

APPELLATE CIVIL.

Before Mr. Justice Muhammad Raza and Mr. Justice
A. G. P. Pullan.

1930
October, 15.

MUSAMMAT SARTAJ FATIMA (PLAINTIFF-APPELLANT).
SYED MUHAMMAD JAWAD AND OTHERS (DEFENDANTS-
RESPONDENTS).*

Arbitration—Award—Error in law made by an arbitrator, whether invalidates an award—Muhammadan law—Award or decree of court attaching conditions to grant of a guzara, whether valid according to Muhammadan law.

An arbitrator has very wide powers and even an error in law made by an arbitrator does not invalidate the award. *Muhammad Yusuf Husain v. Wilayat Husain* (1), relied on *Jafri Begam v. Syed Ali Raza* (2), distinguished.

There is nothing contrary to the terms of the Muhammadan law in a gift by one person to another of a *guzara* for the lifetime of the latter with a continuance in favour of the male heirs of the donee, and such a gift could be made without offending any principle of Muhammadan law. An award by an arbitrator and a decree of a court can be passed laying down similar conditions.

Mr. *Radha Krishna*, for the appellant.

Mr. *Akhlaque Husain*, for the respondents.

RAZA and PULLAN, JJ. :—The plaintiff, who has brought this second appeal, obtained a decree in accordance with her petition of plaint but the lower appellate court in his judgment made one observation which has given rise to the present second appeal, namely, that the maintenance of Rs. 20 a month which the plaintiff is to receive from defendant No. 3, Syed Muhammad Jawad, is only to be paid so long as the descendants of one Syed Hasan Raza in the male line exist. Under an arbitrator's award of the year 1912 a decree was passed by which the defendant No. 3, Syed Muhammad Jawad, was ordered to pay a sum of

*Second Civil Appeal No. 357 of 1929, against the decree of Saiyed Asghar Hasan, District Judge of Hardoi, dated the 16th of September, 1929, modifying the decree of Babu Jagdamba Saran, Additional Subordinate Judge of Hardoi, dated the 26th of February, 1929.

(1) (1928) 5 O.W.N., 1001.

(2) (1901) I.L.R., 23 All., 383
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guzara amounting to Rs. 40 a month to his brother Syed Hasan Raza and to his male heirs for ever. Under the terms of this decree Syed Hasan Raza accepted the *guzara* until his death in the year 1925. Shortly before his death he had married the plaintiff. He also left surviving him one son and one daughter. Under the terms of the decree based on the award the *guzara* was payable to his son Syed Zaki Raza, but an agreement was entered into to which Syed Muhammad Jawad has been found also to have been a party by which one half of the *guzara* is to be paid to the plaintiff.

The plaintiff's objection to the amendment made by the lower appellate court in the decree of the court of first instance is that the award itself was bad in law because "the terms of the award and decree altering the line of succession as laid down by the Muhammadan law are void." An arbitrator has very wide powers and even an error in law made by an arbitrator does not invalidate the award as was pointed out in a judgment of a Bench of this Court of which one of us was a member in the case of *Muhammad Yusuf Husain v. Wilayat Husain* (1) and in that case the decision of their Lordships of the Judicial Committee reported in *Jafri Begam v. Syed Ali Raza* (2) on which the present appellant relies was considered. Their Lordships laid down in that ruling that an arbitrator has no power to "alter the course of the legal devolution of the estate in a mode at variance with the ordinary principles of law"; but they also observed in their judgment that an award so made would be binding on the parties to it. Now even if it be held that the award of the arbitrator in this case has laid down any rule altering the course of the legal devolution of an estate, it does not appear to us open to the plaintiff to challenge it. She has based her whole claim on the award and apart from that award she would not be

(1) (128) 5 O.W.N., 1001.

(2) (1901) I.L.R., 28 All., 333
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entitled to anything by way of *guzara* from Syed Muhammad Jawad. She cannot object to the conditions which were contained in the award on which she based her title. We may also observe that the decree was accepted at the time by Hasan Raza and has long ago become final. But we are not of opinion that in this case the decision of the arbitrator in any way altered the course of "the legal devolution of an estate in a mode at variance with the ordinary principles of law." This is not a question of the inheritance of an estate. It is merely a question arising between the giver and the receiver of a sum paid as a *guzara*. There is nothing contrary to the terms of the Muhammadan law in a gift by one person to another of a *guzara* for the life-time of the latter with a continuance in favour of the male heirs of the donee, and such a gift could be made without offending any principle of Muhammadan law. It appears to us that an award by an arbitrator and a decree of a court can be passed laying down similar conditions. We do not consider therefore that the observations of their Lordships in the case referred to *Jafri Begam v. Syed Ali Raza* (1) have any application to the present appeal. The judgment of the court below has clearly laid down correctly the meaning of the award and has pointed out that it would be a mistake to continue this *guzara* in favour of the plaintiff indefinitely, because the *guzara* itself was not granted indefinitely. It continues only while the male heirs of Syed Hasan Raza exist and if at any time there are no male heirs of Syed Hasan Raza in existence and the line thereby becomes extinct, there will be no liability on the respondent to pay any further *guzara* either to the plaintiff or any one else. We consider therefore that the restriction passed by the court below on the decree of the court of first instance was correct and we dismiss this appeal with costs.

Appeal dismissed.

(1) (1901) I.L.R., 28 All., 388 (F.C.).

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