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bed-room. It is clear from its construction that it was intended as a lumber-room, although no doubt it has been frequently used as a bed-room by members of the plaintiff's family. The defendant's new wall will be about six feet distant from windows [264] Nos. 7 and 8. Having regard to the use which is now or can be fairly expected to be made of this loft, we do not think that defendant's wall will so materially interfere with the comfort of the plaintiff in using it that the Court ought to grant an injunction with respect to the windows. We think that for the injury done the plaintiff can be sufficiently compensated by damages.

On the whole, then, we are of opinion that no injunction should be granted to the plaintiff in this case, but we think it is certainly a case in which he is entitled to substantial damages, and we award him a sum of Rs. 2,000. With regard to costs, we shall not disturb the order of the lower Court, which directed the defendant to pay the plaintiff his costs, but each party must pay his own costs of appeal. The injunction is discharged.

Decree reversed. Injunction discharged. Defendant to pay to the plaintiff Rs. 2,000 damages and his costs of suit. Each party to pay his costs of appeal.

Attorneys for appellant:—Messrs. *Little, Smith, Freve, and Nicholson.*
Attorney for respondent:—Mr. *Mirza Hussein Khan.*

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APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

NIZAMUDIN GULAM AND OTHERS (*Original Defendants*), *Appellants* v. ABDUL GAFUR VALAD MAINUDIN AND OTHERS (*Original Plaintiffs*), *Respondents.** [11th June, 1888.]

Mahomedan law—Wakf—*Settlement in favour of the settlor's family without any ultimate trust for charity—Such trust must be express, and not implied—Grant of life estate invalid.*

A Mahomedan cannot settle his property in *wakf* on his own descendants in perpetuity without making an *express* provision for its ultimate devolution to a charitable or religious object.

A grant of a life estate is invalid under the Mahomedan law. The grantee in such a case would take an absolute estate.

[265] A Mahomedan executed a deed, called a *wakfnama*, by which he settled his property in *wakf* on his two wives and daughters and their descendants in perpetuity. For the management and devolution of this property he laid down the following rules:—(1) that if one of the *aulad* (or daughters) of either wife died, the share of that person should go to the wife and the survivors of her *aulad*; that after the death of a wife her share should go to her surviving *aulad*; that if a wife and her *aulad* ceased to exist, their share should go to the other wife and her *aulad*; that on the failure of *aulad* and *aflad* of both wives, the next of kin of the settlor should receive the property; and he added that in this way the management should go on from generation to generation; (2) that neither of the said two wives nor any one of the *aulad* of the wives should alienate by sale, gift or mortgage either their shares or any part of the property.

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A portion of this property, consisting of two *nafars*, was set apart for such purposes as the building of his own tomb, the saying of prayers, the recitation of the Koran, &c.; and he directed that in case the produce of the two *nafars* proved insufficient for these purposes, his wives and daughters and their descendants should contribute out of the property settled in *wakf* on them.

Held, that, with the exception of the two *nafars* set apart for religious purposes, the rest of the settlement was not a valid *wakf*, as it was solely for the benefit of the settlor's family, and contained no express provision for the ultimate devolution of the property to any religious or charitable object.

Held, also, that the settlement was invalid as a deed of gift to the settlor's next of kin after the determination of the life estates granted to his wives and daughters; first, because the donor had not parted with possession of the property till his death, and secondly because the grant of a life estate is quite inconsistent with the Mahomedan law, the grantee in such a case taking an absolute estate.

[Affirmed, 17 B. 1 (P. C.) = 19 I. A. 170; F., 13 A. 261 (270); 7 Bom. L. R. 306 (307); 4 C. L. J. 442 (456); 11 C.P.L.R. 150 (154); R., 27 B. 500 (514); 20 C. 116 (130); 18 M. 201 (212); 34 M. 527 = 20 M. L. J. 946; 9 Bom. L. R. 295 (302); 8 O. C. 382 (387); 23 Ind. Cas. 510.]

ONE Karimudin executed a deed, called a *wakfnama*, dated 6th January, 1838, the material portions of which were as follows:—

"My *khas* (private) properties, which are at this day under my management, and which I have taken enjoyment of (up to this time), I have made a *wakf* of on my *kabilas* (families, that is wives), and on my *aulad* (children) and other persons. Their names and the clauses about the management thereof are as follows:—

"On my first wife Amina Bibi, the daughter of Gulam Mohidin Mukri, and on her daughters Burkhurdar (literally "happy" or "long-lived") Fatesaheb, the widow of the deceased Mulna Ismail Tungikar; and Masa Bibi, the wife of Mahomad Abdula Mukri,—*on these three persons the undermentioned properties are made a wakf of in the manner following:*—

On my second wife Ayesha Bibi the daughter of Abaji Bhaiji and on (her) minor daughters *Sara Bibi, and Tahira Bibi*, on these three persons the undermentioned properties are mada a *wakf* of in the manner following:

(Here follows a description of the property.)

[266] "(As to) the abovementioned land, &c., and the trees and bushes now standing thereon and those that will grow hereafter on the said lands each should pay to the Government the *khoka* (assessment) of the said land, whatever the sum be, according to the properties received by each for the share of each, and manage and enjoy the abovementioned partitioned off shares.

* * * * *

"Each should manage and enjoy his share of the above properties half and half, and pay the assessment thereof in the manner I have been managing and enjoying the same and paying the assessment thereof. I made (managed) for some days the collection and expenditure (of the income) of the lands and *inamats* belonging to the Juma Masjid at *khas* Uran. For the balance and bond relating to the same which may have remained with me and for the place *I have asked* for my own tomb I have made a *wakf* (of the undermentioned properties), *i.e.*, for the expenses of the masjid. They are:—

* * * * *

"For the making of *nayaz* (saying of prayers) every year on the twelfth night of the month of Rabi-ul-awal (called) the twelfth night of the Hazarat; for the making of the eleventh night ceremony of the Hazarat in the month of Shaban; for the making of the annual *urus* (fair) in honour of the Hazarat Bawa Pak Saheb and Sayyid Ummar Saheb; for

one quarter 'ser' of oil every day for the masjid, and for getting made every month a *khatma* (*i.e.*, a complete recitation) of the *kalamula* (the word of God, *i. e.* the Koran) in my *hak*, for all these abovementioned expenses I make a *wakf* of two *nafars* :—

* * * * *

"As mentioned above (my) aforesaid two wives and the *aulad* (descendants through sons) and the *aflad* (descendants through daughters) of (my) said two wives, from generation to generation, should, in union with one another every month and every year keep as deposit the produce, whatever it be, that will be received from the aforesaid *nafars* with some honest man and make the disbursements thereof as I have directed. If this cannot be done in union with one another, each should take her share of the aforesaid expenses every year and make (the disbursement thereof). Should the produce of the said two *nafars* fall short, my said two wives and their *aulad* and *aflad should make* (contributions) *from their* respective *shares of the* property settled in *wakf* on them. When the produce of the said two *nafars* is more, they should spend the same in the ways of the Lord (*i. e.* for charitable purposes).

"The above-mentioned property has been made a *wakf* of on (my) aforementioned *two wives* and my *aulad* now living and on that which may be born hereafter; (my) said two wives and (my) *aulad* now living and that which may be born hereafter should cause such shares to be made thereof as they may be entitled to in accordance with the book (Koran) and manage the same. The clauses (provisions) relating to the above management are as follows:—

"1. Should any one out of the *aulad* of either of these my two wives die, that one's share of the above-mentioned property made a *wakf* of shall go to that very same wife and the survivors of her *aulad*. It shall not go to any others than her *aulad*. But so long as my two wives are alive the aforementioned shares of **[267]** the *aulad* that may die shall be enjoyed by (my said) wives, their *surviving aulad* shall enjoy it; should either of the two wives and her *aulad* be all dead, their share shall go to the other wife and her *aulad*, according to (their respective) shares. Should neither the *aulad* nor the *aflad* of either of my two wives remain, then those who may be my *next of kin* shall *receive* (the abovementioned property). In this manner the management shall proceed from generation to generation.

"2. Neither of the two wives nor any one out of the *aulad* of the said two wives should alienate either by sale or gift or mortgage either (their) shares of the above-mentioned property or anything out of (their) shares or any *agar* out of the above-mentioned property made a *wakf* of or the rice of the *fajins* or the fields or the *bhats* or the *shilotri* lands or the house or any trees and bushes or any part of the whole of the land of the house. Should they have to let (anything out of these properties) by *makta* (by lease), each should let the same without causing or allowing to be done any obstruction (annoyance) to the other. But they shall not let (the same) for (periods) longer than three years (at a time).

"3. My abovenamed wives and my *aulad* and *aflad* shall themselves dwell in the aforesaid house. They shall not let it to strangers on rent, or alienate it either by sale or gift or mortgage.

* * * * *

"6. So long as I am alive I have the position of *nazir* (manager) with full powers and the position of *mutavalli* (superintendent) of the property particularly described above. After the end of my life until a

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male from amongst my *aulad* (descendants) attains the age of discretion my relatives *Mahomad Abdulla*, the son of *Kamrudin Mukri*, and Mahomad Husein, the son of Abaji Bhaiji, shall manage, with the advice and consent of my aforesaid two wives, the posts of *nazir* and *mutavalli* of the above-mentioned property and (collect and pay) the claims and debts relating thereto in the manner the *vahivat* (management) thereof has been (hitherto) carried on.

"No one has any claim to the above-mentioned property made a *wakf* of in the manner mentioned above. Should any one make a claim or raise objection thereto, the said claim or objection shall, in accordance with the share, be null and void. This *wakfnama* I have duly given in writing of my pleasure and sound mind with my signature attached thereto and with the attestation (attached) thereto of respectable witnesses. The Sur year one thousand two hundred and thirty-nine. In the Hizra year 12, the year of Christ 1838, on the 9th moon of the month of Zulkad, the 6th day of the month of January."

The plaint alleged that, according to the provisions of this *wakfnama*, Kurimudin acted as *mutavalli* till his death in 1840; that his widows and daughters took each a life interest in their respective shares of the estate; that Tahira, one of the daughters of Karim, died in 1873; that her sister Fatesaheb died in 1875, leaving the plaintiff as her next of kin to succeed to the *wakf* property; and that on her death plaintiffs Nos. 1 and 2 were appointed *mutavallis* [268] by the Civil Court. The plaintiffs sued, both as *mutavallis* and as next of kin of Karimudin, to recover possession of a portion of the *wakf* property which the defendants' father had purchased at a Court sale held in execution of a decree against Tahira.

The defendants pleaded that the *wakfnama* was invalid under the Mahomedan law; that the property in dispute was the absolute property of Tahira; that their father was a *bona-fide* purchaser at the Court sale, and obtain possession in 1866 in execution of a money decree against the widow and the daughters (Sara and Tahira) of Karim; and that their possession being adverse for eighteen years, the claim was barred by limitation. They also denied that the plaintiffs were the heirs of Karim.

The Subordinate Judge found that the *wakfnama* was valid; that the suit was not time-barred; and that the plaintiffs were the next of kin of Karim, and as such entitled to recover the property in dispute.

This decree was confirmed on appeal by the Assistant Judge.

The defendants preferred a second appeal to the High Court.

B. Tyabji (with him *Mahadev C. Apte*), for appellants:—We contend that the *wakfnama* is invalid. To constitute a valid *wakf* there must be an express dedication to a religious or charitable purpose. The objects of a *wakf* should be such as shall endure for ever. In the present case the objects of the *wakf* are the settlor's own family. The deed is an attempt to tie up the property for ever and to provide a particular form of devolution. It gives the property to the settlor's wives and daughters, and their *aulad* and *aflad*, *i.e.* their descendants generally. Such a gift must be construed as an absolute gift, and yet it is coupled with a condition restraining alienation. The intention was to create a perpetuity for the benefit of the settlor's family without an ultimate dedication to the poor. The settlement is, therefore, not a *wakf*—*Abdul Ganne Kasam* v. *Hussen Miya Rahimtula* (1). The deed creates a series of life estates which are utterly unknown to the Mahomedan law, and on this account

(1) 10 B.H.C. R. 7.

also it is invalid. Refers to *Ranee Khujooroonissa* v. *Mussamut Roushun Jehan* (1); [269] *Ashutosh Dutt* v. *Doorga Churn Chatterjee* (2); *Jatindra Mohan Tagore* v. *Ganendra Mohan Tagore* (3); *Lachmiput Singh* v. *Amir Alum* (4); *Fatma Bibi* v. *The Advocate-General of Bombay* (5); *Sayad Mahomed Ali* v. *Sayad Gobar Ali* (6).

Farran (with him *Manekshah Jehangirshah*), for respondents:—A *wakf* in favour of the settlor's descendants is not bad under the Mahomedan law. If the descendants fail, there will be an ultimate dedication to the poor. Such a dedication may be implied. In the present case there is an impliedly ultimate trust for a charitable purpose. We rely on the ruling in *Lachmiput Singh* v. *Amir Alum* (4), in which case there was a provision for the family as well as an ultimate dedication to charity. There are two kinds of *wakf*: first, an endowment, and secondly, a settlement. In the case of a settlement, it is a fiction of the Mahomedan law that the poor are to take after the descendants of the settlor have died out. The Mahomedan doctors presume such an intention on the part of the settlor. It is on this ground that such settlements are valid—Baillie's Mahomedan Law, p. 553; *Amrutlal Kalidas* v. *Shaik Hussein* (7). The next question is whether a *wakf* creating a series of life estates is valid. We submit it would be so; see Baillie, p. 567. The English law no doubt condemns perpetuities. But even that law would not take away life estates given to a widow and her daughters. It would only set aside the perpetuity, and say that the next-of-kin would take absolutely on the determination of the life estates. Applying the same principle here, we submit that the plaintiffs as next-of-kin are entitled to succeed.

B. Tyabji in reply:—On the authorities it must be held that there can be no *wakf* in favour of the settlor's family without an ultimate trust for the poor. The opinion of the majority of Mahomedan doctors is that such ultimate trust must be *express*, not implied. If the deed in question fails as a *wakf*, it fails also as a gift *inter vivos*—(1st) because there was no acceptance by the donees, (2nd) because the donor remained in possession, (3rd) because a gift to [270] take effect in *futuro* is invalid, and (4th) because the interest of each donee is not defined, nor his share separated from those of the others.

JUDGMENT.

PARSONS, J.—The plaintiffs sue as *mutavallis*, and also as next of kin, of the deceased Karimudin, to obtain possession of certain property which was purchased by the defendants in 1866 at a Court sale held in execution of a decree passed against Tahira, one of the daughters of Karimudin. The grounds of the claim are that the property in question is *wakf*, and that Tahira had only a life interest therein. Two points, therefore, arise for consideration:—first whether the property is *wakf*, and, secondly, whether the estate of Tahira therein was only a life estate. The facts are these. In 1838, Karimudin, who was the owner of the property, executed what he called a *wakfnama*. In it he says: "My private properties, which are at this day under my management and in my enjoyment, I have made a *wakf* of on my wives and on my *aulad* and other persons." He then names his two wives and the two daughters of each (whom apparently he means whenever he speaks of his *aulad*), and he describes the property which he purports to settle as *wakf* upon them.

(1) 3 I. A. 291. (2) 6 I.A. 182. (3) 9 B.L.R. 377, (P.C.) (4) 9 C. 176.
(5) 6 B. 42. (6) 6 B. 88. (7) 11 B. 492.

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He then dedicates a certain other part of his property, consisting of two *nafars* expressly in *wakf*, for such purposes as the preparing of his own tomb, the saying of prayers, the holding of a fair, the recitation of the koran, &c.; and he directs that his aforesaid two wives and their *aulad* and *aflad*, (*i.e.* his descendants generally) from generation to generation, shall deposit the produce of these two *nafars* with some honest man and make the necessary disbursements; that if this cannot be done they shall take their respective shares of the produce, and make the disbursements; that should the produce of the two *nafars* prove insufficient for the purpose, his wives and their *aulad* and *aflad* shall contribute from the property settled in *wakf* on them. and that, should the produce of the two *nafars* be more than is sufficient, they should expend the excess in charitable purposes. He then lays down certain rules for the management and inheritance of the property he purports to settle in *wakf* on his wives and his *aulad* then living and on their descendants that may be born thereafter, *viz.*, (1) that, if one of the *aulad* of [271] either wife die, the share of that person shall go to the wife and the survivors of her *aulad*; that, after the death of a wife, her share shall go to her surviving *aulad*; that if a wife and her *aulad* cease to exist, their share shall go to the other wife and her *aulad*; that on the failure of *aulad* and *aflad* of both wives, the next of kin of the settlor shall receive the property, and he adds that in this manner it is provided that the management shall proceed "from generation to generation"; (2) that neither of the said two wives nor any one of the *aulad* of the wives shall alienate either by sale or gift or mortgage either their shares of the above-mentioned property or any field or bush or any part of the land. He then appoints himself the *mutavalli* of the property of his own lifetime and he appoints Mahomed Abdulla and Mahomed Husein to be the *mutavallis* after his death until a male from amongst his *aulad* attains the age of discretion. In this way Karimudin assumed to make a settlement in *wakf* of his whole property. A part he did indeed settle in *wakf*,—that is to say, he assigned it directly and expressly for certain religious purposes. That part is not in dispute now. The other part, a portion of which is in suit, he assigned under the denomination of *wakf* to himself and to his descendants with the evident intention that it should remain in the possession of his family inalienable, at any rate until, by failure of near descendants, it might fall into the hands of his next of kin, if indeed the provisions against alienation were not intended to apply to them also. The settlement, it is to be noted, has been already discussed by this Court in a case in which it was described as a document "purporting to settle, with certain exceptions, moieties of the settlor's estate on his wives Amina and Ayesha, on the daughters of the former, Fatesaheb Bibi and Masa Bibi, and on the daughters of the latter, Tahira and Sara Bibi, and the descendants of these donees in each line, so long as it should subsist with cross-remainders on the extinction of either line to the representatives of the other, and a final remainder on the extinction of both lines to the heirs of the settlor." See *Phate Saheb Bibi* v. *Damodar Premji*(1). The effect of the settlement was not in issue in that [272] case, though West, J., observes: "Whether a *wakf* could indeed be created for the purpose merely of conferring a perpetual and an inalienable estate on a particular family, without any ultimate express limitation to the use of the poor or some other inextinguishable class of beneficiaries, appears to be a question of some nicety, as to one element at least of which the Mahomedan doctors

(1) 3 B. 84.

have differed." This, however, is the point that we have now to determine, *viz.*, whether the settlement of the lands in question on the donor and his descendants is a valid *wakf* settlement when the deed does not provide for any ultimate devolution of the lands to any charitable or religious object. It is true that it does provide that, if the produce of the two *nafars* of land expressly assigned for a religious object falls short, the holders of the land in suit are to make up the deficiency out of the produce thereof; but we cannot hold this to be any appropriation of that land for that purpose, and it cannot, in our opinion, affect the decision of the general question as to the validity of the settlement irrespectively of any such direction. The first case to be noted on the subject is that of *Abdul Ganne Kasam* v. *Hussen Miya Rahimtula*(1), in which it was held that it is not sufficient to use in the deed the mere term *wakf*, but that, in order to constitute a valid *wakf*, there must be a dedication of the property solely to the worship of God or to religious or charitable purposes. To the same effect is the ruling in the case of *Mahomed Hamidulla Khan* v. *Lotful Huq* (2). In *Fatmabibi* v. *The Advocate General of Bombay*(3) it was held that the intermediate settlement of property on the founder's children and their descendants would not invalidate a settlement of that property as *wakf* if there was an ultimate dedication to a pious and unfailing purpose. In the same volume at p. 88 there is another case—*Sayad Mahomad Ali* v. *Sayad Gohar Ali*—in which it was held that a settlement in which no religious purpose at all was expressed was no valid *wakf* settlement. In the case of *Luchmiput Singh* v. *Amir Alum*(4) a grant in *wakf* was held valid as being a complete endowment of property for religious and charitable [273] purposes when coupled only with a direction that the manager should maintain the future male descendants of the donor. The latest case to which we have been referred is *Amrutlal Kalidas* v. *Shaik Hussein* (5) in which Farran, J., following the decision in *Fatmabibi* v. *The Advocate-General of Bombay*(3), held the grant to be valid, an ultimate charitable object having been clearly and expressly designated in the deed of grant. In the present case, however, there is no such condition expressed. The settlement is solely for the benefit of those descendants of the donor who may succeed to the property and those who may take it as next of kin. It is true that the logical deductions from the arguments of Abu Yusuf referred to in *Amrutlal* v. *Shaik Hussein*(5), would favour the opinion that a settlement would be valid as *wakf* even in such a case, since on failure of heirs "the rent or produce would revert to the poor, which must be supposed to be the appropriate design, though he should fail to mention it, (Baillie's Moohummudan Law. p. 553, as cited in *Amrutal Kalidas* v. *Shaik Hussein* (5). We cannot, however, adopt such an opinion, which is opposed to the opinions both of Hanifa and Mahammad, and has been more than once dissented from in our Courts. In *Fatmabibi* v. *The Advocate-General of Bombay* (3), West, J., said: "*Wakf* must have a final object which cannot fail; and this object, it seems, must, *according to the better opinion*, be expressly set forth;" and again "If the condition of an ultimate dedication to a pious and unfailing purpose be satisfied, a *wakf* is not made invalid by an intermediate settlement on the founder's children and their descendants. The benefits these successively take may constitute a perpetuity in the sense of the English law; but, according to

(1) 10 B. H. C. R. 7. (2) 6 C. 744. (3) 6 B. 42.
(4) 9 C. 176. (5) 11 B. 492 (503).

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the Mahomedan law, that does not vitiate the settlement, provided the ultimate charitable object be clearly designated" (1). And in *Amrutal Kalidas* v. *Shaik Hussein* (2), Farran, J,, said: "If I were at liberty to draw my own deduction from the sayings of Hanifa and the two disciples, and to decide in the light of modern jurisprudence between the conflicting opinions of the [274] latter, I should, without doubt, give the preference to the view of Mahomed, and refuse to press the arguments of Abu Yusuf to their legitimate conclusion." Though thus expressing his own views, Mr, Justice Farran felt himself at liberty to follow the decision of Mr. Justice West in *Fatmabibi* v. *The Advocate-General of Bombay* (3), which goes far beyond the decisions in the cases summarized at p. 499 of the report in *Amritlal's Case*, as to which Farran, J., said: "The conclusion which is properly deducible from the above cited cases, is, I think, that where the primary and general object of the endowment is for the furtherance of religious or charitable purposes, or for the worship of God, such endowment is valid, although the *wakfnama* may also provide for the support of the family and descendants of the founder; but that where the *wakfnama*. has for its real object nothing connected with the worship of God or religious observances, and provides only in a very remote contingency for the poor. such remote provision does not validate a perpetuity for the benefit of the dedicator's children and their descendants so long as any such exist." Having regard to the opinions expressed by West and Farran, JJ, in the cases of *Fatmabibi* and *Amrutlal*, we do not feel justified in extending the rulings in those cases to such a case as the present, where there is no express provision at all for the ultimate devolution of the property to any religious or charitable object. The grant in *wakf* cannot, therefore, be upheld.

It was next argued that independently of the *wakf*, the settlement is valid as a grant by Karimudin of his estate to his wives and their daughters for their lives, and that, in that view of the case, Tahira would have only a life estate in the property in suit, which on her death would have reverted to Karimudin's next of kin. It was not, however, shown to us how Karimudin could legally create such a life estate, or grant the property to his next of kin on the determination of the life estates. In his lifetime he made no grant, for he kept the possession of the property with himself until his death and on his death his estate would devolve on his heirs by Mahomedan law; and, as [275] said in the case of Ranee *Khujooroonissa* v. *Mussamut Roushan Jehan* (4), "the policy of the Mahomedan law appears to be to prevent a testator interfering by will with the course of the devolution of property according to law among his heirs." The creation of any life estate at all appears quite inconsistent with the Mahomedan law, See *Mussamut Humeeda* v. *Mussamut Budlun* (5). It might be that by consent such an estate might be created; but, as a general rule the donee in such a case would take an absolute estate. "All our masters are agreed that when one has made a gift and stipulated for a condition that is *fasid* or invalid, the gift is valid and the condition void." (Baillie's Moohummudan Law, p. 537). So in the Hedaya, III, p. 309, it is said: An *amree* or life grant is nothing but a gift and a condition; and the condition is invalid; but a gift is not rendered null by involving an invalid condition." We may also quote the case of *Chekkeenokutti* v. *Ahmed* (6) as an authority against the validity of this settlement under which the next of kin claim that the

(1) 6 B. 53. (2) 11 B. 492 (504). (3) 6 B. 42 (51).
(4) 3 I. A. 291. (5) 17 W.R. C. R. 525. (6) 10 M. 196.

property was given to them after the death of the wives and *aulad* and *aflad* of the donor. The settlement, therefore, must be rejected from the case altogether. It is not valid as a *wakf*, and it is not valid as a deed of gift to the next of kin. If valid at all, it would be so only as a gift to the donor's wives and daughters.

In any case, therefore, it is not shown that Tahira held a life interest only in the property which was sold as hers and purchased by the defendants. It follows that the plaintiff's suit to eject the defendants, on the ground that Tahira had only a life interest, must fail. The decrees, therefore, of the lower Courts are reversed, and the plaintiff's claim is rejected with costs throughout.

Decree reversed.

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[276] APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

KRISHNAJI JANARDHAN (*Original Defendant*), *Appellant v.* MORBHAT (*Original Plaintiff*), *Respondent.** [25th June, 1888.]

Limitation—Possession—Adverse possession—Hindu widow—Adoption—Adverse possession against widow for more than twelve years bars the rights of a subsequently adopted son—Title.

Adverse possession against a Hindu widow for more than twelve years bars the rights of a subsequently adopted son.

S., a Hindu, died, leaving a widow and a minor son. The minor died in 1856. Thereupon the defendant, a separated cousin of the minor, took possession of his property, got it entered in his own name in the revenue records, and received its income himself without giving the widow any share thereof. In 1872 the widow adopted the plaintiff, and he, too, was excluded by the defendant from the management and enjoyment of the property in question. In 1883 the plaintiff sued as the adopted son of S., to recover possession of the property in dispute.

Held, that the suit was barred, the defendant having held adversely to the widow for more than twelve years before the plaintiff's adoption.

[R., 2 Bom. L.R. 106 (107); D., 19 B. 809.]

APPEAL from the decision of Khan Bahadur M. N. Nanavati, First Class Subordinate Judge of Poona, in suit No. 284 of 1883.

The plaintiff sued as the adopted son of one Shivrambhat bin Morbhat to recover his half share of certain ancestral property in the possession of the first defendant, and to obtain a perpetual injunction restraining the first defendant from obstructing him in receiving certain money mentioned in the plaint. The second defendant was in possession of a portion of the property in suit as a mortgagee under the first defendant.

The plaintiff alleged that his adoptive father Shivrambhat and the first defendant's father were brothers; they divided their family estate in 1838; Shivrambhat died in 1854, leaving a minor son Mahadevbhat and a widow Mathurabai; the latter of whom managed the minor's estate with the assistance of the first defendant, who was appointed her *mukhtiar* under a general power of attorney. Mahadevbhat died in 1856, and on his death the first defendant, taking advantage of the widow's ignorance, got the property of the deceased transferred to his own name in the revenue records, carried on

* Appeal, No. 46 of 1885.