

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Sayed Mazhar Husain v. Bodha Bibi, and Sayed Mazhar Husain v. Bodha Bibi and another, Consolidated Appeals from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered 3rd August 1898.

Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD MORRIS.

SIR RICHARD COUCH.

[*Delivered by Lord Morris.*]

Ibn Ali died on the 2nd of August 1878. He was possessed of property. The Respondents are the assignees of two ladies the first cousins of Ibn Ali and described in the letter or will of the 1st of August as his paternal uncle's daughters.

The Appellant is the assignee and representative of Haidri Begam the mother and heir of Ibn Ali. The Respondents claim the property in dispute under a letter or will of the 1st of August 1878.

Two questions arose: 1st whether the letter of 1st August amounted to a will. 2nd was it written after Ibn Ali had taken poison from the effect of which he died. On both questions the Subordinate Judge decided in favour of the Appellants holding that the passages in the letter of 1st August did not amount to a bequest

and that even if they did it was written after Ibn Ali had taken poison the cause of his death. On appeal the High Court reversed the decision of the Subordinate Judge on both questions. The bequest on which the Respondents rely is contained in the letter written by Ibn Ali to his general attorney Syed Zain-ul-abdin. The fact of the writing the letter by Ibn Ali was clearly proved and was so accepted by the Subordinate Judge and is not now disputed. The letter was sent by the hand of Musharraf a servant of Ibn Ali. The Subordinate Judge decided that the contents of the letter did not amount to a bequest as they did not bequeath the property directly to his cousins. The letter by clause 10 states "you should not have the property given to (my) grandmother and paternal uncle's wife but you should give the whole to my three sisters who are my paternal uncle's daughters. You should see that they all get an equal share and in the same manner as stated by me in paragraph 3." This paragraph appears to their Lordships to confer a right on the three sisters in the property to take effect on Ibn Ali's death and accordingly that the letter acts as a will under Mahomedan law.

Now comes the more important question as to the writing of the will being before or after the poison was taken by Ibn Ali. It is not at all free from difficulty but their Lordships are not prepared to dissent from the decision of the High Court. It appears reasonable to hold that the onus of proving whether the letter or will was written after the swallowing of poison should rest on the party impugning the will. The Subordinate Judge came to his conclusion apparently on the terms of the letter itself in which the writer states "I, in consequence of my honour, having suffered to a certain extent and the exposure being so great that I

“ could not show my accursed face to any one,
“ thought it advisable to put an end to my life
“ and therefore took poison and died to-day ” and
again in paragraph 5 the writer states “ Please
“ begin to take all these proceedings after
“ perusing this letter. Don't delay in hope of
“ my life for by God I am actually dead and this
“ letter I have written an hour before death.”
The Subordinate Judge considers these passages
prove that Ibn Ali had taken the poison but
their Lordships are of opinion though the words
“ took poison ” are in the past tense they are
connected with the words “ and died to-day ”
which cannot be read in the past tense and the
statement is consistent either with the fact that he
had taken the poison or that he had resolved to
take poison and resolved to die. The evidence
is circumstantial and the evidence of Musharaf
and Husain Bakh go strongly to show that it
must have been subsequent to the sending of the
letter that Ibn Ali retired from the Mardana
and went into the Zenana on the 1st of August
then apparently well. The circumstances lead
their Lordships to agree with the conclusion of
the High Court that the deceased Ibn Ali took
the poison after sending the letter to his friend
who lived some twenty miles distant. Their
Lordships will therefore humbly advise Her
Majesty that the appeals in this case should be
dismissed. The Respondents will have their
costs.

