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is to be made, it must be certain and necessary. The rule that the will of a Hindu must be construed with due regard to Hindu habits and notions applies only where there is ambiguity. Caution must be used in applying that rule and it must be adopted only where a suggested construction of doubtful language leads to manifest absurdity or hardship. Here there is neither. The mere fact that the word maintenance is used cannot affect the unconditional terms of the bequest.

On these grounds the decree of the District Judge must be reversed and that of the Subordinate Judge restored with the costs of both the appeals on the respondents.

Decree reversed.

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APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

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November 15.

MADHAVRAO MORESHVAR PANT AMATYA (ORIGINAL PLAINTIFF), APPELLANT, *v.* KASHIBAI KOM DATTUBHAI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Transfer of Property Act (IV of 1882), sections 55 (6) (b), 123—Registration Act (III of 1877), section 17—Exemption of assessment in lieu of services rendered or to be rendered—Document granting exemption not stamped or registered—Sale—Gift—Hindu Law—Nibandha.

In consideration of services already rendered or thereafter to be rendered by the defendant to the predecessor-in-title of the plaintiff, the latter executed two documents whereby he released the defendant from payment to him of the assessment on certain lands. Those documents were not stamped or registered. The plaintiff sued to recover arrears of assessment from the defendant, who pleaded exemption under the two documents. The lower appellate Court found the transaction to be one of sale, and applying section 55 (6) (*b*) of the Transfer of Property Act, 1882, ordered the plaintiff to pay to the defendant what the Court calculated to be the equivalent of purchase-money before he (the plaintiff) could recover the assessment:

Held, that the transaction evidenced by the documents could not be regarded as a sale, for the consideration could not be regarded as "price";

* Second Appeal No. 420 of 1908.

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and even if it could be assessed in money value, it was vitiated by the fact that it was vague and uncertain as to future services.

Held, further, that the transaction must be regarded as one of gift. It was a gift of the grantee's right to assessment; and such a right is regarded as *nibandha* in Hindu Law and therefore immoveable property. The documents not having been registered, the gift did not operate.

Held, also, that there having been no registered instrument in support of the defendant's title the right set up in defence must be negatived.

SECOND appeal from the decision of J. D. Dikshit, Assistant Judge of Ratnágiri, amending the decree passed by S. S. Wagle, Subordinate Judge at Málwan.

The plaintiff sued to recover from the defendant assessment for three years at the rate of Rs. 58-0-10 a year.

The defendant contended that he was exempted from payment of the assessment. The exemption was claimed under two documents executed in his favour by one Sarvottamrao, a predecessor-in-title of plaintiff, in consideration of services rendered by the defendant to Sarvottamrao or thereafter to be rendered by him. The two documents were not stamped or registered, and ran as follows :—

EXHIBIT No. 28.

Rajeshri Sarvottamrao Nilkanth Pant Amatya, Inámdár, Mouje Chindar, to Bhau bin Devji Ghadi, residing at Mouje Chindar, Tarf Salsi, táluka Málwan, as follows :—At the Mouje aforesaid there were disputes between myself and Gaukars, etc. Therein you acted truthfully and were useful to me in everything and at every time. Therefore, I have been pleased (to confer a grant upon you). (As to that). At the Mouje aforesaid there is Vatni Dhara (standing) in your name. There the thikáns purchased by you are included. The particulars of the said Thikáns are as follows :—.....Assessment amounting to Rs. 24-1-0 in all is granted as inám to you, your sons, grandsons, and others, from generation to generation. Therefore you should be useful to me in every business of mine at the aforesaid; you should be personally present and should see to my comforts in a proper manner. And you should go on enjoying the Inám as aforesaid from generation to generation. Do you note (the same)? The 16th of March 1893.

EXHIBIT No. 29.

Mandatory letter issued by Shrimant Rajeshri Sarvottamrao Nilkant Pant Amatya, Inámdár, Mouje Chindar, táluka Málwan, to Bhau Deoji Ghadi Gavkar, Mouje Chindar, táluka aforesaid as follows :—At (in connection with) the Mouje aforesaid, there was and there is litigation going on in the Court

between myself and Kulkarni and other Gaokaris. In that matter you took great pains and honesty and faithfully did and are doing my business. Having regard to the fact that you were careful about my business and worked zealously even more than myself if I had been present, I am very much pleased and therefore I have thought of conferring a grant upon you. As to that at the Mouje aforesaid there is a Vatni Dhara Khata No. 155 standing in your name (comprising land, acres 49-22¼ gunthas assessment Rs. 54-10-3). You have been paying the assessment thereof to me in the village (a mandatory letter is issued to you) this day for 30th September 1903, out of the said amount as assessment payable in respect of land measuring acres 41-31 gunthas and formerly, that is, on the 16th of March 1893, a mandatory letter was issued to you for Rs. 24-1-0 payable in respect of land admeasuring acres 7-31¼ gunthas under which the land is continued to you. Thus a mandatory letter is hereby issued to you directing that a deduction should be allowed as inám every year to you from generation to generation in your Kháta for Rs. 54-10-3 in all. Therefore you should from generation to generation go on taking credit in the Kháta for the amount of assessment every year. In respect of this, a separate mandatory letter is issued to the Vahivátdár Kárkún; as to that I will go on allowing deduction for the said assessment in the Kháta every year. To this effect this mandatory letter is duly given in writing. The 28th of January 1897.

The Court of first instance held that there was for the transaction evidenced by the two documents a good consideration; and that the documents did not require registration. The Court, therefore, dismissed the plaintiff's claim to recover arrears of assessment.

On appeal the Assistant Judge treated the transaction as one of sale. He further held that under section 55 (6) (*b*) of the Transfer of Property Act, 1882, the defendant was entitled to a charge on the property for the purchase-money which was calculated to be Rs. 1,092-13-0. The plaintiff was, therefore, ordered to pay Rs. 1,092-13-0 to defendant before he recovered the assessment.

The plaintiff appealed to the High Court.

Weldon, with *K. N. Koyajee*, for the appellant.

A. G. Desai, for the respondent.

CHANDAVARKAR, J.—Both the lower Courts have held that the documents, on which the respondents relied in support of their case, were in the nature of a sale of immoveable property of the value of more than Rs. 100, and that, as those documents were not registered as required by section 54 of the Transfer of Pro-

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perty Act and by section 17 of the Registration Act, the respondents had not acquired the right to exemption from assessment which they pleaded in defence to the appellant's claim. But "sale", as defined in section 54 of the Transfer of Property Act, is "a transfer of ownership in exchange for a price paid or promised or part paid and part promised". And, as held by a Full Bench of three Judges of this Court in *Samaratmal Uttamchand* v. *Govind*[1], the word "price" is used in the sections relating to sales in the Transfer of Property Act in the sense of money. In the present case, it is found by the Courts below that the consideration for the transaction relied upon by the respondents consisted of services which they had rendered to the appellant's predecessor-in-title in the past and which they were to render in future. Such a consideration cannot be regarded as "price". The consideration, even if it could be assessed in money value, is vitiated by the fact that it is vague and uncertain as to future services. It is true that in his deposition the first respondent (defendant No. 1) states that he had rendered assistance to the Inámdár Sarvottamrao in certain suits, and that he had lent him monies from time to time. But there is no evidence to show that the remission of assessment by Sarvottamrao was in consequence of any contract of sale between him and the respondents and that the consideration for the contract moving from the latter was the price calculated at the money value of the services which they had rendered and the sum which they had lent to Sarvottamrao. The documents relied upon by the respondents in support of their right to exemption from assessment make it quite clear that, as a reward for the services which the respondents had rendered and were expected thereafter to render to him, Sarvottamrao made a grant of the assessment to the respondents. The rendering of the services was not the consideration but merely the motive of the grant.

The transaction, on a proper construction of the document, must be regarded as one of gift, not of sale. It was a gift of Sarvottamrao's right to the assessment of the *dhára*, which the respondents held, and such a right has been regarded as *nibandha* in Hindu Law. *Morbhat Purohit* v. *Gangadhar Karkare*[2]. It is immoveable property. *Venkaji* v. *Shidramapa*[3] and *Madhavrav*

(1) (1901) 25 Bom. 696. (2) (1883) 8 Bom. 234.

v. *Jagannath*[1]. There can be no gift of immoveable property except by a registered instrument, signed by or on behalf of the donor and attested by at least two witnesses. (Section 123 of the Transfer of Property Act). There being no such instrument in support of the respondents' title, the right they have set up in answer to the appellant's claim must be negatived.

But it was urged before us by their learned pleader that the transaction, evidenced by the documents relied upon by the respondents in support of their rights, was in the nature of a relinquishment by Sarvottamrao of his right to the assessment leviable on the *dhára* holding; that, as such, it could be proved by the *Anujnyapatra* (exhibit 30) which did not require registration, since it was not a deed of transfer but was an order addressed by Sarvottamrao to his own officers, and, as such, containing an admission of the relinquishment. No doubt the effect of the grant of the right to assessment leviable on the *dhára* holding was that the owner of the right, so far as he was concerned, relinquished it in favour of his grantee; but all the same it was a transfer of the right. The fact that the grantee of the right happened in the present case to be the person liable to pay the assessment was a mere accident. After the grant he could hold and deal with the right separately from the *dhára* holding. He could sell or mortgage or transfer by way of gift the latter right, reserving to himself the former. It was a transfer of the right to assessment by Sarvottamrao to the respondents as a bounty or reward for services rendered and to be rendered. Such a transfer cannot be made except in the manner provided by the Transfer of Property Act.

That being the legal aspect of the transaction, section 55, clause 6, sub-clause (*b*), which relates to a sale, has no application here.

The decree of the Court below must be varied by striking out from it the direction as to the payment by the plaintiff of Rs. 1,092-13-0 within one month from the date of the decree. In other respects the decree is confirmed. The respondents to pay to the appellant the costs of this second appeal.

Decree varied.

R. R.

(1) (1889) P. J., p. 75.