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**(1911) 07 BOM CK 0022**

**Bombay High Court**

**Case No:** Second Appeal No. 15 of 1910

Trimbak Bhikaji

APPELLANT

Vs

Shankar Shamrao

RESPONDENT

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**Date of Decision:** July 20, 1911

**Acts Referred:**

- Contract Act, 1872 - Section 19

**Citation:** (1911) 13 BOMLR 947 : 12 Ind. Cas. 532

**Hon'ble Judges:** Rao, J; Basil Scott, J

**Bench:** Division Bench

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### **Judgement**

Basil Scott, Kt., C.J.

In this case the plaintiff sues the defendants for possession of certain property.

2. The first defendant claims to be the adopted son of a previous owner named Balaji who died in 1902 leaving a daughter named Jiji.

3. The plaintiff claimed under a deed of gift dated the 25th of February 1907 executed in his behalf by Jiji and alleged that the defendant No. 1's possession was unlawful in that he was a sister's son of Balaji and therefore one who could not be adopted by Balaji.

4. The only question which has been argued before us is whether it is open to defendant No. 1, failing in his defence as to adoption, to set up a case that the plaintiff's deed of gift from Jiji who was the heir of the last owner, is invalid.

5. The learned District Judge held that the deed of gift relied upon by the plaintiff is not proved to be a valid one. He found that it was a registered deed and was formally proved but he said he was not satisfied that Jiji put her signature to it knowing its contents and consequences. He then made a number of observations with regard to the deed which indicate that he had not clearly made up his mind whether the deed from Jiji's point of view ought to be attacked as a sham or benami

deed passed merely to enable the plaintiff to sue the defendant No. 1, who was in possession of the property, on Jiji's behalf, or whether it was a deed extracted by the plaintiff in his own interest from Jiji by undue influence or misrepresentation.

6. It appears that Jiji gave evidence on behalf of the defendant No. 1 who claimed under a title adverse to her, and the learned Judge has held that it was open to defendant No. 1 when sued for possession to avail himself of such grounds of attack as would have been open to Jiji if she had sued to set aside the deed.

7. In our opinion, however, it is not open to defendant No. 1 to take that line of defence. Ex hypothesis he is a person who has no title to the property. The plaintiff is a person claiming under a registered deed of gift executed in his favour by the person who is admittedly the heir of the last holder. The plaintiff has, therefore, a prima facie title and must succeed unless the defendant No. 1 can show some better title in himself. Sir Richard Couch, in *Ram Bhurosee Singh v. Bissesser Narain Mahata* (1872) 18 W.R. 454, which was a possessory action brought by a person with prima facie title, said: "I think that the title which the plaintiff had by the Mokurruree lease and the bill of sale was sufficient to enable him to bring the suit, and that the defendants were not at liberty, in a suit of this description, to raise the question whether he was only nominally the owner of the property, somebody else being the real owner. The difficulties which are suggested in the judgment in the case quoted might all be met without holding that the party who brings the suit and has a prima facie title, is bound to prove that he is the real owner." That case was followed by the Allahabad High Court in *Nand Kishore Lal v. Ahmad Ata* ILR (1895) All. 69, where they held that a benamidar suing for the recovery of Immovable property on title can sue in his own name, and when such a suit is instituted by a benamidar it must be held to have been instituted with consent and approval of the beneficiary, against whom any adverse decision on the title set up will take effect as a res judicata.

8. This Court in *Joitaram v. Ramkrishna* ILR (1902) 37 Bom. 31 : ILR 4 Bom. 754, has taken the same view of the law without reference to Sir Richard Couch's decision. The learned Judges were there dealing with the case of a deed of gift which was impugned on the ground that the donee had not acquired possession and they say: ♦

The defendant 2 preferred to impugn the plaintiff's title on the ground of an alleged defect, which if established would at most have shown that the donors were entitled, and though it is contended that in such case their title would have been time-barred, it would have been difficult to conceive how the possession of defendant 1 could have been adverse to them at a date earlier than that at which it could have become adverse to the plaintiff. So far as they could, they completed the gift, the terms of which they embodied in the registered deed, and they have never attempted any reservation or revocation in their own favour, and a stranger cannot challenge its validity as against the donee.

9. Similarly in the present case the deed reserved to the donor no right of revocation nor has she taken any proceedings with in the period allowed by the law of limitation to set aside the deed on the ground that it was obtained from her under the circumstances mentioned in Section 19 of the Indian Contract Act.

10. For these reasons we hold that the defendant No. 1 cannot rely upon the ground of attack which might be open to the donor if she sued the donee within the time allowed by the law of limitation, and that so long as the registered deed stands the title of the donee under it cannot be challenged by a third party who has no title. We, therefore, set aside the decree of the learned Judge.

11. That, however, does not dispose of all the questions in the case, for, the learned District Judge has not found upon the question raised as to the validity of the first defendant's adoption. He held that no finding was necessary because the deed of gift relied upon by the plaintiff was not proved to be valid.

12. We, therefore, remand the case for disposal upon the second and third issues as raised by the District Judge.

13. The District Judge will find himself on those issues and dispose of the case accordingly.

14. Costs of this appeal must be paid by the present respondent.