[HUTCHINSON, C.J. AND FISHER, ACTING J.]

HUTCHINSON, C.J. & FISHER, ACTING, J. 1906 July 2

HATIJE HANOUM MAHMOUD EFFENDI, *Plaintiff,*

v.

RATIB EFFENDI IRIKZADE, *Defendant.*

HATIJE HANOUM MAHMOUD EFFENDI, *Plaintiff,*

v.

RATIB EFFENDI IRIKZADE, *Defendant.*

FATMA HANOUM AND OTHERS, *Plaintiffs,*

v.

RATIB EFFENDI IRIKZADE, *Defendant.*

JURISDICTION—SHERI COURT—CYPRUS COURTS OF JUSTICE ORDER, 1882, ART. 21—LAW 7 of 1894, SEC. 47—"RELIGIOUS MATTER"—ADMINISTRATION OF ORPHANS' ESTATE—QUESTION ARISING AFTER CLOSE OF THE ADMINISTRATION—PROPERTY WRONGFULLY EXCLUDED FROM INVENTORY—CONCLUSIVENESS OF INVENTORY.

The District Court has jurisdiction to entertain a claim made by a Moslem orphan, whose property has been administered under the supervision of the Sheri Court, against his guardian after the termination of the guardianship in respect of property wrongfully withheld by the guardian, and not included in the inventory made by the Qadi, or the accounts rendered by the guardian.

When the accounts of a guardianship have been rendered and the guardianship closed, the functions of the Sheri Court are discharged.

The inventory made by the Qadi for the purpose of the administration of the estate of a Moslem orphan is not conclusive as to the property comprised in the estate.

SEMBLE: *the determination of the Sheri Court with reference to any particular item included in the inventory is conclusive.*

The Defendant was appointed by the Sheri Court as guardian of the Plaintiffs, the minor daughters of his deceased brother, for the purposes of administering the property inherited by them from their father. The usual inventory was made by the Qadi for the purpose of the administration of the property, and on the Plaintiffs attaining puberty the Defendant rendered an account of the property comprised in the inventory and the guardianship was closed. Subsequently the Plaintiffs sued the Defendant in the District Court in respect of certain property not included in the inventory, which they alleged belonged to them by inheritance from their father, and was wrongfully withheld by the Defendant, claiming their respective shares of the property and an account of its administration since the death of the deceased.

HELD: *that the District Court had jurisdiction to entertain the claim.*

This was an appeal from the District Court of Paphos.

The three actions were ordered by that Court to be tried together.

The Defendant in all of them was brother of Mahmoud Effendi Irikzade, who was killed in 1892, and left infant heirs,—his daughters the Plaintiffs Hatije, Safvet and Lemma, and another child Musteide since dead. The Plaintiff Fatma was Mahmoud's widow.

Immediately after Mahmoud's death an inventory of his estate was made by the Qadi; and an Ilam dated 7th May, 1892, was in evidence which in substance was as follows:—

"Whereas it has become necessary to appoint a guardian by the Sheri "Court in order to manage the affairs and preserve the property of Safvet,

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"Hatije, Lutfie and Musteide, minor daughters of Irikzade Mahmoud "Effendi . . . . Now therefore . . . this Court hereby appoints "Ratib Effendi Irikzade as guardian for the said minors until they "reach their puberty."

The children had attained puberty before the commencement of these actions.

In the first action Hatije claimed £2,560 as her share in the profits from the movable and immovable property of her deceased father Mahmoud Effendi which she alleged that the Defendant has managed without giving accounts since the 4th of March, 1892. The property was specified in the writ. Some of it was included in the inventory: the rest was not so included, and it was with this latter that the dispute between the parties was chiefly concerned.

In the second action the same Plaintiff sued for an account of her share in the property, other than that mentioned in the first action, which Mahmoud left and which the Defendant "managed fraudulently as guardian since 1892."

In the third action Safvet and Lemma, together with Mahmoud's widow Fatma, claimed from the same Defendant an account of their share in the movable and immovable property of Mahmoud "which was managed by the Defendant as the Plaintiffs' guardian from the 4th of March, 1892, till now."

The Defendant's defence against his three nieces was, first, that he rendered his accounts of his guardianship to the Sheri Court in 1899, and that the examination of his accounts was a matter for the Sheri Court and outside the jurisdiction of the District Court; and secondly, that the inventory made by the Qadi was conclusive as between the Plaintiffs and the guardian.

To this the Plaintiffs replied that property belonging to Mahmoud was left out of the inventory and was in possession of the Defendant since March, 1892, and also that the Defendant has been in possession of their shares since 1899; and they contended that in respect of that property they had a right to sue him in the District Court.

The issues raised were, in effect, the following:—

1. Is the inventory conclusive as between the Plaintiffs and their guardian as to what the estate of Mahmoud consisted of?
2. If it is not conclusive, and the Plaintiffs can show that the Defendant whilst he was their guardian was in possession of property which was not but ought to have been included in the inventory, is the District Court or the Sheri Court the tribunal to decide on their claim against him in respect of that property?

The majority of the District Court decided that the inventory was not conclusive, and that the District Court had jurisdiction.

The Defendant appealed.

G. Chacalli and *A. Kyriakides* for Appellant.

Pascal Constantinides for Hatije and Safvet.

Ch. Pavlides for Fatma and Lemma.

Judgment: CHIEF JUSTICE: By virtue of the Convention of the 1st July, 1878, the Mahkeme-i-Sheri has exclusive cognisance "of religious matters, and no others, concerning the Mussulman population of the Island"; and by Sec. 21 of the Cyprus Courts of Justice Order, 1882, the jurisdiction vested in the District Courts does not include the jurisdiction of the Mahkeme-i-Sheri "in religious matters concerning persons of the Mussulman faith." The administration of the property of infant Moslem orphans is a "religious matter" within the meaning of these enactments: so it has always been held, and the Legislature has expressly recognized it to be so in Sec. 47 of Law VII of 1894. Therefore the administration of the property of the Plaintiffs during their minority was a matter in which the Sheri Court had and the District Court had not jurisdiction.

The Sheri Court had power therefore to make the inventory and issue the Ilam, and to require from the guardian an account of his dealings with the property comprised in the inventory, and of all his receipts and expenditure as guardian.

The guardian says that he rendered those accounts in 1899; and I gather from the whole scope of the arguments on his behalf that his receipts comprised in those accounts were only receipts from or in respect of the property comprised in the inventory, and that he contends that the inventory is conclusive, and that it is not now open to the Plaintiffs to charge him in the District Court with having had possession of other property of theirs which is not included in the inventory.

If the accounts so rendered in 1899 are only in respect of the property included in the inventory the Sheri Court alone has jurisdiction to examine them. But in my opinion, now that the guardianship has come to an end and his nieces are no longer minors, the District Court is the only Court which has jurisdiction to entertain a claim by them against their former guardian in respect of property not included in those accounts or in the inventory.

If a question had been raised before the Sheri Court during the continuance of the guardianship as to whether a particular property belonged to the guardian or to the children, it may be that the Sheri Court would have had authority to adjudicate on that question as a question arising in the course of its administration of the infants' property; and its adjudication made after the question was formally raised and after regular inquiry into the matter might have been conclusive. But it is not alleged that there was ever such a question raised in or adjudicated on by the Sheri Court with regard to the property in respect of which the claims in these actions are made.

The claims now in question are for recovery of their property of which the Plaintiffs allege that the Defendant has wrongfully been in possession. His defence is, I was your guardian and the administrator of your property, duly appointed by the Sheri Court, and that is the only Court which can decide on your claim. To which they reply, you deceived the Sheri Court; this question never came before it, and it had no reason to suspect that this property was ours.

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In my opinion the Plaintiffs' reply is a good one. The Sheri Court has jurisdiction to call upon the guardian to render an account of his guardianship; and if it allows or disallows any item in the account, its allowance or disallowance is probably conclusive. And if, before he is discharged a question is raised between him and his wards as to whether a particular property belongs to him or to them, the Sheri Court might perhaps adjudicate on the question. But when the persons for whom he had been guardian have come of age and the accounts have been rendered and the guardianship closed, the functions of the Sheri Court are discharged; and if they afterwards find out that their former guardian has all along been in possession of property of theirs which he has not included in his accounts, and which he never professed to manage as guardian but alleged to be his own, and about which no question was ever raised in the Sheri Court, the only Court in which they can sue him for that property is the District Court.

In my opinion therefore the decision of the majority of the District Court on this preliminary question was right and this appeal must be dismissed and the Defendant must pay the cost of it.

FISHER, ACTING J.: The only point before the Court is whether the District Court at the suit of the Respondents Hatije, Safvet and Lemma can direct an account as regards the deceased's estate for the period during which they were under the guardianship of the Appellant, viz.: from 1892 to 1899 or make any order with regard to Appellant's dealings with the deceased's property during that period. It is contended that the District Court has no jurisdiction to do so as it involves the administration of the estate of a deceased Moslem who has died leaving heirs under a disability. But the District Court is not asked to undertake such administration. It is asked in so far as the point under consideration is concerned, to order a person who was formerly a guardian to pay to three persons whose guardian he was such sums of money as will represent the amount to which they are damnified by reason of his misconduct while he was their guardian. In two of the three consolidated cases an account is asked for as a means of ascertaining the amount he ought to pay.

To what extent can the District Court entertain these claims? An inventory of the property of the deceased was made by the Qadi and the Appellant appears to have rendered some sort of accounts to the Qadi. As against the inventory it is claimed by the Respondents that it omits property which belonged to the deceased, and as regards the accounts it is said that they are inaccurate. I do not think that the District Court is bound to assume the accuracy and exhaustiveness of the inventory. The alleged non-inclusion of property which ought to have been included is the substantial part of the claims in these actions. On the other hand I do not think that the District Court can review accounts which have been rendered to the Qadi in respect of administration, during the period of guardianship, of property in the inventory, but with that exception I think that the District Court is the proper tribunal to try the actions.

Appeal dismissed.