

(1917) 09 MAD CK 0019
In the Madras High Court

Asa Beevi and Others

APPELLANT

Vs

S.K.M. Kuruppan Chetty

RESPONDENT

Date of Decision : 12-09-1917

Acts Referred:

Transfer of Property Act, 1882 — Section 6

Citation : (1918) ILR (Mad) 365 : 41 Ind. Cas. 361 : (1918) 7 LW 215 : (1918) 34 MLJ 460

Judgement

1. We agree with the conclusion arrived at by Mr. Justice Sadasiva Aiyar in this case on the ground that a transfer of an expectancy of this kind is

not permitted by the Muhammadan Law. That was decided in accordance with the opinion of the numerous law officers consulted in Mussammat

Kanum Jan v. Mussamat Jan Beebee (1827) 4 S.D.A. 210. cited at p. 89 of the Macnaughten's Principles and Precedents of Muhammadan Law

is to the same effect. This view has also been taken by the text writers on Muhammadan Law (Sir Roland Wilson's Digest of Anglo-Muhammadan

Law, page 268, and more particularly Volume II, pages 50 and 51 of the 3rd Edition of Mr. Ameer Ali's Muhammadan Law where the subject is

more fully dealt with). Mr. Tyabji's Principles of Muhammadan Law is to the same effect. On the other hand, reliance has been placed mainly on

the decision of the Privy Council in Mussammat Hurmutool-Nissa Begam v. Allahdia Khan (1871) 17 W.R. 108 by which Mr. Justice Spencer

appears to have been mainly influenced in dissenting from the conclusion come to by Mr. Justice Sadasiva Aiyar. On examining that case, we do

not think that their Lordships intended to lay down that a Muhammadan could renounce his rights of inheritance before that right had become

vested on the death of the person to whom he was entitled to succeed. In that

case there had been very great delay in putting forward the plaintiff's claim to succeed as heir of the deceased and their Lordships observe at page 112,"" They may further remark that, according to the Muhammadan Law, there may be a renunciation of the right to inherit and that such a renunciation need not; be express but maybe j implied from the ceasing or desisting from prosecuting a claim maintainable against another"". Having regard to the words "" right to inherit"" and the words ""prosecuting a claim which claim would only arise after the Succession had opened, we think that these observations of their Lordships may be taken as dealing with a renunciation after the right of inheritance has vested, and are not authority for the proposition that a prior renunciation is authorised by the Muhammadan Law. Mr. Ameer Ali in the passage referred to deals with renunciation after the inheritance has vested.

2. Reliance has also been placed on a decision of this court reported in Kunhi Mamod v. Kunhi Moidin ILR (1896) M. 176. That decision has been questioned by all the text-book writers who have since dealt with the subject. As pointed out in Wilson's book, the recital that all the law officers were not agreed in the case in Mussammat Kanum Jan v. Mussammat Jan Beebee (1827) 4 S.D.A. 210 is not accurate. Further, the respondent was not represented and therefore the case was not so fully argued. The learned Judges also proceeded upon the footing that the right of inheritance had vested. We are not prepared to accept this case as an authority for the proposition that under the Muhammadan Law a right of inheritance can be renounced before it vests. The decision in Mussammat Kanum Jan v. Mussammat Jan Beebee(1827) 4 S.D.A. 210 has since been referred to with approval by this court in the judgment of Benson and Sundar Aiyar, JJ. reported in Marangarni Rowthen v. Nagur Meera Labbai (1912) 24 M.L.J. 258 and the same view appears to have been expressed by Sir Lawrence Jenkins, C.J. in Sumsuddin v. Abdul Husein I.L.R (1906) B. 165 though the judgment in that case proceeded upon the construction of the provisions of the Transfer of Property Act. Reliance has also been placed upon the decision, Muhammad Hashmat Ali v. Kaniz Fatima (1915) 13 A.L.J. 110. but there is no discussion of the authorities in that case.

3. On the whole, we think that there is a large preponderance of authority in

favour of the view that a transfer or renunciation of the right of inheritance before that right vests is prohibited under the Muhammadan Law. The rules of Muhammadan Law are not affected by the Transfer of Property Act and it is therefore unnecessary to consider whether this transfer or renunciation would not also be invalid under the provisions of Section 6 of the Transfer of Property Act itself.

4. For these reasons, the Letters Patent appeal fails and is dismissed with costs.