Special Appeal No. 650 *of* 1867.

1868.
Oct. 12.

JAGANNA'TH VITHAL ....*Appellant.*
APA'JI VISHNU ....*Respondent.*

Hindú Law—Widow—Immoveable Property—Mortgage—Gift of the Equity of Redemption—Donee—Third Parties—Reg. XVIII. of 1827, *Sec.* XIV., *cl.* 1.

In a suit for the redemption of immoveable property brought by the plaintiff, as donee from a Hindú widow of the equity of redemption, the plaintiff's right to the property as reversioner cannot be inquired into, notwithstanding an allegation in the plaint that he was a near relative of the husband of the donor.

A donee of the grantor is a third party within the meaning of Reg-XVIII. of 1827, Sec. 14, cl. 1, and, therefore, as against him a deed of sale of the property given in gift is only valid from the date on which it was stamped.

Precedents on this point questioned but followed.

Where a Hindú widow mortgaged immoveable property to one person, and afterwards gave it in gift to another:

Held that the deed of gift did not convey to the donee the widow's equity of redemption.

THIS was a Special Appeal from the decision of J. R. Naylor, Acting Senior Assistant Judge at Ratnágirí, in Appeal Suit No. 203 of 1867, confirming the decree of Amrit Shripat, Munsif of Dápuli.

The Special Appeal was argued before TUCKER and GIBBS, JJ.

Dhirajlál Mathurádás for the special appellant.

Shántárám Náráyaṇ for the special respondent.

The facts sufficiently appear from the following judgments:—

TUCKER, J.:—This suit was brought by the plaintiff to eject the defendant from the possession of a piece of land, and of a stone platform raised upon it, on the ground that the said land and the superincumbent building had been conveyed to him by a deed of gift from its former owner, [illegible] widow of his cousin, Vásudev Hari, on the understanding that [illegible] should perform her funeral ceremonies.

The defendant answered that the said widow had first mortgaged and then sold to him the property in dispute, and that she could not, therefore, alienate it to any one else.

The Munsif held that the plaintiff could have acquired no legal right under the alleged deed of gift to him, as a Hindú widow was not competent to alienate immoveable property. He cited as authority Special Appeal No. 303 of 1863, 1 Bom. H. C. Rep. 56 (*a*).

The Senior Assistant Judge at Ratnágirí affirmed the Munsif's decree.

In special appeal it has been contended by Mr. Dhirajlál that the widow being alive could assign away her life-interest in the property, and that the assignee of her equity of redemption could sue to redeem any mortgage which she might have previously made of her life-interest. That the assignment by the widow to the plaintiff in this instance was valid, and made for an object, namely, the performance of her funeral ceremonies, which would make the conveyance a good one by Hindú Law. Further, that the plaintiff, being reversioner, could sue to set aside the illegal sale by the widow to the defendant, and that, the plaintiff being a third party, the deed of sale to the defendant would only be valid against the plaintiff, under Reg. XVIII. of 1827, Sec. 14, from the date when it was stamped, which was subsequent to the deed of gift to the plaintiff.

Mr. Shántárám, for the special respondent, has argued, on the other hand, that, allowing that the deed to the defendant was a conveyance of the widow's life-interest only, and that it would not be binding against the reversioners, yet that it was a sufficient answer to the plaintiff's claim under the subsequent deed of gift: for the widow, having conveyed all her interest to the defendant, had nothing left which she could convey to the plaintiff, and consequently the deed, on which alone the plaintiff set up a right, was altogether nugatory.

(*a*) *Bechar Bhagván* v. *Bái Lakshmi.*

The facts in this case may be stated very shortly. On a date which corresponds with the 9th of January A.D. 1841, the widow executed a deed of mortgage to the defendant (exhibit No. 7) with a provision of conditional sale, if the debt with interest were not liquidated within twenty-five years, the term fixed for the duration of the mortgage. Under this deed, in conformity with the decision of this Court in the case of *Rámji* v. *Chinto* (b), she would be at liberty to redeem, even though the term fixed for the payment of the debt had expired. She afterwards, on a date corresponding with the 11th of April 1854, executed an absolute deed of sale in favour of the defendant, the consideration for which, as stated in the deed (exhibit No. 8), was an additional advance of two hundred rupees for religious purposes. This deed was not stamped on the date of execution, but the requisite stamp was subsequently affixed, on the 4th of December 1865. On the 28th of October 1865, she made over the same property in gift to the plaintiff, on condition that he should perform her funeral ceremonies.

Three questions then arise for determination in this special appeal:—

1*st*—Can the plaintiff's alleged title as reversioner be inquired into in this suit?

2*ndly*—From what date did the deed of sale, on which the defendant relies, become operative against the plaintiff?

3*rdly*—Can the deed of gift, on which the plaintiff has sued, be treated as a conveyance to him of the widow's equity of redemption.

On the first question I consider that the Court cannot now inquire whether the plaintiff possesses, independently of the widow, any reversionary rights in the land in dispute. In the plaint he set up no such right, though he said he was a near relative of the widow's deceased husband, nor did he claim to have the deed of sale to the defendant set aside, on the ground that it was prejudicial to his interest as [illegible] heir. If he be, in reality, the heir to the land, on

(b) 1 Bom. H. C. Rep. 199.

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the widow's decease, it would have been competent to him to have instituted a suit during the widow's lifetime for a declaration of his rights, and to get the alienation set aside; but his present action is not of this character, but is only a suit to redeem in consequence of the deed of gift executed to him by the widow. I am of opinion, therefore, that in the present special appeal no decision can be come to as to his reversionary rights.

The solution of the second question depends on the interpretation which is to be placed on Reg. XVIII. of 1827, Sec. XIV., cl. 1, which is to the effect that "a bond or other writing stamped after its original date, if executed within the zillas subordinate to the Presidency of Bombay, shall, so far as it is affected by the stamp, become valid against the grantor from its original date, but *as to the rights of third parties* the date of its being stamped shall be held to be its real date." The term "*third parties*" was for a long series of years held by the late Court of Ṣadr Adálat to include the heirs and representatives, as well as the assignees of a grantor of a written instrument which was stamped after the date of its execution. In the case of *Rughia* v. *Dhurma Jhuttoo* (c) the former decisions with respect to heirs and legal representatives were overruled, and persons who stood in that relation to the grantor of a post-stamped document were held by the High Court of Bombay to stand in the same position as the grantor himself, and to be bound by the instrument from the original date of execution. Since that decision, however, there have been several unreported rulings of this Court which declare that "donees," "vendees," and other "assignees" of the grantor of a post-stamped writing, come within the expression "third parties," as used in the Regulation. These decisions are S. A. No. 619 of 1863, by Arnould, Acting C. J., and Newton, J., on the 8th of July 1864; S. A. No. 367 of 1865, by Newton and Janárdhan, JJ., on the 4th of October 1865; S. A. No. 439 of 1867, by Couch, C.J., and Newton, J., on the 18th of September 1867; and they must be held to have determin-

(c) 1 Bom. H. C. Rep. 52.

the point. If the matter had been "*res integra*," I should have entertained doubts whether the Legislature had intended to include within the designation "third parties" the subsequent assignees, either by law or deed, of the grantor of a post-stamped writing: for I can hardly suppose that where it was declared that a deed of this description was to be binding against the grantor from its original date, it was intended to give him an opportunity of escaping from this liability by a subsequent assignment of the rights previously conveyed away. This would have been a direct encouragement to fraud, which I cannot suppose to have been within the contemplation of the framers of the Regulation; and I should, therefore, have considered it reasonable to conclude that by the expression "third parties" persons wholly distinct from the grantor were meant, and not persons whose rights originated in acts of his subsequent to the original date of execution of a post-stamped document. It is, however, now too late to raise the question. The construction of this particular clause of the Stamp Regulation of 1827 must be treated as settled, and, under the rulings I have cited, the deed of sale by the widow to the defendant would only be valid against the plaintiff from the date of the stamp, *i.e.*, from the 4th of December 1865, and consequently on the 28th of October 1865, the date of the alleged deed of gift to the plaintiff, the widow had an equity of redemption, which she could have enforced during her lifetime, and which she could have conveyed to the plaintiff.

Can the deed of gift (exhibit No. 10) be treated by this Court as a mere conveyance of the widow's equity of redemption to the plaintiff? I think that it cannot. It purports to convey the land absolutely to the plaintiff, and not to be an assignment of any limited interest which vested in the widow. By the Hindú law a widow is prohibited from alienating immoveable property inherited from her husband, except for special purposes, and with the consent of his next [illegible] and it appears to me that it would be productive of mischief, if deeds, which are made in defiance of the law, were held to be good for any purpose whatsoever. In the

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case cited by the Munsif (*Bechar Bhagván* v. *Bái Lakshmi*, S. A. No. 303 of 1863) (*d*), a deed of gift executed by a widow, of immoveable and moveable property inherited from her husband, was set aside so far as it affected to deal with the immoveable property, without any reservation; and I think that this precedent should be followed in the present case also. I would, therefore, affirm the decrees of the lower courts, and direct that the special appellant bear all the costs of the special appeal.

GIBBS, J.—:I concur in the conclusion at which my brother Tucker has arrived. We adjourned this case mainly to consider whether or not the plaintiff, the donee under the gift of the 28th of October 1865, is a "third party" within the meaning of Reg. XVIII. of 1827, Sec. XIV., cl. 1, and as regards the previous sale by the widow on the 11th of April 1854, which was executed on plain paper, but subsequently stamped on the 4th of December 1865, *i.e.*, after the date on which the deed of gift was executed. My learned colleague having some doubts whether a "donee" did come within the class of persons whom the Regulation intends should be considered "third parties," has led me to consider the matter very carefully, and, after a very full consideration of the point, I see no reason for holding differently to the present Chief Justice and Newton, J., in S. A. No. 439 of 1867, in which they held a "donee" to come within the term "third party."

The words of the Regulation are of the broadest nature. After laying down that a post-stamped bond "becomes valid" from the original date as against the grantor, it goes on to say, "but as to the rights of third parties the date of its being stamped shall be held to be its real date."

It is to be noticed that the only parties alluded to in the Regulation are the actual parties to the document, and "third parties" making it a matter of little doubt as to whom the latter phrase applies, namely, that it must be read in its natural and usual sense, and so include all persons

(*d*) 1 Bom. H. C. Rep. 56.

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not parties to the deed; and such the late Sadr Diváṇi Adálat always held, even to the extent that the personal heir of the deceased grantor of the deed is a third party.

This series of rulings of the Sadr Diváṇi Adálat was broken through in the case of *Rughia* v. *Dhurma*, in which a full Court, composed of Forbes, Erskine, Newton, and Westropp, JJ., held that "personal representatives, or other persons claiming as kindred of a deceased, occupy, for the purposes of the Regulation, the same position which the deceased would have occupied, had he been alive," *i.e.*, that such are *not* "third parties." But it has been upheld in the following unreported cases:—S. A. No. 619 of 1863, in which Arnould, Acting C. J., and Newton, J., held that "vendees" are "third parties;" S. A. No. 367 of 1865, in which Newton and Janárdhan, JJ., held that mortgagees are "third parties," and in the case quoted above (S. A. No. 439 of 1867). But in none of these three last-quoted cases were any reasons recorded for the judgment.

The opinion I have formed, therefore, is in accordance with the rulings of the High Court, but I will add my own reasons for coming to this conclusion. As above stated, the words of the Regulation are sufficiently wide to admit the ruling; and I see no ground on which to suppose the framers intended any restricted meaning to the words "third parties." The main argument for a restriction is the door to fraud. I admit that this is to some extent plausible. A and B contract to sell and buy an estate, but, to save stamp duty, execute the conveyance on plain paper: both know their liability, their want of title under such a conveyance, and both must be considered as agreeing to run any risks arising from such an illegal transfer. A soon after gives or sells the estate to C by a regularly executed deed on stamped paper; in doing this he may commit a fraud on B; but B, by having infringed the law in taking his conveyance on unstamped paper, cannot complain as against C, who may be an entirely innocent party. The amount of the penalty, namely, twenty times the original stamp, appears to have been fixed at so high a rate to deter people from infringing the law; and

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although it permits the deed so post-stamped to be good against the grantor from the date of its execution, it seems to me that all B can do is to try and get back, as against A, either the property sold or his purchase-money. B runs all these risks by consenting, in the first place, to infringe the law; and I think he is very properly left to his remedy, be it what it may, against A alone. The Civil Courts are Courts of Equity, and it seems to me that in asking equity as against C, B does not come into court with clean hands, and must not be allowed to succeed.

But there is another question arising in this case, and on which I think the decision must rest, and that is whether under the plaintiff's deed of gift the equity of redemption belonging to the widow can pass. The lower courts have held that a widow cannot alienate immoveable property, and undoubtedly she, having only a life estate in it, cannot alienate it in perpetuity; but it has been held that the widow can dispose of her life-interest in immoveable property; and such an effect has been given, I think, to deeds which purported to pass the entire estate, and it is therefore, a question whether, under this deed of gift, the equity of redemption, which the widow undoubtedly possessed, might not be allowed to pass; but, after a careful consideration of the matter, I have arrived at the conclusion that it should not. By this Court's rulings, whatever may have been the view of the mortgagee in this case, the widow's mortgage can only be held to be a mortgage of her life-interest, and the equity of redemption is limited to that also. I see, therefore, only a very small interest involved in this suit, and a vast amount of litigation in store if we decide this last point in the plaintiff's favour. I see no reason, therefore, why in this case the Hindú law should not prevail in its integrity, but, on the contrary, very many reasons why it should. Under these circumstances, I agree to affirm the decree of the court below.

Decree affirmed.