

Mir Isub Mir Inus Maldikar Vs. Isub

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Court : Mumbai

Decided On : Jan-12-1920

Reported in : (1920)22BOMLR942; 58Ind.Cas.48

Judge : Norman Macleod, Kt., C.J. and ;Heaton, J.

Appeal No. : Second Appeal No. 511 of 1917

Appellant : Mir Isub Mir Inus Maldikar

Respondent : isub

Disposition : Appeal dismissed

Judgement :

Norman Macleod, Kt., C.J.

1. In this case Abdulla and Allisaheb were two Sunni Mahomedans who owned certain property as heirs of their father in equal shares. Abdulla died in 1888 leaving two widows, Jamalbi and Latifa, and his brother Allisaheb. Under Mahomedan law the widows would take two annas out of Abdulla's eight annas. Allisaheb would take six annas. Allisaheb died in 1897 leaving a widow Amina. She would succeed law to the fourteen annas of her husband. It has been argued that she would only be entitled to one-fourth of her husband's estate and in the absence of sharers, residuaries and distant kindred the three-fourth would escheat to the Crown. That is not Mahomedan law as we understand it. I may refer

to Mulla's Mahomedan Law, 5th Ed;,, where the author deals in a simple manner with the doctrine of 'Return'. In the illustration of a Mahomedan dying leaving a widow as his sole heir, he says, 'the widow will take one-fourth as sharer, and the remaining three-fourths by 'Return'. The surplus three-fourths does not escheat to the Government.' He refers to Mahomed Arahad Choudhry v. Sajida Banoo I.L.R (1878) Cal. 702 and Bafatun v. Bilaiti Khanum I.L.R (1903) Cal. 683. It is obvious, therefore, that the defendants' contention cannot be sustained, and the plaintiff succeeds to the fourteen annas as the heir of Amina. The appeal is dismissed with costs.

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