

Vasudev Bhat Vs. Narayan Daji Damle

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Court : Mumbai

Decided On : Dec-19-1882

Reported in : (1883)ILR7Bom131

Judge : Charles Sargent, Kt., C.J. and ;Kemball, J.

Appellant : Vasudev Bhat

Respondent : Narayan Daji Damle

Judgement :

Charles Sargent, Kt., C.J.

1. The plaintiff seeks to recover lands as given to him by one Sadashiv Hari Damle. The Acting Assistant Judge has found that the deed of gift was genuine, and that the donor had authority to pass the deed to the exclusion of the defendants, but that possession was only given under the deed of the thikans mentioned in the mamlatdar's summary decision, (exhibit 4). The plaintiff contends that the deed of gift having been registered, his title was complete without possession. It was admitted that the general rule of Hindu law was as laid down in Hargovan v. Narian 4 Bom. H.C. Rep. 38 but it was said, that the object of the rule was to give publicity, and that registration ought to be deemed sufficient to effect that object. Mr. Justice West in his exhaustive, judgment in Lalubhai v. Bai Amrit I.L.R. 2 Bom. 333 expressed an opinion to that effect, but it was not necessary to the decision of the case before him. He says: 'The object of the various

ceremonies prescribed for the transfer of land, though probably they originated from quite different causes, is now recognized by the Hindu lawyers to be mainly the publicity of the transaction;' and further on he continues: 'That a symbolical delivery will, in the appropriate cases, suffice, appears from the note of Mr. Ellis in 2 Strange's H.L., 468. Where, therefore, there has been a public avowal of a sale, gift, or mortgage by registration, the transfer appears to be completed. The change of ownership proclaimed to all, perfects a right available against; all.' We think it is difficult to accept this conclusion in its entirety. Although publicity may, in the main, be regarded as the reason for requiring the various ceremonies prescribed by the Hindu law Digest, Bk. 2, Chap. IV, 33, still we think that the language of the texts set out in extenso in *Hargovan v. Narran* and at pages 327 and 328 of Mr. Justice West's judgment is too clear and express in requiring delivery and acceptance of the subject of the gift to be effected in the case of land by putting the donee into possession in order to give complete validity to a gift as between donor and donee, and their authority, in their literal terms, has been too frequently and too long recognized by judicial decisions to allow of that ceremony (in some form or other) being dispensed with otherwise than by legislative enactment. The question, therefore, is, whether registration of an instrument of gift by the parties to it can be regarded as in any sense equivalent to delivery of possession. It is doubtless an act more or less public on the part of the donor affording additional evidence of his intention to give the land; but so far as delivery of the land by the donor or possession of it by the donee is concerned, it leaves the donee precisely in the same position as he was immediately after the donor signed the instrument; it neither gives him actual, or constructive, or symbolical possession, and cannot, therefore, we think be regarded as equivalent to delivery and acceptance. Registration is doubtless notice to all the world of the registered deed, and when, as in the case of competing mortgages, the latter of which in date is accompanied with possession, the preferential claim of such mortgage depends upon the mortgagee not having had notice of the prior mortgage, it may well be regarded as conclusive evidence of notice.

2. We must, therefore, hold that the Assistant Judge was right in deciding that plaintiff is only entitled to the property of which he had been put into possession, and which he held was confined to that mentioned in the summary decision,

exhibit 4. The defendant has filed objections: 1st, that the Assistant Judge has treated the thikan Kudiat as included in that decision, whereas it only refers to the thikan Gharvadi; and, 2nd, that the thikan mentioned in exhibit 4, is not the subject of the plaint. It appears, however, from the prayer of the plaint that he distinctly prays for a declaration of his ownership of the property then in possession, and which he had previously in his plaint mentioned as being a house and thikan, Survey No. 33, and which is the only property mentioned in exhibit 4.

3. The decree of the Assistant Judge must, therefore, be varied by reversing the decree of the Subordinate Judge, except with regard to the house and thikan Gharvadi, referred to in exhibit 4, of which the defendant, must not disturb plaintiff's possession, Plaintiff to pay defendant his costs of appeal in this Court.

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