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and it appears that the title was one equivalent to under-proprietary rights and has been described correctly by the plaintiffs as *dehdari*. The plaintiffs, therefore, are entitled in my opinion to a decree for *dehdari* rights in respect of grove No. 452, now No. 484 only, but their suit has been rightly dismissed in respect of the other numbers subject, as I have said, to their fishing rights in Nos. 624 and 476.

The appeal is thus partially dismissed and partially allowed, and proportionate costs will be allowed throughout.

Appeal partly allowed.

APPELLATE CIVIL.

August, 23.

Before Mr. Justice Bisheshwar Nath Srivastava.

ABDUL RAHMAN (OBJECTOR-APPELLANT) *v.* GAYA PRASAD (DECREE-HOLDER) AND ANOTHER (JUDGMENT-DEBTOR) RESPONDENTS.]*

Civil Procedure Code (Act V of 1908), Schedule III, rule 11 —Execution of decree—Attached property under control of Collector—Gift by judgment-debtor in favour of his sons, whether void or voidable—Muhammadan Law—Gift under Muhammadan law, essentials of.

The use of the word "incompetent" in rule 11 of Schedule III of the Code of Civil Procedure seems to show clearly that whilst the property is under the control of Collector the judgment-debtor is disqualified from entering into any transaction in contravention of the terms of that rule. The disqualification imposed by the rule is absolute in its nature, making transactions entered into by the judgment-debtor contrary to the provisions of rule 11 altogether void, and not merely voidable as against the Collector or persons claiming under him. Therefore rule 11 of schedule III is applicable not only to those cases in which a sale has actually been made by the Collector, but if the decree

*Execution of Decree Appeal No. 18 of 1929, against the order of Pandit Bishambhar Nath Misra, Subordinate Judge of Kheri, dated the 19th of January, 1929, upholding the decree of Babu Pratap Shankar Munsif of Kheri, dated the 5th of November, 1928.

is satisfied by the judgment-debtor and no occasion arises for the collector to take any action for the enforcement of the decree, then even in that case rule 11 of schedule III has application and any transfers made by the judgment-debtor must be held to be invalid. *Gauri Shankar Balmukund* v. *Chinnu Maya* (1), relied on.

The only ingredients necessary for the completion of a valid gift under the Muhammadan law are the declaration by the donor, acceptance by the donee, whether express or implied, and the delivery of possession to the donee, either actual or constructive. Registration is not necessary to complete a gift under Muhammadan law.

Mr. *Ali Zaheer*, for the appellant.

Messrs. *Radha Krishna* and *Rauf Ahmad*, for the respondents.

SRIVASTAVA, J. :—The material facts relating to the dispute which has given rise to the present appeals are that one Ganesh Prasad obtained a simple money decree against Munna, father of Abdul Rahman, the objector-appellant, and of Abdul Hamid minor who is respondent No. 2 in these appeals. The decree-holder Ganesh Prasad applied for attachment and sale of the property in suit in execution of his decree. As the property sought to be sold was ancestral the decree was transferred for execution to the Collector on the 30th of June, 1921. The sale was fixed before the Collector for the 20th of July, 1921, but it did not take place on that date as the judgment-debtor paid a part of the decretal debt and got the sale postponed to the 20th of October, 1921. About a month later, on the 23rd of August, 1921, the judgment-debtor Munna executed a deed of gift in respect of the property in suit in favour of his two sons Abdul Rahman appellant and Abdul Hamid respondent No. 2. It is the validity of this gift which is the principal matter of controversy in the present appeals. On the 19th of October, 1921, the judgment-debtor paid off the balance of the decretal amount and on

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the 20th of October, 1921, the property was released by the Collector. On the same date Munna also got the deed of gift, dated the 23rd of August, 1921, registered.

Another chapter of the case begins with a pro-note, dated the 18th of July, 1921, executed by Munna in favour of Gaya Prasad respondent No. 1. This money was borrowed in order to make part payment of the decretal debt of Ganesh Prasad and seems to have constituted part of the money which, as stated before, was paid by Munna to Ganesh Prasad on the 20th of July, 1921. On the 2nd of September, 1925, Gaya Prasad obtained a decree on the basis of the pro-note just mentioned. Gaya Prasad also had another similar decree against Munna. After the death of Munna the decree-holder respondent Gaya Prasad applied for execution of his two decrees by attachment and sale of the property in suit claiming it to be the assets of his deceased judgment-debtor Munna. Abdul Rahman appellant filed objections in both the execution cases on the allegation that the property sought to be attached and sold did not belong to Munna at the date of his death inasmuch as it had been transferred by him to the appellant and his minor brother respondent No. 2, under the deed of gift, dated the 23rd of August, 1921, and was therefore not liable to attachment or sale in execution of the decree against Munna. Both the objections were tried together and dismissed by the learned Munsif on the ground that the deed of gift dated the 23rd of August, 1921, was void under rule 11 of schedule III of the Code of Civil Procedure. This decision has been upheld on appeal by the learned Subordinate Judge.

The objector has come here in second appeal. Two contentions have been urged on his behalf in support of the appeal. The first contention is that the transaction of gift relied upon by him was inchoate and incomplete on the 23rd of August, 1921, and became a completed transaction only on the 20th of October, 1921, when

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the deed of gift was registered. The argument is that as the property had been released by the Collector before the registration of the deed of gift therefore the alienation was not invalidated by rule 11 of schedule III of the Code of Civil Procedure. I find myself unable to accept this contention. Both the lower courts are agreed in finding that the transaction of gift was completed on the 23rd of August, 1921, and I think that the finding arrived at by them is quite correct. The learned counsel for the appellant admits that the only ingredients necessary for the completion of a valid gift under the Muhammadan law are the declaration by the donor, acceptance by the donee, whether express or implied, and the delivery of possession to the donee, either actual or constructive. He concedes that registration is not necessary to complete a gift under Muhammadan law. The only one of these ingredients which is said to have been wanting on the 23rd of August, 1921, was the element of delivery of possession. But the matter is concluded by the finding of both the lower courts. In fact it seems to me that no other finding was possible. The deed of gift, exhibit 1, speaks of possession having been delivered to the donees who were both the sons of the donor and one of whom was a minor. In the case of the minor son at least the mere declaration by the father was sufficient. As for the elder son who is the objector-appellant, we have his express admission contained in the petition of objection, dated the 23rd of July, 1928, to the effect that he had been put in possession of the gifted property from the date of the gift. I have, therefore, no hesitation in agreeing with the courts below that when the deed of gift had been executed on the 23rd of August, 1921 the transaction was accompanied with delivery of possession to the donees and the transaction of gift was therefore complete on that date. As rightly conceded by the learned counsel for the appellant the subsequent registration was wholly unnecessary under the Muhammadan law and

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was a superfluous act. Section 47 of the Registration Act lays down that "a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration." Thus it will be clear that the registration of the deed of gift on the 20th of October, 1921, cannot have the effect of novation of the gift. If any such object was intended the proper course for the donor to have adopted was to execute a fresh deed of gift. As it is, the deed of gift dated the 23rd of August, 1921, must be deemed to take effect from the date of its execution even though it was registered some months later. As admittedly the property which formed the subject of gift was under the control of the Collector on the date of the gift, and as no written permission of the Collector was obtained as required by rule 11 of schedule III of the Code of Civil Procedure, the gift was incompetent, and the decision of the lower court is quite correct.

The next contention urged by the learned counsel for the appellant is that rule 11 of schedule III is applicable only to those cases in which a sale has actually been made by the Collector and where the alienation made by the judgment-debtor is in conflict with the transfer made by the Collector. He has argued that if the decree is satisfied by the judgment-debtor and no occasion arises for the Collector to take any action for the enforcement of the decree, then in such a case rule 11 of schedule III has no application and any transfers made by the judgment-debtor must be held to be valid. He has in support of his argument referred by way of analogy to cases of private alienation of property after attachment and of transfers *pendente lite* and pointed out that in both these classes of cases the transfers are invalid only as against the claims enforceable under the attachment or claims arising under the decree or order passed in the pending suit. I regret I am not impressed with the

soundness of this argument. The argument will be sufficiently answered by a comparison of the language used by the legislature in rule 11 of schedule III with the language used in section 64 of the Code of Civil Procedure and section 52 of the Transfer of Property Act. In section 64 of the Code of Civil Procedure it is expressly provided that the alienation "shall be void as against all claims enforceable under the attachmnt." Similarly in section 52 of the Transfer of Property Act the words used are that "the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein." Thus it is perfectly clear that in the case of attachment as well as in cases of tranfers *pendente lite*, the ligislature has in express terms defined the extent to which the tranfers would be invalid. On the contrary the language used in section 11 of schedule III is quite different. The rule provides that in cases to which the rule applies the judgment-debtor "shall be incompetent to mortgage, charge, lease or alienate any such property or part except with the written permission of the Collector." The use of the word "incompetent" seems to show clearly that whilst the property is under the control of the Collector the judgment-debtor is disqualified from entering into any transaction in contravention of the terms of rule 11 of schedule III. The disqualification imposed by the rule is absolute in its nature, making transactions entered into by the judgment-debtor contrary to the provisions of rule 11 altogether void, and not merely voidable as against the Collector or persons claiming under him. The matter is concluded by the decision of their Lordships of the Privy Council in *Gaurishankar Balmukund* v. *Chinnumaya* (1). In that case, it appears that a somewhat similar contention, with reference to section 325A of the Code of Civil Procedure (Act XIV of

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1882) which corresponds to rule 11 of schedule III of the present Code of Civil Procedure, was urged before their Lordships. Their Lordships make reference to the contention urged before them in the following terms :—

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> "It is contended that section 325A is not to be read in the complete and operative sense natural to the words, that is to say, of incompetency to mortgage such property, but must be read with an implied limitation. The limitation suggested is that there still remained in the judgment-debtor a power to mortgage the property so as to become operative over any residue that might arise to the latter after the Collector's administration had ended."

Their Lordships rejected the contention and held that the mortgage made by the judgment-debtor while the Collector could exercise the powers given to him by sections 322 to 325 of Act XIV of 1882 was absolutely void and not merely voidable as against the Collector and those claiming under him. This contention also is, therefore, without force.

The appeals therefore fail and are dismissed with costs

Appeal dismissed.