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a Court "in holding that a legislative body intended not merely to alter the law, but to alter it so as to deprive a litigant of a judgment rightly given and still subsisting."

Here the decree of this Court, of the 14th of August 1908, still subsists. It is not affected by the Government Notification although that notification had a retrospective effect. The notification could not abrogate rights which had been judicially declared and had become merged in decrees. On this ground the decree of the Court below must be confirmed with costs.

Decree confirmed.

G. B. B.

APPELLATE CIVIL.

Before Sir Narayan Chandavarkar, Kt., Acting Chief Justice, and Mr. Justice Batchelor.

1912.
June 18.

BAI GULAB (ORIGINAL PETITIONER), APPELLANT, *v.* THAKORELAL PRANJIVANDAS (ORIGINAL OPPONENT), RESPONDENT.*

Hindu Law—Minor—Capacity to make will—Indian Majority Act (IX of 1875), section 3.

A Hindu minor, who has not attained majority as provided in the Indian Majority Act, 1875, is not competent to make a will of his or her property.

APPLICATION for probate.

The testatrix was a Hindu and was above 16 years in age though she was under eighteen. By her will she disposed of property belonging to her.

The petitioner applied for probate of the will.

It was contended by the opponent that as the testatrix had not attained majority, as provided in section 3 of the Indian Majority Act, 1875, she was not competent to dispose of her property by making a will.

The District Judge agreed with this contention and rejected the application on the following grounds :—

* First Appeal No. 196 of 1911.

"It was argued that the object of section 2 of the Indian Majority Act is to confine the operation of the Act, to all acts which are of a contractual nature, and that it does not relate to the capacity of persons to act in other matters. It is doubtful whether marriage, in the case of a Hindu, can be termed a contract, and I am therefore not convinced that the argument is sound, but the question has been decided by the High Court of Allahabad in the judgment reported in the Allahabad Law Journal for April 1911 (Vol. VIII, No. 14) and the ruling is against the applicant's contention."

The applicant appealed.

L. A. Shah, for the appellant.

G. K. Parekh, for the opponent.

CHANDAVARKAR, ACTING C. J. :—The question in this appeal is whether a Hindu minor is competent to make a will. The right of a Hindu to make a will is based upon the principle that he is competent to make a disposition of his property to take effect after his death to the same extent to which he can make a disposition of it in his own life-time as a gift. It is clear law that a Hindu minor cannot make a gift of his property in his life-time. If that is so, it follows that he cannot make a will in respect of that property.

But it is argued in the present case that though the testatrix, having been under eighteen years of age, was a minor according to the Indian Majority Act, she was more than fourteen years' old and that, therefore, under the Hindu Law she was not a minor. On that ground we are asked to hold that, according to that law, she was competent to make a will.

But the Indian Majority Act has modified the Hindu Law on the question of minority except in respect of dower, divorce, marriage and adoption.

It is argued, however, by Mr. Shah for the appellant that the Indian Majority Act has not affected the rule of Hindu Law on the question of minority so far as the competency of a Hindu to make a gift *inter vivos* is concerned. That argument is clearly unsustainable. It is true the Legislature has not modified the Hindu Law so far as the competency of a Hindu to make a gift or a will is concerned, but the Legislature has laid down what the age of majority shall be for the purposes of that competency. The Hindu law having been

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repealed to that extent, the law now is that no Hindu can make a will who is less than eighteen years of age.

This is in accordance with the decision of the Allahabad High Court in *Harduari Lal* v. *Gomi*[1]. We must confirm the order with costs.

Order confirmed.

R. R.

(1) (1911) 8 All. L. J. 385.

APPELLATE CIVIL.

Before Sir Narayan Chandavarkar, Kt., Acting Chief Justice, and Mr. Justice Batchelor.

1912. *June* 25.

EKNATH PANDOBA KOSTI AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, *v.* DAGADURAM SAMBHURAM AND OTHERS (ORIGINAL PLAINTIFFS 1—4 AND DEFENDANT 3), RESPONDENTS.*

Dekkhan Agriculturists' Relief Act (XVII of 1879), sections 47 and 48[1]*—Transfer of Property Act (IV of 1882), section 85—Limitation Act (IX of 1908), Schedule II, Article 11—Agriculturist Mortgagor—Suit—Conciliator's certificate—Mortgagor necessary party along with other persons interested—Exclusion of time spent in obtaining conciliator's certificate—Limitation.*

Defendants 1 and 2 brought a suit on a mortgage against defendant 3 and while the suit was pending, defendant 3 mortgaged the same property, namely, a house

* Second Appeal No. 408 of 1911.

(1) Sections 47 and 48 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) are as follows :—

47. No suit, and no application for execution of a decree passed before the date on which this Act comes into force, to which any agriculturist residing within any local area for which a conciliator has been appointed is a party, shall be entertained by any Civil Court unless the plaintiff produces a certificate in reference thereto obtained by him under section 46 within the year immediately preceding.

Explanation.—The expression "Civil Court" in this section does not include a Mamlatdar's Court under Bombay Act No. III of 1876 (*to consolidate and amend the law relating to the powers and procedure of Mamlatdars' Courts*).

48. In computing the period of limitation prescribed for any such suit or application the time intervening between the application made by the plaintiff under section 39 and the grant of the certificate under section 46 shall be excluded.