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decided cases, at least, pointing the other way; we find also certain principles laid down by the Privy Council which militate against the plaintiff; and we have the general tendency of the Courts, from the Privy Council downwards, in favour of limiting the exercise of the power of adoption by women after the death of their husbands. Taking all these considerations together, we have come to the conclusion that the plaintiff is not by virtue of his adoption entitled to oust the defendant Gojarabai from the estate of her husband, and we must, therefore, dismiss the appeal, and confirm the decree of the Court below with costs.

Decree confirmed.

14 B. 472.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

HERAMBDEV DHARNIDHARDEV (*Original Defendant*), Appellant
v. KASHINATH BHASKAR (*Original Plaintiff*), Respondent.*
[31st March, 1890.]

Registration—Endorsement on a sanad returning the sanad to the grantor—Evidence—Admissibility—Evidence Act (I of 1872), s. 92, Proviso 4.

The plaintiff sought to attach a certain *hak* as belonging to his judgment-debtor K. The defendant, who was the original grantor of the *hak*, pleaded a re-grant of the *hak* to himself. In support of this plea, the defendant produced from his [473] possession the original *sanad* bearing the following endorsement by K.—“You have passed me a receipt for the *sanad*. I have, accordingly, given you the ownership of the *sanad*. Therefore over the said *sanad* I have no right or title.” The defendant offered to put in this endorsement, and also tendered the evidence of K.’s brother. This evidence was rejected by the Court, on the ground that the endorsement, which had the effect of extinguishing the grant, was not registered.

Held, that the endorsement did not require registration. It did not itself rescind the grant to K. nor constitute a re-grant to the defendant. It was simply an endorsement returning the *sanad* to the defendant, and, therefore, passed no interest in any property.

Held, further, that the alleged re-grant was a transaction entirely distinct from the original grant, and, therefore, not one falling under proviso 4 to s. 92 of the Evidence Act (I of 1872). The defendant was at liberty to adduce evidence to prove this transaction.

[*Appr.*, U. B. R. (1902) 4th. Qr. Evidence 92; R., 129 P. W. R. 1908; D., 24 B. 615.]

APPEAL from the decision of E. T. Candy, Agent for Sardars in the Deccan, at Poona, in original suit No. 2 of 1888.

The facts of this case were as follows:—In 1867 the defendant granted by a *sanad* a certain *sirdeshmukhi hak* to Kakaji Ganesh and his heirs in perpetuity.

In 1881 the defendant alleged that the grant was rescinded and the *sanad* returned by the grantee with an endorsement to the following effect:—“You have passed me a receipt for the said *sanad*. In accordance with that receipt, I have given you the ownership of the *sanad*. Therefore over the said *sanad* I have no right or title. This I have written, 2nd June, 1881.”

* Appeal, No. 10 of 1889.

The plaintiff obtained a decree against Kakaji, and in execution attached the *sirdeshmukhi hak*. The attachment was raised at the instance of the defendant.

Therefore the plaintiff filed the present suit for a declaration that the *hak* in question belonged to his judgment-debtor Kakaji, deceased, and was liable to attachment and sale in execution of his decree against the deceased.

The defendant pleaded that the grant to the deceased Kakaji had been revoked, and that the deceased had no longer any saleable interest in the *hak* in question.

In support of this plea the defendant tendered in evidence the endorsement written by the deceased on the back of the *sanad*. He also cited the deceased's brother as his witness.

[474] The Agent held that this evidence was inadmissible, on the ground that the endorsement, which had the effect of extinguishing the grant, was not registered. He found that the grant was not rescinded, and passed a decree in plaintiff's favour.

Against this decision the defendant appealed to the High Court.

Daji Abaji Khare, for appellant.—The endorsement does not require registration, under s. 92, proviso 4, of the Indian Evidence Act.

[BIRDWOOD, J.—How can you prove the re-grant, if the transaction is in writing, and not registered?]

I submit the re-grant is not in writing. The endorsement merely says that the *sanad* is returned to the grantor. It does not itself rescind the grant, or constitute a fresh grant. It does not, therefore, create or extinguish any interest in immoveable property. Section 17 of the Registration Act III of 1877 does not, therefore, apply—*Waman Ramchandra v. Dhondiba Krishnaji* (1).

Ganesh R. Kirloskar, for respondent.—The endorsement is, in effect, a re-grant of the *hak*. It is a cancellation or extinguishment of the original grant. As such it requires registration—*Umedmal v. Davu* (2).

JUDGMENT,

BIRDWOOD, J.—The plaintiff wished to attach a *sirdeshmukhi hak* as the property of his judgment-debtor, Kakaji Ganesh. The defendant is the grantor of the *hak*, and pleaded a re-grant to himself by the grantee. The original *sanad* was produced from the defendant's possession, and bears the following endorsement by Kakaji :—"You have passed me a receipt for the said *sanad*. In accordance with that (receipt) I have given you the ownership of the *sanad*. Therefore, over the said *sanad* I have now no right or title. This I have written, dated 2nd June, 1881." It was the defendant's case that though he and Kakaji were at first on good terms at the time when the grant was made, there were subsequently disagreements, as Kakaji had fallen into arrears with certain rents, and that ultimately he agreed to remit these arrears on Kakaji restoring the *hak* to him. The defendant tendered the evidence of Kakaji's brother, Bhagvant, under [475] s. 32, cl. (3), of the Indian Evidence Act, 1872, in support of his case. The Agent for Sardars rejected this evidence, and, in

(1) 4 B. 126.

(2) 2 B. 547.

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doing so, remarked that there was nothing to show that Kakaji's brother had any interest in the *hak*. It is to be noted, however, that Bhagvant describes the *hak* as "our" property,—that is, apparently, as his own and Kakaji's. It was apparently a matter for enquiry whether the two brothers were united in interest as regards the *hak*. But, however, that may be, the real reason for rejecting the evidence of Bhagvant is to be found in the further remark of the Agent, endorsed on the defendant's application, that "as long as the extinguishment of the grant is not registered and so is inadmissible, this evidence is useless." The Agent here refers evidently to the endorsement on the *sanad*. We think that he was wrong in holding that it required registration. It does not rescind the grant to Kakaji. It is not itself a new grant by Kakaji. It is simply an endorsement returning the *sanad* to the defendant; and it is the case for the defendant that the *sanad* was returned in accordance with the agreement referred to in his affidavit in answer to interrogatories delivered under s. 121 of the Civil Procedure Code (Act XIV of 1882). The endorsement passed no interest in any property. What passed the property was the alleged transaction between Kakaji and the defendant, which was entirely distinct from the original grant by the defendant. As to this new transaction, it was clearly open to the defendant to adduce evidence (*Rakhmabai v. Tukaram* (1).) This is not a case falling under s. 92, cl. 4, of the Evidence Act I. of 1872, to which the ruling in *Umedmal v. Davu* (2), relied on by the Agent, is applicable. The defendant must now be allowed to prove the special case set up by him.

The decree of the Agent is reversed, and the case remanded for re-hearing. Costs to abide the result.

Decree reversed and case remanded.