

I fail to see how the Court below can be said to have acted illegally or with material irregularity. On the contrary, it appears to have had good reason for rejecting the plaintiff's story.

If plaintiff was ready to go on with the case and was absent only for a few minutes, why did he not apply to the Court at once instead of on the next day? His witnesses say they were present and heard the case called. Why did they not go and call the plaintiff?

It is significant that on the day fixed for the hearing plaintiff had called no witnesses at all through the Court.

The Munsil's order was correct: in any case, there is no scope for revision. I dismiss the petition with costs.

A. N. C.

Revision dismissed.

APPELLATE CIVIL.

Before Mr. Justice Scott-Smith and Mr. Justice Harrison.

MUSSAMMAZ JAWAI—(DEFENDANT)—*Appellant,*

versus

HUSSAIN BAKHSH AND OTHERS—(PLAINTIFFS)—

Respondents.

Civil Appeal No. 2726 of 1918.

Muhammadan Law—Succession—shares vest in the heirs at the moment of ancestor's death—and if an heir dies before distribution his share goes to his heirs—Plaintiffs entitled to a decree for their share only.

Held, that under Muhammadan Law, a "vested inheritance" is the share which vests in an heir at the moment of the ancestor's death. If the heir dies before distribution the share of the inheritance which has vested in him will pass to his heirs at the time of his death. The shares have, therefore, to be determined on the occasion of each death.

* Mulla's Principles of Muhammadan Law, article 45 (fourth edition), referred to.

1921

Dec. 22.

Held further, that the plaintiffs can only be granted a decree for their share of the inheritance, and cannot be given the share of another co-sharer who has not joined with them in bringing the suit.

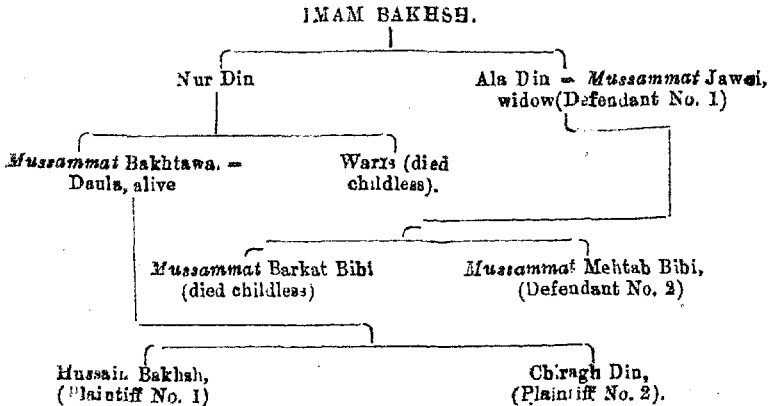
Second appeal from the decree of T. P. Ellis, Esquire, District Judge, Lahore, dated the 17th June 1918, affirming that of Munshi Ghulam Hussain, Subordinate Judge, 2nd Class, Lahore, dated the 12th April 1918, decreeing the claim.

GHULAM RASOOL, for appellant.

ABDUL RAZAQ, for respondents.

The judgment of the Court was delivered by—

SCOTT-SMITH, J.—This is an appeal by *Mussammat Jawai* defendant from the decree of the lower Courts giving the plaintiffs 29/48th share in a certain house situated in Lahore. The pedigree-table printed at page 3 of the paper book is as follows :—



It is common ground that the house in suit was acquired jointly by Nur Din and Allah Din, and that shortly after the acquisition Nur Din died leaving his two children, Waris and *Mussammat Bakhtawar* living with Ala Din in the house. Ala Din died prior to 1899 leaving a widow, *Mussammat Jawai*, defendant, appellant, and the two daughters shown in the pedigree table. As the learned District Judge points out there is nothing to show that the children of Nur Din did not reside in the house up till 1899 and there is no proof of any assertion of adverse title on the part

1921

Mst. JAWAI
v.
HUSSAIN
BAKHSI.

1921

—
Mat. JAWAI
 v.
 HUSSAIN
 BAKHSH.

of Ala Din or his widow before that time. It is admitted that from 1899 to 1905 the plaintiff's mother lived in the house, and that the plaintiffs themselves were born there. It was after *Mussammat* Bakhtawar's death in Amritsar in 1906 that *Mussammat* Jawai took sole possession, and that possession had not ripened into an adverse title at the time the present suit was instituted. The only point upon which stress can be laid is that on the 14th November 1899 *Mussammat* Jawai mortgaged one half of the house to Haider Shah, and that on the following day *Mussammat* Bakhtawar's husband took that half on lease from Haider Shah. The act of the lessee Daula cannot, however, be taken as meaning that his wife, *Mussammat* Bakhtawar, had no right in the house. He has himself given an explanation, which the first Court accepted, as to why he executed the lease, and it is also quite possible, as the learned District Judge has remarked that the mortgagee may have insisted on the lease being executed by a male member of the family who was living in the house. We are in full agreement with the lower Courts that no adverse possession has been shown on the part of *Mussammat* Jawai prior to *Mussammat* Bakhtawar's death.

It has been held that the parties are governed by Muhammadan Law, and the only question which remains for decision is to what share are the plaintiffs entitled under that law? Upon Ala Din's death his widow inherited $\frac{1}{8}$ th share of his estate and his daughters $\frac{1}{3}$ rd share each in accordance with Muhammadan Law. This left $\frac{5}{24}$ th of his share, *i.e.*, $\frac{5}{48}$ ths of the whole house to go to the residuary; in other words, to Waris the nephew of Ala Din. Upon Nur Din's death Waris inherited $\frac{2}{3}$ rd of his half share, *i.e.*, $\frac{1}{3}$ rd of the house, whilst *Mussammat* Bakhtawar inherited $\frac{1}{3}$ rd of one half, *i.e.* $\frac{1}{6}$ th. Waris's share, therefore, was $\frac{1}{3}$ rd plus $\frac{5}{48}$ ths = $\frac{21}{48}$ ths. Waris died leaving a widow who was entitled to $\frac{1}{4}$ th of his estate, whilst *Mussammat* Bakhtawar inherited the other $\frac{3}{4}$ ths, *i.e.*, $\frac{3}{4}$ th of $\frac{21}{48}$ ths. Her share, therefore, became $\frac{2}{4}$ th plus $\frac{3}{4}$ ths of $\frac{21}{48}$ ths. Upon her death her husband took $\frac{1}{4}$ th, and her two children, the plaintiffs, $\frac{3}{4}$ ths. The latter's share, therefore, is $\frac{3}{4}$ ths of $\frac{95}{192}$, or in other

words 95/256ths. Mr. Abdul Razaq on behalf of the respondents urges that as no distribution has hitherto taken place, we should only have regard to the persons now existing. But this is clearly wrong. In Mullah's Principles of Muhammadan Law, fourth edition, article 45 runs as follows:—

“ A ‘ vested inheritance ’ is the share which vests in an heir at the moment of the ancestor's death. If the heir dies before distribution, the share of the inheritance which has vested in him will pass to his heirs at the time of his death.”

It is, therefore, clear that the shares have to be determined on the occasion of each death, and, according to this rule, we have calculated the plaintiffs' shares to which they are entitled at the present time.

Another point urged by plaintiffs' counsel was that as Daula, plaintiffs' father, did not claim his share, it should be given to the plaintiffs as *Mussammata* Jawai is not entitled to it. Daula, however, has not sued and the plaintiffs are obviously only entitled to their own share and they cannot be given the share of another co-sharer who has not joined with them in bringing the suit.

We, therefore, accept the appeal, and, in modification of the decree of the lower Courts, give the plaintiffs a decree for a 95/256ths share in the house in dispute, and we direct that the defendants should pay half the plaintiffs' costs in the lower Courts, and that parties should bear their own costs in this Court.

A. R.

Appeal accepted.

1921.

—
Mst. JAWAI

v.

HUSSAIN BAKSH.