

Before Mr. Justice Sir George Knox and Mr. Justice Karamat Husain.

ASMA BIBI (PLAINTIFF) v. ABDUL SAMAD KHAN (DEFENDANT).*

1909
December 23.

Muhammadian Law—Dower—Present value of the dirham.

The money value of ten *dirhams* in India is something between three and four rupees. *Sughra Bibi v. Musa Bibi* (1) referred to.

THIS was a suit by a Muhammadian wife to recover from her husband Rs 800, part of her dower of Rs. 1,000, Rs. 200 having been remitted. The defence, *inter alia*, was that the dower was not Rs. 1,000, but 10 *dirhams*. The court of first instance (Munsif of Fatehpur) gave the plaintiff a decree as claimed. On appeal by the defendant, however, the District Judge reduced the amount of the decree to Rs. 35, which he held to be the equivalent of 10 *dirhams* in current Indian money. The plaintiff appealed to the High Court.

Babu Surendra Nath Sen, for the appellant.

Maulvi Muhammad Ishaq, for the respondent.

KNOX and KARAMAT HUSAIN, JJ.—The only point for determination in this appeal is the money value of 10 (ten) *dirams*, or *dirhams*, which has been found to be the dower of the plaintiff. The lower appellate court has fixed it at about Rs. 35 (thirty five). The learned vakil for the plaintiff appellant contends that the money value of 10 (ten) *dirhams* is much more than Rs. 35. He relies on the following remarks in *Sughra Bibi v. Musa Bibi* (1):—"But it would appear that we are not allowed to escape from a hopeless and helpless dilemma, for we are told that we must either give this pauper plaintiff Rs. 51,000 or Fatima's portion of 10 (ten) *dirhams* amounting to Rs. 107."

With due respect to the learned Judges who fixed the money value of 10 (ten) *dirhams* at Rs. 107, we are unable to say that 10 (ten) *dirhams* amount to Rs. 107.

A *dirham* is "a silver coin usually weighing from forty five to fifty grains, rather heavier than an English sixpence." Wilson's Glossary, p. 143.

In a footnote to the *Hidayah* it is stated that the "value of the *dirm* is very uncertain. Ten *dirms* according to

* Second Appeal No. 920 of 1908, from a decree of J. H. Cuming, District Judge of Cawnpore, dated the 29th of July, 1908, modifying a decree of Hamid Husain, Munsif of Fatehpur, dated the 7th of March, 1908.

1909

ASMA BIBI
o.
ABDUL SAMAD
KHAN.

one account make about six shillings and eight pence sterling.”
(The *Hidayah* by Grady, p. 44.)

In the above passages the money-value of a *dirham* is correctly estimated and is between three and four annas. On this basis the portion of Fatima, the Prophet's daughter, which was 500 (five hundred) *dirhams* and not 10 (ten) *dirhams*, is commonly calculated among Muhammadans to amount approximately to Rs. 107 of the British coin.

The mistake in the remarks of the learned Judges in *Sughra Bibi v. Musa Bibi* (1), is that Fatima's portion is taken to be 10 (ten) *dirhams* while as a matter of fact it was 500 (five hundred) *dirhams*.

The following are a few out of the many passages to show that Fatima's portion was 500 (five hundred) *dirhams* and not 10 (ten) *dirhams* :—

(a) Baqir said :—“ The Prophet did neither give his daughters in marriage nor did he marry any of his wives on a dower higher than 12 (twelve) *auqiyahs* and a *nush*. “ *Nush* ” means one-half of an *auqiyah*. One *auqiyah* is 40 *dirhams* and one *nush* is twenty *dirhams*, and thus it (the dower) amounts to 500 (five hundred) *dirhams*. Masalik, Book on Marriage, Vol. I, Tehran edition.

قال الباقى ما تزوج رسول الله سائر بناته ولا تزوج شيئا من نسائه على اكثر من اثنتى عشرة اوقية ونش وهو نصف الاوقية و الاوقية اربعون والنش عشرون درهما فذلك خمسمائة درهم - مسالك الافهام كتاب النكاح جلد اول
طبع طهران *

(b) According to the Shafaais and the Hanbalis it is desirable that a dower should not be less than 10 (ten) *dirhams*. This view is adopted to avoid a conflict with Abu Hanifa's view. It is also desirable that it should not exceed 500 (five hundred) *dirhams*, which was the amount of the dower of the daughters of the Prophet and of his wives. The dower of Ommi Habiba, one of the wives of the Prophet, was no doubt 400 (four hundred) *deenars* (a gold coin), but that was fixed by Najashi as a token of distinction to the Prophet.

Qustalani, a commentary on Sahih Bukhari, Vol. VIII, p. 48-49. Nawal Kishore edition.

(1) (1877) I. L. R.; 2 All., 573, at 575.

فيستحب عند الشافعية والكنابلة ان لا ينقص عن عشرة دراهم خروجاً
من خلاف ابي حنيفة و ان لا يزيد علي خمسمائة درهم كآمدنة بنات النبي
صلى الله عليه وسلم و زوجته و اما اصدانق ام حبيبة اربعمائة دينار فكان
من النجاشي اكرامه صلى الله عليه وسلم - قسطلاني شرح صحيح بخاري
جلد هشتم صفحه ۲۸—۲۹ طبع نولكشور *

(c) It is stated in the account given of the marriage of Abu Jaafar, the second, that he said that Ali, son of Musa, proposed to marry Ommul Fazl, daughter of Abdullah Al-Mamun and gave her as dower 500 (five hundred) genuine *dirhams*, which was the amount of dower of his great-grandmother, Fatima. Beharul Anwar, Vol. X, p. 33. Tehran edition.

سياتي في تزويج ابي جعفر الثاني انه قال ان علي بن موسى خطب
ام الفضل بنت عبد الله المامون و بذل لها من الصداق مهر جدته فاطمة وهو
خمسمائة درهم جيد - بحار الانوار جلد عاشر صفحه ۲۳ طبع طهران *

(d) This is the Messenger of God. He has given his daughter Fatima to me in marriage on (a dower of) 500 (five hundred) *dirhams*. I have accepted it. Ye should ask him (if that is so) and be witnesses (1).

هذا رسول الله زوجني ابنته فاطمة عليها السلام على خمسمائة درهم و
قد رضيت فاسلموه و اشهدوا - بحار الانوار جلد عاشر صفحه ۳۵ طبع طهران *

(e) The Prophet gave Fatima in marriage to Ali. Her dower according to one report was 480 *dirhams*: according to another it was 400 (four hundred) mithqal of silver: according to a third report it was 500 (five hundred) *dirhams*, and this is the most authentic report.

في خبر زوج النبي فاطمة عليها علي اربع مائة و ثمانون درهما وروي
ان مهرها كان اربعمائة مثقال فضة وروي انه كان خمسمائة درهم وهو الاصح -
بحار الانوار جلد عاشر صفحه ۳۶ طبع طهران *

(f) It is reported from Abu Salmah, "I asked Aisha—'What was the Prophet's dower?' "The dower fixed by him", she said, "for his wives, was 12 (twelve) *awqiyahs* and a *nush*." She said: "Do you know what a *nush* is?" I said "No." She said, "It is one-half of an *awqiyah* and thus it (the dower) amounts to 500 (five hundred) *dirhams*."

(1) This is a portion of the speech reported to have been made by Ali on the occasion of his marriage with Fatima.

1909

ASMA BIBI
O.
ABDUL SAMAD
KHAN,

عن أبي سلمة قال سألت عائشة كم كان صداق النبي صلى الله عليه وسلم قالت كان صداقته لأزواجه اثنتى عشرة أوقية ونش قالت تدري ماالنش قلت لا قالت لضف أوقية فتملك خمسمائة درهم - مشكوة باب الصداق صفحة ٢٧٧ طبع مجتبهائي *

(g) Omar said, "I do not know that the Prophet married any of his wives or gave any of his daughters in marriage with a dower exceeding 12 (twelve) *auqiya*hs. (1) "

ماعلمت رسول الله صلى الله عليه وسلم نكح شيئاً من نسائه ولا انكح شيئاً من بناته علي أكثر من اثنتى عشرة أوقية - مشكوة باب الصداق صفحة ٢٧٧ طبع مجتبهائي *

(1) In the *Mirqat*, a commentary of *Mishcat*, it is noted that the dower of *Ommi Habibah*, one of the wives of the Prophet, which was 4,000 (four thousand) *dirhams* is an exception; for *Najashi* fixed it without its being fixed by the Prophet. It is also noted that the amount mentioned by Omar is to be explained in one of the two following ways:—

(1) He did not mention the *nush* as it is a fraction.

(2) The exact amount, *i.e.* 12½, and the dower of *Ommi Habibah* were not known to him. A translation of this is to be found in *Tagore Law Lectures for 1891-92* on p. 111 Art. 730 (121), Vol. I. It runs as follows:—

Omar-Ibn-Khattab says:—"I do not know that His Highness married any of his wives or gave any of his daughters in marriage with settlements more than five hundred *dirhams*; nay, the portion of *Fatima* was four hundred *dirhams*."

This is not a translation of the Arabic text, in which 500 (five hundred) *dirhams* and *Fatima's* portion are not mentioned.

(h) It is reported from *Ommi Habibah* (that) "she was the wife of *Abdullah* (*Obedullah*) son of *Jahsh*. He died in *Ethiopia* and *Najashi* gave her in marriage to the Prophet, fixing her dower on his behalf at 4,000 (four thousand), according to another report at 4,000 (four thousand) *dirhams*, and sent her to the Prophet with *Shurhabil* son of *Hasanah*. (2) *Mishcat*, p. 277.

عن أم حبيبة إنها كانت تحت عبد (عبد) الله بن جحش فسانت بارض الحبشة فزوجها النجاشي النبي صلى الله عليه وسلم و مهرها عنه أربعة آلاف وفي رواية أربعة آلاف درهم و بعث بها الى رسول الله صلى الله عليه وسلم مع شريحيل بن حسنة - مشكوة باب الصداق صفحة ٢٧٧ طبع مجتبهائي *

(2) A translation of this is to be found on p. 112, article 734 (125), of Tagore Law Lectures for 1891-92, Vol. I, in which instead of 4,000 (four thousand) four hundred *dirhams* are mentioned. This is undoubtedly wrong. This wrong translation seems to have led Sir R. Wilson to state in a foot-note on p. 119, 3rd edition of his Anglo-Muhammadian Law, that "the dower settled by Mohamed on each of his many wives is said to have been five hundred or four hundred *dirhams* (Mishkat, p. 101)."

According to the authorities cited the money value of 10 (ten) *dirhams* is something between Rs. 3 and 4, and thus there is no substance in this appeal, which we dismiss with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

1909

ASMA BIBI
v.
ABDUL SAMAD
KHAN.

1910
January 5.

Before Mr. Justice Sir George Knox and Mr. Justice Figgott.

EMPEROR v. RAMESHAR DAS.*

Act No. II of 1899 (Indian Stamp Act), sections 27, 64 (a) — Execution of document not containing statement of facts affecting duty—Stamp.

Certain property was sold for Rs. 20,000 to one R, who paid Rs. 1,000 in cash and agreed to give the vendors credit for Rs. 19,000 to be drawn against as required. Shortly afterwards the parties agreed to rescind the contract and R resold the property to his vendors, giving them a conveyance in which the consideration was stated to be Rs. 1,000 in cash, no mention being made of the extinction of his liability to pay the remaining Rs. 19,000. *Held* on these facts that R had committed an offence within the purview of section 64 (a) of the Indian Stamp Act, 1899.

THE facts of this case were as follows :—

Certain property was sold by Mahadeo Prasad and Sita Ram to Rameshar on 14th September, 1908, for the sum of Rs. 20,000. Out of this sum Rs. 1,000 only were paid in cash, and the remainder, Rs. 19,000, was expressed in the sale-deed as having been left in deposit with the vendee by the vendors, who intended to draw upon the deposit from time to time. As it happened, however, no portion of the deposit was drawn upon. A few months later, on 2nd March, 1909, Rameshar executed a sale-deed by which he re-conveyed the same property to the original vendors. The consideration for this re-sale was stated in the

* Criminal Revision No. 687 of 1909, from an order of Muhammad Ali, Sessions Judge of Mirzapur, dated the 14th August 1909.