Appellate Jurisdiction (*a*)

Regular Appeal No. 110 *of* 1867.

SAHIBA BEGUM.....*Appellant.*

G. ATCHAMMA and six others.....*Respondents.*

In a suit upon a hibbanama alleged to have been executed by the husband of the plaintiff giving her twenty-two shares in a village as a gift in lieu of her dower, the Civil Judge dismissed the suit upon the ground that the omission of the amount of the dower rendered the instrument of no validity according to Muhammadan Law.

Held (reversing the decree of the Civil Judge) that the suit was maintainable, the instrument expressing plainly the specific shares of the property, and that the gift was made in lieu of the whole dower, and there being no room for doubt as to the meaning and intention of the contracting parties in regard to the particular subjects either of the gift or of the consideration.

1868. *August* 8. *R. A. No.* 110 *of* 1868.

THIS was a Regular Appeal from the decision of J. R. Cockerell, the Civil Judge of Nellore, in Original Suit No. 29 of 1867.

Rama Rau, for the Appellant, the plaintiff.

Rangaiya Nayudu, for the Respondents, the defendants.

The facts appear in the following

JUDGMENT :—This is an appeal from the decree of the Civil Court of Nellore dismissing the suit. The plaintiff is the widow of Vahadallisha Saib, and claiming under a hibbanama alleged to have been executed by her husband on the 1st April 1858, she seeks to recover twenty-two shares of the shrotriem village of Kasmur, in the Gudur taluq, and the value of certain produce. The defendants 1 to 5 alone defended the suit. In their written statement they aver that the alleged hibbanama is a forgery, and set up that the plaintiff's husband, who held only twenty shares of the village, on the 25th June 1858, executed a kaval or lease to the first defendant for nineteen years under which all the said defendants had held possession. They also object that the hibbanama, if genuine, is invalid by Muhammadan Law, as it does not specify the boundaries of the lands, nor the amount of the dowry for which the land was given. The Civil Judge, without recording any issue or hearing evidence, has decided against the plaintiff's right to maintain the suit on the ground that the omission to state the amount of the dower in the hibbanama rendered

(*a*) Present : Scotland, C. J., and Collett, J.

1868. *August* 8. *R. A. No.* 110 *of* 1868.

it of no legal validity, and the sole question raised in the appeal is whether this is a sound view of the Muhammadan Law, assuming the written instrument to have been executed *bonâ fide* and a dower debt as therein stated to be due. The material part of the instrument is as follows : " I do hereby declare and give in writing to this effect that out of the ninty-six shares of the shrotriem village of Kusmare, in the taluq of Survapully at Nellore, six shares are my mother's, and sixteen shares are mine. These twenty-two shares consisting of wet and dry land and houses thatched with straw are in my own exclusive possession and enjoyment. I do hereby grant the said inam land as a gift to my wife Sahiba Begum in lieu of her dower. This gift is to be considered valid, lawful, and conclusive, and neither I, nor my heirs, nor my representatives shall have any right, interest, or title in it." Contracts of this nature are of the class of hibbanamas designated by the Mahomedan Law Hibeb-bil-Iwaz or gift for an exchange, but it seems that when the iwaz or exchange (in this case the dower) is merely stipulated for in the contract as the consideration for the hibeb or gift (as it is here) the transaction is not in the eye of the law strictly a Hibeb-bil-Iwaz, but is treated as a contract of sale, and does not require for its validity the essentials of an ordinary Hibbanama or even of a Hibeb-bil-Iwaz. *Mac. Prin. and Prec.* 52, 199, 217, 219, 276 ; 3 *Hedaya* 291, 293, *and* see the case of *Sarah Begum* v. *Ghulam Mahomed Khan* 1, *Decis. N. W. P.* 199. A true contract of the latter description takes place, it appears, when the iwaz rests not merely on a stipulation in the contract, but is effected by a reciprocal act distinct from the Hibeb.—*Baillie's Dig. of Mahomedan Law, page* 122, and the authorities there referred to.

In the present case, then, the written instrument is to be regarded as legally of the nature of a contract of sale the debt due for dower being the stipulated consideration for the gift of the land, and the point for consideration is whether such a contract is invalidated for uncertainty by the omission to specify the amount or value of the thing which is the consideration, or the boundaries of the pro-

1868. *August* 8. *R. A. No.* 110 *of* 1868.

perty disposed of. The general rule as to definiteness and certainty is thus propounded by Mr. Macnaghten, "it is essential to the validity of every contract of sale that the subject of it and the consideration should be so determinate as to admit of no future contention regarding the meaning of the contracting parties" *Princ. and Prec. M. L. Chapter* 3, *Sec,* 13, and Mr. Baillie's statement of the rule in his work on the *Mahomedan Law of Sale, p.* 4, is to the same effect, but he adds an illustration which aids in determining its true import. It is required, he says, "that both the thing sold and the price be so known and determined as to prevent disputes between the parties, and any ignorance that may tend to produce contention between them is sufficient to invalidate the sale, as in the sale of a single goat undefined from a particular flock or of anything at a price to be fixed by another person."

The whole effect of the rule thus expounded we understand to be that the property disposed of and the consideration for which the disposition is made should be specifically known to the parties, and so determined by their agreement as to admit of their intention being ascertained from the terms of the contract, and that if the terms are sufficient for this purpose, it is no valid objection that they are not as completely certain and definite as the subjects of the contract admitted of their being. All, it appears to us, that the rule reasonably construed provides against is the uncertainty of either of the parties when the contract is made in regard to the particular thing contracted to be given or received. It would be against reason to carry it to the length of in validating a contract which clearly expressed a definite understanding as to the subject of it, because in giving effect to the distinct intention something supplementary was left to be ascertained dehors the term of the contract which might give rise to dispute.

This view of the law has been acted upon by the Sadr Dewany Udalut of Bengal.—*See* 1 *Morley's Dig.* 268, and particularly the cases of *Imdad Ali* v. *Kadar Baksh,* 5, *Sud. Dew. Ada. Rep.* 298, *Musnud Ali* v. *Koorsheed Banoo* 1 *Sud. Dew. Ad. Rep.* 52 *and Ghulam Husainali Yzeinal Beebee*

1868. *August* 8. *R. A No.* 110 *of* 1868.

Ib. 51. The only authority that we have been able to find bearing against this view are the opinions quoted in argument from *Mac. Princ. and Prec.* 174, 177, and relied on by the Civil Judge, which do no doubt represent that a statement of the amount of the dower debt and a description of the property given by metes and bounds are absolute requirements of the law. Of the weight to be given to these opinions there is nothing said, (In a note at page 124 of Mr. Baillie's Digest of Mahomedan Law they are spoken of as the opinions of officers of inferior Courts) and no authority is referred to in support of them. But there is the note of Mr. Macnaghten to one of the opinions in which he gives the great weight of his sanction to the statement that specification in all contracts of exchange is indispensable, but expressly for the reason stated in the passage before quoted from his work, namely, to preclude all contention as to the meaning of the contracting parties. We do not understand that the learned author would have considered a contract of this nature invalid because of the omissions now made a ground of objection, if it evidenced clearly the intention of the parties as to the extent of the property transferred and the consideration for the transfer. Actual delivery of possession not being an essential, there is, we think, no sound reason for requiring in this kind of contract any more than in an ordinary contract of sale more than a sufficient definiteness and certainty to make known what had been specifically determined upon and agreed to by each of the parties, and we see no sufficient authority for saying that there is any positive law going beyond that requirement.

Then is the present contract sufficiently certain on its face to satisfy the law? We are of opinion that it is. It expresses in plain language the specific shares of the property, and that the gift was made in lieu of the *whole* dower. There is no room for doubt as to the meaning and intention of the contracting parties in regard to the particular subjects either of the gift or of the consideration. For these reasons, we reverse the decree of the Lower Court and remand the case, in order that proper issues may be recorded, and the case heard and determined on the merits.