

(1877) 08 AHC CK 0001

Allahabad High Court

Case No: None

Sugra Bibi

APPELLANT

Vs

Masuma Bibi

RESPONDENT

Date of Decision: Aug. 27, 1877

Citation: (1880) ILR (All) 573

Hon'ble Judges: Turner, J; Spankie, J; Pearson, J

Bench: Full Bench

Judgement

Pearson, J.

The first two grounds of the appeal appear to be incontrovertible. The plaintiff is doubtless entitled to the whole of the dower which her late husband agreed to give her, and which was fixed not in reference to his means at the time of marriage, but to the value which she possessed in the matrimonial market, that value being mainly determined by the local position and traditions, the surroundings and antecedents of her family. The contract cannot be set aside or treated as a nullity because he was comparatively poor when he married, or has not left assets sufficient to pay the debt, but on the contrary may be enforced so far as is possible. But in this instance it happens that, if a dower of Rs. 51,000 had not been agreed to by him, she would have been entitled to a dower of that amount, because such an amount has been customarily fixed as dower for ladies belonging to the family of which she is a member. Her claim is maintainable irrespective of any contract on the part of her husband, but I nevertheless allow in full the third ground of the appeal, and would only add that, as the estate left by Tasadduk Husain is probably not worth Rs. 5,000, it was wholly needless for the plaintiff to have falsely represented her dower as amounting to Rs. 51,000. All that she can gain would be equally gained by representing the amount to have been Rs. 5,000. There is, however, no reason to doubt that her real dower is Rs. 51,000, although she will be unable to realise more than a small portion of it.

2. With these additional remarks I adhere to my judgment of the 30th April last, and would decree the claim and this appeal with costs in all the Courts.

Turner, J.

3. However great the objections which may be taken to it, it is unquestionably the practice for Muhammadan gentlemen to settle on their wives dowers without regard to the extent of their own incomes, and when satisfactory proof is adduced that a settlement of dower has been made bona fide, a lady is entitled to enforce her claim for the whole amount, although it may be in excess of the fortune which on her marriage the husband possessed or could have been expected to acquire. No doubt when a large sum is claimed on account of dower, the lady is bound to meet the improbability suggested by the quantity of the claim, but if the evidence produced by her is sufficient to establish the claim, the Court cannot reduce her dower to an amount which it deems reasonable, nor can it refuse her a decree altogether for any sum in excess of the amount which her opponents are willing to concede her. Regard being had to the usage in this country, the dower claimed by the appellant is not preposterously large, that we could on this ground only refuse credit to her witnesses. It is true that large dowers are less common among Shias than among Sunnis but even among the former they are occasionally settled: the usage of the lady's family is perhaps more regarded than adherence to the advice of some of the doctors of the laws.

4. In the case before us, we consider the appellant's witnesses are more reliable and generally of better position in life than the witnesses called by the respondent. They have sworn, and we see no reason to doubt their evidence, that the appellant's dower was fixed at Rs. 51,000, and in corroboration of their statements on this point they also appear to be stating the truth in asserting that this dower was not in excess of the sum usually settled on ladies of the appellant's family. We would therefore decree the appeal, and, reversing the decrees of the Division Bench and of the Court of First Instance, decree the claim with costs.

Spankie, J.

5. I agree with the opinion expressed by Mr. Justice Pearson, delivered when the suit was heard by the Division Bench. It appears that there is nothing to add to it. If we believe the evidence for the plaintiff, then the dower was specified, and there was no doubt or uncertainty about it. The weight of evidence is in favour of the plaintiff's case, since the amount fixed is stated by the witnesses, members of the family and others likely to know, to be Rs. 51,000. I would, therefore, decree the appeal with costs.