
(1929) 11 MAD CK 0035
In the Madras High Court

Muhammad Naina Maracair and Others	APPELLANT
Vs	
Ummanaikani Ammal and Others	RESPONDENT

Date of Decision : 14-11-1929

Acts Referred:

Citation : AIR 1930 Mad 593

Hon'ble Judges : Wallace, J

Bench : Division Bench

Judgement

Wallace, J.—The contesting defendants have not appeared in this Court.

2. Plaintiffs 2 to 4 are the appellants, Plaintiff 1 died while the appeal was pending in the lower appellate Court and Ahmed Hussain, her brother, was brought on as her legal representative along with plaintiff 2 already on the record. He is respondent 6 here. It is argued that the lower appellate Court's reasons for holding Exs. B and C invalid are unsound in law. In the case of both, the lower appellate Court held that the gifts were not completed by any delivery of possession. As the gifts were of portions of the family dwelling house, in which the parties have all along been living, the actual divesting by the donors and delivery to the donees was not necessary. Such possession as was suitable and possible in the circumstances was given. See Hussain V. Shaik Mira (1). Further in the case of Ex. B the donee was a minor, who could not take possession, and the intention to give declared by the deed of gift was sufficient, provided the donor and guardian continued to hold the property on behalf of the donee: see again Hussain v. Shaik Mira [1890] 13 Mad. 46. Nor is Ex. B invalid because of the want of consent of the brother Ahmed Hussain. The share of the actual donors Gulam Kadir and Muhammad Nachial would pass. Further it may be reasonably contended that both Exs. B and C were not mere hibas but hiba-bil-uwaz, as consideration in both cases was dowry for marriages of daughters of the family. As regards Ex. C the lower appellate Court has held that it was invalid because of raushaa. But it appears from the Hidaya 483, quoted by Mulla in his "Principles of Mahomedan Law", notes u/s 134 and by Wilson "Anglo-Mahomedan

Law," Section 412, relating to Shafi Law, that among Shafis, to which sect the parties belong, the gift of an undivided share is not invalid.

3. I can see no valid reason therefore for holding either B or C invalid under Mahomedan Law, and I must hold in reversal of the lower appellate Court's decree that they are both valid. The result is that plaintiffs-appellants are entitled to a decree in the terms of the prayer in the plaint for A schedule property. The decree will run jointly in the names of appellants and Ahmed Hussain in his capacity as legal representative of plaintiff 1.

4. I make it clear here that Ahmed Hussain's (respondent 6's) rights in the plaint property are not affected by this litigation except so far as he is the legal representative of plaintiff 1 and is bound by this litigation as such. He wished to argue that his being brought on the record as legal representative of plaintiff 1 would enable him to agitate here his own claims against the appellants plaintiffs, even if that involved taking up a position and urging contentions contrary to those of plaintiff 1 in her plaint. This I hold he is not entitled to do, as he is in law, from the legal position he holds in this case, strictly confined to the pleadings and case of plaintiff 1 whose legal representative he is. Any rights he has above and beyond those to which he succeeds in this litigation as legal representative of plaintiff 1 he must agitate elsewhere.

5. Decree will be given as indicated above. Appellants will get their costs from respondents 1 to 5 in all Courts.