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RAGHUNATH SHANKAR v. LAXMIBAI

Sen J.

that the case for enforcing the forfeiture on remarriage was even stronger in the former case than in the latter.

We, therefore, hold that on Dwarkabai's remarriage she forfeited whatever interest she had in her husband's property.

[Their Lordships then dealt with other points argued in the appeal which are not material for the purposes of this report.]

Appeal dismissed.

J. G. R.

ORIGINAL CIVIL.

Before Mr. Justice Tyabji.

1934
October 19

In re MAHOMED HAJI HAROON KADWANI.*

Mahomedan law—Waqif—Appointment of trustees—Members of waqif's family to be preferred.

In the case of a trust created by a Muslim, members of his family should be given preference in appointment as trustees; but they are liable to removal for misconduct, and they should be careful to give not the least ground for suspicion that the funds are not utilized for the most proper objects in accordance with the principles of Islam.

Atimannessa Bibi v. *Abdul Sobhan*,[1] *Niamat Ali* v. *Ali Raza*[2] and *Phatmabi* v. *Haji Musa Sahib*,[3] referred to.

THE facts are sufficiently stated in the judgment.

C. K. Daphtary, for the petitioner.

Sir Jamshed Kanga, Advocate General, in person.

TYABJI J. The trust originated from the will of the deceased Haji Abdulla Hussein which provided that one-third of the estate should be dedicated to such good and

* In the matter of the Indian Trustees Act XXVII of 1866: Misc. No. 93 of 1934.

[1] (1915) 43 Cal. 467 at p. 473. [2] (1914) 13 All. L. J. 26 at p. 30.
[3] (1913) 38 Mad. 491 at p. 496.

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valid charity as his executrix and executors may think proper. That bequest was, by the decree in *Haji Usman Haji Esmail* v. *Mariambai*,[1] declared to be a good bequest.

In accordance with generally prevalent Muslim sentiments,—and the law of waqifs supports these sentiments,—members of the family of the waqif ought to be given preference in appointment as trustees. Thus—

"In the *Asal* it is stated that the judge cannot appoint a stranger to the office of administrator so long as there are any of the house of the appropriator fit for the office; and if he should not find a fit person among them, and should nominate a stranger, but should subsequently find one who is qualified, he ought to transfer the appointment to him."

See *Atimannessa Bibi* v. *Abdul Sobhan*,[2] *Niamat Ali* v. *Ali Raza*[3] and *Phatmabi* v. *Haji Musa Sahib*.[4]

I do not, therefore (in spite of the deference I should like to show to the Advocate General's point that unless outsiders are appointed as trustees the trust may become entirely a family affair) consider that there must necessarily be any outsider amongst the trustees. On the contrary I think the Muslim law does not dread the management of waqifs being retained in the family of the waqif. It disapproves of the introduction of an outsider in the administration at least of such a trust as is before me, unless the members of the waqif's family show their unfitness to be trustees.

I take this opportunity, however, of observing that though descendants of the waqif are favoured by the Court, when appointing a mutawalli, this does not mean that they have a hereditary right to be mutawallis, still less that their descent will protect them from removal if there is any mismanagement. The trustees that are now being appointed ought to be particularly careful in the administration of the trust. They should utilize the funds for such purposes and in such a manner that there may not be the least ground

(1) (1921) O. C. J. Suit No. 507 of 1921, decided by Pratt J., on April 8, 1921 (unrep.).

(2) (1915) 43 Cal. 467 at p. 473.

(3) (1914) 13 All. L. J. 26 at p. 30.

(4) (1913) 38 Mad. 491 at p. 496.

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for any aspersion being cast against them. No suspicions should be allowed to arise that the funds are not being utilized for the most suitable and proper objects. Every portion of the funds should be manifestly put to uses entirely in accordance with the principles of Islam, which is a progressive and enlightened religion.

Attorneys for petitioner: Messrs. *Bhaishankar, Kanga & Girdharlal.*

G. C. O'G.

ORIGINAL CIVIL.

Before Mr. Justice Tyabji.

1934
November 23

ABDUL RAHIMAN ALIAS RAJA MUHAMMAD (PLAINTIFF) *v.* AMINABAI, WIFE OF ABDUL RAHIMAN, AND TWO OTHERS (DEFENDANTS).*

Mahomedan law—Marriage—Woman married when minor—Consummation of marriage on puberty if living with her husband—Repudiation of marriage by wife —Consummation without wife's consent does not affect repudiation.

A person who entices away the wife of a Muslim may be sued by the husband for damages.

Muhammad Ibrahim v. *Gulam Ahmed*,[1] followed.

The Muslim husband being dominant in matrimonial matters, the Court leans in favour of the wife and requires strict proof of all allegations necessary for matrimonial relief.

Under the Mahomedan law the right of a girl to repudiate her marriage on attaining puberty is not lost by the mere fact of consummation without her consent.

THE facts are sufficiently fully stated in the judgment.

T. T. Barodawala, for the plaintiff.

Y. B. Rege, for defendant No. 3.

TYABJI J. The plaintiff prays for a declaration that defendant No. 1 is his lawfully married wife, and that the marriage between them is subsisting; for a decree against

* O. C. J. Suit No. 1118 of 1929.

[1] (1864) 1 Bom. H. C. 236 at p. 250.