

April 12, 1911

Present : Grenier J.

NATCHIA v. PITCHÉ.

75—C. R. Puttalam, 5,894.

Muhammadian law—Maggar—Wife may sue for it though not a party to the kaduttam deed.

Under the Muhammadian law, as soon as the marriage is consummated the right accrues to the wife to demand the *maggar* from the husband. It is not necessary that she should be a party to the *kaduttam* deed in order to entitle her to sue for the dower.

THE facts are set out in the judgment.

Savindranayagam, for the appellant.

Cur. adv. vult.

April 12, 1911. GRENIER J.—

This is an action by a Muhammadian wife against her husband for her *maggar*. The amount of the *maggar* was Rs. 150, and it was alleged in the plaint that on the occasion of the marriage between the plaintiff and the defendant the defendant promised to pay the plaintiff this sum by way of *maggar*. The amount of the *maggar* was erroneously stated in the plaint to be Rs. 200, but it is now conceded that it was not Rs. 200 but Rs. 150. The defendant in his answer admitted the marriage, corrected the averment that the *maggar* was Rs. 200 by saying that it was only Rs. 150, and alleged that the agreement to pay *maggar* depended on the amount of *kaicooly* given, and that plaintiff's father had failed to transfer certain property, namely, 12 coconut trees of the value of Rs. 20. The *maggar*, according to defendant, would be only Rs. 110. The

defendant also alleged that the plaintiff has in her possession a gold string of the value of Rs. 30 given as part of the *kaicooly*, and he claimed that the plaintiff should return the gold string to the defendant, which she refuses and neglects to do. The defendant further averred that the plaintiff was not entitled to the *maggar* as she had left the defendant, and that according to Muhammadan law and custom the defendant was entitled to Rs. 75 as compensation, or *chandy maggar*, from the plaintiff. There was a replication filed by the plaintiff, in which she submitted as a matter of law that it was not competent to the defendant to claim for her *kaicooly*, or the gold string or necklace which was given to her on the occasion of the marriage.

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Another point of law taken in the replication was that the defendant cannot claim any *chandy maggar*, inasmuch as plaintiff never refused to live with him. She expressed her willingness to live with the defendant on condition he paid her the *maggar*, which she contended was an absolute gift payable on demand. At the trial certain issues were agreed to in the following terms :—

- (1) Is the defendant entitled to plead non-payment of *kaicooly* as a defence for non-payment of *maggar* ?
- (2) Is the plaintiff in possession of a necklace worth Rs. 30, the property of defendant, as *kaicooly* ?
- (3) Has plaintiff forfeited her title to *maggar* by her conduct, and is defendant entitled to Rs. 75 as compensation ?

Now, as I have understood the term *maggar*, it is the dower that a husband gives to his wife as the price of her virginity or possession of her person, and as soon as the marriage is consummated the right accrues to the wife to demand it from him. It is not necessary that she should be a party to the *kaduttam* deed in order to entitle her to sue for the dower. *Maggar* and *kaicooly* are two different things, and, as I have understood the law on the subject, the wife never gives *kaicooly* to her husband, but it is the parents who do so. Both *maggar* and *kaicooly* form part of the wife's marriage settlement. Even if the husband has not paid the wife her *maggar* during his life time, she is entitled to claim it from his estate, and the claim would I think be a first charge on it (*Vand. Rep.*, 1869-1871, pp. 196-203). The Commissioner thought that the case could not be decided without evidence as to the custom of the Moors—on what precise point it is difficult to say—but there were two gentlemen called : Mr. Senathirajah, Crown Proctor of Puttalam, and Mohamradu Cassim Marikar, who is the head Moorman at Puttalam ; and according to the former's evidence the necklace given as *kaicooly* to the husband, and afterwards given by him as *thali* to his wife, became the wife's separate property. This witness also stated that he had never heard a claim of *chandy maggar* advanced in the District of Puttalam during the eighteen years he has been

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resident in it. The other witness stated that *chandy maggar* is in force among Muhammadans, that it is now customary to enforce it, and that in order to make *chandy maggar* payable the parties must be divorced, which is not the case here. In answer to the Commissioner, this witness stated that if a man got a necklace as *kaicooly*, and gave it to his wife as *thali*, the wife can claim it as her property, but if it was given as a present it reverts to her husband. So that if we have to regard the evidence of these two witnesses who were called to give expert evidence, then it is perfectly clear that the defendant has no claim whatever against the plaintiff, either in respect of the *kaicooly* or in respect of the *thali* that the husband gave to the plaintiff. The Commissioner appears to have disregarded all the evidence, and to have based his judgment upon what he calls a general principle of the law of universal application, that a contract cannot confer a right or liberty or duty on a third party. He held that the plaintiff has no ground of action against the defendant, but that her parents, the signatories to the *kaduttam*, were the proper people to sue.

I think he was wrong there. As I have said before, the wife is entitled to her *maggar*, and whether she signs the *kaduttam* or not she can sue her husband for it, and that is her present action against him. It was held in D. C. Galle, 54,117 (9 S. C. C., p. 22), that *maggar* takes effect from the marriage, and the wife may make an immediate demand for it, and on refusal sue the husband for it. In my experience I have never known the parents of the bride sue for *maggar* in their own right, and the reason is obvious, that something that is due to the wife incidental to her entering into close marriage relations with her husband cannot be due to any third party. I think this judgment is clearly wrong, and as I have before me all the materials necessary to decide the case, it will serve no good purpose to send it back for the finding of the Commissioner on the evidence he has recorded. I would therefore set aside the decree appealed from and order judgment to be entered for plaintiff for Rs. 150 with interest as claimed in the plaint, dismissing at the same time the defendant's claim for compensation in respect of the *chandy maggar* and the return of the necklace referred to in the answer. The appellant will have her costs of this appeal and in the Court below.

Set aside.

