APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Macleod.

1913.
October 3.

MALLIK SAHEB VALAD ABDUL SAHEB GANDIGIWAD AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, *v.* MALLIKARJUNAPPA BIN SHIVAMURTEYA (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu Law—Widow—Alienation—Consent of next reversioner—Validity of alienation—Legal necessity need not be proved—Registration Act (XVI of 1908), section 17, clause (d)*—Document showing assent—*Spes successionis *—Registration not compulsory.*

A Hindu widow who had inherited property from her husband alienated a portion of it. Her only daughter assented to the alienation a few days after by a writing which was not registered. After the deaths of the widow and the daughter, an heir of the daughter sued to set aside the alienation on the ground that it was not made for legal necessity. The Court found the legal necessity not proved and decreed the claim. The defendant having appealed :—

Held, that the alienation having been assented to by the next reversioner, no question of legal necessity could arise.

Held, also, that the assent in writing was not compulsorily registrable under section 17, clause (*d*) of the Registration Act, for the executant had at its date no more than *spes successionis* as heir.

SECOND appeal from the decision of E. H. Leggatt, District Judge of Dharwar, reversing the decree passed by V. V. Wagh, Joint Subordinate Judge at Dharwar.

Suit to recover possession of property.

One Sivarudraya was the owner of the land in dispute. On his death, it passed to his widow Irawa, who had one daughter Gurushidawa.

In 1891, Irawa sold the land to the father of defendants Nos. 1 and 2. A few days after the sale, Gurushidawa executed an unregistered writing whereby she expressed her assent to the alienation, saying : " If I should happen to survive you I will not endeavour to set aside the alienation which you have made, and I will

* Second Appeal No. 890 of 1912.

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ratify it." Irawa died first and Gurushidawa died the day after.

The plaintiff, the son-in-law of Gurushidawa, filed the present suit to recover possession of the land alleging that the alienation by Irawa was without any legal necessity.

The Subordinate Judge held that the alienation was binding on the plaintiff and dismissed the suit.

On appeal, the District Judge came to the conclusion that the alienation was not supported by legal necessity and decreed the plaintiff's suit.

The defendants appealed to the High Court.

V. V. Bhadkamkar, for the appellant:—The consent of the daughter to an alienation by the widow passed an absolute title to the defendants. No question of legal necessity can arise. The alienation is binding on the plaintiff who is a remote reversioner. See *Bajrangi Singh* v. *Manokarnika Bakhsh Singh*[1]. The writing expressing assent does not require registration, for the daughter had at the time a *spes successionis*. Such an interest does not fall within section 17, clause *(d)* of the Registration Act. See *Abdool Hoosein* v. *Goolam Hoosein*[2] and *Sumsuddin* v. *Abdul Husein*[3].

G. S. Mulgaonkar, for the respondent:—The deed of assent by the daughter was passed without consideration. It did not bind her heirs. It also required registration, for the daughter had a contingent interest at the time within the meaning of the Registration Act.

BEAMAN, J.:—In 1891 a widow with the life estate Irawa sold the plaint property to the defendants. The then heir was the daughter of her deceased husband Gurushidawa. Thirteen days after the sale Gurushidawa

[1] (1907) 30 All. 1. [2] (1905) 30 Bom. 304.
[3] (1906) 31 Bom. 165.

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assented to it. The only difficulty that could have arisen in the case would have lain in proving the consent of Gurushidawa. That has been done by a writing. The Courts below appear to have doubted whether such a writing could be admitted without registration. Looking to the terms of the writing however, it appears to us that it is clearly outside and beyond the scope of section 17, clause (*d*), of the Registration Act. All that Gurushidawa had at that time was a *spes successionis* as heir. In the writing she purports to convey nothing but merely gives her consent to the alienation by her mother which amounts to this. She says "If I should happen to survive you I will not endeavour to set aside the alienation which you have made and I will ratify it." In point of fact she did survive her mother by one day. Now her daughter's husband seeks to set aside the alienation on the ground that it was without legal necessity. No question of that kind, we think, can arise, the facts being as we have just stated them.

The legal point is completely covered by the authority of *Bajrangi Singh* v. *Manokarnika Bakhsh Singh*[1], a decision of the Privy Council.

We therefore think that the decree of the lower appellate Court must be reversed and the plaintiff's claim dismissed with all costs throughout upon him.

Decree reversed.

R. R.

(1) (1907) 30 All. 1.