APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge, and Mr. Justice H. G. Smith

1936
September 22

IRSHADULLAH KHAN AND OTHERS (PLAINTIFFS-APPELLANTS) *v.* MUSAMMAT FAKHIRA BEGAM AND ANOTHER (DEFENDANTS-RESPONDENTS)*

Muhammadan Law—Inheritance—Muhammadan family governed by custom in inheritance—Bequest in favour of widow—Custom not derogatory to Muhammadan Law relating to wills—Bequest inoperative without consent of other heirs under custom—Will, whether governed by rules of Muhammadan Law—Will purporting to be in consideration of dower debt, effect of—Oudh Laws Act (XVIII of 1876), section 3(b)(1)(2)—Limitation Act (IX of 1908), articles 141 and 144—Adverse possession—Muhammadan widow having life interest in her husband's property under custom—Will by husband making her absolute owner becoming inoperative—Possession of widow, whether adverse—Suit for possession by reversioner after widow's death—Limitation, starting point of.

Where inheritance in a Muhammadan family is governed by special custom given in the *wajib-ul-arz*, but there is nothing in that special custom which derogates from the ordinary provisions of Muhammadan Law relating to wills then the ordinary provisions of Muhammadan Law relating to wills and to the consent of other heirs to the will in favour of a single heir apply. In such a case heirs must be looked for according to the special custom and not according to the ordinary rules of Muhammadan Law as to inheritance.

Where, therefore, on the death of a Muhammadan owner of property dying without male issue, according to the special custom governing inheritance in the family, his widow becomes entitled to hold the property for life, but she has no right of transfer without the consent of the real brothers of the deceased and their issue and in case there be no widow the son of the brother and his issue, and, in his absence, the co-sharers with regard to nearness become the heirs of the property left, then a will by the deceased in favour of the widow making her absolute owner of his property will be invalid in the absence of the consent of the real brother of the deceased and his sons, even though they are only to come in after her death. The

*First Civil Appeal No. 57 of 1934, against the decree of S. Abid Raza, Additional Civil Judge of Kheri, dated the 29th of March, 1934.

question as to the necessity of their consent is not affected by the fact that the will purports to be in consideration of the services and the dower debt of the widow. *Ahmad Asmal Muse* v. *Bai Bibi* (1), relied on. *Farzand Ali* v. *Karim Bakhsh* (2), *Binaik Dat* v. *Mohammad Ghafur Khan* (3), *Cholmondeley* v. *Clinton* (4), *Secretary of State* v. *Debendra Lal Khan* (5), *Varada Pillai* v. *Jeevarathnammal* (6), *Ram Dutt Singh* v. *Mohammad Nazir Khan* (7), *President and Governors of the Magdalen Hospital* v. *Alfred Knotts* (8), *Satgur Prasad* v. *Raj Kishore Lal* (9), *Janaki Ammal* v. *Narayanasami Aiyer* (10), *Venkatanarayana Pillai* v. *Subbammal*, (11), and *Khujooroonissa, Ranee* v. *Roushun Jehan* (12), referred to.

Where the widow is entitled to hold the property for life, her possession, however long it lasts, is not possession adverse to the ultimate heirs so as to create an absolute right to the property in her favour after the expiry of 12 years. Accordingly a suit by a person entitled to succeed as heir to her husband on her death for the recovery of immovable property belonging to her husband is governed by article 141 and not by article 144, Limitation Act, and the right to sue arises on the death of the widow.

Messrs. *M. Wasim, Khaliq-uz-Zaman, Ali Hasan* and *Saraswati Prasad*, for the appellants.

Sir *Syed Wazir Hasan* and Messrs. *Akhlaque Husain* and *Abrar Husain*, for the respondents.

SRIVASTAVA, C.J. and SMITH, J.:—This is an appeal from a decision, dated the 29th of March, 1934, of the learned Additional Subordinate Judge of Kheri.

Property, movable and immovable, stated by the plaintiffs to have belonged to one Hafizullah Khan, was in dispute in the suit. This Hafizullah Khan had two brothers, Barkatullah Khan and Rahmatullah Khan, who both pre-deceased him. Rahmatullah Khan left no male issue, but Barkatullah Khan left a son, Hidayatullah Khan. The last-named died about the year 1924 or 1925, leaving three sons, Irshadullah Khan,

(1) (1916) I.L.R., 41 Bom., 377.
(2) (1920) 8 O.L.J., 138.
(3) (1927) 4 O.W.N., 770.
(4) (1820) 37 E.R., Chancery, 527.
(5) (1934) A.I.R., P.C., 23.
(6) (1919) A.I.R., P.C., 44.
(7) (1934) 11 O.W.N., 1165.
(8) (1879) L.R., 4 A.C., 324.
(9) (1919) I.L.R., 42 All., 152.
(10) (1916) L.R., 43 I.A., 207.
(11) (1915) I.L.R., 38 Mad., 406.
(12) (1876) L.R., 3 I.A., 291

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Ahmadullah Khan and Azizullah Khan. Hafizullah Khan died in the year 1902. He left his widow, Musammat Hayat Bibi, in whose favour he is said to have made a will on the 28th of August, 1884, making her absolute owner of his property. He had a daughter, Musammat Mumtazan but she died in her father's life time. Musammat Hayat Bibi lived until the 22nd of May, 1933. She was admittedly in possession as long as she lived of the property left by Hafizullah Khan. On the 18th of April, 1929, she made a will conferring a life estate in the property on her daughter's daughter, Musammat Fakhira Begam, with remainder to the three sons of Hidayatullah Khan, but on the 19th of December, 1932, she made a deed of gift revoking the will and giving all the property to Musammat Fakhira Begam. The three sons of Hidayatullah Khan are the plaintiffs in the present suit, and the defendants are Musammat Fakhira Begam and her husband, Muhammad Shafiullah Khan. The latter was not originally a party, but was impleaded later on, apparently because he was in possession of the movable property. The main contest, however, is between the plaintiffs and Musammat Fakhira Begam. The suit was instituted on the 29th of May, 1933, and the reliefs asked for in the plaint as amended were as follows:

> "(*a*) That a declaratory decree be passed to the effect that the plaintiffs are the owners of and rightholders in the property specified in Lists A and B, attached hereto, the assets of Musammat Hayat Bibi, or in any other property which may be declared to be the assets of Musammat Hayat Bibi and that the defendant has no right and share in the said property.
>
> (*b*) That if for any reason it be held that the defendant has possession over the property specified in the lists attached hereto, the assets of Musammat Hayat Bibi, then a decree for possession over the property specified in List A, attached to the

plaint, be passed in the plaintiffs' favour against the defendant.

(*c*) That if for any reason it be declared that the deed of gift relied upon by the defendant, mentioned in para 3 "(13?)", hereof, is fit to be enforced, then a decree for possession of two-third of the property specified in Lists A and B attached hereto be passed in the plaintiffs' favour as against the defendant.

(*d*) If for any reason it be held that Musammat Hayat Bibi had the right of transfer and the will mentioned in para. 15 herein is valid, then a declaratory decree to this effect be passed that the defendant has only life interest in the assets of Musammat Hayat Bibi without power of alienation, and

(*e*) That costs be made payable."

The family of the parties was originally Hindu, but long ago it was converted to Islam, and the parties are now what is known as Ahban Musalmans. As frequently happens in such cases, traces of the Hindu origin of the family have continued to exist in the form of special family customs, which are akin to the provisions of Hindu Law in the matter of inheritance. The parties belong to a place called Gola in the Haiderabad pargana of the Kheri district, and para. 4 of the *wajib-ul-arz* of that place runs as follows with regard to the custom of inheritance (*vide* page 23 of Part III of the printed book):

"We, the owners of this village, are Ahban Musalmans by caste. The custom of inheritance is not according to the Muhammadan Law, it is based on custom. After the death of a co-sharer, first the male issue, e.g., the son and the grandson, etc., become the heirs and possessors of the property. If there be no issue of the deceased, the widow becomes the possessor of the property left by her husband, but she has no right of transfer without the consent of the real brothers of the deceased and their issue. In case there be no widow the son of the brother and his issue, and, in his absence, the co-sharers with regard to

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nearness become the heirs of the property left. The daughters have no right and share in our family. No widow has up to this time made any adoption in our family, nor can she adopt any one contrary to custom and, in case of a number of wives and their respective issues, the division of the property left is made according to the number of sons, and not according to the number of wives. Accordingly from the first marriage of Allah Bakhsh Khan, Barkatullah Khan and Hafizullah Khan are his sons; and, from the second marriage, Rahmatullah Khan is his son; and the share (of Allah Bakhsh Khan) has equally been divided among the three; but 5 biswas more have been given to Barkatullh Khan in lieu of his labour, etc. The woman, not legally married, and her issue have no right to get any share; but, with the possessor of the inheritance rests the responsibility of their support and their maintenance subject to their being of good conduct and obedient."

According to the above provisions, Musammat Hayat Bibi would have had nothing but a life interest in the property of her deceased husband, Hafizullah Khan, and although the provisions of the *wajib-ul-arz* are not so precisely stated as they might have been, there is no real doubt that the plaintiffs would have taken the property after the death of Musammat Hayat Bibi, if the only thing to be considered were the terms of this paragraph of the *wajib-ul-arz*. The matter is complicated, however, by the will made by Hafizullah Khan in 1884 in favour of Musammat Hayat Bibi. The contention on behalf of the plaintiffs, briefly stated, is that although inheritance generally in the family is governed by the special provisions of the *wajib-ul-arz*, Muhammadan Law applies to the parties in any matter not expressly covered by those special provisions. This contention is in accordance with the provision of section 3(*b*)(1) and (2) of the Oudh Laws Act (XVIII of 1876). The argument of the plaintiffs' counsel is that there is nothing in the special customs recited in the *wajib-ul-arz* which derogates from the ordinary provisions of Muhammadan Law relating to wills, and that accordingly the will of Hafizullah Khan in favour of Musammat Hayat Bibi was invalid *in toto* by reason

of its being in favour of an heir without the consent given after the death of the testator of the other heirs. The question of the validity of the deed of gift by Musammat Hayat Bibi in favour of her grand-daughter, Musammat Fakhira Begam, was also raised in the suit, and was the subject of a good deal of contention in the court below, but it is clear that the position of the plaintiffs depends upon their being able successfully to attack the will of 1884 of Hafizullah Khan. If they can successfully attack the validity of that will, the deed of gift in favour of Musammat Fakhira Begam fails also. If they cannot successfully attack the validity of that will, any defect in the deed of gift in favour of Musammat Fakhira Begam does not assist them, inasmuch as they are not personal heirs of Musammat Hayat Bibi.

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The judgment of the learned Additional Subordinate Judge, we feel bound to point out, is at places obscurely and ungrammatically worded. He framed in all nine issues, two of which, nos. 5 and 6, he sub-divided into four portions. We do not think it necessary to set out the issues and the findings on them at length. It is sufficient to say that on the main question the learned Additional Subordinate Judge took the view that the heirs whose consent is necessary under Muhammadan Law to validate a bequest in favour of an heir of the testator, must be taken to be immediate heirs only, and that on the death of Hafizullah Khan his only immediate heir was his widow, Musammat Hayat Bibi, and that, therefore, the bequest of his whole property to her was valid. This finding, as the learned Additional Subordinate Judge said, involved the failure of the plaintiffs' suit, and the suit was in the end dismissed, though the learned Additional Subordinate Judge gave findings on most of the other issues framed by him. Against that decision the plaintiffs have preferred this appeal.

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The genuineness of Hafizullah Khan's will of the 28th of August, 1884, has not been disputed before us, nor has it been disputed that it conferred a full estate on Musammat Hayat Bibi. The only point in dispute is the validity of the will. The contention of the learned counsel for the appellants, as we have indicated already, is that the ordinary rules of Muhammadan Law applicable to wills apply in the present case, since there is no provision to the contrary in the special custom recited in the *wajib-ul-arz*. On this point reliance was placed on the case of *Ahmad Asmal Muse* v. *Bai Bibi, widow of Adam Amanji and another* (1). It appears from the judgment in that case that certain property known as *Bhag* property was in dispute. Such property in the absence of a will devolved by custom upon the *Bhagdar's* widow, if he died sonless for her life, and after her death was inherited by his nearest male agnate to the exclusion of the daughter and sister. The owner of the property in that case was a Muhammadan, and he made a will, by which he left the *Bhag* and other properties to his widow with a remainder to his daughter and her issue, if she survived the widow. The plaintiff who was a residuary heir of the testator, and had not given his consent sued for a declaration that he was the nearest agnate of the deceased testator, that the widow and the daughter acquired no rights under the will, and that he was entitled to the property after the death of the widow. The view taken by the learned Judges was that in spite of the existence of special customs relating to the *Bhagdari* property, the owner of such property could, nevertheless, make a will in respect of it, and that the owner being a Muhammadan, the rule of Muhammadan Law relating to wills was the only law which could be applied. It was held that as the plaintiff, who was the presumptive reversioner under the *Bhagdari* custom, had never consented to the will, the will was invalid under Muhammadan

(1) (1916) I.L.R., 41 Bom., 377.

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Law. It seems to have been assumed in that case, in the absence of any contention raised to the contrary, that the presumptive reversioner was as much an heir as an immediate heir for the purpose of the application of the ordinary rule of Muhammadan Law relating to the consent of other heirs to a will in favour of a single heir.

This point, however, has been the subject of much contention before us at the time of the arguments. The learned counsel for the appellants maintained that Hidayatullah Khan, their father, acquired a vested interest in the property at the death of Hafizullah Khan, and was not merely a person with a *spes successionis*, which could only materialise on the death of the widow. In that connection, he relied upon a decision of the late Court of the Judicial Commissioner of Oudh in *Farzand Ali and others* v. *Karim Bakhsh* (1). In that case the *wajib-ul-arz* that had to be considered contained provisions very similar to those of the *wajib-ul-arz* with which we are concerned in the present case, and it was held that the provisions merely indicated a postponement of the right of the husband's heirs to take possession, and that the estate vested in those heirs from the moment of the husband's death. The learned counsel conceded, however, that the case of *Binaik Dat and others* v. *Mohammad Ghafur Khan and others* (2) is against him on this point. In that case the case of *Farzand Ali* v. *Karim Bakhsh* (1) was referred to and dissented from, and the view taken was that a custom like the present one, being based on principles of Hindu Law, should be held to give the succession to the collaterals at the time of the widow's death. In any case, the contention before us was that the plaintiffs' father and the plaintiffs themselves were heirs, whether immediate or not, and that in the absence of their consent to the will of Hafizullah Khan after the testator's death the will was invalid.

(1) (1920) 8 O.L.J., 138. (2) (1927) 4 O.W.N., 770.

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The learned counsel for the respondents argued that having regard to the special customs of inheritance contained in the *wajib-ul-arz*, the ordinary provisions of Muhammadan Law have no application at all. Even if the ordinary requirements about the consent of heirs be held to apply, however, the learned counsel argued that the heirs whose consent was necessary must be looked for according to the custom, and not according to the ordinary provisions of Muhammadan Law. On this basis it was argued that the only heir at the time of the testator's death was Musammat Hayat Bibi, and that no one else had anything more than a *spes successionis*. As regards the case of *Ahmad Asmal Muse* v. *Bai Bibi* (1), the learned counsel suggested that that ruling does not lay down good law, and that in any case there was no discussion in it of the point who are the heirs whose consent would be necessary. A further point taken by the learned counsel for the respondents was that the will was not a gratuitous one but was in consideration of the services rendered to the testator by Musammat Hayat Bibi, and of her dower debt, and that as no distribution of the assets of a deceased Muhammadan can take place until the debts have been paid off, there was really nothing to distribute amongst any other possible heirs, and no question of consent of heirs arose. The learned counsel for the respondents also contended that Musammat Hayat Bibi perfected her title by adverse possession. His argument was that if there was any defect in her title under the will, it was cured by lapse of time. He referred to the case of *Cholmondeley (Marquis)* v. *Clinton (Lord)* (2). If the rights of the reversionary heirs were endangered, the learned counsel's argument was, they could have sued, and ought to have sued, under section 42 of the Specific Relief Act. In support of his argument on this part of the case the learned counsel referred to the following

(1) (1916) I.L.R., 41 Bom., 377. (2) (1820) 37 E.R., Chancery, 527.

cases: *Secretary of State* v. *Debendra Lal Khan* (1), *Varada Pillai and another* v. *Jeevarathnammal* (2), *Ram Dutt Singh and another* v. *Mohammad Nazir Khan and others* (3), *The President and Governors of the Magdalen Hospital* v. *Alfred Knotts, R. M. Shar, James Watney and others* (4) and *Satgur Prasad* v. *Raj Kishore Lal and another* (5). With reference to the position of the reversionary heirs he further made reference to the cases of *Janaki Ammal* v. *Narayanasami Aiyer* (6) and *Venkatanarayana Pillai* v. *Subbammal* (7). It was contended that as long ago as the 26th of March, 1918, Musammat Hayat Bibi executed a deed purporting to be a deed of *waqf* in respect of a part of the property, in which deed she claimed to be the full owner of the property (*vide* exhibit A-2, at page 67 of Part III of the printed book). In these circumstances, the argument was, the article applicable, is article 144 of the 1st schedule of the Indian Limitation Act.

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We may mention at this point that the plaintiffs-appellants have not been able to show that the movable property specified in the plaint was the property of Hafizullah Khan, and the claim in respect of that property is not, therefore, pressed. What we have to consider is the immovable property. As to that property it will appear from what we have already said that there are really four questions for considerations:

(1) Do the ordinary provisions of Muhammadan Law relating to wills and the consent of other heirs to a will in favour of a single heir apply in the present case?

(2) If they apply, are the heirs to be looked for in the present case according to the ordinary principles of Muhammadan Law relating to inheritance

(1) (1934) A.I.R., P.C., 23.
(2) (1919) A.I.R., P.C., 44: I.L.R., 43 Mad., 244.
(3) (1934) 11 O.W.N., 1165.
(4) (1879) L.R., 4 A.C., 324.
(5) (1919) I.L.R., 42 All., 152.
(6) (1916) L.R., 43 I.A., 207.
(7) (1915) LL.R., 38 Mad., 406.

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or according to the special custom recited in the *wajib-ul-arz*?

(3) If the heirs are to be looked for according to the special custom, were those heirs not heirs whose consent was necessary, having regard to the fact that they were not immediate heirs, but were only entitled to succeed to the property after the death of Musammat Hayat Bibi?

(4) How is the question affected, if at all, by the fact that the will of Hafizullah Khan in favour of Musammat Hayat Bibi purported to be in part in satisfaction of her dower debt?

(5) Is the claim of the plaintiffs-appellants barred by time?

With regard to the first question, we agree with the view that was taken in I. L. R., 41 Bom., 377. It was said by SCOTT, C.J. (*vide* page 382 of the report):

"The existence of the custom does not destroy the testamentary capacity of the owner. If then the owner is a Muhammadan, what is his testamentary capacity? There is no evidence in the case that his testamentary capacity has been converted by custom into something different from the ordinary capacity of a Muhammadan testator. That capacity is limited by the rule of testation above stated. It appears to me, therefore, that the rule of Muhammadan Law is the only law which can be applied and according to it the will is invalid."

HEATEN, J., put the matter thus (*vide* page 383 of the report):

"Unless we are to deal with the will as a will made by a Muhammadan, and therefore subject to the Muhammadan Law relating to wills, I cannot for myself discover how we ought to deal with it."

This reasoning, if we may say so, seems to us to be eminently sound, and we may also point out that section 3(*b*) of the Oudh Laws Act expressly provides that in questions regarding wills (amongst other matters) Muhammadan Law is the rule of decision except in so far as such law has been by that Act or

any other enactment altered or abolished, or has been modified by any such custom as is referred to in section 3(*b*)(1).

We therefore hold that the ordinary principles of Muhammadan Law relating to wills in favour of a single heir are applicable in the present case.

As to the second question, we are clearly of opinion that the heirs must be looked for according to the custom, and not according to the ordinary rules of Muhammadan Law as to inheritance. It would, in our opinion, be absurd to hold that the consent of a person who is no heir under the special custom is necessary to validate a will in favour of an heir under the custom. Such a view would be quite inconsistent with the policy underlying the rule.

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As to the third question, we are of opinion that although Musammat Hayat Bibi was entitled to hold the property for her life and the other heirs were only to come in after her death, the consent of those other heirs to the will in her favour was, nevertheless, necessary to validate it. Deferred inheritance is, of course, unknown to the ordinary Muhammadan Law, but here we are faced with a special custom, and we think that the interests of the other heirs had to be protected according to the general policy of Muhammadan Law. As was said by their Lordships of the Privy Council in *Ranee Khujooroonissa, widow of Enayut Hossein* v. *Musammat Roushun Jehan* (1):

> "The policy of the Muhammadan Law appears to be to prevent a testator interfering by will with the course of the devolution of property according to law among his heirs, although he may give a specified portion, as much as a third, to a stranger."

It is clear from the provisions of the special custom itself that the rights of the ultimate heirs were intended to be protected, since the widow had under the custom

(1) (1876) L.R., 3 I.A., 291(307).

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no right of transfer without the consent of the real brothers of the deceased and their issue. When Hafizullah Khan died in 1902, his nephew, Hidayatullah Khan, was alive, and it would appear from the details given in the plaint that Hidayatullah Khan's two sons, Irshadullah Khan and Ahmadullah Khan, were also alive at that time. The plaint, which is dated the 29th of May, 1933, gives the age of Irshadullah Khan at that time as 40, so that he would have been born about the year 1893. The age of Ahmadullah Khan is given as 32, so that he would have been born about the year 1901. The age of the third son, Azizullah Khan, is given in the plaint as 28, so that he appears to have been born after the death of Hafizullah Khan. The phraseology of that part of the special custom relating to the possession of a widow is thus translated in the printed book:

"If there be no issue of the deceased, the widow becomes the possessor of the property left by her husband, but she has no right of transfer without the consent of the real brothers of the deceased and their issue. In case there be no widow the son of the brother and his issue, and, in his absence, the co-sharers with regard to nearness become the heirs of the property left. The daughters have no right and share in our family."

The words "in case there be no widow" must in our opinion be taken to include the case where there has been a widow, but she has died, since it is clear that the intention was that after the death of the widow the real brothers of a deceased owner and their issue should come in. Such parties are referred to in the special custom as heirs, the widow becoming the "possessor of the property" left by her husband without right of transfer except with the consent of the real brothers of the deceased and their issue. We, therefore, hold that in the absence of the consent of Hidayatullah Khan and his sons the will of Hafizullah Khan giving full ownership in the property to Musammat Hayat Bibi was invalid.

As to the fourth question, we have not been shown any authority for taking the view that the ordinary provisions as to the consent of heirs were inapplicable by reason of the fact that the will purported to be not gratuitous, but in consideration of the services of Musammat Hayat Bibi and in satisfaction of her dower debt. It is to be noted that no amount of dower debt is stated in the will, and it is to be borne in mind that Musammat Hayat Bibi held possession of the property for about 31 years, so that there is every reason to think that her dower debt was in any case in that manner fully discharged. We, therefore, think that the question as to the necessity of the consent of other heirs is not affected by the fact that the will purported to be in consideration of the services and the dower debt of Musammat Hayat Bibi.

There remains the question of adverse possession. On this point the contention of the learned counsel for the appellants was that their right to sue arose only on the death of Musammat Hayat Bibi, that she was entitled under the custom to possession during her life time, and that nothing done by her during her possession could affect the position of the ultimate heirs. In our opinion this contention is correct. The decisions relied upon by the learned counsel for the respondents could only apply if it were shown that there was any defect in Musammat Hayat Bibi's title to possession of the property during her life time. Under the special custom she was undoubtedly entitled to possess the property as long as she lived, and in these circumstances we do not see that it is possible for it to be argued that her possession, however long it lasted, and it did, in fact, last for 31 years, was possession adverse to the ultimate heirs so as to create an absolute right to the property in her favour after the expiry of 12 years. We do not see that the deed of *waqf* to which we have made reference affects the matter, especially in absence of evidence that it was brought to the notice of the other parties

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interested, nor do we see that it was necessary for Hidayatullah Khan or his sons to institute a suit under section 42 of the Specific Relief Act. The learned counsel for the appellants contended, in our opinion rightly, that the article of the first schedule of the Indian Limitation Act applicable was article 141, and that according to that article, the right of the appellants to sue arose when Musammat Hayat Bibi died, and they had 12 years from the date of her death in which to sue. They did, in fact, sue within a week of her death. In our opinion Musammat Hayat Bibi cannot possibly be said to have acquired an absolute right to the property of Hafizullah Khan by adverse possession.

The result is that we think that this appeal must be allowed as far as the immovable property specified in List A attached to the plaint is concerned. As we have said already, the claim as regards the movable property specified in List B is not pressed. We, therefore, give the plaintiffs-appellants a decree for possession of the property specified in the List A. They are allowed costs here and in the court below in proportion to their success.

Appeal partly allowed.

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Before Mr. Justice E. M. Nanavutty and Mr. Justice Ziaul Hasan

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ABDUL SUBHAN KHAN *alias* KHALIL-UR-RAHMAN (PLAINTIFF-APPELLANT) *v.* NUSRAT ALI KHAN AND OTHERS (DEFENDANTS-RESPONDENTS)*

Specific Relief Act (I of 1877), section 41—Minor's suit for declaration that mortgage-deed executed by him was not binding on him as he was minor at its execution—Contract entered into by minor's false representation as to his age—

*First Civil Appeal No. 5 of 1934, against the decree of Saiyed Qadir Hasan, Civil Judge of Bara Banki, dated the 9th of September, 1933.