

to the whole. The amount spent on improvements is five times the mortgage amount. Following, therefore, the decision of this Court in cases such as *Nijalingappa v. Chanbasawa*⁽¹⁾ and *Dnyanu Laxuman v. Fakira*,⁽²⁾ we are of opinion that the respondents' claim as to improvements and the cross-objections in their regard also fail.

The appeal and the cross-objections are dismissed with costs.

Decree confirmed.

J. G. R.

⁽¹⁾ (1918) 43 Bom. 69.

⁽²⁾ (1921) 45 Bom. 1301 at p. 1304.

PRIVY COUNCIL

VENKATSUBBA SHRINIVAS HEGDE (DEFENDANT) *v.* SUBBA RAMA
HEGDE (PLAINTIFF).

[On Appeal from the High Court at Bombay]

Transfer of Property Act (IV of 1882), sections 122, 123—Gift—Immovable property—Deed of gift—Acceptance of gift—Purported revocation before registration.

Where a duly executed and attested deed of gift of immovable property has been handed by the donor to the donee, and has been accepted by the latter, the donor cannot revoke the gift, although at the date of the purported revocation the deed has not been registered.

Decree of the High Court 48 Bom. 435, reversed.

Atmaram Sakharam v. Vaman Janardhan,⁽¹⁾ approved.

Kalyanasundaram Pillai v. Kuruppa Mooppanar,⁽²⁾ followed.

APPEAL (No. 96 of 1926) from a decree of the High Court (February 25, 1924) reversing a decree of the District Judge of Kanara which affirmed a decree of the Subordinate Judge of Honavar.

The respondent executed on June 26, 1919, a deed of gift of immovable property in favour of the appellant, and handed the deed to the donee who accepted it. On July 21, 1919, the plaintiff commenced the present suit

*Present: Lord Shaw, Lord Carson, and Sir Lancelot Sanderson.

⁽¹⁾ (1924) 49 Bom. 388 (F. B.).

⁽²⁾ (1926) 50 Mad. 193; L. R. 54 I. A. 89.

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for a declaration that the deed was void and for an injunction restraining the defendant from registering the deed. On June 13, 1920, before any order was made by the Court, the deed was registered.

The High Court (Macleod C. J. and Shah J.) reversing the District Judge held that the plaintiff was entitled to revoke the gift before it was completed by registration, and that he had done so. The judgment is reported at 48 Bom. 435.

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E. B. Raikes, for the appellant.

The respondent did not appear.

The judgment of their Lordships was delivered by LORD SHAW:—The circumstances of this case need not be referred to further than as follows: The object of the suit was to set aside a certain deed executed by the deceased plaintiff on June 26, 1919. By that deed certain property was transferred to the appellant. The deed was attacked as having been granted and delivered while the grantor was in ill-health and under undue influence; elements of fraud were also introduced. It may be said at once that the whole of these allegations were tested before the Subordinate Judge and, on appeal from the Subordinate Judge, by the District Court, and all the allegations were disproved. Therefore that element of attack disappears from the case.

There remains, however, a further point which until a few years ago was one of much contention in India. The deed, which was a deed of gift of immovable property, was granted and delivered upon a certain day, but was not registered until certain events happened. Those events included that the grantor having changed his mind brought a suit which contained an application for an injunction against the registration by the donee of the deed of gift.

Upon this question of a possible stoppage of effect to be given to the deed, the facts in this case are clear: the deed itself was, as stated, delivered to the donee, and the donee applied to register it; it was registered pending the litigation which had been raised, of which the present appeal is the outcome.

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The point at issue is thus expressed by the Judges of the High Court:—

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

In granting a certificate for an appeal in this case the High Court delivered in admirably brief form the reasons why the decision, if allowed to stand, would upset the law in India as now settled, and put it in conflict with the latest decisions:—

“ The point of law involved in the case is whether a donor can revoke a gift before the gift deed has been registered on the ground that the gift is not completed until the deed is registered. In the present case this Court decided that the gift was not completed until the deed had been registered. Therefore the donor could revoke it before the deed was registered. This decision has been overruled by a decision of the Full Bench in *Atmaram Sakharam v. Vaman Janardhan*,⁽¹⁾ in which judgment was delivered in October 1924.”

That was the position in which the certificate was granted. But since that happened, the case of *Atmaram Sakharam v. Vaman Janardhan*⁽¹⁾ has been approved in a case before this Board. A judgment has been pronounced by their Lordships which appears to be completely apt, and entirely in favour of the appellant in the present case. It is the case of *Kalyanasundaram Pillai v. Karuppa Mooppanar*.⁽²⁾ The headnote is as follows:—

“ A Hindu executed a deed of gift of part of his immovable property and delivered it to the donee. On the following day he adopted a son. Three days later he registered the deed:—*Held*, that the gift was valid against the

⁽¹⁾ (1924) 49 Bom. 388.

⁽²⁾ (1926) L. R. 54 I. A. 89; 50 Mad. 193.

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adopted son. On delivery of the deed to the donee there was an acceptance of the transfer within section 122 of the Transfer of Property Act, 1882, and thereupon the gift became effectual, subject to its registration as required by section 123."

Then it records that the case of *Atmaram Sakharam v. Vaman Janardhan*,⁽¹⁾ which was referred to by the High Court Judges, was approved.

It is not necessary to go over the facts of this case further than is stated above, but the following passage is directly in point. With regard to the proposal to prohibit the registrar from registering the deed as is made in this case, Lord Salvesen, on behalf of the Board, says (p. 95):—

"Registration does not depend upon his (the donor's) consent, but is the act of an officer appointed by law for the purpose, who, if the deed is executed by or on behalf of the donor and is attested by at least two witnesses, must register it if it is presented by a person having the necessary interest within the prescribed period. Neither death, nor the express revocation by the donor, is a ground for refusing registration, if the other conditions are complied with."

It would be a waste of words and time to go further than that judgment; it is sufficient to say that it appears to rule the present case.

Their Lordships will accordingly humbly advise His Majesty that the appeal should be allowed and the decree of the Subordinate Judge restored, with costs in the Courts below and before their Lordships.

Solicitors for appellant: Messrs. *T. L. Wilson & Co.*

A. M. T.

⁽¹⁾ (1924) 49 Bom. 388.

PRIVY COUNCIL

J. C.*
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MUSA MIYA AND ANOTHER (DEFENDANTS) v. KADAR BUX, SINCE DECEASED
(PLAINTIFF) AND ANOTHER.

[On Appeal from the High Court at Bombay]

Mahomedan Law—Gift—Delivery of possession—Gift to minor by father or guardian.

The general rule of Mahomedan law that a gift is invalid in the absence of delivery of possession is subject to an exception in the case of a gift to a minor by his father, or other guardian. But this exception should be strictly

*Present: Lord Shaw, Lord Carson and Sir Lancelot Sanderson.