

APPELLATE JURISDICTION (a)
Special Appeal No. 168 of 1863.

ABHACHARI *Appellant.*
 RAMACHENDRAYYA..... *Respondent.*

By Hindu law a man may make a gift of any of his property binding as against himself.

Even when a deed of gift is voidable on the ground of fraud, accident or mistake, it is a question for the discretion of the Court whether cancellation or delivery up ought to be ordered.

Courts of Equity strongly incline against remedying mere mistakes of law.

Where a Hindu made a gift to a person whom he said he had taken as his *manasuputra* :—*Held* that he could not set it aside on the ground that he erred in supposing that the donee could perform his funeral rites.

THIS was a special Appeal from the decision of Srinivása Rau, the Principal Sadr Amin of Mangalore, in Appeal Suits Nos. 343 and 344 of 1862, confirming the decree of the District Munsif of Bekal, in Original Suit No. 25 of 1860. This suit was brought to cancel an instrument of gift (exhibit X) executed by the plaintiff in favour of the defendant of which the following is a translation :—

“*Sarva Svatantra mukhtyárnáma* (deed transferring right) executed by Rámachendráyya, younger brother of Balaiya Senabhog, residing at Ajámir village, Alyatnad Magane, Bekal taluk, on the 4th Sravanabhula of Rakshasa (31st August 1855,) in favour of Abháchári, son of Tirupati Giriáchárya, residing at present at Kasargod.

My wife died after having an issue, and I have not married a second time and so remain sonless. I have also grown 65 years old and have none in my family so as to manage the real and personal property belonging to me, to protect me during my life-time, to continue the line of my family and perform my obsequies after my death. Consequently, this day I have taken you as my *manasuputra* (b) and have made over to you the moveable and immoveable property belonging to me, of which the particulars are as follows :—

(Here enter the same).

You are to enjoy the said moveable and immoveable property, to remain with your family in the house in which I now live, to maintain me and perform my obsequies after my demise. According to a separate patti given to you under my signature respecting the debts due by me upon these lands and the debts due to me you are to conduct proceedings to redeem the lands, to enjoy for generations the said

(a) Present : Phillips and Holloway, JJ.

(b) From Can. *manasu* (borrowed from Skr. *manas*) and *putra* 'son.'

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moyeable and immoveable properties free from all hindrance. You should also get the registry transferred in your name in the sarkár (accounts) and continue to pay the tirvai after causing an entry to be made thereof in kudutáté accounts. I declare that if I observe the honours hitherto enjoyed by me and collect in your name the debts due by others, I would have no claim at all thereto and would not raise any objections regarding the same. Thus do I execute this mukhtyarnáma of my own conscience."

The donee was more than fifty years old and not of the plaintiff's gotra ; and the plaintiff's ground for setting aside the gift was that he had erred in supposing that the donee could perform his obsequies.

The Principal Sadr Amin's judgment contained the following passage :—" As the mukhtyarnáma, exhibit X, executed by the plaintiff to the defendant, and which forms the basis of this suit, shows that the plaintiff adopted the defendant as manasuputra and transferred to him on that account his right to the estate, an interrogatory was sent to the pandits of the High Courts, together with the copy of the mukhtyarnáma, for their opinion as to whether the adoption of manasuputra and the mukhtyári deed passed by the plaintiff to the defendant, can be held valid under Hindu law. With reference to the said interrogatory, the pandits gave their answer stating that manasuputra is not at all known to the Hindu law ; that the adoption of the defendant by the plaintiff as his manasuputra or the mukhtyári deed executed on that account, cannot be held valid under Hindu law ; and that among the people of the same caste the difference of sect or gotra would not be a bar to the performance of funeral obsequies.

" The defendant not having any distinct right by heirship, &c., based it solely on the said mukhtyári deed : but as this deed is invalid under Hindu law, it is not necessary to consider in length the arguments set forth by him."

Sadagopacharlu, for the special appellant, the defendant, contended that the gift was binding. There was no fraud in this case. Even if the donor erred in supposing that the donee could perform his funeral rites, that was no ground for setting aside the gift.

Srinivasachariyar, for the special respondent, the plaintiff.

The Court delivered the following

JUDGMENT :—This suit was brought to procure the setting
 aside of a voluntary deed of gift executed by the plaintiff to
 the defendant on the grounds that plaintiff found that it
 would be improper for defendant to perform his obsequies,
 and that he had not lived with the plaintiff since execution
 of the deed of gift.

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The defendant answered among other things that he had managed the affairs of the plaintiff since the execution of the deed.

The Munsif and Principal Sadr Amin decreed for the plaintiff, mainly on the ground that the consideration had failed, and the defendant appealed from that decision.

This is not a case of the donee seeking to enforce a contract, it is one of a donor seeking the cancellation of his own voluntary deed. Nothing is clearer than the proposition that by Hindu as by English Law, any man may make a gift of any of his property binding as against himself. The jurisdiction of a Court of Equity to set aside deeds is most beneficial. It is however to be exercised on certain principles now perfectly well-established. Moreover, even where the deed is voidable on the ground of fraud, accident or mistake, it is always a question for the discretion of the Court whether cancellation and delivery up ought to be ordered.

Here a man seeks to set aside his own deed on the ground that he made a mistake in supposing that the defendant could perform his funeral rites, and on the ground that certain things which cannot possibly be construed as conditions precedent, have not been done by the defendant. It is quite clear from his own language that the plaintiff was well aware that he was not, and could not be adopting a son. He says, that he will consider defendant a manasu-putra.

In modern times the Courts of Equity have strongly inclined against remedying mere mistakes of law, but

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without saying that in no case can an equitable remedy be given, it is quite clear that this is not a case for the exercise of such a discretion. The case is simply one of the plaintiff choosing to alter his mind; he has shown no equity whatever, and without giving any opinion whatever as to the validity or effect of the deed, it is quite clear that the decrees setting it aside must be reversed with costs.

Appeal allowed.

NOTE:—See as to Hindu gifts, *Vyavahara Mayukha*, chap. IX: 2 Coleb. Dig., 94, 95, 96.

APPELLATE JURISDICTION (a)
Regular Appeal No. 4 of 1863.

RĀMAGOPĀL *Appellant.*

MAJETI MALLIKARJANUDU *Respondent.*

Questions as to set-off will be dealt with in this Court upon the principles of English Courts of Equity or of the Roman Law of Compensation, and no weight will be given to objections derived from the peculiar language of the statutes of set-off.

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THIS was a Regular Appeal from the decision of C. R. Pelly, the Acting Civil Judge of Masulipatam, in Original Suit No. 3 of 1862.

The suit was brought by the plaintiff for rupees 2,060-0-8, the balance due upon an account stated.

The defendant pleaded that he was entitled to set-off the amount of a hundi which he had paid. The hundi was in the following terms :

“Every thing must be safe in Masulipatam.

*From Setnumin Sitaram, residing at Husen, Sagaram, to
Majeti Mallikarjanudu, at Masulipatam.*

I have drawn a hundi on you for rupees 1,000 (the moiety thereof being rupees 500.) The person that paid the said money, is Muhammad Vazir Sandagar. The payment should be made within 15 days from 8th Vaisakha Sudda to Name Shahajugu, *i. e.* to the person who bring this.

It is written that the above sum should be debited in 8th Vaisakha Suddha of the accounts of Khata Saligram Guzarati Samvatyear 1918. Sadasivabhattu at Jaggaiyapet.

(a) Present : Frere and Holloway, JJ.