

SarifuddIn Muhammad Vs. MohiuddIn Mohammad and ors.

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Court : Kolkata

Decided On : Jun-06-1927

Reported in : AIR1927Cal808

Appellant : SarifuddIn Muhammad

Respondent : MohiuddIn Mohammad and ors.

Judgement :

Page, J.

1. This case raises questions of general interest to the Mahomedan community relating to the Mahomedan law of gift.
2. The suit out of which this appeal arises was brought to recover possession of certain immovable properties after the plaintiff had established his title thereto for partition and other incidental relief. The following geneological tree will show the relationship of the parties to the suit : (See page 810)
3. The plaintiff' claimed title to the property in suit partly as the heir of Yusuf, and partly as the heir of Lajman. He also claimed to have purchased the interest of his sisters defendants 9 and 10 in some of the properties.
4. Defendant 1 claimed a share income of the properties as the widow and heir of Yusuf, Defendants 2 and 3 claimed the property under an oral gift and a deed of

gift from Lajman.

5. Defendant 4 was alleged to be another donee from Lajman of some of the properties.

6. Defendants 5 - 8 held usufructuary mortgages from defendant 1, and defendants 9 and 10 were joined as pro forma defendants. Defendants 2 and 3 alone contested the suit. The trial Court passed a decree in favour of the plaintiff. Defendants 2 and 3 have appealed. At the hearing of the appeal the defendants raised two main contentions : (1) that while it was conceded that the plaintiff was a residuary of Yusuf through a true grandfather (h h s), inasmuch as he was also related to Yusuf through Lajman as a distant kindred of Yusuf, and the latter relationship was nearer than the former, the plaintiff lost his rights as a residuary, for such rights were merged in the nearer relationship through Lajman; (2) that the properties in suit had been transferred to defendants 2 and 3 by Lajman, in part by a registered deed of gift, and in part by an oral gift.

7. In support of the first ground of appeal the learned advocate for the appellants was unable' to cite any decision or authority, but he referred to a passage in Baillie's Digest of Mahomedan Law, (2nd Edn. p. 704), where the learned author observed that:

where there are several residuaries of different kinds, one a residuary in himself, another a residuary by another, and the third a residuary with another, preference is given to propinquity to the deceased.

8. In my opinion the rule of propinquity may apply as between the members of a class, but it does not apply as between classes, and I am clearly of opinion that the plaintiff has not lost his admitted rights as a residuary of Yusuf merely because he also possessed a relationship to Yusuf through Lajman. The first contention of the appellants, therefore, fails.

9. The defendants also resisted the plaintiff's claim upon the second ground, namely, that the property in suit had been transferred to them by Lajman in part by an oral gift, and in part by a registered deed of gift. In respect of the oral gift it is

enough to say that the learned trial judge, upon a consideration of the evidence has come to the conclusion that the factum of the gift has not been established, and that we are of opinion that the decision at which he arrived was correct. The registered deed of gift was executed on the 30th October 1917, and contained the following provisions:

I, the executant, execute this deed of gift or hebanama to the effect following:

1. The properties mentioned in Schedules (ka), (kha) and (ga) situated in the under mentioned mouzi within parganas Bahirimutha, Nayabad and Vaitgarh, under sub-registry Marisda, thana Bahiri, in the district of Midnapur, are in my possession and ownership. Some of these properties I obtained from my husband and some are my self-acquired properties obtained under patta and by right of purchase. I have been in undisputed possession of all those properties. Their approximate value will be Rs. 4,999.

Hosseni Dufty.

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Faki Mahammad. Sadulla Mahammad. Masiudin.

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Nakku. ----- |

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Lal Mia Bakku. Kamiruddin. |

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----- Pachu. ||

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Mati. Altap & Othes. ----- ||

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Bulan Momin & Othes. ||

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Mahatauddin. Mahiuin, Tofa, Fitkii, Lajman. Aiman. |

| (Plaintiff). (eft. No. 9). (eft. No. 10). |

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Sifuddin, Fazluddin an Othes. Maifudin, Gulam. Tola. Pabnuddin,

(Deft. No. 2). (eft. No. 3). died in 1882, died in 1903.

(Wives Aiman and Bibijan Bibi.) Wife Lajman,

| died in 1923.

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||| Alarakhi Bibi,

Amiuddin, Asiba. Joyha. did in 1913.

died in 1898, |

wife Allaakhi, ajabibi=Yusuffuddin,

| (eft. No. 1).

Yusuffudin died in 1917.

died in 1917.

wif oja Bibi,

(eft. No. 1)

2. The properties in Schedule (kha) were held in shebaitship by my husband and formed the rent-fee pirottar properties of Satyapir Saheb since my husband's death. I have been in possession and enjoyment of the same as shebait and have been rendering services to the Pir Saheb.

3. No son was born to me. I had an only daughter Allarakhi Bibi. She is dead. After the death of the said daughter her son Yusufuddin lived with me. Unfortunately he too died a few days ago at an early age of only 21 years, I am a woman and it is difficult for me to look after the properties. You are the sons of my youngest full brother. You respect me well and I bear affection towards you. Under this deed of gift I give you properties mentioned in Schedules (ka) and (kha), including the said Pir Saheb and his asthana. From this day all the rights I have therein vest in you, and you and your sons and your grandsons and heirs in succession Shall remain in possession and enjoyment of the same. I hold no further interest or concern in the said properties and I shall not be able to lay any claim in future. You will be fully vested with, my absolute right.

4. From this day I leave all the above properties to your possession. As regards the rent-paying lands you will have the mutation effected in the office of the landlord, and as regards the rent-free lands you will have the mutation effected in the collectorate if necessary. You will enjoy the properties in all the schedule according to your wish and remaining a shebait of Sri, Sri Satyapir Saheb in respect of the properties of Schedule (kha). You will continue to be in possession and enjoyment of the same as such and will perform the specified services, such as lighting of lamps, etc., and you will exercise all my rights. I shall have no objection thereto.

5. You will have to maintain me and pay Rs. 999 as the annual expense for my maintenance and in case of illness you will have to arrange for my nursing and proper treatment, and generally I shall live at your ancestral dwelling-house in village Darua, but, I shall, if I so choose, be at liberty to live in one room, within the bastu covered by deed of gift. You will not be able to stand in my way and no right will thereby accrue to me, and as long as I live you shall help me according to my needs. If on any account you fail to pay me the said amount of the maintenance charge I will have the said amount realized from you or your heirs, through Court.

6. Be it stated that before this, on the 28th Pous 1315 B.S., I, of my own accord executed two separate deeds of gift in favour of the aforesaid Yusufuddin and Allarakhi Bibi and I kept them with me after registration. The said two deeds have not been acted upon and no right has thereby accrued to Yusuf and Allarakhi nor have they taken possession. I did not myself speak to Yusufuddin or Allarakhi about the said deeds of gift, nor did I allow them to know of them, nor did they come to know of the same. Once, of my own accord, I executed and registered the deeds, but did not allow anybody to know of the deeds of gift. I did not make Yusuf and Allarakhi aware of this. The deeds of gift were and have been with me. I have been paying rent and have been in possession of the said property. You have got nothing to apprehend from the said deeds of gift. The said deeds of gift have been in a way void, and have become ineffectual. I kept them concealed after registration. Hence the said deeds of gift cannot be binding. They had not been legally accepted by the donees. I also did not speak of the gift before to anyone, nor did I mention the names Yusuf or Allarakhi. And they have not taken possession of any land under the said two deeds of gift, nor have I delivered them possession. Even after the execution of the deeds of gift I have been in possession as before and paying rents. To assure you I make over to you the said two deeds of gift in a torn condition, bringing them out from under the ground where they had been kept buried in a chest. You will keep them as they are.

7. As I am a pardanashin lady, my daughter's son Yusufuddin, at the time of the last settlement, used to look after the proceedings in the settlement office on my behalf in respect of my properties. The said Yusufuddin was entrusted with all settlement works. Now I have come to learn that the said Yusufuddin had a

sinister motive and got some of my properties recorded in his own name. The said record is entirely incorrect. The said person never took possession of any of my properties. I have all along been in possession of all the properties. The said Yusuf never had nor has any interest in the said property. Vested with my rights in all the above properties by virtue of this deed of gift you will have the said incorrect record corrected. To this effect, having gone through the deed of 1 gift in the presence of witnesses and understanding fully the purport thereof, I execute it in sound health of my own accord, in good faith and without any request. Finis. Dated the 14th Kartik 1325 (Amli year) : 30th October 1917.

10. At the hearing of the appeal it was common ground that the deed of 30th October 1917 was duly executed and registered. The learned advocate for the respondent, however, contended, and the learned trial judge has found, that if this transaction is to be treated as a simple heba, it is amenable to the doctrine of musha (confusion) because : (1) Lajman possessed only an undivided share in the subject-matter of the gift, which was capable of partition; (2) the gift was to two persons jointly without specifying the share given to each; (3) the gift was of lands with crops standing thereon without a gift of the crops and that as the defendants have not proved that they obtained delivery of possession of the property under the deed, the gift is invalid in law. The respondents further contended, and the trial Court has held, that if the transaction is a heba-bil-ewaz it is essential to the validity of such a transaction that the stated consideration should have been paid, and that the defendants had failed to prove the payment of such consideration. On the other hand the appellants urged that the transaction was neither a heba nor a heba-bil-ewaz but that the registered deed embodied the terms of an agreement under which Lajman undertook to transfer the proprietary title to the property to defendants 2 and 3 in consideration of a promise on their part to carry out the terms of Clause (5) of the deed; that the defendants accepted the offer therein made by Lajman, and that the transaction was a valid contract of sale to which the provisions of the Contract Act and the Transfer of Property Act apply.

11. As the rights of the parties under the deed of the 30th October 1917 are to be determined by Mahomedan law, and the appellants do not dispute that if the transaction is affected by the doctrine of musha it cannot stand, it is incumbent,

upon the Court to ascertain the nature of the transactions to which the doctrine of musha applies.

12. I have made an examination of the decisions upon the subject, and of such texts and commentaries on the Mahomedan law of heba as are available to one unversed in the language in which the early texts and commentaries were written; but I have found consistency neither in the texts nor among the commentators, and I must needs endeavour to ascertain and to state what I conceive to be the law on the subject in my own way, although the task is one of which I feign would be relieved lest perchance in so doing I 'make confusion worse confounded.'

13. Now, it is of the essence of a gift under Mahomedan law : (1) that the donor should intend to transfer in presenti to the donee the subject-matter of the gift; (2) that there should be acceptance of the gift by the donee; or (3) that the donee should, have obtained delivery of seisin. Acceptance and seisin may be actual or constructive according to the circumstances of the case, but no transaction of which the above are not ingredients, is, or is to be treated as, a gift under Mahomedan law.

14. A gift may be a heba simple or a heba-bil-ewaz (gift for an exchange or a return gift), or a heba-ba-shurt-ul-ewaz (a gift with a stipulation for an exchange or a return gift), but in each and every variation of gift the transaction is a heba and must contain the essential elements that constituted a heba according to the Mahomedan law.

15. Now, a heba simple

means a transfer of property made immediately and without any exchange:

Hadays (Hamition Grady's Edition, Book 30.)

Gift, as it is defined in law; is the conferring of a right of property without an exchange:

(Baillie, 2nd Edition, 515)

The fundamental conception of a heba-bil-ewaz, in Mahomedan law is that it is a transaction made of two separate acts of donation, that is, it is a transaction made up of mutual or reciprocal gifts between two persons, each of whom is alternately the donor of one gift and the donee of the other:

Rahim Bukhsh v. Muliammed Hassan [1888] 11 All. 1

The ewaz, or exchange in gift, is of two kinds : one subsequent to the contract, the other stipulated for in it:

(Baillie. 2nd Edition P. 541).

When the exchanging takas place subsequent to the gift, the ewaz is, without any difference of opinion between our masters, a gift ab initio. So that it is valid where gift is valid, and void where gift is void, there being no difference between them except as to the dropping of the power of revocation in the case of the ewaz while it is established in that of the gift. And after possession has been taken of the ewaz, the power to revoke drops also with respect to the gift. So that neither party can reclaim from his fellow what he has become possessed of whether the ewaz were given by the donee or by a stranger, with or without his direction. All the conditions of gift are applicable to the ewaz.

Rahim Bukhsh v. Muhammad Hassan [1888] 11 All. 1.

16. If a person give something to another on condition of that other giving something to him in exchange for it, the mutual seisin of the respective returns is regarded; that is to say, the contract is nothing until the two seisins take place, and is made null by the subject of it, on either side, being mixed with other property. The reason of this is that a deed of this nature is in its original a gift but whenever the seisins take place, it becomes in effect a sale; and, as such, return may be made on account of a defect or from an option of inspection; and, the right of shaffa is also connected with it (Hamilton's Hedaya, p. 488). Giving an ewaz or exchange for the gift may be entirely an after-thought, or may have been stipulated for in the first transaction, which in that case is termed heba-ba-shurt-ul-ewaz, or a gift with a condition for an ewaz or exchange. In both cases the ewaz is itself a gift,

and is valid only when it is something that can lawfully be made the subject of gift, Up to possession, too, the ewaz may be revoked, but, after that, neither the original gift nor the ewaz or exchange for it is resumable.... A gift cannot be contingent or suspended on a condition, but it may be made subject to a condition. The original word 'shurt.' which is the same in both cases, is thus employed in two distinct senses in the Mahomedan law. In the one it corresponds to the condition in the other to the modus of the civil law. The distinction between them is, that in the first case the condition being essentially future, as already observed, the act, which is made dependent on it, is necessarily suspended until the occurrence of the condition, while in the second case the act, which is made subject to the condition, takes effect immediately, with an obligation on the person benefited by it to fulfil the condition.

17. A condition in this sense may be fasid, that is, invalid or illegal, or it may not be so. Any condition inconsistent with the nature of the transaction to which it is annexed is clearly invalid, so, for instance, a condition in sale or gift of any advantage to the subject of the contract when there is a person entitled to assert it. But the effect of the illegal condition on the two contracts is different. In the case of sale the contract is overpowered by the condition, and invalidated by it; while in the case of gift, the contract throws off the condition and remains unaffected by it, the condition itself being void (Bailie's Introduction, XXXV, XXXVI); see also MacNaghten's Principles of Mahomedan Law, 4th Edn., pp. 217 to 221.

18. To every heba the doctrine of musha Applies, except in so far as it must be taken that the creators of the doctrine could not have contemplated that it should be applied to the subject-matter of any particular gift : Mumtaz Ahmad v. Zubaida Jan [1889] 11 All. 460 and Ibrahim Goolam Ariff v. Saiboo [1907] 35 Cal. 1; see also Ameeronissa Khatoon v. Abedoonissa Khatoon [1875] 2 I.A. 87. Moreover,

the doctrine relating to the invalidity of gifts of musha is wholly unadapted to a progressive state of society and ought to be confined within the strictest rules,

and it has been held that even if a gift was invalid as offending against the doctrine of musha,

possession given and taken under it transferred the property : Mumtaz Ahmad v. Zubaida Jan. [1889] 11 All. 460.

19. The doctrine of musha is thus defined in the Hedaya:

A gift of part of a thing which is capable of division is not valid unless, the said part be divided off and separated from the property of the donor; but a gift of part of an indivisible thing is valid.... The arguments of our doctors upon this point are two fold. First, seisin in cases of gift is expressly ordained, and consequently a complete seisin is a necessary condition; but a complete seisin is impracticable with respect to an indefinite part of divisible things as it is impossible, in such, to make seisin of the thing given without its conjunction with something that is not given and that is a defective seisin. Secondly, if the gift of part of a divisible thing, without separation, were lawful it must necessarily follow that a thing is incumbent upon the giver which he has not engaged for, namely a division which may possibly be injurious to him (hence it is that a gift is not complete and valid until it be taken possession of; since if it were valid before seisin, a thing would be incumbent upon the donor which he has not engaged for, namely, delivery); p. 483. The gift of milk in the udder, of wool upon the back of a goat of grain or trees upon the ground, or of fruit upon trees, is in the nature of the gift of an undefined part of a thing, because in these instances the cause of invalidity is the conjunction of the thing given with what is not given, which is a bar to the seisin, in the same manner as in the case of undivided things : p. 484. Again.

20. If one man makes a gift of a house to two men, the deed is invalid according to Haneefa. The two disciples hold it to be valid, because, as the donor gives the whole of the house to each of the two donees (inasmuch as there is only one conveyance) there is consequently no mixture of property p. 485; see also MacNanhten, p. 201.

21. Now, the Mahomedan lawyers in India being desirous of evading the difficulties and inconvenience to which donors were exposed by reason inter alia, of the doctrines of seisin and musha, with no little subtlety planned a contrivance by means of which a mahomedan could effect a gift without conforming either to the Mahomedan law of heba or the general law relating to the sale and transfer of

property. They invented a form of so called heba whereby the gift in its inception is made for a consideration present or future which may be either in kind or a promise to do or omit to do something in the future.

But if the exchange is in the original transaction, as when one thing is given in exchange for another, there is a sale from the beginning: as sale may be contracted by the word 'give' as well as by the word 'sell' And the transaction which is termed heba-bil-ewaz, has thus become a device in India for giving effect to the gift of musha in a thing susceptible of partition which may be lawfully sold, though it cannot be made the subject of gift : Baillie's Digest, Introduction XXXVI.

22. Mahmood, J., made some pertinent observations upon this subject in *Rahim Bukhs v. Muhammad Hasan* [1888] 11 All. 1:

There is, however, another aspect of this point to which I should like to refer, because it may have led to misapprehension of the Mahomedan law by the learned subordinate judge. The term heba-bil-ewaz is often misused by Indian Mahomedans in respect of transactions-which either amount to exchange or sale.

23. Mr. Baillie has explained the matter at p. 122 of his Digest in the following terms:

'Heba-bil-ewaz' means, literally a gift for an exchange; and it is of two kinds, according as the ewaz, or exchange, is or is not stipulated for at the time of the gift. In both kinds there are two distinct acts : first, the original gift; and second, the ewaz, or exchange. But in the heba-bil-ewaz of India, there is only one act; the ewaz, or exchange, being involved in the contract of gift as its direct consideration, And all are agreed that if a person should say, I have given this to thee for so much, it would be a sale; for the definition of sale is an exchange of property for property, and the exchange may be affected by the word 'give' as well as by the word 'sell.' The transaction which goes by the name of heba-bil-ewaz in India is, therefore, in reality not a proper heba-bil-ewaz of either kind, but a sale; and has all the incidents of the latter contract. Accordingly, possession is not required to complete the transfer of it, though absolutely necessary in gift, and, what is of great importance in India, an undivided share in property capable of division may

be lawfully transferred by it, though that cannot be done by either of the forms of the true heba-bil-ewaz; see also Wilson's Digest of Anglo-Mahomedan Law 4th Edn., p, 338,

24. In order to obtain a clear understanding of the Mahomedan law relating to gift it is essential to bear in mind the distinction between the true heba-bil-ewaz and the transaction that I have described and which in India is falsely sailed heba-bil-rwaz. To attribute to both the name heba-bil-ewaz is not to make them heba-bil-ewaz and to define both as a gift for consideration is to confuse two wholly distinct transactions. To the true heba-bil-ewaz the doctrine of seisin and musha apply alike to the original gift and the gift in return, but neither seisin nor musha apply to the false heba-bil-ewaz, because such a transaction is not a heba at all, and 'nothing more or less than a sale,' per Kemp and Seton Karr JJ., in *Khujooroonissa v. Rowshan Jehan* : vide 3 I.A. 296.

Such a transaction would be governed by the general contract law of India, including those chapters of the Transfer of Property Act which treat of sales and exchanges, and which, like the Indian Contract Act, contain no saving clause exempting Mahomedans. The Mahomedan law of sale having confessedly ceased to be administered co nomine since 1872 (except in the matter of preemption) one would hardly expect it to be revived merely by attaching the name of gift to a transaction which is said to resemble sale in all its incidents; Wilson's Digest of Anglo-Mahomedan Law, p. 338.

25. The observations of Sir Robert Collier in *Khujooroonissa v. Boioshan Jehan* [1876] 2 Cal. 184 and of Sir Ford North in *Chaudhri Mehdi Hasan v. Muhammad Hasan* [1906] 28 All. 439, must be read bearing in mind the distinction that is to be drawn between the true and the false heba-bil-ewaz. In my opinion the transaction falsely termed in India heba-bil-ewaz is not governed by the Mahomedan law of heba, but is amenable to the general law in India relating to contracts and the transfer of property.

26. Tested by the principles of law that I have endeavoured to enunciate the deed of the 30th October 1917, in my opinion, embodies a transaction of sale and not of gift. It is lacking in at least two of the essential elements of a heba, for the donor

obviously intended to transfer the property in consideration of the donee's promising to carry out the terms of Clause (5), and it was neither possible nor contemplated that seisin of the consideration for the transfer should be given or taken. The ruling in *Nawab Umjad Ally v. Mohumdee Begam* [1867] 11 M.I.A. 517 is not *ad rem*. This is not a case where the donor, while transferring the dominion over the corpus to the donees, reserved to herself the right to the produce of the corpus during her life time, for under Clause (5) of the deed in suit the obligations of the donees are not made dependent upon the profits of the corpus being sufficient to meet the payments to be made under Clause (5), the consideration for the transfer being the promise to perform the acts set out in Clause (5) in any event, and the parties agreeing that legal proceedings might be taken by Lajman to enforce the performance by the donees of their obligations under the deed.

27. Now, it was the common case of both parties at the hearing of the appeal that if the transaction set out in the deed of the 30th October 1917 was one of sale and not of gift, no exception could be taken to the validity of the transaction; and the appeal must be determined upon the footing that the sale conformed to all the requirements of the law. It follows, therefore, that the right and interest of Lajman in the properties set out in the schedule to the deed passed under the transaction to defendants 2 and 3.

28. In order to ascertain the extent of Lajman's interest in the properties transferred under the deed it is necessary for the Court to determine certain subsidiary issues.

29. I am of opinion that the properties in Schedules gha and una of the plaint were not given by Lajman to her daughter, Allarakhi or her grandson Yusuf as alleged by the plaintiff. Lajman, an old lady possessed of considerable strength of character, in my opinion, never intended to make a gift of these properties during her life time, although she was minded to provide that if she died during her haj to Mecca they should pass to her, daughter and her grandson. She did not die on the haj, however, but returned to India, and resumed possession and control of these properties. In my opinion the plaintiff failed to establish that these properties were given to the alleged donees, or that the donees accepted the gift or obtained seisin

of the property as required by law. Another matter in issue is -whether Lajman obtained a transfer of certain of the properties in suit by way of dower from her husband Pabnuddin. The learned trial judge has held that the gift of the properties alleged to have been made by way of -dower was not proved. In my opinion the evidence adduced by the defendant upon this issue was vague and unreliable, and I am disposed to accept the decision of the learned trial judge upon this matter. As regards the properties in Schedule ka I agree with the conclusion of the trial judge upon the evidence that these properties belonged to Pabnuddin, and passed upon his death by way of inheritance to Lajman, Allarakhi and Yusuf and that the defendants failed to prove the alleged gift of these properties to Lajman. I also agree with the finding of the learned trial judge with respect to Schedule ga, plots, 1 - 3, and I am of opinion that inasmuch as plot 2 was claimed by the defendants under the alleged oral gift which the defendants have failed to establish the plaintiff upon the evidence is entitled also to plot 2. Plots 2 and 3 of Schedule cha were claimed by the defendants under the oral gift which has not been proved and I agree with the learned trial judge that the defence that plots 1 and 4 were purchased by Lajman in the benami of Yusuf was not established, and I am of opinion that his decision in respect of the property in Schedule cha also is correct.

30. In the result the appeal will be allowed in part, and a decree will be passed varying the decree of the trial Judge in the sense that I have indicated. The cross-objection, not being pressed, is dismissed.

B.B. Ghose, J.

31. I quite agree in the opinion of my learned brother with regard to the application of the doctrine of musha which has been carefully and exhaustively set forth in the judgment just now delivered and there is nothing which I can usefully add. I also agree that the transaction in question under Ex. K does not fall under and is not governed by the Mahomedan law, but is one which must be dealt with according to the statute law of India. The appeal must, therefore, be decreed in part with regard to the interest of Lajman and the properties included in Ex. K.

ORDER

1. The appeal is decreed with regard to-

- (1) 49/144th share of the lands in Schedule ka of the plaint.
- (2) 53/288th share of the lands in Schedule kha of the plaint.
- (3) 11/36th share of plots 1 and 3 in Schedule ga of the plaint,
- (4) the whole of the lands in Schedules gha and una
- (5) 1/6th share of plots 1 and 4 in Schedule cha of the plaint.

2. The decree of the subordinate judge will be varied by dismissing the plaintiff's claim to the extent of the properties stated above.

3. The appellants will get half their costs against the plaintiffs-respondents in this Court and against the plaintiffs in the lower Court.

APPEAL No. 1302 OF 1923.

4. This is an appeal with a cross-objection from a decree of the learned District Judge of Midnapur reversing a decree of the learned Subordinate Judge of Midnapur.

5. This appeal was heard by consent with appeal from original decree No. 72 of 1925, and in respect of the present appeal we refer to the judgments which have been delivered in appeal from original decree No. 72 of 1925. For the reasons to be found in those judgments we agree with the learned district judge's decision that the plaintiffs are entitled to Lajman's interest in the properties transferred to them¹ under the deed of 30th October 1917, although we do not agree with the reasons upon which the learned judge based his decision. In other respects we agree with the decree passed by the learned district judge and both the appeal and the cross-objection will be dismissed. Respondents 1 and 2 will have their costs of the appeal.

