

Abirjan Bewa Vs. Sheikh Kabil

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Court : Kolkata

Decided On : Jun-20-1919

Reported in : 54Ind.Cas.542

Judge : Ernest Fletcher and ;Cuming, JJ.

Appellant : Abirjan Bewa

Respondent : Sheikh Kabil

Judgement :

Ernest Fletcher, J.

1. This is an appeal preferred by the plaintiff against the decision of the learned Officiating Subordinate Judge of Mymensingh, dated the 14th July 1916, reversing the decision of the Munsif of Iswarganj. The plaintiff, a Muhammadan widow, brought the suit against the defendant, who is her deceased husband's nephew, first, for a declaration that the bil ewaz hebanama in respect of one ara of land mentioned in the plaint was without any consideration, nail and void, ineffectual, fraudulent and spurious, and, secondly, for a declaration that the plaintiff having revoked the conditional gift in respect of the one ara comprised in the Schedule to the plaint covered by the said hebanama, the defendant acquired no right thereto. The case as set out in the plaint is not open to doubt. The plaintiff's case is this, that she had executed and intended to execute a deed of gift in favour of the defendant--her deceased husband's nephew, but the gift was to be subject to the

condition, and a condition precedent, that the nephew was to be bound to nurse and maintain her during her life. The case has got to be dealt with clearly on the allegation made by the plaintiff in her plaint, and no such case arises on the present plaint as is referred to by Mr. Justice Mookerjee in his judgment in the case of *Mariam Bibee v. Muhammad Ibrahim* 13 Ind. Cas. 561 : 28 C.L.J. 306. In the present instance the case of the plaintiff was that : she made a gift and intended to make a gift, but the gift was subject to a condition precedent. The learned Judge of the lower Appellate Court has negatived any case of fraud. He has found that the lady was in full possession of her senses, that she dictated the terms on which the gift was to be made, that the scribe and witnesses witnessed her signature and that the document having been written on her own instructions the lady, the plaintiff, subsequently registered it. The document contained an obligation on the defendant to nurse and maintain the plaintiff during the rest of her life, but, according to the terms of the document, that obligation was not stated to be a condition precedent to the gift. The view put forward on behalf of the lady is this, that instead of relying on the terms of the deed and enforcing the obligation as against the defendant to maintain her she is entitled to avoid the transaction whenever the defendant ceases to maintain her, notwithstanding that it be twenty years after the execution and registration of the deed. The learned Judge declined to accept that story and he has found as a fact that there was no condition precedent in this case and that the document represented what was in fact the intention of the lady when she gave instructions to her own people to register the document.

2. Another argument was urged at the close of the case that under the terms of the Muhammadan Law a gift might be resumed by the donor by proceedings in Court, but I am clearly of opinion that the document in the present case is not a heba pure and simple but a heba-bil-ewaz, i.e., a gift made on consideration, and it is important to see that in the plaint the lady's own advisers called it a bil-ewaz hebanama, which quite clearly shows that the document is not a simple gift. Whether the story about the gift of the Koran to the lady, which she directed the defendant to deliver to a Fakir is true or not, there was a clear obligation in this case placed on the defendant by the terms of the deed to maintain the lady, which deprived the gift from being one purely voluntary. In my opinion on the facts found

by the learned Judge of the Court of Appeal below, we mast dismiss the present appeal. The appellant must pay to the respondent his costs of this appeal.

Cuming, J.

3. I agree.

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