APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

1919. November 12.

BAI PARVATI DAUGHTER OF KASHIDAS LAKHMIDAS AND WIDOW OF CHUNILAL BUKHANDAS (ORIGINAL PLAINTIFF), APPELLANT *v.* DAYABHAI MANCHHARAM AND OTHERS (ORIGINAL DEFENDANTS) RESPONDENTS.*

Hindu law—Widow's estate—Deed of gift by widow and next reversioner—Transfer of a spes successionis*—Gift challenged by the reversioner after widow's death—Invalidity of gift so far as reversioner's interest concerned—Transfer of Property Act (IV of 1882), section 6.*

One K died leaving a widow G, a son B and two daughters P and J. On B's death G became his heir. In 1891 G and one of the daughters P gifted away two properties to defendants Nos. 1 to 4, sons of the deceased daughter J, purporting to convey these properties by G as the life tenant and by P as the next reversioner. In 1911 G having died, P filed a suit to recover property from the donees under the gift of 1891, on the ground that the deed against her was invalid as it conveyed her chance of surviving G and succeeding to the property as reversioner. Both the lower Courts dismissed the suit. On appeal to the High Court,

Held, that the deed of gift to defendants Nos. 1 to 4 was good only as regards the life interest of G and was bad as regards the transfer of P's chance of succession, under section 6 of the Transfer of Property Act, 1882.

SECOND appeal against the decision of G. R. Datar, Joint First Class Subordinate Judge, A. P., at Surat, confirming the decree passed by P. C. Desai, Joint Subordinate Judge at Surat.

Suit to recover possession.

The property in suit originally belonged to one Kashidas. Kashidas died in 1868 leaving a widow Gulab, a son Ghelabhai, and two daughters Parvati and Jekore. Ghelabhai died shortly afterwards and his mother Gulab succeeded as heir to the property. Bai Jekore predeceased Gulab and Parvati, leaving defendants Nos. 1 to 4 as her minor sons.

In 1891, Gulab and Parvati gifted two properties to defendants Nos. 1 to 4. In 1911 Gulab died. In 1913,

* Second Appeal No. 804 of 1917.

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Parvati sued to recover possession of the properties transferred to defendants Nos. 1 to 4 by the deed of gift alleging that the gift was invalid as it conveyed her chance of surviving Gulab and succeeding, therefore, to the property as reversioner. The defendants contended that the deed of gift was passed in consideration of their father having maintained Bai Gulab up to the date of the deed; that the deed was binding on the plaintiff and that the claim was barred by adverse possession.

The Subordinate Judge held that though the deed of gift set up by the defendants was not valid in itself, its validity could not be called in question by the plaintiff who was a consenting reversioner: *Ramadhin v. Mathura Singh*[1]. He, therefore, dismissed the plaintiff's suit.

On appeal, the First Class Subordinate Judge confirmed the decree.

The plaintiff appealed to the High Court.

B. J. Desai with *T. A. Gandhi*, for the appellant:—Bai Gulab and the appellant made a gift of the property in suit to the respondents in 1891. Bai Gulab conveyed her present interest in the property and the appellant conveyed her future rights therein. The transfer by the appellant of her reversionary interest is bad under section 6 of the Transfer of Property Act. Such transfers are not recognised by Hindu law: *Amrit Narayan Singh* v. *Gaya Singh*[2]. This is not the case of a transfer for consideration where the consent of a near reversioner may operate to show that the alienation by the widow was for a necessary purpose: *Pilu* v. *Babaji*[3], where it is laid down that the operation of this doctrine is confined to transfers for consideration.

[1] (1888) 10 All. 407.
[2] (1917) 45 Cal. 590.
[3] (1909) 34 Bom. 165.

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Jayakar with *G. N. Thakor*, for respondents:—The life interest of the widow at the date of the gift and of the appellant on her death should be combined, and these interests together made up what may be called a fee in the property gifted away. The gift thus became a gift of the entire property. The widow was competent to relinquish her life interest in the property in the hands of the appellant, the next reversioner. She would then be solely entitled to the property and was competent to make a gift to the respondents. The widow and the appellant thus joined in making a gift of the entire property to the respondents and the whole property was conveyed to them. The appellant is estopped from disputing the validity of the gift as against the respondents because on the faith thereof their father maintained the widow during their life-time.

MACLEOD, C. J.:—One Kashidas died in 1868 leaving a widow Gulab, a son Ghelabhai, and two daughters Parvati and Jekore. His property descended to his son Ghelabhai. On Ghelabhai's death his mother Gulab became his heir. Gulab died in 1911. In 1891 Gulab and Parvati, one of the daughters, gifted two properties to defendants Nos. 1 to 4 who were the minor sons of the deceased daughter Jekore, purporting to convey those properties by Gulab as the life tenant and by Parvati as the next reversioner. After the death of Gulab, the plaintiff filed this suit to recover the property from the donees under the gift of 1891 on the ground that the deed as against her was invalid as it conveyed her chance of surviving Gulab, and succeeding therefore to the property as reversioner.

The trial Court dismissed the suit, and the appeal against the order of dismissal was also dismissed by the First Class Subordinate Judge. A good deal of confusion often arises in cases of this nature owing to the

facts of the case not being properly held in view in arguing the points of law which may arise. There may have been circumstances in the case which would have enabled Gulab and Parvati together to give a good title to a third party of the property in question. It all depended on the manner in which the transaction was effected. But keeping strictly to the facts in this case at the time of the deed of gift, Gulab was the life tenant, Parvati had the chance of succeeding to the property on Gulab's death if she happened to survive Gulab. In these circumstances the document of 1891 was executed. Gulab conveys her life interest, Parvati conveys her chance of succeeding after the death of Gulab. If those interests together made up what may be called a fee in the property donated, then no doubt it would be a good transaction. But it cannot be said, however one looks at the case, that the whole of the fee was conveyed to defendants Nos. 1 to 4 by that document. It is not a case of an alienation by a widow of property of which she is the life tenant with the consent of the next reversioner. From such consent it can be presumed that the alienation by the widow was for a necessary purpose. The onus would lie upon the person disputing the alienation to show that it was not for necessary purposes. Again the widow might have relinquished the whole of her life interest into the hands of the next reversioner, in which case the next reversioner would then become solely entitled to the property. It cannot be said here that Gulab relinquished her interest in the properties gifted to the defendants Nos. 1 to 4 by Parvati before the gift was made. Therefore we must consider only the facts as they occurred in this case. What the defendants Nos. 1 to 4 got under the deed of gift was the life interest of Gulab plus the chance of Parvati succeeding to the property on the death of Gulab. These were two distinct interests, and it cannot

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be contended that under the gift the defendants Nos. 1 to 4 were solely entitled to the whole of the interests in the property. In my opinion the gift was only good as regards the life interest of Gulab.

It has been urged upon us that the father of defendants Nos. 1 to 4 gave consideration for the gift by maintaining Gulab. Although that does not seem to me to affect the appellant's argument in any way, there can be no hardship, at any rate as regards defendants Nos. 1 to 4, if their father maintained Gulab, during the time he was in possession of the property during Gulab's life-time.

So then the transfer by Parvati in the deed of gift of 1891 of her chance of succeeding to the reversion cannot be sustained. It is certainly bad under section 6 of the Transfer of Property Act, and it would lie upon the respondents to show that section 6 does not apply because by the provisions of Hindu law such a transfer is recognised as good. But there is no direct authority on the point under Hindu law, though there are dicta in several cases which have been cited which clearly show that it is the opinion not only of Judges in India, but also of their Lordships of the Privy Council that Hindu law does not recognise the transfer of a *spes successionis*. Therefore the repondents have not satisfied us that this transfer by Parvati of her chance of succession is valid. If then it is invalid there is an end of the case, unless it can be argued that Parvati is prevented by some rule of law from setting up the contention that the deed as regards her interest is invalid. I know of no rule of law which can prevent a party from asking the Court to hold that a particular transaction, which as a matter of fact, is invalid, should be held to be invalid.

There can be no estoppel on a point of law. The fact is that it is the duty of the Court, as soon as the

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invalidity of a transfer is pointed out, if it is satisfied that there is such an invalidity, to set aside the document. Therefore in my opinion the deed of gift to defendants Nos. 1 to 4 was good only as regards the life interest of Gulab, and was bad as regards the transfer of a chance which Parvati had at that time to succeed to the reversion. Therefore the appeal succeeds and the decree of the lower appellate Court must be set aside. There must be a decree in favour of the plaintiff for possession of the property with mesne profits from the date of the suit and costs throughout. Under Order XXXIII, Rule 10 the plaintiff to pay court-fees.

Decree reversed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

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November 14.

SHANKAR SANA KANBI (ORIGINAL DEFENDANT), APPELLANT v. SHIVABHAI VALLAVBHAI, MINOR, BY HIS MANAGER, THE TALUKDARI SETTLEMENT OFFICER UNDER THE GUARDIANS AND WARDS ACT (ORIGINAL PLAINTIFF) RESPONDENT.*

Court of Wards Act (Bom. Act I of 1905), section 14 (1)—Notice of claims—Publication of notice in Government Gazette—*Further publication of notice desirable.*

Under section 14 (1) of the Court of Wards Act (Bom. Act I of 1905), it is desirable that there should be some further publication of the notice calling for claims than the mere publication in the *Government Gazette.*

SECOND appeal against the decision of B. C. Kennedy, District Judge of Ahmedabad, reversing the decree passed by M. M. Bhat, Second Class Subordinate Judge at Nadiad.

* Second Appeal No. 399 of 1918.