

**Joshua Vs. Arakie**

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**SooperKanoon Citation :** [sooperkanoon.com/862903](http://sooperkanoon.com/862903)

**Court :** Kolkata

**Decided On :** Aug-22-1912

**Reported in :** (1913)ILR40Cal266

**Judge :** Lawrence H. Jenkins, ;K.C.I.E., C.J. and ;Woodroffe, JJ.

**Appellant :** Joshua

**Respondent :** Arakie

**Judgement :**

Jenkins, C.J.

1. The plaintiff, Mozelle Joshua, is the widow of Aaron Raphael Joshua; and she has brought this suit to establish her right to Rs. 10,555 under an instrument, which she describes as a marriage settlement or ketuba. The defendants are Sophie Arakie, Aaron Raphael Joshua's daughter by a former wife, and the Administrator-General of Bengal, his representative under a grant of letters of administration.

2. This ketuba came into existence on the marriage of the plaintiff with the deceased. A translation of it is annexed to the plaint.

3. It opens with a narration of the bridegroom's proposal to the bride, his promise to feed and clothe her and endow her with 100 pieces of silver, her acceptance of his proposal, and their marriage.

4. Then it is said the bride brought to her spouse 'ornaments of gold and silver and dresses totalling to Rs. 5,000 which he has accepted and wrote upon himself on the former and the latter also, in all Rs. 5,000. And he further agreed to add, out of his money, an addition on the principal of this edict Rs. 455, in all together with the endowment, additions and gifts Rs. 10,555. And Mr. Aaron acknowledged that the abovementioned sums are received and accepted by him and under his command. And he acknowledged that the said sums are as lent to him and he possessed the same and like the trade of goat and iron should it increase and decrease will be sustained by him.'

5. The Instrument then concludes as follows:

And accordingly the said Mr. Aaron told us that the security and the responsibility of this edict the J endowment and the addition which are stipulated for her accepted and agreed by me and my heirs after me from all my properties and also moveable and not moveable will be security and pledge to realize from the best of my woven goods and landed properties which I have under the heaven and that I may possess hereafter and even from the robe that is on my shoulders during my existence and after my existence from this day and for ever and security and responsibility and the strength, as of all other edicts the endowment and addition, as are in. custom with the daughters of Israel also 4 umma (measurement) of ground as worthy and as t is ordered by our Rabbis. Not like a support and not like a draft to be considered this on cancelling all sorts of previous understandings in the world and in rejecting all evidences and oaths. We the undersigned are witnessing that all aforesaid are spoken by the said Mr. Aaron to Muzalltobe his this bride his wife trust all that are written above and explained with solemn oath and complete. To purchase with the valuable articles. All those mentioned above are correct right firm and true.

6. It was signed, by two witnesses, and there is a written statement by the bridegroom accepting what was mentioned in the document.

7. Though the translation leaves much to be desired, the general drift of the instrument is clear.

8. The question for our determination is whether it was intended to operate as an effective legal instrument, entitling the plaintiff to recover Rs. 10,555 on her husband's death. Harington J. decided adversely to the plaintiff, and so she has preferred this appeal.

9. When the appeal was first opened before us, both sides sought an opportunity of obtaining further authorities in support of their rival contentions. As the case was one of first impression, at least in this Court, and of considerable importance to the Jewish community in Calcutta, we, by consent of parties, allowed an adjournment, and gave each side permission to adduce further evidence in the shape of appropriate books of reference or affidavits of acknowledged authorities with a view to showing whether or not an instrument such as this ketuba was ordinarily intended to have legal operation on the husband's death.

10. Affidavits have been placed before us on both sides, but they do not meet the point on which we desired assistance.

11. Text-books too have been procured, but they are of historical rather than of practical interest.

12. On a consideration of the materials on the record I am convinced that the ketuba is a necessary incident of a marriage contract in Calcutta between those of the Jewish faith.

13. And though it is expressed in terms that suggest pecuniary endowment, yet according to modern ideas and modern practice this expression (in my opinion) is not intended to have the legal consequences for which the plaintiff contends.

14. A solemn declaration of endowment, forming a part of the marriage ceremonial but leading to no practical result, is not unknown, and I see no difficulty in the way of regarding the ketuba as a survival, which is now a mere formality and nothing more.

17. This view gains support from the fact established in this case, that what is recited did not in truth occur; and the evidence shows that though the instrument purports to be an assertion by the witnesses of their actual experience, they both

signed the document in ignorance of its contents. And then again it is a significant circumstance that no instance is recorded in the evidence or disclosed in any reported case where a ketuba has been treated as creating a right to recover the sums mentioned in it.

18. The present suit is based on the ketuba and on that alone, so that I refrain from considering the problem whether a Jewish widow has any rights of dower. Nor do I intend to express any opinion as to her rights in the event of divorce.

19. I propose to deal only with that which is before us, the right of a Jewish widow married in Calcutta to sue on her husband's death for the sums mentioned in the ketuba, and on that my opinion is that the plaintiff has failed to establish her claim, and I would therefore dismiss this appeal with costs.

**Woodroffe, J.**

20. I agree.

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