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Act. It seems to me impossible to hold that these provisions of the letter were not in express terms inconsistent with the provisions of the Contract Act. Wherever it has been intended that independent provisions should be permitted, it has always been expressly provided for such provisions by the introduction of the phrase "in the absence of any contract to the contrary" which occur in section 146 and a number of other sections of the Indian Contract Act.

I concur, therefore, that this appeal ought to be dismissed with costs.

Appeal dismissed.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Shah, and Mr. Justice Hayward.

1920. *March* 9.

KUVERJI KAVASJI SHET (ORIGINAL PLAINTIFF), APPELLANT *v.* THE MUNICIPALITY OF LONAVALA (ORIGINAL DEFENDANT), RESPONDENT*.

Transfer of Property Act (IV of 1882), section 123—Gift of land—Oral gift—No registered deed of gift—Gift inoperative—Unauthorised occupation and use of land—Owner of land making an oral gift of land—Acquiescence—Estoppel—Indian Evidence Act (I of 1872), section 115.

In 1903, the defendant Municipality took plaintiff's land into its possession and used it for making a new road through it. After a major portion of the road was constructed, the plaintiff's father objected to the unauthorised occupation and use of his land but he was prevailed upon to give the land in gift to the Municipality. The gift was orally made, and no writing was made or registered. The plaintiff's father died in 1906. The plaintiff sued in 1914 to recover possession of the land from the Municipality :—

Held, decreeing the suit, that the absence of a registered deed of gift invalidated the gift owing to the provisions of section 123 of the Transfer of Property Act, 1882 ; and that the mere consent of the plaintiff's father to make the gift was not sufficient to vest the land in the Municipality ;

* Second Appeal No. 1007 of 1918.

Held, further, that the plaintiff was not estopped, under section 115 of the Indian Evidence Act, 1872, from denying the gift, because the defendant had occupied the land and laid out a substantial part of the road, before the plaintiff's father was prevailed upon to make the gift.

SECOND appeal from the decision of C. N. Mehta, oint Judge of Poona, confirming the decree passed by G. L. Dhekne, Subordinate Judge of Wadgaon at Lonavala.

Suit to recover possession of land.

In 1903, the defendant Municipality took into their ossession the land in dispute belonging to plaintiff and began to construct a road through it.

The plaintiff's father objected to the unauthorised occupation and use and called upon the Municipality to vacate the land. He was however prevailed upon to give the land in gift to the Municipality. This he did orally; and no writing to evidence the gift was passed or registered. He died in 1906.

In 1914, the plaintiff sued to recover possession of the land from the defendant.

The lower Courts held that the action of the Municipality in taking up the land was, in the first instance, not justified as it failed to observe the proper procedure laid down in section 92 (2) of the Bombay District Municipal Act, 1901: and that as the plaintiff's father had acquiesced in the action of the Municipality in occupying the land without paying any compensation to him, the plaintiff had no cause of action in that respect.

The plaintiff appealed to the High Court.

S. Y. Abhyankar, for the appellant.

V. D. Limaye, for the respondent.

SHAH, J. :—This second appeal arises out of a suit brought by the plaintiff to recover possession of certain

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land from the Municipality of Lonavla. The Municipality took possession of the land in suit for the purpose of making a road in June 1903. In July 1903 the plaintiff's father was pressed by the Managing Committee of the Municipality to give over the land to the Municipality by way of gift, and, according to the finding of the lower appellate Court which may be taken as a fact now, the plaintiff's father consented to make a free gift of the land to the Municipality. Beyond recording a resolution with reference to this so-called gift nothing further was done by the Municipality, nor by the plaintiff's father. Plaintiff's father died a few years later; and in 1914 the present suit was filed by the plaintiff to recover possession of the land from the Municipality. The defendant pleaded that the plaintiff's father had acquiesced in the possession of this land being retained by the Municipality for such a long time and that on account of his consent to make a gift of the land to the Municipality the plaintiff's title was extinct.

In both the lower Courts the defendant has succeeded and the plaintiff's suit has been dismissed.

In the appeal to this Court it is urged on behalf of the plaintiff that in the absence of any registered deed as required by section 123 of the Transfer of Property Act the gift could not be complete in law and that the title to the land is still vested in the plaintiff. On behalf of the respondent Municipality there is practically no answer to this contention based on the provisions of section 123 of the Transfer of Property Act. But it is urged that the plaintiff is estopped from contending that the title is still vested in him in consequence of what happened between the plaintiff's father and the Managing Committee of the Municipality in July 1903. It is clear that the mere consent of the

plaintiff's father to make a gift of the land was not sufficient to vest the land in the Municipality. According to section 123 of the Transfer of Property Act the title required to be conveyed by a registered deed signed by the donor and attested by at least two witnesses. That was not done, and therefore in law the title remained in the plaintiff. The suit is brought within twelve years from the date on which the Municipality took possession, and unless the plea of estoppel is made out, it is clear that the plaintiff is entitled to recover possession of the land.

As regards estoppel it appears that the Municipality took possession of the land and used it for the purpose of the new road before the understanding between the plaintiff's father and the Managing Committee was arrived at in July. It is urged, however, in the argument before us that a part of the road was completed after this arrangement and that the Municipality acted to that extent on what was represented to them by the plaintiff's father in July 1903. The evidence, bearing on this point, to which our attention has been invited, shows that substantially all that the Municipality had to do was done prior to July 1903 ; and even if a part of the road was completed after this understanding between the plaintiff's father and the Municipality, I think substantially the Municipality acted on its own responsibility and prior to any assurance given by the plaintiff's father. It is not therefore possible to apply the provisions of section 115 of the Indian Evidence Act on that ground. It is urged, however, that the Municipality omitted to take the necessary legal steps to acquire this land in consequence of the plaintiff's father having given his consent to let the Municipality have the land. I am not satisfied by any means that such an omission on the part of the Municipality is sufficient to create an estoppel under section 115. The

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omission is easily attributable to the ignorance of the Municipality of their legal position as to the title to the land on the strength of the assurance given by the plaintiff's father ; and there is apparently no evidence whatever in the case to justify the suggestion made before us that this omission was due to the assurance given by the plaintiff's father. I do not think that the proved facts create any estoppel against the plaintiff.

The plain position seems to me to be that both the plaintiff's father and the Municipality failed to realise the effect of section 123 of the Transfer of Property Act. The Municipality failed to take the essential step of having a registered conveyance from the plaintiff's father, and the plaintiff's father omitted to give legal effect to what he then according to the finding undoubtedly intended to do. Under these circumstances, however improper it may appear for the plaintiff to assert his title to the land at this distance of time, I do not think that in law he could be denied the relief by way of possession which he claims in the suit.

The area of the land, to which the plaintiff is entitled, has been stated before us to be 9½ gunthas as found by the trial Court. The decree must be limited to that area.

I am, therefore, of opinion that this appeal must be allowed, that the decree of the lower appellate Court must be reversed and that there should be a decree in favour of the plaintiff for possession of the land in suit measuring 9½ gunthas.

I do not think that any case is made out for allowing mesne profits to the plaintiff. It is an open piece of land with regard to which there could hardly be any amount of mesne profits, and having regard to all the circumstances connected with the case I do not think that the plaintiff is entitled to any mesne profits.

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In view of the finding that the plaintiff's father had consented to make a gift of this land to the Municipality I think that the plaintiff should not be allowed any costs against the Municipality. The parties to bear their own costs throughout.

The defendant's pleader suggests that some reasonable time should be fixed for delivering possession of this land to the plaintiff and the plaintiff's pleader has no objection to three months being allowed. We accordingly direct that the decree for possession will take effect on the expiration of three months from to-day.

HAYWARD, J.:—I agree that the plaintiff is entitled in strict law to recover possession of this strip of land. I agree that the plaintiff is not entitled to much sympathy in view of his conduct in going back upon the promise of his father. It is on the other hand a well recognized rule of law that powers conferred on public bodies must be exercised strictly within the limits expressly allowed by the law, and it has been clearly shown in this case that the powers to acquire land for public purposes conferred by law were unfortunately not strictly exercised by the defendant Municipality of Lonavla. The defendant has therefore been driven to fall back upon the defence of acquiescence, a considerable period amounting to about 11 years having elapsed before the repudiation of the promise given to the Municipality. But acquiescence cannot be successfully pleaded unless it should refer to equitable relief or should amount to an estoppel preventing recourse to a legal remedy. It would, therefore, be necessary in this case to establish an estoppel as this is a case of a legal remedy. It has no doubt been proved that there was a promise which led to a belief that the ownership of the land had been transferred. But it has not been proved that anything whatever was done upon

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the strength of that belief. The road itself would appear to have been practically completed before and not after the promise which was the foundation of that belief. It has been suggested that an act would also include an omission and that there was the omission to take the necessary steps to acquire the land. But no endeavour whatever was made at the trial to prove that it was ever debated whether steps should or should not be taken to acquire the land. No acts or omissions have in fact been established on the part of the Municipality which would in my opinion have justified us in applying the provisions relating to estoppel contained in section 115 of the Indian Evidence Act. The gift itself was, as pointed out by my learned Brother, incomplete and it could in the circumstances have only ripened into title by a complete 12 years adverse possession or by a registered deed under section 123 of the Transfer of Property Act.

There should, therefore, in my opinion be the decree proposed for possession within the period named by the parties without mesne profits and each party bearing his own costs.

Appeal allowed.

R. R.

APPELLATE CIVIL.

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

1920
March 11.

GORDHANDAS VITHALDAS (ORIGINAL DEFENDANT), APPELLANT *v.* MOHANLAL MANEKLAL DOSHI AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS*.

Registration—Constructive notice—Agreement between plaintiff and the defendant's vendor by which the latter restricted the ordinary user of his property—Agreement not a covenant running with land—Agreement if indexed in the register in relation to defendant's property would be notice—Injunction.

* Second Appeal No. 249 of 1919 (with Second Appeal No. 250 of 1919).