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mortgagee rights under Manohar Singh's mortgage but other property also. This property has been auctioned by the appellant in execution of his decree in the year 1929. We have no information before us as to the amount realised by the sale of this property and accordingly whether more than the sum of Rs.450 is due under the sub-mortgage.

In the result the appeal fails, and it is dismissed with costs.

FULL BENCH

Before Sir John Thom, Chief Justice, Mr. Justice Allsop and Mr. Justice Ganga Nath

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UMA SHANKAR (PLAINTIFF) *v.* RAM CHARAN (DEFENDANT)*

Transfer of Property Act (IV of 1882), section 6(a)—Spes successionis—Transfer or relinquishment of prospective right of reversion after the death of a Hindu widow—Invalid unless part of family settlement or compromise of rival claims.

The bare transfer or relinquishment, for consideration, of the interest of a Hindu reversioner in the property which the female owner holds for her life is void under section 6(*a*) of the Transfer of Property Act as a transfer of a mere *spes successionis*. Such a transfer or relinquishment, however, may be valid where it is a part and parcel of a family settlement or of a compromise in a dispute between rival claimants to property.

Mr. *G. S. Pathak*, for the appellant.

Dr. *S. N. Sen* and Messrs. *J. Swarup* and *R. N. Sen*, for the respondent.

THOM, C.J., ALLSOP and GANGA NATH, JJ.:—This is a plaintiff's appeal arising out of a suit in which the plaintiff prayed "that on ejectment of the defendant, the plaintiff may be put in possession of the house bounded as below, situate in mohalla Rikabganj, Farrukhabad." One Har Narain was the last male

*Second Appeal No. 53 of 1937, from a decree of J. C. Malik, Civil Judge of Farrukhabad, dated the 7th of October, 1936, reversing a decree of G. D. Sahgal, Additional Munsif of Farrukhabad at Fatehgarh, dated the 14th of December 1935.

owner of the house, possession of which is sought by the plaintiff. Har Narain died in 1885. His wife Chhitar Kunwar on his death entered into possession of the house in her right as a Hindu widow. Musammat Chhitar Kunwar died in the year 1921. She was succeeded in possession by her daughter Musammat Shyama who continued in possession until her death in November, 1934.

The plaintiff claims the house in suit as nearest reversioner. The defendant is the son of a sister of Musammat Shyama's husband. It is alleged that he took possession of the house in suit on Musammat Shyama's death.

The defendant pleaded *inter alia* that the plaintiff was not the nearest reversioner entitled as such to succeed to Har Narain's estate, and that further on the 15th October, 1888, the plaintiff had executed a deed by which he relinquished any right he had to succeed as reversioner to Har Narain's estate.

The learned Munsif in the trial court held that the plaintiff as nearest reversioner was entitled to succeed to Har Narain's estate. So far as the deed of the 15th October, 1888, is concerned he held that it was void in view of the terms of section 6 (*a*) of the Transfer of Property Act and did not therefore operate as a bar to the plaintiff's claim in the present suit. In the result he decreed the suit. The learned Civil Judge in the lower appellate court held that inasmuch as the plaintiff had surrendered by the deed of the 15th October, 1888, his prospective reversionary rights in Har Narain's estate for valuable consideration he was barred from maintaining a claim to any part of the estate on the death of Musammat Shyama. The learned Judge accordingly dismissed the suit.

A number of issues were raised and decided in the trial court which in view of the decision of the learned Civil Judge that the deed of the 15th October, 1888, was binding on the plaintiff were not considered by

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the lower appellate court. To these issues in the present appeal, therefore, we do not deem it expedient to make reference.

On the assumption that the plaintiff is the nearest reversioner in respect of Har Narain's estate the only question for consideration in this appeal is as to the effect of the deed executed by the plaintiff on the 15th October, 1888. The operative portion of that deed is as follows: "Har Narain, son of Mool Chand, caste Brahman, my maternal grandfather, is dead. His property, specified below, is in possession of Musammat Chhitar, the maternal grandmother of me, the executant, and I am the future heir and my maternal grandmother has life interest in the property aforesaid. As my maternal grandmother has paid me the compensation of my rights, I relinquish my right and execute a deed of agreement in her favour who shall now be the permanent owner of the property aforesaid. I neither have nor shall have any right whatsoever therein. I have, therefore, executed this agreement by way of a deed of relinquishment so that it may serve as evidence and be of use when required." The learned Munsif, as already observed, held that this deed was invalid and of no effect in view of the terms of section 6 (*a*) of the Transfer of Property Act. The learned Civil Judge in the lower appellate court has held that as it was a surrender for valuable consideration of the reversionary rights of the plaintiff it was binding upon him and that therefore he could not now claim the property in suit.

Section 6(*a*) of the Transfer of Property Act is in the following terms: "The chance of an heir apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature cannot be transferred." In appeal it was contended for the appellant that the aforementioned deed of the 15th October, 1888, was nothing more than the transfer of

a reversionary interest and that it was accordingly void. For the respondent on the other hand it was maintained that the deed was not merely the transfer of a reversionary interest but was the relinquishment of a future right to claim and that therefore it was not affected by section 6(*a*) of the Transfer of Property Act. In support of this contention reliance was especially placed upon certain observations of RICHARDS, C. J., in the case of *Mohammad Hashmat Ali* v. *Kaniz Fatima* (1). In the course of his judgment in that case which came before the High Court in second appeal RICHARDS, C. J., observed: "It is contended on behalf of the appellant that under the provisions of section 6 of the Transfer of Property Act it is impossible for any person to transfer the chance of becoming entitled to a share in the property of a living person. This no doubt is quite correct but it seems to us that there is nothing illegal in a person, for good consideration, contracting not to claim in the event of his becoming entitled on the decease of a living person." In that case the plaintiffs claimed certain property through one Khurshed Jahan who had compromised certain disputes by abandoning not only all rights which were then vested in her but also the possibility of her succeeding to shares as one of the heirs of her mother. The observation of RICHARDS, C. J., quoted must be taken in reference to the particular facts of the case which was before the Court. It is clear from the judgment that the renunciation by Khurshed Jahan formed part of a family settlement, a settlement which concluded disputes which arose between contending claimants to certain property. The observation, therefore, "that there is nothing illegal in a person, for good consideration, contracting not to claim in the event of his becoming entitled on the decease of a living person" was clearly *obiter*. As a general proposition its soundness is doubted by PIGGOTT, J., in the case of *Chahlu* v. *Parmal* (2).

(1) (1915) 13 A.L.J. 110.

(2) (1919) I.L.R. 41 All. 611.

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Learned counsel for the defendant respondent relied further upon a number of decisions of this Court, viz. *Kanti Chandra Mukerji* v. *Al-i-Nabi* (1), *Sukhdei* v. *Kedar Nath* (2), *Barati Lal* v. *Salik Ram* (3), *Moti Shah* v. *Gandharp Singh* (4), *Nakched Chaudhri* v. *Sukhdeo Chaudhari* (5), *Raghubir Dat Pande* v. *Narain Dat Pande* (6) and *Mahadeo Prasad Singh* v. *Mathura Chaudhari* (7).

It is unnecessary to review these decisions in detail. Suffice it to say that they are decisions in cases in which in each instance it was found that the transfer of *spes successionis* was part of a family settlement or part of a compromise in a dispute which had arisen as to the ownership of property. The transfer or relinquishment of a prospective right as part of a family settlement or of a compromise by rival claimants to property stands in an entirely different position from the bare transfer of a *spes successionis*. As was observed by SRINIVASA IYENGAR, J., in the case of *Kamaraju* v. *Kocherlakota* (8), "If in substance the transaction is found to be only a dealing with the *spes successionis*, then, of course, it cannot be recognized and cannot form the basis of any binding obligation. But if, on the other hand, the substance of the transaction is found to be a *bona fide* settlement between the parties, then, in spite of the fact that the same transaction might be represented in one of its aspects as a dealing with a *spes successionis*, it is none the less a real compromise of disputed rights."

In our judgment the law on the question in this appeal has been clearly defined in two decisions of the Privy Council, viz., *Annada Mohan Roy* v. *Gour Mohan Mullick* (9) and *Amrit Narayan Singh* v. *Gaya Singh* (10). In the former case it was held that "A contract by a Hindu to sell immovable property to which he is the then nearest reversionary heir, expectant

(1) (1911) I.L.R. 33 All. 414.
(2) (1911) I.L.R. 33 All. 467.
(3) (1915) I.L.R. 38 All. 107.
(4) (1926) I.L.R. 48 All. 637.
(5) A.I.R. 1930 All. 430.
(6) [1930] A.L.J. 1541.
(7) [1931] A.L.J. 295.
(8) A.I.R. 1925 Mad. 1043.
(9) (1923) I.L.R. 50 Cal. 929.
(10) (1917) I.L.R. 45 Cal. 590.

upon the death of a widow in possession, and to transfer it upon possession accruing to him, is void. The Transfer of Property Act, 1882, section 6(*a*), which forbids the transfer of expectancies would be futile if a contract of the above character was enforceable." In the course of their judgment the Board approve of the statement of the law on the point in issue by TYABJI, J., in the case of *Sri Jagannada Raju* v. *Sri Rajah Prasada Rao* (1), viz: "The Transfer of Property Act does not permit a person having expectations of succeeding to an estate as an heir, to transfer the expectant benefits; when such a transfer is purported to be made an attempt is in effect made by the two persons to change with each other their legal positions, an attempt by the one to clothe the other with what the legislature refuses to recognize as rights, but styles as a mere chance incapable of being transferred. It would be defeating the provisions of the Act to hold that though such hopes or expectations cannot be transferred in present or future, a person may bind himself to bring about the same results by giving to the agreement the form of a promise to transfer not the expectations but the fruits of the expectations by saying that what he has purported to do may be described in a different language from that which the legislature has chosen to apply to it for the purpose of condemning it. When the legislature refuses to the transaction as an attempt to transfer a chance, it indicates the true aspect in which it requires the transaction to be viewed." Commenting upon this exposition of the law the Board observed (page 937): "Their Lordships think that they are only following out numerous other passages which have been referred to in earlier judgments of this Board when they accept that reasoning and that conclusion. It is impossible for them to admit the common sense of maintaining an enactment which would prevent the purpose of the contract, while permitting the contract

(1) (1915) I.L.R. 39 Mad. 554(559—60).

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to stand as a contract, or to see how by appealing to section 65 of the Indian Contract Act or to the nature of the bargain as a mere bargain *de futuro*, they could uphold it as a contract when it is a contract to which, not only must specific performance be refused under the Transfer of Property Act, but as to which damages can never be recovered, because the contract is not a performable contract until the realisation of the expectation occurs."

In the latter case *Amrit Narayan Singh* v. *Gaya Singh* (1) it was held that " A Hindu reversioner has no right or interest *in praesenti* in the property which the female owner holds for her life. Until it vests in him on her death, should he survive her, he has nothing to assign, or to relinquish, or even to transmit to his heirs. His right becomes concrete only on her demise; until then it is a mere *spes successionis*."

Now on the 15th October, 1888, when the plaintiff executed his deed of relinquishment he had nothing to assign, or to relinquish or even to transmit to his heirs. His right was one in regard to which it was impossible to say it would even become concrete; it could only become concrete upon the death of Musammat Shyama and if he survived her. The bare transfer of such interest as he had, therefore, was void. This, however, does not necessarily conclude the matter. If the transfer was part and parcel of a family settlement or a compromise in a dispute between rival claimants to property it would not necessarily be invalid. The learned Munsif in the trial court, as already observed, has found that the deed was not part of a family settlement. Upon this question, as upon the other issues in the case, the learned Civil Judge has recorded no finding. In the absence of findings upon these other issues the case cannot be finally decided now. In our judgment, however, the learned Civil Judge has misdirected himself in law and his order must be recalled.

(1) (1917) I.L.R. 45 Cal. 590.

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In the result the appeal is allowed, the order of the learned Civil Judge is set aside. The record will be returned to the lower appellate court with the direction that the appeal be admitted to the pending file and disposed of according to law.

The appellant is entitled to his costs in this appeal.

APPELLATE CIVIL

Before Sir John Thom, Chief Justice, and Mr. Justice Ganga Nath

SADIQ ALI AND OTHERS (DEFENDANTS) *v.* ZAHIDA BEGAM (PLAINTIFF)*

1939 *September*, 1

Muhammadan law—Gift—Assignment of Life Insurance policy —Gift in praesenti *or* in futuro—*Assignment with a condition that it shall be void if assignee predecease the assignor—Contingent gift—Validity—Insurance Act (IV of* 1938), *section* 38.

An assignment of life insurance policies was made by a Muhammadan in favour of his wife; there was a proviso that in the event of her predeceasing him the assignment would become null and void: *Held* that the assignment was valid.

The assignment, if regarded as a gift, was not invalid under the Muhammadan law. It was a gift *in praesenti* of the right to receive the money under the policies; the mere fact that the money was to be realised in future did not make it a gift *in futuro*. The essential elements of a valid gift, namely a declaration of the gift by the donor, an acceptance of the gift by the donee and delivery of possession to the donee, were present when the assignment was made and the policies were handed over to and accepted by the donee; the gift was complete as soon as these were done. Again, under section 38 (1), (2) and (5) of the Insurance Act the assignment became complete and effectual as soon as the endorsement, which was duly attested, was made.

The proviso, that in the event of the assignee predeceasing the assignor the assignment would become null and void, would not make the assignment invalid under the Muhammadan law as being a contingent gift, for by section 38(7) of the Insurance Act the assignment was valid notwithstanding any rule of Muhammadan law to the contrary.

*First Appeal No. 424 of 1937, from a decree of C. I. David, Second Civil Judge of Meerut, dated the 9th of March, 1937.