

RAMAKRISHNAN
DOSSH
P.
SRIBANGA
CHARRU.

plaintiff to file a fresh suit and directed that the plaintiffs' costs be paid out of the funds of the Tirumalai and Tirupati devastanams, of which the first defendant had been, and the second defendant at the time of the suit was, the mahant. The suit was one brought under Religious Endowments Act XX of 1863, section 14, and the Judge considered that it had been brought *bonâ fide* in the interests of the devastanams. The order relating to costs was made under section 18 of that Act. The third defendant, who had been brought on to the record pending the suit on the death of the second, applied against the order so far as it related to costs.

The Acting Advocate-General (Hon. F. *Bhashyam Ayyangar*), *Sadagopachariar* and *Gopalasami Ayyangar* for appellant.

Sundara Ayyar for respondents.

JUDGMENT.—The order of the District Judge as to costs is not a "decree" within the definition of that word in section 2, Civil Procedure Code, nor is the order one of those enumerated in section 588, Civil Procedure Code, as subject to appeal. No appeal therefore lies (*Joyodindro Nath v. Sarut Sunduri Debi*(1)).

We dismiss the petition with costs.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Davies.*

1898.
February 1.

REFERENCE UNDER STAMP ACT, s. 46.*

Stamp Act—Act I of 1879, s. 3 (9), (19)—Settlement—Gift—Conveyance.

An instrument whereby a life interest in land is created with remainder to the settlor and his heirs is a settlement within the meaning of the Stamp Act.

A transfer of land, in pursuance of a compromise of a widow's suit for maintenance, is a conveyance and must be stamped accordingly.

CASE stated under Stamp Act, 1879, section 46, by N. S. Brodie, Acting Secretary to the Board of Revenue.

The case was stated as follows :—

"Copies of two documents presented for registration in the Godavari district, together with their English translations, are herewith forwarded. Of these one has been treated as a gift and

(1) I.L.R., 18 Calc., 322.

* Referred Case No. 20 of 1897.

is engrossed on a stamp of Rs. 8. It purports to have been executed by two persons in favour of their sister making over to her, for her enjoyment for life without any power of alienation, 4 acres and 67 cents of inam land valued at Rs. 800. All Government dues on the land are to be paid by her, and at her death the land is to revert to the executants or their heirs.

“The second document was executed by one Mahipala Subbaya in favour of Mahipala Atehamma, widow of Mahipala Sami, whereby the executant, in pursuance of a razinama filed in a suit for maintenance brought by the widow, makes over to her a piece of land measuring 2 acres and valued at Rs. 500 in satisfaction of her claim for maintenance with power to alienate, by way of gift or sale and subject only to the condition that no further claim for maintenance is put forward. This document has also been stamped as a gift with a stamp of the value of Rs. 3.

“The Inspector-General considers that the first of these documents should be regarded as a deed of settlement according to the ruling of the Madras High Court in *Reference under Stamp Act*, s. 46(1). He points out, however, that in this case the property was settled on only one person and the chief requisite of a settlement as pointed out in the judgment of the same Court in *Reference under Stamp Act*, s. 46(2), namely, the creation of separate interests in favour of several persons, is absent. The Board agrees with the Inspector-General in considering that the judgments in the two referred cases cited in this paragraph conflict with each other and is unable to decide whether the document should be regarded as a deed of gift or settlement.

“The same difficulty is experienced in dealing with the second document. According to the definition given in the Transfer of Property Act, there should be no consideration for a gift. In the case of this document the property was given away in satisfaction of a legal claim for maintenance, and it does not appear therefore to be a gift, nor is it a settlement under the ruling of the High Court in *Reference under Stamp Act*, s. 46(2), as it does not create separate interests in favour of several persons.

“The question is one of considerable importance from the point of view of the revenue involved, as the stamp duty on a deed of settlement is half that on a deed of gift, and the Board

REFERENCE
UNDER STAMP
ACT s. 46.

requests that a definite ruling may be obtained so as to enable registering officers to distinguish in future between gifts and settlements.”

The documents in question were respectively as follows :—

Document No. 417 of 1897.—“ Document executed on 9th April 1897 by Nadakuditi Venkatasivudu and Purushottam, sons of Chinna Ramachandrudu, Brahmins and inamdars of Sahapuram in favour of Ayyagari Mangamma, wife of Venkataraju, Brahmin, inamdar of Sahapuram. As you are our sister we have given you for enjoyment for life without power of alienation mirasi inam land valued Rs. 800 measuring acres 4-67 and bearing Survey No. 129B (2a. 1c.), No. 176 (0a. 71c.), and No. 178 (1a. 95c.) situated in Sahapuram, Cocanada sub-district. You may lease out the land and enjoy the profits derived therefrom from this date. You should yourself pay all Government dues every year. After your death the land should go either to us or to our heirs. . . . stamp Rupees eight.”

Document No. 1364 of 1897.—“ This deed made on 23rd April 1897 between Mahipala Subbayya, son of Sathiyya, Telaga, and raiyat of Arikarevulla of the one part and Mahipala Atchamma, widow of Sami deceased, Telaga of Arikarevulla living by maintenance of the other part : Whereas the said Mahipala Atchamma sued for maintenance in a Court of law, and as both parties agreed to a razinama at the intercession of mediators and presented a razinama in the Court, now in pursuance of the said razinama the said Mahipala Subbayya gives to the said Mahipala Atchamma a piece of land without trees therein measuring 2 acres worth Rs. 300 out of jirayati wet land bearing Survey No. 48 and measuring 3 acres 8 cents, situated in Chodavaram in Ramachandrapur sub-district and belonging to said Mahipala Subbayya, and the said Mahipala Atchamma is at liberty to enjoy the said land with power of alienation either of sale or gift without further disputes on the part of Mahipala Subbayya and his heirs and the said Mahipala Subbayya agrees to register the land in the name of the said Mahipala Atchamma in the revenue accounts.”

Counsel were not instructed.

JUDGMENT.—The first case is clearly distinguishable from that decided in 1884 (*Reference under Stamp Act, s. 46(1)*), for there

there was an absolute and unqualified disposition of property by way of gift. Here there was a provision merely for the life of the donee with reversion to the settlor and his heirs. We think this document (No. 417 of 1897) is a settlement within the meaning of the Stamp Act.

REFERENCE
UNDER STAMP
ACT, s. 46.

The other document No. 1364 of 1897 is certainly neither a settlement nor a gift. There was consideration other than that of marriage. We think it must be treated as a conveyance and stamped accordingly.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.

SIVA RAU AND OTHERS (DEFENDANTS NOS. 2, 4 AND 6), APPELLANTS,

1898.
March 31.

v.

VITLA BHATTA (PLAINTIFF), RESPONDENT.*

Hindu law—Bequest to daughters—Construction of will.

A Hindu testator died leaving three daughters. By his will he gave certain property in equal shares to his younger daughters and their descendants and disposed of the rest for the benefit of his elder daughter S and her son R as follows:—
“All the remaining rent should be collected by S and her son R; they shall, when necessary, let the land to other tenants and have it cultivated, and R shall pay the assessment and subject to the directions of his mother shall enjoy the land and shall not in any way alienate the property.” R predeceased S:

Held, that the testator's daughter took a life estate with remainder to her son, and that on her death the property passed to the heirs of the son.

SECOND APPEAL against the decree of H. G. Joseph, District Judge of South Canara, in Appeal Suit No. 186 of 1896, affirming the decree of U. Aehutan Nayar, Subordinate Judge of South Canara, in Original Suit No. 24 of 1895.

The plaintiff sued as the reversioner of Saraswati Amma deceased, to recover possession of certain immovable property in the possession of defendant No. 1, who was the widow of Saraswati Amma's son who had predeceased his mother. The plaintiff was

* Second Appeal No. 211 of 1897.