A

STATE OF U.P.

v.

SAYED ABDUL JALIL

February 1, 1972

[S. M. SIKRI, C.J., A. N. RAY AND M. H. BEG, JJ.]

B

Mahommedan law—Order of Muslim ruler of Princely State allotting house—If would amount to a gift of the corpus—Whether operates as a grant of life estate or a revocable licence—Indian Evidence Act (1 *of* 1872), *s.* 92 *proviso* (6)*—Admissibility of other evidence.*

C

Pursuant to an order by a Muslim ruler of an erstwhile princely-State, the respondent was allotted a house and he was living in it. After the merger of the princely-State with the appellant-State, rent was demanded from the respondent and he filed a suit for a declaration that he was the owner in possession of the house; and in the alternative, that he was a licensee entitled to remain in possession for life without payment of any rent.

D

The High Court, in second appeal, held that the use of the Urdu words 'inteqal' and 'atta' showed that the Ruler intended the order to be a valid declaration of gift under Mohammedan Law and that when the respondent took possession of the house, he became its owner. The High Court also held that no other evidence was admissible for deciding on the Ruler's intention.

E

Allowing the appeal to this Court,

HELD : (1) There being no mention in the order either of rights of ownership or those of a life-estate holder, the mere use of the two words, did not determine what was meant to be granted. The word 'inteqal' is used in connection with a transfer of property, but in the context of its use here, it could only indicate that the respondent was to have change or transfer his residence in the physical sense. The word 'atta' is used to denote all kinds of grants including a mere permission to live in a house. Therefore, assuming that the order reduced the terms of a grant to writing, oral and other evidence was both necessary and admissible under s. 92, proviso (6), Evidence Act, to resolve the latent ambiguity. The evidence adduced in the case, however, is more consistent with the view that the Ruler meant to resolve the immediate financial difficulty of the respondent by giving him free residential accommodation than with a conferment of the ownership of or a life interest in the house. [346 B-H]

F

G

(2) There was no declaration of any gift either of the corpus or the usufruct and the admissible evidence relating to the nature of the transaction, which the High Court should have considered, showed, that the transaction amounted to nothing more than a grant of a licence revocable at the grantor's option. From the mere expenditure by the respondent of money over some necessary repairs, an inference of a larger grant cannot be drawn. [347 C-E]

H

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 279 of 1967.

A Appeal by special leave from the judgment and decree dated September 15, 1966 of the Allahabad High Court in Second Appeal No. 222 of 1960.

G. N. Dikshit and *O. P. Rana,* for the appellants.

E. C. Agrawala, for respondents Nos. 1, 2, 4 and 5.

B The Judgment of the Court was delivered by

Beg, J. There are two appeals by Special Leave before us, Leave, against the Judgment and decree of a learned Judge of the Allahabad High Court allowing a plaintiff's second appeal

C The plaintiff's case was that the Government of Rampur had given him a house "under the orders of His Highness the Nawab of Rampur, passed on 23rd June, 1945". It appears that, after the merger of Rampur State in Uttar Pradesh in 1949, when Rampur became a district of Uttar Pradesh, this house was given by the Government of Uttar Pradesh to the Municipal Board of D Rampur, Defendant-Appellant, which demanded rent from the plaintiff by notice. On the plaintiff's refusal to pay, the house was attached on 23rd February, 1955. The plaintiff deposited a sum of Rs. 100- under protest. He then filed his suit, on 26-10-56, for a declaration that he is the owner in possession of the house, and, in the alternative, that he is a "licensee" entitled to remain in possession of the house for life without payment of E rent.

The defendants, the State of Uttar Pradesh, the Municipal Board of Rampur, and the Public Works Department at Rampur, denied the alleged gift of either the ownership or of a life-interest in the house to the plaintiff. They also pleaded that there was F no relationship of landlord and tenant between the plaintiff and the defendants. Their case was that, if any permission to reside in the house was given to the plaintiff by the ruler of the State of Rampur before the merger of Rampur with Uttar Pradesh, it was valid and effective only so long as the plaintiff was in the service of the former ruler of Rampur. They set up a claim to "damages for use and occupation in the form of rent from G the plaintiff at Rs. 10/- per month from 1-4-1953 to 30-1-1954". According to them, the plaintiff's licence, if any, automatically terminated when the State of Rampur merged with the State of Uttar Pradesh. The defendants had also pleaded that the alleged gift, which was not governed by Mahomedan law, could not be upheld because no registered deed of gift was executed to trans- H fer a house the value of which was far in excess of Rs. 100/-.

The Trial court as well as the first Appellate Court had found, after an examination of all the evidence, including the alleged

order dated 23rd June 1945, of His Highness the Nawab of Rampur (Exhibit 1), a letter dated 30th June 1949 (Exhibit A-10) from a Minister of Rampur State to "the Secretary (Buildings), fixing rent for the house and the oral evidence that the plaintiff had not proved either of the two alternative claims set up by him. A learned Judge of the Allahabad High Court had, upon the plaintiff's second appeal, reversed the concurrent findings of fact recorded by the Courts below because the learned Judge thought that "the order of the Nawab of Rampur dated 23rd June 1945", constituting a valid declaration of a gift, by the owner of the house, followed by the plaintiff's admitted actual possession of the house conferred ownership of the house upon the plaintiff-respondent according to Mahomedan law. The learned Judge also held that nothing beyond this order of the Nawab could be looked into for deciding what was intended by the Nawab and that the use of the words "inteqal" and "atta" in the following extract from the order in Urdu determined the intent of the Nawab conclusively. "Ap ki sakunat ke waste Abdul Karim Sahib wala makan atta farmaya gaya hai. Ap aj hi us me muntaquil ho jayen ...... Ap un se mil kar inteqal makan ki karrawai kariye".

The questions arising before us for decision are: firstly, whether the alleged gift is governed by Mahomedan Law; secondly, whether the requirements of Mahomedan law for establishing a gift of the house or of its usufruct for life to the plaintiff could be held to have been satisfied in this case; and, thirdly, whether nothing beyond the order of 23-6-1945 could be looked into to determine the Nawab's intention.

One could legitimately presume that a gift by the Nawab of Rampur, a Muslim, would be governed by the rules of Mahomedan law if the Nawab was dealing with his own private property. In the case before us, we find that the plaintiff himself has pleaded that he acquired his right and title to the house in dispute from the Government of Rampur State, although the action of the Government was said to be "under the orders dated June 23, 1945, of His Highness the Nawab of Rampur". Upon an examination of the alleged order, which has been treated by the learned Judge of the Allahabad High Court as a valid declaration of a gift of the house by its owner, governed by Mahomedan law, we find that it is only a piece of information sent to the plaintiff who is described as "Nigran Shikar Mahi" or "Supervisor of Fishing." The communication, translated in English in the paper book of this Court, reads as follows :

> "His Highness has passed orders that you should immediately vacate the house in which you reside and

> pay up to the landlord all his dues. Abdul Karim wala house has been given to you for your residential purpose. You should shift to that house this very day. The Executive Engineer (Buildings) has been intimat- to allot the said house to you immediately. Please contact him and take steps to vacate the house".

The plaintiff himself had produced Agha Khan, the Assistant Military Secretary of the Nawab of Rampur, who had signed and sent the communication, set out above, to the plaintiff. His evidence shows that the Nawab of Rampur had probably given some oral order to get the private house in which the plaintiff was living vacated, and "to give" another house to him for residence. Under cross-examination, the witness stated that, by using the word "inteqal" in the writing, he meant to convey that "the plaintiff should leave that house and live in the house in dispute." This witness, who was not owner of the house, could not gift the house in dispute to the plaintiff. He could only "give" the house to the plaintiff in the sense that he could, under the Nawab's orders, obtain its allotment for the plaintiff. He said that its previous occupant, a mechanic, was also occupying it, without payment of any rent, with the Nawab's permission. The implication of such a statement could only be that the plaintiff had a similar permission. He did not depose that the Nawab had asked him to inform the plaintiff that the Nawab was making a gift of the house to the plaintiff. The witness stated that the house belonged to the Government of Rampur. All this evidence is consistent with the view that the Nawab meant to do nothing more than to resolve the immediate difficulty of the plaintiff, by giving him some free residential accommodation in a house owned by the Government so that the plaintiff could clear up his dues to his landlord, rather than with the conclusion that the Nawab intended to confer the ownership of the house on the plaintiff.

It is well established that a document must be read as a whole. In a document meant for a transfer of ownership, the purpose is generally stated clearly to be that the property given will be owned and possessed henceforth by the donee in such a way that he could use it or deal with it as he liked. The only 'karawai' or proceeding, to which a reference is made in the document, seemed to be "allotment" of accommodation or transfer of plaintiff's residence into another house, owned by the State, for which appropriate steps were to be taken by a Government official. The communication says, as translated, that the Executive Engineer (Buildings) had been informed that the house in question was to be "allotted" to the plaintiff. If the plaintiff was to become its owner, that would have been communicated to the

Executive Engineer. A transfer of ownership would, in the ordinary course, be expected to be evidenced by much more clear and unequivocal language. The appropriate proceeding after a gift is that of mutation in Municipal records. No evidence was given of any mutation in a Municipal record showing transfer of ownership of the 'corpus' for which the term 'milkiyat' is used.

It is true that, as the learned Judge observed, the word 'Inteqal' is used in connection with a transfer of property. This is so when it occurs in juxta-position with 'Jaidad'. In the document before us, the following words indicate that transfer which the Nawab had in mind was that of the plaintiff himself to another residence in the physical sense : "Ap aj hi us me muntaqil ho jayen." This meaning is further emphasised by the use of the words "sakunat ke waste" (for residential purpose) which was the only stated object of the "inteqal." Again, the word "atta" is used to denote all kinds of grants. The grant may be of a license or of ownership of property. The word "atta" could be used by a courtier, as a matter of form, to indicate anything granted by the Nawab whether it be mere permission to live in a house or something more.

If the intention of the Nawab was to grant ownership, the language used to communicate it would not have left it in doubt. It is significant that the plaintiff, who stated in his evidence that the gift was meant to have been made "in lieu of old services", had not mentioned this object of the alleged donation in his plaint. It is also evident that he was not sure of his own rights or position because he took up an alternative case of a gift of the right to live in the house for life. We do not find the word 'hibba' or gift used at all in this document. Nor is the word "amree" or any other similar word, which could connote a life-estate, used in the document. There being no mention either of rights of ownership or those of a life-estate holder, the mere use of the words "inteqal" and "atta" does not determine, as the learned Judge assumed, what was really meant to be granted or transferred. We think that oral and other evidence, besides the document under consideration, was both necessary and admissible under Proviso (6) to Sec. 92 of the Indian Evidence Act to resolve a latent ambiguity caused by the two vague words used in it and to show how its language was related to the existing facts even if one were to assume that the information contained in it was meant to reduce the terms of a grant to the form of writing.

Upon the view we are taking of the facts of this case, it is not necessary for us to embark on any detailed discussion of essentials

A of a gift under the Mahomedan law. It is enough to point out that even if the rules of Mahomedan law were to be applied to the transaction before us the very first of the three conditions of a valid gift, given in Mulla's 'Principles of Mahomedan Law" (16th Edn. p. 141) that of "a declaration of gift by the donor" —is lacking here. Such a declaration must indicate, with B reasonable clarity, what is really gifted. It is also not necessary for us to deal with the distinction between separable gifts of the 'corpus' and the 'usufruct', recognised by Mahomedan law, which references to *Amjad Khan* v. *Ashraf Khan*(1) and *Nawazish Ali Khan* v. *Ali Raza Khan*(2) would disclose. After an examination of all the admissible evidence, relating to the nature C of the transaction set up by the plaintiff, which should have been considered, we are satisfied that the plaintiff failed to prove either a grant of the 'corpus' or of the 'usufruct' of the house to him for his life by its owner. The transaction before us would amount to nothing more than the grant of a license, revocable at the Grantor's option to reside in the house so long as the grantor allowed the licensee to do so. Such a grant is known as "areeat" D in Mahomedan law (See: Mulla's *Principles of Mahomedan Law*, Sixteenth Edition, page 166). The terms of the alleged grant, even if they are to be found only in the communication sent to the plaintiff, are not, read in the context in which they occur, capable of raising an inference of a larger grant. The mere expenditure of small sums of money over necessary repairs, alleged E by the plaintiff, could not convert it into an irrevocable license.

Consequently, we allow this appeal and set aside the judgment and decree of the High Court. We do not think that this is a fit case in which the appellant should get the costs of this litigation as the plaintiff had some grounds to be misled by the communication received by him. The parties will, therefore, F bear their own costs throughout.

V.P.S. *Appeal allowed.*

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(1) A.I.R. 1929 P.C. p. 149. (2) A.I.R. 1948 P.C. p. 134.