

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1898.
March 22.

BAI RAMBAI (ORIGINAL PLAINTIFF), APPELLANT, v. BAI MANI (ORIGINAL DEFENDANT), RESPONDENT.*

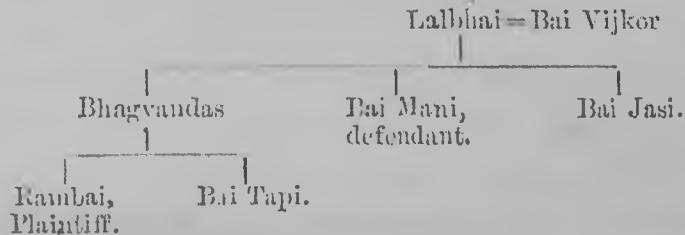
Hindu law—Gift—Gift of moveable property—Delivery of possession not necessary if deed of gift be registered—Transfer of Property Act (IV of 1882), Secs. 123, 129—Registration.

The rule of Hindu law, that delivery of possession is essential to complete a gift, is abrogated by section 123 of the Transfer of Property Act (IV of 1882).

Dharmodas Das v. Nistarini Dasi⁽¹⁾ followed.

SECOND appeal from the decision of T. Walker, District Judge of Surat.

Suit for partition. The relationship of the parties will appear from the following pedigree :—



The property in dispute, both moveable and immoveable originally belonged to Lalbbhai. His son Bhagvandas predeceased him, leaving two daughters, Rambai (the plaintiff) and Tapi.

Lalbbhai died in January, 1891. By his will he bequeathed his property to his widow Bai Vijkor for life and after her death to his daughters and the daughters of his predeceased son in equal shares.

Bai Jasi died on 9th May, 1891, and Bai Vijkor on 24th March, 1894.

In 1895 the present suit was filed by Bai Rambai to recover by partition her share in the property in dispute.

Pending the suit, Bai Tapi died. In accordance with her directions her husband executed a deed of gift conveying her share of the property to the plaintiff. This deed was duly registered.

* Second Appeal, No. 1095 of 1897.

(1) (1887), 14 Cal., 446.

1893.

 BAI RAMBAI
 v.
 BAI MANI.

On the strength of this deed of gift, plaintiff claimed to recover Bai Tapi's share as well as her own.

Defendant Bai Mani pleaded that the gift of Bai Tapi's share was invalid, as it was not accompanied by delivery of possession.

The Court of first instance held that under sections 122 and 123 of the Transfer of Property Act (IV of 1882) delivery of possession was not necessary to validate the gift. A decree was, therefore, passed, awarding to the plaintiff Bai Tapi's share as well as her own.

On appeal the District Judge held, on the authority of *Vasudev Bhat v. Narayan Daji*⁽¹⁾, that the gift was invalid, as actual possession was not given to the donee. He, therefore, varied the decree by awarding to the plaintiff her $\frac{1}{4}$ th share only in the property in suit.

Against this decision plaintiff preferred a second appeal to the High Court.

K. M. Jhaveri (with *G. M. Tripathi*), for appellant :—Under the provisions of section 123 of the Transfer of Property Act (IV of 1882), delivery of possession is not necessary to validate a gift of immoveable property. The transfer can be effected by a deed duly registered—*Dharmodas Das v. Nistarini Dasi*⁽²⁾.

Ganpat Sadashiv Rao, for respondent :—Under the Hindu law transfer of possession is necessary to give validity to a gift of immoveable property. Registration does not give the donee either actual or constructive possession, and cannot, therefore, be treated as equivalent to delivery of possession—*Vasudev Bhat v. Narayan Daji*⁽¹⁾. This rule of Hindu law is not affected by section 123 of the Transfer of Property Act. Section 129 of the Act leaves the rule of Hindu law on this subject untouched.

PARSONS, J. :—We need not discuss the question of consent of co-parceners, because we are not dealing with the case of a gift by a co-parcener in undivided family property. The parties are beneficiaries under the will of Lalbhai, who left his property to his widow for her life and then to be divided among his children and grandchildren, that is, to the parties in this suit, one of

(1) (1882) 7 Bom., 131.

(2) (1887) 14 Cal., 446.

1898.

BAI RAMBAI
v.
BAI MANI,

whom has given her share to the plaintiff, who sues for this as well as for her own share. To such a transfer the provisions of section 41 of the Transfer of Property Act apply and the plaintiff has the right to enforce a partition of the property. This has hardly been contested in argument before us by the pleader for the respondent, who has directed his attack upon the validity of the gift to the point that the gift was not accompanied by delivery of possession. We think that this was not necessary under the law then and now in force.

Section 123 of the Transfer of Property Act, 1882, provides that the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. This has been done. Nothing is said about delivery of possession, and if this was an additional requirement it surely would have been so stated. It was argued that no mention of it was necessary, because section 120 preserves all the rules of Hindu law, but it only does so save as provided by section 123. The Calcutta High Court have construed these sections in the case of *Dharmodas Das v. Nistarini Dasi*¹ and decided that the Hindu rule of law, that delivery of possession is essential to complete a gift, has been abrogated by them. That case was decided as long ago as 1887, and its correctness has not, as far as we are aware, ever been doubted, and the Legislature has not amended the Act, as we think it would have done had the decision been contrary to the intended provision of the law upon such an important point. We follow that decision, and, therefore, hold the gift to be a valid transfer of the share.

We vary the decree of the lower appellate Court by substituting $\frac{1}{2}$ for $\frac{1}{4}$ th share and give the appellant her costs in this Court. The costs in the Court of first instance and in the lower appellate Court will be in the proportion of $\frac{1}{2}$ to $\frac{2}{3}$ as between the parties in those Courts.

(1 (1887) 14 Cal., 446.