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of his well known work on Muhammadan Law. He is unable to support his contention by reference to any other book or authority. The decision of this Court in the case of *Amin Beg v. Saman* (1), mentioned above, is clearly against the contention of the learned counsel and fully supports the decision of the lower appellate court. We are in complete agreement with that decision and with the reasons contained in the judgment of that case. We may add that the same view has been followed in the later case of *Karan Singh v. Emperor* (2). Reference may also be made to the cases of *Sardaran v. Allah Baksh* (3), *Sardar Mohammad v. Maryam Bibi* (4), *Resham Bibi v. Khuda Baksh* (5) and *Abdul Ghani v. Azizul Huq* (6).

For the reasons given above, we dismiss this appeal with costs.

Before Sir John Thom, Chief Justice, and Mr. Justice  
 Ganga Nath

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 December, 6

BRIJ DEVI (DEFENDANT) v. SHIVA NANDAN PRASAD AND  
 OTHERS (PLAINTIFFS)\*

*Transfer of Property Act (IV of 1882), sections 10, 126—Gift—Revocation—Condition restraining alienation—Condition repugnant to the initial grant—Invalid—Gift not revocable upon alienation by donee.*

Where the terms of a deed of gift effected an absolute transfer of the land and conferred upon the donee full proprietary title, but a condition was added which absolutely restrained the donee and his successors from transferring the land and made the gift revocable upon any such transfer: *Held*, that the condition restraining the right of alienation was repugnant to the initial estate granted by the gift and was void under section 10 of the Transfer of Property Act.

Section 126 of the Transfer of Property Act does not in any way modify, or detract from the generality of, section 10. In chapter II of the Transfer of Property Act the conditions which may be imposed, or may not be imposed, upon the transfer of

\*Appeal No. 73 of 1937, under section 10 of the Letters Patent.

(1) (1910) I.L.R. 33 All. 30.

(3) A.I.R. 1934 Lah. 976.

(5) I.L.R. [1938] Lah. 277.

(2) [1933] A.L.J. 733.

(4) A.I.R. 1936 Lah. 666.

(6) (1911) I.L.R. 39 Cal. 409.

property are enumerated, and section 10 in that chapter refers specifically to conditions restraining alienation by the transferee. That section embodies the general principle that a transferor of immovable property may not impose a condition restraining the transferee from alienating the interest conveyed to him absolutely, except in the case of a lease where such a condition is for the benefit of the lessor; and there is no other exception. This general provision applies to all transfers, including gifts. Section 126 is in no way an exception to section 10.

Mr. *S. N. Seth*, for the appellant.

Mr. *K. C. Mital*, for the respondents.

THOM, C. J., and GANGA NATH, J.:—This is a defendant's appeal in a suit in which the plaintiffs claimed possession of certain property which had formed the subject of a deed of gift executed by the plaintiffs' ancestor on the 11th of December, 1914, in favour of Jani Bulaqi Shankar.

The material terms of the gift deed are as follows: "I have made a gift to Pandit Jani Bulaqi Shankar for construction of the temple of Bhaironji, and residence, and removing my possession from the property gifted I have put the donee in proprietary possession and he will have the right to construct a temple and a quarter. . . . The donee or his successors will have no right to transfer or mortgage it; if he does, the transfer will be invalid, and I and my successors will have a right to get the gift revoked." Following upon this gift in his favour the donee was put in possession of the property. He did not, however, succeed in building the temple or a residential quarter for his own occupation. On the 14th of April, 1927, however, he made a waqf of the property in favour of defendant No. 1, that is he transferred the property which had been gifted to him by the plaintiffs' ancestor on the 11th of December, 1914. In view of this action of the donee, which they alleged to be contrary to the provisions of the deed of gift in his favour. the plaintiffs, the successors of the donor, instituted the suit out of which this appeal arises for the recovery of the property gifted. They alleged that under the

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circumstances in virtue of the provision in reference to revocation contained in the deed of gift they were entitled to have the transfer in favour of defendant No. 1 declared invalid, and further, to possession of the property.

The learned Munsif in the trial court dismissed the suit. The plaintiff appealed and the learned Civil Judge held that in view of the terms of the deed of gift of the 11th of December, 1914, the plaintiffs as the successors of the donor were entitled to possession of the property. The defendants appealed and the learned Judge before whom the matter came in second appeal in this Court has upheld the decision of the lower appellate court.

It was contended for the appellant that the transfer in her favour was valid and that the condition in the deed of gift of the 11th of December, 1914, restraining the donee's right of transfer was repugnant to the initial gift in his favour and therefore inoperative. Learned counsel in support of this contention referred to the provisions of sections 10, 11 and 12 of the Transfer of Property Act. Section 10 enjoins: "Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him." It was urged that in the present case there had been an absolute transfer of property to defendant No. 2, and that that transfer had later in the deed of gift been subject to a condition absolutely restraining the transferee and his successors from parting with or disposing of his interest in the property and that accordingly in view of the provisions of the aforementioned section the condition was void. The condition being void, it was contended, the transfer in favour of defendant No. 1, the appellant, was valid and could not be

set aside, nor were the plaintiffs entitled to revoke the gift of the 11th of December, 1914, in favour of defendant No. 2.

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Whether or not section 10 of the Transfer of Property Act applies to the particular facts of this case depends upon whether the deed of gift of the 11th of December, 1914, effected an out and out transfer of the property in dispute in favour of defendant No. 2. We have already referred to the material provisions of that deed. We would observe that by the deed the donor removes himself from proprietary possession of the property and puts the donee, defendant No. 2, in proprietary possession. Giving effect to this specific provision and reading the deed as a whole we are satisfied that it conferred upon the donee full proprietary title in the land which was the subject of the conveyance. In these circumstances it would appear that the condition restraining the donee's right of alienation is void.

Learned counsel for the plaintiffs respondents contended, however, that the condition aforementioned was not void in view of the terms of section 126 of the Transfer of Property Act. Section 126 is in the following terms: "The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable, wholly or in part, at the mere will of the donor is void wholly or in part, as the case may be." It was urged on behalf of the respondents that in the present instance the right to revoke depended upon the alienation by the donee of the land gifted and not upon the will of the donor and that therefore the plaintiffs being the successors of the donor were entitled to revoke the gift. In support of this contention learned counsel for the plaintiffs referred to the case of *Makund Prasad v. Rajrup Singh* (1). In that case a Bench of this Court held that "Where the defendants made a gift of certain

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property to the plaintiffs on the condition that the land would be liable to be taken back in the event of the plaintiffs' transferring it, the power of revocation reserved was not repugnant to the original transfer under sections 10 and 12 of the Transfer of Property Act." In the course of their judgment BANERJI and AIKMAN, JJ., referred to the provisions of section 126 of the Act which they have held to apply to the case where the donor reserved the right of revocation in the event of transfer by the donee. With great respect we are unable to agree with this decision. We would observe that in the judgment no reason is given for holding that the provisions of sections 10 and 12 of the Transfer of Property Act do not apply to a gift subject to a right of revocation upon alienation of the property gifted by the donee.

The provisions of sections 10 and 12 of the Transfer of Property Act are perfectly general. They refer to all transfers, transfer by gift, sale or otherwise. Section 126 appears in a chapter which is headed "Of gifts." Sections 10 and 12 appear in chapter II headed "Of transfers of property by act of parties." In this chapter the conditions which may be imposed and may not be imposed upon the transfer of movable and immovable property are enumerated. Section 10 refers specifically to condition restraining alienation by the transferee. The provision of the section declaring such a condition void is made to apply to every transfer of proprietary interest in immovable property. One exception only is made in the section itself, namely in the case of a lease where the condition is for the benefit of the lessor or those claiming under him. Now section 126 permits a donor in certain circumstances to impose a condition entitling the donor to revoke the gift. This section, it was contended by learned counsel for the plaintiffs, was in equally general terms and therefore conferred upon the donor in the present instance the right to

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restraint alienation on the part of the donee, such alienation being "an event happening" not dependent upon the will of the donor. We are unable to sustain this argument. It appears to us that the condition imposed upon a donee must, before it can be valid, be consistent with the general principles in regard to conditions in transfers contained in chapter II of the Act, and in particular in section 10 thereof. In this connection we would refer to certain observations of the Privy Council in the case of *Ram Sarup v. Bela* (1). The facts of that case are somewhat different from the facts of the present case, but their Lordships in their judgment make certain general observations on the question as to the validity of certain conditions. They were dealing with the right of a donor to revoke a gift made by him in favour of his wife. The gift appears to have been made subject to the condition that the children of the marriage should be brought up as Christians, but as this condition had not been complied with the donor claimed the right to revoke the gift. Their Lordships observed (page 321) that "although on making a gift to them, the donor might attach or purport to attach such a condition, it would be a condition only and subject to the law of conditions." Now the law of conditions in regard to transfer of property is contained in chapter II of the Transfer of Property Act. No condition therefore, in our judgment, imposed upon a donee can be valid if it is inconsistent with the provisions of section 10 of the Act. The contention of learned counsel for the plaintiffs that section 126 is an absolute exception to section 10 and that in view of the terms of the former section the donor was entitled to impose a condition entitling him to revoke upon any event happening including an alienation by the donee, provided that event did not depend on the will of the donor, in our judgment is unsound. It is the duty of the court to give full effect to every section of an enactment. We see no difficulty in reconciling the provisions of sections 10 and 126. Section 10 embodies

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the general principle that a transferor of immovable property may not impose a condition restraining the transferee from alienating the interest conveyed to him absolutely except in the case of a lease where the condition is for the benefit of the lessor. This general provision in our judgment applies to all transfers including gifts. Apart from the condition restraining alienation by a lessee there is no other exception.

The question for decision in the present case is whether the donor in the deed of gift of the 11th of December, 1914, imposed a condition upon the donee repugnant to the interest which he created by the deed in his favour. We have already stated that in our view the deed of gift conferred the title of ownership upon the donee. Under the deed he took full proprietary interest. In these circumstances we hold that the condition restraining the donee's right of alienation was a condition repugnant to the estate created in him. The condition therefore is invalid and the donee, defendant No. 2, was entitled to transfer the property to defendant No. 1. The plaintiffs, the successors of the donor, are not entitled in the circumstances to revoke the deed and to resume possession of the property which was conveyed by the deed to defendant No. 2.

In the result we allow the appeal, set aside the decree of this Court and of the lower appellate court, and restore the decree of the trial court. The defendant appellant is entitled to her costs throughout.