

APPELLATE CIVIL.

1912
August, 3.*Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Banerji.*

PARBATI (PLAINTIFF) v. BAIJ NATH PATHAK

AND ANOTHER (DEFENDANTS).*

Gift—Registration—Consent of donor to registration of deed of gift of immovable property not essential to validity of gift.

Held that it is not essential to the validity of a gift of immovable property that registration of the deed by which such gift is effected should be either at the instance of or with the consent of the donor. *Ramamirtha, Ayyar v. Gopala Ayyar* (1) dissented from.

This was a suit for cancellation of a deed of gift of immovable property executed by the plaintiff. The claim was based upon undue influence and fraud; but these pleas were found against the plaintiff by the courts below, and the suit was dismissed. The plaintiff appealed to the High Court, where it was argued that the gift was not complete without registration, and further that registration was not valid unless procured or at least assented to by the donor. In this case registration had been obtained *in invitam*, and it was argued that the gift was still incomplete and not binding on the donor. The appeal was heard by a Bench consisting of KARAMAT HUSAIN and CHAMIER, JJ., who differed, the former holding that there was no valid and complete gift, the latter that the fact of registration being obtained against the will of plaintiff donor was not sufficient to invalidate the transaction. The decree accordingly followed the judgement of CHAMIER, J. Against this judgement the plaintiff appealed under section 10 of the Letters Patent.

Mr. *M. L. Agarwala*, for the appellant.

The Hon'ble *Nawab Muhammad Abdul Majid*, for the respondents.

RICHARDS, C.J., and BANERJI, J. :—This appeal arises out of a suit in which the plaintiff sought to set aside a deed of gift executed by her. She based her claim upon undue influence and fraud. The courts below, however, have found against her upon these grounds. It was contended, however, on her behalf that the deed was not registered at her instance or with her consent, and that registration

* Appeal No. 33 of 1912 under section 10 of the Letters Patent.

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was brought about compulsorily. The sole question to decide, therefore, is whether or not it is necessary in order that there should be a valid gift of immovable property not only that the instrument should be duly executed and attested in the manner provided by section 123 of the Transfer of Property Act, but also that the registration should be either at the instance of or at least with the consent of the donor. The section merely provides that the gift should be effected by an instrument executed by the donor, attested by two witnesses and registered. In our opinion a document registered in accordance with the provisions of the Registration Act is a registered instrument, and if the document is in fact duly registered in accordance with those provisions the gift is complete and valid. The law does not require that the registration should be at the instance of or with the consent of the donor. The appellant relies upon the case of *Ramamirtha Ayyan v. Gopala Ayyan* (1). It is true that the learned Judges in that case held that it was necessary that the document should be registered with the consent of the donor. They say:—"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." We do not quite understand what the learned Judges meant by saying that "the transfer remained *nudum pactum* until the donor had done all that was necessary to make it legally complete." The transaction remained *nudum pactum* even after registration, that is to say, there was no consideration for it. It was a voluntary transfer. It must be remembered too that at the time this suit was instituted nothing remained for the donor to do. She had executed the deed in the presence of two witnesses and the donee had had the document registered in accordance with the provisions of the Registration Act. Of course, if the plaintiff could have proved that she was induced to execute the deed by fraud or undue influence, this would be a good ground for setting the document aside quite irrespective of whether it was registered or unregistered. In our opinion the judgement of our learned brother CHAMIER was correct. We dismiss the appeal with costs.

Appeal dismissed.

(1) (1896) I. L. R., 19 Mad., 433.