

Political (1895) Department.

ORDINARY MS.

G.O., No. 499

Dated 29th July 1895.

INDEXED.

[Despatch Abstract.]

PETITION

Awaiting the receipt of a copy of ^a certain decree from Muhammad Khabil-ullah Sahib, a Carnatic Stipendiary, residing in Triplicane, in connection with his -- praying that sanction may be accorded for his instituting a suit in the High Court against one Rahim-un-nisa Begam for the recovery of certain jewels.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Stamp Rs 8-4-0
on appl. 8219
27/2/95

Filed 14th February 1905
per L.C.C.
and Regd.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Friday, the twenty-third day of November,
One thousand eight hundred and ninety-four.

Appellate Jurisdiction.

PRESENT :—

THE HONOURABLE SIR ARTHUR J. H. COLLINS, KNIGHT, Chief Justice,

AND

THE HONOURABLE MR. JUSTICE PARKER.



APPEAL No. 17 of 1894.

Mahomed Kabeloola Sahib ... Appellant (Plaintiff).

Mahomed Nuseerudeen Sahib ... Respondent (Defendant).

Appeal from the Decree of the High Court of Judicature in the exercise of its Ordinary Original Civil Jurisdiction made in Civil Suit No. 199 of 1892.

This Appeal coming on for hearing on Monday, the 1st October 1894, and having stood over for consideration till this day, the Court delivered the following

JUDGMENT.

The Plaintiff is the sole heir of the late Ghousee Begum Sahiba, widow of the late Prince Omdath-ud-Dowlah Bahadur. This lady died on 4th June 1892, and by an instrument dated 20th December 1886, she endowed certain immoveable and moveable properties for the upkeep of her husband's tomb and for ceremonies connected therewith including ceremonies to be performed for herself after her death. The sole question argued in this appeal is whether an endowment for such a purpose is a valid *wakf* under Mahomedan Law. Other pleas have been abandoned.

The objects of the endowment as stated in the deed are "for the daily, monthly, and annual expenses of the aforesaid Mausoleum, such as lighting, frankincense, flowers, and the salaries of Hafizees (repeaters of the Koran) and Daroodies (readers of benediction &c.) as well as for the annual Fatheha (prayers for the dead) ceremonies of the deceased (may he be in paradise); and after my death for my annual Fatheha ceremony."

The learned Judge held that none of the above practices were illegal under Mahomedan Law. He pointed out that though there were texts disapproving of such practices there was a distinction between things sinful and things merely disapproved;—that as a matter of fact such practices were not uncommon either in India or in other Mahomedan countries, and that at Medina itself the Prophet's grave was lighted up with a thousand lights and scented-wood burnt. On these grounds he held that though there were moral precepts against such practices they had at the present time become sanctioned by long use and custom. To the objection that the endowment was not for any charitable object he pointed out that as a matter of fact alms were given to the poor, and there was an inn for travellers &c.

We may at once say we do not think the fact that the Muttuvalli has dispensed certain charity in connection with this tomb can at all affect the case. The object of the trust must be judged from the terms of the instrument, and there is not a word in Exhibit A to indicate any charitable purpose, or purpose for the benefit of mankind. The objects indicated are of a religious character. See I. L. R., XII Mad. 66 and VI Bom. 42.

Admitting that the practices referred to by the learned Judge are not uncommon, and may have become to a certain extent sanctioned by usage, we must point out that the evidence on

record fails to show that the expenses for such observances either at Medina or elsewhere come from endowments of the nature of *Wakf*. There is nothing to show that the expenses are not paid for by the contributions of the faithful or by the voluntary offerings of the families of those who desire to commemorate their deceased ancestors.

It is urged by the learned Counsel that the object of this endowment though in a sense religious is not for the advancement of religion, and that unless it is intended to benefit mankind by the advancement of religion it is not a valid *Wakf*. It is pointed out that McNaghten Chapter X defines an endowment as the appropriation of property to the service of God when the right of the appropriator becomes divested and the profits of the property so appropriated are devoted to the benefit of mankind, and in the appendix to that work we are referred to two decisions,—the first of the Bengal Sudr Adawlat of 6th December 1798 in which it was held that *Wakf* implies the relinquishing the proprietary right in any article of property and consecrating it to the service of God that it may be of benefit to man (1 S. D. A. Ben. Rep. 17); the other a decision of 17th February 1857 (Vol. I Sel. Rep. p. 17 S. D. A) in which it was held that inasmuch as *Wakf* implied consecration for the above purpose, the provisions for reading the Koran at and lighting the tomb of a testator did not create a valid *Wakf* (McNaghten App. 556).

In Baillie's Mahomedan Law, Chapter III, regarding the proper objects of appropriation we find (page 576, 2nd Edition) that the appropriation of an estate for those who may read at a tomb is not regarded as valid.

X Bom. H. C. R. 7

I. L. R. VI Bom. 42.

" XI Bom. 441.

" XIII Bom. 265.

" XVII Bom. 4.

" VI Cal. 743.

" IX Cal. 176.

" XVII Cal. 499.

" XX Cal. 116.

A great many cases were quoted to show the nature of *Wakf*,—but none of them bear directly upon the present point. They go to show the nature and requisites of a valid *Wakf*, and that whatever be the interposed interests the appropriation must be for an ultimate charitable trust which will not fail. The question here is whether the ultimate object is for a charitable purpose at all.

In I. L. R. IX Cal. 176 the deed directed that the manager should in the first place pay certain debts and afterwards apply the property for the expenses of the Musjid and the tomb of the holy personages of the settlor's family, the servants of a certain Asthana, and for performing *urs* and *fatheha* at the tomb, as well as for the maintenance of the settlor's grandsons and their male issue. The Subordinate Judge (a Mahomedan Gentleman) held that the endowment was valid,—but the only question raised in appeal was whether the provisions for the payment of debts and maintenance invalidated the *Wakf*. The question now in issue was not discussed.

Similarly no question appears to have arisen regarding the validity of a similar endowment in the case reported in XV Bengal L. R. 167,—but in that case the *fathehas* to be performed were those of Mahomed and the twelve Imams, and the expenses of the first ten days of the Mohurram &c. The ceremonies there to be performed were at the tomb of the saints and not at the settlor's own tomb. In that case the decision in S. D. A. 1857 pt. I p. 235 that a provision for the lighting of the testator's own tomb and reading of the Koran was invalid was referred to.

It was urged that in the construction of a deed of *Wakf* the words "charitable" and "religious" must be taken in the sense in which they are understood in Mahomedan Law, and we were referred to the judgment of Mr. Justice Ameer Ali in I. L. R., XIX Cal. 412. In that case, however, the question was whether a provision for the settlor's children and kindred was a charitable and religious act, and the learned Judge held that according to the Mahomedan Law it was.

The result therefore of an investigation of the authorities seems to be that endowments purely for purposes like the present seem to be against the principles of Mahomedan Law, and

that in such cases when *Wakfnamahs* for such purposes have been upheld the dedication has had relation to the tombs of saints only and has been intermixed with charitable purposes either for the poor or for the settlor's own kindred.

In the absence of any express authority shewing that a dedication for ceremonies at a private tomb, and for that purpose only—is valid under Mahomedan Law, we do not think we ought to uphold the deed. It creates a perpetuity of the most useless description which would certainly be invalid under English Law. The observance of these ceremonies may be considered by the Mahomedans as a pious duty, but it is certainly not one which seems to fall within any definition of a charitable duty or use. These observances can lead to no public advantage, even if they can solace the family of the lady herself. The case bears a close analogy to one in which a Roman Catholic has devised property for masses for the dead, which has been held to be invalid in India on grounds of public policy irrespective of any territorial law (I. L. R., XV Mad. 424 at p. 446). A similar bequest in a Chinese will has also been held to be invalid in an appeal to the Privy Council from the Supreme Court of the Straits Settlements. L. R. VI. Privy Council Appeals, 381. Had it been shown that such perpetuities were recognized as valid under Mahomedan Law we should have felt constrained to uphold the deed,—but in the absence of such proof we think the general rule of public policy should prevail.

We must reverse the decree of the learned Judge and direct that a decree be passed in Plaintiff's favor as prayed. As the point is a new one we shall make no order as to costs.

By the Court.

10/4 A. J. Forbes

Dy. Registrar,

Appellate Side.

Exd. by B. Varada Charlu.

Folio 22

1 A true copy

H. C. Clerk

Asst. Registrar



Memorandum. 1895/1415

Read the following

Adverting to — memorandum dated 1st March 1895, No.

x Dated 27th March } 429 and subsequent reminders, Muhammad Khalil-ullah Sahib is
8th & 21st May. x

informed that if a reply to the above memorandum is not received within a fortnight from the present date his petition to Government dated 18th January 1895 will be recorded.

(By Order)

C. F. G. Hunter

Asst. Assistant Secretary.

18.VI.95

19th June 1895. }
Ootacamund,

HIGH COURT OF JUDICATURE
AT
MADRAS.

JUDGMENT

IN

APPEAL No. 17 of 1894.

(From the Decree of the High Court of Judicature at Madras in the exercise of its Ordinary Original Jurisdiction made in Civil Suit No. 199 of 1892.)

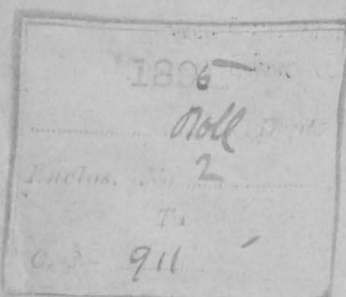
Dated 23rd November 1894.

Sent

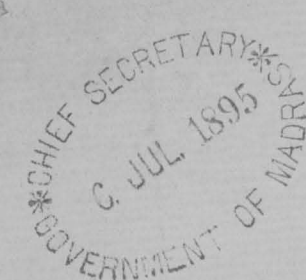
TO

Muhammad Khalil-ullah Sahib,
residing at Small Mosque Street,
Triplicane, Madras.

1895



No
 The Acting Secretary to the Government of
 Madras



The humble petition of Mr.
 James Louis Agra Begum
 residing at Small Mosque
 Triplicane Madras

Sheweth

With reference to the enclosed Memo
 Petitioner begs to enclose Judgment and submit
 that the Decree of the High Court Madras
 has been filed in the High Court Madras in
 a suit brought by James Louis Agra Begum
 claiming certain property attached under the
 execution of the said Decree

Petitioner therefore prays that
 should it be necessary to produce the said
 Decree he shall do the same in due season

5th July 1895

Petitioner shd. A. in duty
 Carl Day

1005-
 911

433:5.7.95
24:11.7.83
449:4.11.81
2934:30.8.82
252:11.8.82

911
Roll. Sept

From Muhammad Saheloolle Sahi
in person.

CS
Am

ORDER of 29th July 1895 No 499

The receipt of a copy of

the Decree will be awaited

CS
17.7.95

26/7/95.

DECEASED

Pelition (R)

3 AUG 95

M.S.

Subject

Submitting copy of judgment in
Appeal No. 17 of 94 on the file of the
High Court, Madras.

No. 0 written to for
80 43385-7-95.

WITH ORDER

When given for copying

When copied

When examined

When signed

189

READ AGAIN G.O., No.
189

DATED

CURRENT No.

ENCLOSURES TO C. No

ORDER OF GOVERNMENT

LETTERS OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

N.B.

A = Copy in full.

B = Not to be copied.

P = Copy abstract only.

Q = Copy heading only.