

admittedly does not belong to the ward. Under these circumstances in our opinion the present suit does not relate either to the person or the property of the ward, and we think that a notice was therefore unnecessary. We allow the appeal, set aside the decree of both the courts below, and remand the case to the court of first instance through the lower appellate court with directions to re-admit it under its original number on the file and proceed to determine the same according to law. Costs here and hitherto will be costs in the cause.

Appeal decreed and cause remanded.

1914

LAL SINGH
v.
THE
COLLECTOR
OF ETAH.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

1914
April, 8

MAQBUL HUSAIN (DEFENDANT) v. GHIAFUR-UN-NISSA (PLAINTIFF) *
Muhammadian law—Gift—Revocation—Substantial alteration of subject-matter
—Partition

Held that a Revenue Court partition of villages, the subject of a deed of gift, does not amount to such a substantial alteration of the subject-matter in the hands of the donee as would under the Muhammadian law render the gift irrevocable by the donor.

THE facts of this case were as follows :—

The plaintiff executed a deed of gift in favour of the defendant, who was her husband's nephew, of the whole of her property on the 15th of September, 1908. She sued for revocation of this deed of gift on the ground that she was induced to execute it by the defendant, who was her mukhtar-a'am, and that he had not paid her any maintenance allowance as provided for by the deed. In her deposition she denied execution of the deed. The defendant pleaded that the suit was not maintainable at all, and even if it was, the plaintiff was not entitled to revocation of so much of the gift as related to property on which he had spent his own money by getting it partitioned and so improving it. He further alleged that the gift being a pious act of the donor was irrevocable under the Muhammadian law by which the parties were governed.

The court of first instance dismissed the suit; but the lower appellate court finding all the issues against the defendant, reversed the decree. The defendant appealed.

* Second Appeal No. 553 of 1913, from a decree of C. E. Guiterman, Second Additional Judge of Aligarh, dated the 25th of March, 1913, reversing a decree of Banke Behari Lal, Subordinate Judge of Aligarh, dated the 15th of March, 1912.

1914

MAQBUL
HUSAIN
v.
GHAFUR-UN-
NISSA.

Munshi *Govind Prasad*, for the appellant :—

The property was partitioned after the gift and there was an alteration of the subject. The donor, therefore, cannot revoke the gift. The defendant has spent money over the property. He cited *Ameer Ali's Muhammadan Law*, 4th Edn., 152.

Mr. *Agha Haidar*, for the respondent :—

Under the Muhammadan law the donor's right to sue for revocation of a gift is barred only when the subject-matter of the gift has altered in substance in the possession of the donee. A partition only affects the fiscal position of the various co-sharers; it does not alter the nature or substance of the property. The property is subject to the free exercise of the right of ownership.

Munshi *Govind Prasad*, was heard in reply.

RICHARDS, C.J., and BANERJI, J.—This appeal arises in a suit brought by the plaintiff for possession of certain property and revocation of a deed of gift in respect of it executed by her in favour of the defendant appellant. Her case as set forth in the plaint was that she had no counsellor or adviser except the defendant, and that the defendant had induced her to make the deed of gift in his favour having led her to believe that he would always remain obedient and faithful to her and would defray all her expenses. It has been found by both the courts below that the plaintiff was aware of the terms of the deed of gift and that no fraud has been proved. We cannot, however, overlook the fact that by the gift she divested herself of everything she had and left herself completely at the mercy of the defendant. Under such circumstances very clear and cogent evidence should have been given to show that she understood the nature of the transaction and its effect upon her interests. Under the Muhammadan Law, by which the parties are governed, a donor has a right to revoke a gift, except in the cases specified at page 152 of Volume I of *Ameer Ali's Muhammadan Law*. The defendant appellant contends that this case falls within the purview of clause (f) viz. that the subject-matter of the gift has altered in substance in the possession of the donee. What happened was this. According to the court of first instance two villages comprised in the gift had been partitioned at the instance of the defendant before the institution of the suit, and for this reason that court excluded those villages

from the operation of its decree. The lower appellate court held that only one village had been partitioned before the suit was filed and excluded that village only from the decree. We are unable to agree with the view of the court below in this respect. There has in our opinion been no substantial alteration of the subject-matter of the gift in the possession of the donee. The property at one time formed part of a bigger mahal; by a partition smaller mahals have been formed, and the property in dispute is now part of one of the smaller mahals. The only difference is that the plaintiff has become a co-sharer of a smaller mahal instead of the bigger mahal. There has been no alteration in the nature of the property. The property exists where it was. We think that the courts below have erred in holding that the gift could not be revoked by the plaintiff.

One other point was raised on behalf of the appellant, viz. that house No. 1320 had not been claimed in the plaint. This is true, but this house is included in the deed of gift and the plaintiff sought to set aside the whole gift. In the lower appellate court the point does not seem to have been pressed and in our opinion there is nothing in it.

The result is that we dismiss the appeal, and, allowing the objection filed on behalf of the respondent, decree the plaintiff's claim in full. Having regard to the fact that the plaintiff gave false evidence in the court of first instance and tried to support her claim by untrue evidence, we direct the parties to bear their own costs in all courts.

Appeal dismissed.

 1914

MAQBUL
HUSAIN
v.
GHAFUR-UN-
NISSA.