

managers of the Begam, show that we had the management of the property. Baillie also lays down (p. 514) that "when the subject of gift is in the hands of the donee, either as a deposit or commodate loan (*areeut*), or trust (*amanut*), he becomes the proprietor of it by the gift and acceptance, though his taking formal possession of it should not be renewed," and this is also borne out by the Hedaya, Vol. III, p. 295. We let the lands and received the rents, and that was a sufficient possession in us, since possession does not necessarily mean *actual* possession.

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Shantaram Narayan for the Respondent—In cases of such gifts the share of each should be defined: Macnaghten's Principles of Mahomedan Law, Bk. I. Ch. v. pars. 6 and 7; Precedents p. 199, Cases IV. and V.; I. Morley's Digest p. 268, Cases 56 to 59. According to Elberling, sec. 276, a gift is invalid even if the division takes place after the gift according to the mode prescribed by the donor.

Couch, C. J.—The Court below has correctly found against the plaintiff, on the ground that the interest of each of the donees was not defined by the gift. That being so, the ground of want of possession does not arise. We may, however, say that, we think, there was not in this case such a possession in the donees as would satisfy the requirements of the Muhammadan Law. I think we must confirm the decree with costs.

WARDEN, J., concurred.

Decree confirmed.

Referred Case.

Jethabhai Bhaichand...	...	<i>Plaintiff.</i>
Bai Lakhu.	<i>Defendant.</i>

Feb. 16.

Small Cause Court—Jurisdiction—Property taken in execution.

A suit brought by a Decree holder, to decide whether moveable property taken in execution is or is not the property of his judgment debtor, is not a suit cognizable by a Court of Small Causes.

Gopalrav Hari Desbmakh, Judge of the Court of Small Causes at Ahmedabad under section 22 of Act XI, of 1865, submitted for the decision of the High Court the

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question—Whether or not a suit instituted for the purpose of proving that certain moveable property, consisting of gold and silver ornaments, and brass and copper pots, and clothes, is the property of his judgment debtors and therefore liable to attachment in execution of the decree obtained by the plaintiff, is maintainable in a Small Cause Court.

“The plaintiff having obtained a decision against one Kasanlal and Ishvar, attached certain property in the possession of the defendant, and alleged kept woman of Kasanlal: on her application the attachment was removed under section 246 of Act VIII. of 1859. The plaintiff, dissatisfied with the summary order, has instituted a regular suit, the object of which is to show that the property in question is the property of the judgment debtors.

The defendant states that the suit is not maintainable in the Small Cause Court, as it involves a question of title.

I find that in the Calcutta Weekly Reporter there are three analogous cases, the decisions on two being in support of the defendant's objection (*a*), and one being against it (*b*). The question appears doubtful and I have thought it proper to submit it for decision.

In my opinion the suit is for personal property and therefore maintainable in this Court under Section 6 of Act XI. of 1865.

PER CURIAM (COUCH, C.J., and WARREN, J.):—The Court is of opinion that the suit is not maintainable in a Small Cause Court.

(*a*) 9 Calc. W. Rep. Civ. R. 136, and 10 Ibid. 141.

(*b*) 2 Calc. W. Rep. Civ. R. 43.