1958 *Present :* **Gunasekara, J., and Sansoni, J.**

M. C. M. SHARIFDEEN, Appellant, *and* M. S. M. RAHUMA BEEBI, Respondent

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Muslim marriage—" Cash dowry "—" Kaikuli "—" Stridanum ".

In a claim made by a Muslim wife against her husband for the repayment of *kaikuli*, it was proved that on a date prior to the marriage a deed of agreement was executed by the parties and the bride's father. In that deed the bride's father undertook to convey " as a gift absolute and irrevocable " to the husband and wife certain lands as dowry in consideration of the marriage. The deed also contained a recital (which was not a term of the agreement) according to which the husband acknowledged that he had received on the previous day a sum of Rs. 4,500 " being cash dowry in consideration of the marriage ".

Held, that the sum of Rs. 4,500 was *Kaikuli* and, therefore, repayable to the wife.

APPEAL from an order made by the Board of Quazis.

Sir Lalita Rajapakse, Q.C., with *A. M. Ameen* and *M. T. M. Sivardeen,* for the respondent-appellant.

M. Rafeek, for the petitioner-respondent.

Cur. adv. vult.

September 29, 1958. SANSONI, J.—

This is an appeal from an order made by the Board of Quazis directing a husband to pay his wife a sum of Rs. 4,500.

A marriage had been arranged between these parties, and on 21st January 1952 a deed of agreement was executed by both of them and the father of the wife. By that deed the appellant (whom I shall refer to as the husband) agreed to marry the respondent (whom I shall refer to as the wife) within eight months ; the latter's father agreed to give his daughter in marriage within that period, and he also agreed to convey " as a gift absolute and irrevocable " to the husband and the wife certain lands as dowry in consideration of that marriage. Each party further agreed to pay Rs. 5,000 as liquidated damages in the event of failure to carry out any condition of the deed.

One of the recitals in the deed contains an acknowledgment by the husband of the receipt of a sum of Rs. 4,500 " being cash dowry paid to him on the 20th day of January 1952 in consideration of the marriage ". Although this recital is not a term of the agreement, it helps us to decide the true nature of this payment.

The wife applied to the Quazi Court claiming the repayment of the sum of Rs. 4,500 which she said was paid as Kaikuli. The husband, however, contended that this sum was not repayable as it was paid to him as

Stridanum and not as Kaikuli. After hearing evidence the Quazi ordered the husband to return the sum of Rs. 4,500 to the wife. It is not clear from his order what view he took as to the nature of the payment, nor does he lay particular stress on the credibility of any of the witnesses.

The Board of Quazis in appeal rejected the argument that the payment was a *quid pro quo* for the marriage. They held that the property in the money did not pass absolutely to the husband as it was given by the bride's father to the husband as a marriage settlement and as Kaikuli. In the course of their order they say: " In our view the term 'cash dowry' in the deed could be construed to be intended by the parties to mean Kaikuli. The term Kaikuli is a concept familiar to Muslims and is generally an incident of the marriage contract. When money is given as dowry the nature of the legal transaction corresponds to the definition of Kaikuli ". I am in entire agreement with the view taken by the Board and my reasons can be set out very briefly.

At the argument before us it was not suggested that the recital in the deed did not accurately set out the nature of the payment, and when the deed is examined it will be seen that a clear distinction is drawn between the character of the transaction relating to the lands and the payment of the sum of Rs. 4,500. While the lands were to be conveyed as an absolute and irrevocable gift, the money is nowhere described as a gift to the husband but merely as a sum already paid to him as cash dowry.

Further, it has been customary—and the custom has been recognised by this Court as far back as 1871 [1] —for the bride's father to make a payment of a sum of money called Kaikuli to the bridegroom which is held by the bridegroom in trust for the bride. Kaikuli has often been described as dowry, so that the expression " cash dowry in consideration of the marriage " used in the deed is an apt description of this payment if it was made as Kaikuli.

The recital in the deed, as I have pointed out, merely refers to this sum as having been paid to the husband. This statement is consistent with the true character of Kaikuli, which is a marriage gift made to the bride by her father, and which is merely handed to her husband to be controlled and managed by him during the subsistence of the marriage—see *Meera Saibo v. Meera Saibo* [2]. There is no rule that such a gift cannot be made some time before the marriage takes place. Although more than one year elapsed in this case between the payment and the marriage, I do not see that any objection can be raised on that ground.

The omission to describe the payment as Kaikuli, and the absence of a reference to the amount of Kaikuli in the marriage certificate, therefore signify nothing.

I would dismiss this appeal with costs.

GUNASEKARA, J.—I agree.

Appeal dismissed.

[1] *(1871) Vanderstraaten 162.* [2] *(1916) 2 C. W. R. 263.*