

1922.

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bond was handed over to him at the time the sale deed was passed and not subsequently as stated by him. On the whole, therefore, I find upon the strength of the recitals in the sale deed that the mortgagee Martand had purported to sell the land as his absolute property and defendant No. 2 had purchased it as such. That being so, the case is governed by Article 134 of the Limitation Act."

The learned Judge is right. When a mortgagee sells the mortgaged property as an ostensible owner and there is valuable consideration for the sale, the right of the purchaser becomes unassailable by the mortgagor by the lapse of twelve years from the date of the purchase. The mortgagee may be dishonest, the purchaser may not make any enquiry as to his vendor's title; the mortgagor may be ignorant of the sale of his property by the mortgagee: these facts no longer affect the rights of the purchaser who has given valuable consideration. Article 134 of the Indian Limitation Act (IX of 1871) required "good faith" on his part. That condition was however removed by Act XV of 1877 and is not re-imposed by Act IX of 1908. The language of the enactment now in force being clear, the plaintiff's suit must fail.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

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

1922.

January 26.

NARAYAN LAXMAN CHANDVADKAR AND ANOTHER (ORIGINAL PLAINTIFFS); APPELLANTS v. GOPALRAO TRIMBAK CHANDVADKAR AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS*.

Annuity—Grant of annuity as consideration for agreement to give in adoption—Hindu Law—Adoption—Grant invalid—Question whether grant of annuity by father is binding on sons.

*Second Appeal No. 374 of 1921.

The grant of an annuity in consideration of giving a boy in adoption is invalid.

1 922.

Quære.—Whether the grant of annuity by a Hindu father can be enforced against the sons.

The two decisions in *Balkrishna v. Janardana*⁽¹⁾ and *Babubhai v. Beharilal*⁽²⁾ appear to be in conflict and may require to be considered hereafter.

NARAYAN
LAXMAN
v.
GOPALRAO
TRIMBAK.

SECOND appeal from the decision of S. J. Murphy, District Judge of Nasik, confirming the decree passed by G. V. Jadhav, Subordinate Judge at Nasik.

Suit to recover a sum of money.

The defendant was adopted in 1894 by one Gopalrao. At the time of adoption, an agreement was come to between Gopalrao and plaintiff No. 2, the natural mother of defendant, whereby Gopalrao agreed to pay Rs. 300 per year to plaintiff No. 2 and her family from generation to generation. The amount of the annuity was paid first by Gopalrao and then by defendant till the year 1916 when payment was stopped.

In 1919, plaintiff No. 2 and her son, plaintiff No. 1, sued to recover arrears of three years' annuity.

The lower Courts dismissed the suit holding that a legal perpetual liability to pay the annuity could not be created; and that the agreement to pay the annuity was illegal and unenforceable as having been one opposed to public policy and Hindu law.

The plaintiffs appealed to the High Court.

G. S. Rao, for the appellants.

Nadkarni with *P. B. Shingne*, for the respondents.

MACLEOD, C. J. :—Both the Courts have found in this case that the promise to pay the annuity was the

⁽¹⁾ (1904) 6 Bom. L. R. 642.

⁽²⁾ (1905) 7 Bom. L. R. 686.

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consideration for the agreement to give the boy in adoption. That would be sufficient to invalidate the agreement; and we need not consider the question whether the payment of the annuity, if there had been good consideration for it, could be enforced against the heirs of Ganpatrao, although we may point out that the two decisions in *Balkrishna v. Janardana*⁽¹⁾ and *Babubhai v. Beharilal*⁽²⁾ appear to be in conflict, and may require to be considered hereafter. The appeal, therefore, will be dismissed with costs.

Appeal dismissed.

R. R.

(1) (1904) 6 Bom. L. R. 642.

(2) (1905) 7 Bom. L. R. 686.

APPELLATE CIVIL.

1922.

January 27.

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

DHUNDIRAJ BALKRISHNA PHALNIKAR (ORIGINAL DEFENDANT),
APPELLANT v. RAMCHANDRA GANGADHAR KALE AND ANOTHER
(ORIGINAL PLAINTIFFS), RESPONDENTS^o.

*Easement—Way—Line of way once defined cannot be altered without consent—
Indian Easements Act (V of 1882), section 22.*

A line of way when definitely set out cannot subsequently be altered without consent.

Per MACLEOD, C. J.:—"The provisions of section 22 of the Indian Easements Act, 1882, can only apply when the exact way to be taken over the premises of the servient owner has not been defined."

SECOND appeal from the decision of K. B. Wasoodew, Joint Judge of Poona, amending the decree passed by J. N. Bhatt, Additional First Class Subordinate Judge at Poona.

Suit for injunction.

^o Second Appeal No. 385 of 1921.