

Musammat Hijaban and ors. Vs. Ali Sher Khan

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Court : Allahabad

Decided On : Jul-27-1921

Reported in : AIR1921All15; 64Ind.Cas.117

Judge : Walsh and ;Wallach, JJ.

Appellant : Musammat Hijaban and ors.

Respondent : Ali Sher Khan

Judgement :

1. This judgment in quite right. The question is covered by authority, not merely by authority, but by a large Bench of this Court whose mind was no doubt entrusted and led by a great Mahamadan lawyer. That is the case referred to by the learned Judge of the Court below reported as Abdul Kadir v. Salima 8 A. 149 : A.W.N. (1886) 53 : 4 Ind. Dec. (N.S.) 1119. That case has been followed with almost enthusiastic unanimity in Hamidunnessa Bibi v. Zohiruddin Sheikh 17 C. 670 : 8 Ind. Dec. (N.S.) 986. Kunhi v. Moidin 11 M. 327 : 4 Ind. Dec. (N.S.) 228 and Bai Hansa v. Abdulla 30 B. 122 : 7 Bom. L.R. 684. The only dissonant note if a Single Judge decision in the Court, which unfortunately the first Court in this case was induced to follow, namely, the case reported as Abdul Karim Khan v. Musammat Chheti 3 A.L.J. 432 : A.W.N. (1906) 136. The lower Appellate Court was quite right in thinking that it was impossible to treat that decision as having any authority in the face of the Full Bench decision. We have been referred to the criticism by a high authority, Mr. Ameer Ali, in his last book on Muhammadan Law. All we can say is that we cannot ignore the decision of our own Court on the invitation of a text book.

2. The appeal must be dismissed with costs, including in this Court fees on the higher scale.