

Privy Council Appeal No. 4 of 1917.

Oudh Appeal No. 5 of 1914.

Irshad Ali and Others - - - - - *Appellants,*

v.

Musammat Kariman and Others - - - - - *Respondents.*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 17TH DECEMBER, 1917.

Present at the Hearing:

LORD BUCKMASTER.

SIR JOHN EDGE.

SIR WALTER PHILLIMORE, BART.

SIR LAWRENCE JENKINS.

[*Delivered by LORD BUCKMASTER.*]

The question in this case is one that is easy to state and difficult to answer: Was the respondent, Musammat Kariman, the wife of Syed Ali, who died on the 14th July, 1909, and are her three children, the respondents, Yar Ali, Musammat Akbari, and Musammat Asghari, his legitimate offspring? The Subordinate Judge before whom the case was heard decided in the negative, but his judgment was reversed by the Court of the Judicial Commissioner of Oudh, which affirmed the claims of Kariman and her children. The consideration of the case has been rendered more difficult by the fact that some of the verbal evidence, and particularly that of Kariman herself, is untrustworthy, while the documents record a state of affairs which it is often hard to reconcile with probabilities; but conjecture as to what may have led to a particular course of action is an uncertain guide and one liable to lead astray. Unless the facts evidenced by documentary and oral testimony are so much at variance with known conditions as to be incapable of reasonable explanation, it is to those facts, and to those facts alone, that their Lordships must trust to reach a safe conclusion in the matter.

Musammat Kariman was born in the prostitute caste. She is stated to have been the daughter of one Madar Bakhsh, of the caste Mangta, *i.e.*, a beggar, and she carried on her occupation at her father's residence at Nehal Garh, in the district of Sultanpore. There is evidence, which their Lordships are not prepared to reject, which shows that while she was so living, Syed Ali made her acquaintance and visited her from time to time. It is indeed probable that this was the way in which their relationship began, but it soon ceased to be casual and transient, and as early as the 7th January, 1869, an agreement was executed between them in which she agreed to enter his service upon condition that he would allow her food and raiment to the amount of 4 rupees a month. In this deed she is described as a prostitute and she so signs herself. This document was duly registered on the 7th January, 1869. Later on in the same year, on the 20th March, she borrowed 200 rupees from Syed Ali, and the bond by which she acknowledged the debt and promised its repayment was also registered. In that deed again she was described and signed herself under the same description as in the earlier document. At a date which it is impossible to fix she left her father's residence and took up her abode at Barsanda, in the house where Syed Ali was residing with his father and mother. In 1872 proceedings were taken against Syed Ali by one Makhduman, said to have been the sister of Kariman, and described, like her, as a prostitute. This was a criminal charge to the effect that Syed Ali had abducted her sister and wrongfully confined her in his house. Now, if Syed Ali really was continuing to live with Musammat Kariman on the terms of the relationship established by the agreement of the 7th January, 1869, the production of this deed and the statement of the circumstances of the case would doubtless have quickly ended the charge. But this was not the way in which these proceedings were concluded. On the 18th July, 1872, Syed Ali instituted matrimonial proceedings against Kariman, alleging that she was his wife and seeking restitution of conjugal rights, and this suit together with the criminal proceedings were settled by an agreement of the 30th July, 1872, about the true nature of which much controversy has taken place. This agreement was made between Kariman and Syed Ali. It recites that a marriage had been made between them on the 11th June, 1869. It recites quarrels as to maintenance, the institution of the proceedings by Makhduman and the proceedings by Syed Ali, and concludes with a recital in these terms: "And whereas the claim brought by Syed Ali is in fact correct and proper and I am his lawful wedded wife, so now we, the declarants, have come to terms on the following conditions," and there then followed provisions for maintenance and a promise on the part of Kariman that she would be obedient and faithful to Syed Ali in the same manner as wives generally obey their husbands. The document is then executed and duly recorded. From that time until the death of

Syed Ali they lived together, and there is no evidence which their Lordships are prepared to accept that throws doubt on the propriety of her conduct. Later on Syed Ali married another woman, Sakina Begum, who is one of the appellants in this appeal, and she also lived at Barsanda, but she lived apart from Kariman, and there appears to have been no intercourse between them. The three children of Kariman, two daughters and a son, were born after the date of this agreement, though what the exact dates of their birth may be is not established. The two daughters married the two nephews of Syed Ali's father, and the son was treated by him as his lawful son. There is not only verbal evidence upon this point, but documentary evidence of an important character. On the 11th August, 1903, Syed Ali executed a power of attorney, by which he appointed Yar Ali, the son of Kariman, and Irshad Ali, the son of Sakina, to be his general agents, and to attend on his behalf proceedings in all the different courts that are there mentioned, to receive moneys out of court, to realise the property of judgment debtors, to make collections from his villages, to grant leases to tenants, and do everything in the way of managing his property except by way of sale, and with a further restriction that they were not to contract debts. In this deed Yar Ali's name preceded that of Irshad Ali, a circumstance of no great weight, but which certainly shows that as between the two there was no attempt to put Yar Ali in any inferior position to Irshad Ali, Syed Ali's admittedly legitimate son, and on the 1st December, 1908, a licence to carry arms is granted to Yar Ali as the son of Syed Ali. There is further evidence to the effect that Yar Ali obtained a post as officer in charge of famine works at the instance of his father, who introduced Yar Ali to the Deputy Collector as his son, the Deputy Collector speaking both as to this circumstance and as to the fact that when he went to Syed Ali's house, Yar Ali was always treated in the same way. There is indeed but little variation in the general stream of evidence, both documentary and oral, showing that Yar Ali was in fact treated publicly and privately as Syed Ali's lawful issue. These circumstances, however, though they have weight, might not in themselves be conclusive to establish that the marriage had taken place. Nor would the mere continuing to live with a woman of the admitted occupation of Kariman be sufficient to establish a presumption of marriage. But in this case there is the recorded document of the 30th July, 1872, which asserts that a marriage ceremony had in fact taken place on a particular date, and, *primâ facie*, such a statement ought to be accepted, unless it can be shown by independent evidence to be false. Kariman herself has undoubtedly created by her own untrustworthy evidence the greatest obstacles in the way of establishing her case. She did not seek exclusively to rely upon this marriage ceremony referred to in the deed, but alleged that Syed Ali was a Shia, and that they had been married three or four times by a *muta* ceremony. This must be wholly rejected. It has been established that

Syed Ali was in fact a Sunni, who would have taken part in no such ceremony. Their Lordships are not prepared to place reliance on the evidence of Kariman. Its inaccuracy may partly be due to forgetfulness, partly to the confusion of a cross-examination that seems to have been most needlessly prolonged and from the irrelevance of which she had no protection, and partly also to the regrettable fact that a desire to establish her case and the not unnatural desire to conceal her antecedents, frequently led to a disregard of truth. Putting her evidence on one side, however, there is independent testimony as to this ceremony having been performed, and performed at Lucknow, which was then some three days' journey from Barsanda. Some of the witnesses who have spoken to this have been disbelieved, but there is one whose evidence was taken on commission, and its accuracy their Lordships see no reason to doubt. This is the evidence of one Farzand Ali. He is the *tahsildar* of Ghaziabad. He knew Seyd Ali, and he knew Kariman. He stated in plain terms that she was married in his presence, and he persists throughout his evidence in saying that he well remembers the ceremony. His evidence is challenged upon the ground that he also declared that Seyd Ali was a *Shia*. But his evidence upon this point was not given in any definite and unqualified form, and the learned Subordinate Judge seems to have been mistaken in reading his evidence as containing a statement that "to his knowledge Mir Syed Ali was a Shia," for the exact form of the answer is "as far as my knowledge goes, Mir Syed Ali belonged to the Shia sect," which is far less definite, and it is, in their Lordships' opinion, impossible to derive from that a conclusion that his evidence was false. His only information upon the point, he says, was gathered from the talk of other people, but he asserts that the marriage which took place with Kariman was performed in the *Sunni* fashion.

Against this testimony the respondents are only able to point to the improbability of the story, and in particular of the marriage taking place at Lucknow, and to circumstances said to be shown by two other recorded instruments, one dated the 2nd May, 1871, and the other the 10th June, 1872. The first of these documents needs close attention. The copy as recorded does not contain the signature of Kariman, but it contains a full registration endorsement stating that Kariman, who is described as a prostitute, and the daughter of Madar Bakhsh, was the executant of the deed, and had verified the contents of the document word by word in the presence and by the identification of two witnesses, these witnesses being stated to have been personally known to the registering officer. The document is a remarkable one. It is a deed poll under the hand of Kariman alone, and begins by a recital that her profession was prostitution, but that for some two years she had accepted service with Syed Ali, and that during that period a daughter had been born to her, and that for the

advantage of the daughter she had given her to Sadik Ali, a relation of Syed Ali, so that she might be saved from her mother's occupation and become a gentlewoman. The deed then releases all claims to the child. As no original is before the Court the copy of the document that has been produced, and that alone, can be looked to for the purpose of seeing what in fact it effected, and, in the first place, there is the noticeable omission of the signature of Kariman herself. It must, therefore, be assumed that she never did execute the deed, and if this be so the statement that she had verified it in the presence of the witnesses and that those witnesses were known to the Registrar is of little value. In these circumstances their Lordships think that as evidence against Kariman it has no value, and they are fortified in this opinion by the fact that no evidence whatever has been forthcoming for the purpose of proving what ought to have been capable of proof, the fact that she had had a child and that that child had been brought up by Sadik Ali. In these circumstances it is unnecessary to pursue a further investigation as to the improbability that the document represented any real transaction at all, and their Lordships think that the Court of the Judicial Commissioner were correct in disregarding it. The second document can be shortly dealt with. It is the power of attorney granted by Syed Ali appointing Lala Sheo Charan Lal to act as his agent in the criminal proceedings to which reference has been made. The point made upon it by the appellant is that it refers to these proceedings under a title where Kariman is described as "Kariman Tawaef," a description inconsistent with her position as Syed Ali's wife. But this is a mere reference to the title of the criminal proceedings, and no other reference would have been correct.

The further points relied upon by the appellants were, first, the fact that Kariman dwelt apart from the residence where the lawful wife lived; secondly, that what transpired on the marriage of the daughters negatives the idea that they were the legitimate issue of Syed Ali; and, finally, on the evidence of certain witnesses whom they called.

The first question has already been dealt with. There is nothing in the evidence to satisfy their Lordships that the conditions of residence of Kariman were inconsistent with her position as Syed Ali's wife. The provision made for the daughters on their marriage undoubtedly shows a difference between their marriage and that of his legitimate daughter, the child of Sakina, and it is said to show that Syed Ali knew that they could not share in his estate. In order, however, for this point to be effectual, it must be shown that such a position is irreconcilable with the relationship, and not merely that it is improbable that if the relationship existed such arrangements would have been made. No such evidence as this has been furnished, nor indeed would it be easy to obtain. No one can speculate with certainty upon

the motives that may have induced Syed Ali to make the provision that he did, and it would be unsafe to presume that they were based upon the view that the daughters were illegitimate.

The verbal evidence of the witnesses is not sufficient to displace the case which has been made by the matters to which their Lordships have already referred. A greater part of it consists in evidence as to Kariman's original occupation, of the humble and even ignoble character of her origin and surroundings, and from this it is sought to draw the inference that marriage with a person in the position and with the prospects of Syed Ali was in the last degree improbable. Improbable it may have been, but Syed Ali was undoubtedly under the spell of infatuation for Kariman, and it is impossible to measure by standards of probabilities what might have been done in those circumstances by a man to secure for himself permanently and as of right the society of the woman he so greatly desired. The evidence of the witnesses who speak as to conversations had with Syed Ali at the time of the marriage of his admittedly legitimate son, Irshad Ali, cannot, in their Lordships' opinion, be trusted. Of these, there were two—Dargahi Khan and Nageshar Bakhsh Singh. The first of these witnesses says that at this marriage Syed Ali said that Yar Ali was the son of a *paturia*. He adds that Nageshar Bakhsh Singh asked Syed Ali the following question in the presence of many people: "Why did you not invite me at the marriage of Yar Ali?" To which Syed Ali replied: "Invitation is given in case of a legitimate son, and not in case of an illegitimate one." Nageshar Bakhsh Singh himself gives evidence as to this occurrence, but he did not say that he had asked the question at all. He says "that people said to Syed Ali: 'Why did you not invite us to the marriage of Yar Ali?'" and that he answered: "Because none would have joined a marriage if invited, because of Yar Ali being the son of a prostitute." The two witnesses' statements are not in agreement, but they constitute practically the only evidence of any act or word on the part of Syed Ali that would throw doubt upon the legitimacy of Yar Ali.

Their Lordships, therefore, are prepared to accept the statement contained in the recorded deed of the 30th July, 1872, supported, as it is, by evidence which they do not think ought to be disregarded, and confirmed by the subsequent conduct and circumstances to which they have already made reference.

They will, therefore, humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

IRSHAD ALI AND OTHERS

2.

MUSAMMAT KARIMAN AND OTHERS.

DELIVERED BY LORD BUCKMASTER.