
(1928) 06 CAL CK 0009
In the Calcutta High Court

Ajaz Hossain Jafri

APPELLANT

Vs

Altaf Hossain and Others

RESPONDENT

Date of Decision : 18-06-1928

Acts Referred:

Citation : AIR 1928 Cal 651 : 114 Ind. Cas. 413

Hon'ble Judges : Bose, J;B.B. Ghose, J

Bench : Full Bench

Judgement

B.B. Ghose, J.—This is an appeal against an order made under Order 22, Rule 10, Civil P.C. by the District Judge of the 24-Perganas. It arises out of an application made by the appellant for continuing an appeal which has been preferred by the respondent pending in the Court of the District Judge on the allegation that the interest of the respondent in the appeal had devolved on the appellant. The District Judge rejected the application and hence this appeal.

2. The facts are very simple. There is a well-known foundation of Mohamed Mohsin of the Hooghly Imambara. There is a committee appointed under the Religious Endowment Act 20 of 1863 for the management of the endowment. The committee it appears from time to time appoints a manager or mutwali for the performance of the duties in connexion with the foundation. In this case the President of the managing committee advertized in the news papers, a-copy of which has been exhibited in this case Ex. 7, inviting applicants for the post of Mutwali of the Hooghly Imambara. It appears that the respondent answered to the advertisement and an agreement was entered into between the members of the committee and the respondent Syed Altaf Hossain under which he was appointed Mutwali for a period of three years with option to the managing committee to continue the appointment if they so chose. There was a term in the agreement that the Mutwali was liable to dismissal by the Committee without assigning any reason by simply giving him three months notice. What happened was that respondent Altaf Hossain was appointed mutwali or manager from the 1st March 1923. Towards the end of the term this gentleman expressed a desire

that the period of his appointment should be extended, and after some correspondence as the Judge notes, the committee informed him on 21st January 1926 that he would be reappointed as mutwali for a further period of three years with effect from the 1st March 1926. Subsequently however on the 16th March the committee addressed a letter to this gentleman in the following terms:

We have the honour to inform you that in accordance with the terms of the agreement approved by you on 17th January 1926 on the basis of which you took charge of the office of mutwali (or manager) of the Hoogly Imambara on the morning of the 1st March 1926, we dispense with your services on and from 1st July 1926 under Clause 5 of the aforesaid agreement and that you are requested to make over charge of the office of mutwali (or manager) to the new mutwali (or manager) to be appointed by the committee hereafter or in his absence to the Dewan and Seristadar of the Imambara or in his absence to the Peshkar.

3. It is said that the appellant before us Syed Ajaz Hossain Jafri was subsequently appointed mutwali, by the committee. On such appointment the appellant applied to the District Judge for an order under Order 22, Rule 10, Civil P.C. The suit out of which the appeal is pending before the District Judge was one for setting aside a lease created in favour of the defendant in that suit by the previous mutwali. The succeeding mutwali named Riezuddin brought the suit originally. He was the mutwali then for a term of three years and after his term expired one Ali Kazmaini was appointed in his place and he was substituted as plaintiff in the suit, and after his term expired the present respondent before us Altaf Hossain was substituted in his place. Now after what has happened the present appellant applies to be substituted in the appeal pending before the District Judge in place of the respondent. The appeal it may be mentioned is Title Appeal No. 386 of 1925.

4. The reason assigned by the learned District Judge is that under the general provisions of the Mahomedan law the mutwali is a permanent official and, therefore, the position of the mutwali is such that the committee is not in a position to dismiss him. With the general proposition of law as enunciated by the District Judge there is no reason to differ. But in the present case the difficulty seems to me to be this that the mutwali, or by whatever name this manager may be called, is not a mutwali appointed under Mahomedan law.

5. Under the Mahomedan law the appointment of a mutwali can be made by the donor and the succession to the appointment must be in accordance with the provisions of the deed of endowment if there is any. The succession to the office of mutwali may be in accordance with the desire of the donor if he is alive, or if the intention of the founder cannot be ascertained from any established usage, then the appointment may be made by the executor of the founder and failing all these the power of appointment is in the Court which represents the power of the Kazi. In no circumstances can the mutwali properly so called under the Mahomedan law be appointed in the manner in which the respondent Altaf

Hossain was appointed mutwali. It can hardly be consistent with the Mahomedan law that the office of mutwali should be advertized and a gentleman who may be qualified in every respect should be appointed for a period of three years or for a further period at the option of the members of the committee. A person appointed in such a way cannot invoke under the provisions of the Mahomedan law the powers of a mutwali. The respondent Altaf Hossain entered into an agreement dated 1st March 1923 which embodied the terms by which he was to hold office. It is unnecessary to recite all the terms, but under these terms he was liable to be dismissed by the members of the committee. As the learned District Judge has himself said that ordinarily the authority which has the power to appoint an officer has also the power of dismissal, I do not see why the ordinary power should be held in this present case as not capable of being exercised. In support of the proposition of the learned Judge that the authority which appoints has the power to dismiss, the case of *Ram Charan Bajpai v. Rakhal Das Mukherji* [1914] 41 Cal. 19 may be cited. That was a case of appointment in a Hindu Trust, but the principle is the same. I do not therefore, agree with the observation of the learned District Judge that the general principles of Mahomedan law apply to the office of the respondent Altaf Hossain and I am of opinion that he is liable to be dismissed under the terms of the agreement he entered into with the members of the committee.

6. The next point which was urged on behalf of the respondent seemed to me during the course of the argument to be of substance, and it was urged by the learned advocate for the respondent that if it be held that Altaf Hossain was a mere servant under the members of the committee then he had no interest in the property and there was no devolution of any interest on the appellant Ajaz Hossain and therefore, no order under Order 22, Rule 10 should be made. It appears, however, that it has been held in the case of *Sankra Murthi Mudaliar v. Chidambara Nadan* [1894] 17 Mad. 143 that a manager appointed by the members of the committee has got the right to maintain a suit for recovery of property. And it appears in this case that successive mutwalis appointed in this manner for a term of three years have been substituted in the place of original plaintiff and the present respondent Altaf Hossain was also substituted in the place of his predecessor in office whose term of office expired after three years' service. This objection cannot therefore, be raised by the respondent.

7. The result therefore, is whether this gentleman is properly called by the name of mutwali or not he is not really a mutwali as understood by the Mahomedan law. That being so as I have already stated his term of office expired in accordance with the contract. Whether he was rightly dismissed or not is another matter. That is a question which I understand is the subject-matter of another litigation. But so far as the present application is concerned it must be held that as the present appellant has been appointed by the committee to act as manager he should be substituted in the place of the respondent in the appeal pending before the District Judge. I do not understand why the gentleman who obtained office according to his own agreement for a limited period in answer to an

advertisement in the newspapers should so desire to retain his office when his employers have discharged him in terms of his agreement.

8. The appeal is, therefore, allowed and it is directed that the appellant should be substituted in the place of the respondent in the appeal pending before the District Judge. The appellant is entitled to his costs in both Courts. We assess the hearing fee in this appeal at five gold mohurs. The costs will be recovered from the respondent Altaf Hossain personally.

Bose, J.

9. I agree.