in the case on hand it is only apposite to refer to Section 12(c) of the Act of 1956. It reads thus:-

> "12. **Effects of adoption**.—An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family;
> (a)…
> (b)…
> (c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption."

18. Thus, going by proviso (c) to Section 12 of the Act of 1956, it is clear that an adopted child shall not divest any person of any estate which vested him or her before

the adoption. We have already taken note of the fact that the date of adoption was 16.07.1994. In the contextual situation it is also relevant to refer to the 'Relation Back Principle'. The said principle is that adoption by a widow would relate back to the date of death of her husband, creating an immediate coparcenary interest in the joint property, meaning that the adopted child is treated as if they were born to the deceased husband, thus entitled to inherit his property. In ***Kasabai Tukaram Karvar and Others v. Nivruti (Dead) Through Legal Heirs and Others***[2], this Court extracted Paragraph 6 of ***Shripad Gajanan Suthankar v. Dattaram Kashinath Suthankar***[3], with agreement thus:-

> "10. As far as the doctrine of relation back goes, we need only notice decisions of this Court in *Govind Hanumantha Rao Desai* v. *Nagappa alias Narahari Laxman Rao Deshpande and Sever*, (1972) 1 SCC 515 and *Shripad Gajanan Suthankar* v. *Dattaram Kashinath Suthankar*, (1974) 2 SCC 156. We may only further expatiate by referring to paragraphs 6, 7 and 9 of *Shripad Gajanan Suthankar* (Supra).
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> 6. It is established law that the adoption by a widow relates back to the date of the death of the adoptive father,

[2] 2022 SCC Online 918; 2022 INSC 733
[3] (1974) 2 SCC 156; 1974 INSC 43

which, in this case, took place in 1921. Indeed, the complexity of the present case arises from the application of this legal fiction of "relation-back" and the limitations on the amplitude of that fiction visa-vis the partition of 1944, in the light of the rulings of the various High Courts and of the Judicial Committee of the Privy Council, and of this Court, the last of which is *Govind* v. *Nagappa*. According to the appellant, the rights of the adopted son, armed as he is with the theory of "relation-back", have to be effectuated retroactively, the guidelines wherefor are available from the decided cases. It is no doubt true that "when a member of a joint family governed by Mitakshara law dies and the widow validly adopts a son to him, a coparcenary interest in the joint property is immediately created by the adoption co-extensive with that which the deceased coparcener had, and it vests at once in the adopted son". (See Mulla on Hindu Law, 13th Edn. p.516.)

11. The same author, however, points out that:

> "the rights of an adopted son arise for the first time on his adoption. He may, by virtue of his rights as adopted son, divest other persons in whom the property vested after the death of the adoptive father, but all lawful alienations made by previous holder would be

binding on him. His right to impeach previous alienations would depend upon the capacity of the holder who made the alienation as well as on the nature of the action of alienation. When the holder was a male, who had unfettered right of transfer, e.g., the last surviving member of a joint family, the adopted son could not impeach the transfer. In case of females who had restricted rights of transfer even apart from any adoption, the transfers would be valid only when they are supported by legal necessity". (*ibid*; pp. 516 – 517; para 507.)

"An adopted son is bound by alienations made by his adoptive father prior to the adoption to the same extent as a natural-born son would be. (*ibid*; p. 517 : para 508.)

7. It is settled law that the rights of an adopted son spring into existence only from the moment of the adoption and all alienations made by the widow before the adoption, if they are made for legal necessity or otherwise lawfully, such as with the consent of the next reversioners, are binding on the adopted son."

19. In fact, the defendants who refuted the claim of the appellant, including defendant No.1 would rely on Section 14(1) of 'the Act' and Section 12(c) of the Act of

1956, besides the compromise decree in OS No.266 of 1982 to contend that defendant No.1 became the absolute owner of the suit schedule properties by virtue of the adoption and the operation of the aforesaid provisions much earlier to the adoption of the appellant/plaintiff on 16.07.1994. In fact, it is so contended by them to drive home the point that since defendant No.1 became the absolute owner of the suit schedule property prior to the adoption of the appellant/plaintiff and the sale deed dated 13.12.2007 in favour of defendant Nos.2 and 3 (respondent Nos.1 and 2 herein) as also the gift deed dated 27.08.2007 in favour of defendant No.4 and 5 (respondent Nos.3 and 4 herein), the appellant/plaintiff was bound by such alienation made by defendant No.1.

20. In view of the position of law referred above and the factual position obtained in the case on hand the crucial legal position to be looked into is what is the effect of the compromise decree passed in OS No.266 of 1982 and whether it would be binding on the appellant. In this context, it is also relevant to note that indisputably the adoption of the appellant/plaintiff was on 16.07.1994 and the adoption deed is a registered one which was not disproved by defendants though it is permissible under

Section 16 of the Act of 1956. Furthermore, it is relevant to note that it is indisputable that the sale deed in question was executed only on 13.12.2007 by defendant No.1 and the gift deed was executed by her only on 27.08.2007. In other words, the sale deed and the gift deed were executed only subsequent to the adoption of the appellant by defendant No.1 on 16.07.1994. It is in this context that the aforementioned question assumes relevance.

21. As noticed hereinbefore, defendant No.1 filed OS No.266 of 1982 against her husband Bhavakanna, Smt. Laxmibai, the second wife of Bhavakanna, Parsuram and Renuka who are the children of Laxmibai through Bhavakanna. True that the said suit was compromised and a decree was passed in terms of the compromise petition. Defendant No.1 filed Final Decree Proceedings No.75/1988_and in the said proceedings the parties entered into compromise and the compromise petition was marked as Ext.D14 and by virtue of the same defendant No.1 was allotted 9/32 share in A to D schedule properties. Indisputably the adoption of the appellant/plaintiff was subsequent to the compromise decree and Ext.D14 in terms of which defendant No.1 was allotted the shares mentioned as above. In such

circumstances, the question is whether by virtue of operation of the provisions of Section 14(1) of the Act and Section 12(c) of the Act of 1956, the defendant No.1 would become the absolute owner of the property prior to the adoption of appellant on 16.07.1994.

22. Obviously, in the case on hand, the factum of adoption of the appellant/the plaintiff by defendant No.1 after the death of adoptive father, on 16.07.1994 is established by the appellant/the plaintiff and it is pertinent to note that the same was admitted by defendant No.1 as well, in her written statement. In such circumstances, in view of the 'Doctrine of Relation Back' and by applying the law laid down in ***Sripad Gajanan Suthankar's*** case (*supra*) relied on with agreement in ***Kasabai Tukaram Karvar's*** case (*supra*) the adoption by defendant No.1, the widow of Bhavakanna Shahpurkar, would relate back to the date of death of the adoptive father which is 04.03.1982 but then all lawful alienations made by defendant No.1 would be binding on the appellant/plaintiff. As held in ***Sripad Gajanan Suthankar's*** case (*supra*) in paragraph 11 his right to impeach previous alienations would depend upon the capacity of defendant No.1 who made the alienation as well as on the nature of the action of alienation.

23. The first among the alienations under challenge in the case on hand is the one where defendant No.1 effected sale of the properties covered by registered sale deed dated 13.12.2007 in respect of 'A' schedule property in favour of defendant Nos.2 and 3. There is concurrency with respect to the said issue between the trial Court and the High Court. The Courts have held that defendant No.1 got absolute right to effect the sale of the property covered thereunder and that the sale was done in favour of defendant Nos.2 and 3 in accordance with the law. Admittedly, in regard to the sale, defendant No.1 executed the sale deed dated 13.12.2007 and she was not having a case that she had not received sale consideration. By applying the 'Doctrine of Relation Back' and the ratio of decisions in ***Kasabai Tukaram Karvar's*** case (*supra*) and ***Sripad Gajanan Suthankar's*** case (*supra*) it can only be held that the appellant/plaintiff is bound by the said alienation. This is because of the cumulative effect of the compromise decree in OS No.122 of 2009 followed by Ext.D14 and the allotment of share based on the same. In this context it is also relevant to note that the factum of execution of the sale deed is not disputed by the appellant but his contention is only that defendant No.1 could not have

sold the property without his consent and knowledge. Though the alienation was subsequent to his adoption by virtue of the fact that defendant No.1 got absolute right and title in regard to the property covered by the said sale deed dated 13.12.2007 and that a valid sale was effected following the procedures, the challenge of the appellant against the said alienation of property by defendant No.1 in favour of defendant Nos.2 and 3 is not liable to be interfered with. We have no hesitation to hold that the concurrent findings of the trial Court and the High Court in regard to the said sale deed warrant no interference. In such circumstances, dismissal of RFA No.100247 of 2018 filed by the appellant/plaintiff challenging the alienation under the registered sale deed dated 13.12.2007 is only to be confirmed.

24. The other alienation of property by defendant No.1 which is under challenge is the alienation of 'B' and 'C' schedule properties by registered gift deed dated 27.08.2008 in favour of defendant Nos.4 and 5. It is to be noted that the trial Court and the High Court are at issue in regard to the said alienation. Obviously, the trial Court held that the gift deed dated 27.08.2008 executed by defendant No.1 in favour of defendant Nos.4 and 5 is null and void and is not binding on the plaintiff.

Consequent to such declaration the trial Court found that the appellant/plaintiff is entitled to entire 'B' and 'C' schedule properties as he being the sole legal heir of deceased defendant No.1. *Per contra*, the High Court found that since defendant No.1 was the absolute owner of the said suit schedule properties as well the appellant/plaintiff got no *locus standi* to challenge the registered gift deed executed by defendant No.1 in favour of defendant Nos.4 and 5. It is the said finding that resulted in allowing RFA No.100168 of 2018 filed by defendant Nos.4 and 5. Consequently, the High Court set aside the judgment and decree passed by the trial Court to that extent and resultantly dismissed the suit filed by the appellant/plaintiff.

25. In the light of the 'Doctrine of Relation Back' and the ratio in the decisions in ***Kasabhai Tukaram Karwar's*** case (*supra*) and ***Sripad Gajanan Suthankar's*** case (*supra*) we have already found that all lawful alienations made by defendant No.1 will bind the appellant/plaintiff and his right to impeach previous alienation would depend upon the capacity of the holder who make the alienation as well as on the nature of the action of alienation. The nature of action of alienation is gift and it is allegedly made in favour of defendant Nos.4 and 5. It

is to be noted that defendant Nos.4 and 5 though got a case that earlier defendant No.1 executed a Will in regard to the said properties in their favour they themselves would admit and plead that subsequently the properties were given in gift as per registered gift deed dated 27.08.2008. The very fact that the defendant Nos.4 and 5 themselves relied on the gift deed would go to show that if at all there was a Will that was revoked. At any rate, it is a fact that even defendant Nos.4 and 5 did not rely on the same.

26. Section 122 of the Transfer of Property Act, 1882 (for short, 'the TP 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.
>
> **Acceptance when to be made**.— Such acceptance must be made during the lifetime of the donor and while he is till capable of giving,
>
> If the donee dies before acceptance, the gift is void."

27. A perusal of Section 122 of the TP Act would make it clear about the pre-requisites of a valid gift. Going by

the same, two things are necessary to constitute a valid gift, namely, (i) an offer and, (ii) its acceptance. A scanning of the judgment of the trial Court in regard to the alienation by a gift by the defendant No.1 in favour of defendant Nos.4 and 5 it is to be noted that several reasons have been given for holding the same as null and void. To start with, it is to be noted that in the gift deed dated 27.08.2008 it is recited thus:-

> "WHEREAS, the Donees are natural Grand Childrens of Donor i.e., (Donor's own daughter's own childrens), the Donor is full and absolute owner of the Properties, more fully described in the Schedule hereunder and hereinafter referred to as the Schedule Property', by virtue of Final Court Decree No. FDP-75/88, dated 02.01.1990 & Exe. Nos. 319/90 R. No.: 1799 dated 05.09.1990. And the said Schedule mentioned properties are exclusive properties which are in actual physical possession and enjoyment of the said Donor."

28. Going by the afore extracted recital in the deed of gift, the donees are natural grand-children of donor i.e., donor's own daughter's own children. But the fact is that even the defendant witnesses who are related to defendant Nos.2 and 3 would admit the fact that defendant Nos.4 and 5 are not the children of own

daughter of defendant No.1. The adoption deed itself would go to show that the adoptive mother who is defendant No.1 was issueless. Thus, when the admitted position is that defendant No.1 got no children, the defendant Nos.4 and 5 cannot claim the status that they are the own children of the own daughter of defendant No.1. That apart, going by the afore extracted recital, the schedule mentioned properties in the gift deed viz., the suit schedule 'B' and 'C' properties are exclusive properties in the actual physical possession and enjoyment of defendant No.1. It is to be noted that the very case of appellant/plaintiff is that he is in exclusive possession of the said suit schedule properties. In the contextual situation, it is to be noted that in Ext.D6(a) gift deed there is no reference about the delivery of property by the donor and taking possession of property by the donee. Defendant No.4 was examined in the suit as DW-3. During cross-examination he would depose that he did not know as to who are in possession of properties comprised in CTS No.667 and CTS No.4879/67 and 278, he also would say that he is absolutely unaware as to who is using CTS 667 and who is residing in CTS No.4879/67, it is to be noted that they are the properties described as 'B' and 'C' schedule

properties in the suit and also as properties gifted to defendant Nos.4 and 5 as per Ext.D6(a) gift deed dated 27.08.2008. It is also relevant to note that while being cross-examined as DW-3 the fourth defendant would also depose that when the gift deed was registered the said properties covered by the same were not in his possession and he voluntarily stated that it was with defendant No.1 till her lifetime. It is also evident from his oral testimony that he would admit that the possession of the said property was not taken either on the date of Ext.D6 or even thereafter. It is in the said circumstances specifically dealt with in detail that the trial Court arrived at the conclusion that defendant No.1 was not knowing the contents of Ext.D6(a) gift deed and further that 'B' and 'C' schedule properties referred to in Ext.D6(a) were not delivered to the possession of defendant Nos.4 and 5 even on the date of execution of Ext.D6(a) and even at the time of examination before the Court defendant Nos.4 was not aware as to who are the persons who are in possession of 'B' and 'C' schedule properties. Same was the case with respect to defendant No.5. Moreover, the trial Court took note of the fact that the evidence on record would reveal that defendant No.1 was residing at Nanawadi at the time of her death along with DW-5. As

noticed hereinbefore when the fact is that the properties covered by the gift deed are not delivered either at the time of the alleged execution of the gift deed or at any later point of time and the fact that the defendant(s) got no case that at any later point of time that they had initiated any steps to get possession of the same either during the lifetime of defendant No.1 or even after her lifetime, we do not find any reason as to how the trial Court could be said to have erred in holding that defendant Nos.4 and 5 could not become absolute owners of 'B' and 'C' schedule properties through Ext.D6(a) gift deed.

29. It is the said finding of the trial Court that was set aside by the High Court in the first appeal with respect to the alienation under the gift deed dated 27.08.2008. A careful scanning of the impugned common judgment of the High Court would reveal that the sound reasoning of the trial Court in regard to this issue was interfered with and set aside without detailed discussion and at the same time without providing any good and sustainable reason therefor. It appears that the High Court was carried away by the fact that the gift deed is a registered one. We have already taken note of the fact that in order to be valid, acceptance of the gift is a pre-requisite. When the very

case of one of the donees of the gift viz., the defendant No.4 that the property was in the possession of the donor herself till her death itself would reveal that the properties were not delivered and in other words in the legal sense there was no acceptance. The fact that defendant No.4 himself depose before the Court that he was not aware of the fact as to in whose possession the gifted properties lie with, would justify the conclusions arrived at by the trial Court. True that the First Appellate Court will be having the power to reappreciate the entire evidence and to substitute any finding of the trial Court if it is legally required. At the same time, when once it is found that a sound reasoning given by a trial Court for returning a finding with respect to a definite issue the same cannot be likely interfered without giving appropriate sustainable reasons. The position with respect to the gift deed is discussed in detail by the trial Court and when it arrived at the conclusion that the pre-requisite for making the same valid was absent such a finding could be reversed only if it is found that the said finding was based on perverse precision of evidence. In the case on hand, the discussion as above would reveal that the pre-requisite to constitute a valid gift is lacking and the evidence discussed by the trial Court would

support the said finding we do not find any reason for the Appellate Court to interfere with the same. The declaration that gift deed dated 27.08.2008 is null and void is made by the trial Court in the aforesaid circumstances and it is only as a necessary sequel that the trial Court held that the appellant/plaintiff is entitled to entire 'B' and 'C' schedule properties as the sole legal heir of deceased defendant No.1. As noted hereinbefore, DW-1 herself in her written statement admitted the adoption of the appellant/plaintiff as her son and the registered adoption deed could fortify the same. When that be so the finding that the appellant is entitled to the said properties being the sole legal heir of deceased defendant No.1 cannot be said to be faulty as it is the inevitable consequence of application for the 'Doctrine of Relation Back' and the ratio of the decisions in ***Kasabai Tukaram Karvar's*** case (*supra*) and ***Sripad Gajanan Suthankar's*** case (*supra*).

30. In the result the appeal is partly allowed. The concurrent finding of the courts below that the sale deed dated 13.12.2007 in favour of defendant Nos.2 and 3 is valid and that the appellant/plaintiff is not entitled to any share in 'A' schedule property is confirmed and consequently the appeal against the judgment in RFA

No.100247 of 2018, viz., SLP (C) No.10558 of 2024 is dismissed.

31. The appeal against the judgment in RFA No.100168 of 2018 against the reversal of the judgment and the decree of the trial Court pertaining to the alienation of properties through gift deed dated 27.08.2008 and the gift deed itself, is allowed and the judgment of the High Court in RFA No.100168/2018 is quashed and set aside. Consequently, the judgment and decree of the trial Court holding the gift deed dated 27.08.2008 as null and void and the finding that the appellant/plaintiff is entitled to entire 'B' and 'C' schedule properties as the sole heir of deceased defendant No.1 are restored.

32. In the circumstances there will be no order as to costs.

....., J.
(C.T. Ravikumar)

....., J.
(Prashant Kumar Mishra)

New Delhi;
January 02, 2025.