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APPEL-
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18 B. 684.

dealing with the case it will be necessary to bear in mind that the balance, Rs. 267-9-8, was the result of the sale of two properties Nos. 111 and 166, in the latter of which alone the plaintiff was interested. Costs to abide the result as regards appellant and defendant No. 3. But the appeal must be dismissed as against defendant No. 4 with costs.

Decree reversed and case sent back.

18 B. 688.

APPELLATE CIVIL.

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

ABAJI GANGADHAR (*Original Plaintiff*), *Appellant v. MUKTA KOM
RAGHU AND ANOTHER (Original Defendants), Respondents.**
[11th October, 1893.]

Gift—Necessity of possession—Attestation of deed, effect of.

In 1873, Ramji, a Hindu, executed a deed of gift of his immoveable property to his daughter Mukta (defendant No. 1). The deed was attested by the plaintiff. In 1878, Ramji mortgaged to the plaintiff some of the land comprised in the deed of gift. Ramji died in that year, and in 1882 his grandson conveyed the equity of redemption to the plaintiff, who was already in possession of the mortgaged land as mortgagee. In the year 1888 the plaintiff being dispossessed by Mukta (defendant No. 1) and the second defendant, to whom she had sold the land, he brought the present suit to recover possession. The defendants relied upon the gift.

Held, that the plaintiff was entitled to possession. At the time of the mortgage to him in 1878 Ramji had not completed his gift to Mukta by giving possession. He was, therefore, in a position to give the plaintiff a good title. It had not been shown that Mukta had ever been treated as the owner of the equity of redemption.

[689] *Held*, also, that the circumstances that the plaintiff attested the deed of gift in 1873 could not affect his title, as the gift had not been completed by delivery of possession.

[R., 21 P.L.R. 1901.]

SECOND APPEAL from this decision of T. Hart-Davies, Acting District Judge of Ahmednagar.

In 1873, by a registered deed of that date Ramji Jaitha made a gift of his immoveable property, including the land in dispute in this suit, to his daughter Mukta (defendant No. 1). The deed was attested by the plaintiff and by one of the donor's sons. Ramji, however, remained in possession, and in 1878 he mortgaged to the plaintiff a part of the lands comprised in the deed of gift and put the plaintiff in possession as mortgagee. Ramji died in the same year. In 1882, Ramji's grandson, Vithal, conveyed the equity of redemption to the plaintiff. In 1888, Mukta and the second defendant, to whom she had sold the land in question, forcibly dispossessed the plaintiff, and he then brought this suit to recover the land. The defendants relied upon the gift to Mukta by her father Ramji.

The Subordinate Judge dismissed the suit, holding that the gift to Mukta was valid and had been acted upon by delivery to her of possession of other lands.

* Second Appeal No. 399 of 1892.

On appeal by the plaintiff, the Judge confirmed the decree.
Plaintiff preferred a second appeal.

Mahadeo Chimmaji Apte for the appellant (plaintiff):—The lands in dispute were Ramji's ancestral property. He could not, therefore, make a gift of them to the prejudice of his heirs, namely, Govinda and his son Vithu. Further, the gift was not completed by delivery of possession to the donee. Ramji continued in possession after the gift, and mortgaged the property with possession to the plaintiff. On both these grounds, the gift to Mukta was invalid, and that being so she could not convey a valid title to the second defendant. The plaintiff is entitled to recover possession—*Vasudev Bhat v. Narayan Daji* (1).

There was no appearance for the respondents (defendants).

JUDGMENT.

SARGENT, C. J.—Both the Courts below have omitted to consider an important fact in the case, that is, that Ramji had not [690] given possession to his daughter Mukta under the deed, and the gift had, therefore, not been completed when he executed the mortgage in 1873 to the plaintiff—*Vasudev Bhat v. Narayan Daji Damle* (1)—and he could, therefore, confer a good title on the plaintiff. Nor is there any evidence to show that she was ever treated as the owner of the equity of redemption by Ramji or Vithu so as even to effect the latter's title. The circumstance that plaintiff attested the deed of gift in 1873 could not affect this title, as the gift was never completed by possession. Under these circumstances Mukta could confer no title on defendant No. 2; and as he only purchased in 1882 he could not have acquired title by adverse possession before the present suit was brought.

We must, therefore, reverse the decree of the Court below and order that possession of the land in question be given to the plaintiff. Plaintiff to have his costs in both the Courts below.

Decree reversed.

18 B. 690.

APPELLATE CIVIL.

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

KEDARI AND OTHERS (*Original Defendants*) v. GAJAI KOM NARAYANRAO AND ANOTHER (*Original Plaintiffs*), Respondents.* [17th October, 1893.]

Landlord and tenant—Mirasi tenure—Mirasi tenure declared in a decree—Civil Procedure Code (XIV of 1882), s. 253—Subsequent payment of rent by defendants not a payment under decree but under the tenure, and so need not be certified under s. 258 of the Civil Procedure Code.

The plaintiff sued the defendants to recover possession of certain land. The defendants pleaded they were *mirasi* tenants and entitled to possession as long as they paid the rent. The suit was compromised, and by a consent decree it was declared that the defendants held by *mirasi* tenure and they were directed to pay rent "as before," or in default the plaintiff should take possession. The plaintiff afterwards applied in execution for possession, alleging that the rent had not been paid. The defendants pleaded that it had been paid, and the

* Second Appeal, No. 335 of 1893.

(1) 7 B. 131.