

APPELLATE CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

BABU LAL (OBJECTOR) v. GHANSHAM DAS AND ANOTHER (OPPOSITE PARTIES).*

1922
May, 8.

Muhammadan law—Gift—Condition against alienation—Such a condition between Muhammadans invalid.

The incidents of a gift as between two Muhammadans are governed by the Muhammadan law and not by the Transfer of Property Act, 1882. A provision purporting to take away the donee's power of transfer being under the Muhammadan law invalid the donee will, in despite thereof, take an absolute estate.

Abdul Karim Khan v. Abdul Qayum Khan, (1) and *Nizam-ud-din Ghulam v. Abdul Ghafur*, (2) referred to.

THE facts of the case are clearly stated in the following judgment of the District Judge :—

This is an objection to an attachment by the Receiver of a 1/16th share in a house situate in Hathras, which share is alleged to belong to the insolvent, Mehdi Hasan.

The house in suit originally belonged to one Barkat-ullah, who by partition on the 5th November, 1902, made over $\frac{1}{4}$ th to Umda Begam and $\frac{3}{4}$ th to Ahsan-ullah. On the same date Ahsan-ullah out of his share gifted three annas to Mehdi Hasan and two annas to Wazir Muhammad. In respect of the former, the gift was with the right of transfer, and in respect of the two annas gifted to Wazir Muhammad the deed provides that the donee shall have no right of transfer. The object of this provision was clearly to secure the property to Wazir Muhammad during his life-time and, afterwards, to his legal heirs. Wazir Muhammad has since died and Mehdi Hasan would ordinarily succeed to a one anna share out of the two annas owned by him in this house, but before his death, on the 30th of January, 1920, Wazir Muhammad gifted back his two annas share to the original donor, Ahsan-ullah, and Ahsan-ullah sold the whole house for consideration to the objector, L. Babu Lal, on the 20th of April, 1920.

All the above facts are admitted by the parties. The only question is whether the limitation as regards the right of transfer in the deed of gift in favour of Wazir Muhammad is nullified by section 10 of the Transfer of Property Act. The wording of the deed of gift is ambiguous, since, after saying that both Mehdi Hasan and Wazir Muhammad will become owners or *malik* of the shares transferred to each of them, the deed goes on to deprive Wazir Muhammad of the right of transfer while allowing that right to Mehdi Hasan. I consider that the intention of the parties was that the property should be enjoyed by Wazir Muhammad only for his life-time and should afterwards pass to his heirs. At the time the donors, Ahsan-ullah and Mehdi Hasan, were the heirs of Wazir Muhammad. It is clear that the re-transfer in favour of Ahsan-ullah was made with the object of preventing any share passing to Mehdi Hasan after the death of Wazir Muhammad, presumably because in the meantime Mehdi Hasan had become insolvent. The objector, who is the representative of Ahsan-ullah as the result of a transfer by sale, is not in a position to dispute the terms of the gift made by Ahsan-ullah himself in favour of Wazir Muhammad.

I, therefore, dismiss the objection with costs.

Dr. S. M. Sulaiman, for the appellant.

Dr. Surendra Nath Sen, for the respondents.

* First Appeal No. 19 of 1922, from an order of O. F. Jenkins, District Judge of Budaun, dated the 5th of November, 1921.

(1) (1906) I. L. R., 28 All., 342.

(2) (1888) I. L. R., 13 Bom., 264.

1922

BABU LAL
v.
GHAN HAM
DAS.

PIGGOTT and WALSH, JJ :—The facts out of which this appeal arises are so clearly stated in the judgment under appeal that it is unnecessary for us to recapitulate them. The question in issue is whether an insolvent of the name of Mehdi Hasan did or did not inherit a fractional share in a certain house on the death of one Wazir Muhammad. Wazir Muhammad's interest in that house was derived from a deed of gift and before his death he had executed another deed by which he returned his share in the house to his own donor, Ahsan-ullah Khan. If Wazir Muhammad had a right to gift this property back to Ahsan-ullah Khan, then it did not belong to him at his death and under no circumstances could Mehdi Hasan inherit anything. It is contended that Wazir Muhammad himself held only a life-estate. The court below has discussed the matter only with reference to the terms of the Transfer of Property Act; but the parties are Muhammadans, and we do not see our way to take this case out of the operation of the principle recognized by this Court in *Abdul Karim Khan v. Abdul Qayum Khan*, (1) and by the Bombay High Court in *Nizam-ud-din Ghulam v. Abdul Ghajur* (2). It would seem that this point was not brought to the notice of the learned District Judge when he was dealing with this matter. We must allow the appeal. We set aside the order of the court below and affirm the objection of the appellant. The appellant is entitled to his costs in both courts, which the receiver may charge against the insolvent's estate.

Appeal allowed.

Before Mr. Justice Lindsay and Mr. Justice Kanhैया Lal.

1922
May, 8.

SRI THAKURJI AND ANOTHER (PLAINTIFFS) v. HIRA LAL (DEFENDANT).*

Act (Local) No. IV of 1912 (Court of Wards Act), section 55—Disqualified proprietor—Suit by disqualified proprietor as manager of an idol.

Section 55 of the Court of Wards Act, 1912, has no application to cases where a disqualified proprietor has no personal interest in the property by virtue of which a right to sue is claimed. His disability extends to the property he owns and not to that which he holds as a trustee. A person who happens to be the manager of an endowed property cannot be regarded as a disqualified proprietor in respect of the property which he so holds as manager, and the idol, in whom the endowed property is supposed to be vested, cannot be treated as a Ward within the meaning of section 55 of the Act.

* Second Appeal No. 1432 of 1920, from a decree of L. S. White, District Judge of Cawnpore, dated the 7th of June, 1920, reversing a decree of Kshirod Gopal Banerji, Subordinate Judge of Cawnpore, dated the 10th of February, 1919.

(1) (1906) I. L. R., 28 All., 342.

(2) (1888) I. L. R., 13 Bom., 261.