
(1896) 12 AHC CK 0016
In the Allahabad High Court

Akbar Yar Khan and Another

APPELLANT

Vs

Phul Chand

RESPONDENT

Date of Decision : 19-12-1896

Acts Referred:

Citation : (1897) ILR (All) 211

Hon'ble Judges : Blair, J; Banerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Blair and Banerji, JJ.—In this second appeal the Court below has returned findings in answer to the questions put by us in a remand order framed u/s 566 of the Code of Civil Procedure. The first question we asked was:

What was the income of the whole property dealt with by Asharat Khan in the deed of 1781 at the date of the document?

2. The finding in reply is: That the income of the whole property averaged rupees 850 per annum at the date of the disposition.

3. The second was: What was the amount of expenditure required for the expenses connected with the fat eh a, also those connected with the kadam sharif, having regard to the means and position in life of the maker of that deed?

4. The finding on that point is: That such expenditure would amount to rupees 500 per annum.

5. The third and fourth issues are as follows:

Does the ceremony of the fateha involve necessarily and essentially any distribution of alms and kindred charity among the poor? Do the ceremonies and expenses connected with the kadam sharif necessarily and essentially involve the distribution of alms or kindred charity among the poor?

6. The finding is that "under the Muhammadan ecclesiastical law it is not binding

to distribute alms or to make any kindred charity in connection with fateha and kadam sharif; but, according to the custom which prevails in the country, the distribution of sweetmeats and other eatables to the poor and other visitors has become an integral part of the ceremony connected with fateha. The ziarat of kadam sharif when held alone by itself does not necessarily involve the distribution of alms or kindred charity."

7. On these findings we are asked by Mr. Amir-ud-din to decree this appeal. He contends that the document which we have to construe must be interpreted by express Muhammadan law. He alleges correctly that the contention between himself and Mr. Abdul Majid for the respondent was conducted on this basis, and the memorandum of appeal put forward one basis, and one only, that on the plain construction of the document the case set up was that, under the Muhammadan law, the fateha and kadam sharif both necessarily involved charitable expenditure. Mr. Amir-ud-din asked us on this ground to decline to bring to bear on the interpretation of the document any finding of custom.

8. He suggests also, and in this respect we are unable to follow him, that the finding of custom by the lower Court does not extend to the period at which the alleged waqf was made. That we have a right to interpret the intention of a waqf by reference to the custom prevailing at the time when the waqf was made we have no doubt. We have the express authority of the Privy Council in the case of Mahomed Ahsanulla Chowdhry v. Amarchand Kundu ILR Cal. 498 at p. 511, for using such custom to discover the intention of a grantor. Their Lordships say: "if indeed it were shown that the customary uses were of such magnitude as to exhaust the income, or to absorb the bulk of it, such a circumstance would have its weight in ascertaining the intention of the grantor." We have the same case, which was also referred to in Abdul Fata Mahomed Ishakv. Bussomoy Dhur Chowdhry I L.R. IndAp 76, as an authority for the proposition that, according to Muhammadan law, no gift is good as a waqf unless there is a substantial dedication of the property to charitable uses at some period of time; and that pronouncement must be taken as an authority for the converse proposition, that, when there is a substantial dedication of the property to charitable uses, the document making such dedication is a good waqf. We have findings as to the expenditure upon charitable uses to the effect that something like rupees 500 annually is spent upon them, and we have the finding as to custom by the light of which we can reasonably conclude that the grantor intended the income of his property to be spent in accordance with what is found to be the custom.

9. We hold, therefore, that the document providing a substantial and not illusory expenditure out of the settled property is a good waqf according to the doctrine of Muhammadan law. We dismiss the appeal with costs.