

Privy Council Appeal No. 32 of 1915.

Allahabad Appeal No. 47 of 1913.

Musammat Imtiaz-un-Nisa - - - - - *Appellant*

v.

Mumtaz Hussain, since deceased - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE FOR THE NORTH-WESTERN
PROVINCES, ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 28TH OCTOBER, 1918.

Present at the Hearing :

LORD BUCKMASTER.

LORD DUNEDIN.

SIR JOHN EDGE.

[*Delivered by* LORD DUNEDIN.]

The plaintiff is the widow of a Mohammedan gentleman. Munshi Muhammad Husain. The suit is brought to recover her dower and her share of her deceased husband's property, which by Mohammedan law in the state of circumstances in this case is one-fourth. It is directed against her sister-in-law, who is in possession of certain portions of the deceased's property in the manner which will presently be set forth. The residuary legatees were also called, but no operative decree was asked against them.

Muhammad Husain was possessed of a dwelling house, of household furniture, of cash, and of house and agricultural property. After his death a dispute arose between his widow and his sister as to which of them was entitled to have her name entered as proprietor in an application made to the Revenue Court for mutation of names. It was then suggested by the friends and relations of both ladies that the matter had better

be settled by arbitration. Accordingly a deed of submission was drawn up and signed by both ladies. By its terms the whole matter was referred to Munshi Nazar Ahmed, an official in the Commissioner's office at Jalandhar, who was a friend of the parties. The agreement was in these terms :—

There is a dispute between us, the two parties, in respect of the right to the dower and division of the estate of Munshi Muhammad Husain, deceased. We, the parties, wish that in consideration of the respectability of the family, the whole of the house and field properties, movable and immovable, situate in kasba Nihtour, pargana Nihtour, left by the said Munshi Saheb, deceased, should be divided, after amicable settlement of the dispute. Therefore, we appoint Munshi Muhammad Nazir Ahmed, son of Sheikh Ghulam Maula, sect Sheikh, resident of mauza Seohara, district Bijnor, at present Superintendent of the office of the Commissioner of the Jalandhar division, who is a near relation of us, the parties, and who has a personal knowledge of all the movable and immovable properties and of the detail and amount of the property of every description left by the deceased, as our arbitrator and referee, and authorize him and give it in writing that the said arbitrator and referee in exercise of his discretion, may, after having removed the grounds of dispute concerning the dower-debt and the cash, award us jointly or severally any share he may like, out of the movable and immovable properties, specified below, left by Munshi Muhammad Husain Mahmud, deceased, either with reference to our rights under the Muhammadan law and Statutory enactments or without reference to such rights under the Muhammadan law and Statutory enactments. I, the first party, further declare that the resumed milak lands in kasba Nihtaur were previously sold to me by Munshi Muhammad Husain Mahmud, deceased. That too, should be included in the estate aforesaid and then divided. As regards my right to the dower-debt, he is at liberty to award or not to award anything. All these acts done by the said arbitrator and referee shall be accepted and admitted by me. The parties shall admit and abide by the award made by the said arbitrator in regard to the mutation cases, which have been instituted by us and are pending in tahsil Dhampur, district Bijnor, for expungement of the name of Munshi Muhammad Husain Mahmud, deceased, and entry of the names of us, the parties. We have, therefore, executed these presents by way of an arbitration agreement, in order that it may serve as evidence and be of use when needed.

Detail of the dwelling-houses, together with boundaries, *i.e.*, the property left by Munshi Muhammad Husain Mahmud, deceased.

The arbitrator met the parties and pronounced an award. It is not necessary to set it out at length. Summarised it was as follows :—He declared that the widow should remain in possession of the movable articles in the house of the deceased and of all the cash. This was to be in lieu of dower. She was also to remain in possession of her part of the dwelling house. The immovable property consisted partly of house property and partly of agricultural property. The former he awarded to the sister, the latter he divided equally between the two.

The learned Subordinate Judge came to the conclusion that the arbitration was fraudulent, and set aside the decree. The learned Judges of the High Court were of a different opinion, and, holding the arbitration to be good, dismissed the action.

Their Lordships have no hesitation in agreeing with the learned judges of the High Court. The criticisms made by the Subordinate Judge on the phraseology of the deed of submission are much too meticulous and give no weight to the fact that it was common ground between the parties that an arbitration was decided upon and was held. Nor is there the slightest ground for his mere *ipse dixit* that the evidence of the arbitrator was worthless and of no weight. On this matter their Lordships have nothing to add to what was said by the Judges of the High Court.

Before this Board the case was argued on different lines. It was urged, first, that the award was not warranted by the submission, in respect that it neither fixed the dower nor made good the legal right of the widow to one-fourth of the property; and, secondly, that in any case, as the widow was a *pardanashin* lady, the burden of showing that everything had been explained had not been discharged.

Their Lordships think that the first argument is based on a misconception of the true scope of the agreement in the deed of submission. Theoretically the question was simple. There was no doubt as to the widow's rights—she was entitled to dower and to one-fourth of the property. But practically the matter was complicated. The dower had been fixed verbally 27 years ago. It was no wonder that there was a dispute as to the amount. Then, as to the property, the widow had been in possession for some time of movables and of cash. Here also there was ample room for dispute. Accordingly the submission was framed to allow the arbitrator to come to what one may call a rough-and-ready settlement of everything in dispute, and for that purpose it was specially provided that he was not to be bound to award any dower unless he wished, and was not, in dividing the property, to be obliged to adhere to the exact fractions fixed by law. Viewed in this way, the award was consonant to the deed of submission, and was not on the face of it in the least unjust, or an unfair solution of the difficulties.

As regards the second point, their Lordships have fully in view the importance of maintaining the rule which has been so often laid down as to deeds by *pardanashin* ladies. This, however, is not the ordinary case of a deed or contract being got from a *pardanashin* lady by one who had all the advantages of education and understanding on his side. The two ladies whose dispute it was were both *pardanashin* ladies, and they were both counselled and assisted by their respective male relatives. It is, after all, a question of evidence, and their Lordships are satisfied that it has been shown not only that the plaintiff had had explained to her and understood that a family settlement was proposed to be carried out, by the help of the arbitrator; but also that she was made aware of the solution that the arbitrator proposed. On the whole matter their Lordships agree with the result arrived at by the learned Judges of the High Court, and they will humbly advise His Majesty to dismiss the appeal.

In the Privy Council.

MUSAMMAT IMTIAZ-UN-NISA

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MUMTAZ HUSSAIN, SINCE DECEASED.

DELIVERED BY LORD DUNEDIN.

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