APPELLATE CIVIL.

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

BAI DHONDUBAI, DAUGHTER OF LATE VISHNUPANT NARSING MAVLANKAR AND OTHERS (ORIGINAL DEFENDANTS NOS. 2 to 4), APPELLANTS *v.* LAXMANRAO TRAMBAKRAO JAVADEKAR AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT NO. 1), RESPONDENTS*.

1922.
April 22.

Will—Construction of Will—Gift to donee as a persona designata.

One V, a Hindu adopted J his daughter's son in 1892. In 1901 V died making a will which so far as the adopted son was concerned provided as follows : "I bequeath my residential house worth Rs. 21,750 to my adopted son Janardan who is now thirteen years of age. He shall take possession of the house after the death of my wife." J died in 1913 and under J's will his brother sued to recover possession of the house from V's daughters. A question arose whether the testator V merely described J as his adopted son or intended that the validity of the gift should be conditional on the validity of the adoption,

Held, on a consideration of the language of the will and the surrounding circumstances, that the testator intended to make the gift to J as *persona designata* without intending that the gift should be conditional on the adoption of J being valid according to the rules of Hindu law.

FIRST appeal against the decision of K. J. Desai, First Class Subordinate Judge at Ahmedabad.

Suit to recover possession.

One Vishnu Narsinh Mavlankar, a Brahmin by caste and resident of Ahmedabad had three daughters (1) Gajarabai, (2) Dhondubai, (3) Narbadabai. He had no son. He, therefore, adopted Janardan, one of the two sons of his daughter Gajarabai, as a son on the 1st December 1892. On the 7th October 1901, Vishnupant made a will and died in December of the same year, leaving him surviving his wife Rukamabai, the adopted son Janardan and the three daughters.

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The important clauses of the will were as follows :—

Second clause—

"As to villages of Narol and Ropda in the Dascroi Taluka got by my father as Inam.....The income remaining in balance.....is divided and taken in three equal shares. Now Janardan my son taken in adoption with (due) ceremonials has authority to take my one-third share after my death."

Third clause—

"The Government Promissory notes in my name and belonging to me..... .....and buildings in Bhadra belonging to me absolutely, ... this property has already been given by way of gift to my wife Rukamabai.....

Fourth clause, after setting forth the remaining properties of the testator, proceeded to state as under :—

Sub-clause (1)—

"To my adopted son Janardan who is at present of the age of about thirteen years I give my said dwelling house of the value of Rs. 21,750 but he is to take absolute possession of the said house after the death of my wife and so long as the said house remains in the possession of my wife, my wife is to defray the expenses of repairs, &c., in connection therewith and the costs relating to the disputes regarding.....going on with my newphew Vasudevrao in a Civil Court. My wife is to set apart and keep with her Rs. 5,000 (five thousand) for Janardan's education and Rs. 2,000 (two thousand) for his marriage, in all Rs. 7,000 (seven thousand) and to defray the several expenses and keep an account of the same. Janardan is to act in deference to my wife's orders and to live with her in peace and harmony and so long as he lives with her, my wife is to defray his boarding charges and the expenses for his clothing, &c., except the expenses for his education, because the expenses for his education, that is to say, the expenses for his books, fees, tutor's pay, &c., are to be defrayed out of the above mentioned sum of rupees five thousand. In case they two do not pull on amicably the amount of expenses defrayed out of the said sum of rupees seven thousand is to be deducted and the balance is to be paid to him and he is to be made separate. And except that, Janardan has no right to take or ask for anything whatever from my wife, but there is no objection to my wife's giving anything to him of her free will. If while Janardan and my wife are pulling on amicably Janardan has to stay at any upcountry place other than Ahmedabad for the purpose of education, then the expenses in connection therewith, that is to say, the expenses for books, house-rent, boarding, clothing and fees and tutor's pay and all of such other expenses are to be defrayed out of the said sum of rupees five thousand."

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Sub-clause (9)—

"As to whatever property may remain after my property is dealt with as stated above, my wife is (? shall be) the owner of the same."

Sometime after Vishnupant's death, the relations between Janardan and Rukamabai became strained. They however settled their dispute by Janardan passing a Fargat (settlement) in favour of Rukamabai, dated the 12th December 1908. By this Fargat Janardan was allowed to retain the benefit of the bequest of Vishnupant's residential house and third share in the Inam villages of Narol and Rokheda and was paid about Rs. 30,000 in cash in consideration of his giving up all other claims in the property of his adoptive father.

Janardan died on the 6th January 1913. He left a will, dated the 14th December 1912, in favour of his brother, the plaintiff in this suit.

In March 1915 Rukamabai died having made a will in March 1915 by which she disposed of the property which she got under her husband's will in favour of her daughter Dhondubai.

After Rukamabai's death the plaintiff sued to recover the possession of the residential house of Vishnupant under Janardan's will. He alleged that both as an adopted son and as a legatee under Vishnupant's will, Janardan was the owner of the house, and that his right was recognised under the Fargat.

Defendants who were the daughters of Vishnupant disputed the validity of the adoption of Janardan and his right under the will of Vishnupant.

The Subordinate Judge held that the adoption of Janardan who was daughter's son was invalid; that he was not entitled to inherit his adoptive father's property as his heir; that the bequests in favour of

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Janardan were given to him as *persona designata* and not as a validly adopted son of Vishnupant.

The defendants appealed to the High Court.

Coyajee with *H. V. Divatia*, for the appellants.

Sir Thomas Strangman with *G. N. Thakor*, for respondent No. 1.

R. J. Thakor, for respondent No. 2.

MACLEOD, C. J. :—This is an appeal from the decision of the First Class Subordinate Judge of Ahmedabad. The facts of the case are fully set out in the judgment. The only question that has been argued in this appeal is whether the plaintiff has proved his title to the suit house. The plaintiff claimed under the will of his brother Janardan, who died on the 6th January 1913. Janardan had been adopted in 1892 by his mother's father Vishnupant. In October 1901 Vishnupant made a will and under that will he gave a life interest in the suit house to his wife Rakamabai and the remainder over to his adopted son Janardan. Vishnupant died in 1901 and in 1908 certain disputes that had arisen between Janardan and Rakamabai were settled by the execution of a deed of release and agreement, whereby Janardan's interest in the suit house after the death of Rakamabai was recognised.

The only question, therefore, is whether the gift of the suit house by the will of Vishnupant was a valid gift ; and that depends on the question whether the testator merely described Janardan as his adopted son or intended that the validity of the gift should be conditional on the validity of the adoption. As was pointed out in *Abhiram Goswami* v. *Shyama Charan Nandi*[1], the language of one instrument does not afford much assistance in the construction of another ; and the case of *Fanindra Deb Raikat* v. *Rajeswar Dass*[2], which is

(1) (1909) L. R. 36 I. A. 148. (2) (1885) L. R. 12 I. A. 72.

relied upon by the appellants, cannot afford any assistance to the Court in construing the present will as the words in the Angikar-patra in that case were entirely different. If we were to consider the facts in other cases, the document in *Lalta Prasad* v. *Salig Ram*[1] was almost in the exact terms of the present will. The testator in that case gave all his property to his wife for her life and then declared that after her death Lalta Prasad, his adopted son, should be owner of the property. The learned Judges said: "There is absolutely nothing in the will to show that the fact of the adoption of the plaintiff was the motive or reason for the gift, and, in the absence of anything of the kind, it appears to us that, interpreting the language of the gift in its ordinary meaning, we must treat it as a gift to Lalta Prasad as a *persona designata*, and that therefore the gift is valid." As was stated in *Fanindra Deb Raikat* v. *Rajeswar Dass*[2] "the distinction between what is description only and what is the reason or motive of a gift or bequest may often be very fine, but it is a distinction which must be drawn from a consideration of the language and the surrounding circumstances." It seems to us that the Court should not strain to adopt a construction, which would defeat the intention of the testator, unless it was absolutely certain from the words of the will that the testator intended to make the gift to Janardan conditional on the adoption being valid. There is no indication that Vishnupant had any such intention. We can only presume that he had adopted his daughter's son out of motives of affection and for perpetuating his name without considering too deeply the rules of Hindu law which invalidated such an adoption. No doubt, he hoped his family would recognise the adoption and not dispute it. But having made the adoption so far back as 1892, when he came

(1) (1908) 31 All. 5.

(2) (1885) L. R. 12 I. A. 72 at p. 89.

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to make his will, it is clear that he wanted to make this gift to Janardan, and he merely described him as adopted son in the ordinary course without intending that the gift should be conditional on the adoption of Janardan being valid according to the rules of Hindu law. He also directed in the will that Janardan should take one-third share in the Inam property. We are not concerned with that gift but it may be pointed out that the words of that gift were somewhat different and would tend more to the construction which the appellants wish the Court to put upon the words of the gift of the house. If that difference of language has any value, it is more against the appellants, for it shows that whatever the intention of the testator might have been with regard to the share in the Inam property, at any rate with regard to the house he intended to give it to Janardan, whatever disputes might arise in the future with regard to his adoption. It is not necessary, therefore, to say anything with regard to the effect of the compromise or arrangement which was arrived at in 1908.

For his own safety Mr. Coyajee asks us to express the opinion that the 8th issue in the suit, whether the defendants Nos. 2 to 4's plea as to the invalidity of Janardan's adoption is barred by limitation, has not been considered, and we do so.

The appeal will be dismissed with costs, i.e., with costs as against respondent No. 1; the other respondents to bear their own costs.

Decree confirmed.

J. G. R.