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the rent. It is contended that he has no right to levy more than the rates fixed by the survey. The defendants were tenants prior to the *inam* grant (*vide* para. 11 of Exhibit No. 31). There was a general survey in the country and the land in dispute was surveyed and assessed at Rs. 107. [COUCH, C.J.—The *inamdar* cannot deprive the tenants of possession, because they had it before the grant and under the Govern. ment ; but he is not bound to observe the Governmnet rules in regard to assessment.] The question is, whether there is any limit to the *inamdar*'s right to increase the rent. [GIBBS J.–The *inamdar* having to live on his *inam* may fairly levy a higher rate than what is levied by Government, but if the assessment is such as to show that the object in putting the excessive rent on is virtually to eject the tenant, the case would have to be considered.] The plaint does not seek to make all the defendants liable jointly.

Vishvanath Narayan Mandlik for the Respondents.

PER CURIAM:—The Court amends the decree of the Acting Assistant Judge by ordering that Rs. 41-9-0 be paid by the several defendats in the proportions in which Rs. 75 are claimed from them in the plaint. The costs of the Special Appeal to be borne by the Special Appellant.

Decree amended.

Special Appeal No. 633 of 1868.

Feb. 16.

Sayad Valimia Alimia *et al*... ... ... *Appellants.*

Gulam Kadar Mohidin ... ... *Respondent.*

Muhammadan Law—Gift of land—Interest of Donees not defined—Possession—Receipt of rent.

A gift of land made by a Muhammadan is invalid if the interest of each of the donees is not defined by the gift.

Semble, that the continued receipt by the donees of the rents of land, which had been let by them as the manager of the donor, is not a sufficient taking possession to satisfy the requirements of the Muhammadan law.

This was a Special Appeal from the decision of H. Phillpotts, Acting Senior Assistant Judge at Broach, in Ap-

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peal Suit No. 2 of 1868, confirming the decree of the Munsif of Jambusar, who had rejected the claim of the plaintiffs.

The plaintiffs, Sayad Valimia and another, sued the defendant, Gulam Kadar, to recover possession of land that had belonged to Begam Jen, who, they alleged, died on the 3rd January 1865, and had given the land in gift to them on the 17th of December 1864.

The following is an extract from the finding of the Senior Assistant Judge :—

"The *Bakhshisnama* (deed of gifs), by which the plaintiffs allege to have been endowed with the land, is not according to the Muhammadan law, so there is no use in inquiring whether it is proved or not.

"The *Bakhshisnama* is invalid for two reasons—(1) that it is a gift to two parties, and yet the interest of each donee is not defined : see Macnaghten's Principles of Mahomedan Law, Bk. I. Chap. v. sec. 8 ; and (2) that no delivery of the thing given ever took place ; for the plaintiffs do not say in their plaint that the land was ever in their possession, much less that, at the time of the gift, or afterwards, it was given into their possession, and there is no evidence of it. So the *Bakhshisnama* is void : Macnaghten Bk. I. Chap. v. sec. 4."

From the decree of the District judge the plaintiffs appealed, and the appeal was heard before COUCH, C. J., and WARDEN, J.

Dhirajlal Mathuradas for the Appellants—Baillie lays down (p. 515) "that the gift of a *mooshaa* in property that admits of partition, to two men or to a group, is valid according to the two disciples, and invalid according to Aboo Huneefa. But it is not void ; so that it avails to the establishment of property by possession ;" and according to the Hedaya also, such gift is valid according to the two disciples see Vol. III. p. 289.

Now, as to possession, we had it during the lifetime of the Begam, so no formal delivery was necessary, and the rent notes, Nos. 12 to 14, which are taken in our name as the

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managers of the Begam, show that we had the management of the property. Baillie also lays down (p. 514) that "when the subject of gift is in the hands of the donee, either as a deposit or commodate loan (*areeut*), or trust (*amanut*), he becomes the proprietor of it by the gift and acceptance, though his taking formal possession of it should not be renewed," and this is also borne out by the Hedaya, Vol. III. p. 295. We let the lands and received the rents, and that was a sufficient possession in us, since possession does not necessarily mean *actual* possession.

Shantaram Narayan for the Respondent—In cases of such gifts the share of each should be defined: Macnaghten's Principles of Mahomedan Law, Bk. I. Ch. v. pars. 6 and 7; Precedents p. 199, Cases IV. and V.: I. Morley's Digest p. 268, Cases 56 to 59. According to Elberling, sec. 276, a gift is invalid even if the division takes place after the gift according to the mode prescribed by the donor.

Couch, C. J.—The Court below has correctly found against the plaintiff, on the ground that the interest of each of the donees was not defined by the gift. That being so, the ground of want of possession does not arise. We may, however, say that, we think, there was not in this case such a possession in the donees as would satisfy the requirements of the Muhammadan Law. I think we must confirm the decree with costs.

WARDEN, J., concurred.

Decree confirmed.

Referred Case.

Jethabhai Bhaichand... ... *Plaintiff.*

Bai Lakhu. ... ... *Defendant.*

Feb. 16.

Small Cause Court—Jurisdiction—Property taken in execution.

A suit brought by a Decree holder, to decide whether moveable property taken in execution is or is not the property of his judgment debtor, is not a suit cognizable by a Court of Small Causes.

Gopalrav Hari Desbmukh, Judge of the Court of Small Causes at Ahmedabad under section 22 of Act XI. of 1865, submitted for the decision of the High Court the