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no concern of Achal Ram's that Ardawan may have a grievance on the score of misstatement in an instrument to which Achal Ram is no party.

We are of opinion that the deed in favour of the appellant is a deed of sale conveying property to him *in presenti* and that therefore he is entitled to continue the suit against respondent No. 1.

Srivastava, C. J. and Ziaul Hasan, J.

We decree the appeal with costs and send back the case to the trial Court to be tried according to law between Bisheshar Prasad and Jang Bahadur.

Appeal allowed.

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge and Mr. Justice Ziaul Hasan

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NAWAB SAIYED SAJJAD ALI KHAN (DEFENDANT-APPELLANT) *v.* MUSAMMAT BADSHAH BEGAM *alias* ABIDA BEGAM (PLAINTIFF-RESPONDENT)*

Mohamedan Law—Ante-nuptial agreement by a Mohamedan in favour of his son's wife to pay her a certain sum monthly as her pandan *expenses, whether a binding contract—Son's wife, whether entitled to enforce claim under agreement although no party to it—Contract Act (IX of* 1872*), section* 2(*d*)*—Consideration, whether should necessarily move from promisee.*

Where a Mohamedan father executes an ante-nuptial agreement in favour of his son's wife in consideration of latter's marriage with his son, that he will during his lifetime pay her Rs.15 per mensem for her *pandan* expenses, the agreement is a binding contract, and the son's wife, being beneficially entitled under it, is entitled to bring a suit to enforce her claim under the agreement, although she is no party to the

*Second Civil Appeal No. 253 of 1934, against the decree of Pandit Girja Shankar Misra, Additional Subordinate Judge of Lucknow, dated the 30th of July, 1934, modifying the decree of S. Akhtar Ahsan, Munsif, South Lucknow, dated the 22nd of February, 1934.

agreement. *Nawab Khwaja Muhammad Khan* v. *Nawab Husaini Begam* (1), *Paran Mohan Das* v. *Hari Mohan Das* (2), and *Subbu Chetti* v. *Arunachalam Chettiar* (3), followed.

Under section 2(*d*), Contract Act, consideration may move either from the promisee or from some other person.

Messrs. *M. Wasim* and *Ghulam Hasnain Naqvi*, for the appellants.

Messrs. *Hyder Husain*, *Abid Husain* and *H. H. Zaidi*, for the respondent.

SRIVASTAVA, C.J., and ZIAUL HASAN, J.:—This is a second appeal against an appellate decree of the learned Additional Subordinate Judge of Lucknow modifying the decree of the Munsif South in that district. It arises out of a suit for recovery of arrears of allowance claimed on the basis of a deed of agreement dated the 5th of May, 1914.

The admitted facts of the case are that the defendant appellant Nawab Saiyid Sajjad Ali Khan had brought up one Qasim Ali Khan as his own son. Qasim Ali Khan's wife having died the defendant arranged the second marriage of Qasim Ali Khan with the plaintiff-respondent, Badshah Begam. On the 5th of May, 1914, an ante-nuptial agreement, exhibit 1, was executed by the defendant jointly with Qasim Ali Khan and two other relations of the latter in favour of the plaintiff. One of the terms of this agreement was that the defendant-appellant will during his lifetime pay the plaintiff Rs.15 per mensem for her *pandan* expenses. The plaintiff's case was that the defendant had not paid this allowance from 1st August, 1927. She accordingly claimed Rs.1,080 for arrears of the allowance from 1st August, 1927 to 31st July, 1933, and Rs.170 on account of interest, total Rs.1,250. The defendant pleaded that he had paid the allowance till the month of December, 1932. He also claimed a deduction of Rs.600 against the amount due to the plaintiff on the ground that he had spent that sum on her account in connection with

(1) (1902) L.R., 37 I.A., 152. (2) (1925) I.L.R., 52 Cal., 425.
(3) (1930) I.L.R., 53 Mad., 270.

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the expenses of a pilgrimage to Mashad. He further raised a legal plea about the agreement being invalid and unenforceable. The learned Munsif held that the defendant had paid the allowance up to December, 1932, but did not allow him the deduction of Rs.600 claimed by him. On the legal issue he held that the agreement was binding on the defendant and was enforceable by the plaintiff. As a result of these findings the learned Munsif gave the plaintiff a decree for Rs.120 only with interest from the date of suit till realisation at 6 per cent. per annum.

The plaintiff appealed and the defendant filed cross-objections, and thus the whole case was re-opened in the lower appellate Court. The learned Subordinate Judge held that the defendant had failed to establish the payment of the allowance up to the end of December, 1932. He, however, agreed with the learned Munsif in holding that the defendant was not entitled to the deduction of Rs.600 and that the agreement was valid and enforceable. He accordingly gave the plaintiff a decree for the full amount claimed together with interest at 6 per cent. per annum from the date of the suit till realisation.

The learned Counsel for the defendant-appellant, in the first place, questioned the lower appellate Court's finding about the payment of the allowance till December, 1932, not having been established. It was argued that the finding was vitiated by reason of the Subordinate Judge having erroneously held the defendant's account books, exhibits A-7 to A-10 to be inadmissible in evidence. It seems to us that the question regarding the admissibility of the aforesaid account books is no longer of any importance inasmuch as the learned Subordinate Judge has not only held them to be inadmissible but has also found them to be unreliable. He has also disbelieved the defendant and his servant, D. W. 3 who were the only witnesses examined in proof of the alleged payment. We have therefore no hesita-

tion in holding that the finding on the question of payment is not open to question in second appeal.

It was argued, in the second place, that the agreement for payment of Rs.15 per month by the defendant to the plaintiff was without consideration and could not be enforced by the latter as she was not a party to the deed of agreement. We are of opinion that these arguments are without substance. In *Nawab Khwaja Muhammad Khan* v. *Nawab Husaini Begam* (1), their Lordships of the Judicial Committee had to deal with a similar claim for recovery of arrears of allowance which was also described as *kharch pandan* under the terms of an agreement executed prior to and in consideration of the plaintiff's marriage with the son of the defendant. With reference to a similar argument which was raised in that case their Lordships remarked as follows:

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"First, it is contended, on the authority of *Tweddle* v. *Atkinson* (1 B and S 393), that as the plaintiff was no party to the agreement, she cannot take advantage of its provisions. With reference to this it is enough to say that the case relied upon was an action of assumption. and that the rule of common law on the basis of which it was dismissed is not, in their Lordships' opinion, applicable to the facts and circumstances of the present case. Here the agreement executed by the defendant specifically charges immovable property for the allowance which he binds himself to pay to the plaintiff; she is the only person beneficially entitled under it. In their Lordships' judgment, although no party to the document, she is clearly entitled to proceed in equity to enforce her claim."

They further went on to observe as follows:

"*Kharch-i-pandan,* which literally means 'betel-box expenses', is a personal allowance, as their Lordships understand, to the wife customary among Mahomedan families of rank, especially in Upper India, fixed either before or after the marriage, and varying according to the means and position of the parties. When they are

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minors, as is frequently the case, the arrangement is made between the respective parents and guardians. Although there is some analogy between this allowance and the pin-money in the English system, it appears to stand on a different legal footing, arising from difference in social institutions."

It was sought to distinguish this case from the present one on the ground that the agreement set up in this case is entirely personal whereas certain immovable property had been charged for payment of the allowance under the agreement relied on in L. R., 37 I. A., 152. We are of opinion that the distinction pointed out cannot make any difference so far as the right of the plaintiff to enforce the agreement is concerned. Section 2, clause (*d*) of the Indian Contract Act lays down that when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promise. This shows that the consideration may move either from the promisee or from some other person. As pointed out by their Lordships of the Judicial Committee in the extract quoted above, such agreements are frequently made in Mahomedan families in this part of the country between the parents and guardians of the parties to the marriage and it would occasion serious injustice if a person in the position of the plaintiff is not allowed to take advantage of the provisions of such an agreement on the ground of her not being a party to it.

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Admittedly the agreement in question was an antenuptial promise in consideration of the plaintiff's marriage with Qasim Ali Khan with whom the defendant was *in loco parentis*. It is well settled that such agreements become a binding contract when they are followed by the marriage, *Pran Mohan Das* v. *Hari Mohan Das* (1). Similarly in *Subbu Chetti* v. *Arunachalam Chettiar* (2), a Full Bench of the Madras High Court

(1) (1925) I.L.R., 52 Cal., 425. (2) (1930) I.L.R., 53 Mad., 270.

recognized a marriage settlement as an exception to the rule against a stranger to the contract enforcing it. The defendant's argument on this point must therefore fail.

The result therefore is that the appellant has failed to make out any ground for interference with the decision of the lower appellate Court. We accordingly dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge and Mr. Justice Ziaul Hasan

BABU BISHUNATH SINGH (DEFENDANT-APPELLANT) *v.* LALA JAMUNA DAS (PLAINTIFF-RESPONDENT)*

Indian Oaths Act (X *of* 1873), *sections* 8 *and* 11—*Parties to suit agreeing to abide by statement of a witness also party to suit —Agreement, whether binding.*

If the parties to a suit agree that they will abide by the statement of a witness, including one who is a party to the suit, and leave the decision of all points including costs arising in the case to be according to his statement, the agreement, even apart from the Indian Oaths Act, is binding upon the parties and they cannot be allowed to resile from it.

Mr. *B. K. Dhaon,* for the appellant.

Messrs. *Hyder Husain, S. C. Das,* and *P. N. Chaudhry,* for the respondent.

SRIVASTAVA, C.J. and ZIAUL HASAN, J.:—This is a defendant's appeal against the decree of the learned Subordinate Judge of Sultanpur decreeing the plaintiff's claim. It arises out of a suit for recovery of money due on foot of a promissory note, exhibit 1, dated the 16th of January, 1931, executed by the defendant in favour of the plaintiff.

The plaintiff's case was that the entire consideration of the promissory note had been paid by him in cash

*First Civil Appeal No. 119 of 1934, against the decree of Pandit Kishan Lal Kaul, Subordinate Judge of Sultanpur, dated the 3rd of September, 1934.