for the provisions of rule 4. The decision in *Atmaram Bhaskar* v. *Parashram Ballal*[1] does not help the respondent in the present case at all. That decision turned on the application of Explanation V to section 11 of the Civil Procedure Code. In that case a claim for future mesne profits had been made, and was not allowed. In the present case no claim for future mesne profits had been made at all. The decision in *Ramchandra* v. *Lodha*[2] goes the length of holding that even where the plaintiff had omitted to sue for past mesne profits when suing for possession, he could bring a second suit for such past mesne profits. Whether that decision is correct or not, it certainly supports the plaintiff's claim in the present case for future mesne profits, and the two decisions of the Allahabad and Calcutta High Courts, *Ram Karan Singh* v. *Nakchhed Ahir*[3] and *Kalidas Rakshit* v. *Keshablal Majumdar*,[4] both support the appellant's contention that a separate suit would lie for future mesne profits. I agree, therefore, that the appeal must be allowed.

Appeal allowed.

J. G. R.

(1) (1920) 44 Bom. 954.
(2) (1924) 26 Bom. L. R. 288.
(3) (1931) 53 All. 951, F. B.
(4) (1930) 58 Cal. 1040.

APPELLATE CIVIL.

Before Mr. Justice Rangnekar.

JINNAPPA MAHADEVAPPA KUNDACHI AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS *v.* CHIMMAVA HUSBAND KRISHNAPPA KOCHARI AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

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Hindu Law—Joint family—Immoveable property—Gift—Gift to daughter for looking after father in old age—Gift invalid.

Under the Mitakshara school of Hindu law, a father has no right to make a gift even of a small portion of joint family immoveable property in favour of

* Second Appeal No. 191 of 1933.

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his daughter although it is made on the ground that she looked after him in his old age.

Vyasacharya v. *Venkubai*,[1] relied on.

Sundararamayya v. *Sitamma*,[2] distinguished.

Haridas Narayandas v. *Devkuvarbai*,[3] referred to.

SECOND APPEAL against the decision of R. W. H. Davies, Assistant Judge at Belgaum, confirming the decree passed by J. H. Chinmulgund, Joint Subordinate Judge at Belgaum.

Suit to set aside deed of gift.

The facts material for the purposes of the report are stated in the judgment.

D. R. Manerikar, for the appellants.

P. V. Kane, for respondent No. 1.

RANGNEKAR J. I regret the judgment, which I am about to deliver in this case; and I wish I could decide the case in favour of the respondents.

The question raised is not directly covered by any decision of this Court; but, I think, it is one which can be answered only in one way on principles of Hindu law. The question is: Whether a portion of a joint family immoveable property can be gifted by a Hindu father to his daughter, for her maintenance, who had looked after him in his old age and for whom he had great love and affection.

The question is answered in the affirmative by both the Courts, but on different grounds. The trial Court considers that a Hindu father has the power to make a gift of a reasonable portion of immoveable property to his daughter, and relies, in support of its judgment, on *Sundararamayya* v. *Sitamma*.[2] The learned Appellate Judge proceeds on

[1] (1912) 37 Bom. 251. [2] (1911) 35 Mad. 628.

[3] (1926) 50 Bom. 443.

the ground that the gift was not of immoveable property but was of the income of lands which were given to her, and that, as gifts of immoveable property in such cases are allowed, this gift was valid and could be maintained.

The facts are not in dispute. One Tammanna, a very old man, was a member of a joint and undivided Hindu family, along with one deaf and dumb son and the plaintiffs, his grandsons by a predeceased son. Apparently, Tammanna was a well-to-do man, possessed of a considerable number of lands; and had something like 38 lands. Of these, he made the present gift by a writing registered. The writing shows that he gave the property to his daughter for her life, as she had nursed him in his illness and he had great affection for her.

There is no doubt that the daughter has been in possession of the property since then.

The short question, therefore, is: whether such a gift is valid under the Hindu law.

In my opinion, the principles are too clear for any doubt to arise. A Hindu father has, under certain circumstances, just as the manager of a joint Hindu family has, power to alienate property which is both moveable and immoveable; but the gift of immoveable property is not one which comes within the exception. The ordinary principle is, that each coparcener takes an interest by birth in the joint family property. Under the Mitakshara Law, no individual coparcener, whilst the family remains undivided, can even predicate of the coparcenary property that he that particular member has a definite share, much less either alienate it or gift it away or any part thereof, except under certain circumstances and subject to certain limitations. According to the texts, originally this prohibition applied even to the father as against his sons, but the restrictions on the father's

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power to alienate have been gradually removed, and it is clear that a Hindu father has a special power of disposal of ancestral property for certain purposes. Thus, the father may within reasonable limits gift away ancestral moveables without the consent of his sons for the purpose of performing "indispensable acts of duty and for purposes prescribed by the texts as gifts through affection, support of the family, relief from distress and so forth". But even as to this, a gift of the whole of the ancestral moveable property to one son to the exclusion of another is not upheld by the Courts. Then, the Hindu father or a manager of a joint family may gift away, again within reasonable limits, ancestral immoveable property for "pious purposes". But even here the gift must be made *inter vivos* and not by will. The third exception is that a Hindu father may sell or mortgage the joint family property to discharge an antecedent debt contracted by him for his own personal benefit and such an alienation would bind the sons, provided that the debt was not incurred for an immoral or unlawful purpose.

I am not now referring to the power of a Hindu father, who is the manager of the joint family, to alienate the joint family property for a legal necessity or for any other similar justifying purpose.

It is clear upon those well established principles that the gift in the present case cannot be upheld.

As stated above, the trial Court relied on *Sundararamayya* v. *Sitamma*.[1] It was held in that case that a Hindu father can make a gift of a small portion of ancestral immoveable property to his daughter at or after her marriage. Some years before this decision, it was held by the same Court that a father has no power to make a gift of ancestral immoveable property to his wife to the prejudice of his minor sons: *Rayakkal* v. *Subbanna*.[2]

[1] (1911) 35 Mad. 628. [2] (1892) 16 Mad. 84.

In *Sundararamayya* v. *Sitamma*[1] the learned Judges relied upon *Churaman Sahu* v. *Gopi Sahu*[2] and on *Ramasami Ayyar* v. *Vengidusami Ayyar*.[3] In *Churaman Sahu* v. *Gopi Sahu*[2] it was held that a widow may make a valid gift of a reasonable portion of even the immoveable property of her husband to her daughter on the occasion of the performance of certain ceremonies which are usual when the wife on the attainment of puberty leaves her parental home for that of her husband. This case was fully considered by a Full Bench of this Court in *Vyasacharya* v. *Venkubai*.[4] In that case the facts were that a widow made a grant of fifty-six acres to her daughter before adopting a son to her deceased husband. The settlement was assented to by the natural father of the adopted son, who, on attaining majority, repudiated the gift. It was held by the Full Bench that the gift could not be enforced by the daughter against the adopted son. The learned Chief Justice, Sir Basil Scott, observed as follows (p. 263) :—

"The learned Pleader for the plaintiff has, however, sought to justify the gift to his client by reference to certain texts which were acted upon in *Churaman Sahu* v. *Gopi Sahu*,[2] in which it was held that it is competent to a Hindu widow governed by the Mitakshara Law to make a valid gift of a reasonable portion of the immoveable property of her husband to her daughter on the occasion of the daughter's *gavna* ceremony (at which the marriage of the daughter would be completed and consummated) and that such a gift is binding on the reversionary heirs of her husband.

"The texts in question are Manu, Book IX, Verse 118, 'but to the maiden sisters the brothers shall severally give portions out of their shares, each out of his share one-fourth part. Those who refuse to give it will become outcastes', and Yajnyavalkya, Verse 124, 'Uninitiated sisters should have their ceremonies performed by those brothers who have already been initiated, giving them a quarter of one's own share'. It is to be observed that the verse of Manu is one of a group of verses (111, *et seq.*) relating to partition.

"I am unable to hold that the decision of the Calcutta High Court has any application to the present case where by reason of the adoption a brother would be in existence who could perform such duties as are imposed upon him by the texts in question. Nor can they apply to a case where the settlement of property is made upon the sister neither on the occasion of a partition nor on the occasion of her marriage."

[1] (1911) 35 Mad. 628.
[2] (1909) 37 Cal. 1.
[3] (1898) 22 Mad. 113.
[4] (1912) 37 Bom. 251.

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In *Ramasami Ayyar* v. *Vengidusami Ayyar*[1] it was held that a gift of land to the son-in-law and on the occasion of his marriage is an act warranted by the authorities and *customary* in this Presidency. After referring to *Kudutamma* v. *Narasimha Charyulu*[2] the learned Judges, in *Sundararamayya* v. *Sitamma*,[3] observed at page 630 as follows: " . . . so far as this Presidency is concerned, it is enough to say that a gift of land has been common for more than a century ". It is clear, therefore, that the validity of such gifts is in Madras Presidency grounded upon a long standing custom. Apart from the ground of custom, I am unable to agree, with respect, with the view taken by the Madras High Court. Mr. Kane also referred to *Haridas Narayandas* v. *Devkuvarbai*.[4] In that case the learned Chief Justice, Sir Norman Macleod, observed as follows (p. 449) :—

" The trial Judge relied upon the passage in the judgment of the Privy Council in *Ramalinga Annavi* v. *Narayana Annavi*[5] in which their Lordships say (pp. 494, 495) :—

' The father has undoubtedly the power under the Hindu law of making, within reasonable limits, gifts of moveable property to a daughter. In one case, the Board upheld the gift of a small share of immoveable property on the ground that it was not shown to be unreasonable. In the present case, the gifts relate to sums of money. The only question is whether they were reasonable.'

" Unfortunately, no reference is given to the case referred to by their Lordships."

It may be stated that the learned advocate on behalf of the respondent, himself a learned Hindu lawyer, said that he attempted to discover this case referred to by the Privy Council, but without success ; and nobody, for aught I know, knows what case it is in which the Privy Council upheld the gift of immoveable property made by the father to his daughter.

[1] (1898) 22 M d. 113.
[2] (1907) 17 Mad. L. J. 528.
[3] (1911) 35 Mad. 628.
[4] (1926) 50 Bom. 443.
[5] (1922) 45 Mad. 489.

I am unable to accept the opinion of the learned Appellate Judge that this was a gift of the income of the lands. That view has no substance in it; and Mr. Kane has not supported it.

Mr. Kane has tried to support the judgments on the ground that the property was given to the daughter in order to help her to look after the deaf and dumb son and to maintain herself. Even so, it is difficult to uphold the gift. But, the record shows that the father gave expressly one land to the son for his maintenance; and, even if he had not got it, his maintenance would have been a charge on the whole property in the hands of the plaintiffs.

Finally, this question was never raised, or considered, by the Courts below; and it is too late for the respondent to raise it now.

Undoubtedly, the gift is of a small portion of the whole of the property; but, if one were to ignore the elementary principles of Hindu law out of one's sympathy with gifts of this nature, it would be difficult to say where the line could be drawn, and it might give rise to difficulties which no attempt could overcome.

I think the judgments of the lower Courts cannot be supported. The decrees made by the lower Courts must be set aside, and it would be declared that the gift was invalid. There would be a decree for possession in favour of the plaintiffs.

In the peculiar circumstances of this case, I disallow mesne profits until possession is restored; and there will be no order as to costs throughout.

Decree set aside.

J. G. R.