

APPELLATE CIVIL.

Before Mr. Justice Scott-Smith and Mr. Justice Harrison.

GULAB (DEFENDANT)—*Appellant,*

versus

MEHNDI AND SHADMAN (PLAINTIFFS)

AND NADU (DEFENDANT)

Respondents.

Civil Appeal No. 991 of 1919.

Indian Registration Act, XVI of 1908, section 17—document embodying an undertaking not to bring a declaratory suit in respect of an alienation of land—whether compulsorily registrable—validity and effect of consent given 18 months before the alienation.

One M. who had no son alienated some of his ancestral land to his son-in-law. N. his brother brought the usual declaratory suit, and thereupon a family agreement was made in consideration of which N. withdrew his suit and M. undertook that he would not charge one-half of the remaining land or the house in which he lived. N. further undertook not to challenge or object to any alienation which M. might see fit to make with regard to the remaining half of the land. Eighteen months later M. executed a deed by which he purported to sell one-half of his remaining land to another son-in-law for Rs. 780. N.'s sons then sued for a declaration that this alienation should not affect their reversionary rights, and their claim was decreed on the finding that the documents in which the agreement was embodied were not admissible in evidence for want of registration.

Held, that the documents, embodying the undertaking given by N., not to contest any alienation which his brother might make in future as to one-half of the land, did not require registration.

Held further, that a consent given to a contemplated alienation 18 months before the actual transfer is as binding and as valid as a consent given to a completed transfer and that the consent of N. made the alienation good against the world.

Kaman v. Muhammad Ali (1), *Labku v. Mussamat Nihal* (2), and *Shib Ram v. Shib Singh* (3), followed.

Second appeal from the decree of B. H. Bird, Esq., District Judge, Rawalpindi, dated the 16th January 1919, affirming that of M. Ahmad Yar Khan, Sub-

(1) 59 P. R. 1904.

(2) 7 P. R. 1905.

(3) 78 P. R.

Judge, 2nd Class, Rawalpindi, dated the 23rd August 1918, decreeing plaintiffs' claim.

AZIZ AHMAD AND N. C. MEHRA for Appellant.

NAND LAL for Respondents.

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The judgment of the Court was delivered by—

HARRISON, J.—The facts of this case are peculiar. One Madat, who had no son, alienated some of his ancestral land to his son-in-law. Nadu, his brother, brought a suit of the usual type and thereupon a family agreement was made in consideration of which Nadu withdrew his suit and Madat undertook that he would not charge one-half of the remaining land or the house in which he lived, and Nadu further undertook not to challenge or object to any alienation which Madat might see fit to make with regard to the remaining half of the land. Eighteen months later Madat executed a deed by which he purported to sell one-half of his remaining land to another son-in-law for Rs. 780. Nadu's sons sued for a declaration that this alienation will not affect their reversionary rights and have been given a decree on the finding that the documents in which the agreement was embodied are not admissible, inasmuch as they have not been registered, that the agreement therefore cannot be proved and that consideration and necessity have not been established. On appeal counsel urges that the documents need not be registered and that the consent of the next collateral makes the alienation good against the whole world.

Now, if the two important documents D. 2 and D. W. 1. contained any clause by which Nadu relinquished his reversionary rights, it would have been necessary to register them. Here, however, all he did was to undertake not to bring a suit to contest any alienation which might be made in future. The right to bring such a suit doubtless arises out of and is, in a sense, ancillary to the reversionary rights. At the same time it cannot be said to be an integral part of those rights. In the second place it is wholly impossible to estimate the value of such a right, which must depend on all the circumstances of the case. If the alienation is for necessity or can be shown to have been

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for necessity by evidence, the right is valueless. It varies moreover with the prospects of the reversioner to succeed to the land and inversely with the age and health of the owner. We find therefore that for these two reasons the undertaking given by Nadu not to contest any alienation, which his brother might make in future as to one-half of the land, did not require registration.

It is urged by counsel for the respondents that a consent of this nature given 18 months before the actual transfer takes place is not a consent at all as contemplated in the various rulings quoted, and he contends that consent can only be given to a transaction which is on the verge of completion. We see no force in this argument and there is no reason why a consent given to a contemplated alienation should not be as binding and as valid as a consent given to a completed transfer. It is also urged that under the circumstances of this case it must be presumed that Nadu did not act in the best interests of the family and that he deliberately injured the prospects of his sons. We find on the contrary that if bad faith be pleaded, it must be established and that good faith must be presumed, and there is nothing in the circumstances of this family agreement which points towards there having been any stupidity, carelessness or malice. Nadu saved one-half of the remaining ancestral property and the house, which Madat could certainly have charged or even sold, and although it might have been possible to defeat the sale or the alienation by bringing a suit, the result of litigation is always doubtful and we see no reason for not presuming that Nadu acted wisely and with foresight in making this agreement.

We therefore find, following *Kaman v. Muhammad Ali* (1), *Labhu v. Mst. Nihali* (2) and *Shib Ram v. Shib Singh* (3) that the consent of Nadu makes the alienation good against the world. We therefore accept the appeal and dismiss the plaintiffs' suit. The costs of the defendants will be paid throughout by the plaintiffs.

Appeal accepted.

(1) 59 P. R. 1904.

(2) 7 P. R. 1905.

(3) 78 P. R. 1908.