

## APPELLATE CIVIL.

1901  
April 13.

*Before Sir Arthur Strachey, Knight, Chief Justice, and Mr. Justice Banerji.*

THAKUR SINGH (PLAINTIFF) v. NOKHE SINGH AND ANOTHER  
(DEFENDANTS).\*

*Gift—Construction of document—Clause in deed of gift excluding claims of the donor or his heirs or representatives.*

A Hindu transferred to his daughter a portion of his immovable property by an instrument which purported to be a deed of gift, the consideration of which was the dutiful behaviour of the donee towards the donor. The deed in particular contained a clause absolutely excluding all claims which might be made in the future by the donor or by his heirs and representatives to the property, the subject of the deed.

*Held* that the deed conveyed to the donee a heritable estate with the power of alienation. *Kankia v. Mahin Lal* (1) and *Ram Narain Singh v. Pearay Bhugut* (2) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Pandit *Moti Lal* for the appellants.

Pandit *Sundar Lal* and *Munshi Jang Bahadur Lal* for the respondents.

STRACHEY, C. J. and BANERJI, J.—This is a suit for a declaration that an alienation of certain immovable property made by the defendant No. 2, Musammatt Ganga Kuar, in favour of the defendant No. 1, Nokhe Singh, is void and of no effect beyond Ganga Kuar's lifetime. The property in question is an eight anna zamindari share in a village Para, which formerly belonged to Jawahir Singh, the father of Ganga Kuar. On the 5th September, 1864, Jawahir Singh executed a deed of gift of 4 annas out of the 8 anna share to Ganga Kuar. She obtained possession. After Jawahir Singh's death the remaining 4 annas came into the possession of his widow Babbo Kuar. On the 20th January, 1874, Babbo Kuar executed a deed of gift of that 4 anna share to Ganga Kuar. In 1896 Ganga Kuar had the name of Nokhe Singh, who is related to her, entered in the revenue papers as owner of the whole 8 anna share. This led to the

\* Second Appeal No. 728 of 1898, from a decree of J. Sanders, Esq., District Judge of Cawnpore, dated the 17th September 1898, confirming the decree of Rai Kishan Lal, Subordinate Judge of Cawnpore, dated the 28th March 1898.

(1) (1888) I. L. R., 10 All., 425. (2) (1883) I. L. R., 9 Calc., 830.

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present suit. The plaintiff is the son of a brother of Jawahir Singh. He contends that under the deed of gift of 1864 executed by Jawahir Singh, Ganga Kuar took only a life interest in the 4 annas; that under the deed of gift of 1874 only Babbo Kuar's life interest in the other 4 annas could pass, and that therefore, as to the whole 8 anna share, Ganga Kuar could transfer no absolute estate. The Courts below have held that under the gift of 1864 Ganga Kuar took, not merely a life interest, but an absolute estate in the 4 annas, which she was competent to alienate, but that as regards the 4 anna share given to her by Babbo Kuar in 1874 she could make no transfer beyond the widow's lifetime. They therefore dismissed the suit as regards the first 4 anna share, and decreed it as regards the second 4 anna share. Against the lower appellate Court's decree the plaintiff appeals, and Nokhe Singh files cross objections under section 561 of the Code of Civil Procedure. Before us the cross objections have not been pressed. We have to deal only with the 4 anna share given to Ganga Kuar by her father Jawahir Singh in 1864.

In the Court of first instance, for some reason which has not been explained, the deed was not produced, though at the end of the plaint it was stated that it would be filed at the next hearing. The lower appellate Court says in its judgment that the defendants do not produce the deed. It was apparently overlooked by that Court, and by those representing the parties, that a certified copy had been admitted in evidence by that Court, as appears from the endorsement. The material portion of the deed is as follows:—"That I have in my proprietary possession a 2 anna share out of the 4 anna zamindari share, which is an 8 anna mahal in the name of me, the executant, in mauza Para Rabat, pargana Ghatampur, and it is owned and possessed by me without the participation of anyone else.

"That as I have now become old and have no son, I have of my own free will and accord made a gift of the aforesaid 2 anna share, with lakes, marshy lands, water and forest produce, trees bearing fruit and not bearing fruit, sayar items, saline earth, tanks, groves, fish, *pasahi* (rice of spontaneous growth) and unclaimed trees, all the zamindari dues in the village, to Musammatt

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Gangia, my widow daughter, in consideration of her excellent duty which she has done towards me. I have taken out the property given in gift of my possession, and put the donee in possession thereof. I shall make a formal application also to the Collector's Court for mutation of names. The donee, Musammat Gangia, shall have the power to take everything given to her in gift into her possession, and she shall make collections and pay the Government revenue. The property given in gift shall not at all be liable for any debt due by the husband of the donee, Musammat Gangia, or by Khairati. If after my death my heirs bring any sort of claim in respect of the property given in gift it shall be false and invalid. I and my representatives have ceased to have any claim to the aforesaid property. The gift is lawful, legal, valid and enforceable, and exchange and separation of considerations have taken place in a single meeting." The word "Khairati" in the copy is obscure, and there is no reference in the record to any person of that name. The copy of the deed kept in the District Registrar's office, which we obtained for purposes of comparison, is to the same effect.

The question is whether the deed constitutes an absolute gift or only creates a life estate in favour of Ganga Kuar. It is unnecessary to consider the cases which were cited to us in argument regarding the construction of gifts in favour of Hindu females, and the presumption which the cases are said to establish as to the intention of a Hindu donor making such a gift. The question depends on the terms of the deed of 1864. There is nothing in it which indicates that it was the intention of the donor to limit the gift to Ganga Kuar's lifetime. On the contrary, all its terms suggest an absolute gift, and if the donee were a male we think that no question could arise. In our opinion the deed constitutes an absolute gift of the 4 anna share to Ganga Kuar. The most important sentence is the last but one that we have quoted;—"If after my death my heirs bring any sort of claim in respect of the property given in gift, it shall be false and invalid. I and my representatives have ceased to have any claim to the aforesaid property." These words, we think, give Ganga Kuar by implication a heritable estate with the power of alienation.

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They absolutely exclude all claims which may be made in the future by the donor or his heirs and representatives in respect to the 4 anna share. Whatever may be meant by the sentence about "Khairati," it clearly does not exclude the liability of the donee Ganga Kuar's debts, but only for debts incurred by her husband or "Khairati." The cases most nearly resembling the present are *Kankia v. Mahin Lal* (1) and *Ram Narain Sing v. Pearay Bhugut* (2) in both of which similar expressions excluding the claims of the donor and his heirs were held to create a heritable estate with power of alienation in the donee. In these cases the gift was made by a husband to his wife. Here the gift was made by a father to his married daughter, who, according to the lower appellate Court, is not proved to have been at that time a widow. At the time when the gift was executed the donor's wife and another daughter were living. The object of the gift as stated by the deed was to reward the donee for her dutiful behaviour to the donor. The gift was of a part only of the donor's zamindari property. The rest went to his widow for her life in the ordinary way. The suggestion made on behalf of the appellant is that, as regards this 4 anna share, the donor intended merely to give his daughter the life interest, which otherwise she would have taken along with her sister after the widow's death; that he desired merely to alter the order of succession by making her life interest in the 4 anna share come before, instead of after, the widow, and before, instead of along with, the donee's sister. We think that there is nothing in the terms of the gift or in the circumstances of its execution which supports this construction. We think that the Courts below have taken a right view of the deed, and that this appeal and the cross objections must be dismissed with costs.

*Appeal dismissed.*

(1) (1888) I. L. R., 10 All., 495.

(2) (1883) I. L. R., 9 Calc., 830.