1938

BHOLA NATH v. SHIV SINGH

arrived at by the learned District Judge that the transfer was not made in recognition of the right of pre-emption, we must hold that the appellant was not entitled to rely upon the transfer in order to defeat the claim of the plaintiff." Applying this reasoning to the present case we find that in the present case, as is admitted by learned counsel, there was no reference in the deed of gift to the right of pre-emption and further the lower appellate court has held as follows in the present case: "Firstly, the transfer made to the respondent No. 2 being a gift and not a sale it is impossible to say that it was made to him by virtue of his preferential right of pre-emption. Secondly, Bhola Nath, being himself the manager of the respondent No. 2, in taking the sales for himself necessarily gave his assent as manager to the sales being made to himself in his personal capacity. The respondent No. 2 had therefore lost his right of pre-emption and could not exercise it again when the plaintiffs had come to court to enforce their right." In view of these rulings we consider that the decrees of the court below are correct and we dismiss these second appeals with costs.

Before Mr. Justice Bennet and Mr. Justice Verma

1938

December, 2

IQBAL ALI (DEFENDANT) *v.* HALIMA BEGAM (PLAINTIFF)*

Muhammadan law—Dissolution of marriage—Apostasy—Conversion of wife to Christianity entitles her to dissolution of marriage.

A Muhammadan wife's conversion to Christianity effects a dissolution of marriage with her Muhammadan husband, and she is entitled to a declaration to that effect.

Messrs. *Shiva Prasad Sinha* and *Shanker Sahai Verma*, for the appellant.

Messrs. *G. S. Pathak* and *M. A. Aziz*, for the respondent.

*Second Appeal No. 1532 of 1935, from a decree of P. P. M. C. Plowden, District Judge of Jhansi, dated the 5th of November, 1935, reversing a decree of Khalil Ahmad Khan, Munsif of Jhansi, dated the 31st of May, 1935.

1938

IQBAL ALI v. HALIMA BEGAM

BENNETT and VERMA, JJ.:—This is a second appeal against the judgment and decree of the learned District Judge of Jhansi who reversed the judgment and decree of the Munsif of Jhansi. The appellant was the defendant in the action which was for a declaration that the marriage of the plaintiff with the defendant had been dissolved as the result of the plaintiff having abjured Islam and having been converted to Christianity. As we have indicated above, the Munsif dismissed the suit but the learned Judge has decreed it. The plaintiff's case was that she had renounced the Muhammadan religion and had been formally baptised as a Christian and that she believed in Christianity and no longer believed in Islam. She pleaded that her conversion *ipso facto* dissolved the marriage tie between her and her husband the defendant. The defendant contested the suit and denied that the plaintiff had been converted to Christianity and pleaded that in no case could the marriage tie be dissolved. The court of first instance held that the plaintiff had not as a matter of fact been converted to Christianity and that she was not in law entitled to the declaration prayed for. The learned Judge, on a careful consideration of the evidence, came to the conclusion that it was established that the plaintiff had renounced Islam and had been baptised as a Christian. On the question of law he referred to the case of *Amin Beg* v. *Saman* (1). and decided in favour of the plaintiff. In the result he decreed the suit and granted to the plaintiff the declaration sought by her.

The learned counsel appearing for the defendant appellant has tried to attack the finding of the learned Judge that the plaintiff has as a matter of fact been converted to Christianity. It is clear, however, that the finding is one of fact based on evidence and is binding on us in second appeal.

On the question of law the learned counsel has cited the views of Mr. Ameer Ali expressed in the 3rd Edition

(1) (1910) I.L.R. 33 All. 90.

1938

IQBAL ALI v. HALIMA BEGAM

of his well known work on Muhammadan Law. He is unable to support his contention by reference to any other book or authority. The decision of this Court in the case of *Amin Beg* v. *Saman* (1), mentioned above, is clearly against the contention of the learned counsel and fully supports the decision of the lower appellate court. We are in complete agreement with that decision and with the reasons contained in the judgment of that case. We may add that the same view has been followed in the later case of *Karan Singh* v. *Emperor* (2). Reference may also be made to the cases of *Sardaran* v. *Allah Baksh* (3), *Sardar Mohammad* v. *Maryam Bibi* (4), *Resham Bibi* v. *Khuda Bakhsh* (5) and *Abdul Ghani* v. *Azizul Huq* (6).

For the reasons given above, we dismiss this appeal with costs.

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

1938 *December*, 6

BRIJ DEVI (DEFENDANT) *v.* SHIVA NANDAN PRASAD AND OTHERS (PLAINTIFFS)*

Transfer of Property Act (IV of 1882), *sections* 10, 126—*Gift—Revocation—Condition restraining alienation—Condition repugnant to the initial grant—Invalid—Gift not revocable upon alienation by donee.*

Where the terms of a deed of gift effected an absolute transfer of the land and conferred upon the donee full proprietary title, but a condition was added which absolutely restrained the donee and his successors from transferring the land and made the gift revocable upon any such transfer: *Held,* that the condition restraining the right of alienation was repugnant to the initial estate granted by the gift and was void under section 10 of the Transfer of Property Act.

Section 126 of the Transfer of Property Act does not in any way modify, or detract from the generality of, section 10. In chapter II of the Transfer of Property Act the conditions which may be imposed, or may not be imposed, upon the transfer of

*Appeal No. 73 of 1937, under section 10 of the Letters Patent.

(1) (1910) I.L.R. 33 All. 30.
(2) [1933] A.L.J. 733.
(3) A.I.R. 1934 Lah. 976.
(4) A.I.R. 1936 Lah. 666.
(5) I.L.R. [1938] Lah. 277.
(6) (1911) I.L.R. 39 Cal. 409.