

*Privy Council Appeal No. 14 of 1929.*  
*Allahabad Appeal No. 29 of 1926.*

Musammat Nawasi Begam and another - - - - *Appellants*

*v.*

Musammat Dilafroz Begam and others - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 13TH MARCH, 1930.

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*Present at the Hearing :*

LORD BLANESBURGH.

LORD RUSSELL OF KILLOWEN.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD BLANESBURGH.]

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The property which is the subject-matter of the suit out of which this appeal has arisen belonged to one Abdul Shah, who died on the 9th October, 1881, leaving him surviving his widow Zamani Begam and his cousin Mansur Shah. According to the Mohammedan law, one-fourth of the property of the deceased devolved upon his widow and three-fourths upon Mansur Shah, while the widow being so entitled took possession of the whole of the estate in lieu of her dower which, as she claimed, amounted to Rs. 50,000. Thereafter Mansur Shah, having assigned a one-half share out of his three-fourths interest to Usman Shah and Zamani Khan, joined with them in April, 1892, in filing a suit against the widow in the Court of the Subordinate Judge of Farrukhabad, alleging that her dower amounted to no more than Rs. 1,000, and that it had long ago been discharged from her usufruct of the estate, and claiming (1) that possession should be delivered to them unconditionally of a three-fourths

share of the estate, and (2) that if any portion of Musammat Begam's dower was found to be due a decree should be passed in their favour for possession on payment of the dower due.

The suit went to judgment. The District Judge by his order dated the 17th April, 1893, decreed it against the widow. She died on the 7th June, 1894, and thereafter an appeal against the decree was preferred to the High Court at Allahabad by the present appellants who are her heirs and legal representatives. That Court allowed the appeal; it held that the dower was Rs. 50,000, and on the 2nd June, 1896, it made the following decree, on which the whole question now at issue turns. "It is ordered and decreed that this appeal be allowed, and in modification of [the decree appealed from] it is ordered that the plaintiff-respondents do receive possession of the property specified in the said decree on payment by them to the defendants appellants of the sum of Rs. 35,223 minus the amount of the profits arising from the plaintiff-respondents three-fourths share of the property in the possession of the defendants-appellants from the date of the lower Courts decree up to the date when possession may be obtained by the plaintiff-respondents."

With reference to that decree it is agreed that, in arriving at the figure of Rs. 35,223 as the sum which had to be paid if the widow's claim to dower was to be extinguished, no interest upon the dower in arrear was taken into account; in fact, in that suit no claim was put forward either by the widow herself or by the present appellants, as her successors in interest, that she was entitled to any such interest and the amount to be paid was assessed upon the footing that no such claim existed.

Now the present suit is brought by a plaintiff who has succeeded to an interest in the three-fourths which formerly belonged to Mansur Shah. She is therefore his successor in interest. Her claim is that upon the taking of proper accounts possession may be delivered to her of her share of the estate with mesne profits, interest and costs, all on the footing that the widow and her representatives have already been paid in full the amount of her dower through the usufruct of the estate of which she and they have had continuous possession. It has, upon that claim, been made clear from the discussion which has taken place before the Board, that upon the pleadings the only real question which has now to be decided between the parties is whether those representing the widow, in taking the account of the amount still remaining due in respect of dower, are entitled to charge any interest in respect of the period during which dower remained unpaid. Both by the Subordinate Judge and by the High Court it has been held that no interest can be charged by them if only for the reason that no claim for interest was in the former suit made by or on behalf of the widow, and that any claim for interest is now *res judicata*. It is agreed that if that view be correct, the appeal must fail, whatever view

might be taken by the Board of the other reasons assigned by the Courts below for the same conclusion. And Their Lordships are of opinion that that view is correct. It is quite clear, as it appears to them, that in the first suit, the widow's claim to interest was one which might, and which ought to, have been made ground of defence; and under the provisions of the Code of Civil Procedure, whereof so much can be asserted a suit by the decree in which the parties to the second suit are bound (as is the case here) then such a claim may not again be reopened in the later suit. It follows that the appeal fails, and Their Lordships will humbly advise His Majesty that it be dismissed with costs.

In the Privy Council.

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MUSAMMAT NAWASI BEGAM AND ANOTHER

vs.

MUSAMMAT DILAFROZ BEGAM AND OTHERS.

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DELIVERED BY LORD BLANESBURGH.

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