APPELLATE CIVIL.

Before Sir Lallubhai Shah, Kt., Acting Chief Justice, and Mr. Justice Crump.

NARU HARI GUJAR (ORIGINAL PLAINTIFF), APPELLANT *v.* TAI KOM DEVJI (ORIGINAL DEFENDANT), RESPONDENT*.

1922. *September* 25.

Hindu law—Widow—Reversioner—Gift of the entire estate by widow to daughter—Conveyance back from the daughter to the widow—Character of the estate held by the widow.

One G, a Hindu, was the owner of the lands in suit. He died leaving a widow, a daughter and a nephew. In March 1911, the widow conveyed the whole of her estate by way of gift to her daughter. In December 1912, the daughter conveyed the whole estate back to the widow absolutely. The daughter subsequently died leaving a daughter Tai (defendant). In 1916 the widow gifted away the lands in suit to Tai. The widow died in 1918 and on her death, G's nephew (plaintiff) filed a suit to recover the lands from Tai as reversionary heir of G.

Held, dismissing the suit, that the result of the transaction of March 1911 was that the widow surrendered the whole estate in favour of the daughter the next reversioner, and by the transaction of December 1912, when the lands were conveyed back to the widow, the widow obtained not the original widow's estate but an absolute interest of the daughter in the lands and therefore the gift by the widow in favour of the grand-daughter in 1916 could not be challenged by the reversioner.

Rangasami Gounden v. *Nachiappa Gounden*[1] and *Sureshwar Misser* v. *Maheshrani Misrain*[2], followed.

SECOND appeal against the decision of E. H. P. Jolly, Assistant Judge of Satara, confirming the decree passed by D. R. Patrak, Joint Subordinate Judge at Satara.

Suit to recover possession.

One Gopal was the owner of the property in suit. He died leaving a widow named Venai, a daughter Vithai and a nephew Naru (plaintiff).

On 22nd March 1911, the widow Venai conveyed the whole of the property to Vithai by way of gift under a registered deed.

* Second Appeal No. 683 of 1921.

(1) (1918) L. R. 46 I. A. 72. (2) (1920) L. R. 47 I. A. 233.

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On 14th December 1912, Vithai reconveyed all the property by a separate document to Venai.

Vithai died in 1915 leaving a daughter Tai (defendant). On her death, Venai gifted away the lands in suit to her grand-daughter Tai on the 6th April 1916. Venai died in November in 1918, and the plaintiff, as the reversionary heir of Gopal filed the suit to recover possession of lands from Tai (defendant).

The defendant contended *inter alia* that the gift by Venai to Vithai became a surrender of her entire estate ; that Vithai became the complete owner of the lands in suit ; that Venai became the absolute owner of the lands when they were reconveyed in her favour by Vithai ; that, therefore, the gift by Venai in favour of the defendant was valid.

The Subordinate Judge held that the result of the two transactions of March 1911 and December 1912 was that there was no surrender of the widow's estate, and that in effect the widow continued to hold widow's estate at the date of the gift in favour of the defendant ; that the widow was incompetent to convey any interest beyond her life-time. He, therefore, passed a decree in favour of the plaintiff.

On appeal the Assistant Judge treated the two documents of March 1911 and December 1912 as separate transactions and held that by the document of March 1911, the widow effectively surrendered the widow's estate in favour of her daughter and what she got back by the document of December 1912, was not the widow's estate but a complete and absolute ownership over the lands which was vested in the daughter at that date. He was, therefore, of opinion that the gift of the lands in suit to the grand-daughter in 1916 by the widow was valid and the plaintiff could not challenge it. The suit was accordingly dismissed.

The plaintiff appealed to the High Court.

D. R. Manerikar, for the appellant :—There was no complete and real surrender by the widow of the entire property to the daughter. The daughter was throughout living with the widow. The reconveyance shows that the conveyance was not meant to be a real transaction. The very recital in the deed of conveyance to the effect that the reconveyance was made because of Government not having sanctioned the gift of the Gadkari Watan properties proves that the conveyance had at any rate been conditional on Government granting the sanction. The conveyance and reconveyance must be considered together and must be taken as having formed one and the same transaction. I rely on *Hem Chunder Sanyal* v. *Sarnamoyi Debi*[1], *Challa Subbiah Sastri* v. *Palury Pattabhiramayya*[2] and *Rangappa Naik* v. *Kamti Naik*[3].

K. N. Koyajee, for the respondent :—The mother and daughter living together was no reason for supposing that the surrender was not complete and real. The conveyance and reconveyance with an interval of a year and nine months between them could not form one transaction. Whether they formed one transaction and whether there was any want of *bona fides* were questions of fact not open to dispute in a second appeal : see *Kanuram Deb* v. *Kashi Chandra Sharma Chowdhuri*[4]. The case of *Hem Chunder Sanyal* v. *Sarnamoyi Debi*[5] is in my favour as there it was held that the reconveyance of the moiety of the widow *on the same day* was part of the same transaction as the conveyance and was only a contrivance to convert the qualified interest of the widow in the moiety into an absolute estate. The remarks at page 451 in

(1) (1894) 22 Cal. 354.
(2) (1908) 31 Mad. 446 at p. 451.
(3) (1908) 31 Mad. 366.
(4) (1909) 14 C. W. N. 226.
(5) (1894) 22 Cal. 354.

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Challa Subbiah Sastri's Case[1] only go to the length of stating that a conveyance and reconveyance may under certain circumstances be treated as one transaction, and *Hem Chunder Sanyal's Case*[2] was cited as an instance. And in *Rangappa Naik's case*[3] the case really turned on a question of estoppel.

There is no evidence in the present case that any of the lands were Gadkari Watan lands or that the Government's or the Collector's sanction was necessary. The conveyance was not conditional in any way, and a recital in the reconveyance cannot affect the prior conveyance.

The principles laid down in *Rangasami Gounden* v. *Nachiappa Gounden*[4] and *Sureshwar Misser* v. *Maheshrani Misrain*[5] must apply here.

SHAH, AG. C. J. :—The facts which have given rise to this appeal are few and simple. One Gopal was the owner of the property in suit. He died leaving a widow named Venai and a daughter named Vithai. He also left a nephew. In March 1911 the widow conveyed the whole of her estate by way of gift to her daughter by a registered deed. The daughter conveyed the whole estate absolutely to the widow on the 14th December 1912. The daughter Vithai died in 1915 leaving a daughter Tai, who is the present defendant. Venai, the widow, gifted away the lands now in suit to her granddaughter, the defendant, on the 6th April 1916. The plaintiff, who is the nephew of Gopal, claims these lands as a reversioner. Venai died in November 1918, and the plaintiff filed this suit in April 1919 to recover the lands as a reversioner. The defence of the defendant

(1) (1908) 31 Mad. 446 at p. 451.
(2) (1894) 22 Cal. 354.
(3) (1908) 31 Mad. 366.
(4) (1918) L. R. 46 I. A. 72.
(5) (1920) L. R. 47 I. A. 233.

was that the widow Venai completely and effectively surrendered her whole estate to the next reversioner, her daughter, in March 1911, that, when the daughter Vithai conveyed back the lands in December 1912 to her, the widow got an absolute estate, and that, therefore, the gift of the lands in suit by her in 1916 in favour of her grand-daughter was valid, and not liable to be questioned by the reversioner as an alienation made by the widow.

The trial Court decided in favour of the plaintiff holding that the result of the two transactions of March 1911 and December 1912 was that there was no surrender of the widow's estate, and that in effect the widow continued to hold the widow's estate at the date of the gift in favour of the present defendant. She was, therefore, held to be incompetent to convey any interest beyond her life-time, as there was no suggestion of any legal necessity in the case. Accordingly a decree was passed in favour of the reversioner.

In appeal the learned Assistant Judge declined to treat the two transactions of 1911 and 1912 as part of one and the same transaction. He treated the transaction of March 1911 on its own merits, and came to the conclusion that thereby Venai effectively surrendered the widow's estate in favour of her daughter, the then next reversioner, and that she got back in 1912, not the original widow's estate, but a complete and absolute ownership over the lands which was vested in the daughter at that date. He was, therefore, of opinion that the gift of the lands in suit to the grand-daughter in 1916 by the widow was valid, and the reversioner had no right to challenge it. The suit was accordingly dismissed.

In the appeal before us it is contended that the transaction of 1911 should not be accepted as an effective

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surrender of the widow's estate in favour of the next reversioner, and that the second transaction of 1912, whereby the daughter conveyed back the properties to her mother, should be treated as evidence of the fact that the original gift in favour of the daughter was not intended to be an unconditional surrender of the estate. It is also pointed out in view of the recital in the deed of 1912 that the sanction of the Collector in respect of some lands was believed to be necessary to give effect to the first conveyance, and that as that sanction was not obtained, the surrender evidenced by the first document could not be accepted as valid. In support of this contention reference has been made to the decisions in *Hem Chunder Sanyal* v. *Sarnamoyi Debi*[1], *Challa Subbiah Sastri* v. *Palury Pattabhiramayya*[2], and *Rangappa Naik* v. *Kanti Naik*[3].

It is needless, however, to examine those decisions in detail in view of the pronouncements of their Lordships of the Privy Council in *Rangasami Gounden* v. *Nachiappa Gounden*[4] and in *Sureshwar Misser* v. *Maheshrani Misrain*[5]. The following observations in *Sureshwar Misser* v. *Maheshrani Misrain*[5] are pertinent to the point in the present case :—

"Now there are two conditions as there laid down which must be fulfilled to make a surrender by the widow, with consent of the next heir (necessity being out of the question), valid. The first is that the surrender must be total, not partial. The second is that the surrender, in the words of *Gounden's case*, 'must be a *bona fide* surrender, not a device to divide the estate with the reversioner' ".

Applying these two tests to the present case, it seems to us clear that, in March 1911, the widow surrendered her whole estate in favour of the next reversioner. It is admitted that the lands and the house referred to in

(1) (1894) 22 Cal. 354.
(2) (1908) 31 Mad. 446 at p. 451.
(3) (1908) 31 Mad. 366.
(4) (1918) L. R. 46 I. A. 72.
(5) (1920) L. R. 47 I. A. 233 at p. 237.

that document constituted the whole of her estate. It is not suggested that the surrender was partial. The second condition that it must be a *bona fide* surrender, not a device to divide the estate with the reversioner, also is fulfilled. It cannot be suggested in the present case that in 1911, when the widow was in bad health, and her widowed daughter was staying with her, it was intended to be merely a device to divide the estate with the reversioner.

The question of transfer of possession does not present any difficulty to our mind, because the widow and the daughter both lived together, and such transfer of possession as was possible and necessary under the circumstances was effected. It seems to us that looking to the transaction of 1911 alone for the moment, it was undoubtedly a good surrender.

It is argued, however, that the transaction of December 1912, must be taken as part of the same transaction, and that when the land was conveyed back to the widow, it was the original widow's estate that was restored, and not that the lands were conveyed back to her absolutely as owned by the daughter at the time. We are not at all sure whether the widow's estate once effectively surrendered could be re-created. But that is not so much the question raised by the appellant. What we are asked to hold by the appellant is that the intention of the parties must be gathered from the recitals in the second document which would show that the first transfer was invalid. We do not think, however, that a document executed nearly a year and nine months after could be treated as part of the same transaction, and the recital in the document as to the absence of the Collector's sanction cannot be relied upon as proving either the necessity for such sanction, or the tenure of the land conveyed by the widow to her daughter. Under these circumstances,

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the second document cannot be read in the sense in which it is argued on behalf of the appellant it should be read by the Court; and it seems to us that the lower appellate Court was right in treating the document as a later and independent transaction conveying the estate, which it does purport to convey, namely, the absolute interest of the daughter in the lands. If that position is accepted, it follows necessarily that the gift by Venai in favour of her granddaughter in 1916 was perfectly valid, and not liable to be challenged by the present plaintiff. We, therefore, affirm the decision of the lower appellate Court and dismiss the appeal with costs.

Decree confirmed.

J. G. R.

CRIMINAL REVISION.

Before Sir Lallubhai A. Shah, Kt., Acting Chief Justice, and Mr. Justice Crump.

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October 13.

EMPEROR v. T. K. PITRE AND OTHERS*.

Criminal Procedure Code (Act V of 1898), section 108—Security for good behaviour—Dissemination of seditious matter—Proof of authorship—Mention of the author's name in the book—Mention of author's name in the statement furnished under section 18 of the Press and Registration of Books Act (XXV of 1867)—Declaration under section 1 of the Act—Proof of actual dissemination of seditious matter.

In a proceeding under section 108 of the Criminal Procedure Code against the applicants as the author, printer and publisher, respectively, of a seditious pamphlet, no direct evidence was led to connect the applicants with the pamphlet or its dissemination. The only evidence that was offered was (1) that the pamphlet mentioned the names of the applicants as its author, printer and publisher; (2) a statement furnished under section 18 of the Press and Registration of Books Act stating the above information; and

* Criminal Applications for Revision Nos. 206 to 208 of 1922.