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occupiers of which reside in England. It is obvious, in such cases, that the result of our decision must make the provisions of the Act nugatory for a considerable time at all events, that is, until steps can be taken to summon the occupiers of the factories, during which time of course the employés of the factory will be exposed to all the dangers of the machinery not properly fenced. But we have only to construe the words of the Legislature irrespective of the possibly injurious consequences to a class of persons incapable of protecting themselves.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Aston.

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April 17.

MAHAMMADUNISSA BEGUM (ORIGINAL DEFENDANT), APPELLANT, *v.* J. C. BACHELOR (ORIGINAL PLAINTIFF), RESPONDENT.*

Mahomedan Law—Gift—Possession, transfer of, by the donor—Relinquishment of a share by a Mahomedan in the property of the deceased—Valuable consideration—Transfer of Property Act (IV of 1882), section 53—Fraudulent transfer—Good faith.

To facilitate the action of the Collector in obtaining the certificate of guardianship to the property of a Mahomedan minor, under the Guardian and Wards Act (IX of 1890), *M*, the uncle of the minor, relinquished in favour of the minor, the share to which he was entitled in the property of his deceased brother, the father of the minor girl. The certificate was duly obtained by the Collector. The plaintiff, a judgment-creditor of *M*, then, sued the minor for a declaration that *M*'s share in the property of his brother, which he had relinquished, was liable to attachment and sale in execution of his decree. The lower Court decreed the plaintiff's claim on the grounds that the relinquishment was not valid and binding upon the donor under the Mahomedan Law since being a gift it had not been accompanied and perfected by possession and that it was void against *M*'s creditors under section 53 of the Transfer of Property Act (IV of 1882) because it had been made with intent to defeat, delay or defraud them:

Held, that the relinquishment by *M*, of his share in the property of his brother was not a gratuitous transaction, but was supported by valuable consideration, since as consideration for the Collector's undertaking the responsibility of administrator of the minor's property, he agreed to relinquish his share to the minor: the relinquishment was not a mere gift but was supported

*First appeal No. 121 of 1903.

by consideration which the law regards as valuable and that, therefore, the rule of Mahomedan Law, which requires that a gift must be accompanied by possession to render it valid and binding upon the donor, did not apply to the transaction.

Held, further, that as the transfer was made by *M* honestly with the intention of parting with his share in favour of the minor for the purpose of removing the difficulties in the way of the Collector's application then pending and of enabling him to obtain a certificate of guardianship to the minor, and as it was not a contrivance resorted to for his own personal benefit it was not void under section 53 of the Transfer of Property Act (IV of 1882).

APPEAL from the decision of Chimanlal L., First Class Subordinate Judge at Surat.

Suit for a declaration that the share which the judgment-debtor had in his brother's property was liable to be attached and sold in execution of a decree against him.

One Mir Mahomed Rasulkhan died in about the year 1895, leaving him surviving his brother Mir Abdul Alam Rasulkhan, otherwise known as the Nawab of Bella, his mother Badi Begum, his wife Padshah Begum, two daughters Mahabulnissa Begum (who died four months after her father's death) and Mahammadunissa Begum (the defendant), and two sisters, Bismilla Begum and Ladli Begum.

Mahammadunissa Begum being a minor, the Collector of Surat, on the 14th January 1897, applied to the District Court at Surat, under section 7 of the Guardian and Wards Act (VIII of 1890), to be appointed guardian of the property of the minor. To this application Mir Abdul Rasulkhan offered no opposition: but Badi Begum and Padshah Begum strenuously opposed the same.

While the application was pending, the Collector paid a visit to these two ladies, Badi Begum and Padshah Begum, on the 25th September 1898. At this interview, the Nawab of Bella was also present. The result of the interview was that all the three persons then present agreed to relinquish the share each of them had in the property of the deceased Mir Mahomed Rasulkhan. The object of the relinquishment was to facilitate the action of the Collector in getting a certificate of guardianship to the property of the minor and in managing the same. On the same day Mir Mahomed Rasulkhan, Badi Begum and Padshah Begum conjointly presented an application to the District Court,

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wherein they said: "We have abandoned (or released) (all) our rights in the share which we have in the property belonging to the deceased Mir Mahomed Alumkhan according to the Koran. And we have made the minor, Mahammadunissa Begum, the independent owner of the entire property. Therefore, please to order a certificate to be given to His Honour the Collector with regard to the whole of the property."

On the 15th October, 1898, the District Court granted a certificate to the Collector appointing him guardian of the property of the minor.

The plaintiff had sold some goods to Mir Abdul Rasulkhan, Nawab of Bella. He filed a suit in the Court of the Subordinate Judge at Allahabad to recover the value of the said goods and obtained a decree for Rs. 11,392-13-0 on the 16th May 1896. This decree was transferred to the Surat Court for execution. The plaintiff filed in the latter Court Darkhast No. 247 of 1900 for the attachment and sale of Mir Abdul Rasulkhan's share in the property of his deceased brother. The property was attached and the date for its sale was fixed. But before the date of the sale, on the 15th December 1900, Mahammadunissa Begum (defendant) filed a miscellaneous application to raise attachment, and the Court raised the attachment on the 15th January 1901.

The plaintiff thereupon filed this suit against Mahammadunissa Begum for a declaration that Mir Abdul Rasulkhan's share in the property of his deceased brother was liable to be attached and sold in execution of his decree.

The Subordinate Judge held that Mir Alam Rasulkhan had $\frac{7}{144}$th share in the property of his deceased brother, that he gave his share in gift to the minor defendant, but that the gift was invalid as there was no delivery of possession, that the gift by Mir Alam Rasulkhan was fraudulent and voidable under section 53 of the Transfer of Property Act, and that the plaintiff was entitled to have the share of his judgment-debtor sold in execution of his decree.

The defendant preferred an appeal from this decision to the High Court.

Branson (with him *V. J. Kirtikar*, Government Pleader), for the appellant.

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MAHAMMADU-NISSA BEGUM v. J. C. BACHE-LOR.

M. N. Mehta, for the respondent.

CHANDAVARKAR J.—This is an appeal from the decree of the First Class Subordinate Judge at Surat in a suit which was brought by the respondent, J. C. Bachelor, for a declaration that his judgment-debtor, Mir Abdul Rasul Alumkhan, had a certain share in the estate of his deceased brother, Mir Mahammad Rasulkhan, and that the said share was liable to attachment and sale in execution of the respondent's decree. The appellant, who was defendant in the suit, is the daughter of Mir Mahammad Rasulkhan, and, being a minor, was represented in the Subordinate Judge's Court, as she is now in this appeal, by her guardian, the Collector of Surat. The claim was contested on her behalf in the lower Court on the ground of an alleged relinquishment of his share by Mir Abdul Rasul Alumkhan in favour of the minor.

The Subordinate Judge found the relinquishment proved but he held that it was not valid and binding upon the donor under the Mahomedan Law, because, being a gift, it had not been accompanied and completed by possession, and that it was void against the donor's creditors under section 53 of the Transfer of Property Act, because it had been made with intent to defeat, delay, or defraud them.

These two grounds, on which the Subordinate Judge allowed the claim of the respondent, have been attacked in this appeal.

The main facts of the case as to the circumstances under which the relinquishment was made are not in dispute. The property in suit, in which Mir Abdul Alam Rasulkhan, the Nawab of Bella, had the share which he relinquished in favour of the minor appellant, was inherited by him with others in 1895 as heir of his deceased brother, Mir Mahammad Rasulkhan, according to the Mahomedan Law. The other heirs were:—(1) the deceased's mother, called in the case the *Badi Begum*, (2) the deceased's widow by name *Padsha Begum*, (3) his two daughters, the present appellant and *Mukbulnissa Begum*, the latter of whom died three years ago; (4) and the deceased's two sisters, *Bismilla Begum* and *Mehbulla alias Ladli Begum*.

On the 14th of January 1897, the Collector of Surat applied to the District Court to be appointed guardian of the property of the present appellant, her sister *Mukbulnissa Begum* having

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been dead. The application was opposed by the appellant's mother, *Padsha Begum*, and grandmother *Badi Begum*.

While the application was pending, the Collector paid a visit to these two ladies. At that interview, which took place on the 25th of September 1898, the Nawab of Bella was also present. The object of the visit, as stated by Mr. McNeill, the then Collector of Surat, in his deposition, Ex. 64, was "to get over certain difficulties in connection with the appointment of the Collector as guardian of the minor." That object was to be achieved by getting the *Badi Begum* and the Nawab of Bella (*i.e.*, Mir Abdul Alam Rasulkhan) "to sacrifice some of their own interests with a view to facilitate the appointment of the Collector as guardian for the management of the property of the minor by the Collector." The result of the interview was that the *Badi Begum*, the *Padsha Begum*, and the Nawab of Bella agreed to relinquish their respective shares in the property of the deceased, Mir Mahomad Rasulkhan, in favour of the minor appellant with a view to enable the Collector to obtain the certificate. Subsequently the two ladies and the Nawab presented an application to the District Court which was in these terms:—

"We have abandoned (or released) (all) our rights in the share which we have in the property belonging to the deceased Mir Mahomed Alumkhan, according to the Koran. And we have made the minor, Mahammadunissa Begum, the independent owner of the entire property. Therefore, please to order a certificate to be given to His Honour the Collector with regard to whole of the property."

The District Court accordingly gave a certificate to the Collector appointing him guardian of the minor appellant's property under the Guardian and Wards Act.

The Subordinate Judge's view that the relinquishment of his share by the Nawab of Bella in favour of the minor appellant is no more than a "gratuitous gift," unsupported by any consideration, leaves out of sight the substance of the transaction which led to, and ended in, the relinquishment in question. At the date of it, the Collector had applied for a certificate of administration to the minor's property. But there were difficulties in his way and he was doubtful whether he could succeed in getting the

certificate, seeing that the property was part of an estate held jointly by the minor, her mother, her grandmother, her paternal uncle, and her two paternal aunts, as tenants in common. He interviewed three of the co-sharers of the minor and they agreed to relinquish their respective shares in favour of the minor with the object of removing the difficulties and enabling him to obtain the certificate. Their subsequent application to the District Court can bear no other reasonable interpretation than that, as consideration for the Collector's undertaking the responsibility of administrator of the minor's property they jointly agreed to relinquish their shares to the minor. The relinquishment by each was consideration for relinquishment by the others. In effect they said to the District Court: "We have agreed to relinquish our shares; and as consideration for that, the Collector has agreed to become the guardian of the minor's property. Please, therefore, appoint him guardian and give him a certificate." The transaction, therefore, was not gratuitous. It was supported by valuable consideration, which has been defined as "some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other" (see per Lush J. in *Currie* v. *Misa* (1)). It is a reasonable view to take of the case that the Collector undertook the responsibility of taking charge of the minor's property, of acting as her guardian and of accounting to the District Court for his management in that capacity, with the consent and at the instance of three of the co-sharers of the minor, of whom the respondent's judgment-debtor was one, that but for it he might have not thought it worth his while to proceed with his petition and undertake an office of trust and responsibility. Such undertaking by the Collector, acting on behalf of the minor, was the consideration for the relinquishment in favour of the minor.

Under these circumstances the relinquishment was not a mere gift. It was a transfer of property, supported by consideration which the law regards as valuable. It is idle to speculate what benefit could have accrued to the transferors from the Collector's appointment as guardian. If they thought that the benefit to

(1) (1875) L. R. 10 Ex. 153, p. 162.

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the minor was beneficial to them, it is a sufficient motive to uphold the transaction as resting on valuable consideration. The rule of Mahomedan Law, which requires that a gift must be accompanied by possession to render it valid and binding upon the donor, does not apply to the transaction because this was not a mere gift.

The only material question, then, is, whether the transfer was made with intent to delay, defeat, or defraud creditors, and is, on that account, voidable at the option of the latter: section 53 of the Transfer of Property Act.

No doubt at the time of the transfer, the respondent's judgment-debtor was heavily involved in debt and there were decrees standing against him. But the last paragraph of section 53 of the Transfer of Property Act provides that "nothing contained in this section shall impair the rights of any transferee in good faith and for consideration." If the transfer was made by the respondent's judgment-debtor honestly with the intention of parting with his share in favour of the minor for the purpose of removing the difficulties in the way of the Collector's application then pending, and of enabling him to obtain a certificate of guardianship to the minor, and if it was not a contrivance resorted to for his own personal benefit, it is not void and must have effect. The test of *good faith* is whether it was a genuine or a colourable transaction: *Alton* v. *Harrison* (1); *Ex parte Games* (2). As was pointed out by Denman C. J. in *Wood* v. *Dixie* (3), if a conveyance is made *bonâ fide* and with a full intention that the property should be parted with, it will not be fraudulent if made with intent to defeat the execution. "Such a motive does not defeat the assignment."

Upon the evidence before us there can be no question that Mr. McNeill, the Collector, who acted for the minor throughout the transaction, was anxious that there should be no difficulty in the way of his appointment by the Court as guardian of the minor's property; and that it was for the removal of that difficulty that the respondent's judgment-debtor and the minor's mother and grandmother respectively transferred their shares to

(1) (1869) 4 Ch. App. Cas. 622. (2) (1879) 12 Ch. D. 314.
(3) (1845) 7 Q. B. 892 at p. 896.

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the minor. There is no reason to suppose that the Collector was not acting in good faith—that, in other words, he arranged for and agreed to a colourable transfer with no intention that the transferors should really part with their rights. The transfer was not merely of the share of the respondent's judgment-debtor. The mother and the grandmother also relinquished their shares. It is not suggested that these two were involved in debts at the time or had any motive of defeating or delaying any present or future creditors. The fact that they joined the repondent's judgment-debtor in the relinquishment is additional proof of the *bonâ fides* of the transaction. The evidence, no doubt, shows that since the relinquishment the minor's mother and grandmother have been in physical possession of the property and that they, not the Collector, have paid the taxes. But that circumstance is not sufficient to throw suspicion on the good faith of the transferee, who in this case was the Collector acting for the minor. As mother and grandmother respectively of the minor, it is but natural that they have been allowed by the Collector to live with her.

For these reasons we must reverse the decree of the Subordinate Judge and reject the claim with costs throughout on the respondent.

R. R. *Decree reversed.*

FULL BENCH.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Chandavarkar and Mr. Justice Aston.

1905.
April 18.

SHIVLAL BHAGVAN (ORIGINAL PLAINTIFF), APPELLANT, v. SHAMBHU-PRASAD PARVATISHANKAR, DECEASED, AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Decree on mortgage against minors—Sale in execution—Reversal of decree in appeal—Attachment in execution of a money-decree—Title of the purchaser in execution of the decree on the mortgage—Lis pendens—*Stay of execution.*

* Second Appeal No. 514 of 1904.