

He is, however, entitled to a decree for the admitted amount.

This application in revision is allowed, and instead of the decree of the Small Cause Court there will be a decree for a sum of Rs. 225. The defendants-applicants are entitled to their costs in both Courts, advocate's fee in this Court five gold mohurs.

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APPELLATE CIVIL.

Before the Hon'ble Mya Bu, Offg. Chief Justice, and Mr. Justice Baguley.

ABDUL HAMID AND OTHERS

v.

ABDUL AZIZ AND ANOTHER.*

1934
 Aug. 27.

Bengalee Mahomedan—Scheme of management of Mosque—Persons of mixed descent—Retention of Indian language, dress and customs—Adoption of Burmese language and customs of Zerbadis—Eligibility as trustee.

The scheme for the management of the Bengalee Sunni Mosque of Bassein provided that of the six trustees three should be Bengalees, and that the remaining three should be taken from among the members of other communities who worshipped at the mosque. The committee of appointment was to consist of six Bengalee Sunni Mahomedan worshippers resident in Bassein, and the remaining five were to be members of other communities who worshipped at the said mosque. The first trustee appointed by the Court was a Bengalee Mahomedan born of a Burmese mother.

Held, that a Bengalee Mahomedan of mixed descent, as long as he retained the use of the Indian language, dress, and habits, and moved in the social circle of Indians of pure blood, belonged to the Bengalee Mahomedan community, and was eligible for election under the scheme. When a descendant of an Indian male parent adopted the Burmese language and dress, and the customs of a Zerbadi, and associated with Zerbadis, he ceased to be a member of the Bengalee Mahomedan community.

Campagnac for the appellants.

Khan for the respondents.

* Civil First Appeal No. 61 of 1934 from the order of the District Court of Bassein in Civil Misc. No. 68 of 1932.

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BAGULEY, J.—This is an appeal against an order of the District Judge of Bassein, passed in connection with an application for the filling of certain vacancies occurring among the appointment committee and trustees of the Bengalee Sunni Mosque of Bassein.

In the scheme as originally framed it is directed that of the six trustees,

“three should be Bengalees and the remaining three should be from among the other communities of the worshippers at the Mosque.”

and, so far as the appointment committee is concerned, it is laid down that

“the Committee of Appointment shall consist of eleven members appointed from among the worshippers of the Bengalee Mosque resident in Bassein, six of whom shall belong to the Bengalee Sunni Mohamedan worshippers and the rest shall belong to other communities.”

One point for decision in this appeal is the meaning of the words “Bengalees” and “Bengalee Sunni Mohamedan Worshippers.” In the scheme as originally framed it is laid down that

“the first trustee, Mr. Fysor Rahman, shall be one of the Bengalee trustees”,

so Mr. Fysor Rahman was clearly regarded as a Bengalee by the Judge who framed the scheme.

It may be noted that among the trustees it is stated that three shall be Bengalees and of the appointment committee six members shall belong to the Bengalee Sunni Mohamedan worshippers, but in each case in contradistinction to “the Bengalee” are mentioned “other communities”, and it seems from this clear that among the trustees three are intended to belong to the Bengalee community and on the appointment committee six members shall

belong to the Bengalee Sunni Mohamedan community who worship at this mosque.

It has been held by the learned District Judge that both trustees and members of the committee of appointment who come under this scheme must be Bengalees of pure blood. It is urged on behalf of the present appellants that they may be persons of mixed blood, provided their Mohamedan male ancestor originally came from Bengal.

It seems to me that the word "community" must be construed by something beyond purely racial considerations. In the Oxford Dictionary the word "community" is said to be

"Often applied to those members of a civil community, who have certain circumstances of nativity, religion or pursuit common to them, but not shared by those among whom they live",

and, as examples, reference is made to

"the British or Chinese community in a foreign city, the mercantile community everywhere, the Roman Catholic community in a Protestant city, etc."

It seems, therefore, that a community must contain a certain suggestion of social unity.

It is true that Mohamedans of mixed blood in Burma are sometimes referred to as Zerbadis and sometimes as Burma Muslims, these two names being practically synonymous, but the touch-stone seems to me to be that when a descendant of an Indian male parent identifies himself with Burma to the extent that Burmese is his family tongue and possibly he adopts Burmese clothes and manners of living, he must be regarded as having definitely left the Indian community and joined the community of the Burma Muslims, but when, on the other hand, owing to the influence of his Indian father, he keeps some Indian tongue as his family

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tongue, and retains the use of Indian clothes and remains in the same social circle with Indians of pure blood, he would then very properly be said to belong to the Indian Mohamedan community, or, as the case might be, the Bengalee Mohamedan community, and so on.

In this particular case, as has been mentioned, Fysor Rahman was regarded as being a Bengalee Mohamedan by the Judge who framed the scheme, so it seems quite clear that the framer of the scheme cannot have intended to mean that the Bengalee Sunni Mohamedan worshippers should include no one but Bengalees of pure blood, for Fysor Rahman had a Burmese mother. Whether a Mohamedan of mixed blood retains his position in the Bengalee Mohamedan community or whether he definitely throws in his lot with the Mohamedans of Burma and classifies himself as a Zerbadi or Burma Muslim is a matter of evidence in each case; it depends on the social unit to which he has attached himself and in which he is received on equal terms by the other members.

So far as the order refuses to accept the nomination of Hadayet Ali Khan for one of the vacancies on the appointment committee is concerned, there is on the record the evidence of two witnesses, both of whom depose to the fact that Hadayet Ali Khan, whatever he may have been in the past, is no longer worshipping at the Bengalee Sunni Mosque. If this fact was disputed by those who put forward his name, they should have called evidence to rebut these statements or should have tendered evidence in the form of affidavits, or Hadayet Ali Khan might himself have filed an affidavit or made a sworn statement. An opportunity of putting forward this evidence

was open to the appellants and advantage was not taken of it, so on the record as it stands I can see no reason to suppose that the finding of the learned Judge that Hadayet Ali Khan was not qualified to be a member of the appointment committee was wrong. The appeal on that point must be dismissed.

The proceedings show that orders have not yet been finally passed with regard to the filling up of all the vacancies, and the case will have to go back to the trial Court for steps to be taken for these appointments to be filled up on the lines indicated. The test in every case as to whether a proposed member of the appointment committee or a trustee is a member of the Bengalee Mohamedan community will be the test given in this order.

I would pass no order as to costs in this appeal.

MYA BU, OFFG. C.J.—I agree.

If the definition of "Bengalee Mohamedan community" as given by the learned District Judge is accepted it is even possible to exclude off-springs of a Bengalee Mohamedan father with a Hindustani Mohamedan mother, while off-springs of such a union, whether born in Burma or elsewhere in India outside Bengal, could hardly be expected to be taken out of the social unit of the Bengalee Mohamedan community in this country. It is, therefore, bound to cause results which could not have been in the contemplation of the framers of the scheme and which could not be expected to be in the contemplation of the members of the Bengalee Mohamedan community here, to define members of the Bengalee Mohamedan community in Bassein as consisting only of full-blood descendants of Bengalee ancestors. My

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learned brother's definition of this term appears to me to be the only reasonable and practicable definition of the term, and is the most consistent with what appears to have been the intention of the framers of the scheme. With these remarks I concur in my learned brother's judgment.

CRIMINAL REVISION.

Before Mr. Justice Braund.

V.A.S.M. CHETTYAR FIRM AND OTHERS

v.

KING-EMPEROR.*

1934

Nov. 14.

Pawn-broker—Business of pawn-broking—Chettyar money-lender—Isolated instance of lending money on security of a chattel—Necessity for license—Burma Municipal Act (Burma Act III of 1898 and V of 1933), ss. 142 (renumbered 195), 148 (renumbered 202).

A pawn-broker is a person who lends money upon the security of pawns with sufficient frequency or system to constitute the business of a pawn-broker. There must be a series or repetition of acts of pawning.

Kirkwood v. Gadd, 1910 A.C. 422—*referred to*.

A Chettyar who habitually has lent money on the security of promissory notes or of land, and who is only proved in an isolated instance to have given a loan on the security of a chattel cannot be convicted of carrying on the business of a pawn-broker within s. 142 of the Burma Municipal Act, 1898. In order to constitute a Chettyar money-lender a pawn-broker there must be sufficient evidence of system to show that he lends money on pawn to an extent sufficient to constitute the business of pawn-broking. But, having regard to the nature of a Chettyar's business, slight evidence of system may, in a proper case, be sufficient for the purpose.

King-Emperor v. Kanappa, 4 L.B.R. 8; *Newman v. Oughton*, (1911) 1 K.B. 792; *P. Chettyar v. Taungdwyngyi Municipality*, Cr. Rev. No. 1B of 1931. H.C. Ran.—*referred to*.

P. K. Basu for the applicant.

Tun Byu (Assistant Government Advocate) for the Crown.

* Criminal Revision Nos. 628B, 629B, 630B of 1934 from the order of the Subdivisional Magistrate of Yenangyaung in Criminal-Summary Trial Nos. 56, 58, 59 of 1934.