(1909) 01 CAL CK 0041

In the Calcutta High Court

Mahomed Shah APPELLANT

Vs

Official Trustee of Bengal RESPONDENT

Date of Decision : 25-01-1909

Acts Referred:

Citation : (1909) ILR (Cal) 431 : 2 Ind. Cas. 292

Hon'ble Judges : Stephen, J

Bench : Single Bench

Judgement

Stephen, J.—The plaintiff in, this case sues to have it declared that he is the absolute owner of a certain Government promissory notes of the value of Rs. 37,500 now in the custody of the Official Trustee.

2. The case depends on a deed of the 19th November 1867 by which provision was made for the proper maintenance of the Mysore family.

3. The matter has been frequently before this Court, already points of law having been raised both under the present deed and under other deeds with similar effect. The plaintiff by this deed takes a life interest with remainder to certain other persons. It has been held that this is void by Mahomedan Law. It has also been held under this deed that trusts declared after the life interest are void as gifts to unborn persons. In accordance with this decision I give judgment in favour of the plaintiff in terms of prayers 1, 2, 4 and 5 of the plaint. It has been suggested on behalf of the Official Trustee and the appearing defendant that the whole deed is void, but the failure of the interests subsequent to that in favour of the plaintiff being void, it is not necessary to set aside the whole deed. The cases to which I have been referred are as follows: Shahebzadah Mahmud Faradoon Jah v. Sahebjadi Fakir Johban Begum Suit No. 121 of 1907. (Unreported), Sahebzadah Mahomed Abdool Hossain v. The Official Trustee of Bengal Suit No. 567 of 1908. (Unreported) and Sahebzadah Mahomed Mouzzumuddeen v. The Official Trustee of Bengal Suit No. 791 of 1901. (Unreported).

4. The Official Trustee is entitled to his charges and commission, if any due to

him, out of the subject-matter of the suit. I give judgment for the plaintiff, accordingly, with costs. The appearing defendants are also entitled to their costs.

5. Costs to be taxed on scale No. 2.