

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Wilkinson.*

HUSSAIN (DEFENDANT NO. 1), APPELLANT,

v.

SHAIK MIRA (PLAINTIFF), RESPONDENT.*

Muhammadan law—Gift by a father—Undivided share—Delivery of possession.

A Muhammadan made a gift in writing to his daughter on her marriage of an undivided moiety of his share in certain buildings, which were the property of the donor's wife. On the death of the donee, her husband married her sister, and the donor thereupon similarly made a gift to her of the remaining undivided moiety. The donees were minors at the dates of their respective gifts. The husband now sued to recover the share of his first wife, of which delivery had not been made.

Held, that the gift was not invalid, either for indefiniteness or for want of delivery of possession.

SECOND APPEAL against the decree of T. Ganapati Ayyar, Subordinate Judge of Kambaconam, in appeal suit No. 759 of 1887, affirming the decree of S. Subbayyar, District Munsif of Nega-patam, in original suit No. 179 of 1886.

Mr. Wedderburn for appellant.

Pattabhiramayyar for respondent.

The facts of the case and the arguments adduced on this second appeal appear sufficiently for the purpose of this report from the judgment of the Court.

JUDGMENT.—The only question argued in second appeal is the validity of the gift of items 2 and 3. The plaintiff's first wife was the eldest daughter of defendant No. 1. On her marriage, on 30th May 1883, exhibit A was executed whereby defendant No. 1 gave to his daughter a moiety of the property described in schedules 2 and 3 of the plaint. She died on the 14th June, and on the 15th the plaintiff married her sister, and to her defendant No. 1 gave as dowry the other half of her mother's tiled house and building. The plaintiff now sues for the share of his first wife in the house and lands. These houses were the properties of the wife of defend-

* Second Appeal No. 1655 of 1888.

ant No. 1, and he, therefore, was, at the time of the gift, a co-sharer with his daughters, being entitled only to a one-quarter share. It is argued that the gift by defendant No. 1 to his eldest daughter was invalid (1) because an undivided share cannot be given, and (2) because the donor retained possession and user of the gift. With reference to the latter objection it is sufficient to say that where there is on the part of the father of a minor a *bond fide* intention to make a gift to the minor, the Muhammadan law is satisfied without actual change of possession, and it will be presumed that the subsequent holding of the father is on behalf of the minor. According to the Shurhi Viqaya "a gift made by a father to his child is perfected by the mere declaration of it.(1)" Nor do we think that the former objection should be allowed to prevail. The doctrine of Muhammadan law that a gift of an undivided share in property is invalid because of *musha* or confusion only applies to such objects of gift as are capable of partition. The shares of the father and his minor daughters in the house were defined, but the house was not capable of being divided into three shares consisting of $\frac{1}{4}$, $\frac{2}{3}$ and $\frac{3}{4}$ respectively. The father gave to his minor daughters on their marriages a moiety of the share to which he was entitled, and the gift was not in our judgment void for indefiniteness. This second appeal fails and is dismissed with costs.

HUSSAIN
v.
SHAIK MIRA.

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GNANAMMAL AND OTHERS (DEFENDANTS), APPELLANTS,

v.

MUTHUSAMI (PLAINTIFF), RESPONDENT.*

1889.
February 6.

Court sale—Decree against Hindu father—Interest of undivided son—Certificate of sale—Civil Procedure Code, s. 316—Grounds of second appeal.

In execution of a decree for sale passed on a hypothecation bond, all the land comprised in the security was attached. The judgment-debtor was a member of an undivided family; his son put in no claim in execution, but on a claim put in by his nephew it was ordered that the right, title and interest of the judgment-debtor

(1) Macnaghten, p. 213 (Ed. iv).

* Second Appeal No. 70 of 1888.