

MANU/UP/0079/1914

Equivalent/Neutral Citation: (1914)ILR 36All268, 23Ind. Cas.600

**IN THE HIGH COURT OF ALLAHABAD**

**Decided On:** 11.03.1914

Masum Ali and Ors. **Vs.** Abdul Aziz and Ors.

**Hon'ble Judges/Coram:**

*Henry Richards, C.J. and Pramoda Charan Bannerji, J.*

**JUDGMENT**

**Henry Richards, C.J. and Pramoda Charan Bannerji, J.**

1. This appeal arises out of a suit brought by the plaintiffs against the heirs of Munshi Abdul Karim. The plaintiffs are the members of the Islam Local Agency Committee, Agra. It appears that in the year 1907 a movement was set on foot to collect money for repairing and re-constructing a mosque known as Masjid Hammam Alawardi Khan. The Local Agency Committee themselves sanctioned a subscription of Rs. 3,000; besides this amount Rs. 100 -were paid in cash at that time by Hakim Shafi-ul-lah; Rs. 500 were promised by Munshi Abdul Karim; and another sum of Rs. 3,000 was promised by Munshi Jan Mohammad. Munshi Abdul Karim was appointed treasurer. The Local Agency Committee handed over their contribution of Rs. 3,000 to Munshi Abdul Karim and he also received the donation of Rs. 100 from Hakim Shafi-ul-lah, Munshi Jan Muhammad gave a cheque for Rs. 500, dated the 12th of September, 1907. On the 29th of September, 1907, the cheque was presented for payment, but it was returned by the bank with a note that the endorsement was not regular. It was again presented on the 12th of January, 1909, when, the bank returned the cheque with a note that it was out of date, Munshi Abdul Karim died on the 20th of April, 1909. The present suit was instituted against his heirs on the 14th of April, 1910. Munshi Jan Muhammad died in May 1910. The defendants do not dispute the right of the plaintiffs to recover the sum of Rs. 3,100; they have admitted this part, of the plaintiffs' claim all along. It is admitted on both sides that nothing has been done to carry out the repairs and re-construction of a part of the mosque. Defence is, however, taken to two items, viz. the Rs. 500, represented by the cheque of Munshi Jan Muhammad and the subscription of the deceased Munshi Abdul Karim. The court of first instance granted a decree for the subscription promised by Munshi Abdul Karim, but dismissed the suit in so far as it related to the claim for Rs. 500, the subscription of Munshi Jan Muhammad, The lower appellate court granted a decree for the entire claim. It appears to us that the suit cannot be maintained in respect of either item. With regard to the subscription of Munshi Abdul Karim, this was a mere gratuitous promise on his part. Under the circumstances of the present case it is admitted that if the promise had been made by an outsider it could not have been enforced. We cannot see that it makes any difference that Munshi Abdul Karim was a himself the treasurer. There is no evidence that he ever set aside a sum of Rs. 500 to meet his promised subscription. As to the other item, viz. the amount of Munshi Jan Muhammad's cheque, we see great difficulty in holding that a suit could have been brought against Munshi Abdul Karim in respect of this cheque during his life-time. His undertaking of the office of treasurer was purely gratuitous. He might at any time have refused to go on with the work. It is said that he must be regarded as the agent of the committee, and that if he was the agent he was guilty of gross negligence and accordingly would have been liable for any loss the Committee

sustained. In our opinion Munshi Abdul Karim cannot be said to have been an agent of the committee: even if he was, it is very doubtful that he could have been held guilty of gross negligence. He had presented the cheque for payment, the mistake in the endorsement was a very natural one and the delay in re-presenting the cheque or getting a duplicate from the drawer may well be explained by the delay which took place in carrying out the proposed work. In our opinion, under the circumstances of the present case Munshi Abdul Karim could not have been sued in his life-time. It is quite clear that if no suit lay against Munshi Abdul Karim in his lifetime, no suit could be brought after his death against his heirs. The result is that we allow the appeal to this extent that we vary the decree of the court below by dismissing the claim in respect of the two items of Rs. 600 each. The appellants will get their costs of this appeal, In the court below the parties will pay and receive coats in proportion to failure and success.

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