1922.

Present : Ennis and Porter JJ.

HABEEBU *v.* SILVA.

300—D. C. Galle, 18,265.

Muhammadan law—Gift of land subject to long lease—Seisin delivery of possession—Lapse of time after gift—Presumption.

A Muhammadan gifted in 1891 a land which was subject to a long lease to his daughter N, who accepted the same in the deed. N died in 1897, leaving a son five years old, who subsequently transferred it to plaintiff. The defendant urged that as the donor was not in possession of the property at the time of the gift, the only way by which the seisin of the property could be proved would be to show that the donee had received the rents and profits of the property gifted, and that there was no evidence on this point.

The Court presumed in the circumstances of the cases that the rent was spent on behalf of the minor son.

"One must presume after lapse of years that everything had been done that should have been done." In the present case there is an accumulation of small details which seem to indicate that the Judge was right in coming to the conclusion that possession had been taken of the land gifted to the donee.

THE facts appear from the judgment.

Jayawardene, *K.C.* (with him *Samarawickreme* and *Cooray*), for the appellant.

E. W. Jayawardene (with him *Abdul Cader*), for the respondent.

February 21, 1922. ENNIS J.—

This is an appeal from a decree in a partition action. It appears that the boutique in question originally belonged to Packir Bawa and his wife Haniffa. The defendant claims by succession and transfer all the rights of Packir Bawa and Haniffa. The plaintiff claims under a deed of gift from Packir Bawa to his daughter Mayadu Natchia, executed on June 6, 1891, and duly accepted in the deed. Mayadu Natchia died in 1897, leaving as one of her heirs a child of five, Abdul Cader, who subsequently conveyed a share to the plaintiff, upon which the plaintiff bases his claim. The only point urged on appeal is that the deed of gift of June 6, 1891, was never acted upon. It appears that there was an endorsement on the original Crown grant, which was produced by the defendant, showing that the gift had been made. The learned Judge held that this fact, together with the fact that the deed was executed many years ago, was quite sufficient to support the presumption that the deed of gift had been acted upon. It is against this view of the case that the present appeal has been taken.

1922.

ENNIS J.

Habeebu v. Silva

It has been strongly urged that, where the donor was not in possession of property at the time of the gift, the only way by which seisin of the property could be proved would be to show that the donee had received the rents and profits of the property gifted, and it was urged in his case that there was no such evidence. We were referred to the case of *Mullick Abdool Gaffoor v. Muleka* [1] to support the contention that there must be such proof or some such proof of possession. That case itself seems to show that the Courts are reluctant to set no value on a deed of gift by the application of a rule that lands let on lease could not be made the subject of a gift unless actual possession had been given. In the present case it appears that at the time of the donation the boutique donated was under lease for sixteen years, a lease which expired in 1902; and in 1902 it would seem that Packir Bawa was dead, and the donee, Mayadu Natchia, was also dead. Neither of them, therefore, could have been called to give evidence as to how the rents and profits had been dealt with. Abdul Cader gave evidence and said that on his mother's death his grandmother took care of him and supported him, and that he had always lived in her house. In these circumstances it would seem impossible to hold that the grandmother, Haniffa, had taken the rents and profits of this land without allocating them to the maintenance of Abdul Cader. This bears out the Judge's finding that one must presume after lapse of years that everything had been done that should have been done. In the present case there is an accumulation of small details which seems to indicate that the Judge was right in coming to the conclusion that possession had been taken of the land gifted to the donee; and, in any event, it would be impossible for this Court to say that the presumption was wrong. I would accordingly dismiss the appeal, with costs.

PORTER J.—I agree.

Appeal dismissed.

[1] *10 Cal. 1112.*