1919.

AHMEDABAD MUNICIPALITY v. THE GUJARAT GINNING AND MANUFACTURING COMPANY, LIMITED.

That of course is essential. Without that there can be no provision for receiving the sewage. But it does not follow that because there is a general system, that therefore, there is provision for receiving the sewage from any particular private premises. What has happened appears on the facts stated by the District Judge. You cannot receive the sewage at every point into the main sewer. You have to make special provision for receiving it at the point at which you wish to receive it, and that is done in Ahmedabad by providing a manhole and the necessary facilities for connecting the subsidiary pipes with the main sewer. The manhole has been provided in such a way that the plaintiffs were able to connect the subsidiary sewer or drain, which they had made, directly with the main sewer. Seeing that the Muncipality not only provided the general system including the main sewer, but also the manhole and the facilities which made it possible for the plaintiff to connect up his subsidiary system with the main system, I think that they had made provision for receiving the sewage. I, therefore, agree that the appeal should be allowed and that the claim should be dismissed with costs throughout.

Decree reversed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

1919. *October* 20.

KISONDAS GURU LAXMANDAS BAIRAGI (ORIGINAL PLAINTIFF No. 1), APPELLANT *v.* DHONDU WALAD TUKARAM NARVADE AND OTHERS (ORIGINAL DEFENDANTS AND PLAINTIFF No. 2), RESPONDENTS.*

Contract—Sale—Consideration—Past co-habitation, whether good consideration.

* Second Appeal No. 240 of 1918.

1919.

KISONDAS v. DHONDU.

A past co-habitation will not be good consideration for the transfer of property.

SECOND Appeal against the decision of C. V. Vernon, reversing the decree passed by V. G. Vaidya, Second Class Subordinate Judge at Kopergaon.

Suit to recover possession.

The plaintiffs sued for possession of a house as owners on the strength of a sale deed passed in favour of plaintiff No. 2 by defendant No. 1 for Rs. 100.

Defendant No. 1 contended that plaintiff No. 2 was for a long time his mistress and hence the sale-deed was passed through undue influence and without consideration; that it was passed at a time when defendant No. 1 was on his death-bed; that the plaintiffs had never been in possession as owners; and that the suit house was the joint property of himself and defendant No. 2.

The Subordinate Judge found that there was no money consideration for the sale, and that as plaintiff No. 2 was the mistress of defendant No. 1, the real consideration for the transaction was past co-habitation. He, therefore, allowed the plaintiff's claim.

On appeal, the District Judge reversed the decree on the ground that the case of past co-habitation as consideration for the sale was not made out in the plaint and that such consideration was unlawful: *Alice Mary Hill* v. *William Clarke*[1].

Plaintiff No. 1 appealed to the High Court.

V. D. Kamat, for the appellant.

P. B. Shingne, for the respondents Nos. 1 and 2.

MACLEOD, C. J.:—The plaintiffs sued for possession of a house as owners, alleging a sale for Rs. 100 to plaintiff

(1) (1904) 27 All. 266.

1919.

KISONDAS v. DHONDU.

No. 2 by defendant No. 1. The trial Court found that there was no money consideration for the sale, and that as the plaintiff No. 2 had been the mistress of defendant No. 1, the real consideration for the transaction was past co-habitation. That was not the case made out in the plaint, and if, as we are told, the point has never been decided in this Court, we are decidedly of opinion now that past co-habitation will not be good consideration for the transfer of property. The facts of this case go even further, because it was not merely the case of plaintiff No. 2 being the mistress of defendant No. 1, but of the connection between the two being adulterous as plaintiff No. 2 had a husband living. Therefore it comes to this that the transaction was really a gift, and as the property was joint family property between the defendants, and there had been no partition, the fact that the first defendant purported to sell half the house would not thereby effect a partition. Therefore whichever way we look at it, the plaintiff must fail and the appeal is dismissed with costs.

Appeal dismissed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

1919. November 28.

SUPDU DHODU GUJAR (ORIGINAL PETITIONER), APPELLANT *v.* MADHAVRAO JIVRAM GUJAR (ORIGINAL OPPONENT), RESPONDENT.*

Consent-decree—Default—Variation—Court's power to vary the terms of consent-decree.

The plaintiff sued for a declaration that an ostensible sale deed was merely a mortgage deed and that he was entitled to redeem the property. The parties arrived at a compromise and a consent-decree was passed in terms that the plaintiff do pay defendant within one month from the 4th September 1917, a sum of Rs. 1,100 and the Survey No. 529 at Jamner should be given in

* Second Appeal No. 870 of 1918.