

THE BRITISH
INDIA STEAM
NAVIGATION
COMPANY
v.
IBRAHIM
SULAIMAN.

conclusion at which the Chief Judge arrived is wrong and that judgment ought to have been given for the defendants. The costs in this Court will be costs of the suit and follow the result.

APPELLATE CIVIL.

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

1896.
January 24.

KUNHI MAMOD (DEFENDANT NO. 1), APPELLANT,

v.

KUNHI MOIDIN (PLAINTIFF), RESPONDENT.*

*Muhamadan law—Relinquishment of rights of inheritance—Relinquishment
executed before ancestor's death.*

A Muhamadan sued to recover his share of the property by his mother deceased. It appeared that before her death he had by a registered deed in consideration of Rs. 150 renounced all his claims on her estate :

Held, that the renunciation was binding on the plaintiff.

SECOND APPEAL against the decree of A. Venkataramana Pai, Subordinate Judge of Calicut, in appeal suit No. 535 of 1894, modifying the decree of P. Govinda Menon, District Munsif of Betutnad, in original suit No. 432 of 1892.

The plaintiff sued to recover his one-half share in the estate of his mother who died in 1890. The first defendant was the plaintiff's brother and he pleaded that by a registered document, dated the 15th March 1884, and executed by the plaintiff in favour of his mother, the plaintiff had in consideration of Rs. 150 paid to him in respect of the share in her estate to which he would become entitled on her death acknowledged satisfaction of all his claims thereto and admitted that he had no longer any right whatever to her properties.

The District Munsif held that this instrument was invalid for the reason that the rights thereby renounced had not then vested and he passed a decree for plaintiff. This decree was confirmed with a slight modification by the Subordinate Judge.

* Second Appeal No. 132 of 1895.

Defendant No. 1 preferred this second appeal.

Subramania Sastri for appellant.

Respondent was not represented.

KUNHI
MAMOD
v.
KUNHI
MOIDIN.

JUDGMENT.—The Courts below have allowed plaintiff a share in items 1, 3, 5, 6, 7 and 9 in schedule A on the strength of the decision in *Mussummant Khanum Jan v. Mussummant Jan Beebee* (1). We have referred to the report itself, and are of opinion that the case is not one of any great authority. It is true that the majority of the Muhamadan Law officers expressed the opinion that the renunciation was not valid on the ground that the right had not vested, but the opinion was not unanimous, and eventually the Sadr Court held that the receipt of the money had not been satisfactorily proved. Here, however, it is not denied that plaintiff received the money, and there is the further difference that the right had vested, but that provision was made for the mother by setting apart some property for her maintenance for her life, after which the plaintiff accepted the money value of his share. *Primâ facie* there is nothing illegal in the transaction and in the absence of clear proof that it is forbidden by Muhamadan law we think plaintiff should be held to be bound by it.

The only other point taken is as to the movables, but this is a question of fact on which the Subordinate Judge has given a finding, though the evidence upon which it is based is rather vague.

The decree must be modified by disallowing plaintiff's claim to items 1, 3, 5, 6, 7 and 9 in schedule A and in other respects confirmed.

The appellant will be allowed the costs of the appeal.

We do not interfere with the award of costs in the Courts below.

(1) 4 S.D.A., 210.