

ORIGINAL CIVIL.

Before Mr. Justice Stephen.

MAHOMED SHAH

v.

OFFICIAL TRUSTEE OF BENGAL.*

1909
Jan. 25.

Mahomedan Law—Trust deed—Life interest with remainder over—Gift to unborn persons.

A deed creating a life interest with remainder over is void under the Mahomedan Law. Similarly a gift to unborn persons is void.

Shahebzadah Mahmud Faradoon Jah v. Shahebjadi Fakir Johban Begum (1), *Shahebzadah Mahomed Abdool Hossain v. The Official Trustee of Bengal* (2), and *Shahebzadah Mahomed Mouzzumuddeen v. The Official Trustee of Bengal* (3) followed.

ORIGINAL SUIT.

THIS was a suit brought by the plaintiff, Shahebzadah Mahomed Mahmud Shah, a member of the Mysore family and a beneficiary under the Mysore Trust Deed, dated the 19th November 1867, for construction of that deed and to have it declared that he was the absolute owner of certain promissory notes for Rs. 37,500, now in the custody of the Official Trustee.

Under this deed, these promissory notes were given to the Official Trustee in trust to pay the income to the plaintiff during his life and after his death to his widow and children in certain shares. The plaintiff had one issue, a son, named Mahomed Behroze Shah, who together with the plaintiff's wife, Shahebzadee Noorunnessa Begum, were made party defendants to the suit. At the time the Trust Deed was executed the plaintiff had no children. The Official Trustee left the construction of the deed to the Court.

Mr. L. P. E. Pugh and *Mr. N. N. Sircar*, for the plaintiff.

Mr. Hyam, for the defendants Shahebzadee Noorunnessa Begum and Shahebzadah Mahomed Behroze Shah.

* Original Civil Suit No. 567 of 1908.

(1) Suit No. 121 of 1907. (Unreported). (2) Suit No. 567 of 1908. (Unreported).

(3) Suit No. 791 of 1901. (Unreported.)

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OF BENGAL.
STEPHEN J.

Mr. Langford James, for the Official Trustee.

STEPHEN J. The plaintiff in this case sues to have it declared that he is the absolute owner of a certain Government promissory notes of the value of Rs. 37,500 now in the custody of the Official Trustee.

The case depends on a deed of the 19th November 1867 by which provision was made for the proper maintenance of the Mysore family.

The matter has been frequently before this Court, already points of law having been raised both under the present deed and under other deeds with similar effect. The plaintiff by this deed takes a life interest with remainder to certain other persons. It has been held that this is void by Mahomedan Law. It has also been held under this deed that trusts declared after the life interest are void as gifts to unborn persons. In accordance with this decision I give judgment in favour of the plaintiff in terms of prayers 1, 2, 4 and 5 of the plaint. It has been suggested on behalf of the Official Trustee and the appearing defendant that the whole deed is void, but the failure of the interests subsequent to that in favour of the plaintiff being void, it is not necessary to set aside the whole deed. The cases to which I have been referred are as follows :—*Shahebzadah Mahmud Faradoon Jah v. Sahebjadi Fakir Johban Begum* (1), *Sahebzadah Mahomed Abdool Hossain v. The Official Trustee of Bengal* (2) and *Sahebzadah Mahomed Mouzzumuddeen v. The Official Trustee of Bengal* (3).

The Official Trustee is entitled to his charges and commission, if any due to him, out of the subject-matter of the suit. I give judgment for the plaintiff, accordingly, with costs. The appearing defendants are also entitled to their costs.

Costs to be taxed on scale No. 2.

Attorney for the plaintiff : *N. N. Mitter*.

Attorneys for the defendants : *Gregory and Jones*.

Attorneys for the Official Trustee : *Orr, Dignam & Co.*

(1) Suit No. 121 of 1907. (Unreported). (2) Suit No. 567 of 1908. (Unreported).
(3) Suit No. 791 of 1901. (Unreported).