

B.A.LL.B. VIII SEMESTER
SUBJECT: Drafting of Pleading & Conveyancing
BL-805

TOPIC: Gift Deed

Gift Deed :- A gift deed is a document through which a person or persons (i.e. a donor) can transfer its property to another person or persons (i.e. donee) by way of gift without payment of any money or other consideration.

A gift deed can be used when a person being a valid owner of an existing property wishes to gift his property to someone. A minor is incompetent to gift a property. Gift deeds can be used by natural persons and not by corporate entities.

How to use the document :- Record the details of the donor and donee , and the property that is being gifted through the gift deed. If the gift deed comes into effect on a certain date or on happening of an event , the same can be included in the gift deed. For example, if the donee will get the property only upon marriage , then the same can be described in the document.

Gifts are governed by Transfer of Property Act, 1882 . A gift can be given of any property.

Movable or Immovable

As per Sec. 122, for a gift to be valid:-

- 1- The property that is to be gifted must be in existence at the time of making the gift (for example , future expected crop produce can't be gifted.)
- 2- The donor must be the lawful owner of the property
- 3- Must be voluntary
- 4- Must be without consideration
- 5- Must be accepted by the donee

As per Sec. 123, if the gift is of an immovable property, the gift deed must be registered and attested. The gift of a movable property can be effected by registration or by delivery of the property.

The Gift deed would need to be printed on non judicial stamp paper or e-stamp paper which is available in certain states. The value of the stamp paper would depend on the state in which it is executed and where the property is situated. Each State in India has provisions in respect of the amount of stamp duty payable on the gift deed and the same would need to be determined based on the specific facts of the case. Information regarding stamp duty payable can be found on the State Government Websites. For instance , the website of the State of Karnataka provided details of stamp duty payable on Gift deeds.

After printing the document on the stamp paper or e-stamp paper, a applicable, the Gift Deed is to be signed and each party can keep a copy of the Gift Deed.

Pursuant thereto, the Gift Deed would need to be registered if the property being gifted is immovable property. For the purposes of registration, both the donor and donee have to go to the sub-registrar's office.

Applicable Law:- The provisions of Transfer of property Act, 1882 are applicable to gifts of immovable property . In terms of the Transfer of property Act, 1882 read with the Registration Act, 1908 all gift deeds of immovable property are compulsorily registrable.

Format Deed of Gift – Gift by Father to Son

1 Date

2 Place

3 Parties

3.1 -----, son of ----- , by faith Hindu , by Nationality Indian , by occupation - -----, residing at -----.

(Donor includes successors-in-interest and assigns)

-AND-

3.2 -----, son of -----, by faith Hindu, by Nationality Indian, by occupation - -----, residing at -----.

(Donor , Donee collectively parties and individually party.)

NOW THIS DEED OF GIFT WITNESS AS FOLLOWS :-

4 Subject Matter of Gift :-

4.1 Subject Land :- All that piece or parcel of land hereditaments and premises measuring 1 one Cottah 8 Eight Chhittacks be the same a little more or less out of the total land of 3 three Cottahs situate and lying at and being Municipail Holding No. -----, Ward No. -----, within the limit of ----- Municipality and having Postal Address ----- and more fully and described in the colour Red on the plan attached hereto (Subject Land)

4.2 The Structure :- One – storied brick built dwelling house , having built up area of ----- Square feet, be the same a little more or less, standing on the Subject Land (The Structure), described in the Schedule below.

4.3 Other Rights :- Easements and all other rights, liberties, privileges and benefits appurtenant to the Subject Land and The Structure and all equipments, installations, fittings, fixtures etc. in or about The Structure.

4.4 Subject Property :- The subject matter of the gift is 4.1,4.2 & 4.3 above , which are collectively described in the Schedule belowand demarcated in colour Red and shown as “Lot-A” on the plan attached hereto (collectively Property)

5 Background :-

5.1 Description of the Title :- Chain of title is to be described in detail here .

5.2 Sale to Donor :- By a Deed of Sale dated -----, registered in the Office of the Sub-Registrar, -----, in Book no. I, Volume No. ----- for the year - ----- (said Deed), said ----- (Name of the previous owner) sold

the aforesaid plot of land measuring about 5 Decimals or 3 Three cottahs more or less comprised in Dag No. ----- as aforesaid to the Donor hereto.

5.3 Ownership of the Donor :- In the circumstances, The Donor hereto became the sole and absolute owner of ALL THAT piece or parcel of land measuring 3 three Cottahs be the same a little more or less including the common passage situate and lying at ----- and comprised in -----

5.4 Construction by the Donor :- Subsequently, The Donor constructed a one-storied brick built dwelling house on his acquired property as aforesaid in accordance with the building plan duly sanctioned by the appropriate authority.

5.5 Said Property :- Thus the Donor has become the sole and absolute owner in respect of the land and the structure as referred above (Said Property). The Subject Property is the part and portion of the Said Property.

6 Representations and warranties of the Donor :-

6.1 Absolute Ownership :- The donor is the absolute owner of the Subject Property.

6.2 Rights, Power And Authority to Sell :- The Donor has good right, full power, absolute authority and indefeasible title to the gift and / or alienate the Subject Property.

6.3 Free from Encumbrances :- The Subject Property is free from all claims, demands, encumbrances, mortgages, charges, liens, attachments, lis pendens, uses, debutters, trusts, prohibitions, Income Tax Attachment, Financial Institution Charges and liabilities whatsoever or howsoever made or suffered by the Donor or any person claiming through the Donor or any person claiming through the Donor and the title of the Donor to the Subject Property is free, clear and marketable.

6.4 No Prejudicial Act by the Donor :- The Donor has not at any time done or executed or knowingly suffered or been party or privy to any act, deed, matter or thing whereby the Subject Property or any part thereof can or may be impeached, encumbered or affected in title.

6.5 No Personal Guarantee :- The Subject Property is not affected by or Subject to any Personal Guarantee for securing any financial accommodation.

6.6 No Bar by Court Order :- There is no order of Court or any other statutory authority prohibiting the Donor from transferring and/or alienating the Subject Property or any part thereof.

7 Basic Understanding :- The donee is the son of the donor and the donor bears natural love and affection for the donee. The donor has expressed his desire of gifting the subject property in favour of the donee has agreed to accept such gift.

8 Gift :-

8.1 Hereby Made :- The donor doth hereby gift to the donee, absolutely and forever free from all encumbrances of any and every nature whatsoever , the Subject Property , described in the Schedule below being .

8.1.1 Subject Land :- All that piece or parcel of land hereditaments and premises measuring 1 one Cottah 8 eight chhittacks be the same a little more or less, out of the total land of the donor, i.e. 3 three cottahs situate and lying at and being Municipal Holding No. -----, Ward No. -----, with the limit of ----- Municipality and having Postal address ----- and more fully and particularly described in the schedult below and demarcated in the colour Red on the Plan attached hereto.

8.1.2 The Structure :- One-storied brick built dwelling house, having built up area of ----- square feet, be the same a little more or less, standing on the Subject Land.

8.1.3 Other Rights :- Easements and all other rights, liberties, privileges and benefits appurtenant to the Subject Land and the Structure and all equipments, installationsm fittings, fixtures etc. in or about The Structure.

8.2 Consideration :- Natural Love and affection that the Donor bears for the Donee.

9 Terms of Gifts:-

9.1 Salient Terms :- The gift of the Subject Property being effected by this Deed is :

9.1.1 Gift :- A gift within the meaning of the Transfer of Property Act, 1882.

9.1.2 Absolute :- Absolute, irreversible and forever.

9.1.3 Free from Encumbrances :- Free from all encumbrances of any and every nature whatsoever including but not limited to its pendens, attachments, liens , charges . mortgages, trusts, debutters, reversionary rights, residuary rights, claims and statutory prohibitions.

9.1.4 Other Rights :- Together with Easements and all other rights, liberties, privileges and benefits appurtenant to the Subject Property.

10 Miscellaneous :-

10.1 Delivery of Possession :- Simultaneously with the execution of these presents Khas, Vacant and Peaceful possession of the Subject Property is handed over by the Donor to the Donee (Possession Date)

10.2 Outgoings :- All Municipal and other taxes, penalties, surcharge, outgoing, liabilities and levies on or relating to the Subject Property till the Possession Date, whether as yet demanded or not, shall be borne, paid and discharged by the Donor and thereafter that shall be borne, paid and discharged by the Donee.

10.3 Holding Possessions :- The Donor hereby covenant that the Donee shall and may , from time to time and at all times hereafter, peacefully and quietly enter into, hold, possess, use and enjoy the Subject Property and every part thereof and receive rents, issues and profits thereof and all other benefits, rights and properties hereby gifted or expressed or intended so to be unto and to the Donee, without any lawful eviction, hindrance, interruption disturbance, claim or demand whatsoever from or by the Donor or any persons lawfully or equitably claiming any right or estate therein from under or in trust from the Donor.

10.4 Further Acts :- The Donor hereby covenants that the Donor or any person claiming under him , shall and will from time to time and all time hereafter, upon every request and at the cost of the Donee and / or Successors-in-interest of the Donee, do and executed all such acts, deeds and things for further and ore perfectly assuring the title of the Donee to the Subject Property.

10.5 Production of Said Deed :- As referred hereinbefore, the Said Deed and all other title documents in respect of the Said Property shall be lying with the custody of the Donor and unless prevented by fore or other unavoidable accidents from time to time and at all time hereinafter at like request and cost of the Donee, the Donr or his successors-n-interest will produce or cause to be produced the said Deed and/or the said documents for reasonable requirement as may be required from time to time.

10.6 Assessment of Value for the Purpose of Advalorem Stamp Duty :- For the computation of stamp duty, the value of the Subject Property is assessed at Rs. -----/- (Rupees -----)only

11 Interpretation :-

11.1 Number :- Words denoting the Singular Number include, where the context permits and requires, the Plural Number and Vice-Versa.

11.2 Headings :- The headings in this Deed are inserted for convenience only and shall be ignored in construing the provisions of this Deed.

11.3 Definitions :- Words and Phrases have been defined in the Deed by bold print and by putting them within brackets, Where a word or phrase is defined, other parts of speech or grammatical forms of that word or phrase shall have corresponding meaning,

Schedule above referred to (Subject Property) (Subject Matter of Gift)

Detail of the Subject Property with boundary description :- The Plot is shown on the Plan annexed hereto with the border Red and the plan is treated as a part of this Deed.

12 Execution and Delivery :-

12.1 In Witness Whereof:- The Donor has executed and delivered this Deed of Gift on the day, month and year mentioned above.

Gift Deed for an Movable Property

I, ----- (name of donor), s/o ----- (father's name),-----R/o------(address),do hereby on dated -----make a gift deed for a gift made on dated of -----, Rs.-----/- (Rupees in word) out of love and affection to my ----- mention the relationship & name of receiver),

S/o or D/o ----- R/o-----,I confirm that I am a resident Indian. I, further confirm that this gift is being made out of my own funds standing to the credit of my A/c No. ----- in ------(mention the bank name & address), I further confirm that the consideration for this gift is the love and affection for my ----- (mention the relationship & name of receiver) and no other consideration.

I am an Income Tax assessee having PAN/GIR # A-984 / N and assessed with the Income Tax ward 1, Noida and this gift is made out of my past savings from profession in India.

I further confirm that the gift has been made by Cheque No. ----- -- dated ----- drawn -----on ----- (mention the Bank name & address). This Gift is irrevocable and I have no claim left whatsoever of the said gifted amount and he/she is free to utilise it in any manner.

PLACE:

DATED:------(Donor Name)

Witness:

The gift as stated above is accepted -----
----- (Name of Receiver)

For further queries you may reach us via..

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