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himself from the rest of the family. We therefore need not enter into the other questions raised before us.

We accordingly decree these appeals with costs and dismiss the cross-appeals.

Appeals decreed.

A. F. M. A. R.

Before Mr. Justice Tottenham and Mr. Justice Ameer Ali.

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Dec. 2.

LAKSHIMONI DASI (PLAINTIFF) v. NITYYANANDA DAY AND ANOTHER, MINORS, REPRESENTED BY THEIR MOTHER AND GUARDIAN, KRISTOMONI DASSI (DEFENDANTS).*

Hindu Law—Gift—Gift without delivery of possession—Transfer of possession—Sale—Transfer of Property Act (IV of 1882), ss. 123, 129—Immoveable property—Acceptance of gift.

P executed a deed of gift of certain property in favour of the plaintiff in 1877 before the Transfer of Property Act was passed, and the deed was duly registered. In 1881 *P* sold certain portions of the same property to the defendants, and gave possession to them of such portions. *P* died six years after the execution of the deed of gift, and after his death some of the title deeds of the property covered by the deed of gift came into possession of the plaintiff. Both the lower Courts found that there had been no delivery of possession given by the donor nor acceptance by the donee. In a suit brought five years after the death of *P* for possession of the property the subject of the alleged gift: *Held* that mere registration was not sufficient to make the gift complete, according to the Hindu Law, under which some possession or acceptance by the donee was necessary: there being neither possession nor acceptance the suit should be dismissed.

Dagai Dabee v. Muthuranath Chaltopudhya (1), *Kishto Soondery Deba v. Kishlomotee* (2), and *Harjivan Auendram v. Naran Haribhai* (3), referred to. *Dharmodas Das v. Nistarini Dasi* (4) approved.

THIS appeal arose out of two suits brought against the defendants for possession of certain lands covered by a registered deed of gift executed in favour of the plaintiff by her brother one Pran Krishna Dutt on the 26th Aushran 1284 (10th December 1877).

* Appeal from Appellate Decree No. 1085 of 1891, against the decree of F. W. Badcock, Esq., Judge of Burdwan, dated the 13th of May 1891, affirming the decree of Baboo Monmotho Nath Chatterjee, Munsiff of Cutwa, dated the 17th of December 1890.

(1) I. L. R., 9 Calc., 854.

(2) Marsh., 367.

(3) 4 Bom. H. C., 31.

(4) I. L. R., 14 Calc., 446.

The deed was proved to have been executed, but it appeared that Pran Krishna Dutt during his lifetime had sold portions of the same property to the defendants, who were also put in possession by him. The question was whether the gift was accepted by the plaintiff, as it was not shown that possession of the property was ever delivered to the plaintiff during the lifetime of Pran Krishna Dutt.

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The Munsiff dismissed the suit.

On appeal, the District Judge also dismissed the suit, and on the question of possession observed as follows:—

“As to possession, the plaintiff has quite failed to prove it. The deed of gift is dated some years before Pran Krishna’s death, the defendants got possession six years before his death, and the plaintiff never asserted her claim till five years after his death. The appellant’s pleader says possession is not essential, and quotes the case of *Dharmodas Das v. Nistarini Dasi* (1), but in that case the question of the necessity of possession was not gone into. The respondents’ pleader quoted the cases of *Dayai Dabee v. Mothuranath Chattopadhyaya* (2) and *Kali Dass Mullick v. Kanhaya Lal Pundit* (3). On the authority of these rulings, and Mayne’s Hindu Law, page 329, I think delivery of possession in some way was necessary. As to the title-deeds having been made over at the time of the gift, I don’t find any evidence except a recital in the deed to that effect.”

The plaintiff appealed to the High Court.

Baboo *Karuna Sindhu Mukerji* for the appellant.

Baboo *Sarat Chunder Roy Chowdhry* for the respondents.

Baboo *Karuna Sindhu Mukerji*.—The deed of gift having been registered, it passed a good title to the donee. Possession is not absolutely necessary under the Hindu Law [see Mayne’s Hindu Law, section 351, and *Dharmodas Das v. Nistarini Dasi* (1)]. To complete a gift there must be a transfer of the apparent ownership from the donor to the donee. In this case the plaintiff is in possession of all the properties which formed the subject-matter of the gift excepting the disputed portion, and the title-deeds are also in her possession. This is sufficient to entitle

(1) I. L. R., 14 Calc., 446.

(2) I. L. R., 9 Calc., 854.

(3) I. L. R., 11 Calc., 121 ; L. R., 11 I. A., 218.

1892 her to a decree. The gift cannot be invalid in part : either it is wholly void or it is wholly valid (see section 129 of the Transfer of Property Act IV of 1882). The case of *Kalidas Mullick v. Kanhaya Lal Pundit* (1) supports my contention that possession is not necessary. In the case of *Dagai Dabee v. Mothuranath Chattopadhyaya* (2), simply a deed was executed : besides, this authority seems to conflict with the case of *Moheshur Buksh Singh v. Ganoon Koonwar* (3). In case of transfer for consideration, it was at one time considered that possession was necessary, but the case of *Nurain Chunder Chuckerbutty v. Dataran Roy* (4) lays down "that delivery of possession is not under the Hindu Law essential to complete the title of a purchaser for value." The plaintiff was in possession of the title deeds, which should have been admitted in evidence.

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Baboo *Sarat Chunder Roy Chowdry*.—Here there is a finding by both the Courts below that the plaintiff had no possession of the disputed properties ; possession is absolutely necessary to complete a gift [see *Dagai Dabee v. Mothuranath Chattopadhyaya* (2)]. The provisions of Act IV of 1882 do not apply to this case. In the case of *Kalidas Mullick v. Kanhaya Lal Pundit* (1) the donor was out of possession and therefore could not deliver possession. There is no evidence that the title-deeds were in the possession of the donee before the death of the donor.

Baboo *Karuna Sindhu Mukerji* in reply.

The judgment of the Court (TOTTENHAM and AMBER ALI, JJ.) was as follows :—

The plaintiff in these suits sued to recover possession of certain properties on the ground that they were covered by a deed of gift executed in her favour many years ago by her brother, one Pran Krishna.

Both the Courts below have dismissed the suits on the ground that the deed of gift propounded by the plaintiff was not operative in law.

(1) I. L. R., 11 Calc., 121 ; L. R., (3) 6 W. R., 245.

11 I. A., 218.

(4) I. L. R., 8 Calc., 597.

(2) I. L. R., 9 Calc., 854.

The deed in question bears date the 26th Aghran 1284. It is a registered document, and purports to cover, so far as can be gathered, all the properties belonging to Pran Krishna. Four years later, namely, some time in 1288, Pran Krishna sold a portion of the same property, for a consideration of Rs. 160, to the defendants in one suit, and shortly afterwards another portion, for a consideration of Rs. 290, to the defendants in the other suit; and he appears to have died six years after the execution of the deeds of sale. The present suit was brought, as appears from the judgment of the Appellate Court, five years after Pran Krishna's death.

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The defendants contend that though the deed of gift may have been executed by Pran Krishna in his lifetime, the plaintiff never obtained possession of these properties, and that, therefore, the gift was invalid, and that they themselves were put in possession by the vendor, and have been ever since in possession of the properties purchased by them. Baboo Karuna Sindhu Mukerji, who appeared for the appellant in this Court, contended that the fact of the deed of gift being registered was sufficient to convey the property to the plaintiff, no possession being required under the Hindu Law to perfect the gift. He further contended that, as a matter of fact, possession had been delivered, and that the Lower Courts were wrong in holding otherwise. And thirdly, he urged that the plaintiff was in possession of the title-deeds of the properties, and the Courts were wrong in not admitting them in evidence.

It must be observed in the first place that the deed of gift was executed long before the Transfer of Property Act came into force, and it is conceded that, whatever alterations may have been made in the provisions of the Hindu Law by section 129 of the Transfer of Property Act, they do not affect any right taken under the present deed of gift. We have therefore to consider whether the view propounded by the pleader for the appellant is well founded, *viz.*, whether when once a deed has been registered no possession is necessary to perfect the gift.

Mr. Mayne in his work gives a general epitome of the prevailing law on the subject, and his conclusion may be summarised thus: that though there is no specific direction in the Hindu Law as to delivery of possession, the general course of decisions has

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been that some sort of possession is necessary, and there is no doubt that in a number of cases [see *Dagai Dabee v. Mothuranath Chattopadhyaya* (1), *Harjivan Anandram v. Navan Haribhai* (2), *Kishto Soandery Debea v. Kishtomotee* (3)] that view has been adopted. The case of *Dharmodas Das v. Nistarim Dasi* (4), which was referred to in argument, explains in a somewhat different way the rule of Hindu Law. In that case Mr. Justice Mitter says: "We may, however, state here that it is by no means clear under the Hindu Law that, to make a gift of *immoveable* property valid and complete, delivery of possession is essentially necessary. What is laid down in the Hindu Law is this, that to constitute a valid gift there must be acceptance by the donee, and one of the modes of acceptance in gifts of immoveable property is delivery of possession on the part of the donor and receipt of possession by the donee. Without going into the question of Hindu law, and assuming that law to be in favour of the appellant, *viz.*, that delivery of possession is essential under the Hindu Law to complete a gift, we think the law has been abrogated by section 123 of the Transfer of Property Act."

The cases of *Kalidas Mullick v. Kanhayu Lal Pundit* (5), *Mahomed Muse v. Jijibhai Bhagwan* (6), and *Mooheshur Buksh Singh v. Gunoon Kunwar* (7), which were cited, have little bearing on the present question.

But accepting the view enunciated by Mitter, J., it seems to us that in the present case the Courts below have found as a fact that the plaintiff never had possession during Pran Krishna's lifetime, nor did she ever make any objection to the defendants taking possession of the property sold to them. There is no indication that she ever accepted the gift; and the facts detailed in the Munsiff's judgment would lead to the conclusion that the plaintiff had no connection with any portion of the property at any time after the execution of the deeds.

It is urged that the delivery of the title-deeds is some evidence of delivery of possession. The plaintiff is the mother of the next

(1) I. L. R., 9 Calc., 854.

(2) 4 Bom. H. C., 31.

(3) Marsh., 367.

(4) I. L. R., 14 Calc., 446.

(5) I. L. R., 11 Calc., 121.

(6) I. L. R., 9 Bom., 624.

(7) 6 W. R., 245.

heirs of Pran Krishna. Upon his death such documents as were in his possession would naturally come into their hands. Apparently, with the exception of one of the documents, none of them relate to any of the properties in suit. The mere fact therefore that she is now in possession of some of the title-deeds relating to the properties covered by the deed of gift would throw no light upon the question of possession, even as explained in the case of *Dharmodas Das v. Nistarini Dasi* (1), and both the Courts have negatived, upon the evidence, the allegation of possession of any portion of the property forming the subject of the gift. So far, therefore, as to the two first grounds taken by the pleader for the appellant are concerned, we must decide upon the facts against the plaintiff.

As regards the third ground, we find from the order sheet of the Munsiff that the documents were not produced until after the case had concluded and been reserved for judgment. We are therefore of opinion that the original Court was right in refusing to admit them at that stage. It is unnecessary to enter into the ground mentioned by the Lower Appellate Court for refusing to admit those documents.

On the whole, we are of opinion that the plaintiff has failed to prove her case, and that the appeals must be dismissed with costs.

A. F. M. A. R.

Appeal dismissed.

CRIMINAL REVISION.

Before Mr. Justice Pigot and Mr. Justice Hill.

NILKANTA SINGH AND OTHERS (PETITIONERS) *v.* THE QUEEN.
 EMPRESS AT THE INSTANCE OF MANJHI SINGH
 (OPPOSITE PARTY).*

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 Sept. 23.

*Witnesses—Recalling witnesses for further cross-examination after charge—
 Evidence—Criminal Procedure Code (Act X of 1882), s. 257.*

There is under s. 257 of the Criminal Procedure Code no absolute right of cross-examination which would enable the accused to recall and

*Criminal Revision No. 442 of 1892, against the order passed by F. W. Badcock, Esq., Sessions Judge of Bhagulpur, on the 1st August 1892, affirming the order passed by W. F. C. Montrieu, Esq., Deputy Magistrate of Monghyr, dated the 30th of June 1892.

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