

The fact that plaints have been returned by this Court is a fact that we regret, because we are clearly of opinion that such practice is wrong. Ten wrongs, however, do not make a right; and with reference to the precedents to which Mr. Pandurang Kirtikar has called our attention, it is sufficient to remark that there is not a single case in which the Court was called on to hear arguments, and formally to decide whether a plaint may or may not rightly be returned to a plaintiff, after it has been admitted to the file of the Court, and the court-fee stamps thereon have been punched.

Appeal dismissed.

Note.—See *Abdul Samad v. Rajindro Kishor Singh* (I. L. R., 2 All., 357); *Bai Motigavri v. Pranjivandas Bhaidas* (Printed Judgments for 1883, p. 100).

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ALL.

APPELLATE CIVIL.

Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice West.

SETH MULCHAND BADHARSHA, DECEASED, HIS HEIRS GHELA BHAI MULCHAND AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, v. BAI MANCHA, WIDOW OF SETH NAGINDAS MAYACHAND AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Hindu law—Alienation of immoveable property by widow—Will—Bequest.

An absolute bequest, by a Hindu of his separate immoveable property to his widow confers on her as full dominion and power of alienation over that property as if the bequest had been made to a stranger.

THIS was a second appeal from the decision of S. H. Philpotts, Judge of the District Court of Ahmedabad, affirming the decree of L. P. Parakh, Joint Subordinate Judge at the same place.

This suit was instituted by Mulchand (since deceased and represented by his heirs) for a declaration that the sale of a certain shop made by Bai Mancha (defendant No. 1) in favour of Lalchand (defendant No. 2) was valid only during her life-time, and that after her death he (plaintiff) was entitled to the property. He alleged in the plaint that he was the paternal uncle of Bai Mancha's husband, who died on the 17th October, 1878, without issue; that she had, therefore, only a life-interest in the shop, and was not competent to alienate it beyond her own life.

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* Second Appeal, No. 282 of 1882.

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The defence substantially was that she was the absolute owner of her husband's estate under his will dated the 2nd December, 1872; that the will gave her express authority to alienate it, and that, therefore, the alienation was valid.

The Subordinate Judge held that the husband of Bai Mancha had been separate in interest from the plaintiff and the sole owner of his property; that he had bequeathed the whole of his estate to his two widows with special power to alienate it; and that the sale of the shop by Bai Mancha was valid. His decision was confirmed by the District Judge in appeal.

The plaintiffs appealed to the High Court.

K. T. Telang (with *Nagindás Tulsidas*) for the appellant.—Under the Hindu law a wife has no authority to alienate immovable property given to her by her husband—*Vyav. Mayukha*, cap. IV, sec. 10 para. 9; *Stokes's Hindu Law Books*, p. 100. That rule is equally applicable to the power of a Hindu widow to alienate immovable property bequeathed to her by her husband. The law of wills among Hindus is analogous to the law of gifts, as held by the Privy Council in the *Tagore Will Case* (1). If the law declares a wife or widow incompetent to alienate such property, an express authority from her husband cannot remove the incompetency.

Branson (with *Bhāishankar*, of Messrs. *Jefferson, Bhāishankar and Dinsha*, Solicitors,) for the respondents.—The Courts below have found that Bai Mancha's husband was separate in estate, and sole owner of his property. It was perfectly competent to him to bequeath his property absolutely. If he had bequeathed it to a stranger, nothing could have prevented the latter from alienating it. If so, why should his bequest to his widow be attended with any restrictions, especially when she is given an express authority to alienate? This case is exactly similar to *Jeevan Punda v. Mt. Sona* (2), which held that a devise of immovable property to a Hindu widow, with an express power of alienation, was valid, and authorized her to alienate it. That case further

(1) *Jotindra Mohan Tagore v. Ganendra Mohan Tagore*, 9 Beng. L. B., 377; L. B., 1 Ind. Ap., 887.

(2) N. W. P. H. C. Rep. of 1869, p. 6 for the February number.

ruled that, as a Hindu was not incompetent to make a gift of his immoveable property to his wife, he was not incompetent to bestow it upon her by will. That decision fully governs the present case.

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The judgment of the Court was delivered by

WEST, J.—The testator in this case, having no sons, bequeathed his shop to his widows, one of whom survives. As there was no co-owner with him of the property, he could have given it, and might, therefore, bequeath it to a stranger with as full ownership as he had himself, and with the usual incidents of ownership, amongst which is the power of alienation. In the case of the widow, however, Mr. Telang refers to chapter IV, sec. 10, para. 9, of the Vayav. Mayukha, as preventing the alienation of immoveable property given by a husband to his wife, and as equally preventing the widow's alienation of property bequeathed by her husband. That bequests stand substantially on the same footing as gifts was finally ruled by the *Tagore Case*; but the case referred to by Mr. Branson shows that the Hindu law has been construed as allowing a gift of full ownership with power of disposal to a wife and in the form of bequest to a widow as well as to a stranger. The Smriti passage in the Mayukha (taken from Narada) had reference probably to a stage of progress in which the severance of an estate from the family was still looked on as impossible, or, at least, as sacrilegious. Separate ownership and the power of alienation must be attended with the incidents requisite to give them effect; and as the general power of disposal of property has become recognized by the modern law, it seems impossible to say that it is to be subjected to restrictions when exercised in favour of a widow which were provided for an entirely different state of things. Moreover, the supposed law could be readily evaded by a gift or bequest to a wife's father, or brothers, or sister, and a transfer by the donee or legatee. It is not necessary to give to the Hindu law a construction which would make it at once unreasonable and ineffectual. Colebrooke, in 2 Strange's Hindu Law, 15 (Ed. of 1825) says a husband may make a gift of immoveable property to his wife, and that it thus becomes fully at her disposal. Where the

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husband had sole ownership, this is the rational rule, not putting the wife or widow in a worse position than a stranger. W.P. therefore, confirm the decree of the District Court, with costs(1).

Decree confirmed.

(1) See also, in connection with this case, *Prosunno Coomar Ghose v. Tarrucknath Sirkar*, 10 Beng. L. R., 267.

ORIGINAL CIVIL.

Before Mr. Justice West and Mr. Justice Scott.

In re THE FLEMING SPINNING AND WEAIVING COMPANY (LIMITED)
IN LIQUIDATION.

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Sept. 7, 14.

JEHANGIR GUSTADJI AND NANABHAI RUSTOMJI RANINA (PETITIONERS
AND RESPONDENTS).

JOOSUB HAJI AHMED, APPELLANT.*

Company—Voluntary winding up—Transfer or sale of business—Special resolution—Dissentient member—Notice of dissent—requirements of notice—Powers of voluntary liquidator—Waiver—Arbitration—Failure to make award—Second arbitration—Indian Companies' Act X of 1866, secs. 116, 149, 175 to 179.

The F. S. & W. Company (Ld.) in the course of being wound up voluntarily proposed to transfer its business and property to another Company to be called the New F. S. & W. Company; and passed a special resolution on the 3rd July, confirmed on the 31st July, 1878, under section 175 of the Indian Companies' Act X of 1866, empowering the liquidators to carry out the transfer. J., a dissentient member of the old Company, sent on the 5th August, and, therefore, within the seven days provided by that section, a notice expressing his dissent from such resolution; but the notice did not contain the requisition provided for by the latter part of that section, requiring the liquidators either to abstain for carrying the resolution into effect, or to purchase his interest in the Company. The liquidators, however, replied on the 23rd August by offering to purchase J.'s shares, which offer being refused, they and J. entered into an agreement on the 12th October, "in pursuance of the provisions in that behalf contained in the Indian Companies' Act X of 1866," for the reference of "the dispute as to the price to be paid to the said J. for his shares in the F. S. & W. Company (Ld.);" to two arbitrators and an umpire to be named by them. The agreement fixed a short date for the making of the award. The arbitration