

APPELLATE CIVIL.

Before Mr. Justice Davies and Mr. Justice Boddam.

RAMAMIRTHA AYYAN (DEFENDANT No. 1), APPELLANT,

1896.
July 15.

v.

GOPALA AYYAN (PLAINTIFF), RESPONDENT.*

Transfer of Property Act—Act IV of 1882, s. 123—Registered gift of land—Natural love and affection—Donor retracts consent prior to registration—Compulsory registration—Effect of.

Where a donor made a gift of land to the plaintiff, but prior to registration retracted his consent, upon which the District Registrar ordered compulsory registration :

Held, that the donor could not be compelled to register contrary to his wishes, and that the registration was void and the gift of no effect.

SECOND APPEAL against the decree of V. Srinivasa Charlu, Subordinate Judge of Kumbakonam, in appeal suit No. 12 of 1894, reversing the decree of T. M. Audinarayana Chetti, District Munsif of Mannargudi, in original suit No. 157 of 1892.

The plaint set forth that the property under attachment and some other property were owned by plaintiff's maternal uncle Sundrappa Ayyar ; that he made a present or gift of the same to plaintiff under a deed, dated 6th January 1890 and plaintiff has been in possession and enjoyment of the same ever since ; that the second defendant, who has fraudulently and collusively obtained a decree in a Small Cause suit against the first defendant, his relative, has placed the disputed property under attachment in execution of the said decree and at his (the first defendant's) instance that an application presented by plaintiff to remove the attachment was dismissed for default, and that the first defendant has no manner of title to the property. Hence the suit.

In his written statement the first defendant admits that the property in dispute and some other property were owned by Sundrappa Ayyar as in the plaint alleged, but he contends that Sundrappa Ayyar conveyed the same to him under a registered sale-deed on the 8th January 1890, and that he has been in possession and enjoyment ever since. He further impugns the genuineness of the deed of gift relied on by plaintiff and says that Sundrappa

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Ayyar, the alleged executant, denied its execution and denounced it as false before the Sub-Registrar of Athiohapuram, and he argues that, even granting it be a genuine one, yet it cannot take effect as against the sale-deed which was passed before the gift-deed was registered and the gift was complete.

The deed of gift, though a registered document, was registered long after it was executed by order of the District Registrar, owing to the executant's denial of execution and refusal to register.

The District Munsif dismissed the suit. The lower Appellate Court found that both the deed of gift relied on by the plaintiff and the sale-deed relied on by the first defendant were genuine; but with regard to the third issue which raised the question of the validity of the deed of gift which was registered contrary to the wishes of the donor, proceeded as follows:—

“ Was the donor entitled to recall his gift after he did all that he was entitled to and the donee accepted it? I must of course answer this question in the negative. In regard to a gift which is usually made out of pure love and affection, all that the donee can do is to indicate his intention of accepting it, and when a gift is made and accepted, nothing more is needed to perfect it if the donor complied with all the requirements of the law. The statute requires a registered document for it, and if the donor write and give a deed to the donee and the latter accept it, whether or not the donor goes to register it voluntarily or not, he having placed it out of his power afterwards to recall it, he cannot retract or annul it. For the donee having the deed in his possession, has the power to enforce its registration under the law when the donor refuse to register it voluntarily. Having placed himself in such a position, he cannot be said to have the power to revoke it before it was registered. I think the gift was complete when it was written, signed and delivered to the plaintiff and plaintiff took it. No more than that is necessary to perfect it, unless the donor and donee both agree to rescind it and did not register it. That is totally a different case.”

Defendant No. 1 appealed to the High Court.

Rajagopala Ayyar for appellant.

Ramachandra Rau Saheb for respondent.

JUDGMENT.—We have no doubt that a deed of gift is not complete until it has been registered as required by section 123 of the Transfer of Property Act, and that it only operates upon

registration. In this case the deed of gift was not registered until the sale had been completed and, therefore, was not effectual as against the deed of sale.

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We are further of opinion that a deed of gift being a voluntary transfer remains *nudum pactum* until the donor has done all that is necessary to make it legally complete. To do so, it is necessary, *inter alia*, that it should be registered; but he can be no more compelled to register the deed than to execute it in the first instance. The registration of the present deed contrary to the supposed donor's wishes, which was ordered by the Registrar, was therefore void. We accordingly hold there was no gift, and reverse the decision of the Subordinate Judge and restore that of the Munsif. The appellants' costs in this Court and in the first Appellate Court must be paid by the respondent.

APPELLATE CIVIL.

Before Mr. Justice Davies and Mr. Justice Boddam.

CHINNA SEETAYYA (PETITIONER), APPELLANT,

1896.
 August 7.

v.

KRISHNAVANAMMA (COUNTER-PETITIONER), RESPONDENT.*

Execution—Partition by Collector—Civil Procedure Code, ss. 265, 360—Jurisdiction of Court to hear objections to the division ordered by Collector.

Where a decree for partition of an estate has been transmitted by the District Court to the Collector for execution under section 265, Civil Procedure Code, the Court that made the decree is not deprived of its judicial power to hear and decide objections to the division of the estate made by the Collector.

APPEAL against the order of G. T. Mackenzie, Acting District Judge of Godavari, dated 20th February 1895, passed in miscellaneous petition No. 53 of 1895.

The petitioner, who was a decree-holder in original suit No. 3 of 1867, on the file of the Court of the late Principal Sadr Ameen of Rajahmundry, filed a petition in the District Court, Godavari, praying that the Court would be pleased to order the Collector to complete the sub-division and partition of the village of Timmanagudam as early as practicable and deliver petitioner's share to him.

* Appeal against Order No. 133 of 1895.