

(1877) 12 AHC CK 0007

Allahabad High Court

Case No: None

Hasan Ali and Another

APPELLANT

Vs

Mehdi Husain and
Others

RESPONDENT

Date of Decision: Dec. 18, 1877

Citation: (1875) ILR (All) 533

Hon'ble Judges: Spankie, J; Oldfield, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. We may, however, observe that we should be disposed to accept the Judge's finding on the merits. Even if the plea, that Musammat Husaini was not the legal guardian of the appellants when she made the sales, was good, we think that the plea is not one to be taken in special appeal for the first time; no such objection was made below; and further it does not appear that the plaintiffs came into Court offering their shares of the ancestral debts on account of which the sales were effected.* On the contrary, they denied any necessity for sale, and seek to repudiate the transactions. But we are not satisfied that we are not within Muhammadan law in this case *Hamir Singh v. Zakia* ILR All. 57. We must look to the position of the parties, the circumstances of the case, and the facts found by the Judge. Musammat Husaini was one of the heirs of the property, and was manager on behalf of the children--her nephew and niece. Their father and mother had died, and there was no one to take care of the orphans. The father had been in straitened circumstances before his death. The debts of deceased had to be satisfied. Their discharge is a matter of necessity, and as observed in the Full Bench decision quoted above *Hamir Singh v. Zakia* ILR All. 57, the right of the heirs is connected with the estate on the sole condition of its being free from incumbrance. Musammat Husaini was in possession of the property, whatever it was, on her own account, and on behalf of the minors, and, in that character, it would seem that she could act for them. In

about five years after his death she was compelled to sell the property covered by the deeds of sale, the landed portion of which was already mortgaged for more than Rs. 3,000 to satisfy the debts and for other necessary family purposes and wants. She thus was enabled to bring up the children and maintain and marry them. Whatever she did was done openly, and the Judge has found that the consideration was duly paid, that the sales were effected to pay the ancestral debts and that they were paid to meet pressing necessity for the benefit of the minors. Under these circumstances, we agree with the lower Appellate Court that the Muhammadan law and principles of equity and justice are binding on the plaintiff's who have not in their petition of plaint assigned any reason or grounds for repudiating the act of Musammat Husaini.

2. With these observations, which go to all the pleas in appeal, we dismiss the appeal and affirm the judgment of the lower Appellate Court with costs.

-----Foot Note-----

* Pana Ali v. v. Sadik Hossein H.C.R. 1875 N.W.P. 201; Sahee Ram v. Abdul Rahman H.C.R. 1874 N.W.P. 268.