

(1911) 02 AHC CK 0001
In the Allahabad High Court

Nasirul Haq and Others

APPELLANT

Vs

Fyaz-Ul-Rahman and Others

RESPONDENT

Date of Decision : 08-02-1911

Acts Referred:

Citation : 9 Ind. Cas. 530

Hon'ble Judges : John Stanley, C.J; Banerji, J

Bench : Division Bench

Judgement

1. The facts of this case are not in dispute. They are these: One Abdullah owned, among other properties, 10 biswas of the village of Nizamuddinpur and 17 1/2 biswas of Tayabpur. His wife, Musammat Mubarakunnisa, brought a suit against him for the recovery of her dower of Rs. 10,000 and this suit was compromised and the compromise embodied in a decree of the 29th of August 1889. The material portions of the decree run as follows: "The defendant Abdullah gives the whole of the undermentioned properties to the plaintiffs in lieu of Rs. 10,000 dower claimed by her. Now the plaintiff is the owner of the said properties but the defendant will retain possession over 10 biswas of Nizamuddinpur for his life, the income of it will be appropriated by the defendant and in case of urgent necessity, he may hypothecate or sell his life-estate in 5 biswas out of the said 10 biswas.... On the death of the plaintiff those who may be the heirs of both the plaintiff and the defendant will be the owners of the properties." Mubarakunnisa died on the 25th of May 1894 and was survived by her husband Abdullah. He, on the 19th of April 1897, executed a usufructuary mortgage in favour of the defendant No. 1 of 4 biswas of Nizamuddinpur and 2 1/2 biswas of Tayabpur. On the 2nd of April 1899, he sold to the plaintiff 3 5/4 biswas out of the 5 biswas of Nizamuddinpur of which, according to his construction of the above-mentioned decree, he was the owner, and 1 1/4 biswas out of the other 5 biswas of the same village to which he claimed title by inheritance from his wife. Abdullah died in 1899, and on the 14th of June 1907, the plaintiff brought the suit out of which this appeal has arisen for the redemption of the property mortgaged by Abdullah under the mortgage of the 2nd of April 1889. He impleaded the mortgagee and

the heirs of Mubarakunnisa and Abdullah, namely the defendants Nos. 2-13, who are their children and grand-children. These last mentioned defendants Nos. 2-13 disputed the right of the plaintiff to redeem the mortgage, contending that Abdullah had only a life-estate in 10 biswas of Nizamuddinpur and that the interest of the plaintiff in the 5 biswas, which was transferred to him, came to an end with the death of Abdullah. It was further contended that, according to the terms of the decree Abdullah, relinquished his chance to succeed as an heir to any part of the estate of Mubarakunnisa inasmuch as he agreed with her that only those who might be the heirs of both himself and her would be the owners of her property on her death.

2. The Court of first instance dismissed the suit holding that under the compromise incorporated in the decree Abdullah got only a life-estate in the 10 biswas, and that he relinquished his right of inheritance to his wife as to the properties comprised in the decree.

3. An appeal was preferred and before the lower Appellate Court it was admitted that Abdullah, had only a life-estate in a 10 biswas share of Nizamuddinpur, but it was contended that on the death of his wife he inherited 2 1/2 biswas out of the remaining 10 biswas. The decree of the Court of first instance was upheld.

4. A second appeal was then preferred and the learned Judge of this Court before whom it was argued, reversed the decisions of the Courts below, holding that the agreement on the part of Abdullah to relinquish his chance to succeed Mubarakunnisa was void and unlawful, and that the Court had no jurisdiction to pass the decree on its basis of the 29th of August 1889, u/s 375 of the Code of Civil. Procedure (Act No. XIV of 1882). The Court held that the decree of the 29th of August 1889 so far as it debarred Abdullah from inheriting his share in the assets of Mubarakunnisa is a nullity and that Abdullah's representative in interest is not bound by it, and accordingly that Abdullah on the death of Mubarakunnisa inherited 2 1/2 biswas out of 10 biswas of Nizamuddinpur, and that the plaintiff as a purchaser from him is entitled to redeem the entire mortgage. We may point out that Abdullah could not inherit more than a sixth of the share of his wife, and not a fourth as stated by our learned brother. There being children of the marriage his share according to the Muhammadan Law would only be one-sixth. This, however, is of no importance so far as regards the present appeal.

5. From the decision of our learned brother this appeal has been preferred under the Letters Patent. In his judgment the authorities bearing on the subject of the right of a Muhammadan to relinquish his chance of succeeding as an heir to the estate of a living person are reviewed. We do not think it necessary, in the view which we take of the facts, to refer particularly to all the authorities. In the case of Musammatt Hurmut-ool-Nisa Begam v. Allahdia Khan 17 W.R. 108 their Lordships of the Privy Council held that according to the Muhammadan Law there may be a renunciation of the right to inherit. This ruling has not, so far as we are aware, been questioned by their Lordships in any subsequent case. The ruling

was, however, prior to the passing of the Transfer of Property Act and it may be that that Act has some bearing upon the question, as was held by Jenkins, C.J., and Beaman, J. in *Sumsuddin Goolam Husain v. Abdul Husain Kalimuddin* 31 B. 165 : 8 Bom. L.R. 781. In that case it was held that the chance of an heir apparent succeeding to an estate is, under Muhammadan Law, neither transferable nor releasable, that it is only by application of the principle that equity considers that done which ought to be done that such a chance can if at all be bound. In *Kunhi Mamod v. Kunhi Moidin* 19 M. 176 decided long subsequent to the passing of the Transfer of Property Act, it was held by Collin, C.J. and Parker, J.. that the renunciation by a Muhammadan of his chance of succeeding to an estate was valid. In that case the plaintiff, in consideration of Rs. 150 which was paid to him by his mother in respect of the share in her estate to which he would become entitled on her death, admitted that he had no longer any right to her property. The learned Judges held that "prima facie, there is nothing illegal in the transaction" and, in the absence of clear proof that it is forbidden by Muhammadan Law, they thought that the plaintiff should be held to be bound by it.

6. There is, no doubt, a conflict of decisions in the High Courts in India upon this question but is it necessary in this case to determine it? We think not. Prior to, and at the date of, the decree of the 29th of August 1889 Abdullah was the absolute owner of the property affected by that decree. His wife claimed her dower. They had children and an arrangement was come to whereby the wife accepted in lieu of her dower a life estate in portion of the property of her husband and Abdullah accepted a life-estate in other portions of his property, and, subject to be life-estates, the properties were settled upon the children of the marriage. This was in the nature of a family settlement. Both Abdullah and Mubarakunnisa agreed that upon their respective deaths the property in which life-estates were reserved to them should devolve upon their heirs. There is nothing so far as we are aware unlawful in such an agreement. There was no transfer" or renunciation of an expectant interest or of a mere possibility. The Court which passed the decree upon the compromise, considered it lawful and passed a decree in accordance with it. It appears to us that the decree debarred Abdullah, or any one claiming under him from successfully asserting a title to any interest in the property outside and beyond the life-interest which was reserved to him. Having, taken benefits under the compromise it was not open to him, nor is it open to any one claiming under him, now to impugn the validity of the transaction or deprive the heirs of the rights and interests conferred upon them not merely by Abdullah but by Mubarakunnisa. Section 6(a) of the Transfer of Property Act merely provides that "the chance of an heir apparent succeeding to an estate, or any other mere possibility of a like nature, cannot be transferred." This clause seems to strike at transfers of a mere possibility or expectancy not coupled with any interest or growing out of any existing property, It does not for example, strike at agreements by expectant heirs, such as an agreement to divide at particular property in a certain way on the happening of a particular

contingency See Ram Niranjana v. Protag Singh 8 C. 138 : 10 C.L.R. 66.

7. For these reasons we think that our learned brother was wrong in reversing the decrees of the lower Courts. We accordingly allow the appeal, set aside the decree of the learned Judge of this Court, and restore the decree of the lower Appellate Court with costs in all Courts.