1957 *Present :* K. D. de Silva, J., and Sinnetamby, J.

JAYAH, Appellant, *and* SAHEEDA, Respondent

S. C. 277—D. C. Colombo, 29068/M

Muslim Law—Dowry—" Kaikuli "—" Stridanum "—Assessment of evidence of intention of donor.

In regard to a dowry given by the parents of a Muslim bride the fact that the donation was designated " Kaikuli " or " Stridanum " cannot be ignored when assessing whether the donor intended to make an absolute gift to the bridegroom.

[1] *(1917) 1 K. B. at 393.* [2] *(1948) 2 All E.R. 1021.*

[3] *(1919) 21 N. L. R. 321 at 326.*

APPEAL from a judgment of the District Court, Colombo.

M. Rafeek, for the defendant-appellant.

M. I. M. Haniffa, with *S. H. Mohamed*, for the plaintiff-respondent.

Cur. adv. vult.

June 14, 1957. DE SILVA, J.—

The marriage of the plaintiff and the defendant who are Malays by race and Muslims by religion was registered on August 23, 1951—*vide* marriage certificate P1. On that occasion the plaintiff's father handed over to the defendant the husband a sum of Rs. 2,000. This amount has been entered in the marriage certificate against the item "amount of stridanum". The "thali" ceremony took place on September 29, 1951, and soon after that the defendant conducted his wife to a house at Fountain House Lane, Maradana, where he, his mother and married sister resided. The plaintiff began to complain that her mother-in-law and sister-in-law were harassing her. In January 1952, she went to reside with her parents at Padukka. Thereafter she instituted an action against the defendant to recover maintenance and obtained an order in her favour. In January 1953, the defendant divorced the plaintiff by the pronouncement of "Talak" according to Muslim law. The plaintiff instituted this action in June, 1953, to recover from the defendant (*a*) certain articles of jewellery, clothes and furniture or their value (*b*) a sum of Rs. 300 as Mahar (*c*) Rs. 151 as lying-in-expenses incurred when her child was born and (*d*) a sum of Rs. 2,000 paid by her father to the defendant as "stridanum" at the time of their marriage. The defendant filed answer admitting his liability to pay a sum of Rs. 300 as Mahar. He also admitted that certain articles of furniture belonging to the plaintiff were in his house and he expressed his willingness to return them to her. He denied the rest of the plaintiff's claim. He also stated that the sum of Rs. 2,000 was paid to him for his own use in connection with the marriage expenses and for the purchase of presents for the bride and denied his liability to return the same to the plaintiff.

At the trial the defendant admitted that the plaintiff was entitled to recover the sum of Rs. 151 as lying-in-expenses. The learned District Judge rejected the plaintiff's claim in respect of the articles of jewellery, clothes and furniture but held that the plaintiff was entitled to recover the sum of Rs. 2,000 given to the defendant as "stridanum". The defendant has appealed from that judgment.

In the marriage certificate this sum of Rs. 2,000 has been described as "stridanum". Although there is no provision in Muslim law requiring the parents of a Muslim bride to provide a dowry yet there is nothing to prevent them from doing so, if they so desire. Indeed it is customary among the Muslims of this country to give dowries to their daughters. The dowry so given falls under one of two categories, namely, Kaikuli and Stridanum. Kaikuli, properly speaking, is a marriage gift made to the

bride by her parents, and is handed to and remains in the charge of the husband under his control and management during the subsistence of the marriage and may be claimed from him by the wife or her heirs. Stridanum which is a word of Sanskrit origin means the " woman's wealth " or gift to a woman. Strictly speaking, the wife has the full control and management of the property which forms her " Stridanum " and the husband has no rights whatsoever over it. But as it was pointed out by de Sampayo J. in *Meera Saibo v. Meera Saibo* [1] " Kaikuli " and " Stridanum " being words taken over by Muslims from other systems of law are often used by them in a sense different from their original connotation. In the case referred to, de Sampayo J. observed " Whatever the intrinsic meaning of the words may be, we have to take account of the meaning which the parties themselves attached to them in this particular deed. " The relevant part of the deed which came up for consideration in that case is in the following terms :—" We (the defendants) on account of the marriage that had taken place between M. A. C. M. Meera Saibo and wife M. M. Asiatumuna of the same place and for the sum of Rs. 750, Kaikuli or dowry money, agreed to be given to Meera Saibo, and for dowry, do hereby give grant and set over to them both the property herein described as dowry ". That deed was drawn up in Tamil and the word which has been translated as " dowry " is " Seethanam " which is the Tamil derivative of the Sanskrit word " Stridanum ". It was contended by the plaintiffs in that case who were the parents of Asiatumuna who had in the meantime died without issue, that no rights passed on the deed to Meera Saibo on the ground that the lands conveyed formed " Kaikuli " and " Stridanum " property. This contention was rejected by de Sampayo J. who was associated with Wood Renton C.J. on two grounds. In the first place he said that the terms " Kaikuli " and " Seethanam " were not used in their literary sense but in entire ignorance of their true meaning. As the terms of the deed indicated a general intention to make a gift to the husband and wife it was held that Meera Saibo, the husband, became entitled to a half share of the property conveyed on that deed. In the second place it was held that a grant to two persons cannot under any circumstance be construed as a grant to only one person. The Ordinance No. 7 of 1840 and the law of evidence were regarded as being decisive on that point. This case was cited with approval by Macdonell C.J. in *Zainabu Natchia v. Usuf Mohamadu* [2] which is a case decided by a bench of 4 Judges. In that case two deeds of transfer executed by the parents of a Muslim bride in favour of the bridegroom, for payment of " Kaikuli " agreed upon, came up for consideration. It was contended on behalf of the wife that the lands conveyed on these deeds formed " Kaikuli " property and that her husband held them in trust for her. This argument was rejected on the ground that the operative part of each deed clearly conveyed an unqualified dominium in the property to the transferee even if it was conceded that the recitals indicated an intention to create a trust. A principle deducible from these decisions appears to be that where there is a conflict between the designation of the donation and the intention of the parties making the donation the intention should

[1] *(1916) 2 C. W. R. 263.* [2] *(1936) 38 N.L.R. 37.*

prevail. So that even though the property gifted is described as "Kaikuli" or "Stridanum" yet if it is otherwise clear that the real intention of the donor was to make an absolute gift to the bridegroom that intention must be given effect to. However in assessing the evidence of intention the fact that the donation has been designated "Kaikuli" or "Stridanum" cannot be ignored, because these are terms widely in use and the majority of Muslims, I take it, know what they connote. But I am unable to agree with the learned District Judge when he stated "It will be a contradiction in terms to describe a gift given to a man as 'Stridanum' ". By this dictum if he meant that in no circumstances could a gift described as "Stridanum" be construed as a gift to the bridegroom it is too wide a proposition and finds no support from the recent decisions of this Court. In appropriate cases, as I observed earlier, if it is clear that the intention of the donor was to make an absolute gift to the bridegroom the use of the word "Stridanum" to describe the gift is no bar to holding it to be a gift to the bridegroom.

In the instant case the learned District Judge after considering the evidence definitely held that the sum of Rs. 2,000 was intended by the parties to be a marriage settlement in favour of the plaintiff. He also refused to accept the evidence led on behalf of the defendant that this amount was intended as a personal gift to the defendant. I am unable to say that these findings are wrong; on the contrary there is ample evidence to support them. Accordingly I dismiss the appeal with costs.

SINNETAMBY, J.—I agree.

Appeal dismissed.