A V. SREERAMACHANDRA AVADHANI (D) BY LRS.

v.

SHAIK ABDUL RAHIM AND ANR.

(Civil Appeal No. 2364 of 2005)

B AUGUST 21, 2014

[JAGDISH SINGH KHEHAR AND

ROHINTON FALI NARIMAN, JJ.]

C *Mohammedan Law – Gifts (hiba) – Conditional gifts – Nature and effect of – Held: Under Mohammadan Law, a gift has to be unconditional – Therefore, conditions expressed in a gift, are to be treated as void – A conditional gift is valid, but the conditions are void – Conditions are however* D *permissible, if the gift is merely of a usufruct – Therefore, the gift of a usufruct can validly impose a limit, in point of time (as an interest, restricted to the life of the donee) – In a gift which contemplates the transfer of the corpus, there is no question of such transfer being conditional – The transfer* E *is absolute – Conditions imposed in a gift of the corpus are void – On facts, the gift deed in question contemplated transfer of the corpus and not the usufruct – Clearly, the intention of the donor in the gift deed, was to transfer the corpus of the immovable property to the donee, and not* F *merely a usufruct therein – Since the donor through the gift deed had transferred the corpus of the immovable property to the donee (his wife), the gift deed was valid – All conditions depicted in the gift deed curtailing use or disposal of the property gifted were therefore void – Since the gift deed* G *irrevocably vested all rights in the immovable property in the donee, subsequent sale of the gifted immovable property by the donee wife to appellant was legal and valid, and consequently, the claim of respondents to the gifted property, on the demise of the donee wife, not sustainable in law.*

H

'S', a Muslim gentleman, executed a gift deed on 26.04.1952, thereby gifting an immovable property in favour of his wife 'B'. 'B' enjoyed the property during the lifetime of 'S'; and even after his demise in 1966, continued to exclusively enjoy the property. On 02.05.1978, 'B' sold the gifted property to appellant. 'B' died on 17.02.1989. On her demise, the respondents issued a legal notice to the vendee-appellant staking a claim on the said gifted property asserting, firstly, that 'B' had only a life interest in the gifted property; and secondly, that the respondents being the LRs of 'S' came to be vested with the right and title over the gifted property, after the demise of 'B'.

The suit filed by the respondents was dismissed by the trial court. The trial court held that 'S' had gifted the corpus of the immovable property to his wife 'B'; and all the conditions expressed by the donor 'S', in the gift deed dated 26.04.1952, depriving the donee 'B' of absolute right/interest in the gifted property, were void; and that the gift deed dated 26.04.1952, was not in the nature of a usufruct. The First Appellate Court did not examine whether the gift deed dated 26-04-1952, constituted transfer of the corpus of the property, or merely its usufruct; and held that 'B' had merely been transferred a life interest in the property gifted to her on 26.04.1952. The High Court also did not take into consideration whether the gift was in respect of the corpus of the immovable property, or its usufruct and affirmed the determination recorded by the First Appellate Court.

In the instant appeal, the question which arose for consideration was whether the gift deed dated 26.04.1952 irrevocably vested all rights in the immovable property in 'B', and thus, the sale of the gifted property by 'B' to appellant on 02.05.1978, was legal and valid; and consequently, the claim of the respondents to the

A gifted property, on the demise of 'B' on 17.02.1989, was not sustainable in law.

Allowing the appeal, the Court

HELD:1.1. The parameters for gifts (under Mohammedan Law) are clear and well defined. Under
B Muhammadan Law, a gift has to be unconditional. Therefore, conditions expressed in a gift, are to be treated as void. A conditional gift is valid, but the conditions are void. [Para 11][1109-G; 1110-C-D]

C 1.2. Gifts pertaining to the corpus of the property are absolute. Where a gift of corpus seeks to impose a limit, in point of time (as a life interest), the condition is void. Likewise, all other conditions, in a gift of the corpus are impermissible. In other words, the gift of the
D corpus has to be unconditional. Conditions are however permissible, if the gift is merely of a usufruct. Therefore, the gift of a usufruct can validly impose a limit, in point of time (as an interest, restricted to the life of the donee). [Para 14][1115-E-H]

E 1.3. In a gift which contemplates the transfer of the corpus, there is no question of such transfer being conditional. The transfer is absolute. Conditions imposed in a gift of the corpus are void. [Para 15] [1116-A-C]

F *Nawazish Ali Khan v. Ali Raza Khan*, AIR 1948 PC 134 – referred to.

Asaf .A.Fyzee Outlines of Muhammadan Law", (fifth edition, edited and revised by Tahir Mahmood, Oxford University Press); *"Mulla's*
G *Principles of Mahomedan Law"* (nineteenth edition, by M.Hidayatullah and Arshad Hidayatullah) and *"Digest of Moohummudan Law"*, by Neil B.E. Baillie (part first, second edition, London: Smith, Elder & Co., 1875) –
H referred to.

2. The transfer of the corpus refers to a change in ownership, while the transfer of usufruct refers to a change in the right of its use/enjoyment etc. On facts, the text of the gift deed dated 26.04.1952 contemplates the transfer of the corpus and not the usufruct. Reasons for the above conclusion, are as under: Firstly, the donor records, having purchased the gifted property from his own earning on 16.07.1944, through a registered purchase deed, whereby he was vested with the absolute right of possession and enjoyment of the property. It is then asserted, that there is no dispute about the title of the donor, over the gifted property. All the above rights in the donor, are sought to be transferred by way of gift to 'B' by asserting, "I am conveying in your favour as you are my wife and out of love to you and delivered possession of the same to you forthwith, From now onwards you shall enjoy This immovable property freely....." The words extracted hereinabove clearly establish the transfer of the corpus, which was in the absolute ownership of the donor, to the donee. Secondly, the use of the words "We shall have no right to cancel this conveyance with silly reasons" also reveals, the intention of the donor to transfer the corpus of the property, to the donee. Thirdly, the use of the words "Neither myself nor my successors shall raise any objection in respect of this conveyed property either against you or against your successors", recognises the rights of the donee as well as her successors. These words extinguish, not only the donor's rights in the property, but also that of his successors. There is recognition of the rights of the donee and her successors to the extent, that in the event of transfer of the gifted property to the successors of the donee, the same would not be assailable by the donor or his successors. This also depicts, the intention of the donor to transfer the corpus of the gifted

A property. Fourthly, the gift deed records that ".....after your life time this property shall devolve upon your off spring.....". The use of the words "your off spring", expresses an intention which is separate and distinct from "our off spring". In other words, the gift deed B contemplates the transfer of the gifted property by the donee, to her children, even if, such children were not the children of the donor. This too shows that the intention of the donor, contemplated the transfer of the corpus. Fifthly, the gift deed records "I am herewith filing C transfer memos, alongwith this deed for registration, to get your name mutated in revenue records. Therefore from now onwards you shall pay the Municipal Taxes and shall enjoy the same freely and happily." This expression in the gift deed, brings out the intention of D the donor, that the transfer of the gifted property should not remain a matter of understanding within the family, but should be an open declaration to the public. The assertion in the gift deed, that Municipal Taxes will be borne by the donee, shows that the donee E was to henceforth bear all liabilities of the gifted property, as its owner. Lastly, the handing over of the earlier title deeds of the gifted property to the donee, by recording in the gift deed that "I have handed over the link sale deed and the voucher to you" also indicates, that the F donor clearly expressed in the gift deed, that he had not retained any documents of title pertaining to the gifted property with himself, but had handed over the same to the donee. This also shows the intention of the donor to relinquish all his existing rights, in the gifted property. G This also shows the intent of the donor, to transfer the corpus of the property to the donee. Clearly, the intention of the donor in the gift deed dated 26.04.1952, was to transfer the corpus of the immovable property to the donee, and not merely a usufruct therein. H [Para 16][1116-D-E; 1117-F-H; 1118-A-H; 1119-A-D]

3. Since the donor 'S' through the gift deed dated 26.04.1952, had transferred the corpus of the immovable property to his wife 'B', it is natural to conclude that the gift deed executed in favour of 'B', was valid. Likewise, all conditions depicted in the gift deed dated 26.04.1952, which curtail use or disposal of the property gifted are to be treated as void. In the above view of the matter, the conditions depicted in the gift deed, that the donee would not have any right to gift or sell the gifted property, or that the donee would be precluded from alienating the gifted immovable property during her life time, are void. Similarly, the depiction in the gift deed, that the gifted immovable property after the demise of the donee, would devolve upon her off spring and in the event of her not bearing any children, the same would return back to the donor or to his successors, would likewise be void. [Para 17] [1119-D-H; 1120-A]

4. Since the gift deed dated 26.04.1952 irrevocably vested all rights in the immovable property in 'B', it is clear that the sale of the gifted immovable property by 'B' to appellant on 02.05.1978, was legal and valid. Consequently, the claim of the respondents to the gifted property, on the demise of 'B' on 17.02.1989, is not sustainable in law. The order passed by the trial court is affirmed. [Para 18][1120-A-C]

CASE LAW REFERENCE

AIR 1948 PC 134 referred to Para 6

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2364 of 2005.

From the judgment and order dated 02.08.2004 in Second Appeal No. 313 of 2004 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad.

G. Ramakrishna Prasad and Venkat Subramonian, Advs. for the Appellants.

A. Subba Rao, Sudipto Sircar (For Annam D. N. Rao), Venlateswara Rao Anumolu and Prabhakar Parnam, Advocates, for the Respondents.

The Judgment of the Court was delivered by

JAGDISH SINGH KHEHAR, J.

1. Heard learned counsel for the parties.

2. Sheikh Hussein was married to Banu Bibi. During the subsistence of his matrimonial ties, Sheikh Hussein executed a gift deed on 26.04.1952, whereby a "tiled house" with open space in Survey No.883 in Eluru town, West Godavari District, Andhra Pradesh was gifted in favour of his wife Banu Bibi.

3. It is not a matter of dispute, that Banu Bibi enjoyed the immovable property gifted to her, during the lifetime of her husband Sheikh Hussein. Sheikh Hussein died in 1966. Even after the demise of Sheikh Hussein, Banu Bibi continued to exclusively enjoy the said immovable property. On 02.05.1978, Banu Bibi sold the gifted immovable property, to V.Sreeramachandra Avadhani. The vendee V. Sreeramachandra Avadhani is the appellant before this Court (through his legal representatives).

4. Banu Bibi died on 17.02.1989. On her demise, the respondents before this Court - Shail Abdul Rahim and Shaik Abdul Gaffoor issued a legal notice to the vendee. Through the legal notice, they staked a claim on the abovementioned gifted immovable property. In the notice, the respondents asserted, firstly, that Banu Bibi had only a life interest in the gifted immovable property; and secondly, the respondents being the legal representatives of Sheikh Hussein (who had gifted the immovable property to Banu Bibi) came to be vested with the right and title over the gifted immovable property, after the demise of Banu Bibi. The vendee, V.Sreeramachandra Avadhani repudiated the assertions made in the legal notice dated 22.03.1989, through his response dated 16.04.1989.

5. Having realized that the vendee would not part with the immovable property purchased by him from Banu Bibi, the respondents preferred a suit bearing O.S.No.256 of 1989, before the Subordinate Judge, Eluru, West Godavari District, Andhra Pradesh. In the suit, the respondents sought a declaration of title, over the "tiled house" with open space, gifted by Sheikh Hussein to his wife Banu Bibi. In addition, the respondents sought recovery of possession, and also mesne profits, from the vendee V. Sreeramachandra Avadhani. The above Original Suit filed on 13.11.1989 was contested. A written statement was filed on 19.07.1990.

6. The Principal Senior Civil Judge, Eluru, West Godavari District, Andhra Pradesh dismissed the original suit on 19.08.1998. Relying on the judgment rendered by the Privy Council in Nawazish Ali Khan v. Ali Raza Khan, AIR 1948 PC 134, the trial court arrived at the conclusion, that the gift deed executed by Sheikh Hussein on 26.04.1952 transferring immovable property in favour of his wife Banu Bibi, was valid. It was also concluded, that the gifted immovable property came to be irrevocably vested in the donee Banu Bibi. That apart, the trial court held, that Sheikh Hussein had gifted the corpus of the immovable property to his wife Banu Bibi. Based on the aforesaid, it was further concluded, that all the conditions expressed by the donor Sheikh Hussein, in the gift deed dated 26.04.1952, depriving the donee of an absolute right/interest in the gifted property, were void. The trial court clearly expressed, that the gift deed dated 26.04.1952, was not in the nature of a usufruct.

7. Dissatisfied with the order passed by the trial court, the respondents preferred an appeal before the Second Additional District Judge, Eluru, West Godavari District, Andhra Pradesh. The First Appellate Court accepted the appeal preferred by the respondents on 05.01.2004. On the issue whether Banu Bibi had an absolute right over the "tiled house" with open space, gifted to her, the First Appellate Court

A recorded its finding on the basis of the text of the gift deed, dated 26.04.1952. The consideration recorded by the First Appellate Court is being extracted hereunder:

"13. It is the bounden duty of the plaintiffs to prove that, they have inherited the property as the legal heirs of
B Shaik Hussain Saheb, as his wife has no right to alienate the property Exs. A-1 and B-5 which is one and the same document is the crucial document to determine the main issue in this suit. A perusal of the said document clearly shows the fact that in the
C said settlement deed dated 26-4-1952 which was executed by Shaik Hussain Sahab in favour of his wife Bhanubibi he has specifically mentioned that, she has no right to alienate the property and she can enjoy the property as she likes and after her death it would devolved
D upon her children if she has got children and if she has not children, the heirs of Shaik Hussain Saheb would inherit the same. It is clearly mentioned in the said documents as follows:

E "During your life time you shall not alienate this property in favour of any body and after your life time this property shall devolve upon your off spring and if you have no children the same shall return back to me or to my near successors with absolute
F rights of enjoyment and dispossession by way of gift, sale etc."

This recital itself shows that, Bhanubibi has no right to alienate the plaint schedule property and she has right to enjoy the same throughout her life only
G and after her death, it would devolve upon her children if she got children and in the absence of children, it would revert back to her husband Shaik Hussain Saheb and Bhanubibi has no children. Further admittedly Shaik Hussain Saheb died earlier to Bhanubibi.
H Further admittedly the plaintiffs are the legal heirs of

Shaik Hussain Saheb. As per the above settlement deed, the plaintiffs are the rightful owners of the plaint schedule property. Further though it is contended by the defendant that for some other property Shaik Hussain Saheb executed a will and the plaintiffs filed a suit which was dismissed, the said facts are not applicable to the facts of this case and the cause of action and the property involved are different in the suit and further the 1st defendant has not filed any document of the said to confirm his right. Hence this Court holds that, the plaintiffs are the absolute owners of the property and they are entitled for declaration of the suit schedule property. Hence this issue is decided in favour of the plaintiffs and against the defendants."

(emphasis is ours)

A perusal of the judgment rendered by the First Appellate Court reveals, that the appeal was adjudicated, as if the controversy was in the nature of a disputed question of fact, without appreciating the legal implications pertaining to gift, under Muhammedan Law. While determining the controversy, the First Appellate Court did not examine whether the gift dated 26.04.1952, constituted transfer of the corpus of the property, or merely its usufruct. The First Appellate Court, without any reference to the judgment of the Privy Council relied upon by the trial court, while interpreting the text of the gift deed dated 26.04.1952, arrived at the conclusion, that Banu Bibi had merely been transferred a life interest in the "tiled house" with open space, gifted to her on 26.04.1952.

8. Dissatisfied with the judgment rendered by the First Appellate Court, the vendee V.Sreeramachandra Avadhani preferred an appeal before the High Court of Judicature of Andhra Pradesh, at Hyderabad (hereinafter referred to as the 'High Court'). The High Court while disposing of the Second Appeal No.313 of 2004 on 02.08.2004 affirmed the

A determination recorded by the First Appellate Court. The operative part of the order of the High Court, on the nature and effect of the gift deed dated 26.04.1952, is being extracted hereunder:

> B "Considering the submissions made and also on perusal of the material, the question which falls for consideration in this appeal is, as to whether Bhanubibi is wife of Shaik Hussain Saheb, who was admittedly the owner of the properties, and had any alienable rights in terms of the settlement deed executed on C her favour on 26-04-1952 and consequently the sale in favour of the appellant is valid. Necessarily, these questions call for the consideration of the terms and conditions of the settlement deed and interpretation thereof, which no doubt is a factual D matrix. There cannot be any dispute in regard to the terms as contained in the said settlement deed. The lower Appellate Court did taken into consideration the restriction imposed on her and being they having no children of themselves and the plaintiffs being the only E heirs, it as held that there could not have been sale in favour of the appellant. Having regard to the terms as contained therein and which has rightly taken into consideration by the lower Appellate Court, I do not find any illegality or perversity in regard to the F approach made by the lower Appellate Court in considering the terms of the said settlement deed."
>
> (emphasis is ours)

A perusal of the consideration recorded by the High Court G reveals, that the High Court also did not examine the nature and effect of the gift. It did not take into consideration, whether the gift was in respect of the corpus of the immovable property, or its usufruct. The High Court also did not take into consideration, the judgment rendered by the Privy Council in H Nawazish Ali Khan's case (supra)(which was relied upon by

the trial court). The controversy was again disposed of, on the basis of a literal interpretation of the terms and conditions expressed in the gift deed (dated 26.04.1952). A

9. Having lost before the First Appellate Court, as also, before the High Court, the legal representatives of the vendee approached this Court by filing Special Leave to Appeal (Civil) No.22023 of 2004. Leave was granted by this Court on 01.04.2005. B

10. We have heard learned counsel representing the rival parties. During the course of hearing, learned counsel for the appellants placed reliance, on the different aspects of Muhammadan Law on the subject of gifts (hiba). In this behalf reference was first of all placed on "Asaf A.A.Fyzee Outlines of Muhammadan Law", (fifth edition, edited and revised by Tahir Mahmood, Oxford University Press). On the subject of "conditional gifts", the fundamentals/principles of Muhammadan Law as have been explained in the treatise are extracted hereunder: C D

"Gifts with conditions

In hiba the immediate and absolute ownership in the substance or corpus of a thing is transferred to a donee; hence where a *hiba* is purported to be made with conditions or restrictions annexed as to its use or disposal, the conditions and restrictions are void and the *hiba* is valid. The *Fatawa Aamgiri* says: E F

All 'our' masters are agreed that when one has made a gift and stipulated for a condition that is fasid or invalid, the gift is valid and the condition void. It is a general rule with regard to all contracts which require seisin, such as gift and pledge, that they are not invalidated by vitiating conditions. G

Examples:-

(i) D makes a hiba of a house for the residence of H

A the donee and his heirs, generation after generation, declaring that if the donee sells or mortgages it the donor or his heirs will have a claim on the house but not otherwise. The donee takes an absolute estate both in Hanafi and in Ithna Ashari Law.

B (ii) D makes a hiba on condition that he has an option of cancelling the *hiba* within three days. The *hiba* is valid and the option void.

(iii) A makes a gift of government promissory notes C to B on condition that B should return one-fourth part of the notes to A after a month. The condition relates to a return of part of the corpus. The condition is void and the gift is valid.

(iv) A makes a *hiba* of certain property to B. The deed D of gift lays down the condition that B shall not transfer the property. The restraint against alienation is void and B takes the property absolutely."

(emphasis is ours)

E Reliance was also placed on "Mulla's Principles of Mahomedan Law" (nineteenth edition, by M.Hidayatullah and Arshad Hidayatullah) and our attention was drawn to the following narration:

F "Gift with a condition.- When a gift is made subject to a condition which derogates from the completeness of the grant, the condition is void, and the gift will take effect as if no conditions were attached to it(s).

G "All our masters are agreed that when one has made a gift and stipulated for a condition that is fasid or invalid, the gift is valid and the condition is void".

Gift of a life-estate.-Life estates were considered to come under this principle with the result that the H donee took an absolute interest. But in Amjad Khan's

case (1929) 56 I.A.213, 4 Luck.305 the Judicial Committee did not regard the principle as applicable to the facts. See sec.55 and the cases there cited.

"An amree (life grant) is nothing but a gift and a condition; and the condition is invalid; but the gift is not rendered null by involving an invalid condition". Hedaya, 489. In a later case the Privy Council (Nawazish Ali Khan v. Ali Raza Khan (1948) 75 I.A.62, (48) A.PC.134) observed that there was no such thing as life estate or vested remainder in Mahomedan Law as understood in English Law, but a gift for life would be construed as an interest for life in the usufruct.

'Life estate' in the sense, that is, the transfer of the ownership of the property itself limited to the life of the donee,
with a condition that the donee would have no right of alienation is not recognised by Mahomedan Law. But the view that once prevailed to the effect, that under the Mahomedan Law, a life interest with such a condition is nothing but a gift with a repugnant condition, when the condition must fail and the gift must prevail as an absolute one, is no longer good law in view of later decisions of the Privy Council."

(emphasis is ours)

It would be pertinent to mention, that our attention was not invited to any contrary legal view, expressed either by the Privy Council, or by any other Court.

11. Learned counsel for the appellants also placed reliance on a "Digest of Moohummudan Law", by Neil B.E.Baillie (part first, second edition, London: Smith, Elder & Co., 1875). The relevant extract of the text relied upon is being reproduced hereunder:

"Gift is of two kinds, *tumleek* (already described), and *iskat*, which means literally, 'to cause to fall', or

A extinguish. The legal effects of gift are-1 st. That it establishes a right of property in the donee, without being obligatory on the donor; so that the gift may be validly resumed or cancelled. 2 nd. That it cannot be made subject to a condition; though if a gift were made with an B option to the donee for three days, and were accepted before the separation of the parties, it would be valid. And 3 rd That it is not cancelled by vitiating conditions; so that if one should give his slave on condition of his being emancipated, the gift would be C valid, and the condition void."

(emphasis is ours)

A perusal of the above text inter alia reveals, that under Muhammadan Law, a gift has to be unconditional. Therefore, D conditions expressed in a gift, are to be treated as void. A conditional gift is valid, but the conditions are void.

12. Learned counsel for the appellants then invited our attention to another part of the "Digest of Moohummudan Law" by Neil B.E.Baillie, dealing with "of the effect of a condition in E the gift". The text relied upon is being reproduced hereunder:

"When a slave or a thing is given on a condition that the donee shall have an option for three days, the gift is lawful if confirmed by him before the separation of the parties; and if not confirmed by him till after they F have separated, it is not lawful. But when a thing is given on a condition that the donor shall have an option for three days, the gift is valid, and the option void; because gift is not a binding contract, and therefore does not admit of the option of stipulation. A person says G to another, 'I have released thee from my right against thee, on condition that I have an option,' the release is lawful, and the option void.

A man to whom a thousand *dirhems* are due by another says to him, 'When the morrow has come the H

thousand is thine,' or 'thou art free from it,' or 'When thou hast paid one-half the property then thou art free from the remaining half,' or 'the remaining half is thine,' the gift is void.' But if he should say, 'I have released you on condition that you emancipate your slave,' or 'Thou art released on condition of thy emancipating him by my releasing thee,' and he should say, 'I have accepted,' or 'I have emancipated him,' he would be released from the debt.

All 'our' masters are agreed that when one has made a gift and stipulated for a condition that is *fasid*, or invalid, the gift is valid and the condition void; as if one should given another a female slave, and stipulate 'that he shall not sell her,' or 'shall make her an *com-i-wulud*,' or 'shall sell her to such an one,' or 'restore her to the giver after a month,' the gift would be valid, and all the conditions void'. Or if one should give a mansion, or bestow it in alms, on condition that the donee shall restore some part of it,' or 'give some part of it is *iwuz*, or exchange,' the gift would be lawful and the condition void.' It is a general rule with regard to all contracts which require seisin, such as gift and pledge, that they are not invalidated by vitiating conditions."

(emphasis is ours)

The above text also leads to the same inferences as have been drawn above.

13. Having placed reliance on different commentaries noticed above, learned counsel for the appellants invited our attention to the decision rendered by the Privy Council in Nawazish Ali Khan's case (supra). It was the vehement contention of the learned counsel for the appellants, that the texts brought to our notice by him, were expressly approved, in the above judgment. Learned counsel placed reliance on the following observations, from the decision of the Privy Council in Nawazish Ali Khan's case (supra):

A "19 The Chief Court in appeal took the view that under the wills of Nasir Ali Khan the estate vested after his death in the three successive tenants for life; that on the exercise of the power of appointment it would pass immediately to the appointee; that there was no B period during which the estate would be in abeyance; and that the rights of the heirs of the testator were not affected or prejudiced. In their Lordships opinion this view of the matter introduces into Muslim law legal terms and conceptions of ownership familiar enough in C English law, but wholly alien to Muslim law. In general, Muslim law draws no distinction be-tween real and personal property, and their Lordships know of no authoritative work on Mus-lim law, whether the Hedaya or Baillie or more modern works, and no decision of this D Board which affirms that Muslim law recognises the splitting up of ownership of land into estates, distinguished in point of quality like legal and equitable estates, or in point of duration like estates in fee simple, in tail, for life, or in remainder. What Muslim law does E recognise and insist upon, is the distinction between the corpus of the property itself (ayn) and the usufruct in the property (manafi). Over the corpus of property the law recognises only ab-solute dominion, heritable and unrestricted in point of time; and where a gift of the corpus F seeks to impose a condition inconsistent with such absolute dominion the condition is re-jected as repugnant; but interests limited in point of time can be created in the usufruct of the property and the dominion over the corpus takes effect subject to any such limited G interests.

"If a person bequeath the service of his slave, or the use of his house, either for a definite or an indefinite period, such bequest is valid; because as an endowment with usufruct, either gratuitous or for an equivalent, is valid H during life, it is consequently so after death; and also,

because men have occasion to make bequests of this nature as well as bequests of actual property. So likewise, if a person bequeath the wages of his slave, or the rent of his house, for a definite or indefinite term, it is valid, for the same reason. In both cases, moreover, it is necessary to consign over the house or the slave, to the legatee, provided they do not exceed the third of the property in order that he may enjoy the wages or service of the slave, or the rent or use of the house daring the term prescribed, and afterwards restore it to the heirs." (Hedaya, Vol.4; p.527, chap.5, entitled "Of Usufructuary Will.")

This distinction runs all through the Muslim law of gifts-gifts of the corpus (hiba), gifts of the usufruct (ariyat) and usufructuary bequests. No doubt where the use of a house is given to a man for his life he may, not inaptly, be termed a tenant for life, and the owner of the house, waiting to enjoy it until the termination of the limited interest, may be said, not inaccurately, to possess a vested remainder. But though the same terms may be used in English and Muslim law, to describe much the same things, the two systems of law are based on quite different conceptions of ownerships. English law recognises ownership of land limited in duration; Muslim law admits only ownership unlimited in duration, but recognises interests of limited duration in the use of property.

20 There is a full discussion of the law on this subject in the judgment, of Sir Wazir Hasan in the case of Amjad Khan v. Ashraf Khan.4 That case challenged the doctrine accepted by Hanafi lawyers that a gift to "A" for life conferred an absolute interest on "A"; a doctrine based on a saying of the Prophet (Hedaya, Bk. III, p. 309):

A "An amree or life grant is lawful to the grantee during his life and descends to his heirs. The meaning of amree is a gift of a house (for example) during the life of the donee, on condition of its being returned upon his death. An amree is nothing but a gift and a
B condition and the condition is invalid; but a gift is not rendered null by involving an invalid condition."

Sir Wazir Hasan in his judgment examined the appropriate tests and all the relevant decisions of the Privy Council. He pointed out the distinction in Muslim
C law between the corpus and the usufruct, between the thing itself and the use of the thing. On the construction of the deed which was in question in the case before him, he came to the conclusion that the donor intended to confer upon his wife not the corpus, but a life interest
D only, that such life interest could take effect as a gift of the use of the property and not as part of the property itself, and that there was nothing in Muslim law which compelled him to hold that the intended gift of a life estate conferred an absolute interest on the donee. This
E case was taken in appeal to the Privy Council and is reported in 56 IA 213.5 The Board agreed with Sir Wazir Hasan on the construction of the deed in question that only a life interest was intended, and held that if the wife took only a life interest it came to an end on her
F death and the appellant who was her heir took nothing, and if the life interest was bad the wife took no interest at all and the appellant was in no better case. There is also a discussion of the basis upon which a life interest under Hanab law can be supported in the 3rd
G edition of Tyabji's Muhammadan Law at pp. 487 et seq: That book as the work of an author still living, cannot be cited as an authority, but their Lordships have derived assistance from the discussion.

H

21 Limited interests have long been recognised under Shia law. The object of "Habs" is "the empowering of a person to receive the profit or usufruct of a thing with a reservation of the owner's right of property in it . . .I have bestowed on thee this mansion .,. for thy life or my life or for a fixed period" is binding by seizm on the part of the donee. (Bail: II 226). See also 32 Bom 1726 at p. 179. Their Lordships think that there is no difference between the several Schools of Muslim law in their fundamental conception of property and ownership. A limited interest takes effect out of the usufruct under any of the schools. Their Lordships feel no doubt that in dealing with a gift under Muslim law, the first duty of the Court is to construe the gift. If it is a gift of the corpus, then any condition which derogates from absolute dominion over the subject of the gift will be rejected as repugnant; but if upon construction the gift is held to be one of a limited interest the gift can take effect out of the usufruct, leaving the ownership of the corpus unaffected except to the extent to which its enjoyment is postponed for the duration of the limited interest."

(emphasis is ours)

14. The above extracts from the observations recorded by the Privy Council, leave no room for any doubt, that the parameters for gifts (under Mohammedan Law) are clear and well defined. Gifts pertaining to the corpus of the property are absolute. Where a gift of corpus seeks to impose a limit, in point of time (as a life interest), the condition is void. Likewise, all other conditions, in a gift of the corpus are impermissible. In other words, the gift of the corpus has to be unconditional. Conditions are however permissible, if the gift is merely of a usufruct. Therefore, the gift of a usufruct can validly impose a limit, in point of time (as an interest, restricted to the life of the donee).

15. Having given our thoughtful consideration to the treatises on Muhammedan Law brought to our notice, as also, the judgment rendered by the Privy Council in Nawazish Ali Khan's case (supra), we are of the considered view, that in a gift which contemplates the transfer of the corpus, there is no question of such transfer being conditional. The transfer is absolute. Conditions imposed in a gift of the corpus, are void. For the determination of the present controversy, the only issue to be considered by us is, whether the gift made by Sheikh Hussein in favour of Banu Bibi dated 26.04.1952 contem-plates the transfer of the corpus. If the answer to the above is in the affirmative, then the will dated 26.04.1952 would be considered as valid, but the conditions incorporated therein, would be regarded as void.

16. The transfer of the corpus refers to a change in ownership, while the transfer of usufruct refers to a change in the right of its use/enjoyment etc. In order to determine whether the gift deed dated 26.04.1952 envisaged a transfer of the corpus, we will have to examine the contents of the gift deed itself. Accordingly, the gift deed dated 26.04.1952 is being reproduced hereunder:

> "This deed of conveyance of immovable property, i.e. tiled house with open place worth of Rs.3000.00
>
> XXXXXXX
>
> The tiled house together with open place shown in the schedule below which was purchased by me out of my earnings on 16.7.1944 from Smt.Manikyamma, W/o Sri Arundalapalli Tiruvallur Veera Raghavulu and got the same registered as document No.2462/44 and taken possession of the same and ever since has been under my absolute right, possession and enjoyment about there are no disputes or any joint sureties etc. I am conveying in your favour as you are my wife and out of love to you and delivered possession of the same

to you forthwith, From now onwards you shall enjoy This immovable property freely without a right to gift, Sale etc. and since you have no issue so far, you shall enjoy the property during your life time. Neither myself nor my successors shall raise any objection in respect of this conveyed property either against you or against your successors. We shall have no right to cancel this conveyance with silly reasons. During your life time you shall not alienate This property in favour of any body and after your life time this property shall devolve upon your off spring and if you have no children the same shall return back to me or to my near successors with absolute rights of enjoyment and dispossession by way of gift, Sale etc. I am herewith filing transfer memos along with this deed for registration to get your name mutated in revenue records. Therefore from now onwards you shall pay the Municipal Taxes and shall enjoy the same freely and happily. I have handed over the link sale deed and the voucher to you. It is settled that the said voucher shall be kept with me or with my successors after your life time."

Having given our thoughtful consideration to the text of the gift deed dated 26.04.1952, we are of the view that the same contemplates the transfer of the corpus and not the usufruct. Our reasons for the above conclusion, are as under:

Firstly, the donor records, having purchased the gifted property from his own earning on 16.07.1944, through a registered purchase deed, whereby he was vested with the absolute right of possession and enjoyment of the property. It is then as-serted, that there is no dispute about the title of the donor, over the gifted property. All the above rights in the donor, are sought to be transferred by way of gift to Banu Bibi by asserting, "I am conveying in your favour as you are my wife and out of love to you and delivered possession of the same to you forthwith, From now onwards you shall enjoy This

A immovable property freely....." The words extracted hereinabove clearly establish the transfer of the corpus, which was in the absolute ownership of the donor, to the donee.

Secondly, the use of the words "We shall have no right to cancel this conveyance with silly reasons" also reveals, the B intention of the donor to transfer the corpus of the property, to the donee.

Thirdly, the use of the words "Neither myself nor my succes-sors shall raise any objection in respect of this C conveyed property either against you or against your successors", recognises the rights of the donee as well as her successors. These words extinguish, not only the donor's rights in the property, but also that of his successors. There is recognition of the rights of the donee and her successors to D the extent, that in the event of transfer of the gifted property to the successors of the donee, the same would not be assailable by the donor or his successors. This also depicts, the intention of the donor to transfer the corpus of the gifted property.

Fourthly, the gift deed records that ".....after your life time E this property shall devolve upon your off spring.....". The use of the words "your off spring", expresses an intention which is separate and distinct from "our off spring". In other words, the gift deed contemplates the transfer of the gifted property by the donee, to her children, even if, such children were not the F children of the donor. This too shows that the intention of the donor, contemplated the transfer of the corpus.

Fifthly, the gift deed records "I am herewith filing transfer memos, along with this deed for registration, to get your name mutated in revenue records. Therefore from now onwards you G shall pay the Municipal Taxes and shall enjoy the same freely and happily." This expression in the gift deed, brings out the intention of the donor, that the transfer of the gifted property should not remain a matter of understanding within the family, but should be an open declaration to the public. The assertion H

in the gift deed, that Municipal Taxes will be borne by the donee, shows that the donee was to henceforth bear all liabilities of the gifted property, as its owner.

Lastly, the handing over of the earlier title deeds of the gifted property to the donee, by recording in the gift deed that "I have handed over the link sale deed and the voucher to you" also indicates, that the donor clearly expressed in the gift deed, that he had not retained any documents of title pertaining to the gifted property with himself, but had handed over the same to the donee. This also shows the intention of the donor to relinquish all his existing rights, in the gifted property. This also shows the intent of the donor, to trans-fer the corpus of the property to the donee.

For the reasons recorded hereinabove, there can be no doubt whatsoever, that the intention of the donor in the gift deed dated 26.04.1952, was to transfer the corpus of the immovable property to the donee, and not merely a usufruct therein.

17. Having concluded that the donor Sheikh Hussein through the gift deed dated 26.04.1952, had transferred the corpus of the immovable property to his wife Banu Bibi, it is natural to conclude that the gift deed executed in favour of Banu Bibi, was valid. Likewise, while applying the principles of Muhammedan Law expressed in recognized texts, and the decision of the Privy Council in Nawazish Ali Khan's case (supra) it is inevitable to hold, that all conditions depicted in the gift deed dated 26.04.1952, which curtail use or disposal of the property gifted are to be treated as void. In the above view of the matter, the conditions depicted in the gift deed, that the donee would not have any right to gift or sell the gifted property, or that the donee would be precluded from alienating the gifted immovable property during her life time, are void. Similarly, the depiction in the gift deed, that the gifted immovable property after the demise of the donee, would devolve upon her off spring and in the event of her not bearing any

A children, the same would return back to the donor or to his successors, would likewise be void.

18. Having held that the gift deed dated 26.04.1952 irrevocably vested all rights in the immovable property in Banu Bibi, it is natural for us to conclude, that the sale of the gifted B immovable property by Banu Bibi to V.Sreeramachandra Avadhani on 02.05.1978, was legal and valid. Consequently, the claim of the respondents to the gifted property, on the demise of Banu Bibi on 17.02.1989, is not sustainable in law.

C 19. For the reasons recorded hereinabove, the instant appeal is allowed. The order passed by the trial court dated 19.08.1998 is affirmed. The orders passed by the First Appellate Court dated 05.01.2004, and by the High Court dated 02.08.2004, are set aside.

D 20. There shall be no order as to costs.

Bibhuti Bhushan Bose Appeal allowed.