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decided against him, he has not been awarded costs on the amount as to which the suit was dismissed. The suit was mainly brought for an injunction against the defendant. That he got, but, besides that, the plaintiffs claimed a considerable sum, nearly Rs. 2,000, as damages; and that part of the claim was dismissed. The order of the Court below was not, as the appellant appears to imagine, that he should pay costs to the plaintiffs on the whole amount of the plaint.

The order was that costs should be given in proportion. Accordingly we find in the schedule of costs only Rs. 10 were paid in as the stamp-fee for the plaint, but Rs. 80 have been allowed as pleader's fees. Nothing has been allowed to the defendant in respect of the large portion of the claim which was dismissed. The Courts below have given no reason for departing from the usual rule in such cases, and it may probably have been by an oversight that they made no order for the defendant to get his share of the costs.

We think it right to amend the decree by saying that the parties will get their costs in proportion to their success respectively. The costs of this appeal will follow the same.

Appeal dismissed.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice McDonell.

1882
June 6.

YUSUF ALI AND OTHERS (PLAINTIFFS) *v.* THE COLLECTOR OF TIPPERA (DEFENDANT).*

Mahomedan Law—Gift, Requisites of—Gift in Futuro.

Under the Mahomedan law a gift is not valid unless it is accompanied by possession, nor can it be made to take effect at any future definite period. A document, containing the words "I have executed an ikrar to this effect, that, so long as I live, I shall enjoy and possess the properties, and that I shall not sell or make gift to any one; but, after my death, you will be the owner, and also have a right to sell or to make a gift after my death," *held* to be an ordinary gift of property '*in futuro*,' and as such invalid under Mahomedan law.

Appeal from Appellate Decree, No. 1294 of 1879, against the decree of J. C. Geddes, Esq., Officiating Judge of Comilla in Tippera, dated the 10th March 1879, reversing the decree of Baboo Umachurn Kastogiri, First Subordinate Judge of that District, dated the 28th June 1877.

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THE facts found on remand in this case, after the hearing on appeal to the High Court, were as follows:—

That one Bhani Bebi held an absolute interest in certain properties given by her husband and in other properties which she had acquired by purchase out of funds allowed to her by him; and that she, being childless, out of natural love and affection, agreed to, and on the 19th Bhadro 1253 (3rd September 1846) entered into, an ikrar, under which she took a life-interest in these properties only, the remaining interest going to one Asfunnissa, another wife of Buksh Ali, the mother of the defendant; the words used being "I have executed an ikrar to this effect, that, so long as I live, I shall enjoy and possess the properties, and that I shall not sell or make gift to any one; but, after my death, you will be the owner, and also have a right to sell or to make gift after my death;" that this ikrar was duly executed by Bhani Bebi, and was explained to her, and that there was absolutely no trace of fraud in the transaction. The defendant, who was a lunatic, was represented by the Collector of Tippera.

This ikrar was impugned by the plaintiffs, who were the brothers and sisters of Bhani Bebi, and they disputed the order of the Collector, who had ordered the defendant to be registered as proprietor of the properties.

The point on which the case turned on appeal before the High Court was, whether such a voluntary relinquishment of her property on the part of Bhani Bebi was valid under the Mahomedan law.

Mr. *Ghose* (with him Mr. *Amir Ali* and *Moonshee Serajul Islam*) for the plaintiffs contended that the ikrar was invalid, as, under the general rule of Mahomedan law, any gift to be valid must be accompanied by immediate delivery of possession, see Chap. V of Macnaghten's Mahomedan Law, p. 50, and Baillie's Digest of Mahomedan Law, p. 250, 2nd Edn.; and that a gift cannot be postponed so as to make it take effect at any future definite period—*Rajah Syud Enaet Hossein* v. *Ranee Roshun Jahan* (1), and on appeal, *Khajooroonissa* v. *Rowshan Jehan* (2).

(1) 6 W. R., 4. (2) I. L. R., 2 Calc., 184.

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As to immediate delivery of possession, see *Abedoonissa Khatoon* v. *Ameroonissia Khatoon* (1), *Obedur Reza* v. *Mahomed Muneer* (2), *Gulam Jafar* v. *Masludin* (3), and *Khader Hussain Sahib* v. *Hussain Begum Sahiba* (4). The case relied on by the other side will be *Nawab Umjad Ally Khan* v. *Mussamut Mohumdee Begum* (5), but the present case cannot be governed by it. The case of *Jeswunt Singjee Ubby Singjee* v. *Jet Singjee Ubby Singjee* (6) cannot be distinguished from the present case, and it was before the Privy Council at the trial of the case of *Nawab Umjad Ally Khan* v. *Mussamut Mohumdee Begum* (5). The Privy Council did not intend, in the case of *Nawab Umjad Ally Khan* v. *Mussamut Mohumdee Begum* (5), to depart from the rule laid down in the case of *Jeswunt Singjee Ubby Singjee* v. *Jet Singjee Ubby Singjee* (6). This ikrar is not a testamentary disposition; the legatee has not enjoyed possession, and there is no consent of the heirs; the donee in this case predeceased the donor. The Mahomedan law does not contemplate any other kind of disposition than a gift and a testamentary disposition. To show that the Mahomedan law is applicable, see the case of *Zohorooddeen Sirdar* v. *Baharoolah Sircar* (7).

The *Officiating Advocate-General* (Mr. *Phillips*, with him Baboo *Anoda Pershad Banerji*) for the respondent.—I submit the deed was a kind of family arrangement, and is not in any way governed by Mahomedan law. It is not in form or substance a gift; it is merely a definition as to what the wife's status was to be. It does not come within the definition of 'gift' according to the Mahomedan law, and if so, the Mahomedan law is not applicable. There are a number of cases which are not contemplated by Mahomedan law, such as trusts, &c.; but they are valid nevertheless. The case cited—*Zohoorooddeen Sirdar* v. *Baharoolah Sircar* (7)—came within the definition of 'inheritance,' the will there was capable of being revoked at any time during the life of the donor.

(1) 9 W. R., 257.
(2) 16 W. R., 88.
(3) I. L. R., 5 Bomb., 238 (242).
(4) 5 Mad. H. C. Rep., 114.
(5) 11 Moore's I. A., 517.
(6) 3 Moore's I. A., 245.
(7) W. R. for 1864, p. 185.

If the rule of equity and good conscience is sufficient to let in the Mahomedan law of gifts in the case of Mahomedans, then, under that principle, the law of every nation with regard to gifts would be applicable in our Courts. A general rule of equity, which is applicable to Mahomedans, is laid down in *Stapilton* v. *Stapilton* (1), that family arrangements do not come within the rules relating to persons dealing with reversionary interests, and in the absence of undue influence on the part of the parent, will be binding. The transaction in the case of *Nawab Umjad Ally Khan* v. *Mussamut Mohumdee Begum* (2) is much the same as the transaction in the present case. That case was heard in Oude before the transfer to the East India Company, and it was for that reason that the Mahomedan law was applied.

The judgment of the Court (GARTH, C. J., and MCDONELL, J.) was delivered by

GARTH, C. J.—We thought it right in this case, when it first came before us on second appeal, to send it back to the District Judge, for the purpose of having these two material points more clearly ascertained :

1*st*—What interest had Bhani Bibi in the properties given her by her husband, and those purchased with her own money, at the time when she executed the ikrar of 1253 ? and

2*nd*.—Under what circumstances, and for what reason, did she execute that ikrar ?

Upon these points the District Judge has found :

1*st*—That Bhani Bibi had an absolute, and not a life, interest only in the property in dispute up to the time when she executed the ikrar of 1253 ; and

2*ndly*—That the ikrar of 1253 was executed at the solicitation of her husband, but without any undue influence or fraud.

He says that the reason for her excuting it seems to have been that, as she was then pretty well advanced in life, and had no children, her husband was anxious that the property which

(1) Cited in White & Tudor, Eq. Cas., 649.

(2) 11 Moore's I. A., 517

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he had bestowed upon her should not pass away from his own children. He, therefore, induced her to convey it to herself for life, and after her death to his children by his other wife.

The District Judge finds, moreover, that the instrument was executed at Bhani Bibi's own residence, and in the presence of her husband, without any of her own relatives being present; that it was read over to her before she signed it; and that as to any fraud, compulsion, or undue influence, except the 'anurah' of her husband mentioned by the witness Doorga Churn, there is absolutely no trace.

These findings of the Judge completely dispose of the two material points which were raised before us on the former occasion. It is now clear that Bhani Bibi had an absolute and not a life estate in the property, and that the ikrar was not made in settlement of any dispute, or by way of compromise.

We thought it not improbable, that some dispute had arisen in the family as to whether she had a life-estate or not, or as to what her rights in the property really were; and if that had been so, and if the ikrar had been made for the purpose of settling those disputes, there might have been a good consideration for it. But these doubts are now set at rest by the finding of the District Judge.

We have, therefore, only to decide, as a matter of law, whether such voluntary relinquishment of her property on the part of Bhani Bibi was valid in point of law; and as to this it has been contended by the appellants:

1*st*—That, by Mahomedan law, a gift cannot be valid unless it is accompanied by possession; and

2*nd*—That it cannot be made to take effect at any future definite period.

There certainly seems no doubt as to the correctness of both these propositions. They are laid down very clearly in Baillie's Digest of Mahomedan Law, pp. 507 and 512, and in Macnaghten's Mahomedan Law, p. 50, Chap. V, paras. 3 and 4; and they are confirmed and exemplified by several authorities to which we have been referred. See *Nawab Umjad Ally Khan* v. *Mussamut Mohumdee Begum* (1), *Khader Hussain Sahib* v.

(1) 11 Moore's I. A., 517.

Hussain Begum Sahiba (1), *Rajah Syud Enaet Hossein* v. *Rajah Roshun Jahan* (2), and *Khajooroonissa* v. *Rowshan Jehan* (3).

Indeed, the Advocate-General, who appeared for the respondent, scarcely attempted to dispute the general correctness of these propositions. But his main contention was, that the deed of gift by Bhani Bibi was the result of a family arrangement, and that, being of that nature, we ought to presume that it was made for good consideration.

There is no evidence, however, that it was the result of a family arrangement; and certainly the finding of the lower Court, which was directed to enquire into the circumstances under which it was made, affords no ground for that supposition. The disposition of the property was made by the lady at the request of her husband, and prompted, no doubt, by a very proper motive. She felt grateful to him for the generosity with which he had treated her, and was very ready to carry out his wishes by securing (as no doubt she intended to do), the reversion of the property after her death to her husband's family.

There is nothing, so far as we can see, in the form of the disposition to distinguish it from an ordinary gift of property *in futuro*; and, as such a gift is not valid by Mohamedan law, we must need reverse the judgment of the Court below, and confirm that of the Subordinate Judge with costs.

Appeal allowed.

Before Mr. Justice Mitter and Mr. Justice Maclean.

SHEO SHUNKUR SAHOY (DEFENDANT) *v.* HRIDOY NARAIN (PLAINTIFF).*

1882
April 14.

Suit for Damages—Splitting Claims—Civil Procedure Code (Act X of 1877), s. 43.

On the 27th Joist 1286 F. S. (2nd June 1879) the plaintiff brought a suit to recover damages for the breach of a contract on the part of the defendant, for not having made over possession to him of certain leasehold properties, the

* Appeal from Original Decree, No. 331 of 1880, against the decree of Baboo Koilash Chunder Mookerjee, Subordinate Judge of Tirhoot, dated the 3rd September 1880.

(1) 5 Mad. H. C. Rep., 114. (2) 5 W. R., 4, 19. (3) I. L. R., 2 Calc., 184.