

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Azima Bibi, since deceased (now represented by Dewan Amir Hossein Khan and another), and others, v. Munshi Shamalanand, from the High Court of Judicature at Fort William in Bengal (P.C. Appeal No. 22 of 1910, Bengal Appeal No. 40 of 1906); delivered the 26th November 1912.*

---

PRESENT AT THE HEARING :  
LORD MACNAGHTEN.  
LORD MOULTON.  
SIR JOHN EDGE.  
MR. AMEER ALI.

[DELIVERED BY LORD MACNAGHTEN.]

---

This Appeal was heard *ex parte*.

The Appellants are the female members of a Mohammedan family which in matters of worship have adopted the Hindu religion. There is no evidence that there is any custom in the family by which the Mohammedan law in regard to the descent of property has been altered or varied.

The Respondent is a pleader of some standing. He took a mortgage of ancestral property from the male members of the family. He was under the impression that the Hindu law of descent prevailed in the family, and that the female members had no proprietary interest. He made no inquiry of any of the female members or of their husbands. They were *purdah nashin* ladies and naturally left the management of the property in the hands of the males.

The Respondent brought this suit to enforce his security against the family property, making both the males and the females parties. The Subordinate Judge gave him a decree against the males but dismissed the suit against the females, with costs. On appeal the High Court passed a decree against the females as well as against the males, and ordered the Appellants to pay the costs of the Appeal to the High Court.

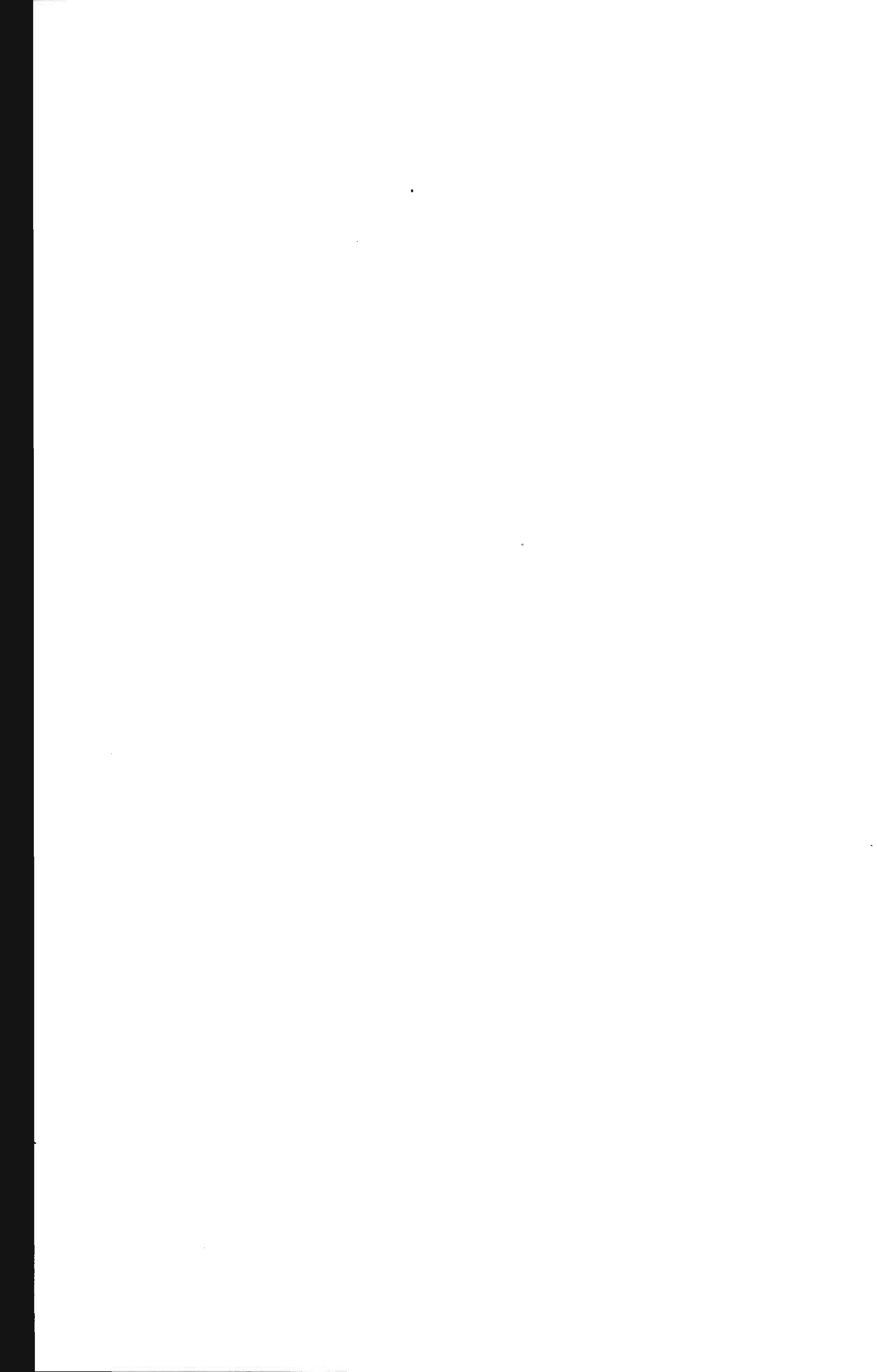
The learned Judges of the High Court held that the male members "represented" the females in the transaction because the females had not actively interfered with the property, and it appeared that in other transactions the male members of the family had dealt with the family property without the active concurrence of the females. There was no proof nor, indeed, was there any suggestion, at least in the evidence, that the Appellants or any of them had misled the Respondent, either by word or by conduct.

In their Lordships' opinion the decree of the High Court is against all principle and authority.

Their Lordships will therefore humbly advise His Majesty that the decree of the High Court should be discharged with costs and that the decree of the Subordinate Judge should be restored.

The Respondent will pay the costs of the Appeal.

---



In the Privy Council.

---

AZIMA BIBI, SINCE DECEASED (NOW  
REPRESENTED BY DEWAN AMIR  
HOSEIN KHAN AND ANOTHER),  
AND OTHERS,

*v.*

MUNSHI SHAMALANAND.

---

DELIVERED BY LORD MACNAGHTEN.

LONDON:  
PRINTED BY EYRE AND SPOTTISWOODE, LTD.,  
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1912.