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consequently, the appeal was in time. Reference was made to the case of *Raman Chetti* v. *Kadirvalu* [1], where the two periods overlapped, and it was decided that the overlapping period should not be counted twice over.

There is no decision in this Court directly in point. In *Macmillan & Co., Ltd.* v. *K. & J. Cooper* [2] the unsuccessful party applied for a certified copy of the judgment on June 12, and of the decree on June 30. The certified copies were supplied respectively on July 3 and August 8. It was held that the whole period of time occupied in obtaining certified copies of the judgment and decree appealed from should be excluded. Though that was a case of the two periods overlapping, the decision in *Silamban Chetty* v. *Ramanadhan Chetty* [3] was approved of. We think, therefore, that these two distinct periods should be excluded in computing the time for the admission of the appeal. The Rule, therefore, must be made absolute and the appeal remanded to the lower appellate Court for being heard on the merits. Costs costs in the appeal.

Rule made absolute.

J. G. R.

[1] (1898) 8 Mad. L. J. 148. [2] (1923) 48 Bom. 292.
[3] (1909) 33 Mad. 256.

APPELLATE CIVIL.

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

SUBBA RAMA HEGDE, HEIR OF SUBRAYA HARIAPPA HEGDE (ORIGINAL PLAINTIFF), APPELLANT *v.* VENKATSUBBA SHRINIWAS HEGDE (ORIGINAL DEFENDANT), RESPONDENT*.

1924.
February 25.

Transfer of Property Act (IV of 1882), Sections 123, 126—Gift—Immovable property—Execution of deed of gift—Suit by donor to restrain donee from registering the document—Gift invalid.

* Second Appeal No. 551 of 1922.

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The plaintiff, who owned immovable property, executed a deed of gift regarding it in favour of defendant. Before the deed was presented for registration, the plaintiff filed a suit for a declaration that the deed was null and void and for an injunction restraining the defendant from completing the deed by getting it registered. During the pendency of the suit, the defendant had the deed duly registered :—

Held, that the plaintiff was entitled to revoke the gift before the defendant had completed it by getting the deed registered.

SECOND appeal from the decision of V. M. Ferrers, District Judge of Kanara, confirming the decree passed by V. B. Halbhavi, Subordinate Judge at Honavar.

Suit for declaration and injunction.

The plaintiff owned immovable property. On June 26, 1919, he executed a deed of gift of the property in favour of the defendant, who was his cousin. He repented soon after, however, and on July 21, 1919, filed a suit for a declaration that the deed of gift was null and void and for an injunction restraining the defendant from getting it registered. The defendant, however, had the deed registered during the pendency of the suit.

The plaintiff made a will on October 20, 1919, bequeathing his property to Subba, who was his brother's son. He died shortly afterwards, and Subba was added as representing him.

The lower Courts dismissed the suit.

The plaintiff appealed to the High Court.

H. C. Coyajee, with *S. S. Patkar*, for the appellant.

D. K. Thakore, with *Ratanlal Ranchhoddas*, for the respondent.

MACLEOD, C. J. :—The plaintiff in this suit was one Subraya Hariappa Hegde. He alleged in the plaint that when his relation Madappa was absent from the village

the defendant told him that his interest would suffer if he acted according to the opinion of Madappa and that the defendant would manage his property in such a way as would safeguard his interest. Having given this improper advice, the defendant had forcibly taken him to Honavar about the beginning of the month of Ashadh (Shake year 1841) and had got a document written and took his signature by a thumb impression thereon ; that he did not understand what was written in the document, and received nothing in return in connection with it from the respondent. The defendant, in whose favour the document was signed, is the cousin of the plaintiff. Thereafter the plaintiff wished to get the document back and objected to its being registered. Accordingly his prayer was that it should be declared that the document which the defendant got from him was void and it should be given back into his possession, and that a permanent injunction should be issued to the defendant restraining him from completing the document by getting it registered.

The suit was filed on July 21, 1919. The same day the defendant presented an application for registration. On July 24, notice was issued calling upon the defendant to produce the document in Court. In other words that was an application to the Court to prevent the defendant pending the suit from registering it. However before any order was passed on the notice Subraya died in November. Thereafter proceedings took place before the Registrar for registration of the document. Eventually it was registered in June 1920.

At the hearing of the suit, which was continued by the plaintiff's brother's son to whom Subraya had given the property by will, the allegation that the

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plaintiff had passed the document under undue influence and misrepresentation was negatived, and a decree was passed dismissing the plaintiff's suit. An appeal from this decree was unsuccessful.

We are only concerned in this second appeal with a point of law, which shortly put is as follows:—

"Can a donor of immovable property, when the gift can only be effected by a registered document, resile from his action before the document has been registered, and if the donee refuses to give back the document, can the donor obtain an injunction from the Court restraining the donee from proceeding to register the document?"

The real point in the case has not been observed by either of the Courts below. Both the learned Judges seem to think that the case was governed by the decision in *Venkati Rama Reddi* v. *Pillati Rama Reddi*[1]. There a deed of gift was registered by the donee after the death of the donor without the leave of the legal representative of the donor, and it was held that there was nothing in section 123 of the Transfer of Property Act which required the donor to be concerned in the registration of the document; all that was required was that he should have executed it. Once such an instrument is duly executed, the Registration Act allows it to be registered even though the donor may not agree to its registration, and upon registration the gift takes effect from the date of the execution.

If nothing further had been done by Subraya except to object to the registration, and to refuse to appear before the Registrar and admit execution, then undoubtedly the donee could have succeeded in getting the document registered even against the consent of the donor. But neither that decision, nor the decision in *Ramamirtha Ayyan* v. *Gopala Ayyan*[2], which is

[1] (1916) 40 Mad. 204. [2] (1896) 19 Mad. 433.

considered as over-ruled by *Venkati Rama Reddi* v. *Pillati Rama Reddi*[1], have dealt with the point which is before us. It is true that in *Ramamirtha Ayyan* v. *Gopala Ayyan*[2] the Court was of opinion that "a deed of gift being a voluntary transfer remains *nudum pactum* until the donor has done all that is necessary to make it legally complete. To do so, it is necessary, *inter alia*, that it should be registered; but he can be no more compelled to register the deed than to execute it in the first instance. The registration of the present deed contrary to the supposed donor's wishes, which was ordered by the Registrar, was therefore void".

It is not necessary to go so far as that in this case, because Subraya filed the suit before the document was registered, and if he could obtain from the Court an injunction restraining the donee from registering the document, clearly any subsequent registration during the pendency of the suit would be subject to the final decision of the Court.

Now it has been argued for the respondent, that once a donor has executed a deed of gift of immovable property and handed over the deed to the donee, it is not in his power to withdraw the gift, and as there is no necessity for him to take part in the registration of the document, the donee is entitled to get the document registered whether the donor consents to it or not.

It is necessary, therefore, to examine the provisions of the Transfer of Property Act in respect of gifts to see whether this argument can prevail. Under section 122 "gift" is the transfer of certain existing moveable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. Therefore there are two things

(1) (1916) 40 Mad. 204. (2) (1896) 19 Mad. 433 at p. 435.

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essential to a gift (1) transfer of property, and (2) acceptance by the donee.

Under section 123, for the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

Therefore a gift is a transfer, and the transfer of immovable property gifted cannot be effected except by a registered instrument. It must follow that the gift is incomplete until the document is registered, although when the document is registered, by virtue of section 47 of the Indian Registration Act, the date of the gift is carried back to the date of the execution of the document.

But section 126 has been relied upon as showing that a gift cannot be revoked except under the provisions of that section, none of which apply to this case. But clearly when the section says that "a gift save as aforesaid cannot be revoked," it must refer to a complete gift and not to an inchoate gift. For instance, if the donee has not accepted the gift, clearly it is not complete and the donor can revoke it. So if the property has not been transferred, the gift is still inchoate, and in my opinion the donor is entitled, if he so wishes, to prevent it from becoming complete. The donee who is to get the property without consideration, has nothing to complain of, if, before the gift is completed so as to effect a transfer of the property, the donor expresses his wish to withdraw.

It seems to me that Subraya was entitled in this case to revoke the gift before the donee had got the document registered, and the filing of the suit would in effect prevent Venkat from getting the document effectively registered against Subraya until the suit was decided one way or the other.

Under section 52 of the Transfer of Property Act :—

"During the active prosecution in any Court having authority in British India, or established beyond the limits of British India by the Governor-General in Council, of a contentious suit or proceeding in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose."

Clearly the provisions of that section apply to a transfer by the defendant of the suit property to himself. When this suit was filed the title to the property was in the plaintiff, and the defendant by getting the document registered transferred the property to himself, and it is such a transfer which is clearly prohibited by the section.

In my opinion, therefore, the appeal succeeds and the plaintiff is entitled to a decree. The document (Exhibit 56) to be restored to his possession by the Registrar. The endorsement of registration with reference thereto to be cancelled. Copy of this decree to be sent to the Registrar under section 39 of the Specific Relief Act. The plaintiff has not succeeded in rescinding the gift on the ground taken in the plaint, and we think that no order as to costs should be made.

SHAH, J. :—I agree. I desire to add that quite apart from section 52 of the Transfer of Property Act, the conclusion reached in this case would be the same. I am not clear as to the application of section 52 of the Transfer of Property Act to the facts of the present case. I prefer to reserve my opinion on that point and to base my decision upon the broad ground that it is open to the donor to revoke a gift before it is completed. In the present case before it was completed by registration, he took steps to revoke it and filed a suit to restrain the defendant from getting the document

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registered and from completing the gift. There is no decision which lays down that the donor cannot revoke it before it is completed.

Appeal allowed.

R. R.

APPEAL UNDER LETTERS PATENT.

Before Mr. Justice Marten, Mr. Justice Pratt and Mr. Justice Fawcett.

1924.

March 7.

NAGINDAS MOTILAL AND OTHERS (ORIGINAL DEFENDANTS NOS. 31 AND 32), APPELLANTS *v.* NILAJI MOROBA NAIK AND OTHERS (ORIGINAL PLAINTIFF AND DEFENDANTS NOS. 29, 30, 33 AND 34), RESPONDENTS*.

Limitation Act (IX of 1908) section 5—Delay in filing application—Delay not excused—Delay caused by wrong advice of pleader—Ignorance of newly passed statute—Excuse of delay—Appeal from order refusing to excuse delay—Letters Patent, clause 15.

Under clause 15 of the Letters Patent an appeal lies from an order refusing to excuse the delay in filing an appeal or application.

Ramchandra Gangadhar v. *Mahadev Moreshvar* (1), followed.

Gobinda Lal Das v. *Shiba Das Chatterjee* (2), not followed.

An appeal filed in the High Court was decided against the applicants on February 11, 1921. They applied for a certified copy of the judgment on March 16 : the copy was ready on May 6, 1921. They then took the advice of their mofussil pleaders, who being unaware of the passing of Act XXVI of 1920, advised them that the period within which to apply for leave to appeal to the Privy Council was six months. The applicants applied for leave to appeal on July 16, 1921. There being a delay of fourteen days in filing the application,

Held, that the delay caused in filing the application should, in the circumstances, be excused under section 5 of the Indian Limitation Act.

THIS was an appeal under the Letters Patent.

Application for excuse of delay.

* Letters Patent Appeal No. 7 of 1922.

(1) (1917) 42 Bom. 260. (2) (1906) 33 Cal. 1323.