

Jayanabibi Vs. Jayarabi

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Court : Chennai

Decided On : Sep-12-1949

Reported in : AIR1950Mad761

Judge : Raghava Rao, J.

Acts : Muhammadan Law; [Code of Civil Procedure \(CPC\) 1908](#) - Sections 100 and 101

Appeal No. : Second Appeal No. 848 of 1947

Appellant : Jayanabibi

Respondent : Jayarabi

Advocate for Def. : G. Venkatarama Sastri, Adv.

Advocate for Pet/Ap. : Y. Suryanarayana, Adv.

Disposition : Appeal dismissed

Judgement :

Raghava Rao, J.

1. This second appeal raises the question whether there was delivery of possession as required by the Muhammadan law under or pursuant to EX. D.-8, a deed of settlement in favour of the defendant by her deceased husband, dated 4th

April 1944. The plaintiff though originally a Hindu became a Muslim by conversion and afterwards also a wife of the executant of Ex. D.-8. Both the parties to the present suit are Muhammadans, even as the executant of EX. D.-8 was. The suit has been decreed by the Courts below on the ground that Ex. D.-8 is of no avail to the defendant for want of delivery of possession.

2. The property was in the hands of tenants at the time of Ex. D-8, Under it, firstly the settlor reserves to himself the right to receive rents during his lifetime, and secondly he also undertakes to pay municipal taxes. It is contended by Mr. Suryanarayana, learned counsel for the appellant, that notwithstanding these two undisputed facts there was sufficient delivery of possession as required by the Muhammadan law by the mere declaration to that effect in the document. It is said that the intention to deliver which is unequivocally manifested by the clause of the document 'I have delivered possession of the property to you even now' need not be followed up by any attornment of the tenants to the donee or by any reception of rents and profits by her. Reliance is placed by the learned counsel on the ruling of the Privy Council in *Mohamed Sadiq Ali Khan v. Fakr Jehan Begum*, and in particular on the observation at P. 19 which is in these terms:

'In the case of a gift by a husband to his wife their Lordships do not think that the Mahomedan law requires actual vacation by the husband and an actual taking of separate possession by the wife. In their opinion the declaration made by the husband followed by the handing over of the deed are amply sufficient to establish a transfer of possession.' The observation must, however, be understood in relation to the facts of that case which was a case of the husband and wife living together in the house at the time of its gift by the one to the other, and in the light of West J.'s statement of the law relied upon by their Lordships in a quotation which they make, namely, 'that when a person is present on the premises proposed to be delivered to him a declaration of the person previously possessed puts him into possession,' Moreover, the effect of acts such as the two referred to above as existing in the present case did not fall to be considered by their Lordships in the ruling relied upon by the learned counsel for the appellant before me.

3. The question whether or not possession was delivered is in essence a question of fact on which both the Courts below have concurred adversely to the appellant. The second appeal is therefore devoid of substance and must be and is hereby dismissed with costs.

4. No leave.

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