

(1896) 01 MAD CK 0005
In the Madras High Court

Kunhi Mamod

APPELLANT

Vs

Kunhi Moidin

RESPONDENT

Date of Decision : 24-01-1896

Acts Referred:

Citation : (1896) ILR (Mad) 176

Hon'ble Judges : Arthur J.H. Collins, C.J;Parker, J

Bench : Division Bench

Judgement

1. The Courts below have allowed plaintiff a share in items 1, 3, 5, 6, 7 and 9 in schedule A on the strength of the decision in Mussummant

Khanum Jan v. Mussummant Jan Beebee 4 S.D.A. 210. We have referred to the report itself, and are of opinion that the case is not one of any

great authority. It is true that the majority of the Muhammadan law officers expressed the opinion that the renunciation was not valid on the ground

that the right had not vested, but the opinion was not unanimous, and eventually the Sadr Court held that the receipt of the money had not been

satisfactorily proved. Here, however, it is not denied that plaintiff received the money, and there is the further difference that the right had vested,

but that provision was made for the mother by setting apart some property for her maintenance for her life, after which-the plaintiff accepted the

money value of his share. Prima facie there is nothing illegal in the transaction and in the absence of clear proof that it is forbidden by Muhammadan

law, we think plaintiff should be held to be bound by it.

2. The only other point taken is as to the moveables, but this is a question of fact on which the Subordinate Judge has given a finding, though the

evidence upon which it is based is rather vague.

3. The decree must be modified by disallowing plaintiff's claim to items 1, 3, 5, 6, 7 and 9 in Schedule A and in other respects confirmed.
4. The appellant will be allowed the costs of the appeal.
5. We do not interfere with the award of costs in the Courts below.