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arbitrator perversely and manifestly misapplies a rule of succession or applies to the parties a rule by which they are not bound; we are not to be supposed to have exhausted the category of the cases which may come under that clause, but we do think that where the arbitrator has applied his mind honestly and has arrived at a decision to the best of his ability, the fact that a Judge might take a different view is not a ground for holding that the award is illegal on its face. We must reverse the decrees of the Courts below and remand the suit to the Court of First Instance for its being heard on the other objections taken to the award. Costs to abide the result.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Seshagiri Ayyar and Mr. Justice Napier.

1917, Nov. 30 and Dec. 12.

ABI DHUNIMSA BIBI, APPELLANT (PLAINTIFF),

v.

MAHAMMAD FATHI UDDIN AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Muhammadan Law—Dower, relinquishment of, by a Muhammadan woman of the age of 15, whether valid—Indian Majority Act (IX of 1875), sec. 2—'Act in the matter of dower,' meaning of—Indian Contract Act, sec. 11.

A relinquishment of her right to dower by a Muhammadan woman, who is a minor under the Indian Majority Act, is invalid under the Indian Contract Act (IX of 1872).

To relinquish dower is not 'to act in the matter of dower' within section 2 of the Indian Majority Act.

SECOND APPEAL against the decree of S. G. ROBERTS, District Judge of South Arcot, in Appeal No. 2110 of 1915, preferred against the decree of A. V. RATNAVELU PILLAI, District Munsif of Chidambaram, in Original Suit No. 627 of 1914.

Plaintiff, a Muhammadan woman aged about 20, sued her deceased husband's heirs for recovery of Rs. 725, the dower settled at the time of her marriage. The defendants pleaded

* Second Appeal No. 1277 of 1916.

inter alia that the plaintiff relinquished her right to dower at the time of her husband's death out of deference to her husband and at his request to her to do so and that the relinquishment was valid in law as it was made when plaintiff had completed her fifteenth year and was therefore a major according to the Muhammadan Law. The District Munsif decreed the suit holding that the relinquishment, though true, was invalid as having been made under pressure and by reason of plaintiff's minority and consequent incapacity to enter into a contract according to the Indian Contract Act. On appeal by the defendants the District Judge dismissed the suit holding that the relinquishment of dower was true and was made by the plaintiff out of her free will and that the same was valid by reason of section 2 of the Indian Majority Act. The plaintiff preferred this Second Appeal.

T. R. Venkatarama Sastri for appellant.

N. Rajagopalachariyar for respondents.

T. R. Venkatarama Sastri—The relinquishment is invalid as the plaintiff was a minor at the time, according to the Indian Majority Act and the Indian Contract Act, though a major according to the Muhammadan Law. A dower according to the Muhammadan Law becomes a debt as soon as it is settled at the time of marriage and section 2 of the Indian Majority Act which preserves to minors like the plaintiff their capacity existing under the Muhammadan Law 'to act in the matter of dower', does not however enable them to enter into any contract by which they can relinquish debts or other benefits arising out of contracts. The validity of a contract of relinquishment of a debt must be tested only by the Contract Act which abrogates all rules of Muhammadan Law, according to which plaintiff could have relinquished the dower. The word 'act' section 2 of the Indian Majority Act is not apt when used in respect of 'dower' alone, but it seems to have been used as a comprehensive verb to denote the steps to be taken in respect of all the four classes of cases mentioned, viz., marriage, dower, divorce or adoption. Probably the words 'act in the matter of dower' in section 2 preserve to persons like the plaintiff their right to settle the amount of dower.

N. Rajagopalachariyar—The relinquishment is valid according to Muhammadan Law; see Koran, Chapter IV, section 4,

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Wilson's Digest of Muhammadan Law, Fourth Edition, pp. 127 and 206, and *Jyani Begam* v. *Umrav Begam*(1). Section 2 of the Indian Majority Act preserves to persons like the plaintiff their capacity to relinquish, by the words 'act in the matter of dower', which are wide enough to include not only a power of settling the amount of dower but also a power to relinquish the same. On the construction of those words, see *Bai Shirinbai* v. *Kharshedji*(2). If according to the decision of the Privy Council in *Jumoona Dassya* v. *Bamasoondari Dassya*(3) a Hindu widow of the age of 16 or 17 can adopt a boy, a power preserved to her by section 2 of the Indian Majority Act, and thus divest herself of all her husband's property, there is nothing inconsistent in construing section 2 as preserving to a person like the plaintiff a power to relinquish a right to dower. If a minor can settle the amount of dower, however small and prejudicial to her it might be, she can equally relinquish the same. The personal law cannot be invoked for one purpose and rejected as to the other. Dower does not cease to be a dower simply because it has also the characteristic of a debt. Reference was made to section 129 of the Transfer of Property Act.

The Court delivered the following JUDGMENT :—

SESHAGIRI AYYAR J.

SESHAGIRI AYYAR, J.—This is a suit by a Muhammadan lady for dower. The defence is that when her husband was on his deathbed and she was only fifteen years of age, she relinquished her right to the dower. The question for consideration is whether this relinquishment debars the plaintiff from suing to recover it. The District Munsif found that the dower was released but the release was brought about by undue influence and fraud, and that consequently plaintiff was entitled to recover it. The learned District Judge has written an interesting judgment in which, while accepting the conclusion of the District Munsif that there was a release of the dower, he differs from the lower Court on the question of fraud and finds that the release is binding upon the plaintiff.

The question is not covered by any authority and is one of some importance. It has to be decided on first principles. Under the Muhammadan Law a dower, as pointed out by Mr.

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(1) (1908) I.L.R., 32 Bom., 612. (2) (1898) I.L.R., 22 Bom., 430.
(3) (1876) I.L.R., 1 Calc., 289 (P.C.).

Justice ABDUR RAHIM at page 334, in his book on Muhammadan Jurisprudence, is

"a sum of money or other form of property to which the wife becomes entitled by marriage; it is not a consideration proceeding from the husband, for the contract of marriage, but is an obligation imposed by the Law as a mark of respect for the wife."

In Hamilton's Hedaya, Chapter 15, section I, the right to dower is said to have been founded upon the text

"Let him support her according to his ability."

It is pointed out in this treatise

"that when a woman surrenders herself to the custody of her husband, it is incumbent upon the latter thenceforth to provide her with food, clothing and lodging, because such is the precept both in the Koran and in the traditions and also because maintenance is a recompense for the matrimonial restraint."

The author is apparently of opinion that the fixing of dower is a recompense for the surrender. It is stated in Muhammadan Law books that even though no dower may have been fixed on the date of the marriage, the wife is entitled to some dower from the estate of the husband. That is the nature and origin of dower or *Mahar* in Muhammadan Law.

The character of the obligation to pay the dower is as a debt. The moment that dower is settled, it passes from the domain of a moral precept into an enforceable debt. It has been held that the wife has a lien over the property of her husband in her possession for unpaid dower. It has also been held that she would rank *pari pasu* with other creditors in the distribution of the estate of her husband: see *Meer Mehar Ally* v. *Mussamut Amanee*(1) and *Syed Imdad Hossein* v. *Musamat Hosseinee Buksh*(2). Mr. Tyabji in his Principles of Muhammadan Law discusses the cases and says that the widow's claim for dower due from the estate of her deceased husband ranks equally and rateably with the claims of other creditors.

Having now arrived at a conclusion as regards the nature and character of dower, the next question is whether a minor can give up her rights to it. There cannot be much doubt that, where a Muhammadan female attains an age which according to Muhammadan Law is the age of majority, she can release her rights to dower. In the present case, the plaintiff was a major

(1) (1869) 11 W.R., 212. (2) (1869) 2 N.W.P. H.C.R., 327.

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according to Muhammadan Law. But as regards general contractual obligations, the Indian Contract Act has superseded the laws of Hindus and of Muhammadans. If this question is not complicated by the exception contained in the Indian Majority Act to which we shall presently refer, there could be no doubt that the renunciation of the dower by plaintiff would not bind her.

Now the question is whether section 2 of Act IX of 1875 has made any difference in this respect. That section lays down that nothing in the Indian Majority Act shall affect the capacity of any person 'to act in the matter of dower.' It was contended by Mr. Rajagopalachariyar for the respondent that in releasing the right to dower the plaintiff was acting in the matter of the dower. There is some justification for this contention in the language employed by the learned Judges of the Bombay High Court in *Bai Shirinbai* v. *Kharshedji*(1). That was a case relating to Parsees and the question there was whether a Parsee minor suing to have a marriage declared void was acting in the matter of marriage. The learned Judges seemed inclined to hold that the plaintiff brought herself within the meaning of section 2 of the Indian Majority Act. In our opinion, the construction placed upon the word 'act' seems far-fetched. As Mr. Venkatarama Sastriyar for the appellant contended, the word 'act' has been used as a comprehensive verb to control the steps to be taken in four specified classes of cases—marriage, dower, divorce and adoption. It is not very apt as applied to dower, although it is full of meaning as applied to the other three classes. It must be remembered that the primary object of the Indian Majority Act was to reserve liberty to the Indian subjects of the Sovereign to exercise their rights in matters specially pertaining to religion or religious usages. No attempt was made in the Majority Act to indicate the legal consequences which might flow upon the exercise of these rights. The object was to confer a privilege and not to endanger ordinary civil rights. Civil and contractual obligations might flow upon the exercise of such rights. The ordinary law was intended to take its course in respect of these correlative rights. Therefore, in our opinion, when the legislature permitted a person to act in the matter of

(1) (1898) I.L.R., 22 Bom., 430.

dower, it only intended to allow that person, who was not otherwise competent under the ordinary law, to act in that matter, to initiate to the religious act or ceremony which under the personal law of the subject he or she was capable of initiating. In our opinion the legal consequences flowing from this primary act was not intended to be controlled by section 2 of the Indian Majority Act.

One other consideration to be borne in mind is this. The Indian Majority Act should not be so construed as to deprive a person of rights which he is otherwise entitled to. What was intended to be a beneficent legislation should not be construed as operating to deprive the ordinary rights of a person. Under the Muhammadan Law, as pointed out by Mr. Justice ABDUR RAHIM in his book at page 241,

"Generally speaking, only such acts and transactions of a minor will be upheld as are of benefit to him, and whatever is injurious to his interest will be disallowed."

He says again at page 242,

"But an infant, with or without permission of his guardian, cannot do any act which is absolutely injurious to his interests, such as divorcing his wife or making gift or waqf of his property or lending his money. Similarly a bequest of an infant is void because it is laid down that it is better for a man that he should leave his heirs rich rather than they should beg of people."

No doubt this prohibition against the act of an infant is removed when he or she attains majority as understood by Muhammadan lawyers. But the question still remains whether when the British Government enacted a uniform rule as to the age of majority, it was intended to deprive minors belonging to the Hindu or Muhammadan communities from enjoying the privileges of that legislation by operation of section 3 of the Indian Majority Act. In our opinion the injunction of Muhammadan Law which prohibits injurious acts being done by a minor to his prejudice must be taken to have been preserved till the age at which he or she attains majority under the ordinary law of the land.

There is one other passage at page 241, in Mr. Justice RAHIM's book which is rather significant. He says—

"An infant even if possessed of understanding is, however, under no obligation with respect to what is regarded in law as a

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benevolent act, having a semblance of penalty; he is also not liable to penalties which are in the nature of private rights like retaliation."

This passage has some bearing upon the finding of the learned District Judge. The act of renunciation by the plaintiff is said to have occurred under the following circumstances :—Her deceased husband was suffering from cholera. He was a pious man and was anxious that he should be relieved of all obligations contracted by him prior to his death as he believed that if he died an undischarged debtor he would not be able to attain salvation. It was apparently to ease the mind of her husband in this behalf, that the plaintiff is said to have cried out that she released her rights of dower. That is undoubtedly a benevolent act intended to secure religious benefit to her husband. In the passage which we have cited from Mr. RAHIM's book such a benevolent renunciation would be regarded as not binding upon a person even though he or she be of good understanding. We are not sure whether the learned author intended to lay down that where the age of majority according to the Muhammadan Law had been attained such a renunciation would still be not binding. But apart from that question, in our opinion, such a purely gratuitous act on the part of the minor should not bind her when she attains the age of majority. As we pointed out at the beginning, the moment that the marriage is contracted, the dower due to her becomes a debt and before a debt can be relinquished the person must be of age according to the law of the land. In our opinion the plaintiff was not acting in the matter of dower when she said that she gave up her rights to it. We are, therefore, of opinion that the decision of the District Judge should be reversed and that of the District Munsif restored with costs in this and the lower Appellate Court.

N.R.