his protection in a special manner in which no other relations do, and the strength of the expression used in the injunction as to their protection points to children only being intended. To extend the legal obligation to descendants would impose in many cases a heavy burden. On the whole we think that, whatever the extent of the moral obligation may be amongst Hindus, the legal obligation should not be carried beyond what the language of the text creates according to its plain and obvious sense. The decree of the Court below must be reversed. Parties to pay their own costs throughout.

Decree reversed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Kemball.

VASUDEV BHAT (ORIGINAL PLAINTIFF), APPELLANT, *v.* NARAYAN DAJI DAMLE (ORIGINAL DEFENDANT), RESPONDENT.*

1882
December 19.

Hindu law—Gift of land—Necessity of possession—Registration not equivalent to possession.

The plaintiff sued for possession of certain lands, alleging that they had been given to him under a deed of gift registered. It was found that no possession was given to him under the deed. It was contended for him that his title was complete without possession, as the deed had been registered, and that the object of the rule as to possession was to give publicity to the transaction.

Held that the plaintiff was only entitled to the land of which he had been put into possession.

According to Hindu law, in order to give complete validity to a gift of land as between donor and donee, the donee must be put into possession.

Registration gives the donee neither actual, constructive, nor symbolical possession, and, therefore, cannot be regarded as equivalent to delivery and acceptance.

THIS was a second appeal from the decision of J. L. Johnstone, Acting Assistant Judge at Ratnagiri, partially reversing the decision of K. S. Joglekar, First Class Subordinate Judge at the same place.

* Second Appeal, No. 668 of 1881.

1882

VASUDEV BHAT v. NARAYAN DAJI DAMLE.

The facts of the case are fully stated in the judgment of the High Court.

Daji Abaji Khare for the appellant contended that as the deed of gift was registered, the right of the plaintiff was complete without possession, as held in *Lalubhai* v. *Bai Amrit* (1).

Shivshankar Govindram for the respondent relied upon *Hargovan* v. *Narran* (2).

SARGENT, C. J.—The plaintiff seeks to recover lands as given to him by one Sadashiv Hari Damle. The Acting Assistant Judge has found that the deed of gift was genuine, and that the donor had authority to pass the deed to the exclusion of the defendants, but that possession was only given under the deed of the *thikan's* mentioned in the mamlatdar's summary decision (exhibit 4) The plaintiff contends that the deed of gift having been registered, his title was complete without possession. It was admitted that the general rule of Hindu law was as laid down in *Hargovan* v. *Narran* (3), but it was said that the object of the rule was to give publicity, and that registration ought to be deemed sufficient to effect that object. Mr. Justice West in his exhaustive judgment in *Lalubhai* v. *Bai Amrit* (4) expressed an opinion to that effect, but it was not necessary to the decision of the case before him. He says: "The object of the various ceremonies prescribed for the transfer of land, though probably they originated from quite different causes, is now recognized by the Hindu lawyers to be mainly the publicity of the transaction; and further on he continues: "That a symbolical delivery will, in the appropriate cases, suffice, appears from the note of Mr. Ellis in 2 Strange's H. L., 468. Where, therefore, there has been a public avowal of a sale, gift, or mortgage by registration, the transfer appears to be completed. The change of ownership proclaimed to all, perfects a right available against all." We think it is difficult to accept this conclusion in its entirety. Although publicity may, in the main, be regarded as the reason for requiring the various ceremonies prescribed by the Hindu law (5), still we think that the language of the texts set out

(1) I. L. R., 2 Bom., 333.
(2) 4 Bom. H. C. Rep., 31.
(3) 4 Bom. H. C. Rep., 33.
(4) I. L. R., 2 Bom., p. 333.
(5) Digest, Bk. 2, Chap. IV, 33.

in extenso in *Hargovan* v. *Narran* and at pages 327 and 328 of Mr. Justice West's judgment is to clear and express in requiring delivery and acceptance of the subject of the gift to be effected in the case of land by putting the donee into possession in order to give complete validity to a gift as between donor and donee, and their authority, in their literal terms, has been too frequently and too long recognized by judicial decisions to allow of that ceremony (in some form or other) being dispensed with otherwise than by legislative enactment. The question, therefore, is, whether registration of an instrument of gift by the parties to it can be regarded as in any sense equivalent to delivery of possession. It is doubtless an act more or less public on the part of the donor affording additional evidence of his intention to give the land; but so far as delivery of the land by the donor or possession of it by the donee is concerned, it leaves the donee precisely in the same position as he was immediately after the donor signed the instrument; it neither gives him actual, or constructive, or symbolical possession, and cannot, therefore, we think, be regarded as equivalent to delivery and acceptance. Registration is doubtless notice to all the world of the registered deed, and when, as in the case of competing mortgages, the latter of which in date is accompanied with possession, the preferential claim of such mortgage depends upon the mortgagee not having had notice of the prior mortgage, it may well be regarded as conclusive evidence of notice.

We must, therefore, hold that the Assistant Judge was right in deciding that plaintiff is only entitled to the property of which he had been put into possession, and which he held was confined to that mentioned in the summary decision, exhibit 4. The defendant has filed objections: 1st, that the Assistant Judge has treated the *thikan* Kudiat as included in that decision, whereas it only refers to the *thikan* Gharvadi; and, 2nd, that the *thikan* mentioned in exhibit 4, is not the subject of the plaint. It appears, however, from the prayer of the plaint that he distinctly prays for a declaration of his ownership of the property then in possession, and which he had previously in his plaint mentioned as being a house and *thikan*, Survey No. 33, and which is the only property mentioned in exhibit 4.

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VASUDEV BHAT v. NARAYAN DAJI DAMLE.

The decree of the Assistant Judge must, therefore, be varied by reversing the decree of the Subordinate Judge, except with regard to the house and *thikan* Gharvadi, referred to in exhibit 4, of which the defendant must not disturb plaintiff's possession. Plaintiff to pay defendant his costs of appeal in this Court.

Decree varied.

NOTE.—The decision in the above case was followed in *Bhikaji Sadashiv* v. *Bhagirthibai* (Second Appeal No. 11 of 1882) decided by SARGENT, C. J., and KEMBALL, J., on the 19th December, 1882 (see Printed Judgments for 1882, page 410.)

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Melvill.

1883 *January* 16.

UMED DHOLCHAND, PLAINTIFF, *v.* PIR SAHEB JIVA MIYA AND OTHERS, DEFENDANTS.*

Cause of action—Multiplicity of suits—Dividing cause of action—The Code of Civil Procedure, XIV of 1882, *Sec.* 43—*Presidency Small Cause Court Act, IX of* 1850, *Sec.* 34.

When money is due on two or more bonds at the time of the institution of a suit, and the bonds appear to have been originally passed in respect of one claim, it is not incumbent upon the plaintiff to sue upon both bonds in one action. There is nothing in section 43 of the Code of Civil Procedure which would justify the Court in going behind the bonds to consider the circumstances out of which they sprung, albeit those circumstances might themselves at the time have constituted a cause of action. There is no provision in the Mofussil Small Cause Courts Act (XI of 1864), similar to section 34 of the Presidency Small Cause Court Act IX of 1850, which forbids a plaintiff's dividing any cause of action for the sake of bringing two or more suits in the Small Cause Courts of the Presidency.

THIS was a reference from L. N. Banaji, Judge of the Court of Small Causes at Ahmedabad, under section 617 of the Code of Civil Procedure. He stated the case thus :—

"1. There are two suits filed in this Court between the same parties.

"2. The plaintiff filed the two suits on two bonds, both respectively dated Maha Sud 6th, 1934, corresponding with the 8th February, 1878. From the language of the bonds it appears that they were passed by the defendants in respect of the principal and interest due on a previous bond for Rs. 299, bearing

* Civil Reference, No. 66 of 1882.