

APPELLATE CIVIL.

*Before the Honourable Mr. Chandavarkar, Acting Chief Justice,
and Batchelor and Heaton, JJ.*

KRISHNAJI NARAYAN HARDIKAR (APPLICANT) v. BALKRISHNA
VENKATESH PHADKE (OPPONENT).*

1909.

July 2.

Relinquishment of claim by reversioner—Release—Stamp.

The relinquishment of his claim by a reversioner is a release and must be stamped accordingly.

Reference by W. T. Morison, Commissioner, Central Division, under section 57 of the Stamp Act (II of 1899).

The circumstances which gave rise to the reference were as under—

On the 3rd December 1908 one Balkrishna Venkatesh Phadke passed a "consent paper" in favour of Krishnaji Narayan Hardikar as follows:—

I pass this consent paper for a reason as follows:—Chiranjiv Ganga-bhagirathi Bhagirathibai, widow of Kashinath Lakshman Phadke, who was my cousin, did, at the request of her father-in-law, pass to you as gift the under-mentioned house of the value of Rs. 400 at the time of his exequial ceremonies, i.e., on the 25th of April 1903. The particulars of that house are as follows:—

* * * * *

The house thus described above and enclosed within the aforesaid boundaries, together with the things appertaining thereto, has been given to you as a gift. The same is agreed to and approved of by me. I duly pass this consent paper to you.

* * * * *

The above consent paper is passed by me without taking any consideration for it. Now, excepting yourself, neither myself nor my heirs and representatives have any manner of right or claim left over or to the same.

A question having arisen as to what was the proper stamp duty to the said document, the Sub-Registrar of Sholapur was of opinion that it did not fall under section 4 of the Stamp Act, as that section applies to sales, mortgages or settlements. He was

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further of opinion that the deed was either a gift of reversionary interest or a release of that interest. Being thus doubtful on the question, he referred it to the Commissioner, Central Division, through the Collector of Sholapur under section 56 of the Stamp Act. In forwarding the reference to the Commissioner under section 40 of the Stamp Act, the Collector agreed with the view of the Sub-Registrar that section 4 of the Stamp Act was not applicable but he was doubtful whether the document was a deed of gift or a deed of release of reversionary interest.

The Commissioner, thereupon, made a reference under section 57 of the Stamp Act in the following terms :—

The chief question is whether the deed of consent in question is a gift or a release. In my opinion the document cannot be a gift, as Balkrishna has no existing interest in the property in question. (*Vide* definition of gift on page 254 of Desai's Stamp Act.) The document appears to be a release on the analogy of the case at I. L. R. 24 Allahabad 372, and the Madras Board's Proceedings No. 340 of 25th February 1881, printed on page 304 of Desai's Stamp Act.

G. S. Rao, Acting Government Pleader, appeared for the Government of Bombay.

PER CURIAM.—The Court agrees with the Commissioner and holds that the relinquishment of his claim by the reversioner is a release and must be stamped accordingly.

Order accordingly.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Beaman.

1909.

July 5.

DAGDU VALAD SAKHARAM KUNBI (ORIGINAL PLAINTIFF),
APPELLANT, v. TOTARAM VALAD NARAYAN KUNBI AND OTHERS
(ORIGINAL DEFENDANTS), RESPONDENTS.*

*Court Fees Act (VII of 1870), section 7, clause (iv) (b), section 7, clause (v),
—Suits Valuation Act (VII of 1887), section 8—Suit for partition and
separate possession of joint family property—Valuation for Court fee
purposes—Market value of subject matter determines jurisdiction—
Jurisdiction.*

* Appeal No. 3 of 1909, from order,