

APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Moti Sagar.

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Feb. 22.

JHANDU (PLAINTIFF) Appellant,

versus

Mst. HUSAIN BIBI AND OTHERS (DEFENDANTS),
Respondents.

Civil Appeal No. 575 of 1920.

Muhammadian Law—Re-marriage of widow during her iddat—legibility of such marriage.

Held, that a marriage contracted by a widow within the period of her *iddat*, i. e. 4 months and 10 days, is void notwithstanding that she was pregnant at the time of her former husband's death and had been delivered of the child before she contracted the second marriage.

Tayyabjee's Principles of Muhammadan Law, page 133; Hamilton's Hedaya, pages 130, 132, 145; Wilson's Muhammadan Law, pages 112, 113 and Appendix D, page 519; Muhammad Yusuf's Muhammadan Law, Volume III, page 63; Abdur Rahman's Institutes, paras. 316, 317; Muhammad Ali's Translation of the Quran, page 1086, verse 4; and Bailie's Digest, page 355, referred to.

Hahia v. Inam Din (1), followed.

Second appeal from the decree of A. H. Brasher, Esquire, District Judge, Amritsar, dated the 7th February 1920, affirming that of Khan Faiz Muhammad Khan, Subordinate Judge, 2nd Class, Amritsar, dated the 30th October 1919, dismissing plaintiff's suit.

NIAZ MUHAMMAD, for Appellant.

KAHAN CHAND, for Respondents.

The judgment of the Court was delivered by—

BROADWAY J.—One Jhandu, son of Umar, a Gazar, instituted a suit against *Mussammât* Husain Bibi, alleging that she had been lawfully married to him and claiming restitution of conjugal rights. It appears that *Mussammât* Husain Bibi was a widow when Jhandu married her and the defence set up was that marriage, if any, was illegal and not binding as

it had been solemnized within the period of *iddat*, namely, 4 months and 10 days from the death of her former husband. It was found as a fact that the marriage in question took place within two months of the death of *Mussammat Husain Bibi's* former husband, and the Courts below following *Ilahia v. Imam Din* (1) dismissed the plaintiff's suit holding that the marriage in question was illegal and therefore not binding on *Mussammat Husain Bibi*. *Jhandu* has now come up to this Court in second appeal through Mr. Niaz Muhammad, and it has been contended that the decision in *Ilahia v. Imam Din* (1) was bad and opposed to Muhammadan Law.

Our attention has been drawn to various treatises on Muhammadan Law, such as, Muhammad Usaf's Muhammadan Law, volume III, page 63; Hamilton's Hedaya, page 130; Abdur Rahman's Institutes, paras. 316-317; Muhammad Ali's translation of the Quran, page 1086, verse 4; Fateh-ul-Qadir, page 141; and Bailie's Digest, page 355. We have carefully examined these (with the exception of Fateh-ul-Qadir, which has not been actually placed before us); and in addition we have consulted Wilson's Digest of Anglo-Muhammadan Law and Tayyabjee's principles of Muhammadan Law. The reference to Muhammad Ali's translation of the holy Quran affords no assistance as that obviously deals only with the case of a divorced woman. In Tayyabjee's treatise at page 133 a table is shown giving the duration of the period of the *iddat* and according to this table the period prescribed for the *iddat* of a widow on the death of a regularly married husband, if not pregnant, is 4 months and 10 days, and if pregnant 4 months and 10 days or until delivery, whichever is longer. In the present case it appears that *Mussammat Husain Bibi* was pregnant at the time of her former husband's death and was delivered of her child before the expiry of the 4 months and 10 days' period.

It has been contended that the Muhammadan Law requires only that a widow should maintain the period of *iddat* for such period as is laid down, namely, 4 months and 10 days, or, if she be

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pregnant, until such time as she is delivered of the child, the period fixed being curtailed if the delivery takes place before the expiry of the period of 4 months and 10 days. We are unable to find an authority to support this contention and none has been laid before us. In Hamilton's Hedaya at page 130 the following passage occurs:—

“Now the *iddat* of a widow is not designed for the purpose of ascertaining the state of her womb; for if it were so, it would not be determined by the lapse of time (supposing her to be one who is subject to the menstrual discharge), but by three terms of her courses; whereas we see that the law fixes it at four months and ten days, although she be a woman of that description; but it is made incumbent merely as a fulfilment of one of the rights of marriage.”

See also pages 132 and 145.

According to the view taken by Wilson the period of *iddat* for a woman, who has been lawfully married, is 4 months and 10 days, and if she happens to be pregnant it continues until delivery—*vide* pages 112 and 113 and Appendix D, page 519. This is the view that was adopted in *Ilahia v. Imam-I in* (1) a view with which we are in accord.

We, therefore, dismiss this appeal with costs.

C. H. O.

Appeal dismissed.