APPELLATE CIVIL.

Before Mr. Justice Markby and Mr. Justice Prinsep.

1878
March 21.

SUDDURTONNESSA AND ANOTHER (PLAINTIFFS) *v.* MAJADA KHATOON AND ANOTHER (DEFENDANTS).*

Mahomedan Family adopting Hindu Customs— Law applicable to—Discretion of Judge.

A Mahomedan family may adopt the customs of Hindus subject to any modification of those customs which the members may consider desirable. A Judge is not bound, as a matter of law, to apply to a Mahomedan family living jointly all the rules and presumptions which have been held by the High Court to apply to a joint Hindu family. It rests with him to decide in any particular case how far he should apply those rules and presumptions.

THIS was a suit to recover possession of an eight gunda one kara and one krant share of a five-anna share of a certain talook. The plaintiff stated, that while her husband and his co-sharers lived jointly, five annas share of the talook in dispute was purchased from joint funds; that the kobala was executed in the name of Golam Ali and Nazarut Ali; that all the co-sharers remained in possession by enjoying the profits thereof up to the year 1274; that, on their separation, the widows of Golam Ali and Nazarut Ali granted an ijara in respect of the entire five annas share to the defendant No. 10, and thereby dispossessed the plaintiff. The defendants pleaded, amongst other matters, that the disputed property was not purchased from joint funds, that Golam Ali and Nazarut Ali obtained it under a gift, and that they themselves and their heirs held possession thereof, and that the co-sharers separated in the year 1250. The lower Appellate Court did not apply the strict rules of Hindu law to the case, and dismissed the suit. From this decision the plaintiffs appealed.

Baboo *Doorga Mohun Dass* for the appellants.

Baboo *Taruck Nath Palit* and *Moulvie Serajul Islam* for the respondents.

* Special Appeal, No. 1073 of 1877, against the decree of Baboo Nobin Chunder Paul, Second Subordinate Judge of Zilla Dacca, dated the 17th February 1877, reversing the decree of Baboo Sree Nath Paul, Munsif of Manickgunge, dated the 4th April 1876.

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SUDDURTON-NESSA v. MAJADA KHATOON.

MARKBY, J. — It is impossible to say that the judgment of the lower Appellate Court in this case was erroneous in law, unless we go to the length of saying that a Judge is bound, as a matter of law, to apply to a Mahomedan family living jointly all the rules and presumptions which have been held by this Court to apply to a joint Hindu family. Now we are not prepared to go to that length. When a Mahomedan family adopts the customs of Hindus, it may do so subject to any modification of those customs which the members may consider desirable; and it must rest with the Judge who has to decide each particular case how far he should apply the rules of a Hindu joint family to the case of any Mahomedan joint family that comes before him.

With regard to the case quoted—*Vellai Mirá Ravuttan* v. *Mirá Moidín Ravuttan* (1)—we have no reason to doubt that it was a perfectly proper decision with reference to the facts then before the Court. The Court does not there say anything contrary to what I have just now laid down as the law in this part of the country. Although in that particular case the Court, sitting as a Court of regular appeal, did apply to the acquisition of a manager on the part of a Mahomedan joint family the same presumption as applies to the manager of a Hindu joint family, they nowhere say that that must be done in all cases. We cannot say that because the Subordinate Judge does not apply that presumption to this case his judgment is erroneous in law. We cannot, therefore, interfere with his judgment in special appeal.

The appeal must be dismissed with costs.

Appeal dismissed.

(1) 2 Mad. H. C. Rep., 414.