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MA YIN HU AND ANOTHER v. MA CHIT MAY.

BROWN, J.

the donee that the gift would be revoked on the donee's transferring or mortgaging the property without the donor's consent, that is to say, on the happening of any specified event which does not depend on the will of the donor. Looked at in this light the agreement does not seem to me to contravene the provisions of section 10. There is only a promise to the donor personally and it is only the donor, during his life time who could revoke the gift. There is no absolute restraint on the transferee or any person claiming under him from alienating the property. I am of opinion therefore that the provisions of section 10 of the Transfer of Property Act do not apply to the present case and that the promise made by the 1st appellan is not void as being opposed to public policy. The appellants are bound by that promise and their appeal must therefore fail.

I dismiss this appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Brown.

1929

Mar. 1.

A.K.R.M.M.C.T. CHETTY FIRM.

v.

MAUNG THA DIN AND ANOTHER.*

Civil Procedure Code (Act V of 1908), s. 47 ; O. 21, r. 2—Suit to recover money paid towards satisfaction of a decree when such payment not certified, maintainability of—Basis of the claim.

Where the judgment-debtor paid a certain sum towards the partial satisfaction of a decree and the decree-holder failed to certify the payment and executed the whole decree,

Held, that a suit would lie to recover the sum paid. Section 47 of the Civil Procedure Code would not bar such suit as the claim is based on a failure to carry

* Civil Miscellaneous Appeal No. 92 of 1928 from the judgment of the District Court of Pyinmana in Civil Appeal No. 39 of 1928.

out the promise to credit the amount to the decree and although this has a bearing on the question of satisfaction yet it is not a question directly relating to satisfaction of the decree.

Maung Myo v. *Maung Ka*, 11 L.B.R. 429—*referred to.*

Venkatram for the appellants.

Basu for the respondents.

BROWN, J.—The respondents brought a suit against the appellants for the recovery of a sum of Rs. 604 together with interest thereon. Their case was that in December 1924 they paid the sum of Rs. 500 to the appellants towards satisfaction of a decree the appellants held against them. The appellants have since that date taken out execution for the whole amount due under the decree and have not certified or recognised this payment of Rs. 500. They further stated in their plaint that the actual amount overdrawn in the executing Court by the appellants was Rs. 604, and the amount they actually claimed this sum of Rs. 604.

It is quite clear, however, that so far as the case is based merely on an overdrawal in the executing Court, the present suit cannot lie and this is admitted by the learned advocate for the respondent. The question for decision now is whether a suit can be brought for recovery of the Rs. 500.

The trial Court held that it could not and dismissed the suit. The District Court in appeal held that such a suit could be brought and remanded the case for a decision on the merits. The case of *Maung Myo* v. *Maung Ka* (1), is clearly in favour of the view taken by the District Judge. The District Judge appeared to have thought that the decision in *Maung Myo's* case was difficult to reconcile with the wording

(1) (1922) 11 L.B.R. 429.

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of section 47 of the Code of Civil Procedure. Under that section questions arising between the parties to the suit in which the decree was passed and relating to the satisfaction of the decree must be determined by the Court executing the decree and not by a separate suit. But the question that arises in this case is the alleged failure of the appellants to carry out their promise of crediting the amount to this decree. It has of course a bearing on questions as to the satisfaction of the decree, but it is not directly a question relating to such satisfaction. I see no good reason for dissenting from the decision in *Maung Myo's* case.

It has been suggested that the present suit must fail because of the wording of the receipt given for the payment of the money. That point has not yet been considered by the trial Court and it is sufficient to say that I am not satisfied at this stage that it is shown that this objection is fatal to the suit. The question of limitation which has also been mentioned must also be left for decision in the first instance by the trial Judge. I am of opinion that the suit as regards the Rs. 500 with possibly interest thereon is maintainable.

I therefore dismiss this appeal with costs.