

Isubu Lebbe Marikar Hadjiar - - - - - *Appellant*

*v.*

Idroos Lebbe Marikar Hadjiar Abdul Hamid - - - - - *Respondent*

FROM

THE SUPREME COURT OF CEYLON.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 1ST JUNE, 1923.

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*Present at the Hearing :*

VISCOUNT HALDANE.

LORD PARMOOR.

LORD CARSON.

[*Delivered by VISCOUNT HALDANE.*]

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This is an appeal from a decree of the Supreme Court of Ceylon dismissing the appeal of the appellant from an order of the District Court of Colombo. The effect of the decision of the Supreme Court was to refuse to vacate an order declaring the last will and testament of one Uduma Lebbe Marikar Hadjiar Aysa Umma to be proved. The result was that probate was issued to the respondent. There was an issue fixed in the litigation, which was between the heir and the executor. That issue was very simple and it was an issue agreed to by the counsel: Is the will produced the act of the deceased Aysa Umma? That was the only question before the Court and it was shown that the will, which was executed a considerable while ago, in 1911, was executed by the testatrix before two witnesses, Mahamood Hadjiar and Mohomet Ghazi, one of whom, Mohomet Ghazi, is dead. It was also attested in the presence of a Mr. Mack, who was apparently a well-known notary of good standing in Ceylon, and apparently he had prepared the document. The witness, Mahamood Hadjiar, is still alive, and he gave evidence in the case (Mr. Mack being mentally deranged and unable to give evidence), to the effect

that Mr. Mack had read the will in English and explained it in Tamil to the testatrix, and that the testatrix was a woman of about 50 when she signed the will, and she was a sensible woman and capable of managing her own affairs. On that evidence and on the rest of the evidence that was before him the learned Judge who tried the case came to the conclusion without hesitation that the will produced was the act of Aysa Umma and that it was the natural outcome of the love and affection which she bore the respondent. It was argued before the learned Judge that this being a will made by a pardanashim lady, whose face was veiled ordinarily, in favour of the person who was executor, purporting to convey the whole property to him, the burden was very heavy upon the person setting up the will to show that the will was the deliberate act of the testatrix. The learned Judge held, whether the burden was heavy or not, that it had been discharged adequately.

The case then went on appeal to the Supreme Court and they took the same view as the District Judge. No other issue was raised before them and they concurred in the finding of the learned Judge who tried the case, that the will was properly considered and executed by the testatrix.

There is really no other point in the case. It may or may not be—it does not come before their Lordships for decision—that the testatrix had power to dispose of the whole estate, as against only a part, which according to Mohammedan law in general, is what is within the disposing power of the testatrix. If there is anything in it, on which their Lordships express no opinion, it is a question which must be determined at some subsequent stage. For the present it is enough to say that their Lordships accept the concurrent findings of the two Courts below, on the only issue stated, and it is unnecessary to do more than state that they express the opinion that on the evidence there is nothing to show that this lady was in any way misled.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.



In the Privy Council.

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ISUBU LEBBE MARIKAR HADJIAR

2.

IDROOS LEBBE MARIKAR HADJIAR ABDUL  
HAMID.

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DELIVERED BY VISCOUNT HALDANE.

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