

Privy Council Appeal No. 44 of 1918.

Allahabad Appeal No. 32 of 1915.

Musammat Hafizan Bibi - - - - - *Appellant*

v.

Musammat Suba Bibi and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 20TH DECEMBER, 1922.

Present at the Hearing :

LORD BUCKMASTER.

LORD PHILLIMORE.

SIR JOHN EDGE.

SIR LAWRENCE JENKINS.

LORD SALVESEN.

[*Delivered by* LORD SALVESEN.]

In this suit the appellant sued for payment of Rs. 75,000 as the amount of the dower debt due by the heirs of her late husband, Mujib Ullah. The latter died in 1909, and the present suit was commenced in April, 1912. The appellant was married about thirty-six years before the date of suit and had lived with her husband till his death. Her allegation was that at the time of the marriage an agreement was made on her behalf with her husband that her dower was to be a lakh of rupees. As she had succeeded to one-fourth of his estate the demand was correspondingly restricted.

The Subordinate Judge held on a consideration of the evidence led before him that the appellant had established her case, but his judgment was reversed by the High Court, who gave decree in favour of the appellant for three-fourths of Rs. 107, *i.e.*, for Rs. 80,400, and otherwise dismissed her claim. The sum of Rs. 107 represents the so-called "fatmi" dower, or the legal

minimum to which the widow of a Mohammedan is entitled. No question was raised as to the amount of the "fatmi" dower if this is all to which the appellant is entitled.

The issue was thus entirely one of fact, viz., whether the appellant had proved the agreement which she alleged. She adduced ten witnesses in support of her case, of whom the Subordinate Judge held two to be unreliable, but as regards the others he considered them respectable and worthy of credit. The respondents adduced six witnesses, all of whom the Subordinate Judge regarded as unreliable, and whom therefore he did not believe. Their story was that at the time of the marriage the dower was settled to be "fatimai" or "fatmi" dower.

The High Court proceeded on the assumption that the evidence for the defence was interested and unreliable, but on an examination of the evidence led on behalf of the appellant held that she had failed to prove that her dower was fixed at one lakh of rupees at the time of her marriage with Mujib Ullah. This indeed was the main issue of fact which the appellant sought to establish, although in the course of the trial a mass of conflicting statements as to the social position of the appellant's family and the customary dower of female members was elicited from the witnesses examined on both sides. The materiality of this evidence if an agreement were clearly proved is not obvious, but, on the other hand, it afforded some test of the reliability of the witnesses on whom the appellant chiefly relied if the conclusion upon it was unfavourable to her contentions.

When the evidence was led thirty-six years had elapsed since the date of the marriage and the verbal agreement relied on. There was admittedly no documentary evidence, and the appellant's case came thus to rest entirely on the recollection of persons who were present at the marriage. In such circumstances the oral evidence of an agreement must be clear and convincing in order to establish a claim against the estate of the man who is said to have been a party to it. The Judges of the High Court have pointed out numerous matters on which the appellant's witnesses gave evidence that was demonstrably false, and they accordingly reached the conclusion that their evidence in support of the allegation that the dower was fixed at one lakh was unreliable and ought to be rejected.

It would serve no good purpose to recapitulate in detail the grounds on which the High Court reached this conclusion. It will be sufficient to indicate generally their Lordships' own conclusions on the facts in controversy.

The marriage between the appellant and Mujib Ullah was a love match. The appellant was at the time a beautiful girl of eleven or twelve years, while Mujib Ullah had already reached the comparatively mature age of twenty-five. He was fond of hunting, and on one of his expeditions saw the appellant and fell in love with her. He kept the marriage a secret from his elder brother, the head of the family, but a good many of his relatives were present at it. The celebration was attended by many

guests, variously estimated at 100 to 500 persons. Had the appellant been a member of her husband's family, in which the customary dower of females is proved to have been a lakh of rupees, or had she been of equal social standing, there would have been a strong probability that her people would have stipulated for a similar dower before consenting to the marriage. The truth, however, appears to have been that while her father had at one time had some interest in landed property, it had been confiscated owing to the part he had taken in the Mutiny, and both he and his sons were in very reduced circumstances. A good many of the appellant's witnesses testified to their belief that they did a considerable business (very variously estimated) in grain and as money-lenders, but they are all open to the observation that they had very inadequate means of knowledge. A striking feature of the case is that the appellant's mother and two brothers, who are all alive (the eldest brother having alone died), were not called as witnesses. On the matter of their social position, and especially as to their financial circumstances, they alone were in a position to give definite information, which might have been borne out or checked by reference to accounts or other documentary evidence. No evidence was led, apart from the appellant's own statement in regard to a maternal aunt, as to what was the customary dower of females of the appellant's family. It was argued that none was available, as the appellant had no sisters and no other female relatives whom she knew. Her ignorance, however, of other members of her family is commented on by the Judges of the High Court, and certainly, if it be real, it suggests that the social importance of her family was much below that of her husband's, which is the conclusion that their Lordships have arrived at on the other evidence in the case.

Granting all this, there is no inherent improbability that the appellant's husband, infatuated as he seems to have been with her, might not have agreed to so large a dower as a lakh of rupees if her relatives had insisted on this as a condition of the marriage. Of any such insistence there is no trace in the evidence, and all the persons who took part in the actual celebration or in arranging the amount of her dower—the kazi, the vakil and the witnesses—are all dead. Those who give evidence in the case were merely guests who had no special interest in the matters to which they depose and whose evidence in chief is singularly bald and devoid of detail. Under cross-examination they made such divergent statements as seriously to impair their reliability. Thus, to add only one instance to the many to which the High Court Judges refer, two of the appellant's witnesses assert that Nasrat Ullah (the elder brother of the appellant's husband) was present at the marriage, although if there is one thing certain in the case it is that the marriage had been kept secret from him, as the brothers were on bad terms. On the whole, therefore, their Lordships are of opinion that the High Court reached a correct decision in holding that the appellant had failed to prove the agreement on which her claim was based, and they will humbly advise His Majesty that the appeal be dismissed with costs.

In the Privy Council.

MUSAMMAT HAFIZAN BIBI

v.

MUSAMMAT SUBA BIBI AND OTHERS.

DELIVERED BY LORD SALYESSEN.

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