grants to remember what words were in ordinary use at the time for distinguishing between grants of the royal share of the revenue only and for grants of the soil but it has also to be remembered that this was a grant for service or a Watan grant and not an ordinary Inam or Saranjam grant. There is no authority excluding from consideration these matters. It was merely held that there was no *a priori* presumption that grants were limited to the royal share of the revenue and were not of the soil in the case of *Suryanarayana* v. *Patanna*[1] by their Lordships of the Privy Council.

Decree reversed.

R. R.

[1] (1918) L. R. 45 I. A. 209 at p. 218.

APPELLATE CIVIL.

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

ADIVEPPA BIN NAGAPPA ARSINGADI (ORIGINAL DEFENDANT NO. 1), APPELLANT v. TONTAPPA BIN TIPPANNA RANGANWAR AND OTHERS (ORIGINAL PLAINTIFF AND DEFENDANTS NOS. 2 AND 3), RESPONDENTS.*

1919. September

Hindu Law—Reversioner—Widow's estate—Acceleration—Deed of gift by widow in favour of a daughter—Stipulation for maintenance of the widow for her life time—Nature of the transaction, whether acceleration or alienation.

One S made a gift of her widow's estate to her daughter L, with a condition attached that L was to maintain S till her death. The lower Court held that the gift amounted to a valid acceleration of S's estate. On appeal to the High Court,

Held, that there was no acceleration of S's estate, for any consideration was sufficient to change the nature of the transaction from an acceleration to an alienation.

* Second Appeal No. 38 of 1918.

ADIVEPPA v. TOTAPPA.

SECOND appeal against the decision of V. M. Ferrers, Assistant Judge, Dharwar, reversing the decree passed by B. G. Kadkol, Joint Subordinate Judge at Dharwar.

Suit to recover possession.

The property in suit originally belonged to one Shidawa who had a life estate. On August 3, 1911, she made a gift of her property to her daughter Laxmava. The material portion of the deed of gift was as follows:—

As you are the owner of my husband's estate after my death, I have made a gift of the same to you. You are the full owner. Neither I, nor my executors have any interest therein. You are to take care of me till my death.

Laxmava died on January 29, 1914, leaving a daughter Ningava who was married to plaintiff, and two sons Hanmappa and Totappa (defendants Nos. 2 and 3). Ningava died on January 31, 1914. Plaintiff, therefore, as the legal heir of his deceased wife Ningava sued to recover possession of the property from Laxmava's husband Adiveppa (defendant No 1) and her two sons (defendants Nos. 2 and 3).

The defendants contended that Shidawa had no right to make a gift of the property and that Laxmava had acquired no right under the deed of gift.

The Subordinate Judge held that the deed of gift did not amount to an acceleration of Shidawa's interest in the estate. She had reserved the right of her maintenance for life which was a legal charge upon the estate. He, therefore, dismissed the plaintiff's suit.

On appeal, the Assistant Judge, reversed the decree holding that by effecting the deed of gift, Shidawa did make a valid acceleration in favour of the next reversioner Laxmava.

Defendant No. 1 appealed to the High Court.

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V. V. Bhadkamkar, for the appellant :—The deed of gift shows that the widow parted with the property subject to the charge of her maintenance. By laying down this condition precedent to the execution of the deed of gift, the widow did not intend to divest herself completely of her estate. In order that there should be a valid acceleration, the widow must give away the estate wholly and so far as that property is concerned she is considered as dead : see *Moti Raiji* v. *Laldas Jebhai* [1] ; *Behari Lal* v. *Madho Lal Ahir Gyawal* [2]. Such, however, is not the case with the transaction in suit. It is passed for a consideration and would not in law amount to an acceleration of widow's estate. It would be in the nature of an alienation by a life-holder of the estate but being effected without any proof of necessity is not valid.

H. B. Gumaste for respondent No. 1 :—By the deed of gift the whole property vested in the donee. It was a complete surrender of the estate. The stipulation for the maintenance of the widow would not vitiate the surrender. Under Hindu law, a widow is entitled to maintenance from him who takes the estate and the reversioner was bound to maintain the widow apart from the condition in the deed of gift. The condition can be treated as non-existent ; there is thus an entire surrender of the widow's estate : *Chinnaswami Pillai* v. *Appaswami Pillai* [3].

[MACLEOD C. J. :—See *Sriramulu Naidu* v. *Andalammal* [4], where the transaction was treated as an alienation].

That is so ; but in that case, a burden which was something more than mere maintenance of the widow

(1) (1916) 41 Bom. 93.
(2) (1891) L. R. 19. I. A. 30.
(3) (1918) 42 Mad. 25.
(4) (1906) 30 Mad. 145 at p. 148.

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was imposed by the deed of gift. Such is not the case here. The reversioner agreed only to maintain the widow for her life-time and this he was bound to do apart from the deed of gift. The obligation of maintaining a Hindu widow by the holder of the property arises not by reason of contarct but it is a duty enjoined by Hindu law. The property is, therefore, taken by the reversioner free from any burden created by contractual relations. The gift would thus amount to a valid acceleration of the widow's estate.

MACLEOD, C. J.:—The plaintiff sued to recover possession of the plaint property with past mesne profits for the year 1914-15, with future mesne profits and costs from the defendants. The land in suit belonged originally to one Shiddawa who had a life estate. On the 3rd of August 1911 she made a gift of her property to her daughter Laxmava. Laxmava died on the 29th of January, 1914, leaving a daughter who died on the 31st of January, 1914, leaving her husband, the plaintiff in this case, her surviving. The 1st defendant is the husband of Laxmava and defendants 2 and 3 are his sons. The plaintiff's case is that Shiddawa's gift to his wife and her daughter Laxmava operated as a valid acceleration of Laxmava's interest as the nearest reversioner at the time, and that, therefore, the property went to Laxmava's daughter and from the daughter to the plaintiff, even if that daughter was married.

The trial Court dismissed the plaintiff's claim. It found on the 3rd issue whether the gift to Laxmava by Shidava was an acceleration of Shidava's estate in the negative. The learned Judge said: "In the end the donor makes it a condition precedent for her maintenance till death to the said bequest. The learned pleader for the plaintiff concedes (*sic*) that the disposition can be a valid gift under Hindu law. The only point then is whether it amounts to an acceleration of

Shidava's estate. The simple test to be applied in the present case is whether the donor could or could not maintain successfully an action on the deed of gift in case she were not maintained by the donee. I hold that she could. It, therefore, follows that Shidava by no means disposed of her entire life estate by the execution of the deed."

The decree dismissing the plaintiff's claim was set aside by the lower appellate Court which held that the acceleration under the gift of Shidava to Laxmava was valid.. The learned Judge seemed to consider that the widow who gave away her life estate in favour of the nearest reversioner, with a condition attached that the donee should maintain her, could succeed in a suit for maintenance even although the acceleration were upheld. I do not think that this argument is sound. In order that an acceleration by a Hindu widow of her life estate should be valid, it was laid down in *Behari Lal* v. *Madho Lal Ahir Gyawal*[1] that it was essentially necessary that the widow should withdraw her own life-estate so that the whole estate should get vested at once in the grantee. The necessity of the removal of the obstacle of the life estate was a practical check on the frequency of such conveyances. In *Moti Raiji* v. *Laldas Jebhai*[2], Mr. Justice Beaman explained the difference between an alienation by a widow, and acceleration by her which had the effect of putting an end to her life estate and vesting the estate in the nearest reversioner. In that case it was arranged that one-third of the property should come back to the widow and on that ground it was held that the acceleration was invalid. Mr. Justice Heaton in his judgment cited the case which I have just referred to, viz., *Behari Lal* v. *Madho Lal Ahir Gyawal*[1]. He went on to say: "That clearly brings out the idea that for an acceleration

[1] (1891) L. R. 19 I. A. 30 at p. 32. [2] (1916) 41 Bom. 93.

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there must be an absolute annihilation of the widow's interest, as complete as if she were dead."

But that case does not touch the exact question which we have before us in this case. But I agree with what was said in *Sriramulu Naidu* v. *Andalammal*[1]. There the widow gave the property to the nearest reversioner on certain conditions. Under it the donee had not only to provide for the maintenance of the transferor, but had also during her life-time to pay annually to one of her dependents Rs. 84, and to maintain a charity for all time at an annual expense of Rs. 50. Further, on her death, he had to make payment on different accounts aggregating Rs. 2,400. The Judges said: "of course, Raghavalu would not have been subject to any of the obligations cast upon him by the deed of gift were the property to devolve on him by inheritance in the usual course. The transaction was thus essentially an onerous gift, and therefore an alienation by her, the validity or invalidity of which was determinable with reference to the rules of Hindu law, governing transfers by qualified female proprietors."

It seems to me that if there is any consideration for the gift by the widow of her life-estate that must prevent it taking effect as an acceleration, and must turn the transactian into an alienation. That seems to me a sound logical principle to act upon, because if we were to enter into a discussion as to whether this consideration was so small that we should overlook it, then that would open the door to all sorts of discussions in later cases as to the quantum of consideration. It seems preferable to say at once that any consideration is sufficient to change the nature of the transaction from an acceleration to an alienation.

It has been urged before us that the donee in this case took the property with an obligation under

[1] (1906) 30 Mad. 145 at p. 148.

Hindu law to maintain the donor. But it seems to me that there is a fallacy underlying that argument, because the donor Shidava in this case had a life estate, and it would not follow that because she got rid of that life estate in favour of the nearest reversioner, that there was any obligation under Hindu law on that nearest reversioner to maintain Shidava. For these reasons, in my opinion, the decree of the lower appellate Court should be set aside and the decree of the trial Court made good, so that the appeal will be allowed with costs.

HEATON, J.:—I agree.

Decree reversed.

J. G. R.

APPELLATE CIVIL.

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

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DAMODAR KRISHNA KULKARNI AND ANOTHER IN APPEAL No. 69 OF 1918; GOVIND SAKHARAM KULKARNI AND ANOTHER IN APPEAL No. 70 OF 1918; BHIKAJI BALKRISHNA KULKARNI, IN APPEAL No. 71 OF 1918; SHIVAJI BALWANT KULKARNI, HEIR OF THE DECEASED PANDURANG KRISHNA, IN APPEAL No. 72 OF 1918; BHAGWANT GANGADHAR KULKARNI, IN APPEAL No. 73 OF 1918; GOPAL AMRIT KULKARNI, IN APPEAL No. 74 OF 1918; AMBADAS GANGADHAR KULKARNI AND OTHERS, IN APPEAL No. 75 OF 1918; RAGHUNATH SADASHIV KULKARNI, IN APPEAL No. 76 OF 1918; BHIKAJI BHAGWANT KULKARNI, IN APPEAL No. 77 OF 1918; YESHWANT SHANKAR KULKARNI, MINOR BY GAURDIAN RANGUBAI KOM RAMCHANDRA, IN APPEAL No. 79 OF 1918; ANANDRAO NARAYAN KULKARNI, IN APPEAL No. 80 OF 1918; MAHADEO WAMAN KULKARNI, IN APPEAL No. 81 OF 1918; GOPAL PANDURANG KULKARNI, IN APPEAL No. 82 OF 1918; YESHWANT ANNAJI KULKARNI IN APPEAL No. 120 OF 1918; MAHADEV MORESHWAR