IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 350 of 2005
Reserved on: 21.07.2026
Date of Decision: 03.08.2026

Shantu (deceased) through LRs ...Appellant

Versus

Kanshi Ram ...Respondents

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] Yes

For the Appellant : Mr Bhupender Gupta, Senior Advocate with Mr Pranjal Munjal, Advocate.

For the respondent : Mr I.S. Chandel, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 26.04.2005 passed by the learned District Judge, Shimla vide which the judgment and decree dated 12.11.2002 passed by the learned Sub Judge (1st Class), Theog, District Shimla, H.P. (learned Trial Court) were set aside. *(The*

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

High Court of H.P.

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2026:HHC:31937

parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiff filed a civil suit before the learned Trial Court seeking a declaration that a gift deed executed by the plaintiff on 21.03.1997 stood revoked as per the conditions of the gift on defendant's failure to maintain the plaintiff and his wife. The plaintiff also sought consequential reliefs of possession and permanent prohibitory injunction. It was asserted that the plaintiff was the owner of the suit land mentioned in para-1 of the plaint. The plaintiff and his wife were old. They were unable to cultivate their land. The defendant came to the plaintiff and proposed to maintain him and his wife, provided the plaintiff gifted the suit land to the defendant. The defendant also helped the plaintiff during the winters to win over his confidence. The plaintiff and his wife believed the assurances of the defendant. The plaintiff executed a gift deed of his half share in favour of the defendant on 21.03.1997. The gift was conditional, and it was specifically mentioned that the gift deed would stand revoked on failure to maintain the plaintiff and his wife. The defendant and his

High Court of H.P.

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2026:HHC:31937

family members failed to maintain the plaintiff and his wife. They turned them out of their house. The plaintiff also issued a notice to the defendant. Hence, the suit was filed for seeking the relief mentioned above.

3. The suit is opposed by filing a written statement admitting that the plaintiff had executed a gift deed in the defendant's favour. It was asserted that the plaintiff was alone and he had no wife. He married subsequently. The defendant maintained and looked after the plaintiff for many years. The plaintiff used to reside with the defendant and his family members. The defendant used to cultivate the suit land. The plaintiff executed a gift deed and a Will in favour of the defendant in lieu of the services rendered by the defendant. The defendant was put in possession of the suit land. The plaintiff refused to receive any help and maintenance from the defendant after his marriage. The defendant also sent some money orders to the plaintiff, but the plaintiff refused to accept them. The suit was filed without any basis. Hence, it was prayed that the suit be dismissed.

4. No replication was filed.

High Court of H.P.

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2026:HHC:31937

5. The following issues were framed by the learned Trial Court on 09.03.2000:

1. Whether the gift is liable to be cancelled as prayed? OPP
2. Whether the plaintiff is entitled for the possession? OPP
3. Whether the plaintiff is entitled for the declaration? OPP
4. Whether the plaintiff is entitled for the relief of permanent prohibitory injunction? OPP
5. Relief.

6. The parties were called upon to produce the evidence, and the plaintiff examined himself (PW1) Het Ram (PW2) and Ghama (PW3). The defendant examined himself (DW1) and Chimna Ram (DW2).

7. The learned Trial Court held that the gift deed contained a specific condition that it was being executed in lieu of the future maintenance and in case of failure to maintain the donor and his wife, the donor would be at liberty to revoke it. The plaintiff's version that the defendant had not maintained him and his wife was highly probable. The plea taken by the defendant that the plaintiff wanted to revoke the gift deed for some ulterior purpose was not proved on record. Therefore, the learned Trial Court answered all the issues in the affirmative and decreed the plaintiff's suit.

High Court of H.P.

::: Downloaded on - 04/08/2026 03:59:06 :::CIS

2026:HHC:31937

8. Being aggrieved by the judgment and decree passed by the learned Trial Court, the defendant filed an appeal which was decided by the learned District Judge, Shimla (learned Appellate Court). The learned Appellate Court held that the plaintiff failed to prove that the defendant had not maintained the plaintiff and his wife. The personal services rendered by the donee to the donor do not amount to any consideration under Section 122 of the Transfer of Property Act but can be a motive for the execution of the gift deed. The gift cannot be revoked at the Will of the donor. The plaintiff had failed to show any breach of the condition of the gift deed, and the learned Trial Court erred in decreeing the suit. Therefore, the learned Appellate Court accepted the appeal and set aside the judgment and decree passed by the learned Trial Court.

9. Being aggrieved by the judgments and decree passed by the learned Appellate Court, the plaintiff has filed the present appeal which was admitted on the following substantial questions of law on 15.07.2005.

1. Whether the Lower Appellate Court has misconstrued and misapplied the provisions of Transfer of Property Act in holding that there was no agreement between the parties making the gift revocable by ignoring the stipulation and

High Court of H.P.

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condition in the Gift Deed that in case of failure to render services the Ext.PA was liable to be revoked?

2. Whether the Lower Appellate Court has rendered erroneous and perverse findings by holding that there was no breach of the conditions of the Gift Deed (Ext.PA and plaintiff himself left the house of the defendant voluntarily and refused to accept the maintenance?

3. Whether the Lower Appellate Court has taken an erroneous view of the law by misunderstanding the correct proposition laid down in the judgment of the Hon'ble Court as well as the High Court's interpretation in holding that Ext.PA was irrevocable?

10. I have heard Mr Bhupender Gupta, learned Senior Counsel assisted by Mr Pranjal Munjal, learned counsel for the appellant/plaintiff and Mr I.S. Chandel, learned counsel for the respondent/defendant.

11. Mr Bhupender Gupta, learned Senior Counsel for the appellant, submitted that the gift deed contained a specific condition that the gift was subject to maintaining the plaintiff and his wife. The plaintiff's evidence showed that the defendant had maltreated the plaintiff. He had not rendered the services to the plaintiff and his wife, and the plaintiff was within his right to revoke the gift deed. The learned Trial Court had rightly held that the defendant had failed to adhere to the terms and conditions of the gift deed and the learned Appellate Court erred in reversing the well-reasoned judgment of the learned Trial

High Court of H.P.

::: Downloaded on - 04/08/2026 03:59:06 :::CIS

2026:HHC:31937

Court. Therefore, he prayed that the present appeal be allowed and the judgment and decree passed by the learned Appellate Court be set aside. He relied upon the following judgments in support of his submission: -

(i) *Gehru Ram vs. Rohlu 1998(1) Shim. L.C. 360;*

(ii) *Bhagwan Dass (deceased) through Lrs vs. Tulu @ Tula Ram & Another ILR 2019 HP 637;*

(iii) *Mt. Purnia Kurmi vs. Manindar Nath Mahanti AIR 1968 Assam and Nagaland 50;*

(iv) *Amar Chand v. Pushpa RSA No. 91 of 2021 decided on 21.06.2022 and;*

12. Mr I.S. Chandel, learned counsel for the respondent/defendant submitted that the learned Appellate Court found as a fact that the plaintiff had not proved the violation of the conditions of the gift deed. This is a pure finding of fact and is binding upon this Court while deciding the regular second appeal. The plaintiff had failed to specify the manner in which the services were to be rendered. The evidence on record showed that the plaintiff had himself left the house of the defendant. The defendant had even sent the money orders to the plaintiff, but the plaintiff had refused to accept them. The plaintiff intended to revoke the gift deed after his marriage at his wife's instance. The learned Appellate Court had rightly held

High Court of H.P.

::: Downloaded on - 04/08/2026 03:59:06 :::CIS

2026:HHC:31937

that future maintenance cannot be a consideration for execution of the gift deed, but a motive. A will was executed in favour of the defendant, and the suit does not survive after the plaintiff's death. Therefore, he prayed that the present appeal be dismissed. He relied upon the following judgments in support of his submission: -

(i) ***Jaladi Suguna (deceased) through Lrs vs. Satya Sai Central Trust and others (2008) 8 SCC 521;***

(ii) ***Mool Raj vs. Jamna Devi and others AIR 1995 HP 117 and;***

(iii) ***Naresh Kumari & Ors vs. Chameli & Ors 2024 INSC 965.***

13. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

14. A submission was made by Mr I.S. Chandel that the plaintiff has died and there is a Will in his favour; therefore, the suit does not survive. This submission cannot be accepted because the Court had specifically held vide order dated 01.01.2016 that Bhagat Ram was the legal heir of the deceased. Hence, the question of the succession of the deceased as far as this regular second appeal is concerned has attained finality.

High Court of H.P.

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Therefore, the judgment in ***Jaladi Suguna*** (supra) will not apply to the present case.

Substantial Questions of law No. 1 to 3:

15. All these substantial questions of law are interconnected and are being taken up together for consideration.

16. The defendant Kanshi Ram admitted that the plaintiff had executed a gift deed and a Will in his favour. He denied in his cross-examination that the gift deed contained a condition of maintaining the plaintiff and his wife.

17. The statement of the defendant in his cross-examination that the gift deed did not contain any condition of maintaining the plaintiff and his wife is not acceptable. The gift deed (Ext.PA) specifically mentions that it was executed in lieu of the maintenance and the plaintiff would have a right to revoke the gift deed on the defendant's failure to maintain the plaintiff and his wife. Therefore, it was duly proved that the gift deed was conditional.

18. It was submitted that the future services cannot be a consideration but a motive for the execution of the gift deed,

High Court of H.P.

::: Downloaded on - 04/08/2026 03:59:06 :::CIS

2026:HHC:31937

and a gift deed cannot be revoked on failure to maintain the donor. This submission cannot be accepted. It was laid down in ***Mt. Purnia Kurmi v. Manindra Nath Mahanti*, *1968 SCC OnLine Gau 20: AIR 1968 Assam & Ngld 50*** that a gift with a condition to maintain the donor can be revoked if the donee failed to fulfil the condition. It was observed at page 51:

> "**8.** Here from Exts. 1 and 2 it will be evident that the gift is in favour of one on whom the donor has depended for her maintenance and she has even treated him as her own son. An obligation was cast on the donee to maintain such a helpless widow, who had no one to look after her and who has divested herself of all her property in favour of the donee, who was a complete outsider to the family. The condition under which the donee has accepted the gift is one over which the donor has no control, and it does not depend on the will of the donor. It is the donee who has to play his honourable part. It is clearly established on the one-sided evidence of the plaintiff's side in the absence of any statement on oath to the contrary, as found by the learned Munsiff and not reversed by the learned Subordinate Judge, that the defendant failed to maintain the plaintiff and that he tortured her, for which she had to leave the house to take shelter with P.W. 6. Even in the written statement the defendant has not stated that he is still ready to take care and maintain the plaintiff. It is, therefore, clear that the case is brought within the provisions of Section 128 of the Transfer of Property Act as noticed above and the specified event, namely the refusal to maintain the plaintiff, has taken place, for which the defendant alone is responsible, and it did not depend on the will of the plaintiff, and so the gift is liable to be revoked.

High Court of H.P.

::: Downloaded on - 04/08/2026 03:59:06 :::CIS

2026:HHC:31937

9. A reference may also be made to Section 31 of the Transfer of Property Act, which may be quoted:—

> "31. Subject to the provisions of Section 12 of the Transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen".

10. It is clear that Exts. 1 and 2 read together forming part of one indivisible transaction, go to show that a condition that the transfer by gift in this case had a condition superadded and the interest created by this transfer will cease to exist in case a specified uncertain event, namely refusal by the donee to maintain the donor, took place. The view I have taken in this case finds support from a decision of the Allahabad High Court in the case of *Jagat Singh* v. *Dungar Singh*, AIR 1951 All 599. When, therefore, on the evidence it is clearly and unquestionably established that the donee refused to maintain the plaintiff, the plaintiff was entitled to file this suit for revocation of the gift, and the learned Munsiff was perfectly justified in decreeing the suit for revocation of the gift deed and for other reliefs as claimed. Mr Barooah, the learned counsel for the respondent, submits that the condition, which was incorporated in Ext. 2, could not be taken into account at any rate, when it was found in an unregistered document. This could not be admissible in evidence, in view of the provisions of Section 17 of the Indian Registration Act. As noted earlier, it is true that the agreement Ext. 2 is an unregistered document. But such an agreement does not come within the terms of Section 17 of the Indian Registration Act. By the agreement, the donee has only contracted to maintain the plaintiff during her lifetime, and this condition, which is incorporated in the agreement, does not create any interest in any immoveable property of the value of rupees one hundred and upwards, nor does it extinguish any rights therein. It is a condition, which is permissible

High Court of HP

::: Downloaded on - 04/08/2026 03:59:06 :::CIS

> under Sections 31 and 126 of the Transfer of Property Act, and the document Ext. 2, which contains such a condition, is not required to be registered under Section 17 of the Indian Registration Act, and as such the document was rightly admitted and taken into consideration by the learned Munsiff."

19. This Court also held in ***Gehru*** (supra) that where a gift deed is executed subject to the condition that the donee should maintain the donor, it can be revoked for failure to maintain the donor.

20. A similar view was taken by this Court in ***Bhagwan Dass v. Tulu, 2019 SCC OnLine HP 3381,*** wherein it was held:

> **6.** PW-2 Jhanji Devi, though, stepped into the witness box, for proving, vis-a-vis the defendant Tulu Ram, hence breaching the afore condition, as borne in Ext. PW-3/A, yet, the defendants' counsel rather failed to mete any suggestion to her, hence during her cross-examination, for, hence therethrough, his, striving, to, rebut, the efficacy, of, the afore articulations, embodied, in, her examination-in-chief. The effect of the afore lack, of, any suggestion becoming meted, to, PW-2, the widow, of, the deceased donor, and, appertaining to the defendant, during, her lifetime, rendering service to her. (a) Consequently, the aforesaid condition, as borne in Ext. PW-3/A, hence making, it, incumbent, upon him, to also render service to her, rather becoming hence acquiesced, to, become rather breached, (b) thereupon it would be befitting to conclude, vis-a-vis, dehors, the defendant proving, vis-avis, his rendering service, to, the donor, during, the latters' lifetime, yet, his failing to prove the afore condition, as, embodied in Ext. PW-3/A, hence enjoining him to also render service to the widow

High Court of H.P.

::: Downloaded on - 04/08/2026 03:59:06 :::CIS

> of the deceased donor. The consequence thereof is, vis-a-vis, the declaratory decree, as strived to become rendered, becoming amenable, to become granted, vis-a-vis, the plaintiff.

21. This position was reiterated in ***Amar Chand*** (supra), wherein it was held.

> 14. Therefore, in view of the fact that the suit was decreed by the learned Trial Court by holding that on record it stood proved that the conditions of the Gift Deed stood breached by the defendant by not rendering service to the mother of the plaintiffs and same was reiterated by the learned Appellate Court, said findings having been returned by the learned Courts below being findings of fact and further as no substantial question of law is being involved in the present appeal, the same is dismissed.

22. Thus, the gift with a condition to maintain the donor can be revoked on failure to fulfil the condition.

23. In ***Mool Raj*** (supra), this Court had found that the gift deed did not contain any condition of revocation on failure to maintain the donor. Therefore, this judgment does not apply to the present case.

24. In ***Naresh Kumari*** (supra), the Hon'ble Supreme Court held that there cannot be any condition to render the services in perpetuity, but the rendering of services can be during the lifetime of the donor and donee. In the present case, the condition was to maintain the plaintiff and his wife during

High Court of H.P.

::: Downloaded on - 04/08/2026 03:59:06 :::CIS

2026:HHC:31937

their lifetime, and it was not perpetual. Therefore, the cited judgment does not apply to the present case.

25. The plaintiff asserted that the defendant had threatened to assault him and failed to maintain him. He stated in his cross-examination that he had married 2-4 months before executing the gift deed and the Will. He remained in the house of the defendant for 2-3 days. The defendant had threatened him. He had wrongly mentioned in his plaint that the defendant had turned him out of his house. He stated that the defendant had sent the money order 2-3 times, but he had returned the same.

26. Ghama (PW3) stated that the defendant had not maintained the plaintiff and the plaintiff had to maintain himself. The plaintiff was unable to cultivate his land. He stated in his cross-examination that the plaintiff used to reside alone at the time of the execution of the gift deed and he was not being maintained by any person.

27. The defendant Kanshi Ram admitted that the gift deed was executed in his favour. He denied that there was no condition in the gift deed regarding the maintenance of the

High Court of H.P.

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plaintiff. The plaintiff was earlier residing with him in his house, and he had maintained the plaintiff. The plaintiff had executed the gift deed in lieu of the services rendered by the defendant to him. The plaintiff and his wife remained with him as husband and wife for 6-7 days. Thereafter, the plaintiff left for his home voluntarily. He had not threatened the plaintiff or his wife. The plaintiff had asked him to pay maintenance to him in his home. Subsequently, the plaintiff refused to accept the maintenance from him.

28. The statement of the defendant corroborates the plaintiff's version that the defendant was not maintaining him. The plaintiff had no reason to leave the defendant’s home after 6-7 days of his marriage if he was residing with the defendant for 4 years before the execution of the gift deed. The defendant denied that the gift deed did not contain any condition that he would have to maintain the plaintiff, which is contrary to the terms and conditions of the gift wherein a specific condition has been mentioned to this effect. Het Ram (PW2) stated that this condition was explained at the time of the execution of the gift. The denial of the defendant to maintain the plaintiff and his

High Court of H.P.

::: Downloaded on - 04/08/2026 03:59:06 :::CIS

2026:HHC:31937

wife shows that the defendant is not a trustworthy witness and he did not intend to maintain the plaintiff.

29. Mr I.S. Chandel, learned counsel for the respondent, vehemently submitted that the plaintiff had refused to accept the money order sent by the defendant, which shows that the plaintiff had himself refused to take the services of the defendant. This submission cannot be accepted. The condition in the gift deed was to maintain the plaintiff and not to pay money to him. The plaintiff is an old person who required care and attention. He cannot be left to fend for himself by paying money to him. Therefore, the plaintiff was within his right to refuse the amount sent to him because it would not constitute the maintenance as is understood in the context of the present case.

30. Chimna Ram (DW2) stated that the plaintiff used to reside separately from the defendant and sometimes he used to reside with the defendant. The defendant used to take care of the plaintiff before his marriage. The plaintiff remained in the house of the defendant for 4 to 5 years. The defendant maintained him. The plaintiff expressed his desire to gift the

High Court of H.P.

::: Downloaded on - 04/08/2026 03:59:06 :::CIS

2026:HHC:31937

land to the defendant. The plaintiff remained with the defendant for about a week after his marriage and thereafter went to his home. The plaintiff told him that he was getting the maintenance and he was happy. The defendant had sent him once to the house of the plaintiff because the plaintiff had refused to accept the maintenance money. The plaintiff stated that he wanted to take back his land at the instance of his wife.

31. The testimony of this witness is not believable. He claimed that the plaintiff was residing separately and thereafter that the plaintiff was residing with a defendant. He has not provided any explanation as to why the plaintiff and his wife should leave the house of the defendant if they were being maintained by the defendant properly. As already stated, the condition was to maintain the plaintiff and his wife and not to pay them money. Therefore, the payment of money would not constitute sufficient compliance with the condition of the gift deed.

32. Thus, the learned Trial Court rightly held that the defendant had failed to prove that he was maintaining the plaintiff as per the terms and conditions of the gift deed and the

High Court of H.P.

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learned Appellate Court erred in reversing the well-reasoned judgment of the learned Trial Court. The learned Appellate Court was swayed by the fact that maintenance cannot be a consideration of the gift deed but can only be a motive, which is not correct because this Court has consistently held that maintenance can be a condition of the gift deed and the learned Appellate Court was bound by these judgments.

33. Therefore, the learned Appellate Court had misdirected itself in law while appreciating the evidence which led to the findings recorded by the learned Appellate Court. The learned Appellate Court also erred in ignoring the express condition of the gift deed which provided maintenance by the defendant and a revocation of the gift deed in case of failure. Hence, all these substantial questions of law are answered accordingly.

Final Order:

34. In view of the above, the present appeal is allowed, and the judgment and decree passed by the learned Appellate Court are ordered to be set aside while those passed by the learned Trial Court are ordered to be restored.

High Court of H.P.

::: Downloaded on - 04/08/2026 03:59:06 :::CIS

2026:HHC:31937

35. The appeal stands disposed of, so also the pending application(s), if any.

36. Records of the learned Courts below be sent down forthwith.

(Rakesh Kainthla)
Judge

3rd August, 2026
(Nikita)

High Court of H.P.

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