

1885.

MAHOMED
SIDICK
v.
HAJI AHMED
AND OTHERS*

I am of opinion, therefore, that the property is ancestral. Nothing could be done with it which infringed on the equal rights of the sons. Yet both these wills deal with the property unequally, and make gifts to the daughters, which are illegal. Saving the appointment of the surviving brothers as guardians of the infant children, I do not think any legal effect can be given to either will; and so far as they are a testamentary disposition of property they must be declared invalid. [The remainder of the judgment is not material for the purposes of this report.]

Judgment for the plaintiffs.

Attorneys for the plaintiffs.—Messrs. *Macfarlane and Edgelow.*

Attorneys for the defendants.—Messrs. *Jefferson, Bháshankar and Dinshá*; and Messrs. *Payne, Gilbert and Sayáni.*

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

KESHAV BAPUJI, PLAINTIFF, v. NA'RA'YAN SHA'MRA'V,
DEFENDANT.*

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January 19.

Power—Principal and agent—Power to sue given to an agent, extent of—Vakil, reasonable remuneration to, under such power.

A mere power to sue does not authorize an agent to do more than employ a vakil on the terms of paying him a reasonable remuneration.

THIS was a reference by Ráo Sáheb Bulákhidás Gangádás Desái, Joint Subordinate Judge of Sangamner, under section 617 of the Civil Procedure Code (Act XIV of 1882).

The reference for the purposes of the report was as follows:—

“Plaintiff Keshava Bápúji, a pleader in the Sangamner Court, sued to recover from Náráyan Shánráv Pátíl a sum of Rs. 99, alleging that the former mukhtyár of the defendant agreed to give to the plaintiff Rs. 99 for his professional services engaged in a redemption suit. While the suit was progressing, Náráyan revoked the *mukhtyárnámá*, or the general power of attorney, and applied to the Court, through another mukhtyár, to dismiss the

* Civil Reference, 43 of 1884.

suit, stating he had sold the mortgaged property to the heirs of the mortgagee.

“Defendant contended that he was not aware of the agreement, and that, among other things, he had not authorized his agent to pass the agreement in question.”

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The agreement was as follows :—

“Shri (*i.e.*, prosperity, &c. Agreement.)—The 10th of the month of *Vaishákh Vadya* in *Sháke* 1805, the *Samvatsar* being named *Subhánu*, the English date the 31st of the month of May in the Christian year 1883. On this day this agreement is given in writing to Rajashri Keshav Bápuji, Vakil, Court Sanganner, by Náráyan Shámráv Pátíl Vage, residing at Baroda, by his general attorney, Shankar Rámchandra Pátíl Vage, residing at Sanganner. I give this agreement in writing as follows :—The field Ganeshpati, forming party of our ancestral *mirási* lands, situate in the environs of *kasba* Sanganner, bearing old survey No. 537 and re-survey Nos. 751-52, has been in the occupation of Sahadu Mahádu [and] Gangdya Rágho, the sons and heirs of Nhánu valad Rakhmáji Argáde, deceased, inhabitant of Sanganner, as mortgagees. But they deny the said mortgage. Therefore, a suit is to be instituted against them in this Court for the redemption of the mortgage. I have this day given you the *valátnámí* in that matter, and have appointed you (my) vakíl. The agreement in that behalf is as follows :—If the Court should decide that the said lands were mortgaged to them, then I will pay you Rs. 99, in letters ninety-nine, as reward for the trouble taken by you on the very day of the decision. Even though they and I should come to an amicable settlement, I will pay the amount as stated above. I will not make any default in that. This agreement is duly given in writing. The date, the month and the year as aforesaid.”

The following is a translation of the power of attorney given by the defendant to his mukhtyár :—

“I, Náráyan Shámráv Pátíl Vage, inhabitant of *kasba* Sanganner, at present residing at Baroda, and (now temporarily) living at Násik, do hereby constitute and appoint Shankar Rámchandra Pátíl Vage, inhabitant of Sanganner, residing at Násik,

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my true and lawful attorney to make accurate inquiries as regards the *inám*, &c., lands at the village of kasba Sangamner, zilla Ahmednagar, which, owing to my having gone to Baroda, passed into the occupation and possession of other people by way of mortgage, &c., and to redeem the same by all means, and to sue or make petitions, to make an appeal or special appeal, and to answer and sign for me, and to pass all manner of documents, and to have them passed in connection with these lands, and to register, &c., the same, and to do other work in connection with the same wherever the same may be required to be done, which I, if present, would have been called on or permitted to do.'

"The question referred for decision was :—Whether the agent or mukhtyár had authority to pass to the plaintiff the agreement in suit under the terms of the power of attorney given to him by Náráyan Shámráv ?

"The Subordinate Judge of Sangamner was of opinion that the general power of attorney did not authorize the agent to enter into contracts with respect to the lands, and did not give him any authority to pass any simple money bonds."

There was no appearance for the parties.

SARGENT, C. J.—A mere power to sue would not, in our opinion, authorize an agent to do more than employ a vakíl on the terms of paying him a reasonable remuneration. The present agreement is of a special character, by which the client agrees to pay a larger sum in the event of success for the chance of having to pay nothing if the vakil fails in gaining his cause. That is one which, however common it may be, we think the agent could not enter into without express authority from his principal. As to the power to pass all manner of documents, and to have them passed in connection with the lands, and to register the same, upon which the Subordinate Judge relies for holding that the agreement was within the agent's powers, it is by its very terms confined to documents relating to the lands which the client was anxious to recover, and not to the suits to be brought to recover them.