

1916.

RAMKRISHNA
YESHWANT
v.
THE PRESIDENT OF THE
VENGURLA
MUNICIPALITY.

proposed, though I am not unmindful of the force of some of the arguments used by Mr. Justice Subrahmaniam Ayyar in the Madras Full Bench case of *Soundaram Ayyar v. Sennia Naickan*.⁽¹⁾

Appeal dismissed,

J. G. R.

(1) (1900) 23 Mad. 547.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice Heaton.

1916.

November
21.

TAVAKALBHAI WALAD SULTANBHAI (ORIGINAL DEFENDANT NO. 2),
APPELLANT v. IMATIYAJ BEGAM JAVJE MIRBANESAHEB (ORIGINAL
PLAINTIFF), RESPONDENT.*

Mahomedan Law—Deed of gift—Gift with a condition attached—Obligation in the nature of trust—Construction of document.

A Mahomedan woman made a deed of gift in favour of three persons, Mirza Vazir Beg, Imatiyaj Begum and Chaggan Bibi in the following terms: "the lands have been given to you three as gifts. All my rights of ownership are transferred to you. The vahiwat or management of the lands should be made by one of you three, namely, Vazir Beg, and after paying Government dues, Rs. 40 should be paid out of the residue of the income annually to the Imatiyaj Begum, and the remainder should be divided equally between Mirza Vazir Beg and Chaggan Bibi. Mirza Vazir Beg should have vahiwat and give income according to their shares to the two. They have no right of claiming division of the lands from Mirza Beg, but only a right of claiming income every year." A suit was brought by Imatiyaj Begum to enforce her right under the deed of gift. The second defendant, transferee of Mirza Beg's interest in the property, contended that the deed of gift in so far as it conferred benefits on the two women mentioned therein was void and that he was absolutely entitled.

Held, that the gift was good and complete under the Mahomedan law and the deed could be supported in favour of the plaintiff.

SECOND appeal against the decision of G. D. Madgao-
kar, District Judge of Ahmednagar, reversing the

* Second Appeal No. 955 of 1915.

decree passed by G. B. Laghate, First Class Subordinate Judge at Ahmednagar.

Suit to recover money under a deed of gift.

The lands in suit belonged to one Umrao Bibi, a Sunni Mahomedan of the Hanafi School. In 1889, she executed a registered deed of gift of all the lands in favour of her son Vazir Beg with a condition that he was to pay to her daughter Imatiyaj Begum Rs. 40 out of the annual income. The remainder of the income was to be divided equally between Vazir Beg and another daughter Chaggan Bibi.

In 1911, Vazir Beg sold the lands to defendant No. 2 in the suit and put him in possession thereof.

Vazir Beg having failed to pay the allowance accruing to her under the condition in the deed of gift, Imatiyaj Begum filed a suit to recover three years' arrears.

Vazir Beg did not appear.

Defendant No. 2 contended that the gift was a fraudulent transfer and that he as the purchaser of the plaintiff lands was not liable to pay the allowance to the plaintiff.

The Subordinate Judge held that the gift was void under Mahomedan law as it was a gift relating to property which was not actually in existence.

The District Judge, on appeal, reversed the decree holding that the deed and the condition thereof were both valid. He observed as follows:—

"The gift itself is, therefore, perfectly complete and good upon the strictest construction of the Muhammadan Law of Musha; *Nawab Umjad Ally v. Mohumdee Begum* (1867) 11 M. I. A. 517 at p. 547. As for the condition, the only doubt as to its validity which could arise lies in the fact that it may be said to be in respect of the future produce or income, not itself in existence at the time: *Amtul Nissa v. Mir Nurudin* (1896) I. L. R.

1916.

TAVAKAL-
BHAI
v.
IMATIYAJ
BEGAM.

1916.

TAVAKAL-
BHAI
v.
IMATIYAJ
BEGAM.

22 Bom. 489. Even without extending, however, to portions of the doctrine of Hiba, the remarks of their Lordships of the Privy Council on the doctrine of Musha and its inadaptability to a progressive state of society, as stated in the case of *Sheikh Muhammad Muntaz v. Zubaida Jan* (1889) 16 I. A. 205, gifts by Muhammadans of a right to receive future revenues of an existing property have been upheld in subsequent cases in India upon the analogy of shares of a trading company: *Ahmad-ud-din v. Ilahi Bakhsh* (1912) I. L. R. 34 All. 465; *Lali Jan v. Muhammad Shafi Khan* (1912) I. L. R. 34 All. 478, the latter being the case of a deed more analogous to the present than the one in the Bombay case cited above. The deed and the condition are, therefore, both valid, and the appellant's rights to the maintenance amount of Rs. 40 a year from the respondent No. 1, so long as he was in possession of the property, hardly admit of doubt."

The defendant No. 2 preferred a second appeal.

B. N. Bhajekar, for the appellant.

S. R. Bakhale, for the respondent.

SCOTT, C. J.:—By a document dated the 5th of August 1889, one Umrao Bibi purported to make a gift in favour of three persons, Mirza Vazir Beg, Imatiyaj Begum and Chaggan Bibi, of certain Inam lands. She stated that "the lands have been given to you three as gifts. All my rights of ownership are transferred to you. The Vahiwat or management of the lands should be made by one of you three, namely Vazir Beg, and after paying Government dues, Rs. 40 should be paid out of the residue of the income annually to Imatiyaj Begum, and the remainder should be divided equally between Mirza Vazir Beg and Chaggan Bibi. Mirza Vazir Beg should have Vahiwat and give income according to their shares to the two. They have no right of claiming division of the lands from Mirza Beg, but only a right of claiming income every year."

Mirza Beg's interest in the property has now passed to the second defendant who contends that the deed of gift in so far as it conferred benefits on the two women mentioned therein is void, and that he is absolutely

entitled. This suit is brought by Imatiyaj Begum to enforce her rights under the deed of gift.

The learned Judge of the lower appellate Court has held, upon the authority of *Nawab Umjad Ally Khan v. Mussumat Mohumdee Begum*,⁽¹⁾ that the gift is good and complete under the Mahomedan Law, and that upon the authority of *Lali Jan v. Muhammad Shafi Khan*⁽²⁾ the deed can be supported in favour of the plaintiff. The last mentioned case is very similar to the present, being a gift in favour of an individual, subject to a condition of payment of one-third of the income to another individual. A suit by the last named beneficiary was brought against the assignee of the other donee. The learned Judges of the Allahabad High Court held that the conclusion of the trial Judge in favour of the donee of one-third was supported by the decision of the Privy Council in *Nawab Umjad Ally Khan v. Mussumat Mohumdee Begum*,⁽³⁾ and that though that was a case between Shias, the rule was considered as applying equally to Shias and Sunnis. The case here is between Sunnis.

It is contended on behalf of the appellant that this Court must follow the ruling in *Amtul Nissa v. Mir Nurudin*.⁽⁴⁾ That, however, was a case distinguishable from the present. A Mahomedan there executed a deed of gift in favour of his wife by which he agreed to give her and her heirs in perpetuity a sum of Rs. 4,000 per annum out of his undivided share in certain Jaghir villages which he had inherited from his father, and it was held that the deed of gift was invalid, as it was a gift in effect of a portion of the future revenues of the villages to the extent of Rs. 4,000 per annum. In the present case Mirza Vazir Beg

1916.

TAVAKAL
BHAI
v.
IMATIYAJ
BEGUM.

⁽¹⁾ (1867) 11 Moo. I. A. 517.

⁽²⁾ (1912) 34 All. 478.

⁽³⁾ (1896) 22 Bom. 489.

1916.

TAVAKAL-
BHAI
v.
IMATIYAJ
BEGAM.

accepted the lands, the subject of the gift from Umrao Bibi, and took the benefit of one moiety of the residue of the income on the condition that he would pay a specified annual sum to the present plaintiff, and a moiety of the residue of the income to Chaggan Bibi. That was the condition upon which he took the property, and that was the obligation attaching to the property in his hands or in the hands of those claiming under him with notice. The decision of the Privy Council in *Nawab Umjad Ally Khan v. Mussamat Mohumdee Begum*⁽¹⁾ shows that the Courts should enforce obligations in the nature of trust against persons in possession of property, even though they be Mahomedans, and it is shown clearly by Mr. Faiz Tyabji in his comments upon that decision in paragraph 408 of his book on Mahomedan Law that the conclusion of the Privy Council was entirely in accord with the views of the Prophet. The passage from the Koran cited by Mr. Tyabji is as follows:—"It is of no avail that ye turn your faces (in prayer) towards the East and the West, but righteousness is in...those who perform their engagements in which they have engaged...these are the true and these are the pious." For these reasons we affirm the decree of the lower appellate Court and dismiss the appeal with costs.

Decree confirmed.

J. G. R.

⁽¹⁾ (1867) 11 Moo. I. A. 517.