

Musammat Fatima Begum - - - - *Appellant*

*v.*

Ahmad Ali Khan and another - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 19TH FEBRUARY, 1937.

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*Present at the Hearing:*

LORD BLANESBURGH.

LORD ALNESS.

SIR JOHN WALLIS.

[*Delivered by* LORD ALNESS.]

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This is an appeal from a decree of the High Court of Judicature at Lahore, dated the 15th January, 1934, which modified and reversed a decree of the Senior Subordinate Judge of Ludhiana, dated 19th March, 1928. The appeal arises out of a suit for recovery of a dower. The principal question in issue is whether the respondents, as legal representatives of one Aftab Ali Khan, who is dead, are bound to pay a dower now aggregating Rs.36,000. The claim involves that Aftab Ali Khan was liable as a surety to pay the dower, and that his liability was transmitted on his death to the respondents.

The Trial Judge held that Aftab Ali Khan was liable to the plaintiff for payment of the dower, and accordingly passed a decree to that effect. The High Court at Lahore, on appeal, held that Aftab Ali Khan was not liable as a surety in respect of the dower. Certain other questions were dealt with in the judgments of both Courts in India, but they are no longer in issue between the parties, and need not be further referred to. Against the decree of the High Court so far as it exonerated Aftab Ali Khan and his estate from liability in respect of the dower in question, the present appeal is taken.

The facts which gave rise to the issue which now falls to be determined by the Board are as follow: On 25th April, 1903, Musummat Fatima Begum, the appellant, was married to one Nawab Samiullah Khan, and on that date a deed of marriage contract was drawn up. It was signed, *inter*

*alios*, by Samiullah Khan, and by Aftab Ali Khan, his cousin. On 25th April, 1923, Nawab Samiullah Khan died. On 12th April, 1926, the plaintiff brought the present suit, alleging that Aftab Ali Khan under the deed stood surety for payment of a dower then aggregating Rs.36,000. Other parties were also called as defendants, but Aftab Ali Khan alone defended the suit. In his written statement he denied liability to pay the sum sued for.

In the Trial Court eight issues were framed by the learned Senior Subordinate Judge, of which only one—namely the sixth—is now material. That issue was in these terms: “Did not defendant Aftab Ali Khan stand surety for the payment of the dower?” The learned Judge, on 19th March, 1928, decided that issue in favour of the plaintiff, and, as already stated, a decree to that effect was accordingly made. From that judgment and decree the present respondents, who are the legal representatives of Aftab Ali Khan, by this time deceased, appealed to the High Court of Judicature at Lahore, which on 15th January, 1934, reversed the decree of the Trial Court, in so far as it was directed against Aftab Ali Khan as a surety. Against that decree the plaintiff obtained leave to appeal to His Majesty in Council, and her counsel has now been fully heard. In the result their Lordships are satisfied that the judgment of the High Court was in the above respect well founded, and should be affirmed.

The decision of the question at issue between the parties turns upon the true construction of the marriage contract already referred to. Was Aftab Ali Khan bound under that deed as a surety to pay the dower, or was he not? That is the issue. In determining it their Lordships at once turn to the official translation of the marriage contract, to which alone, they apprehend, they can have regard. It is not a well drawn deed, but the scheme which it was intended to embody is not obscure. After setting out the *factum* of the marriage and its celebration, and mentioning that Nawab Samiullah Khan had accepted his liability to pay Rs.17,000 as prompt and Rs.34,000 as deferred dower, the deed provides (1) that, in the unhappy event of “variance” between the parties to the marriage, the husband should pay his wife Rs.60 per month; (2) that Aftab Ali Khan should pay Rs.60 a month to the wife while the marriage subsisted; (3) that one Bi Masitan should transfer Rs.30 of her pension to the appellant. Then followed a declaration, which is of the nature of a “summing up” of the preceding provisions, and on which alone in India the plaintiff’s counsel based her claim. It may, in these circumstances, be desirable to set out at length the terms of this part of this declaration. It is as follows:—“It is declared that both the aforesaid dowers, that is the prompt and the deferred, are payable in full by the man marrying as all due debts are, that he should pay the same without any deductions at the time they fall due, and that the girl married is entitled to recover the same from her husband and the surety.” Special reliance was placed by the appellant upon the last three words of the declaration,

namely "and the surety." Then followed a P.S. to the deed in these terms: "The Vakil of the girl married remitted Rs.15,000 out of the two dowers, and the remaining amount stands as a right, payable debt due from the man marrying."

Thus is the Rs.36,000 in suit ascertained.

Within the four corners of the deed so described, their Lordships, like the High Court at Lahore, are unable to find any definite or unequivocal undertaking on the part of Aftab Ali Khan to pay the dower in question. There can be no doubt, and indeed it was ultimately conceded by the appellant's counsel, that, if he is to succeed in the appeal, the *onus* rests on him of demonstrating beyond reasonable doubt the existence of such an undertaking in the deed. Their Lordships are of opinion that he has failed to do this.

The appellant's counsel placed reliance on a phrase in the earlier part of the marriage contract which reads "just as payment of the dowers of both kinds, that is, prompt and deferred, is essential and compulsory, so is it incumbent on the surety to pay the said amount every month." These words are quite inadequate, in their Lordships' view, to serve the purpose contended for by the appellant in argument. Having regard to the language employed and to its situation in the deed, the words quoted merely provide, what is not in doubt, that the surety is liable to pay the wife Rs.60 a month throughout the married life of the parties.

With regard to the words "and the surety" quoted *supra*, it must be remembered that they occur, as their Lordships have already indicated, in the "summing up" clause in the deed, where one would not expect to find a fresh and substantive obligation on the part of the surety to pay the dower, and which, in truth, as the High Court pointed out, is expressed "in a somewhat cursory manner." Their Lordships feel free to interpret that part of the deed as meaning that it is just as incumbent on the surety to pay what he has undertaken as it is on the husband to pay what he has undertaken.

Their Lordships' opinion regarding the true construction of the deed is reinforced by the consideration that, when one has regard to the P.S., which may be taken as embodying the last words of the parties on the subject matter of the contract, the liability of the husband is expressed, but the liability of the surety is not referred to. Nor can it be ignored that it is in this P.S. that the liability for a sum of Rs.36,000 now in suit is in terms defined.

Their Lordships base their decision on the simple view that, the *onus* being on the plaintiff to establish the liability of Aftab Ali Khan under the deed to pay this Rs.36,000, she has, in their Lordships' judgment, upon a careful review of the provisions of the deed, failed to discharge that *onus*. Their Lordships will, therefore, humbly advise His Majesty that the appeal should be dismissed, and that the decree of the High Court at Lahore should be affirmed. The appellant will pay the costs of the appeal.

In the Privy Council.

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MUSAMMAT FATIMA BEGUM

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AHMAD ALI KHAN AND ANOTHER

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DELIVERED BY LORD ALNESS

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