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permanently-settled district, and this has been found by both the lower Courts, and it is also admitted that the estate in suit like all lands within the Sunderbunds is only temporarily settled. But the fact that a portion of a district is not permanently settled would not affect the general character of the district itself. We think therefore that the plaintiff is within the terms of s. 37 the purchaser of an entire estate in the permanently-settled district of the 24-Pergunnahs, and that, unless defendant can bring himself under one of the exceptions to that section, he must be ejected. We have already held that he does not come within the fourth exception, as he does not hold a lease of lands whereon plantations have been made. That is the only exception pleaded by the defendant, and as he has failed to establish that ground, plaintiff's suit must be decreed with costs in all the Courts, the orders of the lower Courts being set aside.

J. V. W.

Appeal No. 826 *allowed.*
Appeal No. 992 *dismissed.*

Before Mr. Justice Mitter and Mr. Justice Beverley.

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March 15.

DHARMODAS DAS (ONE OF THE DEFENDANTS) *v.* NISTARINI DASI (PLAINTIFF).*

Hindu law—Gift—Delivery of Possession—Transfer of Property Act, s. 123—*Immoveable and moveable Property.*

Assuming that delivery of possession was essential under the Hindu law to complete a gift of immoveable property, that law has been abrogated by s. 123 of the Transfer of Property Act. The first para. of that section means that a gift of immoveable property can be effected by the execution of a registered instrument only, nothing more being necessary.

Semble.—The same is the case under that section with regard to moveable property, provided that a registered deed (and not the alternative mode of delivery) be adopted as the mode of transfer.

THIS was a suit for possession of certain land claimed under a deed of gift executed in favor of the plaintiff by her father on the 26th Pous 1289 (9th January, 1883). The father died shortly afterwards, *viz.*, on the 4th Magh 1289 (20th January,

* Appeal from Appellate Decree No. 1575 of 1886, against the decree of J. G. Charles, Esq., Judge of 24-Pergunnahs, dated the 30th April, 1886, affirming the decree of Baboo Atul Chunder Ghose, Munsiff of Alipore, dated the 15th January, 1885.

1883). The deed was proved to have been executed, and there was no question that the gift was accepted, but it was not shown that possession of the property was delivered to the plaintiff during the lifetime of her father.

The suit was decreed by the Munsiff. On appeal it was contended (among other grounds) that, as possession did not accompany the deed of gift, it was invalid under the Hindu law. As to this the Judge said: "With regard to this ground of appeal the appellant's pleader relies on the case of *Dagai Dabee* v. *Mothura Nath Chattopadhya* (1). This authority, however, seems to conflict with the case of *Moheshur Buksh Singh* v. *Gunoon Koonwur* (2), and in any case seems to me to be set aside by s. 123 of the Transfer of Property Act, which is applicable to Hindus. I accordingly hold that delivery of possession is no longer, if it ever was, necessary to make valid a gift of immoveable property among Hindus."

The defendant appealed to the High Court.

Baboo *Rash Behari Ghose* and Baboo *Anund Gopal Palit* for the appellant.

Baboo *Boiddo Nath Dutt* for the respondent.

The arguments sufficiently appear in the judgment of the Court (MITTER and BEVERLEY, JJ.) which, after shortly stating the facts as above, proceeded as follows:—

Upon this state of things it is contended before us that delivery of possession not having been effected at all, the gift, according to Hindu law, is not valid. The District Judge, who has held that the gift is valid, has relied upon s. 123 of the Transfer of Property Act in support of his conclusion.

It is contended before us that s. 123 does not at all abrogate that part of the Hindu law which requires that possession must be delivered in order to complete a gift, and in support of this contention s. 129 of the Transfer of Property Act is referred to. That section says: "Nothing in this chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Mahomedan law, or, save as provided by s. 123, any rule of Hindu or Buddhist law." Now

(1) I. L. R., 9 Calc., 854. (2) 6 W. R., 245.

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this section no doubt leaves intact the Hindu law except so far as it is touched by the provisions of s. 123 referred to above. We think that the District Judge is right in the construction which he has put upon s. 123 of the Transfer of Property Act. We may, however, state here that it is by no means clear under the Hindu law that, to make a gift of *immoveable* property valid and complete, delivery of possession is essentially necessary. What is laid down in the Hindu law is this, that to constitute a valid gift there must be acceptance by the donee, and one of the modes of acceptance in gifts of immoveable property is delivery of possession on the part of the donor, and receipt of possession by the donee. Without going into the question of Hindu law, and assuming that law to be in favor of the appellant, *viz.*, that delivery of possession is essential under the Hindu law to complete a gift, we think that that law has been abrogated by s. 123 of the Transfer of Property Act. That section says: "For the purpose of making a gift of immoveable property the transfer must be effected by a registered instrument signed on behalf of the donor and attested by at least two witnesses. For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery."

Now in the case of moveable property the Hindu law was clear. According to Hindu law no gift of moveable property is valid unless the property given away is actually delivered by the donor to the donee. Section 123 is clear in this respect, that it has done away with the provision of the Hindu law requiring delivery of possession as regards moveable property. The second para. of s. 123 says that the transfer by gift of moveable property may be effected either by a registered instrument signed by the donor or by delivery. It cannot be reasonably contended that this para. of s. 123 still requires delivery of possession, although the gift may have been effected by the execution of a registered instrument. If that were so, the law would stand thus: "For the purpose of making a gift of moveable property the transfer may be effected, either by a registered document signed by the donor and by delivery of possession, or by delivery of possession." It would be unreasonable to hold that that is the law as regards

moveable property, for, if by delivery of possession alone a gift of moveable property becomes effective, the Legislature would not direct that it becomes effective by delivery of possession and something more. Therefore, as regards moveable property, it is clear that the gift of such property can be effected simply by a registered instrument. That being the meaning of the second para. of s. 123 of the Transfer of Property Act, it seems to us that the word "must," in the first para. of the section, means that the gift of immoveable property can be effected by the execution of a registered instrument only. The word "must" is used in the first para. and the word "may" in the second para. "May" is used in the second para. because there are two effective modes of effecting a gift of moveable property, and in the first para. "must" is used because there is only one mode of effecting a gift of immoveable property. We, therefore, think that there is an express provision in s. 123 that a gift of immoveable property can be effected by the execution of a registered instrument, and that is the only mode of effecting it.

The view taken by the District Judge appears to us therefore to be correct, and this appeal must be dismissed with costs.

J. V. W. *Appeal dismissed.*

Before Mr. Justice Mitter and Mr. Justice Beverley.

BENI MADHAB MITTER (PLAINTIFF) *v.* KHATIR MONDUL (DEFENDANT).*

1887 *March* 7.

Registration Act, s. 60—*Certificate of Registration—Document registered by officer having no jurisdiction—Admissibility of Evidence.*

The Court can go behind a certificate of registration, and where it finds that a document was registered by an officer who had no jurisdiction to register it, will refuse to receive it in evidence on the ground that it is not duly registered. *Ram Coomar Sen* v. *Khoda Newaz* (1) distinguished.

THE following was the judgment appealed from, in which the facts are stated sufficiently for this report.

"This was a suit for recovery of rents based on a kabuliat. The defendant denied the execution of the kabuliat, and also stated that the kabuliat, not being registered in the proper office, was not admissible in evidence.

* Appeals from Appellate Decrees Nos. 1365 and 1366 of 1886, against the decrees of Baboo Parbati Kumar Mitter, Subordinate Judge of Jessore, dated the 2nd April, 1886, affirming the decrees of Baboo Gopal Chunder Banerji, Munsiff of Bongram, dated the 16th December, 1885.

(1) 7 C. L. R., 223.