of a Union Territory, the administrator thereof acting within the scope of the authority given to him under Article 239 of the Constitution is the Central Government. So far there is no dispute. The High Court then observed that it must follow that the Administrator is the State Government in so far as the Union Territory is concerned and it is so provided in the definition of the State Government in Section 3(60) of the General Clauses Act.' The High Court fell into an error in interpreting clause (c) of Section 3(60) which upon its true construction would show that in the Union Territory, there is no concept of State Government but wherever expression 'State Government' is used in relation to the Union Territory, the Central Government would be the State Government. The very concept of State Government in relation to Union Territory is obliterated by the definition."

(7) A Division Bench decision of this Court reported in *Chief Commissioner, Union Territory Chandigarh and others* v. *Sushil Flour, Dal and Oil Mills* (2), has also been relied upon on behalf of Union Territory.

(8) In view of the law laid down in Goa Sampling Employees Association's case (Supra), I do not find any force in the arguments of learned counsel for the petitioners that the Food Inspector who took the sample in any of the cases was not appointed by the appropriate Government under Section 9(1) of the Act and that the prosecution was not initiated by a person duly authorised to do so under Section 20(1) of the Act. I, therefore, dismiss all the petitions.

(9) The parties, through their counsel, are directed to appear in the trial court on June 15, 1990.

S.C.K.

Before A. L. Bahri, J.

MAYA DEVI (SMT.) *ALIAS* SAVITA RIKHI,—*Appellant.*

versus

SURJIT SINGH AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 858 *of* 1983

16th August, 1990

(2) 1983 (2) (PRH)I.

Hindu Law by Mulla, 1982 *Edition—Paras* 226, 448—*Adoption prior to* 1956—*Necessary ceremonies for adoption—Strict proof required—No presumption of valid adoption can be drawn by mere registration of adoption-deed—In absence of proof of giving and taking—Adoption invalid—Donee inheriting from natural father—Validity of adoption—Gift by father to daughter must be for pious purpose of maintenance—Gift to be complete must be accepted.*

Held, in the absence of any evidence of necessary ceremonies having been performed on the alleged date of adoption, the adoption cannot be said to be valid. The so-called admission of performance of necessary ceremonies of adoption is too vague to be relied upon, when no specific time of actual performance of such ceremonies is mentioned in the registered deed of adoption.

(Para 12)

Held, that the very fact that Surjit Singh inherited to the estate of his natural father negatives the factum of alleged valid adoption by Bhola Singh.

(Para 13)

Held, that the father has no pious obligation to make the gift of ancestral property in favour of his daughter.

(Para 15)

Held, that mere registration of the gift deed does not make the gift complete or effective. Gift consists in the relinquishment of right in person and its creation in another person and it is complete on the other's acceptance. Father's acceptance of the gift, as such, is held to be valid.

(Para 16)

Regular Second Appeal from the decree of the Court of Sh. T. N. Gupta, Addl. Distt. Judge, Patiala, dated the 20th day of January, 1983 *reversing that of Shri Baldev Singh, P.C.S. Sub Judge Ist Class, Nabha, dated the 2nd November,* 1982, *and decreeing the suit of the plaintiff for a declaration to the effect that the plaintiff is owner to the extent of 3rd/4th share in the land detailed in the head note of the plaint while the defendant is owner of the remaining 1/4th share and ordering that a permanent injunction shall issue against the defendant restraining her from alienation in any manner 3/4th share of the land in suit and leaving the parties to bear their own costs throughout.*

CLAIM :—Suit for declaration to the effect that the plaintiff is owner of land measuring 41 Kanals 15 Marlas bearing khata No. 65/51 *khatauni No.* 79 *rectangle No.* 44 *Killa Nos.* 2/2 (1-0), 8/2 (0-9), 9/2 (3—13), 10 (8—19), 12 (6—8), 19 (8—0), 22 (7—0), *alongwith* 1/2 *share in Well in khata No.* 67/5-3, *khatauni No.* 82 *and rectangle No.* 44

killa No. 26 (0—13), *situated within the revenue estate of village Nabha, Tehsil Nabha,*—vide *jamabhandi* 1970-71 *and defendant has no right, title of interest in the aforesaid land and as consequential relief a decree for permanent injunction prohibiting the defendant from interfering in the possession of the land mentioned above and from alienating and dispossessing of the same in any manner.*

CLAIM IN APPEAL:—For reversal of the order of lower appellate Court.

M. S. Jain, Sr. Advocate and Sanjeev Sharma, Advocate with him, *for the Appellant.*

S. C. Kapoor, Advocate and Naresh Katyal, Advocate, with him, *for the Respondents.*

JUDGMENT

A. L. Bahri, J.

(1) Smt. Maya Devi defendant has filed this appeal against judgment and decree dated January 20, 1983, passed by the Additional District Judge, Patiala, whereby the judgment and decree of the trial Court dated November 2, 1982, was set aside. The trial Court had dismissed the suit whereas the lower appellate Court decreed the suit filed by Surjit Singh, adopted son of Bhola Singh, for declaration that he was owner to the extent of 3/4th share in the land in dispute and the remaining land belonged to Maya Devi defendant, i.e. 1/4th share. Maya Devi was further injuncted restraining her from alienating in any manner 3/4th share of the land in dispute.

(2) The dispute relates to the estate of Bhola Singh. Maya Devi appellant is the daughter of Bhola Singh, whereas Surjit Singh plaintiff claims to be his adopted son. Bhola Singh owned and possessed 1/6th share in the agricultural land as described in para 1 of the plaint, situated in village Nabha. After consolidation 41 Kanals 16 Marlas of land fell to his share which is described in para 2 of the plaint, which is the subject matter of the suit. Bhola Singh died on May 27, 1970. Bhola Singh adopted Surjit Singh plaintiff as a son on May 29, 1953 by means of an adoption deed which was duly registered. Bhola Singh is alleged to have executed a fake and sham gift deed of the suit land in favour of Smt. Maya Devi on December 3, 1953. This gift deed was challenged as invalid on the ground *inter alia* that possession under the gift was not delivered to the

donee. The gift was not made with an intention to transfer right, title and interest to the donee. The gift was never accepted by the donee-defendant. Bhola Singh had no right or authority to gift after the plaintiff had been adopted as his son. During his life-time Bhola Singh treated the suit land as exclusively owned by him. Bhola Singh and the parties are governed by Hindu law as prevalent in Northern India. Bhola Singh constituted a coparcenary joint Hindu family property. The land in the hands of Bhola Singh was ancestral *qua* the plaintiff. The plaintiff had thus interest in the suit land equal to the share of Bhola Singh. The gift could not be made without the consent of the plaintiff. After the death of Bhola Singh, Surjit Singh plaintiff claim to be sole heir and legal representative of Bhola Singh and thus owner of the suit land. Since Maya Devi defendant was threatening to dispose of the disputed land, the suit was filed by Surjit Singh for declaration of ownership of the suit land and for injunction restraining Maya Devi from alienating the same in any manner.

(3) Smt. Maya Devi contested the suit. Some preliminary objections were taken that the suit for merely injunction was not maintainable as the plaintiff was not in possession of the suit land. The plaintiff had no *locus standi* to file the suit. The plaintiff got another suit filed through his wife Kiran Sharma against Maya Devi, defendant, on the basis of some agreement of sale which was dismissed. On merits the allegations of the plaintiff were generally denied. After making the gift in favour of Maya Devi defendant, Bhola Singh divested himself of all rights. After December 3, 1953, the date of the gift, Bhola Singh was never in possession of the suit land. It was admitted that Bhola Singh adopted the plaintiff but it was asserted that the same was not a valid adoption. The plaintiff could not legally succeed to the estate of Bhola Singh. After the adoption the land was mortgaged by the defendant in favour of Sita Devi wife of Prem Raj and the mortgagee is in possession of the suit land. The plaintiff is not in possession of the suit land. The gift was stated to be validly made by Bhola Singh in favour of Maya Devi. Possession under the gift was passed to Maya Devi who accepted the gift. It was denied that the gift was a sham or forged transaction. The suit was barred by time. In the replication filed by the plaintiff the stand taken up in the plaint was reiterated while denying the allegations of the defendant. It is pertinent to mention here that with regard to adoption it was stated that he was validly adopted by Bhola Singh who brought him up as his son and also performed his

marriage. Maya Devi also treated him as her brother. The defendant was estopped and barred by her act and conduct from challenging the adoption.

(4) On the pleadings of the parties following issues were framed :—

(1) Whether the plaintiff was validly adopted by Pt. Bhola Singh deceased ? OPP

(2) Whether Pt. Bhola Singh executed fake and sham gift deed and the same is void for the reasons given in para 5 ? OP

(3) Whether the plaintiff has succeeded to the estate of Bhola Singh ? OPP

(4) Whether the suit is within time ? OPP

(5) Whether the suit is not maintainable under section 34 of the Specific Relief Act ? OPD

(6) Whether the plaintiff has no *locus standi* to file the suit ? OPD

(7) Whether the plaintiff is estopped by his act and conduct from filing the suit ? OPD

(8) Whether the suit is properly valued for the purposes of court-fee and jurisdiction ? OPD

(9) Relief.

(5) The trial Court decided issues Nos. 1 and 3 together. It was held that there was no valid adoption of plaintiff by Bhola Singh and thus the plaintiff as adopted son of Bhola Singh was not to succeed to his estate. Under issue No. 2 it was held that the gift of the suit land made by Bhola Singh in favour of his only daughter Maya Devi was not fake and sham transaction. The gift was valid. Under issue No. 4 the suit was held to be barred by time. Issue No. 5 was decided in favour of the plaintiff. The suit was held to be maintainable. Issue No. 6 was given up and was decided against the defendant. The plaintiff was held to have *locus standi* to file the suit. Under issue No. 7 it was held that the plaintiff was not estopped from filing the suit. Under issue No. 8 the suit was held properly valued for purposes of court-fee. In the result the suit was dismissed.

(6) On appeal filed by Surjit Singh plaintiff, as already stated above, the judgment and decree of the trial Court was set aside and the suit was partly decreed. Under issue No. 1 it was held, while reversing the finding of the trial Court, that the plaintiff was adopted by Pt. Bhola Singh before 1953. Under issue No. 2 also the finding of the trial Court was reversed and it was held that the gift being a wholesale transfer of coparcenary property was illegal and void. Under issue No. 3 it was held that since the property was ancestral and there was valid adoption of Surjit Singh plaintiff by Bhola Singh deceased, by succession Surjit Singh was to inherit ½ share as adopted son and the other ½ share was again to be divided between Surjit Singh, adopted son, and Maya Devi in equal shares. In this manner Surjit Singh was held owner of ¼th share, whereas Maya Dévi to the extent of ¼th share. Finding of the trial Court was again reversed. Under issue No. 4 the suit was held to be within time. Again the finding of the trial Court on issue No. 4 was reversed. In conclusion it was held that plaintiff was adopted son of Bhola Singh before the gift of the land was made by Bhola Singh in favour of Smt. Maya Devi. The gift was, therefore, illegal. The suit was within time. On the death of Bhola Singh, Surjit Singh became owner of 3/4th share and Maya Devi to the extent of ¼th share. Thus, while setting aside the judgment and decree of the trial Court, the suit of the plaintiff Surjit Singh stood decreed to the extent of ¾th share of the suit land. An injunction was also granted restraining Maya Devi from alienating ¾th share of the suit land.

(7) I have heard learned counsel for the parties and have perused the record. The decision of the case primarily depends upon the determination of the question of adoption of Surjit Singh by Bhola Singh. If the adoption is held to be valid then further question for consideration would be regarding validity of the gift made by Bhola Singh in favour of Maya Devi, as admittedly the land in dispute being ancestral *qua* Surjit Singh plaintiff and Bhola Singh's right of alienation would be restricted. In case the adoption of Surjit Singh is held to be invalid, his suit would be dismissed as in that case Bhola Singh having no male issue, even if the property had come to him from his father, he would be competent to make the gift, or bequeath after his death it would be Maya Devi who would succeed to him.

(8) The parties are required to lead evidence on the pleas taken up in the pleadings and evidence, if any, produced which is beyond the pleadings is to be ignored. It is keeping in view this principle

that the evidence produced in the case as well as the question involved regarding validity of the adoption is to be gone into. At the outset it may be stated that in the pleadings of the parties the factum of adoption was admitted. However, its validity was disputed. In the plaint there was no allegation as to where and in whose presence Surjit Singh was adopted by Bhola Singh. In para 4 of the plaint it was stated that Bhola Singh adopted Surjit Singh as his son on May 29. 1953 by means of an adoption deed which was duly registered. In the written statement, as already mentioned above, the factum of adoption was admitted. However, its validity was disputed. In the replication no case was pleaded by Surjit Singh that the adoption did not take place on May 29, 1953 but it had already taken place when Surjit Singh was a child/infant. However, it was stated that from the childhood Surjit Singh was being treated as son of Bhola Singh. He was brought up, educated and married by Bhola Singh. Since the parties are governed by Hindu law, strict proof of necessary ceremonies to complete the adoption was required.

(9) Para 448 of the Hindu Law by Mulla, 1982 Edition provides necessary requirements of a valid adoption as under :—

> "448. REQUIREMENTS OF A VALID ADOPTION.—No adoption is valid unless :—
>
> (1) the person adopting is lawfully capable in adoption;
>
> (2) the person giving in adoption is lawfully capable of giving in adoption;
>
> (3) the person adopted is lawfully capable of being taken in adoption;
>
> (4) the adoption is completed by an actual giving and taking: and
>
> (5) the ceremony called *datta homam* (oblation to fire) has been performed. It is, however, doubtful whether the *datta homam* ceremony is essential in all cases to the validity of adoption."

Since adoption was prior to 1956, no presumption could be drawn of a valid adoption merely by registration of the alleged adoption deed. While referring to the scope of sections 16 and 13 of the Hindu

Adoption and Maintenance Act, 1956, in *Indrawati* v. *Jagmal and another* (1). Surinder Singh, J. held that nothing contained in the aforesaid Act shall affect any adoption made before the commencement of the said Act and validity and effect of such adoption shall be determined as if the aforesaid Act had not been passed. It was further observed that if the provisions of the said Act were ignored, we have to revert to the general law regarding placing of burden on the question of adoption. The evidence in support of an adoption must be sufficient to satisfy the very grave and serious onus that rests upon any person who seeks to displace the natural succession by alleging an adoption. In *Achhar Singh etc.* v. *Darbara Singh etc.*, (2), in respect of an adoption made before the enforcement of Hindu Adoption and Maintenance Act, it was held by S. P. Goyal, J. that mere registration deed would not attract the provisions of Section 16 of the aforesaid Act. Presumption of adoption under the said section was available only if the adoption was made after the Act came into force. In the present case, thus the plaintiff Surjit Singh was required to prove all the ingredients of a valid adoption as enumerated in para 448 of the Hindu Law as reproduced above.

(10) Before adverting to the evidence produced in this case the contention of the counsel for Surjit Singh respondent may briefly be noticed. It is argued that adoption in the present case of Surjit Singh by Bhola Singh took more than 30 years ago when Surjit Singh was an infant and in order to establish an ancient adoption, may be 30 years old, very slight evidence was required to be produced and the evidence of treatment of Surjit Singh by Bhola Singh as his own son, bringing him up and performing his marriage should be treated as sufficient to prove valid adoption. In other words contention is that there need not be specific evidence of the necessary ingredients of adoption i.e. giving and taking of the child by the natural and the adoptive father respectively. In support of this contention some judicial decisions were referred to which may briefly be noticed. *Surai Bai* v. *Sadashiv Jugal Kishore* (3), *Vithoba Bhanji and others* v. *Vithal Sakroo and others* (4), *Balinki Padhano and*

(1) 1979 P.L.R. 505.
(2) 1982 C.L.J. (C&Cr.) 159.
(3) A.I.R. 1958 M.P. 100.
(4) A.I.R. 1958 Bombay 270.

another v. *Gopakrishna Padhano and others* (5), and *Panna Lal* v. *Chiman Parkash and others* (6). In all these cases it was held that in spite of an old adoption strict proof of the performance of the ceremonies could not be demanded. An adoption acquiesced and recognised for a number of years by the person making the adoption and a long course of recognition on the part of that person and the brotherhood would give rise to the inference that the condition relating to the adoption were fulfilled. As far as legal proposition is concerned there is no dispute. The lower appellate Court has relied upon these authorities in order to come to a conclusion that on the basis of some evidence produced in the present case a presumption of a valid adoption could be raised as the adoption was ancient. However, as already noticed above these conclusions of the lower appellate Court that Surjit Singh was adopted more than 30 years ago is contrary to the plea taken up in the plaint. Specifically it was pleaded that the adoption took place on May 29, 1959 by means of an adoption deed.

(11) Exhibit P.90 is the adoption deed, dated May 29, 1953. This deed does state that adoption had taken place earlier. This document does not state that on that very day i.e. May 29, 1953 actual adoption took place. At the most it can be a memorandum of fact that Bhola Singh had already adopted Surjit Singh. This document has been wrongly interpreted by the lower appellate Court that Surjit Singh was 11 years old when he was adopted. Primarily this document is a Will in favour of Maya Devi, the only daughter of Bhola Singh and,—*vide* this Will Bhola Singh desired his land and house at Nabha to go to Maya Devi after his death. It was thereafter recited that Surjit Singh son of his brother Hari Chand from his very birth was residing with him and he was brought up as his son, who at that time (in 1953) was about 11 years. It further recites that necessary ceremonies of adoption were performed by Hari Chand accordingly. There is no mention as to when Hari Chand performed the necessary ceremonies of adoption. The mere fact that from the child-birth Surjit Singh was being brought up by Bhola Singh as his own son as per admission of Bhola Singh in this document, as referred to above, will not prove that the adoption took place at the time of the birth of Surjit Singh or near about or that necessary

(5) A.I.R. 1964 Orissa 117.
(6) A.I.R. 1947 Lahore 54.

ceremonies were performed at that time. Learned counsel for Surjit Singh has vehemently argued that admission of Bhola Singh, as discussed above in Exhibit P.90, coupled with other evidence produced on the record, it should be held that the adoption was held. It is further asserted that since Maya Devi is claiming through Bhola Singh in the property left by him. Such an admission even if not conclusive proof of valid adoption, would necessarily shift the burden on the opposite party. Reference has been made to the decision of Patna High Court in *Umesh Bhagat* v. *Smt. Ram Kumari Devi and others* (7). The adoptive father had made an admission of adoption in the application form submitted to a college showing him as adoptive father. It was held that it amounted to a clear admission of an adoption and such an admission would bind the person claiming under it. In *Avadh Kishore Dass* v. *Ram Gopal and others* (8), question of adoption was not under consideration. However, it was held that necessary admissions are not conclusive proof of the facts admitted and may be explained or shown to be wrong but they do raise an estoppel and shift the burden of proof on to the person making them or his representative-in-interest. Unless shown or explained to be wrong they are an efficacious proof of the facts admitted.

(12) The matter was under consideration of the Mysore High Court in *Govinda* v. *Chimabai and others* (9). There was an admission of adoption in the document which was stated to have been obtained by fraud. It was observed that an adoption deed containing a recital as to the adoption having been made would not give the plaintiff a status of an adopted son if the adoption itself is disproved or when it is shown that the adoption deed was not executed voluntarily but was obtained by misrepresentation or fraud. It was further observed that photographs of the ceremonies will be neutral and cannot help the plaintiff to establish that he was taken in adoption. If the entire document Exhibit P.90 is read as a whole, it negatives the factum of a valid adoption as specially by this document a Will was being executed bequeathing the entire suit property in favour of Maya Devi, the only daughter of the executant Bhola Singh. There is no evidence that apart from the property in dispute, Bhola Singh had other property at the time of execution of this document. There is some evidence that earlier Bhola Singh had

(7) A.I.R. 1963 Patna 362.
(8) A.I.R. 1979 S.C. 861.
(9) A.I.R. 1968 Mysore 309.

landed property in some other village. That is of no help. Merely because factum of adoption was mentioned in this document and that the adoption was also admitted by the two attorneys of Maya Devi, namely, Kulwant Singh (DW 2) and Vijay Reikhi (DW 4), the same cannot be held to be a valid adoption in the absence of any evidence of necessary ceremonies having been performed on May 29, 1953, the alleged date of adoption as pleaded in the plaint. The so-called admission of performance of necessary ceremonies of adoption in Exhibit P.90 is too vague to be relied upon, when no specific time of actual performance of such ceremonies is mentioned in this document. Maya Devi, in whose favour the aforesaid document Exhibit P.90 was executed bequeathing the estate to her, is not bound by the alleged admission of performance of ceremonies as mentioned therein. Such a matter was under consideration of the Supreme Court in *Madan Lal* v. *Mst. Gopi and another* (10), in para 5 of the judgment it was observed as under:—

> "The deed of adoption dated August 10, 1944, which is impugned in the present suit, contains a bald assertion that Mansaram had taken the appellant Madan Lal in adoption. But, significantly the deed does not mention the year, the date or the place of adoption. It does not either mention, as adoption deeds generally mention, the names of persons who were present at the time of adoption. In fact, on the record of this case there is no evidence whatsoever to show when and where the adoption took place and even whether the necessary ceremonies were performed. We cannot accept the submission, though strongly pressed upon us by Shri Sobhagmal Jain who appears on behalf of the appellant that what the plaintiff had challenged in the suit was the validity of the deed of adoption and not the factum of adoption."

(13) Yet there is specific evidence in the form of mutation Exhibit P.13 that on the death of Hari Chand, natural father of Surjit Singh, his property was inherited by his sons including Surjit Singh. Under the Hindu Law if there is a valid adoption, there would be complete transplantation of the child of the family of his natural father to the family of his adoptive father. The very fact that Surjit Singh inherited to the estate of his natural father negatives the factum of alleged valid adoption by Bhola Singh.

(10) A.I.R. 1980 S.C. 1754.

Exhibit P.18 is the statement of Maya Devi recorded in the suit : Krishan Sharma *v.* Maya Devi, wherein she admitted the adoption of Surjit Singh by Bhola Singh as his son. This statement again is not of much assistance as Maya Devi in the written statement has also admitted the factum of adoption. It is only the validity of adoption which has been questioned in this suit. It is, therefore, held that Surjit Singh was not validly adopted by Bhola Singh. Finding of the lower appellate Court in this respect is reversed.

(14) The question of gift made by Bhola Singh in favour of Maya Devi has to be looked from different angles. Firstly, as held above, Surjit Singh having not been validly adopted by Bhola Singh and there being no other male lineal descendant of Bhola Singh being in existence at the time of his death by natural succession the entire property was to devolve upon his daughter Maya Devi Secondly, since the adoption has been held to be not validly performed, Bhola Singh could alienate his property in any manner treating it as his self acquired property in the absence of any male descendant. The other aspect of the matter to be considered would be as to whether Bhola Singh could make gift of some of his property in favour of his daughter treating the property to be ancestral. It is only the last aspect which has been debated during arguments. The contention of counsel for the appellant is that even if the adoption is held to be valid, gift of fraction of entire property of Bhola Singh could be made in favour of his daughter under the Hindu Law. This contention cannot be accepted. Firstly, as already stated above, there was no evidence that at the time the gift deed was executed there was any other property of Bhola Singh in any other village. Referring to the old revenue records it is stated that the entire estate of Bhola Singh was to the tune of 250 Bighas of land and the gift only relates to 27 Bighas of land and a house situated at Nabha which would be small fraction. Assuming it to be so still the gift could not be held to be valid under the Hindu Law on this ground. Para 225 of the Hindu Law by Mulla, 1982 Edition, deals with gift by father within reasonable limits of ancestral movables. Father, as mentioned in this para, has the power of making within reasonable limits of ancestral movable property without the consent of his sons by way of affection or support of the family. However, it is para 226 which deals with ancestral immovable property which is relevant and reads as under :—

"226. *Gift by father or other managing member of ancestral immoable property within reasonable limits.*—A Hindu

father or other managing member has power to make a gift within reasonable limits of ancestral immovable property for "pious purposes." But the alienation must be by an act *inter vivos*, and not by will. A member of a joint family cannot dispose of by will any portion of the property even for charitable purposes and even if the portion bears a small proportion to the entire estate."

A perusal of the aforesaid para indicates that a father could make a gift within reasonable limits of ancestral immovable property for "pious purposes". The Supreme Court in *Gurannna Bhratar Chanbasappa Deshmukh and others* v. *Mallappa Chanbasappa and another* (11), commented upon the power of the father to gift the property in favour of a daughter. It would be useful to refer certain passages from the judgment. After referring to the relevant paras of the Hindu Law and different judgments in para 18, the Supreme Court observed as under :—

"*The legal position may be summarized thus.*—The Hindu law texts conferred a right upon a daughter or a sister, as the case may be, to have a share in the family property at the time of partition. That right was lost by efflux of time. But it became crystallised into a moral obligation. The father or his representative can make a valid gift, by way of reasonable provision for the maintenance of the daughter, regard being had to the financial and other relevant circumstances of the family. By custom or by convenience, such gifts are made at the time of marriage, but the right of the father or his representative to make such a gift is not confined to the marriage occasion."

(15) Thus, in this very context further question to be considered is whether the gift in dispute was made by the father for pious purpose or for maintenance of Maya Devi, the daughter. Maya Devi is already settled in her married life and is residing in Canada. There is no evidence that in fact she ever needed monetary support from her father for her maintenance, otherwise there was no pious obligation of the father to make the gift of ancestral property in favour of his daughter.

(11) A.I.R. 1964 S.C. 510.

(16) The second important question for consideration is as to whether the gift made in favour of Maya Devi was legally complete or not. It has been argued on behalf of the respondent that since Maya Devi was residing in Canada at the time the gift deed was executed, there was no acceptance of the gift by taking possession of the property. This contention cannot be accepted. Even if at the time of execution of the gift the donee was not available, the gift could be subsequently accepted. In the present case there is specific evidence of acceptance of the gift as Bhola Singh subsequently after obtaining a power of attorney from Maya Devi mortgaged the land. This is so clear from different letters which were initially marked as 'A', 'B', 'C' and 'D' as also noticed and relied upon by the trial Court. If after execution of the gift deed Bhola Singh started acting as attorney of Maya Devi, the donee, and dealt with the property in dispute, there was clear indication of acceptance of the gift. Thus, the gift was complete. The gift could only be held invalid if adoption of Surjit Singh had been held to be valid, otherwise, as already stated, in the absence of any male lineal descendant there was no bar on Bhola Singh to gift away the property to his own daughter Maya Devi who was otherwise also to succeed to him. All the provisions of the Transfer of Property Act are not applicable to Punjab. Section 123 of this Act is not applicable to the gift in dispute. Mere registration of the gift deed does not make the gift complete or effective. Gift consists in the relinquishment of right in person and its creation in another person and it is complete on the other's acceptance. It was so held in *Inder Singh* v. *Nihal Kaur and another* (12), *Mukhtiar Kaur* v. *Ghulab Khan* (13), and *State of Punjab* v. *Sant Singh* (14). In the present case there was acceptance of the gift as discussed above and, therefore, the gift is held to be valid.

(17) The other question debated relates to limitation of filing of the suit. In the suit challenge was to the gift deed executed by Bhola Singh (Exhibit D.3), dated December 3, 1953. Mutation of this gift deed was sanctioned on August 24, 1954, copy Exhibit D.5. Bhola Singh, acting as attorney of Maya Devi, mortgaged some of the land in dispute in favour of Sita Devi on May 27, 1969, copy of

(12) A.I.R. 1968 Punjab and Haryana 495.

(13) A.I.R. 1977 Punjab and Haryana 257.

(14) 1976 P.L.R. 87.

this mutation in this respect is Exhibit D.6. Bhola Singh died on May 27, 1970, Death entry being Exhibit P.2. Letters written by Surjit Singh in between 1967 to 1969, which were merely marked but subsequently proved, indicate that he had been requesting Maya Devi to send authority for mortgaging the land. From the narration of the facts stated above, it is quite clear that Maya Devi accepted the gift and Surjit Singh requested her for sending the power of attorney for mortgaging the land. The purpose of mortgaging the land is also mentioned in these letters that Bhola Singh and Surjit Singh were to visit Maya Devi in Canada and they needed money. By that time there was no dispute between the parties. Since the land was under the tenants at the time of execution of the gift deed-Exhibit D.3, it was only symbolic possession which was required to be delivered. Obviously Maya Devi at that time being residing in Canada was not expected to take herself physical possession of the land. Bhola Singh obtained her power of attorney. Subsequently Bhola Singh was dealing with the land in dispute upto the time of his death he was acting as attorney of Maya Devi. Thus, by sanctioning of the mutation itself would show that gift had been given effect to and possession had been delivered. Mutation was sanctioned on August 24, 1954 and the present suit was filed on April 17, 1976 i.e. beyond 12 years of the completion of the gift. Article 109 of the Limitation Act provides a period of 12 years to challenge father's alienation of ancestral property and the time from which the period begins is when the donee in the case of a gift takes possession of the property. This position would be if Surjit Singh had been held to be validly adopted son of Bhola Singh. Otherwise the suit was required to be filed within 3 years as required under Article 59 of the Limitation Act. In substance the prayer of Surjit Singh is to set aside an instrument i.e. gift deed, Exhibit D.3, dated December 3, 1953. The factum of gift was admitted by Surjit Singh himself in his letters already referred to above which were written during the period January 31, 1967 to May 11, 1969. The letters show that Surjit Singh had the knowledge of the gift and that is why he was requesting Maya Devi to send power of attorney for mortgaging the land. The suit filed on April 17, 1976 would thus be clearly barred by time. Even if the residuary Article i.e. Article 58 is applied, the suit is also barred by time having been filed beyond three years when the right to sue first accrued. Thus issue No. 4 is decided accordingly.

(18) For the reasons recorded above, this appeal is accepted leaving the parties to bear their own costs throughout. The judgment and decree of the lower appellate Court are set aside and that of the trial Court, dismissing the suit, are restored.

R.N.R.

Before : G. C. Mital & G. S. Chahal, JJ.

SHASHI KANT VOHRA AND OTHERS,—*Petitioners.*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 757 of 1988

4th September, 1990

Haryana General Sales Tax Act, 1973—S. 13—Indian Evidence Act, 1872—S. 115—Notification dated 2nd June, 1979 and Exemption Notification dated 30th December, 1987—Rural tiny industrial units granted exemption from payment of tax by 1979 notification—Exemption granted for period of two years—Exemption certificate issued by Industries Department made condition precedent for availing concession—1987 notification laying further condition that such units should have turnover not exceeding 5 lac rupees a year—Validity of 1987 notification—Withdrawal of concession from tiny units with turnover in excess of 5 lac rupees—Violates rules of Promissory estoppel—Exemption cannot be withdrawn—Notification issued under S. 13 is subordinate legislation and not a legislative Act.

Held, that the exemption of tax allowed under the Haryana General Sales Tax Act, 1973 to the tiny industries,—*vide* notification dated 2nd June, 1979 could not be withdrawn by means of the impugned notification dated 30th December, 1987 and the Haryana Government was estopped from withdrawing the concession to the tiny industrial units by the rule of promissory estoppel.

(Para 16)

Haryana General Sales Tax Act, 1973—S. 13—Indian Evidence Act, 1872—S. 115—Notification dated 10th August, 1973 and 30th December, 1987—Exemption granted to Khadi and Village Industries by 1973 notification withdrawn by 1979 notification—Being mere concession, it could be withdrawn at any time—Rule of promissory estoppel does not apply.