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In the result the appeal is allowed, the order of the learned Civil Judge is set aside. The record will be returned to the lower appellate court with the direction that the appeal be admitted to the pending file and disposed of according to law.

The appellant is entitled to his costs in this appeal.

APPELLATE CIVIL

Before Sir John Thom, Chief Justice, and Mr. Justice Ganga Nath

SADIQ ALI AND OTHERS (DEFENDANTS) *v.* ZAHIDA BEGAM (PLAINTIFF)*

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Muhammadan law—Gift—Assignment of Life Insurance policy —Gift in praesenti *or* in futuro—*Assignment with a condition that it shall be void if assignee predecease the assignor—Contingent gift—Validity—Insurance Act (IV of* 1938), *section* 38.

An assignment of life insurance policies was made by a Muhammadan in favour of his wife; there was a proviso that in the event of her predeceasing him the assignment would become null and void: *Held* that the assignment was valid.

The assignment, if regarded as a gift, was not invalid under the Muhammadan law. It was a gift *in praesenti* of the right to receive the money under the policies; the mere fact that the money was to be realised in future did not make it a gift *in futuro*. The essential elements of a valid gift, namely a declaration of the gift by the donor, an acceptance of the gift by the donee and delivery of possession to the donee, were present when the assignment was made and the policies were handed over to and accepted by the donee; the gift was complete as soon as these were done. Again, under section 38 (1), (2) and (5) of the Insurance Act the assignment became complete and effectual as soon as the endorsement, which was duly attested, was made.

The proviso, that in the event of the assignee predeceasing the assignor the assignment would become null and void, would not make the assignment invalid under the Muhammadan law as being a contingent gift, for by section 38(7) of the Insurance Act the assignment was valid notwithstanding any rule of Muhammadan law to the contrary.

*First Appeal No. 424 of 1937, from a decree of C. I. David, Second Civil Judge of Meerut, dated the 9th of March, 1937.

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SADIQ ALI v. ZAHIDA BEGAM

Mr. *K. Masud Hasan*, for the appellants.

Mr. *Mushtaq Ahmad*, for the respondent.

THOM, C. J., and GANGA NATH, J.:—This is a defendants' appeal arising out of a suit brought against them by the plaintiff respondent to recover Rs.10,000 for her dower and interest thereon. The plaintiff is the widow of Khan Bahadur Tasadduq Husain. The defendants are his other heirs. It was not contested that her dower was Rs.10,000. The defendants contended that it had been paid up by the assignment of three assurance policies of Rs.6,000 each by the plaintiff's husband before his death. The learned Civil Judge found against the defendants and decreed the suit.

It is not denied by the plaintiff that three assurance policies of Rs.6,000 each were assigned to her by her husband, Khan Bahadur Tasadduq Husain, before his death. The defendants' case was that this assignment was made to her in lieu of her dower, while the plaintiff contended that the assignment was made on account of love and affection and not in lieu of her dower.

It has been contended on behalf of the appellants that the dower was paid up by this assignment; and if it was not, the assignment amounted to a gift which was invalid, and they were entitled to their share in the money which was realised by the plaintiff under the assignment. The appellants produced three witnesses, two of whom are defendants themselves. [Their evidence was then discussed and the judgment continued as follows.]

There is intrinsic evidence in the endorsement of assignment itself, which shows that the assignment was not made and could not have been made in lieu of dower. The endorsement is: "I, Tasadduq Husain, in consideration of natural love and affection do hereby assign the benefit of all moneys to become payable under this . . . ." If this assignment was made in lieu of her dower, it should have been so stated in the endorsement. On the other hand, the proviso to this

endorsement clearly says that the assignment was not to take effect in case the wife died during the lifetime of her husband. The plaintiff's heirs would have been entitled to the dower on her death. If this assignment were made in lieu of dower, there was no reason to deprive the plaintiff's heirs of her dower in case she died before her husband. Under this proviso her heirs would not have got any benefit under the assignment. This fact leaves no room for doubt that the assignment was not made in lieu of dower.

It has been further contended by learned counsel for the appellants that this assignment amounted to a gift, and it was invalid under the Muhammadan law. The validity of the assignment has been attacked on two grounds, namely that it was a gift *in futuro,* and a contingent gift.

It is essential for the validity of a gift that there should be (1) a declaration of the gift by the donor, (2) an acceptance of the gift, express or implied, by or on behalf of the donee, and (3) delivery of possession of the subject of the gift by the donor to the donee. If these conditions are complied with, the gift is complete. In this case there is a declaration by the donor in the shape of the assignment. The assignee has stated on oath that the policies were handed over to her and she accepted them. The gift was therefore complete as soon as these conditions were complied with.

The mere fact that the money was to be realised in future is not enough to make it a gift *in futuro.* Otherwise gifts of actionable claims would not be possible. It is not disputed that valid gifts can be made of actionable claims.

In the present case what was gifted was the right to receive the money under the policies. In *Ahmad-ud-din* v. *Ilahi Bakhsh* (1) a gift was made of the right to receive a specified share of the offerings which might

(1) (1912) I.L.R. 34 All. 465.

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be made at a particular shrine. It was contended that a gift of the right to receive offerings was not valid, inasmuch as the thing gifted was not in existence and a gift of future things was void. It was observed: "The deed of the 11th of January, 1900, purports to transfer to Ilahi Bakhsh the right of Maksud-un-nissa to receive a specified share in the offerings made by pilgrims at a certain shrine in the town of Amroha. It is contended before us that such a gift is invalid under the Muhammadan law, because it is a gift of a thing not in existence at the time and incapable of that actual seisin which the Muhammadan law requires in order to make a gift valid. We think that the thing gifted in this case must be regarded as being the right of the donor to receive a fixed share in the offerings after they have been made, and this is an enforceable right in the sense that it is enforceable in law as against other co-sharers in the same." These observations apply fully to the present case.

Whether the gift is complete and *in praesenti* or not depends on the question whether the donor has divested himself of the property and conferred it on the donee. In the present case the assignor completely divested himself of all his rights and conferred full ownership on the plaintiff as soon as he made the assignment.

In *Sadik Husain Khan* v. *Hashim Ali Khan* (1) it was observed by their Lordships of the Privy Council: "In *Chaudhri Mehdi Hasan* v. *Muhammad Hasan* (2) it is laid down by this Board that, according to Muhammadan law, a holder of property may in his lifetime give away the whole or part of it if he complies with certain forms, but that it is incumbent on those who seek to set up such a transaction to prove that those forms have been complied with, and this will be so whether the gift be made with or without consideration. If the latter, then unless it be accompanied by delivery of the thing given, so far as it is capable of delivery,

(1) (1916) I.L.R. 38 All. 627(645). (2) (1906) I.L.R. 28 All. 439(449)

it will be invalid. If the former, delivery of possession is not necessary, but actual payment of the consideration must be proved, and the *bona fide* intention of the donor to divest himself *in praesenti* of the property and to confer it upon the donee must also be proved."

Section 38(1), (2) and (5) of the Insurance Act (No. IV of 1938) enacts:

"(1) A transfer or assignment of a policy of life insurance, whether with or without consideration, may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the assignor or his duly authorised agent and attested by at least one witness, specifically setting forth the fact of transfer or assignment.

"(2) The transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but shall not be operative as against an insurer and shall not confer upon the transferee or assignee or his legal representative any right to sue for the amount of such policy or the moneys secured thereby until a notice in writing of the transfer or assignment has been delivered to the insurer at his principal place of business in British India by or on behalf of the transferor or transferee.

"(5) From the date of the receipt of the notice referred to in sub-section (2) the insurer shall recognize the transferee or assignee named in the notice as the only person entitled to benefit under the policy, and such person shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings."

These provisions have been duly complied with. The assignment therefore became complete and effectual as soon as the required endorsement duly attested was made. The assignment, even if it amounted to a gift, was a gift *in praesenti* and not *in futuro*.

It has also been contended by learned counsel that the gift was contingent and therefore void under the Muhammadan law. If this assignment is to be regarded

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as a gift, as is contended by learned counsel for the appellants, the defect of contingency is validated by the provisions of sub-section (7) of section 38 of the Insurance Act, which lays down: "Notwithstanding any law or custom having the force of law to the contrary, an assignment in favour of a person made with the condition that it shall be inoperative or that the interest shall pass to some other person on the happening of a specified event during the life of the policyholder, and an assignment in favour of the survivor or survivors of a number of persons, shall be valid."

The words "any law or custom" are wide enough to cover the Muhammadan law in the present case. The gift, therefore, is not invalid on account of the proviso "that in the event of my said wife predeceasing me, this assignment shall become null and void, as if it had not been made."

We, therefore, hold that the assignment was valid. There is no force in the appeal. It is therefore ordered that the appeal be dismissed with costs.

Before Sir John Thom, Chief Justice, and Mr. Justice Ganga Nath

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ZAMIR AHMAD (PLAINTIFF) *v.* QAMAR-UN-NISSA AND OTHERS (DEFENDANTS)*

Muhammadan law—Wakf—Wakf by a person involved in debt—Validity—Voidable by creditors if purpose was to defeat or defraud them—Subsequent arrangement among the heirs touching the wakf property—Effect—Transfer of Property Act (IV of 1882), sections 2(d), 53.

A wakf created by a Muhammadan who is involved in debt is not *ipso facto* void under the Muhammadan law; it is only voidable, at the instance of the creditors, if it is executed for the purpose of defeating or defrauding them. Section 53 of the Transfer of Property Act applies to wakfs by Muhammadans.

The validity of a wakf cannot be affected by a subsequent arrangement by the heirs of the wakif by which the wakif's estate including the wakf property is parcelled out amongst

*First Appeal No. 513 of 1934, from a decree of V. R. Mehta, Civil Judge of Pilibhit, dated the 7th of December, 1933.