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largely contributed to the results of which he now seeks to take advantage. He had no reasonable cause for abandoning her to her fate or depriving her of the protection of his house and presence; and by so doing he, if he is not directly responsible for her misconduct, has at least disqualified himself from obtaining the relief prayed in the petition.

We therefore are clearly of opinion that the confirmation of the Judge of Agra's decree in this case must be refused, and the petition dismissed.

*Petition dismissed.*

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*August* 15.

## APPELLATE CIVIL.

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Straight.*

HAZARI LAL AND OTHERS (PLAINTIFFS) *v.* JADAUN SINGH (DEFENDANT).*

*Act XV of* 1877 (*Limitation Act*), *sch.* ii, *Nos.* 91, 144—*Suit to cancel instrument*—*Champerty.*

The plaintiffs sued for possession of certain immoveable property, "by avoidance of a spurious deed of gift" executed by one *N*, deceased, in favour of the defendant. *H*, one of the plaintiffs, joined in the suit under an agreement with the other plaintiffs that he should defray the costs of the suit from the Court of first instance up to the Privy Council, and that he should then become proprietor of one-half of the property in suit and be entitled to half the costs.

*Per* STRAIGHT, J.—That the suit was governed by No. 144, and not No. 91, sch. ii of the Limitation Act, 1877.

*Per* STUART, C.J.—That the suit was governed by No. 91, and not No. 144, sch. ii of that Act. *Sikker Chund* v. *Dulputty Singh* (1) distinguished.

*Held* by the Court that *H* had no right to join in the suit.

THE plaintiffs, with the exception of Hazari Lal, sued to obtain possession, by right of inheritance under Hindu law, of ten biswas of a village called Pilkhana, and ten biswas of a village called Katlapur, by avoidance of a deed of gift executed by one Narain Singh, deceased, and the defendant Dal Kuar, in favour of the minor defendant Jadaun Singh, on the 5th July, 1876. They also sought to recover a one-third share of a village called Narwar. The plaintiff Hazari Lal, according to the plaint, "joined in the suit on this mutual contract and agreement, that he would defray

* First Appeal No. 83 of 1881, from a decree of Maulvi Nasir Ali Khan, Subordinate Judge of Mainpuri, dated the 16th July, 1881.

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the costs of the suit from the Court of first instance up to the Privy Council appeal, and that he would then become proprietor of one-half of the disputed property, and would be entitled to half the costs." The defendants set up as a defence that the suit, as to the deed of gift, was barred by the limitation of No. 91, sch. ii of Act XV of 1877; that even if not so barred, such deed was duly and properly executed by Narain Singh, who had full power to make it; that mauza Narwar was the self-acquired property of Narain Singh, and was orally given to Jadaun Singh, who held possession of it, and received the profits; that mauzas Pilkhana and Katlapur were the divided and separate property of Narain Singh, which he could dispose of as he thought proper; and that on the admissions contained in the plaint as regards Hazari Lal, the suit was champertous and illegal. The Court of first instance (Subordinate Judge) decided the plea of limitation in favour of the defendants, and the claim of the plaintiffs as to Pilkhana and Katlapur was accordingly dismissed. But as to Narwar, it ordered that a decree "be passed in the plaintiffs' favour against the defendants for the share in mauza Narwar, declaring them to be the proprietors of the same, and authorising them to take possession after the death of the widows of Narain Singh."

The plaintiffs appealed to the High Court as regards the dismissal of their claim in respect of mauzas Pilkhana and Katlapur, contending, *inter alia*, that the suit was not barred by limitation, No. 91, sch. ii of Act XV of 1877 not being applicable to it, but No. 144. The defendant-respondent filed objections under s. 561 of the Civil Procedure Code in regard to mauza Narwar.

Mr. *Conlan*, Munshi *Hanuman Prasad*, and Pandit *Nand Lal*, for the appellants.

Mr. *Ross*, the *Junior Government Pleader* (Babu *Dwarka Nath Banarji*), and Babu *Jogindro Nath Chaudhri*, for the respondent.

The Court (STUART, C.J., and STRAIGHT, J.) delivered the following judgments:

STRAIGHT, J. (After stating the facts as set out above continued:)—The point of limitation has first to be considered, for, if the view of the lower Court upon it is correct, the substantial portion of the plaintiffs' claim falls to the ground. In order to

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determine it, we must look to the plaint, and there the relief sought as to mauzas Pilkhana and Katlapur is a decree for possession by "avoidance of the spurious deed of gift executed on the 5th July, 1876, by Narain Singh, deceased, and Dal Kuar, defendant No. 2, in favour of defendant No. 1," As to the question of limitation, the plaintiffs' pleader contended that the mention of the deed of gift in the plaint is purely incidental and wholly immaterial, and that the suit is substantially one for the recovery of immoveable property to which the limitation period of twelve years applies. The argument is a sound one, for if Narain Singh was incompetent in point of law to make a gift, the deed is a mere piece of waste paper, the existence of which can in no way obstruct the plaintiffs' rights by inheritance to succeed to his estate, and it is therefore unnecessary for them to seek to have that set aside which has neither force nor effect. No doubt, in the plaint the plaintiffs assail this document in terms, and seemingly in two ways, as if somewhat doubtful of their positions. First, they appear to suggest that it was fraudulently and collusively brought about—how, is not stated very clearly—by one Sohan Lal, elder brother of the minor defendant, in collusion with the defendant Dal Kuar, and the wives of Narain Singh, when the latter was "in a state of insensibility," and that he was in reality unaware of its existence; and next, they assert his incompetency under the Hindu Law to make such a gift at all. I may say at once, however, by way of expediting the determination of the question of limitation, that I entirely concur in the conclusion of fact arrived at by the Subordinate Judge, that Narain Singh did execute the deed of the 5th July 1876, and that he did so freely and voluntarily in a sound state of mind, and with full knowledge of what he was doing. Equally do I agree with the Subordinate Judge in his finding that mauzas Pilkhana and Katlapur were the divided estate of Narain Singh, and were enjoyed separately by him. It therefore comes to this, that Narain Singh, on the 5th July 1876 executed an instrument conveying property rightly belonging to him by way of gift, as he was fully competent to do, to the minor defendant, and conferring a title upon him under which he no doubt did obtain possession. Then the point arises, is a suit like the present, which is in substance one for the recovery of immoveable property, altered in its main nature and

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character and subjected to a much shorter period of limitation, because the plaintiffs mention in their plaint the deed of gift and ask for its avoidance? In other words, is it one to cancel or set aside an instrument "not otherwise provided for" in the sense of art. 91, Act XV of 1877?

After giving the point the best consideration I can, I do not think that it is. In my opinion art 91 is intended to apply to suits of the kind mentioned in s. 39 of the Specific Relief Act, and to cases where a plaintiff seeks to have cancelled or set aside some instrument he has been induced by misrepresentation, concealment of facts, or other means of a like kind to enter into, or where the cancelment or setting aside of an instrument is the only relief asked, as an example of which latter kind of suit I may refer to a case reported in I. L. R., 3 All. 394. I therefore consider it right to say, lest by silence I should be supposed to endorse the view expressed by the lower Court, that I hold the present suit to be in its essence and substance one for the recovery of immoveable property, so far as mauzas Pilkhana and Katlapur are concerned, and that it is not governed by art. 91, but by art. 144 of the Limitation Law.

(After deciding that mauzas Pilkhana and Katlapur were the separate estate of Narain; that he had full power to dispose of them; and that the deed of gift was duly and properly executed, without fraud or coercion of any kind; and that the suit, as regards those mauzas, must be dismissed: and further, that the oral gift of mauza Narwar to Jadaun Singh had been established, the learned Judge, as regards the joinder of Hazari Lal as a plaintiff in the suit, observed as follows):—

It is clear that he had no right whatever to figure in the litigation, or to be joined as a party to the suit. His interest was of a purely speculative character, and his presence in the litigation cannot for a moment be countenanced or tolerated. The question of champerty or any special points in reference to him need not, however, be gone into, as the practical result of my judgment is that, the appeal being dismissed with costs, and the objection under s. 561 allowed with costs, the whole suit of all the plaintiffs fails.

STUART, C. J.—In this case the plaintiffs seek to set aside a deed of gift by one Narain Singh in favour of the defendant, his

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nephew, Jadaun Singh, a minor, and they also claim property other than that given by the deed of gift, which it is contended on behalf of the minor defendant is his, by reason of an oral or parol gift of it by Narain Singh shortly before his death. The suit appears to have been promoted in the Court below by one Hazari Lal, who made a speculative bargain for himself, but to whose claims, and even to his presence in the suit, we can give no countenance whatever. It is sufficient, however, to say thus much of Hazari Lal, as the result of this appeal must be the dismissal of the whole suit.

Among the pleas as maintained before us is one which raises the question whether the suit, as far it relates to the deed of gift, is barred by limitation. This question was also considered by the Subordinate Judge, who was of opinion that it was barred by the limitation of three years provided by No. 91, sch. ii of Act XV of 1877, the deed of gift having been executed on the 5th July, and registered on the 17th July, 1876, while this suit was not filed until the 18th April, 1881, that is, four years and nine months after the execution of the deed of gift. As I am of opinion that the validity of the deed is, as I shall presently show, established by the evidence, it is scarcely necessary for me to offer any observations on this question of limitation. But as remarks were made on this subject at the hearing, in which I do not concur, and which appear to me to involve a misapprehension of the Limitation Law, it may be as well for me to explain the view I take of this matter. I am disposed to agree with the Subordinate Judge. The only other alternative is to hold that the case falls under No. 144 of the same schedule—"for possession of immoveable property or any interest therein not hereby otherwise specially provided for"—the limitation period prescribed for which being twelve years, reckoned from the time "when the possession of the defendant becomes adverse to the plaintiff." I cannot see that the present case is one of that kind. No doubt it may be in substantial effect more or less of that character. But it is the defendant's deed of gift, and not any flaw in the plaintiffs' hereditary title, or the action of any third party under any kind of adverse contract, which stands in the plaintiffs' way; and should it be set aside, the necessary consequence would be the recovery by the

plaintiffs of the property comprised in the deed of gift. There is, I say, no question about any dealing with the land by parties entitled, say, by way of mortgage or conditional sale, or by any similar contract—the defendant stands on his deed, and he must, I think, under the circumstances, be taken to admit that were it not for his deed of gift the plaintiffs would undoubtedly, and as a matter of course, be entitled to recover and hold possession of the property. The sole and only question therefore, so far as relates to the plea of limitation, is simply and only whether this deed was a valid and effectual gift of the property comprised in it to the defendant Jadaun Singh, and as such the deliberate act and deed of Narain Singh, the donor, and no examination of the plaintiffs' right, or of any other right or title to the property, is in any way involved. And that, in my opinion, is a question or state of things provided for by No. 91 of sch. ii of Act XV of 1877, and not by No. 144 of the same schedule. Allusion has been made to s. 39 of the Specific Relief Act I of 1877, which provides that "any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may, in its discretion, so adjudge it, and order it to be delivered up and cancelled." Now I think it may very reasonably be contended that No. 91 of sch. ii of the Limitation Act includes instruments so described, but in my judgment its application is not limited to such instruments, being, as I consider No. 91 to be, applicable not only to these, but to all other instruments which by reason of imperfect or invalid execution or of fraud parties may have an interest in seeking to have set aside, and of these such a suit as we have in the present case may, I think, be fairly comprehended, not only by legal construction, but also by considerations of legal policy; for it surely could not have been intended that such a simple question as the due and valid making of a deed of gift, which from its nature could be easily disproved, if tainted with fraud in any respect, might be held over the head of a donee, especially such a donee as we have in the present case, for the long period of twelve years, during which, too, evidence which might have clearly proved the gift might by the death of witnesses, or by the destruction or loss of papers, become unavailable; three years,

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on the other hand, being sufficient, and more than sufficient, for the collection and preparation of evidence against the deed, if there was any reason to believe or suspect it had been improperly obtained.

Generally the argument in favour of No. 91 of sch. ii of the Limitation Act of 1877, being regarded as supplying the limitation law in such a case as the present, may be briefly summed up thus: No. 144 of the schedule applies to suits for possession of immoveable property as against, say, a mortgagee or conditional vendee without regard to a deed of gift, or any other instrument outside the inheritance, and there is nothing said in it about cancelling or setting aside deeds or instruments held by third parties, or indeed instruments of any kind. On the other hand, No. 91 provides the limitation for a suit, the one express and special purpose of which is to cancel or set aside an instrument solely by reason of its existence, the plaintiff seeking on legal grounds to have it removed out of his way, not because it gives the defendant property to which, under an alleged superior title, plaintiff has a better right, but because, and only because, it is alleged to have been executed while the donor was not in a sound and intelligent state of mind.

A Calcutta case has been referred to in favour of the contention that the suit in the present appeal must be regarded as one for the possession of immoveable property, and not one of the kind intended by No. 91, sch. ii. That case had reference to the Limitation Act of 1871 and not to Act XV of 1877, under which the present case arises. But as I view that Calcutta case, it was a totally different one from the present. This was the case of *Sikher Chund* v. *Dulputty Singh* (1) and it was there held that on the facts the suit must be regarded as one for possession of immoveable property under No 145 of the Act of 1871, corresponding to No. 144 of the present Act, and not merely for setting aside an instrument within the meaning of No. 92 of the former Act, corresponding with No. 91 of the present. A Hindu family being heavily oppressed with debts, ancestral and otherwise, the two elder brothers of the family, for themselves and as guardians of their

(1) I. L. R., 5 Calc. 363.

minor brother, applied, under s. 18 of Act XL of 1858, and obtained from the District Judge an order for the sale of several portions of the ancestral estate, and sold the same under registered deeds signed by the Judge. Within twelve years after the registration the adopted son of the minor brother brought several suits against the purchasers to set aside the sales and recover back his share of the property, alleging that his two elder brothers had made the sales fraudulently and illegally to satisfy personal debts of their own, and the Court (Garth, C. J., and Prinsep, J.) held that the suit was in substance one for the possession of immoveable property. I am inclined to think that the judgment of the Calcutta Court was right in that case, although, neither in the argument from the bar, nor in the judgments of the Judges, is there a full and conclusive examination of the question. It is to be observed that the suit was between parties equally entitled to the ancestral property without the intervention of a deed of gift to an outsider, or any other transaction foreign to the regular course of inheritance, and there was no question in regard to execution, or as to the manner in which the deeds of sale had been obtained from the two elder brothers. Prinsep, J., in the course of his judgment, remarked:—"The object of the suit is, in my opinion, to show that the sales which it is sought to set aside were made unlawfully, that is, not for purposes legally binding on the minor; and that therefore possession taken under those sales was unlawful." That was the question, and the sole question, before the Court, and there was no plea or suggestion about the fact of execution, or of any fraud or incapacity on the part of the makers of the deeds, the question being whether the deeds were justifiable under the circumstances of the family. Garth, C. J., agreed with his colleague, although he said that the point of limitation was one which during the argument he had some doubt about; but "the substantial object of the plaintiff is to recover the property, and the validity or invalidity of the sales forms only one of the questions which are involved in that claim." In the case before us the validity or invalidity of the deed of gift is the sole and only question. And I observe that in the course of the argument for the respondent it was maintained, with the expressed approbation of the Court, that No. 92 of the Act of 1871, corresponding to No. 91 of the present Limitation Act,

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"refers to a class of cases where a man has executed an instrument through fraud or duress, and which he wishes to have delivered up to be cancelled"—words which appear to me correctly to describe what is sought for by the plaintiffs-appellants in the case before us.

For all these reasons I am led to conclude that No. 91 and not No. 144 provides the limitation for such a suit as the present. (On the merits of the case the learned Chief Justice was also of opinion that the deed of gift executed by Narain Singh was valid, and the oral gift of mauza Narwar had been established, and that therefore the appeal should be dismissed, and the objection of the respondent be allowed).

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*August* 22.

## REVISIONAL CIVIL.

*Before Mr. Justice Straight and Mr. Justice Brodhurst.*

HUSAINI BEGAM (JUDGMENT-DEBTOR) *v.* MULO (AUCTION-PURCHASER.) *

*Certificate of sale—Registration—Effect of registration certificate—Civil Procedure Code, s.* 316—Act *III. of* 1877 (*Registration Act*), *ss.* 23, 60, 87, 89.

*Semble* that a certificate granted under s. 316 of the Civil Procedure Code is not an instrument the registration of which is compulsory.

Although that section says that a certificate granted thereunder shall bear "the date of the confirmation of the sale," that provision cannot alter the fact of execution or the time when execution does take place, which is the starting point from which the four months mentioned in s. 23 of the Registration Act begin to run.

*Held*, therefore, that a certificate granted under that section in respect of a sale which was confirmed on the 7th April, 1880, which was registered within four months from the 10th May, 1882, when it was executed, was registered within the time allowed by law.

The certificate showing that a document has been registered is conclusive proof that it has been registered according to law.

THIS was an application for revision under s. 622 of the Civil Procedure Code of an order by Mr. W. Young, District Judge of Bareilly, dated the 27th May, 1882. On the 20th January, 1880, Mulo, the respondent in this application, purchased at sale in execution of a decree held by her against the applicant, Husaini Begam, two villages called Kulasia and Allapur. On the 7th April, 1880, an order confirming the sale was made. On the 21st of that

* Application No. 162 of 1882, for revision under s 622 of the Civil Procedure Code of an order by W. Young, Esq., Judge of Bareilly, dated the 27th May, 1882,