

1883

HARMUKH-  
GAURI  
v.  
HARISUKH-  
PRASAD.

is three years, as prescribed by article 60. It is true that this is not the view which was expressed in the case to which the District Judge refers—*Chhaganlal v. Bapubhai* (1), but it is to be observed that the question raised and argued in that case was whether the 'hak' in dispute was moveable or immoveable property, and whether the period of limitation was six years, as alleged by the defendant, or twelve years as contended by the plaintiff. It was never argued that a shorter period than either might possibly apply, and the question of the applicability of art. 60 was not even considered. Had this argument been presented to the Court, it is more than probable that it would have prevailed.

Under the view which we now take we must reverse so much of the decrees of the Courts below as awards to the plaintiff the sum of Rs. 499-8-0 and costs in proportion. In other respects the decrees are confirmed. The respondent to bear the costs of this second appeal. The parties to bear their own costs in the Courts below.

*Decree varied.*

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(1) I. L. R., 5 Bom. 68.

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### APPELLATE CIVIL.

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

*In re BHAVANIBAI, WIDOW of BALA MAHARAJ.*

*Stamp Act I of 1879, Sch. I, Art. 36—Instrument of gift—Endorsement at foot of document.*

On the 3rd of April, 1878, on which date the Stamp Act XVIII of 1869 was in force, A. passed to B. a document on plain paper granting B. an annuity charged on the revenues of a village. On the 24th of April, 1879, the Stamp Act I of 1879 being then in force, A. adopted C. as her son, and C. three days afterwards made the following endorsement upon the document: "I consent to act according to this *sanad*."

*Held* that the instrument should be stamped with a single stamp as an instrument of gift, under article 136, schedule I of Act I of 1879.

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\* Civil Reference, No. 64 of 1882.

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January 16.

THIS was a reference under section 46 of Act I of 1879 from J. G. Moore, Acting Commissioner, S. D., who stated the case thus :—

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*In re*  
BHAVANIBAI.

“On 3rd April 1878, one Bhavanibai, widow of Shri Sidheshwar Pandit *alias* Bala Maharaj, *inamdar* of the village of Kunnur, taluka Chikodi, Belgaum District, executed at Kolhapur (out of British India) a settlement on plain paper, whereby she granted to one Prabhakarbhat bin Janardanbhat an annuity of Rs. 325 out of the revenues of the village of Kunnur, for the worship and other religious ceremonies of the tomb of Bala Maharaj. On the 24th April, 1879, the lady adopted a son by name Nana Maharaj, who endorsed on 27th idom at Kolhapur (without affixing any stamp thereto) the aforesaid deed by way of ratification in the following words :—

“ I consent to act according to (the terms of) this *sanad*.”

“The document was presented to the Collector of Belgaum for denoting the stamp duty thereon in September, 1880, and he having satisfied himself that it was executed out of British India, and that it first arrived in British India on 17th August, 1880, treated it as one instrument, and ordered it to be stamped with a stamp of Rs. 65—art. 21, sch. I of Act I of 1879 (Annuity Conveyance).

“The points for decision are :—

“(1) Whether the document with the endorsement written on it, one year after its execution, is a single instrument, or whether the deed executed by the widow and the endorsement by the adopted son must be treated as separate instruments ?

“(2) Whether, if the whole be taken as one instrument, the stamp duty should be fixed under Act XVIII of 1869, which was in force when the deed was executed by the widow, *viz.*, on 3rd April, 1878, or according to the provisions of the new Act of 1879, which was the law when the deed was endorsed by the adopted son on the 27th April 1879 ?

“(3) Whether, if they be regarded as two distinct instruments, the endorsement by the adopted son is liable to any, and if so to what, stamp duty, and whether duty should be levied on both the instruments separately ?

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*In re*  
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"(4) Whether the document executed by the widow is a conveyance or a settlement?

"Opinion of the Commissioner, S. D.—

"Point 1.—The whole should not be considered as a single instrument, inasmuch as the deed executed by the widow was complete by itself, and because it was never intended to be endorsed by the adopted son, who had no *locus standi* at that time.

"Point 2.—If the whole be treated as one instrument, and the endorsement be not liable to stamp duty, it will be subject to the provisions of the old Act, 1869.

"Point 3.—Each of the instruments should be stamped as a settlement.

"Point 4.—The document is clearly a settlement; *vide* clauses 9 and 19 of section 4 of Act I of 1879."

There was no appearance on behalf of any party before the High Court.

SARGENT, C. J.—When the lady adopted a son, her gift *in futuro* became inoperative. The donee now claims under a gift from the adopted son, and if that instrument of gift be duly stamped, it will constitute a sufficient title-deed. The instrument should be stamped with a single stamp as an instrument of gift under article 36, schedule I, Act I of 1879.

### ORIGINAL CIVIL.

*Before Mr. Justice Scott.*

FRANCIS JOHN RAFFIN AND OTHERS, PLAINTIFFS, *v.* THE STEAM SHIP *CHILKA*, DEFENDANT.\*

*Salvage—Towage—Extraordinary towage—Claim of master and crew—Award—Apportionment.*

The s. s. *C.*, while employed as a Government transport to convey troops and stores from Bombay to Egypt, broke her screw shaft and became disabled. While in that condition the s. s. *H. B.* met her and towed her back to Bombay, the voyage occupying eleven days. The owners of the s. s. *C.* settled the claim of the owners of the s. s. *H. B.* for Rs. 37,500, but refused to recognize any separate claim to remuneration in the plaintiffs, the master and crew of the s. s. *H. B.*

\* Admiralty Jurisdiction, Suit No. 1 of 1882.

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March 12,  
13, 15, 16  
and 17.