

(1919) 11 BOM CK 0028**Bombay High Court****Case No:** Second Appeal No. 240 of 1918

Kisandas Laxmandas Bairagi

APPELLANT

Vs

Dhondu Tukakam Narvade

RESPONDENT

Date of Decision: Nov. 27, 1919**Citation:** (1920) 22 BOMLR 762 : 57 Ind. Cas. 472**Hon'ble Judges:** Norman Macleod, J; Heaton, J**Bench:** Division Bench**Final Decision:** Dismissed**Judgement**

Norman Macleod, Kt., C.J.

The plaintiffs sued for possession of a house as owners, alleging a sale for Rs. 100 to plaintiff 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 cohabitation. That was not 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 cohabitation 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 conies 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.