

Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Moulvi Muhammad Abdul Majid v. Mussumat Fatima Bibi, from the High Court of Judicature for the North Western Provinces, Allahabad; delivered June 24th, 1885.

Present:

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

THE question in this appeal arises out of a disposition of his property made by one Imam Baksh. The disposition, which was not strictly a will, because it was made in his lifetime and he reserved to himself some benefit under it, was made on the 19th August 1860, and he died about a year afterwards. At the time he made it the state of the family was this. He had two wives. By the first he had a daughter, Mussumat Fatima Bibi, who had had a son, Hafiz Syud-ud-din, then dead. He had had another daughter, Mussumat Makki Bibi, who had died, leaving two children, Muhammad Ibrahim and Mariam Bibi. By the second wife he had a son, Maulvi Muhammad Haidar Hussain, who died in July 1875, leaving his eldest son, the present Appellant and the Defendant in the suit, and other children. The contention between the Appellant and Respondent arose after his death. It was this, as stated in the plaint of the Respondent which was filed on the 5th of May 1879. In that, she states the disposition of the property by her father, Imam Baksh, and that the management of the whole property was en-

trusted to Haidar Hussain, and after the death of Imam Baksh, she, the Plaintiff, confirmed him as manager, and that she has not disputed any of the rights of Haidar Hussain. Then, after stating that he was in possession of the property and acted as manager, and stating his death, she says that, after his death, the Defendant, without the consent and permission of the Plaintiff, improperly took possession of the property constituting her share, and asked the Revenue Court to enter his name in the place of that of Haidar Hussain, and that she gave notice to the Revenue Court of her dissent from that. She then goes on to say, "That the Defendant, " notwithstanding his want of right, not only " arbitrarily declares himself to be the manager " of the whole property, but considers and " represents himself to be the permanent owner " of the whole property, and by his own " authority, and with the view of injuring the " Plaintiff, has committed and omitted to do acts " calculated to cause great loss to her; and she " prays that a decree may be passed in her " favour, declaring her right, permanent proprietary title and possession to her share in " the property detailed below," and " that " complete possession of her share may be " awarded to her: that the Defendant's possession and management may be removed."

The Defendant, in his written statement, sets up this claim. "From the death of Maulvi " Muhammad Haidar Hussain the whole " property mentioned in the will and the " agreement legally devolved upon and came " into the possession of the Defendant under the " express conditions and directions of the said " documents, and with reference to inferences " drawn from them. According to the terms " of the will, the rules of Mahammadan law, and " the principles of justice, the Defendant alone

“ is entitled and competent to retain possession
 “ (subject to the conditions of the will) in order
 “ to carry out its provisions, which are to be
 “ carried out in perpetuity and for ever, and not
 “ for a limited period.” It may here be
 noticed that the Defendant is not the only heir
 of Muhammad Haidar Hussain, there are other
 persons who are also his heirs. The contention
 is that although the Defendant is only one of
 the heirs he alone is entitled and competent to
 retain possession.

This being the contention of the parties, the
 provisions in the document may now be looked
 at, to see how far the Defendant's contention is
 supported by its provisions, and how far the right
 of the Plaintiff to recover in this suit is established.
 Imam Baksh begins by saying, “ I had two wives
 “ married according to the Mahammadan law,
 “ one, Musammat Hingan Bibi, who is at present
 “ alive, and by whom I had two daughters, one,
 “ Musammat Fatima Bibi, who is alive, and
 “ her son, Hafiz Syud-ud-din Mahammad Syud
 “ Bukht, now deceased, was adopted by me as
 “ my son, and the other, Musammat Makki Bibi,
 “ who died, leaving one son, Muhammad Ibrahim,
 “ and a daughter, Mariam Bibi, minors. My
 “ second married wife died, and Maulvi Muham-
 “ mad Haidar Hussain, a son by her, is alive.
 “ Therefore, according to the Mahammadan law,
 “ Musammat Fatima Bibi, my daughter, and
 “ Maulvi Muhammad Haidar Hussain, the
 “ children of my loins, are my legal heirs.” He
 then goes on to provide that the whole income of
 a four annas share of his villages and estates
 shall be devoted to charity and works of benefi-
 cence, and the remaining 12 annas of the
 villages and estates and the whole of his other
 property shall be divided into four “ sehamis ”
 (shares), and gives one share to Hafiz Syud-
 ud-din Mahammad Syud Bukht, one to Fatima

Bibi, one to Maulvi Muhammad Haidar Hussain, and one to Muhammad Ibrahim and Mariam Bibi, and says:—"During my, the Declarant's, lifetime, they shall continue to receive the profits of those 'sehams' (shares): the one 'seham' of Hafiz Syud-ud-din Mahammad Syud Bukht will be received by his mother, Fatima Bibi. She will be the owner of her own one 'seham' and of one "seham' of Hafiz Syud-ud-din Mahammad Syud Bukht, in all, of two 'sehams.' She is at liberty to give them to anyone she may like among her own children. It will be necessary and incumbent on all the said heirs to perform all the necessary and obligatory terms of this document, which they have of their own will consented to observe, and they will not have the power to dissent from it on any plea of law or Mahammadan law." The assent which is here stated is shown by their putting their names to the document after the signature of Imam Baksh. Then in the third clause he provides for what is to be done with the four annas share which was devoted to charity. He says:—"He, Maulvi Muhammad Haidar Hussain, shall always be the manager of this four anna share; none of the heirs shall have the right to interfere in any way in the aforesaid four anna share. It shall be incumbent on Maulvi Muhammad Haidar Hussain to keep the entire management in his own hands." A little lower down he says, "After Maulvi Muhammad Haidar Hussain, whoever from the descendants is just, virtuous, and capable of performing this duty, shall be the superintendent and manager of that four anna share. In short my, the Declarant's, object is this—that the managership and superintendentship should always continue with Maulvi Muhammad Haidar Hussain, and, after him, as specified above, whoever among the descendants is capable of

“ performing this work.” The word “ descendants ” there means among his own descendants— not limited to the descendants of Muhammad Haidar Hussain ; and as far as this provision goes it would seem to point to some selection being made from amongst his descendants in order to have a person who should have the management of the charity property. Then we come, under the fifth clause, to the provision which he makes with regard to the remainder of his property. In the fourth clause he had said what there seems to be no doubt was his wish :—

“ The aforesaid heirs should continue in harmony, “ and eat and reside together, so that being united “ the estate may continue to improve and the “ name always be preserved.” In the fifth he says, “ Maulvi Muhammad Haidar Hussain shall “ continue in possession and occupancy of the “ full 16 annas of all the estates, villages, lands “ lying at different places, and moveable and “ immoveable property (collections from the “ villages). All the matters of management “ in connexion with this estate should neces- “ sarily and obligatorily rest always and for “ ever in the hands of Maulvi Muhammad “ Haidar Hussain.” Here we have the words “ always and for ever.” But these words, according “ to several decisions of this Board, do not *per se* extend the interest beyond the life of the person who is named. *Per se* they are satisfied by limiting the interest which is there given to the life of Muhammad Haidar Hussain. The subordinate Judge has made observations upon the meaning of these words which are quite supported by the authorities. So far, then, there is nothing in the words used by the Testator to indicate an intention that the possession and management were to go to any one of his descendants after the death of Muhammad Haidar Hussain. He then gives directions as to the

recording of the name, and goes on to say :—“ No
 “ heir and no stranger shall at any time or period
 “ have, on any ground, or in any way, power to
 “ object or oppose to any of the matters above
 “ mentioned, or to take possession or to make any
 “ arrangements of his own regarding the estates.
 “ In all these matters all persons shall be entirely
 “ powerless;” showing there an intention to keep
 the property in the hands of his family if possible,
 and that no strangers should at any time come in
 and have any part of it. This is still further
 shown by the sixth paragraph. But before that he
 directs that Haidar Hussain is to make collections
 of the profits, and says that he is to pay the
 profits of two out of the four shares to Fatima
 Bibi, “ and the profits of one seham he may
 “ take himself, and the profit of one share,
 “ that of Muhammad Ibrahim and Mariam Bibi,
 “ after deducting the expenses, he is to keep in
 “ deposit with himself,” according to the pro-
 visions of a subsequent clause. This part clearly
 shows that what he intended was that during
 the life of Haidar Hussain he was to give to
 the parties their shares of the profits. But there
 is no direction that this should be done by any
 other person after the death of Haidar Hussain.
 The direction is applicable to Haidar Hussain
 only, who is directed himself to pay the profits.
 Then he says :—“ My, the Declarant’s, real
 “ object is that all my estates may always
 “ remain in possession of my descendants as
 “ specified above ”—repeating the intention pre-
 viously shown—“ and no interference of any
 “ stranger on any account may be permitted
 “ therein, and my property should not be
 “ allowed to pass into the hands of any
 “ stranger. Hence I enjoin on Musammat
 “ Fatima Bibi, Maulvi Muhammad Haidar
 “ Hussain, Muhammad Ibrahim, Mariam Bibi,
 “ and also their descendants, generation

“ after generation in perpetuity, that when any
 “ of them is disposed to transfer his share by
 “ sale, mortgage, or lease, &c., then he must
 “ first offer to transfer to all of his sharers in
 “ property ; and so long as the sharers are willing
 “ to take it he must by no means transfer to
 “ others.” There, it may be observed, he does
 not speak of profits. He had spoken previously
 of the shares and profits ; but here he seems to
 be speaking of shares in the property, and the
 shares of the different persons, amongst others of
 Fatima Bibi, and he directs that they shall not
 transfer their shares of the property to strangers.
 Certainly that does not indicate an intention
 that the property should not be vested after the
 death of Haidar Hussain in the persons to whom
 he had given the shares. Then he says :—“ The
 “ stranger will not have any power to take any
 “ possession or occupancy of the transferred
 “ property beyond receiving the profits which
 “ will be handed to him ;” and “ The purchaser
 “ also, beyond receiving the profits, shall have
 “ no power or right of possession or occupancy
 “ over the property sold ; nor by the auction
 “ shall the right of possession and management
 “ be disturbed of Maulvi Muhammad Haidar
 “ Hussain, or whoever may be his representa-
 “ tive.” Mr. Cowie rightly admitted that by
 “ representative ” here is meant, not a successor
 of Haidar Hussain in the right of Haidar Hussain
 in any way, but a person who might, during
 Haidar Hussain’s life, be his agent ; thus again
 indicating that he was making a provision rather
 for what was to be done during the life of
 Haidar Hussain than for what was to be done
 afterwards.

These are the provisions of the will, and it
 is difficult to see in them any provision by
 the settlor which would confer upon the present
 Defendant the right which he now claims to

have. There is nothing to show that the heirs of Haidar Hussain were to take his place in the succession and management, and, even if there were, there would be this difficulty, that, if it went by right of succession to the heirs of Haidar Hussain, they would all, and not the present Defendant alone, come in. Thus expressions clearly denoting that the management is to be in a single hand would, by a strained application of them to a period beyond the life of Haidar Hussain, be used to vest the management in a number of hands.

It has been contended by Mr. Doyne that there ought to be, and that there might be, a selection, by some sort of family council, of one of the heirs of Haidar Hussain, who should succeed him in the management, and, in default of any appointment by a kind of family council, that it might be made by the Court. We find in this document no provision of the kind, nothing to indicate that it was the intention of the settlor that there should be any selection; and it seems to their Lordships, whatever might have been the wish of the settlor to keep the property in the family, impossible to say that he has so framed this instrument as to carry out such an intention or to effectuate such a wish beyond the life of Haidar Hussain. The right of Fatima Bibi to her shares in the property is clear upon the terms of this instrument, unless the Defendant could show that there were provisions in it which would control that part of it, and limit her for ever (for that seems to be the contention) simply to an enjoyment of the profits, and not to have any other interest in the property. There are words which indicate an intention that she should take an interest in the property with an attempt, no doubt, to control her in the disposition of it, and to prevent her parting with it to strangers.

It is unnecessary to allude to what is said in the Judgements of the subordinate Court and the High Court. Their Lordships are of opinion that the conclusion they came to was a correct conclusion, and they will humbly advise Her Majesty to affirm the decree of the High Court and to dismiss this appeal. The costs of it will be paid by the Appellant.

