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THAKUR
PRASAD
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the facts. Where a decree-holder has made an application within time and has obtained an order granting his request, and the completion of that order is suspended by some obstacle which the decree-holder has to remove before he can get satisfaction of his decree, and where, it may be after an interval of three years, having removed that obstacle, he returns to the Court and prays that, as in the present case, the order which he got years ago may now be carried to completion, his application is not a fresh application, but one praying the Court to revive the suspended order and permit it to be pushed through to completion.

We decree the appeal, set aside the order of the Court below, and return the proceedings to that Court with a view to their being carried out according to law.

The appellant will get his costs in all Courts.

Appeal decreed.

1900
July 23.

Before Mr. Justice Knox, Acting Chief Justice, and Mr. Justice Aikman.

JAMMYA (PLAINTIFF) v. DIWAN AND OTHERS (DEFENDANTS)*.

Act No. XII of 1887 (Bengal Civil Courts Act), section 37—*Muhammadan Law—Evidence of custom at variance with Muhammadan Law.*

Where the parties to a suit are Muhammadans, governed, in regard to the matters mentioned in section 37 of the Bengal Civil Courts Act, 1887, by the ordinary rules of Muhammadan law, evidence is inadmissible to prove a custom of succession at variance with that law. *Surmush Khan v. Kadir Dad Khan* (1) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Pandit *Moti Lal* (for whom Pandit *Mohan Lal Nehru*) for the appellant.

Mr. *Abdul Raouf* (for whom Mr. *Abdul Jabir*) for the respondents.

KNOX, ACTING C. J., and AIKMAN, J.—The main point taken in this appeal is that the learned Subordinate Judge has erred in law in holding that a custom of exclusion of daughters, which overrides the Muhammadan law of inheritance, is a good

* Second Appeal No. 406 of 1898 from a decree of Babu Prag Das, Subordinate Judge of Saharanpur, dated the 20th April 1898, reversing a decree of Pandit Kunwar Bahadur, Munsif of Muzaffarnagar, dated the 23rd August 1897.

and valid custom when the parties are Muhammadans. That this was the view taken by the learned Subordinate Judge is undoubtedly correct. He appears to have entirely overlooked section 37 of Act No. XII of 1887. That section lays down in very positive and emphatic terms that whenever it is necessary for a Civil Court to decide any question with regard to succession, inheritance, and other points therein specified, the Muhammadan law, in the case where parties are Muhammadans, shall form the rule of decision, except where such law has by legislative enactment been altered or abolished. We have not been referred to any legislative enactment touching the particular question before us, and we know of none. In striking contrast to the language used in section 37 of the Bengal Civil Courts Act is that used in section 5, Act No. IV of 1872, the corresponding section which has force in the Panjab. That provides that in questions regarding successions in cases where the parties are Muhammadans, the Muhammadan law is to be followed, except in so far as such law has been altered or abolished by legislative enactment, or has been modified by any custom applicable to the parties concerned, and not contrary to justice, equity or good conscience. The law which governs these Provinces gives no opening where parties are Muhammadans to the consideration of custom, and we have not been referred to any case of this Court which at all points that way. On the contrary, such decisions as there are, beginning with a Full Bench decision in the case of *Surmust Khan v. Kadir Dad Khan* (1) and extending onwards, are all opposed to the view taken by the learned Subordinate Judge. We must allow the appeal, which is decreed. The decree of the lower appellate Court is set aside, and the appeal is remanded under section 562 of the Code of Civil Procedure to the Court below, with directions to re-admit it to its file of pending appeals and dispose of it according to law. The plaintiff appellant will get the costs of this appeal.

Appeal decreed and cause remanded:

(1) (1866) Agra Full Bench Rulings, Vol. 1, p. 38.

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JAMUNA
v.
DIWAN.