

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mustabshara Begum v. Syed Mehdi Hossein Khan, from the High Court of Judicature at Fort William in Bengal; delivered 14th November 1899.*

Present at the Hearing :

LORD WATSON.

LORD HOBHOUSE.

SIR RICHARD COUCH.

SIR EDWARD FRY.

[*Delivered by Sir Richard Couch.*]

The Appellant and Respondent who are Mahomedans were married on the 5th April 1888 and on the 9th March 1893 a suit was brought by the Appellant against the Respondent in which she claimed Rs. 1,25,000 for dower due to her, Rs. 4,500 on account of maintenance allowance, and Rs. 57,235 the value of ornaments belonging to her in the hands of the Respondent. The latter in his defence alleged that the amount of dower, the number and value of ornaments and the amount of maintenance claimed by the Plaintiff were wholly incorrect and false and that at the time of the marriage the amount of dower was fixed at Rs. 20,000 and five gold mohurs of the current coin. The suit was heard by the Third Subordinate Judge of Patna who made a decree in the Plaintiff's favour for the whole of her claim. On appeal to the High Court that was set aside and a decree was made that the Plaintiff was entitled to Rs. 20,150 as her dower and to Rs. 4,500 as the maintenance allowance due to her from the Defendant with

interest from the date of suit, and as to the rest of her claim the suit was dismissed. The present Appeal is from that decree.

The first question to be determined is what was the amount of the dower fixed at the marriage. Upon this the evidence for the Plaintiff is entirely oral. The first witness on this subject is Syed Reza Hossein who was examined by commission at Aorla, Zillah Bareilly where he resided. He is one of the Syeds of Barahar and Mir Amir Hossein the father of the Plaintiff is also one of them. Mir Amir Hossein is his father's sister's son and his mother's paternal house was at Aorla. He was present at the marriage and he said that Moulvi Ali Mahomed was the wakil on behalf of the bridegroom and Syed Ghairat Ali was the wakil of the bride, that the dower was Rs. 1,25,000 and five gold mohurs, and that the customary dower in the paternal and maternal family of the Plaintiff was Rs. 1,25,000, the Plaintiff's mother's dower was Rs. 1,25,000 and five gold mohurs, Amir Hossein's sister's was Rs. 1,25,000 and his was the same. He described his occupation as zemindari and said he paid Rs. 550 annually to the Government. The next witness was Abdool Latif examined by commission at Moradabad and describing his occupation as zemindari and service. He said he attended the marriage ceremony, Moulvi Ali Mahomed was the wakil on behalf of the bridegroom, he did not remember the name of the wakil of the bride, the amount of dower was fixed at Rs. 1,25,000 and five gold mohurs. He said he got Rs. 50 a month from Moulvi Ibrahim Ali as pay and had three villages the net income of which was Rs. 800 annually. Tafazzul Hossein a landowner also examined by commission at Moradabad said he was present at the marriage, that the dower was fixed at Rs. 1,25,000 and five gold mohurs

payable on demand, there was a moulvi who was the vakil on behalf of the bridegroom whose name he did not remember and Moulvi Ghairat Ali was the vakil of the bride. He was invited to attend the marriage ceremony by Amir Hossein. Another Syed Reza Hossein also examined by commission at Moradabad said he was invited and attended the marriage ceremony, that a person called Moulvi whose name he did not know was the vakil of the bridegroom and a person named Moulvi Ghairat Ali was the vakil of the bride, he heard his name. He said his occupation was a landowner and his net annual income of landed property, including his brother's share, was Rs. 900. Syed Mehdi Ali Khan examined by commission at Janset, Zillah Mozuffernuggur where he resided is an honorary magistrate and a grand nephew of Amir Hossein. He said he was present at the marriage, that Ghairat Ali was the vakil of the bride and the dower was fixed at Rs. 125,000 and five gold mohurs. He said he belongs to a family of which two were Prime Ministers of the Kings of Delhi and he pays Rs. 50,000 annually to the Government as revenue. He also said that "no Kazi comes to read nika among us in this part of the country and no Kazi was present at the time of the Plaintiff's nika." Mahomed Hassan examined by commission at Saharunpore married a sister of Amir Hossein. He said he and Amir Hossein are Barhan Syeds, that he was present at the marriage. Ghairat Ali was the vakil of the Plaintiff and the dower was fixed at Rs. 1,25,000 and five gold mohurs, this amount of dower is the customary amount in the Plaintiff's family, the dower of his wife and the other sisters of Amir Hossein was the same amount. On cross-examination he said that his profit as a landowner might be equal to Rs. 189 per annum and he had a saving of Rs. 200 and that he was

married more than 40 years ago. He did not say when his wife's sisters were married but it was not far removed in time from his marriage. Another Reza Hossein son of Jaffer Hossein also examined by commission at Janset a relation of Amir Hossein said he was present at the marriage, that Ghairat Ali was the vakil of the bride and the dower was fixed at Rs. 1,25,000 and five gold mohurs and he did not hear the name of Gudda Hossein. Sadat Ali examined by commission who described himself as a cultivator of land at an annual rent of Rs. 14 said he attended at the marriage. Mahomed Ali Khan examined by commission said he was a relation of Amir Hossein and was present at the marriage. Moulvi Ghairat was the vakil of the bride and the dower was fixed at Rs. 1,25,000 and five gold mohurs. Mahmud Hassan examined by commission said he is a mohurrir in the Tehsil Department and one of the Syeds of Barhan, Amir Hossein is also a Barhan Syed and his wife's brother, the dower of his the witness' wife was Rs. 1,25,000 and five gold mohurs, that his elder brother was married to one of the sisters of Amir Hossein, the dower of his wife was the same and that is the customary dower prevailing in the family of Amir Hossein, Amir Hossein is married to the daughter of the paternal uncle of the witness. Nasar Hossein examined by commission at Meerut said that his father and Amir Hossein are cousins, that he was present at the marriage and the dower was fixed at Rs. 1,25,000 and five gold mohurs. He said his annual income is Rs. 1,800 out of which he has to pay about Rs. 1,000 for Government revenue. It appears in the Record (pp. 207, 311) that Amir Hossein made a deposition on the 26th April 1894 in support of an application to examine a woman named Kamrup by commission, but he did not appear as a witness at the hearing of the suit and

no explanation of his absence was given. It is a remarkable omission in the Plaintiff's evidence and the importance of it will appear when the evidence for the Defendant is stated. The Plaintiff has in her plaint claimed a large amount for dower basing the claim upon the practice obtaining in her family and the circumstances and position of both parties to the marriage and the rate of dower prevalent in the families of both. Before noticing the evidence which was given for the Defendant it will be well to consider what weight should be given to this evidence for the Plaintiff not supported by any documentary evidence and mostly of persons who were not examined before the Judge. The instances given of Rs. 1,25,000 being the customary dower in the Plaintiff's family relate to marriages contracted forty years ago when it is apparent that the family occupied a higher position than it does now. The Subordinate Judge who appears not unnaturally to have felt much sympathy for the Plaintiff after mentioning the names of the witnesses whose evidence has been noticed says "The Plaintiff admittedly belongs to a respectable and highly descended family; she is really poor but still is proud of her lineage. The Defendant is son of a wealthy and rich Nawab so the poverty is on one side and the wealth is on the other. Such status and position of the parties made this marriage a peculiar one and therefore though the Plaintiff was poor all brothers relatives and friends of the Plaintiff's father joined this marriage ceremony and were present there at the time when the Plaintiff's nika took place." It may be that the feeling thus alluded to has had some influence on the evidence given in the suit by the Plaintiff's relatives. There is not the slightest documentary evidence in support of this alleged

customary dower and it has not been said that it was ever paid. Their Lordships doubt whether if no evidence had been given on the Defendant's part there would be sufficient to justify a decree in the Plaintiff's favour for the dower claimed.

The evidence for the Defendant has now to be considered. Mahomed Akber Ali Khan his younger brother said he was present at the marriage. Moulvi Gudda Hossein was the vakil on behalf of the bride and Moulvi Ali Mahomed was the vakil for his brother, the dower was fixed at Rs. 20,000 and five gold mohurs of the current coin. Syed Ali Mahomed the next witness said he went with the Respondent at the request of his father Lutf Ali Khan to read the nika, he was vakil-bin-nika on behalf of the bridegroom. Gudda Hossein was the vakil on behalf of the bride, Ghairat Ali was not the vakil on her behalf. There were no witnesses with the vakil of the bride as it is not required under the Shia law, the dower was settled at Rs. 20,000 and five gold mohurs, no one by the name of Syed Ghairat Ali told him that the dower was to be Rs. 1,25,000 and five gold mohurs. In his cross-examination he said that he neither saw nor heard of any Kazi being present at the time of the marriage. Gudda Hossein who said his name is Syed Zaki Hossein *alias* Gudda Hossein deposed that he went from Patna to Teshang at the request of the Respondent to perform the marriage ceremony, he was the vakil-bin-nika on behalf of the Plaintiff, Ali Mahomed went with him, he was the vakil of the bridegroom, when he arrived at Teshang one Mir Abool Hasan who was the go-between in this marriage came to him and told him that Mir Amir Hossein father of the bride requested him to be the vakil-bin-nika on behalf of the bride, he did not see Amir

Hossein, he asked Abool Hasan what amount of dower had been settled and he said it was Rs. 20,000 of current coin and five gold mohurs of current coin. He then described his going to the zenana and obtaining the bride's consent. In cross-examination he said that according to the Shia law the presence of the Kazi is not necessary, he did not see any Kazi present at the time of the marriage, he did not know if any person of the name of Ghairat Ali was there. Reaz Ali deposed that he was a Kazi by occupation and this service had been in his family from time immemorial, he officiated at the marriages which took place in Teshang, the marriages at which he or his naibs officiate were recorded in his register and it never happens that he or his naib is not present at the time of nika, he was acquainted with Mir Amir Hossein, he arrived when the marriage was being performed, when he arrived Ali Mahomed had stood up, he saw Amir Hossein and enquired of him and he told him that the dower was fixed at Rs. 20,000 and five gold mohurs, on his statement he wrote the description in the register, he enquired from Amir Hossein the names of the vakils for the bride and bridegroom. In cross-examination he said he got an income of Rs. 2,500 or 3,000 from the nika khani, he received a large amount on each marriage that took place among the Syeds:—sometimes Rs. 10 and Rs. 15 per nika, he receives Rs. 1·4 from the general public and in case of second marriage Rs. 3 or more, the register begins in June 1881, it was begun by his brother Fazal Karim who had made an application in the Court of the District Judge of Saharunpore, he could not cite any rule or order under which he keeps the register, he did not receive any written order to keep it, he keeps it of his own accord, he has recorded nikas and

dower for this reason, that he is generally called upon to give evidence in lawsuits and the nikas and dower are asked. In further cross-examination he said he received his nika khani fee, Rs. 10 from the hands of Abool Hasan he only learnt from Amir Hossein that the dower was fixed at Rs. 20,000 he had no other talk with him. The register was produced by the witness. It contained entries of 1,250 marriages and under the date of 5th April 1888 there is an entry of this marriage in which the name "Gudda Hossein" appears in the column headed "Name of the vakil of the Shia sect," the name "Syed Mahomed Majtahid" in the column headed "Name of witnesses of the Shia sect," and in the column headed "Amount of dower" there is "20,000 and five gold mohurs." In other parts of the register there are entries under the corresponding columns, showing that it was not unusual for the Kazi to be present at a Shia marriage although his presence might not be necessary. He evidently had an interest in attending at such marriages and it might often be thought desirable to have the marriage entered in his register. As he does not take any part in the marriage ceremony it is possible that the witnesses who said that no Kazi was present may not have observed him. The Subordinate Judge appears to their Lordships to have dealt unfairly with this witness and with the register and to have used language (Rec. p. 282) which ought not to have been used. The learned Judges of the High Court say in their judgment that they have examined the book and "are not prepared to endorse" his statements and further on they say "we are of opinion that the grounds on which the Subordinate Judge has rejected the evidence of Kazi Reaz Ali and his register are not sound or sufficient and that his statement that he attended soon after the marriage and ascertained



“ the particulars as recorded in the register from  
“ Amir Hossein ought to be believed the more  
“ so as Amir Hossein has not ventured into the  
“ witness box to contradict him.”

Their Lordships have felt a difficulty with regard to the evidence for the Plaintiff that Ghairat Ali was her vakil. He is dead. It is not possible to reconcile this evidence with that of Gudda Hossein and the entry of his name in the register unless it is supposed that Reaz Ali has made a mistake in the name. If he has it would not affect his evidence of the amount of the dower which he said he learnt from Amir Hossein and also the names of the vakils. Upon the whole evidence their Lordships have come to the same conclusion as the High Court that the dower was fixed at Rs. 20,000 and five gold mohurs.

With regard to the ornaments their Lordships are of opinion that the evidence about them is not sufficient to support the decree of the Subordinate Judge. This part of the claim has been entirely disallowed by the High Court. Their Lordships concur with it in the view which the learned Judges have taken of the evidence upon it. It is not necessary to notice that evidence in detail as at the hearing of the Appeal no argument upon it was addressed to their Lordships and it was not referred to. The amount of the dower was the only question which was argued. Their Lordships will therefore humbly advise Her Majesty to affirm the decree of the High Court and dismiss the Appeal. The Appellant will pay the costs.

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