

Allahabad High Court

Smt Archana Tyagi And 4 Others vs Yaduraj Narain on 4 September, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD A.F.R. Judgment reserved on. 19.08.2025 Judgment delivered on. 04.09.2025 Neutral Citation No. - 2025:AHC:156273 Court No. - 35 Case :- FIRST APPEAL No: - 381of 2024 Appellant :- Smt Archana Tyagi And 4 Others Respondent :- Yaduraj Narain Counsel for Appellant :- Shiv Sagar Singh Counsel for Respondent :- Ajay Kumar Singh, Ashish Kumar Singh Hon'ble Sandeep Jain, J.

1. The instant first appeal under section 96 C.P.C. has been preferred by the plaintiff against judgment and decree dated 16.3.2024 passed by the Court of Additional Civil Judge(Senior Division) - Second, Meerut in Original Suit No. 1510 of 2021 Archana Tyagi and others vs. Yaduraj Narain, whereby the plaintiffs suit for the recovery of possession, permanent injunction and mesne profits, regarding the land gifted by their predecessor Raghukul Narain, has been dismissed.

Plaint case

2. The plaintiff- appellants filed a suit in the trial court with the averments that their predecessor Raghukul Narain(donor), had executed a gift deed on 8.2.1968 regarding land situated in khasra No. 4352, having area of 1104 square yards, the details of which were mentioned in the schedule of the plaint, in favour of his nephew /defendant Yaduraj Narain(donee), on the defendant's request. The gift deed was registered on 24.2.1968 in the office of Sub-Registrar, Meerut. It is the case of the plaintiffs that the gift was conditional that the defendant would construct a cinema hall on the gifted land ,after taking due permission and if, the cinema hall could not be constructed, then the gifted land would revert back to the donor or his successors, whoever is alive. According to the plaintiffs, the defendant duly accepted the conditional gift.

3. It is the case of the plaintiffs that another gift deed was executed on 30.10.1968 , consisting one plot of land of area 466.66 square yards and the other plot of land of 35 square yards, the smaller plot was to be used as a passage and the whole land was situated in khasra No. 4352, Garh Road, near Sohrab Gate, Meerut. This gift deed was registered on 8.11.1968 in the office of Sub-Registrar, Meerut. Both the gifts were conditional that if, due to some reason, permission to construct cinema hall is not granted by the competent authorities or if, the building of cinema hall is not constructed, then the gifted land would revert back to the donor or his successors, whoever is alive, and the defendant would have no objection to it. It was further agreed that a small area of 35 square yards would be used as a passage by both the predecessors of plaintiffs and the defendant, which would not be taken back.

4. It is the case of the plaintiffs that in the year 2019 their predecessor late Rajeev Tyagi came to know, that the defendant intended to demolish the existing Nandan cinema hall and in its place, construct a multiplex/commercial complex for business purposes and for this, the defendant has submitted a building plan before the Meerut Development Authority for approval. The plaintiffs contended that their consent was not obtained for demolishing the existing Nandan cinema hall and in its place, constructing multiplex

/commercial complex, which proves that the defendant has deliberately violated the conditions of the gift deed. Subsequently, Rajeev Tyagi gave a notice dated 7.8.2019 to the defendant, Vice-Chairman/Secretary, Meerut Development Authority, Chief Development Officer, Meerut for restraining the defendant from constructing the multiplex/ commercial complex and for not sanctioning the building plan, because the land was gifted with the condition that only a cinema hall would be constructed on it. It was further averred that the defendant was not conferred any ownership right in the gifted land and a relationship of licensor and licensee, existed between Raghukul Narain and the defendant.

5. It is the case of the plaintiffs that the defendant has deliberately violated the terms of the gift deed and as such, the plaintiffs do not want to continue the relationship of licensor- licensee between them. A legal notice was given by the plaintiffs on 11.10.2021 terminating the license of the defendant and directing him to hand over the vacant possession of the disputed land after removing the superstructure and when this was not complied with by the defendant, the plaintiffs have filed the suit for the following reliefs:-

(i) by decree of mandatory injunction granted in favour of the plaintiffs against the defendant, the defendant be directed to hand over the vacant and physical possession of the land gifted to it, after removing the superstructure on it, and if the defendant fails to do so, then it's actual and physical possession be handed to the plaintiffs by court , by adopting due procedure of law.

(ii) by decree of permanent injunction granted in favour of the plaintiffs against the defendant, the defendant be restrained from selling the disputed land, mortgaging it, charging it, creating any lien on it or constructing multiplex/commercial complex on it or altering its condition.

(iii) by decree of the court granted in favour of the plaintiffs against the defendant, the defendant be directed to pay ₹ 5,000/- towards the cost of the legal notice.

(iv) by decree of the court granted in favour of the plaintiffs against the defendant, the plaintiffs be awarded mesne profits at the rate of ₹ 33,300/- per day from the date of filing of the suit till the date of actual possession, regarding which the court fees would be paid at the time of execution.

(v) the costs of the suit be also awarded to the plaintiffs.

Defendant's case

6. The defendant Yaduraj Narain filed his written statement in the trial court in which he accepted that the plaintiffs predecessor Raghukul Narain had conditionally gifted his land for constructing a cinema hall on it. He contended that in terms of the conditions of the gift deed, he had constructed Nandan cinema hall, after obtaining due permission and as such, complied with the conditional gift. He averred that since he had complied with the conditions of the gift, as such, the plaintiffs were not entitled to revoke the gift and take any other action against him. He specifically pleaded that after the execution of the gift deed dated 8.2.1968 and 30.10.1968, he had constructed Nandan cinema hall in the year 1974, after taking due permission and had operated the cinema hall on the gifted land, in accordance with the terms of the gift deed for a period of 53 years, and as such, the plaintiffs had no right to revoke the gift in the year 2021.

7. The defendant further averred that it was not mentioned in both the gift deeds that in future, in any situation whatsoever, the land would not be used for any other purpose. It was further submitted that keeping in view the prevailing situation, a building plan was submitted to the Meerut Development Authority for reconstruction/ remodelling the Nandan cinema hall, which was duly approved by the Meerut Development Authority, in accordance with the UP government order, which encouraged cinema business. The defendant further averred that previously he was using the land after constructing a cinema hall on it and subsequently also, he will utilise the land for operating a cinema hall on it. It was further averred that in the revenue records, the name of defendant has been mutated and as such, he is the owner of the gifted land, in accordance with the provisions of the Transfer of Property Act, from which he cannot be divested.

8. It was further averred that if, it is presumed that the gift deeds are null and void ab-initio then, since the defendant is in, hostile, open, continuous possession of the gifted land for 53 years, as such, he has perfected title of the gifted land on the basis of adverse possession and on this ground, the plaintiffs suit for the relief of possession is barred by limitation. It was further submitted that since the defendant is the owner of the gifted land as such, the plaintiffs are not entitled to get any mesne profit. The plaintiffs suit is barred by Section 38 and 41 of the Specific Relief Act. The defendant is the true owner of the disputed land as such, against the true owner, the plaintiffs are not entitled to get the relief of permanent injunction.

9. It was further averred that the defendant is constructing a multiplex on the gifted land, with all the modern facilities, whose budgeted cost of construction is about ₹ 20 crores and till date, the defendant has spent about ₹ 2 crores and on the spot, construction material of about ₹70 lakhs is lying and if the defendant is restrained from construction, then he will suffer monetary loss as well as physical damage, because basement has been dug. It was submitted that the plaintiffs suit has only been filed to harass the defendant and as such, it be dismissed with a special costs of ₹ 5 lakhs.

10. The plaintiffs filed replica in the trial court in which, they reiterated the plaint submissions and denied the averments of the defendant. It was reiterated that the gift was conditional, according to which cinema hall had to be constructed on the gifted land and further, the gifted land could have only been used for constructing a cinema hall on it and the ownership rights in the gifted land never devolved on the defendant. The possession of the defendant always remained permissive. It was further averred that after demolishing the cinema hall, the defendant has started constructing a multiplex/ shopping complex, which the defendant has got no right to do, which proves that the defendant has violated the conditions of the gift deed and as such, the plaintiffs have a right to revoke the gift and claim back the possession of the gifted land.

11. The trial court on the basis of the pleadings of the parties, framed the following issues on 6.9.2022, which read as under:-

(i) Whether the plaintiffs, on the basis of the plaint averments, are entitled to get back the vacant possession of the property mentioned in schedule A and B, at the end of the plaint?

(ii) Whether the plaintiffs, on the basis of plaint averments, are entitled to get the relief of permanent injunction regarding the disputed property?

(iii) Whether no cause of action has arisen to the plaintiffs for filing the suit?

(iv) Whether the plaintiffs are entitled to get the costs of notice amounting to ₹ 5,000/- from the defendant?

(v) Whether the plaintiffs are entitled to get mesne profits at the rate of ₹ 33,300/- per day, regarding the disputed property?

(vi) Whether the plaintiffs suit is undervalued?

(vii) Whether the court fees paid is insufficient?

(viii) Whether the plaintiffs suit is barred by limitation?

(ix) Whether the plaintiffs suit is barred by Section 38 and 41 of the Specific Relief Act?

(x) Whether the plaintiffs are entitled to get any other relief?

12. During trial, on behalf of the plaintiffs Amit Narain Singh Tyagi was examined as PW-1 and on behalf of the defendant, Devesh Narain was examined as DW-1.

13. The trial court vide judgment and decree dated 16.3.2024 has dismissed the plaintiffs suit. The trial court decided issue number 1,2,4,5,6,10 in favour of the defendant and issue No.3,7,8,9 was decided in favour of the plaintiff.

14. Learned counsel for the plaintiff -appellants submitted that the donor gifted the land only for the purpose of constructing cinema hall on it, and the defendant after accepting the conditional gift, was bound to obey the conditions of the gift. Learned counsel submitted that the defendant after having accepted the conditional gift and constructing a cinema hall on it, was not entitled to demolish the cinema hall and in its place, construct a multiplex/shopping complex, which amounts to violation of the terms of the gift deed as such, the plaintiffs are entitled to revoke the gift and claim back the possession of the gifted land. Learned counsel further submitted that the donee was never permitted to change the usage of the land, which was supposed to be used for constructing only cinema hall, but by constructing a multiplex/shopping complex the donee -defendant has changed the usage of the land, which was not permitted in terms of the gift deed. The defendant has admitted that he is constructing a multiplex/shopping complex on the disputed land after obtaining permission and after getting sanctioned the building plan from the Meerut Development Authority, as such, the defendant cannot be permitted to change the usage of the gifted land. Learned counsel further submitted that the trial court has erred in overlooking the above facts and has recorded a perverse finding that the defendant has duly complied with the terms and conditions of the gift, after having operated for more than 53 years, cinema hall on the disputed land, as such, the plaintiffs are not entitled for the reliefs sought in the plaint. Learned counsel further submitted that since no duration for operating the cinema hall was mentioned in the gift deed as such, a cinema hall once constructed on the gifted land, was supposed to remain in existence forever and by demolishing the cinema hall in the year 2021, the defendant has violated the terms and conditions of the gift, as such the plaintiff -appellants are entitled to get their suit decreed.

15. Per contra, learned counsel for the defendant- respondent submitted that the donee-defendant had accepted the conditional gift in the year 1968 and had accordingly, after obtaining due permission from the concerned authorities, constructed Nandan cinema

hall in the year 1974 on the gifted land, and thereafter, operated the cinema hall for 47 years, till the year 2021. Learned counsel further submitted that after having constructed and operated the cinema hall on the gifted land for 53 years, the donee has fully complied with the terms of the gift deed. Learned counsel further submitted that since no duration was mentioned in the gift deed for which the cinema hall, after construction, was to remain functional or to remain in existence, as such, it cannot be interpreted in the manner, that forever cinema hall had to be operated on the gifted land. Learned counsel further submitted that the defendant has keeping in view the changing times and taste of the people, to remain profitable in the cinema business, has only demolished the old Nandan cinema hall which was having only one screen, and by constructing a multiplex in its place, which is also a modern cinema hall having three screens. Also, as per the prevailing trend in the multiplexes there are several shops which sell coffee, sweets, popcorn, etc. catering to the demand of the viewers, which cannot be deemed as changing the usage of the gifted land. Learned counsel further submitted that the dominant purpose of the multiplex is to screen movies to the viewers as such, it cannot be said that by demolishing a single screen cinema hall and by constructing in its place a multiplex having three screens, a change of usage has been effected by the donee. With these submissions, it was prayed that the appeal has got no merits and it be dismissed.

16. Learned counsel for the defendant- respondent in support of his submissions has placed reliance upon the following judgments:-

(i) N.P. Saseendran vs. N.P. Ponnamma and Others 2025 SCC OnLine SC 626

(ii) Sridhar and Another vs. N. Revanna and Others (2020) 11 SCC 221

(iii) Narmadaben Maganlal Thakker vs. Pranjivandas Maganlal Thakker and Others (1997) 2 SCC 255

(iv) Renikuntla Rajamma(Dead) By Legal Representatives vs. K. Sarwanamma (2014) 9 SCC 445

(v) Rajvir Singh vs. Randhir Singh 2024 SCC OnLine ALL 6235

(vi) Asokan vs Lakshmikutty and Others (2007) 13 SCC 210

17. I've heard the learned counsel of both the sides and perused the trial court record and the case law submitted by the learned counsel.

18. The judgments cited by the learned counsel for the defendant-respondent pertain to cases where either the character or nature of the gift deed was in dispute, or where the donor had created a life interest in the subject matter of the gift. However, such issues do not arise in the present case, as neither the character nor the nature of the gift deed is under challenge, nor has the donor created any life interest in the subject matter through the said gift deeds. Therefore, the cited judgments are distinguishable and have no application to the facts and circumstances of the present case.

19. On the basis of the arguments of the learned counsel of the parties, the following issues arise for determination, in this appeal:-

(1) Whether the gift deeds were conditional? If yes, then what were the conditions of the gift?

(2) Whether the defendant has complied with the conditions of the gift?

(3) Whether the gift is revocable in the year 2021, after the donee having completed the construction of Nandan cinema hall in the year 1974, and keeping it functional for 47 years?

20. The controversy in this appeal hinges on the interpretation of the gift deeds executed by the predecessor of the plaintiffs Raghukul Narain (donor) wayback in the year 1968, in favour of the defendant (donee). For appreciating the controversy in issue, it will be appropriate to reproduce the relevant recitals of the gift deeds, which read as under (translated in English, from Hindi):-

First Gift Deed Dated 8.02.1968/24.02.1968 "I Raghukul Narain son of Raghunandan Richpal caste Tyagi resident of Mohalla Dhalampara Meerut, is the owner of land having area of 1104 square yards, which is shown in red colour in the annexed map, situated in khasra No. 4352 Garhmukteshwar Road, near Sohrab Gate, Meerut. My nephew Yaduraj's land is adjoining to my land, who intends to construct a cinema hall on his land, but since his land is insufficient, according to the bye laws, for constructing a cinema hall, as such he requires my land. Hence, I on my sweet will and consent, gift the above land admeasuring 1104 square yards to Yaduraj Narain on the condition that if, Yaduraj Narain is granted permission for constructing cinema hall then, he will construct the cinema hall and he will be entitled to use the gifted land for operating cinema hall on it but if, due to any reason, permission is not granted or if cinema hall is not constructed then, the gifted land will revert back to me or my successors, whoever is alive at that time and further, Yaduraj Narain will have no right to use the gifted land for any other purpose and the gift has been accepted with the above condition, by Yaduraj Narain. Both the parties and their successor will be bound by the above conditions."

Second Gift Deed Dated 30.10.1968/8.11.1968 "I Raghukul Narain son of Raghunandan Richpal caste Tyagi resident of Mohalla Dhalampara Meerut, is the owner of two pieces of land having area of 466.66 and 35 (for passage) square yards, which are shown in red colour in the annexed map, situated in khasra No. 4352 Garhmukteshwar Road, near Sohrab Gate, Meerut. My nephew Yaduraj's land is adjoining to my above land, who intends to construct a cinema hall on his land, but since my land is also required, according to the cinema bye laws, hence I gift the above two pieces of land, having market value of ₹ 10,000 on my sweet will and volition, to Yaduraj Narain on the condition that if, Yaduraj Narain is granted permission for constructing cinema hall and if, he constructs a cinema hall then, he will be entitled to use both the gifted land as owner, but if, due to any reason, permission is not granted for constructing the cinema hall or if, cinema hall is not constructed then, I will be entitled to take back the possession of the larger piece of the gifted land having area of 466.66 square yards and further, Yaduraj Narain shall have no right to use the larger piece of land for any other purpose, but the smaller piece of land can be used as passage by me and Yaduraj Narain and this cannot be taken back. The gift has been accepted with the above condition by Yaduraj Narain. Both the parties and their successors will be bound by the above conditions."

21. It is pertinent to mention here that there is no dispute regarding the execution of the gift deeds by the donor and its acceptance by the donee. There is also no dispute that the gift deeds were got fraudulently executed from the donor. The only dispute is regarding the interpretation of the conditions of the gift deeds.

22. From the recitals of the gift deeds mentioned hereinabove, the following facts are apparent:-

(i) the land of donor and donee were situated adjacent to each other.

(ii) the donee wanted to construct a cinema hall on his land, but it was insufficient according to the bye-laws applicable for constructing a cinema hall, as such, the donor gifted his adjoining land, to enable the donee to get the cinema hall constructed on the gifted land.

(iii) the donor exclusively gifted his land for constructing cinema hall on it and the donee was not permitted to use the gifted land for any other purpose/usage.

(iv) the donor gifted his land with the condition that the donee will obtain necessary permission from the authorities for constructing the cinema hall on the gifted land and if, the permission is granted, then, the donee will construct the cinema hall on the gifted land.

(v) the donor also stipulated in the gift deed that if, for any reason whatsoever, the donee is not able to obtain permission for constructing the cinema hall on the gifted land, or if the cinema hall was not constructed on the gifted land, then, the donee will not be able to use the gifted land for any other purpose/usage and in that situation, he will be entitled to take back the possession of the gifted land.

23. The Apex Court in the case of Annaya Kocha Shetty (Dead) through Lrs vs. Laxmibai Narayan Satose Since deceased through Lrs. and Others 2025 SCC OnLine SC 758, while elucidating how to interpret the terms of a contract, held as under:-

"16. The circumstances dealing with the dispute between the parties are stated in required detail in the preceding paragraphs. At the outset, let us refer to the ratio of this Court in Provash Chandra Dalui (supra) on the construction of the basic agreement between the plaintiff and the defendant. This Court held that the court must look at the words used in the contract unless they are such that one may suspect that they do not convey the intention correctly. If the words are clear, there is very little the court can do about it. In constructing a deed, looking at the surrounding circumstances and subject matter is legitimate only if the words used are doubtful.

17. The guide to the construction of deeds and tools adopted can broadly be summarised as follows:

17.1 The contract is first constructed in its plain, ordinary and literal meaning. This is also known as the literal rule of construction.

17.2 If there is an absurdity created by literally reading the contract, a shift from literal rule may be allowed. This construction is generally called the golden rule of

construction.

17.3 Lastly, the contract may be purposively constructed in light of its object and context to determine the purpose of the contract. This approach must be used cautiously.

18. The construction of a deed is "generally speaking, a matter of law." However, when there is an ambiguity in the deed, determining its meaning is a mixed question of fact and law.⁷ This concept is encapsulated by sections 91 and 92 of the Evidence Act, 1872.

18.1 Section 91 of the Evidence Act, 1872 denotes that a deed constitutes the primary evidence of the terms to which the parties are to adhere. Whereas section 92 of the Evidence Act, 1872 forbids any contradictions or variations in a written document by extrinsic evidence.⁸ However, there are exceptions outlined in the proviso to section 92, that allow variations from this general rule:

"92. Exclusion of evidence of oral agreement. - "When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms;

Proviso (1) : Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party want or failure of consideration, or mistake in fact or law:

Proviso (2) : The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document:

Proviso (3) : The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4) : The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5) : Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved; Provided that the annexing of such incident would not be repugnant to, or inconsistent with the express terms of the contract:

Proviso (6) : Any fact may be proved which shows in what manner the language of a document is related to existing facts."

18.2 The subtle distinction in the point of law, as carved out by the provisos, is that the evidence to vary the terms of an agreement in writing is not admissible, but evidence to show that there is no agreement in the first place is admissible.⁹ Thus, unless the grounds fall within the provisos read with the illustrations to section 92, there is a bar on adducing oral evidence."

24. Section 126 of the Transfer of Property Act deals when gift may be suspended or revoked. The section reads 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 a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

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

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice."

25. The Apex Court in the case of R Thajudeen vs. Tamil Nadu Khadi and Village Industries Board (2024) SCC OnLine SC 3037, held as under:-

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

15. In simpler words, ordinarily a gift deed cannot be revoked except for the three contingencies mentioned above. The first is where the donor and the donee agree for its revocation on the happening of any specified event. In the gift deed, there is no such indication that the donor and donee have agreed for the revocation of the gift deed for any reason much less on the happening of any specified event. Therefore, the first exception permitting revocation of the gift deed is not attracted in the case at hand. Secondly, a gift deed would be void wholly or in part, if the parties agree that it shall be revocable wholly or in part at the mere will of the donor. In the present case, there is no agreement between the parties for the revocation of the gift deed wholly or in part or at the mere will of the donor. Therefore, the aforesaid condition permitting revocation or holding such a gift deed to be void does not apply. Thirdly, a gift is liable to be revoked in a case where it is in the nature of a contract which could be rescinded. The gift under consideration is not in the form of a contract and the contract, if any, is not liable to be rescinded.

Thus, none of the exceptions permitting revocation of the gift deed stands attracted in the present case. Thus, leading to the only conclusion that the gift deed, which was validly made, could not have been revoked in any manner. Accordingly, revocation deed dated 17.08.1987 is void ab initio and is of no consequence which has to be ignored.

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

(emphasis supplied)

26. The Apex Court in the case of J Radha Krishna vs. Pagadala Bharathi and Another 2025 SCC OnLine SC 1447, held as under:-

"3. It is not in dispute that Shri KVG Murthy, had executed a document dated 10.01.1986 (Ex.B.1) - Gift Deed though claimed as settlement deed by the appellant - in favour of the respondent, the alleged foster daughter namely Pagadala Bharathi. The said document was subsequently cancelled by way of deed of cancellation dated 30.12.1986, whereafter on 30.09.1992, Shri KVG Murthy executed a Will in favour of his brother's son. The High Court while appreciating the evidence and statutory mechanism in place, more specifically Section 126 of the Transfer of Property Act, 1882, in para 19 has returned the findings as under:--

"19. As stated above, under Section 126 of the Act, if a gift is to be revoked or suspended there should be a right reserved. In fact, the evidence of PW.1, who is the plaintiff in the suit, only shows that a donor has executed the gift deed in favour of defendant no. 1 with the hope that she will look after him till his death. As defendant No. 1 was not looking after him, the settlement deed was cancelled. Therefore, it is a clear admission of a valid execution of the gift deed Ex.B.1 and no other proof is required. So far as the right of the deceased to cancel the gift deed for failure to maintain or look after the donor is concerned, the evidence of PW.1 does not show that at the time of execution of Ex.B.1, there was such an understanding between the donor and the first defendant. In the absence of such agreement, Section 126 of the Act cannot be relied upon when there is no right reserved or understanding entered into between the donor and donee. Therefore, the decision first referred supra cannot be pressed into for the benefit of the respondent herein. In fact, the law of this aspect is very clear and the courts have repeatedly held a settlement deed once executed cannot be cancelled. In this connection it is useful to refer to a decision reported in Namburi Basava Subrahmanyam v. Alapati Hymavathi (1996) 9 SCC 388, wherein their lordships after considering the interpretation of the document as a Will or a settlement deed found that the document was a settlement deed creating vested remainder and the said settlement deed subsequently cannot be cancelled by bequeathing the same property in favour of other. In a decision reported in M. Venkatasubbaiah v. M. Subbamma 1955 SCC OnLine AP 202, it was held that-

"A gift subject to the condition that the donee should maintain the donor cannot be revoked under Section 126 of the failure of the donee to maintain the donor firstly for the reason that here 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. 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 the 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 settler 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".

(emphasis supplied)

27. It is clear from section 126 of the Transfer of Property Act that the donor and donee may agree that on happening of any specified event, which does not depend on the will of the donor, a gift shall be revoked. It is also apparent that at the mere will of the donor, a gift cannot be revoked. It is also apparent that a gift is like a contract, which can be rescinded like a contract, save for want or failure of consideration.

28. From the law laid down by the Apex Court in the case of Annaya Kocha Shetty (supra), R Thajudeen (supra), J Radha Krishna (supra) it is evident, that the intention of the parties is to be ascertained while interpreting the contract. If the words of the contract are unambiguous then there is very little the court can do about it. It is also apparent that the surrounding circumstances and the subject matter, is also to be considered. It is also apparent that if, an absurdity is created by literally reading a contract, then a contract may not be literally interpreted. It is also apparent that a contract must be purposely constructed in the light of its object and context to determine the purpose of the contract.

29. Amit Narain Singh Tyagi PW-1 deposed and proved in his examination-in-chief, the plaint averments. He proved the plaint case. He disclosed in the cross-examination that Raghukul Narain died on 23.2.1986 and the plaintiffs filed the suit on 13.12.2021 and at the time of the filing of the suit, his father Rajeev Tyagi had died. He admitted that both the gift deeds were executed prior to his birth. He admitted that after the year 1968, the defendant had obtained permission for constructing the cinema hall and had also constructed the cinema hall, which had started functioning in the year 1974, as Nandan cinema, which remained functional till the year 2021. He feigned ignorance about the cycle stand, betel shop, eatables shop, etc. being situated inside the Nandan cinema hall. He also admitted that the donor had neither cancelled the gift deeds in his lifetime nor initiated any cancellation proceedings. After perusing the letter dated 27.4.2019 of Additional District Magistrate (Administration) Meerut sanctioning the building plan, he admitted that the defendant's son Divesh Narain has been granted permission to demolish the closed cinema hall and constructing in its place, a commercial complex, having all the modern amenities, including cinema house of small capacity, under the scheme facilitating such construction. He also admitted, after perusing the khatauni, that the current owner is the defendant Yaduraj Narain Singh. He also admitted that in the proposed multiplex, three small cinema halls will be constructed and the permission for constructing multiplex has not been opposed by the Additional Commissioner, Entertainment tax, Department because such permission, has been granted to facilitate the construction of multiplex having modern amenities, including small cinema halls. He also accepted that the deed which was executed in the year 1968, was a gift deed, and not a lease deed. He also admitted that in both the gift deeds, the word licensee has not been used. He stated that the gift deeds became void, when the cinema hall was demolished. He also admitted that in the gift deeds, it is not mentioned that the defendant will never demolish the cinema hall.

30. The defendant's son Devesh Narain DW-1, being the power-of-attorney holder of the defendant, proved the submissions of the written statement in his examination- in-chief. He deposed that it is nowhere mentioned in the gift deeds that in the future, in any situation whatsoever, the land would not be used for any other purpose. He further deposed that in accordance with the changing demands of the viewers, a building plan for reconstruction /remodelling of the Nandan cinema hall was submitted to the Meerut Development Authority, Meerut which was sanctioned by it. He further deposed that the sanction was accorded, keeping in view the policy of the State government for facilitating the cinema business, after complying with the terms and conditions of the relevant government order. He further deposed that the defendant had previously utilised the land for cinema hall and in future also, the land would be utilised for that purpose. He further deposed that the defendant's name is recorded in the relevant khatauni. He further deposed that after construction of Nandan cinema hall, the defendant has acquired ownership of the gifted land, from which he cannot be divested. He further deposed that if the gift deeds are null and void ab-initio, even then, since the defendant is in open, hostile and continuous possession of the land for more than 12 years, as such, the defendant has become owner of the disputed land on the basis of adverse possession. He further deposed that the construction of multiplex would cost around ₹ 20 crores, out of which about 4 crores have already been spent, and if, the construction of multiplex is stopped, then the defendant shall suffer huge loss.

31. DW-1 deposed in cross-examination that after the construction of Nandan cinema hall in the year 1974, the defendant had become owner of the land. He admitted that there was a condition in the gift deed that the defendant had to construct cinema hall on the gifted land, after obtaining permission and it was stipulated that, if the cinema hall is constructed, then the defendant will acquire the ownership of the gifted land. He admitted that the defendant had accepted the conditions mentioned in the gift deed. He admitted that the multiplex will consist of three small cinema halls and it will also have commercial amenities and the multiplex will be five storeyed building.

32. It is evident from the gift deed that the donor had gifted the land to enable the donee to construct a cinema hall on the gifted land after obtaining permission, under the bye-laws regulating the construction of cinema halls, and if such permission was not granted to the donee, then it was expressly agreed that the gifted land would not be used for any other purpose and further if, the donee failed to construct the cinema hall, then the donor would be entitled to take back the gifted land. It is also not disputed that in the year 1974 the construction of the Nandan cinema hall was completed on the gifted land, which remained functional till the year 2021, till then no dispute arose between the donor and the donee.

33. It is also apparent that no time limit was mentioned in the gift deeds, in which the donee had to construct the cinema hall on the gifted land, as such, it has to be interpreted that the parties intended the construction to take place within a reasonable time. In the instant case, after the execution of gift deeds in the year 1968, Nandan cinema hall was constructed, which started functioning in the year 1974, which remained functional, until it was demolished for constructing a multiplex/commercial complex in the year 2021. It is evident that the cinema hall remained functional for about 47 years.

34. Now the question that arises is, whether after having constructed and operated the cinema hall for about 47 years, can it be said that the donee has not complied with the terms and conditions of the gift, so as to enable the successors of donor to revoke the gift and claim back the possession of the gifted land?

35. It is also to be examined whether by demolishing the cinema hall and constructing in its place, a multiplex/commercial complex, can amount to change of usage of the gifted land?

36. It is very much apparent from the gift deeds that the sole purpose of the gift was to enable the donee to construct cinema hall on the gifted land, after taking due permission from the concerned authorities, in accordance with the bye-laws prevailing at that time. The donee after accepting the gift, duly obtained the requisite permission from the concerned authorities, under the relevant bye-laws and thereafter, started construction of the cinema hall, which was completed in the year 1974, which came to be known as Nandan cinema hall. The cinema hall remained functional till the year 2021, when it was demolished for constructing a multiplex, keeping in view, the changing times and attitude/taste of viewers, who intended to visit the cinema hall, otherwise the donee would not have survived in this business. It is the specific assertion of the defendant that the multiplex was constructed only because the people preferred to watch movies in the multiplexes and if the donee, had not constructed the multiplex, then he would not have survived in this business. It is also apparent that in modern multiplexes there are shops, which sell eatables, confectionery items, beverages, restaurants, to cater to the culinary requirements of the cinema goers.

37. If the condition mentioned in the gift deed is interpreted in the manner that after having once constructed a cinema hall on the gifted land, the donee was forever required to maintain that building, even when, it became dilapidated, outdated, then it will amount to an absurd condition. It is very much apparent that the concept of multiplex was not in existence in the year 1968, when the land was gifted to the donee for constructing cinema hall on it, as such, it would never have been contemplated by the parties, that in future, after about 50 years, a time will come, when people will stop visiting old-fashioned cinema halls and instead, they will prefer watching the movie in a multiplex, having modern amenities. In view of this, the gift deed cannot be interpreted in a manner, which prevents the donee from demolishing the cinema hall, even after 47 years of its existence. If the interpretation suggested by the learned counsel of the appellant is accepted, then it will amount to an absurd interpretation of the gift deed, which is impermissible.

38. It is also apparent that the dominant purpose of the multiplex remains screening of movies, providing entertainment to the people. Only the subsidiary purpose is to provide eatables to the cinema goers, and affording some shopping opportunities to them. Generally, the people who desire to watch a movie, visit the multiplex. The primary purpose of majority of people visiting multiplex, is to watch a movie.

39. Since the donee-defendant has duly complied with the conditions of the gift by constructing a cinema hall on the gifted land and operating it for about 47 years, in my opinion, it cannot be said that the donee has violated the terms of the gift deeds and in view of this, the condition of the gift having been fulfilled, the successors of the donor are not entitled to revoke the gift and take back the possession of the gifted land, from the donee. Once the conditions of the gift have been complied with, the donor is divested of the ownership rights in the gifted land and as such, the donor cannot claim back the ownership and possession of the gifted land. After having fulfilled the conditions of the gift by constructing and operating the cinema hall for about 47 years, having become the owner of the gifted land, the donee-defendant cannot be prevented from demolishing the old cinema hall and constructing in its place, a modern multiplex having some shops providing eatables to the cinema goers and also affording some shopping opportunities to them.

40. In the above facts and circumstances, in my opinion, the trial court has not committed any error in concluding that the donee - defendant has not violated the terms of the gift deeds and as such, the plaintiffs have got no right to revoke the gift after about 53 years and claim back the possession of the gifted land. In view of the above discussion, this appeal has got no merits and is liable to be dismissed.

41. Accordingly, this appeal is dismissed. Consequently, the impugned judgment and decree dated 16.3.2024 passed by the trial court in OS No. 1510 of 2021 is affirmed.

42. However, in the facts and circumstances of the case, the parties shall bear their respective costs. Office is directed to prepare the decree, accordingly.

43. Original trial court record, if received, be sent back forthwith.

44. Interim order, if any, stands vacated.

Order Date: 04.09.2025 Jitendra/Himanshu/Mayank (Sandeep Jain, J.)

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