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lverse to plaintiff, who was living with his father Ramkrishna efendant 1), and who was admittedly a minor up to 1892.

G. K. Parekh for respondent (defendant 2):—The auction-rchaser is a necessary party, being interested in the property, e subject-matter of the litigation.

The lower Appellate Court has found that Ramkrishna efendant 1) has been in adverse possession of the land for more an twelve years. This being a finding of fact, it must be epted as final in second appeal.

he gift is not valid, as there was no delivery of possession, ch is necessary to constitute a valid gift. There is no evidence ne delivery of the deed of gift to the plaintiff. It is also alid as being the gift of an undiv ner. steps seem to have been taken plete gift.

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BATTY, J.:—In this case the plaint ssion d certain portion of land which originally formed part of the nt ancestral property of his father (the defendant No. 1) and father's brothers. In 1870 plaintiff's father and the brothers plaintiff's father separated in interest, but the field of which e land in suit forms part was provisionally assigned for the aintenance of their mother, and therefore was not at the time rtitioned. Subsequently, after the death of the mother, the aintiff's uncles executed, as to their unpartitioned share in that d, a document in favour of the plaintiff, then an infant, porting to be a deed of gift. The document is Exhibit 17. is dated 15th Novem[illegible]

jus disponendi, had denied the fact of the gift and continuously received the rent for the subject-matter. T last-mentioned circumstances were emphasised as differentia that case from one in which the donor had done all she c to complete the gift, was a party to the suit and admitted gift to be complete.(6) Their Lordships also pointed out contributing to the error, the misleading nature of the head-

(1) (1884) 11 Cal. 121 s.c. L. R. 11 I. A. 218.
(2) (1885) 9 Bom. 324.
(3) (1896) 19 All. 267 s.c. L. R. 24 I. A. 1.
(4) (1873) 10 Bom. H. C. 49.
(5) (1867) 4 Bom. H. C. 31.
(6) (1884) 11 Cal. at p. 132.

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On 1st January, 1887, the mortgage of 1885 was redeemed b moneys obtained from defendant No. 2, advanced on a mortga with possession of the same land.

The plaintiff attained majority in 1892 and instituted t present suit on 2nd January, 1899, making his father a pa thereto as well as defendant 2, the mortgagee before mentione

It appears that a third person not joined in this suit h bought the right, title and interest of the defendant No. 1 in t property in question at an auction-sale, and the lower Cou held that this auction-purchaser was a necessary party to suit.

The main grounds of the defence were, however, that gift was invalid both because it was unaccompanied v possession and because it purported to be the gift of an undivi share, and that more than twelve years of adverse possess barred the plaintiff's claim to disturb the mortgage in whicl was suggested he had acquiesced.

The leading cases on the question whether delivery of possess is necessary to the validity of a gift by a Hindu donor appe to be the Privy Council cases *Kalidas Mullick* v. *Kanhaya J Pandit* (1) (followed in *Ugarchand* v. *Madapa* (2)) and *Nau Ibrahim Ali Khan* v. *Ummatul Zohra*.(3) The first-mentioned these corrected the error in *Kachu Byaji* v. *Kachoba Vithoba* that delivery of possession was indispensable to the validity o sale under Hindu law. Their Lordships pointed out that t error appears to have arisen from a misconception as to what been decided in *Harjiwan Anandram* v. *Naran Haribhai*,(5)

[illegible] point in which was that the alleged donor had reserved [illegible]ber, 1877, and was duly registered.

[illegible]ding to its provisions the plaintiff's mother was to be the [illegible]dian of the plaintiff for the purposes of that property. It is alleged that the plaintiff's uncles ever themselves enjoyed [illegible]onally possession of the land in question, or delivered [illegible]ession thereof to the plaintiff orto any one on his behalf. plaintiff's father who was in possession remained in [illegible]session, paid the assessment and apparently had undisturbed [illegible]agement. In 1885 the plaintiff's father executed a mortgage, [illegible]ch included the property in suit. This mortgage was without [illegible]session.

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Girdhar Parjaram v. *Daji Dulubhram* (1) as to what was the sential ground of decision in that case. The judgment in *ılidas Mullick* v. *Kanhay Lal* (2) further distinguishes between es of contracts on the face of them purporting to be for per- mance in future, as in the cases of *Rajah Saheb Perhlad Sein Baboo Budhoo Singh* (3) and *Rani Bhobosoondri* v. *Issurchunder 't* (4) on the one hand, and cases where under the terms of ft the donor is entitled to possession on the other, and with rence to the last-mentioned cases observed that there is no on why a gift or contract of sale, if it is not of a nature h makes the giving effect to it contrary to public policy, ld not operate to give the donee or purchaser *a right to obtain* ession.

he contention having been raised that the completion of a by possession was required on the analogy of the feudal as to investiture and livery of seizin, their Lordships erred the analogy found in cases relating to voluntary racts or transfers, where if the donor has done all that he l do to perfect his contemplated gift, he cannot be compelled do more. With this may be compared the rulings in *ıding* v. *Bowring* (5) and cognate cases.

s the contention that the deed of gift was utterly invalid the donor was out of possession and no possession over given to the donee, it was observed "that the dispute not between the donee and the donor, or a person claiming er her" (I. L. R. 11 Cal. 132). Thus the effect of the ision in *Kalidas Mullick's case* is to recognize that, as between onee and a stranger, a gift may be valid though at the time lonor may have been out of possession and though the donee never have obtained possession, provided that the donor had e all the donor could to complete the gift.

he other Privy Council case of *Nawab Ibrahim* v. *Umnatul ra* (6) seems to establish the converse, viz., that when the ged donor has not done all he could to complete the gift, but

(1) (1870) 7 Bom. H. C. 4.
(2) (1884) 11 Cal. 121 s.c. L. R. 11 I. A. 218.
(3) (1869) 12 M. I. A. 275 at p. 306.
(4) (1872) 11 Ben. L. R. 36.
(5) (1886) 31 Ch. D. 282.
(6) (1896) 19 All. 267.

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has made a reservation of the *jus disponendi*, the alleged gift unsustainable. The essential to the validity of a gift seems be, therefore, that the donor should have done all he could t complete the gift.

It may be noted that the case of *Vasudeo Bhat* v. *Naray Daji Damle*(1) was decided two years before that of *Kalid Mullick*,(2) and so far as it is inconsistent therewith, is overru thereby.

The case of *Ugarchand* v. *Madapa*,(3) decided shortly a *Kalidas Mullick's case*, applied its principles to a *kararna* where the person who executed it was not in possession, declared the Full Bench decision in *Bai Suraj* v. *Dalpat Dayashanker*(4) overruled.

The Allahabad High Court, in *Man Bhari* v. *Naunidh* followed in *Balmakund* v. *Bhagwandas*,(5) seems to have held t the validity of the gift was dependent on, or at least establis by, the delivery of the deed of gift. But the first of these decided before *Kalidas Mullick's case*, and the second does refer to it. In *Man Bhari* v. *Naunidhi*, the fact that the d had relinquished the subject of the gift, so far as he could, apparently regarded as the most important circumstance in t case. The case *Lakshimoni Dasi* v. *Nityananda Day*(7) was in which the alleged donor had executed a duly registered of gift, but four years after sold a portion for consideration later another portion. The Calcutta High Court in that citing the decision in *Dharmodas Das* v. *Nistarni Dasi*(8) as con in cases to which section 123 of the Transfer of Property A applies, appears to have held that acceptance on the part of donee was essential to the validity of a gift. The judgmen *Lakshimoni Dasi's case* makes, however, but the most curs reference to *Kalidas Mullick's case*, which, it may be not nowhere refers to acceptance by the donee as essential. But in *Lakshimoni Dasi's case* the alleged donor had never giv

(1) (1882) 7 Bom. 131.
(2) (1884) 11 Cal. 121 s.c. L. R. 11 I. A. 218.
(3) (1885) 9 Bom. 324.
(4) (1880) 6 Bom. 380.
(5) (1881) 4 All. 40.
(6) (1894) 16 All. 185.
(7) (1892) 20 Cal. 469.
(8) (1887) 14 Cal. 446.

ansession and the alleged donee had never made any objection th the subsequent vendor's possession, it is possible to regard that Zise as not inconsistent with the principle in *Nawab Ibrahim Ali* a*Khan* v. *Umamatul Zohra*,[1] and as regarding the alleged gift as complete, on the ground that though a document was executed, fne alleged donor never intended to give effect to it and did not in all he might in order to give effect to it, and that the alleged adnee having apparently acquiesced in his subsequent dealings onth the property, it was fully understood that the mere execution in the document was not all that the donor would have done if andhad wanted to perfect his gift. In *Meherali* v. *Tajudin*[2] the the sion of the Privy Council in *Kalidas Mullick* v. *Kanhya Lal*[3] pos referred to, but deemed inapplicable to a case governed Exl Mahomedan law and this Court's ruling in *Mohinudin* v. 3rd *chershah*[4] was therefore followed, though in the same year hol Privy Council case, *Mahomed Buksh Khan* v. *Hosseini Bibi*,[5] applied the principle of *Kalidas Mullick's case* to Mahomedan law. of the following cases may be noted as instances in which y la ruling in *Kalidas Mullick* has been followed: *Lallubhai* n *Keso*[6]; *Shankar* v. *Visaji*[7]; *Ramchandra* v. *Mhasu*[8]; t in one of them, *Lallubhai* v. *Keso*, registration was regarded as Wl pable of supplying want of possession. In *Rajaram* v. *Ganesh*[9] is r seems to have been regarded as a matter so far beyond tha ute as to dispense with the need for citing authorities, that son ere a donor takes all the steps in his power to give effect to amo gift is complete and he cannot revoke it. And in Mayne's Hindu Law[10] it is stated that when the resistance to the donor's nec mpts to give full effect to the donation arises from a third mu son, the fact that possession has not been given is no answer def a suit by the donee against the obstructing party. And otl ugh it is further stated by Mayne[11] that there must be a *Bh* nsfer of the apparent evidences of ownership from the donor m the donee, it is also stated to be sufficient if the change of set

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(1) (1896) 19 All. 267.
(2) (1888) 13 Bom. 156.
(3) (1884) 11 Cal. 121 s.c. L. R. 11 I. A. 218.
(4) (1882) 6 Bom. 650.
(5) (1888) L.R. 15 I.A. 81. s.c. 15 Cal. 684.
(6) (1886) P. J. p. 33.
(7) (1884) P. J. p. 35.
(8) (1888) P. J. p. 14.
(9) (1898) 23 Bom. 131.
(10) 6th Edn., p. 485, sec. 377.
(11) Hindu Law, p. 485, sec. 378.

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possession is such as the nature of the case admits of, and a instances are cited the delivery to the donee of the deed of gift the possession of the donor in trust for a donee incapable o taking possession as being a minor, &c.

In the present case the donors never appear to have assume actual personal possession after the death of their mother fo whose benefit the land had been kept joint, and the low Appellate Court appears to have held that actual possessio remained throughout with the father of the plaintiff. The was, therefore, no apparent reservation of any kind on the p of the donors. In relinquishing their own claims they did that was practically necessary and by their registered deed of g all that they could. It is objected that the mother of the do was mentioned in that document as his guardian, but it is har to be conceived that the father of the donee could be regar as setting up a possession adverse to his infant son or that t donors in assenting to his continuance in possession underst it to be adverse either to themselves or to the child. T possession of the father having manifestly originated in a muti understanding, which recognized the title of the owners, cou not without some overt act become adverse to them or to the disposing power: *Dadoba* v. *Krishna* (1); and the possession the father was practically the only mode in which the infant could accept or exercise possession. The donors never objec and made no attempt to revoke their gift. No division w necessary, as the entirety of the land in question was with t plaintiff's father.

It has been suggested by the lower Appellate Court that t gift was invalid as being the gift of an undivided share, a *Vrandavandas Ramdas* v. *Yamunabai* (2) was cited as authorit But that was a case of alienation by a member of an undivid family to an outsider, whereas in the present case the gift is b persons who were not members of an undivided family (t uncles of the plaintiff having previously separated from h father) to the plaintiff, a member of another coparcenary. consent was necessary to validate the alienation, nor was the

(1) (1879) 7 Bom. 34. (2) (1875) 12 Bom. H. C. 229.

any one who did or could object. The parties being Hindus, the question that arose in *Sheikh Muhammad Mumtaz Ahmad* v. *Zubaida Jan* (1) cannot arise here. On these grounds the gift appears unimpeachable.

Then it seems to have been held that the plaintiff is estopped from denying his father's title, because he allowed the mortgagee in 1887 to believe that his father was the sole owner and to advance money in that belief. Now, as the plaintiff admittedly only attained his majority in 1892, he was but a lad of thirteen in 1887 and cannot be reasonably regarded as having stood by and looked on in such manner as to estop him from questioning the transaction now. The property never passed from the possession of the father as on behalf of his son till the date of Exhibit 18—1st January, 1887. And this suit, instituted on 3rd January, 1899, allowance being made for the Christmas holidays, was therefore within time. The suit therefore does not appear to be time-barred. It is true that it seems somewhat of a hardship that defendant having advanced money to the father should be deprived by the son on the point of acquiring a contutory title. But the son has not been shown to have been to blame and is not liable to lose his title for his father's acts. What other liabilities there may arise out of the transaction it is not necessary to discuss here. The plaintiff's pleader states that he has nothing to urge against an equitable order that the son should recover subject to payment of the proportionate amount of the loan by which he and his father have benefited.

As to the last point, viz., that the auction-purchaser was a necessary party, it seems sufficient to observe that the plaintiff must be left to exercise his own discretion as to joinder of a defendant whose title is not necessarily involved in that of any other party to the suit. The plaintiff is *dominus litis*: *Rajaram Bhagwat* v. *Jibai*.(2) If he chooses to leave the question that may arise between himself and the auction-purchaser to future settlement, he does so at his own risk. He is not bound to sue every possible adverse claimant in this suit, if none of the parties claim through the auction-purchaser, and for the purposes of his suit it is not necessary to establish title against him.

(1) (1889) L. R. 10 I. A. 205. (2) (1884) 9 Bom. 151, 155.

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Much has been said as to the effect of Exhibits 51, 52 and 5[illegible] in this case, as judgments not *inter partes* and therefore inadmissible. This, under recent decisions, seems hardly to be a sustainable contention. But the judgments in question seem to add little to what appears from the record in this case, except that they contain a finding of fact that the mortgagee (defendant 2) in this case had actual notice of the deed of gift. It is unnecessary to have recourse to this, however, even for the purpose, for the defendant No. 2 does not appear to have raised the contention that he was a purchaser without notice, nor does it appear that such a contention, if defendant 2 had set it up, could have prevailed. The defendant 2 preferred to impugn the plaintiff's title on the ground of an alleged defect, which if established would at most have shown that the donors were entitled, and though it is contended that in such case their title would have been time-barred, it would have been difficult to conceive how the possession of defendant 1 could have been adverse to them at a date earlier than that at which it could have become adverse to the plaintiff. So far as they could they completed the gift, the terms of which they embodied in the registered deed, and they have never attempted any reservation or revocation in their own favour, and a stranger cannot challenge its validity as against the donee.

The decree of the lower Appellate Court must be reversed, the appellant appears, however, to be entitled only to the share of his uncles in the entire field, and the decree must, therefore, be limited to one awarding him one-fourth share of the field to be ascertained in execution. Possession to be given to plaintiff on his paying into Court within six months from this date one-fourth of the amount due on Exhibit 18. The defendant 1 to bear his own costs and defendant 2 to pay plaintiff's costs and bear his own throughout.

Decree reversed.