

In the result their Lordships will humbly advise Her Majesty that the judgment appealed against ought to stand, and the appeal must be dismissed with costs.

*Appeal dismissed.*

Solicitors for the appellant :—Messrs. *Barrow and Rogers.*

Solicitors for the respondent :—Messrs. *T. L. Wilson and Co.*

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CHANDI DIN  
v.  
NARAINI  
KWAR.

## APPELLATE CIVIL.

1892  
March. 5

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Mahmood.*

DEOKI PRASAD AND OTHERS (PLAINTIFFS) v. INAIT-ULLAH (DEFENDANT)\*.  
*Muhammadan Law—Waqf—Waqf-namah containing provision for descendants of grantor.*

The fact that the grantor of a *waqf* has in the deed constituting the same made some provision for the maintenance of his kindred and descendants will not render the *waqf* invalid. *Sheik Mahomed Ahsan-ulla Chowdhry v. Amarchand Kundu* (1) and *Muzkurool Hug v. Puhraj Ditaray Mohapattur* (2) referred to.

The facts of this case sufficiently appear from the judgment of Edge, C. J.

Mr. *Amiruddin* for the appellants.

The Hon'ble Mr. *Spankie*, for the respondent.

EDGE, C. J.—The plaintiffs, appellants here, on the 19th of March 1885 obtained a money decree against Kudrat Ali. On the 27th of July 1885, Kudrat Ali executed a deed which is alleged to be a *waqf-namah*, and thereby transferred a portion of his property to his son Inait-ullah. The appellants here proceeded to execute their decree against the portion of the property which had been assigned by the deed of the 27th of July 1885. Inait-ullah filed objections claiming that the property was *waqf*. His objections were allowed, and thereupon the plaintiffs brought this suit against Inait-ullah and his father Kudrat Ali. The first Court decreed the suit. The lower appellate Court allowed the appeal of Inait-

\*Second Appeal No. 888 of 1888 from a decree of Lala Lalta Prasad, Subordinate Judge of Ghazipur, dated the 21st March 1888, reversing a decree of Lala Bageshri Dial, Munsif of Rasra, dated the 17th November 1887.

(1) L. R. 17 I. A. 28.

(2) 13 W. R. 235.

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DEOKI  
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ullah and dismissed the suit with costs. From the decree of the lower appellate Court this second appeal has been brought. Kudrat Ali did not defend the suit. He is not a respondent here. The sole respondent here is his son Inait-ullah. Mr. *Amiruddin*, for the appellants, contended, firstly, that the assignment of the 27th of July 1885 was a fraudulent transfer within the meaning of s. 53 of the Transfer of Property Act. It is not necessary to decide whether or not s. 2, clause (d) of the Transfer of Property Act excludes s. 53 of that Act. I say it is not necessary to decide this, because it has been found by the lower appellate Court that Kudrat Ali was possessed of other property quite sufficient to pay off the decree. Consequently the case cannot come within s. 53 of the Transfer of Property Act. The other point taken by Mr. *Amiruddin* is that the document of the 27th of July 1885 is not a valid *waqf-namah* according to Muhammadan law. His contention is that it is void under Muhammadan law as it provides for the descendants and kindred of the grantor as well as for certain religious purposes, and he relies on the decision of their Lordships of the Privy Council in the case of *Sheik Mahomed Ahsanulla Chowdhry v. Amarchand Kundu* (1). In my opinion the document which was considered there was a very different document from the document which we have to consider here. In this case the object of the *waqf-namah* was, firstly, to provide for the support of the descendants and kindred of the grantor who might be in great want and need of support, and the surplus of the income of the property was to go to purposes which were undoubtedly religious purposes. In my opinion that was a good *waqf-namah* and I would dismiss the appeal with costs.

MAHMOOD, J.—The learned Chief Justice has already dealt with the case so completely that I only wish to add a few words. One observation which I have to make is that the deed of *waqf-namah* now before us was a valid *waqf-namah* according to Muhammadan law, and that the views expressed by the learned Chief Justice in this case are in accord with those expressed by Kemp, J.,

(1 L. R. 17 I. A. 28.

in the case of *Muzhurool Hug v. Puhraj Ditarey Mohapattnr* (1). The next observation I have to make is that these views were accepted by their Lordships of the Privy Council in this very case of *Sheik Mahomed Ahsanulla Chowdhry v. Amarchand Kundu* (2), and that that case, far from supporting the appeal, seems to me to be opposed to it. For these reasons I agree with all that has fallen from the learned Chief Justice and also in the decree which he has made.

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*Appeal dismissed.*

*Before Mr. Justice Straight and Mr. Justice Tyrrel.*

1892  
March 5.

DULI SINGH (PLAINTIFF) v. SUNDAR SINGH (DEFENDANT).<sup>3</sup>

*Hindu law—Hindu widow—Gift.*

The widow of a separated Hindu being in possession, as such widow, of property left by her husband, executed a deed of gift of such property in favor of her daughter's son, her daughter being also a party to the deed. Subsequently to the execution of this deed of gift the executant's daughter gave birth to another son:—*held* that the deed in question could not affect more than the life interests of the executant and her daughter, and could not operate to prevent the succession (as to a moiety of the property) opening up in favor of the subsequently-born son on the death of the survivor of the two ladies. *Ramphal Rai v. Tala Kuari* (3) referred to.

The facts of this case sufficiently appear from the judgment of Straight J.

Mr. D. Banerji and Maulvi Ghulam Mujtaba, for the appellant.

Mr. Roshan Lal and Pandit Sundar Lal, for the respondent.

STRAIGHT, J.—One Bhimjit was the admitted owner of the property to which the suit relates, and he occupied the position of a separated Hindu in possession of separate estate. He was married to one Hira Kuar, who, upon his death in 1850, survived him. By Hira Kuar he had one daughter, Musammât Rukmin, who was married to a man of the name of Fateh Singh. By Fateh Singh she had two sons, Kharak Singh, who is a *pro forma* defendant in the present litigation, and Duli Singh, who is the plaintiff. Hira

\* First appeal No. 26 of 1891 from an order of Babu Gangs Saran, Subordinate Judge of Agra, dated the 11th October 1890.

(1) 13 W. R. 235.

(2) I. R. 17 I. A. 23.

(3) I. L. R. 6 All. 116.