Privy Council Appeal No. 16 *of* 1913. *Allahabad Appeal No.* 23 *of* 1910.

Shoharat Singh and others - - - *Appellants,*

v.

Musammat Jafri Bibi - - - - *Respondent.*

FROM

THE HIGH COURT OF JUDICATURE FOR THE NORTH-WESTERN PROVINCES, ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 18TH MAY 1914.

Present at the Hearing :

LORD PARKER OF WADDINGTON.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* LORD PARKER OF WADDINGTON.]

The questions which arise for decision on this appeal are substantially questions of fact only. Was Muhammad Kazim ever married to Achchhi Bibi, and if so, when, and were there any children of the marriage? There is no doubt that Muhammad Kazim left three daughters by Achchhi Bibi him surviving, of whom the plaintiff was the youngest, and that those three daughters, if legitimate, were entitled to succeed to his property as co-heirs. But the defendants to the action (the now appellants) allege that they were illegitimate, or alternatively that if the plaintiff was legitimate, so also were her sisters, so that the plaintiff was entitled to succed to one-third only of her father's property. The plaintiff (the now respondent) alleges on the other hand that although

her father and mother lived together as man and wife for many years they were married about 1½ years before she was born and not earlier, that she therefore was his only legitimate child.

The plaintiff tendered in proof of the marriage of her parents a deed said to have been executed by Muhammad Kazim on the 11th April 1884, a translation of which will be found at page 90 of the record, and also the depositions of several witnesses who deposed to the marriage ceremony having taken place in their presence about the same date. The Subordinate Judge was of opinion that the deed was a forgery, and that these witnesses were not telling the truth. The High Court having before it additional evidence of considerable importance came to a contrary conclusion, holding that the deed was genuine and that the marriage ceremony had been performed as deposed to by the witnesses. The present appeal is from this decision of the High Court.

The deed in question is a deed of dower. In it Muhammad Kazim, who was a Mohammedan of the Shia sect, declared that Achchhi Bibi had been living with him for some years past, and that he had contracted *muta* with her in the beginning; that owing to their mutual love and affection he had long intended performing *nikah* with her, but owing to certain circumstances, as well as to the unwillingness of some members of his family, he could not do so; that a suit was recently instituted on his behalf in which his deposition was taken; that in this deposition he had not considered it advisable to admit his *muta* with Achchhi Bibi; that she came to know of this, and by reason of it a disagreement took place between them; that as he had made up his mind before this to perform *nikah* with her, and as it was also necessary to remove the disagreement between them, he had of his own free will

and accord performed *nikah* with Achchhi Bibi at a dower of Rs. 50,000, at a general meeting at which *raises* and respectable residents of the city were present ; hence he had executed that deed as a memorandum of the dower and *nikah* that it might be of use in time of need.

A *muta* marriage is, according to the law which prevails among Shias, a temporary marriage, its duration being fixed by agreement between the parties. It does not confer on the wife any right or claim to her husband's property, but children conceived while it exists are legitimate and capable of inheriting from their father. A *nikah* marriage is a religious ceremony, and confers on the woman the full status of wife, and children born after it are legitimate.

If the deed in question be a genuine deed, and the statements in it be taken as true, then not only was there a *nikah* marriage between Muhammad Kazim and Achchhi Bibi at or about the time of its execution, but their cohabitation originated in a *muta* marriage. There is no evidence as to the original term for which this *muta* marriage was contracted, but such term, whatever it was, may from time to time have been extended by agreement, and in their Lordships' opinion, if it be once proved that the cohabitation originated in a *muta* marriage, the proper inference would, in default of evidence to the contrary, be that the *muta* continued during the whole period of cohabitation.

Besides the deed itself there is ample corroborative evidence of the *nikah* marriage there referred to, if the witnesses called to depose to the actual ceremony are treated as worthy of credit. There is also some corroborative evidence of the *muta* marriage.

After careful consideration of all the evidence their Lordships have come to a conclusion that they ought not to reverse the findings of the High

Court as to the genuineness of the deed of dower or the credibility of the witnesses who deposed to the celebration of the *nikah*. The judges who were parties to these findings have necessarily a large experience in matters of this nature. The Subordinate Judge had no more opportunity than they had of seeing and observing the demeanour of the witnesses, and they on the other hand had evidence before them which was not before the Subordinate Judge. No doubt, as pointed out by the learned Counsel for the appellants, there are good reasons why both the deed itself and the evidence of the witnesses in question ought to be looked upon with suspicion and scrutinised with great care. Their Lordships do not think it necessary to go into these reasons. It is enough to say that, after scrutinising the evidence with the greatest care, they do not see their way to disturb the findings of the Court below.

There is, however, one matter which does not appear to have been considered by the High Court with the attention which it deserved, and that is the question of the *muta* marriage. If the deed be treated as a good and valid deed, and the plaintiff's witnesses as reliable witnesses, there is considerable evidence that the cohabitation of Muhammad Kazim and Achchhi Bibi commenced in a *muta* marriage, and if this be so in default of evidence to the contrary, such marriage must be taken to have subsisted throughout the period which covered the conception and birth of the plaintiff's two sisters. These sisters would thus be co-heirs with the plaintiff of their father's property. It is true that their claim as such is statute barred, but the expiration of the period of limitation would accrue for the benefit of the defendants in the action (the now appellants), and not for the benefit of the plaintiff (the now respondent). In their Lordships' opinion the proper conclusion on the assumption that the

nikah marriage took place as alleged, was in favour of a *muta* marriage having also taken place, and of the legitimacy of the plaintiff's sisters, in which case the plaintiff was entitled to one-third only of what she has recovered under the order of the High Court. In their Lordships' opinion the case should be remitted to the High Court to be dealt with on this footing; the order must be varied in this respect, with liberty to either party to apply to the High Court to vary the order as to costs; and there should be no costs of this appeal which has in part succeeded and in part failed. And they will humbly advise His Majesty accordingly.

In the Privy Council.

SHOHARAT SINGH AND OTHERS

v

MUSAMMAT JAFRI BIBI.

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