

The result is that the decree under appeal must be reversed, and we give the plaintiffs a declaration that though they have no proprietary rights as owners over the land in suit, the defendant had no authority to issue the order including this property in the Government reserved forest, and the plaintiffs are entitled to continue to enjoy the land in the same way as before the order to afforest.

It is not necessary to consider the question of granting the injunctions asked for by the plaintiffs against the Secretary of State as the Government through its pleader has given an undertaking not to obstruct the plaintiffs' enjoyment of the land in question so long as this decree remains unreversed or unmodified and so long as the land is not acquired.

Under the provisions of section 429, Civil Procedure Code, we give the defendant a period of three months within which to satisfy the decree.

The undertaking of the Government will not bar it from the exercise of any other power vested in it for the control of such land under the Indian Forest Act, 1878, or otherwise.

The appellant will have $\frac{2}{3}$ ths of his costs throughout from the respondent.

Decree reversed.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Beaman.

KHASHABA BIN MANSING (ORIGINAL DEFENDANT), APPELLANT, *v.*
CHANDRABHAGABAI, WIFE OF BALVANTRAY KHASHABA
(ORIGINAL PLAINTIFF), RESPONDENT.*

1908.

March 11.

Transfer of Property Act (IV of 1882), sections 122 and 123—Gift of immovable property—Acceptance of the gift—Registration of the deed subsequent to acceptance—Remand—Examination of witness on commission—Practice.

A gift of immovable property duly made and accepted is not invalid merely because the registration of the deed of gift took place after the death of the donor.

* Second Appeal No. 277 of 1905.

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Nand Kishore Lal v. Suraj Prasad⁽¹⁾, followed.

On registration the deed of gift would operate as from the date of execution.

On remand by the High Court for the determination of certain issues the District Court sent down the case to the first Court in order that the evidence might be taken there. The evidence of the plaintiff was taken on commission.

Held, that the defendant was in no wise aggrieved by the procedure followed.

SECOND appeal from the decision of Dayaram Gidumal, District Judge of Khanlesh, confirming the decree of V. N. Rahrkar, Subordinate Judge of Bhūsával.

The plaintiff sued to recover possession of certain lands with mesne profits, alleging that the lands in dispute along with other lands belonged to her grandfather-in-law Mansing; that on the 2nd December 1890 he made a gift of them to her under a deed and put her in possession; and that she was illegally dispossessed of the lands in dispute by the defendant, who was her father-in-law, in June 1900.

The defendant denied the execution of the deed of gift by his father Mansing and contended that his father could not make a gift of the lands as they were joint property of himself and his father; that his father could not make a gift of his entire immovable property; that the gift was invalid according to Hindu Law and the Transfer of Property Act (IV of 1882); that the plaintiff was not put in possession; and that she was not entitled to possession and mesne profits.

The Subordinate Judge found that the deed of gift was proved; that the plaintiff lands were the self-acquisition of Mansing and they were not the joint property of defendant and Mansing; that the gift to plaintiff was not invalid; and that the plaintiff was entitled to get possession and mesne profits the amount of which should be determined in execution.

On appeal by the defendant the Judge confirmed the decree.

The plaintiff preferred a second appeal which was heard by Jenkins, C. J., and Aston, J., on the 31st January 1908 when the following interlocutory judgment was recorded:—

(1) (1898) 20 All. 352.

Interlocutory Judgment :—To perfect a gift there must be an acceptance by the donee.

1908.

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P.
CHANDRA-
BHAGABAI.

In this case there is no definite finding of an acceptance by the donee.

It is argued on behalf of the donee that this was assumed in her favour by the lower Courts, but that is not sufficient.

It was necessary for the donee to establish acceptance, and for the Court definitely to find on that acceptance in the affirmative. We cannot satisfactorily deal with the case until this point is cleared up.

We therefore send back the case for the determination of the following issues :—

1. Was the gift alleged by the plaintiff accepted by her or on her behalf ?

2. If so, was it accepted during the life-time of Mansing or subsequently ?

Parties will be at liberty to adduce further evidence and the return should be in two months.

On the remand the District Judge sent down the case to the Subordinate Judge for taking further evidence and to certify his findings on the issues raised by the High Court, and it was during the remand proceedings that the plaintiff, who was not examined in the case before, was examined on commission.

On the said issues the Subordinate Judge (R. D. Nagarkar) found,

1. In the affirmative.

2. It was so accepted not during the life-time of Mansing but subsequently.

The findings of the District Judge on the said issues were :—

1, 2. The plaintiff accepted the gift during Mansing's life-time by accepting the delivery of the deed of gift through her husband.

The defendant preferred objections to the findings of the District Judge.

1908.

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v.
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BHAGABAI.

Raikes (with *S. V. Bhandarkar*) for appellant (defendant).

M. B. Chaubal (Government Pleader with *M. V. Bhat*) for respondent (plaintiff).

BACHELOR, J.:—The first point taken in this appeal is a point of law and depends upon the argument that under sections 122 and 123 of the Transfer of Property Act, there can be no good acceptance of a gift of immoveable property until the transfer has been effected by a registered instrument as required by the law. It seems to matter little whether the acceptance required is the acceptance of the gift or of the transfer. For as we understand the argument there is neither gift nor transfer until the transaction is embodied in a registered instrument.

Now the facts of this case show that although there was an acceptance by the plaintiff during the life-time of the donor, this acceptance occurred while yet the instrument of gift remained unregistered. We are, therefore, asked to say that there has been no valid acceptance.

But the precise point occurred in the case of *Nand Kishore Lal v. Suraj Prasad*⁽¹⁾, where it was held that the gift of immoveable property duly made by means of a registered deed is not invalid merely because registration of the deed of gift may have taken place after the death of the donor, and we are of opinion that we ought to follow that decision.

It must be remembered moreover that here the donor had done all that it was required of him to do in order to make the gift, and the subsequent registration could have been effected without any co-operation on his part. Further, the deed of gift was registered afterwards, and on registration it operated as from the date of execution; and this, we think, is an answer to the technical objection that there was no acceptance of a registered instrument.

The only other point urged was as to the matter of procedure, and it was said that the defendant had been prejudiced by the circumstance that the plaintiff who had never tendered herself for examination throughout the course of the case, was allowed, when the matter came before the District Judge on the remand,

(1) (1898) 26 All. 392.

to be examined on commission. It is said, therefore, that the result is that the defendant is concluded in this appeal by the evidence of a witness whom no Judge has ever seen. However that may be, it has been the invariable practice of these Courts that when a remand of this nature is ordered, the District Court sends down the case to the first Court in order that the evidence may be taken there, and this is done in the interests of the parties themselves and for their convenience. But nevertheless the lower appellate Court still remains empowered by the order of remand to take what evidence it may see fit to take, and record its findings upon it.

We are of opinion, therefore, that the defendant has no just grievance in the matter of the course which this remand has taken.

The result is that the decree of the lower Court will be confirmed with costs.

Decree confirmed.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Heaton.

SHANKAR SHAMRAO (ORIGINAL DEFENDANT 1), APPELLANT, v. SHANKARGAUDAYA BIN BASALINGANGAUDA AND OTHERS (ORIGINAL PLAINTIFF AND DEFENDANTS 2 AND 3), RESPONDENTS.*

1908.

March 23.

Dekkhān Agriculturists' Relief Act (XVII of 1879), section 15B, clauses (1) and (2) (1)—Decree on Mortgage—Payment by instalments—Sale on default in payment of an instalment—Application to make the decree absolute—Extension of the provisions of the Dekkhān Agriculturists' Relief Act (XVII of 1879) to the District—Application for payment by instalments.

The Court of the First Class Subordinate Judge of Dhārwar passed a decree on a mortgage which directed payment of the debt by instalments and on

*Appeal No. 192 of 1907.

(1) Section 15B, clauses (1) and (2) of the Dekkhān Agriculturists' Relief Act (XVII of 1879), runs thus :—

15B. Power to order payment by instalments in case of decree for redemption, foreclosure or sale :—(1) The Court may in its discretion, in passing a decree