

In the High Court of Judicature
at Bombay.

O. O. C. J.
—

Suit No. 729 of 1905.

Haji Bibi Widow Plaintiff
vs.

M. M. Sir Sultan Mahomed } Defendants.
Shah Aga Khan & others }

—
24th March 1908.

Coram: Russell J. C. J.

Judgment.— I have taken
time to consider the application
made by the Advocate General for
the 5th Defendant Shamsudin Shah,
supported as he was by Mr. Branson
and

(2.) and Mr. Padshah for the other Defendants whom they represented, by which I was asked now to hold that all the evidence cognate to the question of the Aga Khan's being an Ashuassari should be held to be irrelevant. I took time to consider this point because it required to my mind a very grave consideration indeed.

It will be remembered that sometime ago during the progress of this case, when I saw what the object of the Plaintiff was in leading evidence with regard to this question, I pointed out to the Plaintiff

Courts

(3.)
counsel paras 1 and 2 of the Plaintiff
and suggested to him the necessity
as it appeared to me of amending
those paras. if he intended to
insist upon this question being
gone into. He, however, declined
to accede to that suggestion, and
the case now put forward on the
part of the Plaintiff is that those
paras. are ~~what~~ is said to be a
mistake. When I made that sug-
gestion, I certainly expected - I
will not say I hoped - but I
certainly expected that objec-
tion would then be raised
on behalf of the Defendants
to this question being gone
into

(4)
into. But no objection was then
taken, and it then occurred to
me, as was confirmed by what
fell from Mr. Inverarity yester-
day, that Defendant 1 deliberately
did not intend to raise any ob-
jection to this evidence being gone
into and that Defendant 1
was determined that the case
should be thrashed out to the
bitter end. From what fell
from Mr. Inverarity yesterday,
it appears to me that my idea
then was ^{or} ~~the~~ correct one.

As regards the other
Defendants, however, no ob-
jection

jection was raised then, and it
 may or may not be that the
 objection is raised now in con-
 sequence of the length this trial
 is assuming and the consequent
 expenses. However that may be,
 it appears to me that I am
 unable to accede to the Ad-
 vocate General's and other Counsel's
 suggestion at the present stage
 of the proceedings because in
 the first place to do so would
 be to put the 1st Defendant
 in a position in which to my
 mind I would ^{not} be justified in
 putting him. That position would
 be this, that various allegations
 having been made ^{with out objection in his favor} with regard
 to

(6.) To his position as described in paras.
1 and 2 of the Plaintiff's ^{for rule} to hold ^{that} ^{no further evidence is to be given on this particular point} that
all the evidence that has already
been given on this point is irrelevant
would be to prevent him from
meeting the case that has been
~~made~~ sought to be made ^{even}
^{even to the extent of going further than the evidence} although that case may be
^{on the facts of the particular case not have been made} strictly speaking, irrelevant to
the proceedings. That is one
objection to my mind.

The next objection
to my mind is that to ac-
cede to the Advocate General's
request might be doing in-
justice - possibly great injustice -

to

(7.)
to the Plaintiff. The Plaintiff has
been allowed to go into this
question. As I understand, she
may have further evidence
upon the point. She may have
evidence for all I know by which
this question may become a
relevant question in the case.

~~When~~ We know that he has
already tendered a book
to support this case and
whether that book is ad-
missible or not hereafter
I cannot say. The position
with regard to the Plaintiff
would be this that she would

(8.) go to another Court and say:

"I had further evidence to support the case which I was allowed to put forward before, but in the middle of my case I was not allowed to give that evidence."

Then with regard to the other Defendants, to accede to this request might be doing a very serious injury to them and to Defendant 1, because it might be said - one knows how these things are said in this country - and probably
it

that they have no interest in the evidence given (7)
it might be said on behalf of
the Defendant who are allied
with the Aga Khan - that they
were so frightened by the
suggestion as to his being
Ashraf that they - other
Defendants than Defendant 1 -
endeavoured to stop any
further evidence being given,
and of course it is well-
known that they were acting
on behalf of and may be
probably at the instigation
of Defendant 1.

It appears to me,
therefore, although I confess

(10.)

I should like this case shortened
as much as possible specially
when one knows of the inordinate
expenses the parties are put to,
I regret to say I cannot
accede to this request.

Whether the Defendants
who support the Advocate
General should not come
to some arrangement - so as
to appear by the same Counsel
is a matter with which I have
nothing to do. It is for them
to arrange between themselves.
I am afraid I must
allow

(11.)

allow the evidence ^{must} to be con-
tinued.

W. S. Souza,
Shorthand Writer,
High Court, Oj.
28-3-08.

High Court
Bombay

O. O. C. J.
—

Suit No. 729 of 1908

Haji Bibi Widow.....

vs.

H. H. Sir Sultan Aka-
bomed Shah Aga Khan
and others.....

Oral Judgment
livered by Russe
Ag. C. J. on the
24th March 1908

Approved by Justice

L.R.R.

30.3.08.