

1957 *Present* : Basnayake, C.J., and Pulle, J.

SITHY RAHEEM, Appellant, and HAFEEL, Respondent

S. C. 414—D. C. Galle, X. 1,596

Muslim Marriage and Divorce Act, No. 13 of 1951—Action for recovery of mahr—Jurisdiction of District Court to hear it—Sections 47, 48, 100 (2) (d)—Retrospective effect.

An action brought in the District Court by a Muslim woman against her husband for the recovery of mahr can be proceeded with after the date on which the Muslim Marriage and Divorce Act No. 13 of 1951 came into operation if it was instituted before the Act came into operation. Such an action does not fall within the ambit of section 100 (2) (d) of the Act.

APPPEAL from an order of the District Court, Galle.

S. Nadesan, Q.C., with *M. Rafeek*, for Plaintiff-Appellant.

H. V. Perera, Q.C., with *M. L. S. Jayasekera*, for Defendant-Respondent.

April 11, 1957. BASNAYAKE, C.J.—

This is an appeal from an order of the learned District Judge dismissing, on a preliminary issue of law, the action instituted by the plaintiff, a Muslim woman, against her husband claiming the value of 100 Kalangies of gold which he had agreed to pay her as Mahr at the time of their marriage. The defendant denied his liability and pleaded that the Court had no jurisdiction to entertain the action not only because he was residing outside its territorial limits but also because sections 47 and 48 of the Muslim Marriage and Divorce Act No. 13 of 1951 excludes its jurisdiction. The latter question was taken up for trial first and the learned District Judge held that the jurisdiction of the District Court was ousted by the Act pleaded by the defendant and dismissed the plaintiff's action. He rested his decision mainly on section 100 (2) (d) of the Act, which provides that on and after the appointed date every inquiry, appeal or other proceeding under the repealed Ordinance which is pending or incomplete on the date immediately preceding the appointed date, shall, on and after that date, be carried on and completed as far as possible in accordance with the provisions of the new Act. The expression repealed Ordinance is defined (s. 100) and it means the Muslim Marriage and Divorce Registration Ordinance. This is not an action instituted under that Ordinance. It is a proceeding for the recovery of money and can in no sense be regarded as falling within the ambit of section 100 (2) (d) of the Act. Section 48 of the Muslim Marriage and Divorce Act 13 of 1951 which reads: "Subject to any special provision in that behalf contained in this Act, the jurisdiction exercisable by a Quazi under section 47 shall be exclusive and any matter falling within that jurisdiction shall not be tried or inquired into by any other court or tribunal whatsoever"—clearly excludes the jurisdiction of the District Court; but there is nothing in the Act which gives it retrospective effect and it cannot therefore apply to actions commenced in the Courts before the Act came into operation. The action was instituted on 1st February 1954 and the Act came into operation on 1st August 1954. If the Legislature intended that the Act should apply to pending actions in the District Court it would undoubtedly have said so expressly and provided machinery for the transfer of such actions from the District Court to the Quazi. For, it is settled law that, unless a statute which sets up a special tribunal contains clear and unambiguous language excluding the jurisdiction of the established Courts, it will not be construed as ousting their jurisdiction.

Section 48 or any other provision of the Act does not exclude the jurisdiction of the District Court to hear and determine this action. Learned counsel for the respondent does not seek to support the decision of the learned trial Judge. We therefore set aside the order of the District Judge and direct that the case be sent back to the District Court in order that the trial may be proceeded with.

The appellant is entitled to her costs both here and in the court below.

PULLE, J.—I agree.

Order set aside.