

Latafat Husaln and ors. Vs. Hidayat Husaln and ors.

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Court : Allahabad

Decided On : Jan-15-1936

Reported in : AIR1936All573

Appellant : Latafat Husaln and ors.

Respondent : Hidayat Husaln and ors.

Judgement :

1. This is a plaintiff's appeal arising out of a suit for recovery of possession of a 1/8th share in the inheritance of the plaintiff's deceased husband Fasahat Husain. Originally Fasahat Husain and his brother, Tahawar Husain, were entitled to equal shares in some property; and Tahawar Husain died, his estate devolving on his mother Mt. Sanjha Bibi, under the Shia Law. Mt. Sanjha Bibi gifted this property to Fasahat Husain's son from his first wife in 1894. On 6th November 1920 two documents were executed: one was a deed of wakf by Fasahat Husain under which he appointed his second wife, the present plaintiff, Shafiq-un-nisa, as the mutawalli, and constituted the children of Shafiq-un-nisa as the beneficiaries; and the second was a deed of release executed by Shafiq-un-nisa under which she relinquished her claim to her dower against the property of her husband, and also relinquished her claim to any inheritance in the estate reserved by him. Fasahat Husain died in 1928. Thereupon, contrary to the release made by Shafiq-un-nisa she brought the present suit to recover her 1/8 the share in the inheritance of Fasahat Husain. She has not pressed her claim for her dower. The only question that arose for consideration was whether Shafiq-un-nisa could obtain a decree for

possession of the 1/8th share in the estate left by Fasahat Husain when she had in his lifetime renounced her claim to such inheritance. Both the Courts below have dismissed the claim. In appeal it is contended before us that a relinquishment of the right of succession made by a Muhammadan heir is prohibited by the Muhammadan Law and is null and void, and cannot stand in the way of the plaintiff when seeking to recover her share of inheritance.

2. It seems to us that the question raised in appeal really consists of two parts which are distinct and separate from each other. The first is whether a relinquishment of the right to succession made by a Muhammadan heir is valid in law so as to be binding upon him in the sense that the estate passes to the person in whose favour the relinquishment is made. The second is whether, even if the relinquishment is not effective, there can be an estoppel in certain circumstances.

3. The preponderance of authorities on the first point is in favour of the view that a relinquishment by a Muhammadan heir before the succession has opened is under the Muhammadan Law invalid. The point arose in a case decided in 1827 by the Sudder Dewanny Adawlut of Bengal in *Mt. Khanum Jan v. Mt. Jan Beebee* (1827) 4 SDA 210, which case was quoted as an authoritative pronouncement by Macnaghten in his 'Principles and Precedents of Muhammadan Law' (Case No. 11). In that case the two daughters of a Mahomedan lady had renounced their right of inheritance to their mother's property on receipt of Rs. 1,000 each from persons in whose favour they had executed the deed. After the death of the mother they waited for nearly 12 years, and then ultimately brought a suit for recovery of their legal shares. The promisees were setting up a deed of gift executed by the mother in their favour, but that was not upheld. The question then arose whether the renouncement was valid, and would prevent the daughters from claiming their shares. The mufti attached to the Zilla Court of Shahabad came to the conclusion that inasmuch as consideration had been received, the plaintiffs were not entitled to succeed although the right parted with had not been in existence at the time. But on appeal the Kazi of the Provincial Court and the Mufti of Patna expressed the opinion that there was no bar to the claim. The Law Officers of the Sudder Dewanny Adawlut declared their opinion in favour of the accuracy of this view. The view was based on the well-recognized proposition that

during the lifetime of the mother, the daughters had no right of inheritance, and that therefore their renunciation during the mother's lifetime of their rights of inheritance was null and void, and it amounted to giving up something which had no existence at the time, and that accordingly such act could not invalidate the right of inheritance supervenient to the mother's death, or be any bar to their claim of the estate left by her. The question of estoppel, either in equity or arising under any rule of evidence, does not appear to have been directly referred to the Muftis and the Kazi for their opinion. So far as the proposition that under the Mahomedan law a renunciation of a future right of inheritance is not in itself valid is concerned, this authority has remained unchallenged and has been adopted by the various textbook writers.

4. We may mention that two later cases decided by their Lordships of the Privy Council do not really negative this proposition. In *Hurmut-ool-nissa Begum v. Allahdia Khan* (1872) 17 WR 108 there had been no plea raised by the defendants that any renunciation of a right to succession had been made during the lifetime of Hyder Ali, the succession to whom was claimed by the plaintiff. The suit was brought after a long number of years and the mutation of names in favour of the defendants had been acquiesced in. Their Lordships came to the conclusion that the evidence failed to establish that the plaintiffs had any title. In addition their Lordships also remarked that according to Muhammadan law there may be a renunciation of the right to inherit, and that such a renunciation may not be expressed, but may be implied from the ceasing or desisting from prosecuting a claim maintainable against another. As no question of a renunciation in the lifetime of the ancestor had arisen in that case, their Lordships' remark presumably related to a renunciation which could be implied from the Conduct of the plaintiff since the death of the ancestor. Similarly in *Muhammad Kami v. Imtiaz Fatima* (1910) 36 IA 211 Mubarak Ali had died in 1891, and the plaintiff claimed a share in the estate left by Mubarak Ali, The suit was filed in 1903, and in defence it was pleaded that on account of the conduct of the plaintiff in 1895 there had been a renunciation of her share in the inheritance. There was no plea taken that any relinquishment had been effected in the lifetime of Mubarak Ali. Their Lordships accordingly went into the question of fact whether the plaintiff had relinquished her claim and was estopped from pressing it or not.

5. In *Kunhi Mamod v. Kunhi Moidin* (1896) 19 Mad 176, a Bench of the Madras High Court held that where a person had executed a deed of relinquishment for a consideration of Rs. 150 renouncing all his claims to the estate of a Muhammadan lady, the renunciation was binding on the plaintiff and he could not be given a decree. This view was subsequently dissented from by a Full Bench of the Madras High Court in *Asa Beevi v. S. K. M. Karuppan Chetty* 1918 41 Mad 365, where it was held that a transfer or renunciation of a contingent right of inheritance is prohibited under the Muhammadan law. The relinquishment in that case had been made in the lifetime of the ancestor for a cash consideration. The Full Bench allowed the plaintiff to recover possession of the property without calling upon the plaintiff to refund the amount. The Bombay High Court also in *Sumaiddin Goolam Husain v. Abdul Husein Kalimuddin* (1907) 31 Bom 165, has held that the chance of an heir-apparent succeeding to an estate under the Mahomedan law is neither transferable nor releasable and has further considered that to uphold such a relinquishment would be contrary to the intention of the law: Section 6 T.P. Act.

6. So far as the proposition under the Mahomedan law a relinquishment by an heir who has no interest in the lifetime of his ancestor is invalid and void is concerned, the authorities seem to be all one way. On principle there seems to be no distinction between the rules of English law and the rules of Mahomedan law. Such a release or renunciation cannot be operative so as to divest the heir of all rights in the inheritance when the succession opens and to vest the whole property in the other person in whose favour the relinquishment was made. Inheritance is governed by the personal law of the deceased owner, and the devolution of property is brought about by the operation of law and does not depend on the will of the heir. But there is nothing to prevent an heir from not claiming a share in the property which has devolved on him or from so acting as to estop himself from claiming it.

7. The question of estoppel is really a question arising under the Contract Act and the Evidence Act, and is not a question strictly arising under the Mahomedan law. In *Mohammad Hashmat Ali v. Kaniz Fatima* 1915 13 ALJ 110, a Bench of this Court held that there was nothing illegal in a person, for good consideration, contracting not to claim the estate, in the event of his becoming entitled to inherit

on the decease of a living person; and further held that the provisions of Section 6, T.P. Act, did not in any way create a bar against the legality of such a contract. The same view was expressed in *Barati Lal v. Salik Ram* 1915 13 ALJ 1141, where a Hindu reversioner had relinquished his right upon receipt of consideration. Obviously Section 6, T.P. Act, cannot in terms apply to such a relinquishment. If the relinquishment is in the nature of a gift or transfer of a contingent right then of course it would be void under Section 6; but if it is merely an agreement or contract for not claiming a contingent right of inheritance when succession opens in future, then the case would not be governed by the provisions of Section 6 at all.

8. The contract made by an heir for consideration not to claim a certain property cannot be said to be in any way illegal or forbidden by any law. Of course where the consideration is received and it is only a cash consideration, and the contract is subsequently sought to be enforced, it would be a matter of discretion for the Court to refuse specific performance and to make the plaintiff pay compensation when he is not carrying out his contract. But in cases where the agreement has been effected in a form which makes it impossible for the Court to grant adequate compensation to the aggrieved party the agreement may well be enforced, and the plaintiff be held bound by it. It has been held in this Court that contingent reversioners can enter into a contract for consideration which may be held binding on them in case they actually succeed to the estate: see *Mahadeo Prasad v. Mata Prasad* 1922 19 ALJ 799 and *Fateh Singh v. Rukmini Ravanji Maharaj* 1923 21 ALJ 235. It was pointed out in *Moti Shah v. Gandharp Singh* 1926 24 ALJ 873, at pp. 876-7, that although a reversionary right cannot be the subject of a transfer, for such a transfer is prohibited by Section 6, T.P. Act, there was nothing to prevent a reversioner from so acting as to estop himself by his own conduct from subsequently claiming a property to which he may succeed. Among other cases reliance was placed on the pronouncement of their Lordships of the Privy Council in *Kanhai Lal v. Brij Lal* 1918 40 All 487, where a reversioner was held bound by a compromise to which he was a party.

9. The finding of the lower appellate Court in this case in fact is much stronger. According to the recitals contained in the deed of release executed by the plaintiff, it is clear that, as found by the lower appellate Court, the plaintiff had herself been

insisting that her husband should execute the deed of gift in her favour in lieu of her desisting from her claim to dower and enforcing her prospective rights as an heiress of her husband's estate. The two deeds were executed at the same time, and on the finding of the lower appellate Court they formed part and parcel of the same transaction. The husband would not have executed the deed of wakf, if the plaintiff had not been willing to forego her claim to the inheritance and willing to abandon her claim to the dower. Now that the husband is dead and the deed of wakf has been accepted by the plaintiff and she is the mutawalli in possession of the wakf property, she should not be allowed to resile from her previous position and claim a share in the inheritance which she had abandoned. This would be allowing her to commit a fraud on the deceased who would not execute the deed of wakf if she had not been agreeable to relinquish her claim. The learned Judge has come to the conclusion that the arrangement between the husband and the wife was in the nature of a family settlement which is binding on the plaintiff. We think that on this finding the plaintiff cannot be allowed to go back upon her renunciation as it is not possible to grant her relief for possession by making her pay compensation to the defendants. The case in *Nazir-ul-Haq v. Faiyaz-ul-Rahman* (1911) 33 All 457 may be distinguishable on the ground that in that case the Bench did not expressly decide the question of the validity of the relinquishment under the Mahomedan law, and proceeded merely on the ground that under the arrangements the husband and wife had taken life estates and the remainder had been settled on the children of the marriage; but the cases in *Mohammad Hashmat Ali v. Kaniz Fatima* 1915 13 ALJ 110 and *Barati Lal v. Salik Ram* 1915 13 ALJ 1141 are in point, especially the latter, which proceeded on the ground that there had been a family settlement of the disputed claim. The plaintiff and her children were not entitled to obtain immediate possession of the wakf property without the wakf which they succeeded in obtaining, and had remained in possession of the same for about 8 years before the husband died. She cannot be allowed now to go back upon the family settlement which, if not enforced, would cause injustice to the defendants, who would suffer. Accordingly we dismiss the appeal with costs.