ORIGINAL CIVIL.

Before Mr. Justice Beaman.

HASSONALLY MOLEDINA, PLAINTIFF, *v.* POPATLAL PARBHUDAS AND ANOTHER, DEFENDANTS.*

1912.
June 25.

Doctrine of satisfaction—Inapplicability in India of doctrine of satisfaction—Indian Succession Act (X of 1865), section 164—General applicability in India of the principles of the Indian Succession Act in so far as they are not overriden by some special provision of local law or usage—Khojas—Law applicable to Khoja wills—The Indian Evidence Act (I of 1872), section 92.

The plaintiff claimed to be entitled to a sum of money deposited by him with one Karmali Moledina, deceased, a Khoja Mahomedan, and also to a legacy under the will of Karmali Moledina. He therefore sued the executors of the will of Karmali Moledina for a declaration to that effect and for the administration, if necessary, of the estate of Karmali Moledina.

The defendants maintained *inter alia* that the legacy must be taken as intended as payment of the balance due on the deposit by the plaintiff from Karmali Moledina and that the plaintiff could not claim both the legacy and the debt.

Held, that, inasmuch as the principles of interpretation announced in the Indian Succession Act were intended by the Legislature to be universally applicable unless overridden by some special provision of local law or usage, the doctrine of satisfaction which is abolished by section 164 of the Indian Succession Act must be considered as exploded in India.

Held further, that if it be considered that the wills of Khojas are governed by Hindu Law, the will of Karmali Moledina would be governed by section 164 of the Indian Succession Act, but if such wills are governed by Mahomedan Law, the will would have to be interpreted in accordance with the provisions of the general law of evidence, and, in particular, would be governed by the provisions of section 92 of the Indian Evidence Act, and that in either case the defence set up under the doctrine of satisfaction would be defeated.

Quære, whether the wills of Khojas are governed by Hindu or Mahomedan Law.

IN November 1908, the plaintiff deposited with one Karmali Moledina, a Khoja, the sum of Rs. 9,500 and received a writing of acknowledgment for that sum dated the 14th of November 1908.

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On the 19th of July 1911, Karmali Moledina died leaving a will, dated the 18th of June 1911, whereby he appointed the defendants as his executors and by clause 8 of which he bequeathed the sum of Rs. 9,000 to the plaintiff in the following terms :—

To my brother Hasanally Moledina I give Rs. 9,000 namely nine thousand as Bakshis (Hiba). Because he has no strength in him to earn his livelihood. Therefore the above moneys shall remain invested in good security through my executors and they shall pay the income thereof to him (to Hasanally Moledina).

The plaintiff sued the defendants for a declaration that he was entitled to the sum deposited by him with Karmali Moledina and also to the legacy bequeathed to the plaintiff and also, if necessary, for the administration of the estate of Karmali Moledina. The defendants in their pleadings declared that the sum of Rs. 500 part of the deposited sum of Rs. 9,500 had been already repaid to the plaintiff by Karmali Moledina and submitted, *inter alia* that the Rs. 9,000 mentioned in clause 8 of the will of Karmali Moledina was intended to be in satisfaction of the debt of Rs. 9,000, the balance of the deposited sum, and not to be a legacy in addition to it, and that consequently the plaintiff could not claim payment of both the debt and the legacy.

Taleyarkhan with *Kanga*, for the plaintiff.

Shortt with *Davar*, for the defendants.

BEAMAN, J. :—This suit was brought by the plaintiff to recover a deposit of Rs. 9,000 from the estate of the deceased Karmali Moledina and a legacy of equal amount given to him by clause 8 of the will. The suit was brought against the executors, who resisted the plaintiff's claim on two main grounds : (1) availing themselves of the old and, as far as this country is concerned, exploded doctrine of satisfaction, that the legacy in the will was no more than a payment of the deposit or debt and, therefore, that the plaintiff could not have both the debt and the

legacy ; (2) that inasmuch as the executors had not given their assent to the legacy, the plaintiff could not sue them directly as upon a complete title for that amount, nor as a creditor of the estate could he sue the executors without asking for an administration of the whole estate.

In order to avoid as much as possible unnecessary difficulties arising out of technical defences of that kind, the plaintiff was allowed to amend his plaint so as to ask in the first instance for a declaration that he was entitled to his debt and his legacy ; in the next, if necessary, for an administration of the estate. To the plaint so amended the executors have put in a supplemental written statement, reiterating their defence based upon the doctrine of satisfaction, and further claiming that all parties interested in the estate ought to be joined in this suit. As to that, they will be able to come in in the administration suit if they desire to do so. The executors were asked whether they admitted that they held sufficient assets of the deceased to meet all claims upon the estate, for, if they did, it would probably be unnecessary to make the usual administration decree. They do not admit that they hold sufficient assets to meet all claims ; and where that is so, the usual and proper course no doubt would be, where either a legatee or a creditor is suing, to have the whole estate administered.

Before dealing with the substantial objection taken by the executors, I should like to observe in passing upon their defence under section 112 of the Probate and Administration Act that that section appears to me to be unfortunately worded. If it really means what it says, the practical consequences of applying it strictly logically would be absurd, for, however just a legatee's claim may be, no Court could decree it upon an incomplete title. Therefore, as long as the executors chose to withhold their assent, it is difficult to find any remedy of

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which the legatee might effectually avail himself. The executors appear to have thought that while this objection would be fatal to a suit brought directly against them, it would be obviated as soon as the form of the suit was changed and administration of the estate granted. Merely as a matter of academical logic, I do not see how that in any way affects the position. I cannot bring myself, however, to believe that the law really meant to leave legatees thus completely at the mercy of perverse or capricious executors; and it certainly does appear to me that the Legislature might with advantage alter or add to the words of this section and the section which corresponds with it in the Indian Succession Act.

I now pass to a consideration of the executors' main defence. I have already said that as far as this country is concerned the doctrine of satisfaction is exploded. Section 164 of the Indian Succession Act expressly abolishes it, and, although that Act does not apply to Hindus, Mahomedans or Buddhists, it cannot be doubted that it was the intention of the Legislature to announce what they considered to be a generally correct principle of interpretation universally applicable unless overridden by some special provision of local law or usage. I may further add that if Khojas are really to be treated as Hindus for the purposes of making wills as well as in all matters of succession and inheritance, then the will at present in dispute being regarded as that of a Hindu would be governed by the provisions of section 164 of the Indian Succession Act. This point has frequently come before me during the five years I have been sitting on the Original Side of this Court. I have repeatedly expressed my own opinion that it has never yet been authoritatively and finally decided that for all testamentary purposes a Khoja Mahomedan is to be treated as though he were a Hindu governed by the Hindu Law. There are observations in a judgment of Sir Lawrence

Jenkins in the case of *Advocate-General* v. *Karmali*[1], which indicate that that eminent and learned Chief Justice thought that in this Presidency Khoja Mahomedans were governed in all testamentary matters by the Hindu Law. As, however, that opinion appears to have rested chiefly upon the assent of counsel of long standing and experience who were arguing the particular case before him, I have never been able to regard it as an authoritative and final decision of the question, for a question so important and so vitally affecting the interests of a large, wealthy, and influential community could hardly be properly decided upon the admissions of counsel made probably for their own convenience in the argument of a particular case. However that may be, if Khoja Mahomedans are not governed by the Hindu Law and section 164 of the Indian Succession Act is, therefore, not applicable to their wills, then the interpretation of those wills would seemingly have to be made in accordance with the provisions of the general law of evidence. Section 92 of the Evidence Act would then create even a more formidable bar to the defence upon which these executors rely than any section to be found in the Succession Act. It is true that section 92 is not to be applied in contravention or supersession of any of the special provisions of the Indian Succession Act relating to the interpretation of wills. But the executors, as far as I can see, are not entitled in one breath to deny the applicability of the principles enunciated in section 164 of the Indian Succession Act and also the applicability of the general rule of evidence, which, as soon as the provisions of that Act are got out of the way, governs the interpretation of all documentary evidence.

In the present case it is enough for me to say that I adhere to every word of my former decision in the case of *Pestonji* v. *Framji*[2], particularly where I have endea-

(1) (1903) 29 Bom. 133. (2) (1910) 12 Bom. L. R. 863.

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voured in that judgment to ground my decision upon general principles. That was a far stronger case than this; for here even were any Court not precluded by the provisions of section 164 read with those of section 62 of the Succession Act, or leaving that Act entirely out of consideration by section 92 of the Evidence Act, from going behind the plain language of the will in search of imaginary motives and conjectured circumstances, still reading the will as a whole I do not think that any Court even in the early days in England would have been disposed, where the language is as plain as it is here, to go very far in that direction although no doubt the doctrine of ademption has been applied very peremptorily and carried very far. In clause 8 of the will the testator says in as plain language as possible that he gives Rs. 9,000 to the plaintiff as *bakshis*. I do not see how any bequest could have been expressed in plainer language. Upon the principle, therefore, of *Pestonji* v. *Framji*[1], and without covering the same ground again, I have no hesitation whatever in coming to the conclusion that the plaintiff is entitled to this legacy.

The debt to the extent of Rs. 9,000 is admitted. The plaintiff is, therefore, clearly entitled to the declaration he has asked for in prayer (*a*) to the plaint; and thereupon to have the usual administration decree prayed for in prayers (*c*) to the plaint.

Costs of the parties up to the present out of the estate, those of the executors as between attorney and client.

Costs and further directions reserved.

Liberty to apply.

Attorneys for the plaintiff: *Messrs. Shamrao, Minocheher & Hiralal.*

Attorneys for the defendant: *Messrs. Raghavayya, Bhimji & Nagindas.*

Suit decreed.

H. S. C.

(1) (1910) 12 Bom. L. R. 863.