

we must apply the same rule to the present case. The document became valid by the consent of the heirs. We must construe the will according to the way in which valid wills would be construed if the gift were made to strangers. Life estates and contingent interests are not recognised by the Muhammadan law, and we are not entitled to give the same effect to this will which might be given to an English will. In our view the gift in the will to Abdul Kadir was an absolute gift and the provisions restraining alienation and the condition as to the devolution of the property after his death without issue are void, and accordingly the claim of the plaintiff cannot be maintained. We are, therefore, of opinion that the decree of the Commissioner is correct, though not for the reasons which he has given. Under all the circumstances of the case we think that each party should abide his own costs in all Courts. This is our answer to the reference.

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ABDUL
KARIM
KHAN
v.
ABDUL
QAYUM
KHAN.

APPELLATE CIVIL.

Before Mr. Justice Banerji and Mr. Justice Richards.

GANESHI LAL AND OTHERS (OBJECTORS) APPELLANTS v. AJUDHIA
PRASAD AND OTHERS (APPLICANTS) RESPONDENTS.*

Hindu law—Mitakshara—Succession—Stridhan.

Held that the stridhan of a Hindu woman governed by the Mitakshara law would, on her death without issue, go to the sons of her husband's sister in preference to the sons of her own sister.

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

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

Dr. *Satish Chandra Banerji* (for whom Babu *Sarat Chandra Chaudhri*), for the respondents.

BANERJI and RICHARDS, JJ.—This is an appeal against an order made under Act No. VII of 1889, granting a certificate to the respondents. The debts in respect of which the certificate has been granted were due to a Hindu lady, Musamat Mathura Dei, and were admittedly her stridhan. The applicants for the certificate are her husband's sister's sons.

* First Appeal No. 61 of 1905, from an order of D. K. Lyle, Esq., District Judge of Moradabad, dated the 14th of February, 1905.

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GANESHI
LAL
v.
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PRABAD.

The appellants, who opposed the application, are the sons of the lady's own sister, and the question before the Court was which of these persons had the preferential right to obtain the certificate. The learned Judge has found in favour of the respondents. We think he was right. According to the Mitakshara, Chapter II, section 11, paragraph 11, the stridhan of a woman dying without issue who had been married according to one of the approved forms of marriage belongs in the first place to the husband, and in his absence to his nearest sapindas. The sister's sons of the husband are his sapindas though they belong to another *gotra*. It is admitted that there are no nearer sapindas of the husband. Consequently, according to the Mitakshara, which is the ruling authority in the Benares School and must govern this case, the respondents are the persons entitled to the stridhan of the deceased, and have, as held by the Court below, a preferential right to obtain the certificate. The appeal therefore fails.

There is an objection under section 561 of the Code of Civil Procedure by which the respondents question the propriety of the order made on the day following that on which the order appealed against was made directing the respondents to furnish security. This objection cannot be sustained as it is not an objection to the order appealed against. We think, however, that the order of the District Judge directing a certificate to be issued to the respondents should be varied by adding to it a direction that the respondents should furnish security as provided for in the order of the Judge, dated the 15th of February, 1905. This will cure the defect of which the respondents complain. We accordingly vary the order of the Court below by directing that the respondents shall, within three months from this date, give to the Judge a bond with one surety for rendering an account of the debts and securities received by him and for indemnity of persons who may be entitled to the whole or any part of those debts and securities. The security will be for an amount equivalent to the amount of the debts and securities for which the certificate is granted. As the appeal has substantially failed, the respondents will have their costs. The objections under section 561 are dismissed with costs.

Appeal dismissed.