

(1923) 11 MAD CK 0003
In the Madras High Court

Abdul Rahiman Sahib Chowdry and Others
Vs

APPELLANT

Murugappa Naicker and Others

RESPONDENT

Date of Decision : 27-11-1923

Acts Referred:

Citation : AIR 1924 Mad 577 : (1924) 19 LW 352

Hon'ble Judges : Schwabe, C.J

Bench : Division Bench

Judgement

Schwabe, C.J.

1 This is an appeal from a decision of the Judge, City Civil Court, in which he finds that the plaintiffs, who are suing as representative

Muhammadans, failed to make out their claim that the suit land is wakf property, having been dedicated a long time ago and used as a public burial

ground for Muhamayidans. The evidence for the defendants was to the effect that, beginning somewhere in 1916, attempts were made by the

original first plaintiff, who styled himself Muthawali, to set up a claim to this land, as having been dedicated for religious purposes, and with that

object, he started holding religious ceremonies there, and built a platform which was used in those ceremonies. The plaintiffs, on the other hand,

adduced evidence to show that certain persons had been buried in this land some time more than thirty years ago. At an earlier stage, it had been

the case of the first plaintiff that there was an actual dedication of this land for religious purposes. The then Judge of the City Civil Court decided

against that view. The case came up to this Court and this Court upheld that finding but remitted the case back to the City Civil Court, because the

learned Judge had not gone into the question, whether or not there had been

such user of this land as a burial ground, as to render it wakf property and inalienable. The Judge, to whom the case was remanded gave the parties an opportunity of adducing further evidence; but they both said that they were prepared to stand on the evidence as it had been given before, and the learned Judge had therefore the opportunity of examining the evidence in the same way that I have to deal with it, namely, by having the printed record before him of the oral evidence given, and of the exhibits, and to some extent the views of the first Judge who had seen the witnesses. He was not satisfied that the plaintiffs, on whom the onus lay, had made out their case. He was not satisfied that there had been any burials in this part of the land and he was not satisfied that this land had become, in any way, dedicated by user or otherwise, as a public burial ground. I agree with that finding. I think that, if there were any such dedication or user, much stronger evidence could have been found. I think too that there are indications against that view, in the way in which this property had been dealt with. It was registered in the Corporation books, as a burial ground in the name of a private owner. It is not enough that the property was used as a burial ground, for that to amount to a dedication of the property as wakf property. The mere fact that a Muhammadan chooses to bury the body of another Muhammadan in his garden would not, as I understand the law, make that property wakf property, inalienable for all time. There must be some public user, or public dedication, and I can find no sufficient evidence of that in this case.

2. My attention was called to a case in *Court of Wards v. Ilahi Baksh* (1913) 40 Cal. 297, decision of the Privy Council, which is only interesting, in that it shows that though there is no public dedication, the user of part of the land, as a Muhammadan burial ground, for a long time, will itself make the land wakf land. In that case, there was evidence that the land had been used, from time immemorial by the Muhammadan community, for the purpose of burying their dead, and on that evidence, it was held that it formed part of a grave-yard, set apart for Muhammadans, and by user, if not by dedication, the land was wakf. In that case, the registers contained the name of an individual, as the owner and the register described the property as burial ground; but it appeared from the evidence that the person, who was there named as the owner of the land, was the leading

Muhammadan of the place and it was as the leading Muhammadan of the place that his name had been put in, as the owner of the property. In this

case, in the books of the Corporation, there is the entry of the land being burial ground, but no evidence was attempted to be adduced that the

man whose name is put down, as the owner of the land, was a representative Muhammadan and that his name was entered as such.

3. I am clear that the plaintiffs in this case have failed to make out their case and it follows that the appeal must be dismissed, and the suit dismissed

with costs throughout.