
(1933) 08 CAL CK 0043
In the Calcutta High Court

Gholam Hossain Shah and Others

APPELLANT

Vs

Sayed Muslim Hossain and Others

RESPONDENT

Date of Decision : 18-08-1933

Acts Referred:

Religious Endowments Act, 1863 — Section 14, 18

Citation : AIR 1934 Cal 348 : 150 Ind. Cas. 124

Judgement

1. This appeal was, at the instance of the learned advocates for the parties concerned, heard before the appeal from Original Decree No. 248 of 1929, but as the said appeal arose out of a previously instituted suit, and inasmuch as the decision of the trial Court was given before the decision of the trial Court in the suit out of which this appeal has arisen, we have dealt with the appeal No. 248 first. One of the main points argued before us in this appeal, arising out of the specific prayer in the plaint, is the same as the one decided by us in the other appeal, and our judgment in Appeal No. 248 is therefore to be treated as a part of this judgment.

2. The previous history of the litigation is the same as that in the other case. The plaintiffs-respondents in this appeal, as members of the Mahomedan public, instituted the suit out of which this appeal has arisen, with the sanction of the District Judge of Hooghly, u/s 14 read with Section 18, Religious Endowments Act (Act 20 of 1863), for the removal of the defendant in the suit from membership of the committee appointed under the Act for a decree for damages caused to the wakf estate for misfeasance, breach of trust and neglects of duty. The plaintiffs prayed for a direction upon the committee to observe strictly the directions contained in the trust deed, as regards the appointment of mutawalli, and to abolish the illegal innovation of appointment for the period of three years, with all its objectionable features. There were other ancillary and consequential prayers made by the plaintiffs in the suit, bearing upon the details of the administration of the endowment, In view of the nature of the allegations made in the plaint, a brief reference to the main features of the case is necessary. Haji Mahammad Moshin dedicated his properties to the service of God, by a

document, variously described as a towliatnama, a deed of appropriation or a deed of trust, creating an endowment, popularly known as the Hooghly Imatnbarah. Two mutawallis were appointed by the creator of the endowment by the deed executed by him in the year 1806.

3. The net income of the endowed properties was divided into nine different shares; three of these shares were devoted to religious purposes, two shares were to be applied to the remuneration of two mutawallis, and the remaining four shares were to be spent for secular purposes, specifically mentioned in the deed of the endowment. The properties which came to be known as the kharij towliat properties, which escheated to the Government after demise of Haji Mahammad Moshin have by virtue of an arrangement made by the Government, all along been treated as appanage to the three ninths share mentioned above. It is not necessary to refer in detail to the narration of events relating to the appointment and dismissal of mutawallis by the Government, acting through the Board of Revenue Under Regulation. 19 of 1810, and the appointment of mutawallis by the committee after the Religious Endowments Act came into operation in 1863 nor would the repetition of the narration of facts leading upto the appointment of mutawallis for a term serve any useful purpose, as they have been referred to in detail in our judgment in Appeal No. 248. The fact that Syed Ashrafuddin was made to retire in 1916, on a monthly pension of Rs. 250, and on payment of a bonus of Rs. 3,000, requires special notice in this case; it has also to be mentioned, for the purposes of this case, that Moulvi Syed Baziuddin had to be given a bonus of Rs. 500 at the time when he was made to relinquish the office of mutawalli. The appointment of Syed Kazi Maini as mutawalli for three years, the appointment of Syed Altaf Hossein in the year 1923 by the committee, and his dismissal by the committee in 1926, are facts to which detailed reference has been made in our judgment in the other case (Appeal No. 248). The committee appointed one Ajaz Hossein Jaffri in the place of Syed Altaf Hossein, who however refused to vacate the office of mutawalli.

4. The plaintiffs in the suit out of which this appeal has arisen alleged that the procedure adopted by the members of the committee after the dismissal of Syed Altaf Hossein was unjustified; and it led to a dead lock and the Mohurram ceremony which was the principal function for which the Imambarah was founded, could not have been performed in the year 1926 had not Syed Altaf Hossein exerted himself to the utmost. In the plaint specific reference was made to the acts of mismanagement; cases of improper application of funds by the committee, and of diversion of funds specially set apart for a particular purpose, were mentioned. It was stated that the members of the committee, the defendants in the suit, had, by their illegal orders upon the mutawalli, diverted the three-ninths share money from its legal purposes, which was to be devoted to religious purposes, to other non-religious purposes; a list was appended to the plaint. A portion of the plaint in the suit was devoted towards making out the position that the founder of the endowment directed that every mutawalli should hold office for life or until he was disabled by infirmity or illness, and that the

mutawalli should also be able to nominate his successor. The appointment of Syed Altaf Hossein for a term was described as an innovation and illegal and detrimental to the interest of the endowment. Special reference was made in the plaint to the system of drawing cheques by the mutawalli jointly with the members of the committee, in respect of the funds belonging to the endowment, of which the mutawalli was the Chief Executive Officer. On the pleadings of the parties a number of issues was raised for determination in the suit. Two of the issues (3 and 8) were in these terms: "Are the agreements referred to in para 10 of the written statement legal and valid in the case of the present endowment? Whether the provisions of the Towliatnama are to be followed, or if the provisions contained are unworkable, the directions of the Court is to be obtained for appointment of mutawalli?" and "What suitable directions ought to be given by this Hon'ble Court in the matter of the management of the endowment?"

5. (The agreements referred to in issue 8 quoted above are the agreements between the mutawallis and the members of the committee, containing the terms and conditions of their appointment as such, which has been dealt with in detail in our judgment in Appeal No. 248).

6. In view of our decision in the other case, we do not think any useful purpose will be served by our dealing with this part of the case, which was, it may be mentioned, given the greatest possible prominence during the course of the argument of this appeal before us, in any detail. As has been held by us, the agreement between Syed Altaf Hossein and members of the committee, dated 1st March 1923, which was in line with the agreement between the parties when Raziuddin and Kazimaini were appointed mutawallis of the Hooghly Imambarah by the Committee, was a valid agreement, operative under the law. The committee appointed by the Government under the provisions contained in Act 20 of 1863, acted within their power in making appointments of mutawallis for a term, with conditions which were as much binding upon the persons appointed, as upon the members of the committee. The committee was appointed by the Government to take the place of the Board of Revenue, which exercised control over the endowment created by Haji Mohammad Moshin, in 1806; and during the period of the exercise of control by the Board of Revenue, the scheme of appointment of mutawallis, as it appears from the deed of endowment, had already been departed from; and the case sought to be established before the Courts of law, in the matter of mutawalli appointing or nominating his successor, was finally negatived by the Sadar Dawani Adalat, in 1836. A detailed reference to these matters has been made in our judgment in Appeal No. 248. After the Religious Endowments Act (20 of 1863) came into operation, the endowment being one to which Section 3 of the Act was applicable, the Government,, entirely ceasing to have control, appointed a committee u/s 7 of the Act, to whom the properties of the endowment were transferred.

7. The trust properties vested in the committee, in the sense that the control of the same was completely transferred to the members of the committee, under

law. The administration of the endowment was also vested, by operation of law, in the committee; and the committee had to appoint a trustee, manager or superintendent for the proper management of the endowment. The trustee, manager or superintendent, was an officer or servant of the committee, and was not a mutawalli under the ordinary Mahomedan law. There was no innovation and it could not be called an innovation if the committee thought it fit, as they had reasons for thinking, that the appointment of a mutawalli (or manager) for a term was beneficial to the endowment entrusted to their charge.

8. We have in the other case (appeal No. 248) come to the definite conclusion that there was nothing contained in the agreement between Syed Altaf Hossein and the members of the committee which could be held to be against the public or invalid, and inoperative as such. In our judgment, the members of the committee acted under the law, in the matter of appointing an officer designated mutawalli or manager for the internal administration of the Hooghly Imambarah. It was not necessary under the law, upon the procedure laid down by law, upon the decision of the Sadar Dewani Adalat, in 1836, and upon the events which happened, to give effect to the provisions of the original deed of endowment, in the matter of appointment or succession to mutwalliship of the Hooghly Imambarah; and it was not therefore necessary for any civil Court, acting as the Kazi or otherwise, to give direction in the matter of the appointment of a mutawalli, and to interfere with the statutory function of the committee, in this behalf. In the above view of the case, which has been set out in detail in our judgment in Appeal No. 248, our conclusion is that the learned District Judge by whom the case was decided in the trial Court, is not right in holding that the imposition of the term of three years, the period for which Syed Altaf Hossein could hold office, was illegal, the learned Judge moreover, is not right in holding that in future, the mutawalli could only be legally appointed by the committee recommending him, and the Court of the District Judge of Hooghly as the Kazi, affirming the recommendation and appointing him for life. In our judgment, as indicated already it would not be right to hold, as has been held by the learned Judge in the trial Court, that the trust or wakf properties vested in the mutawalli, and that he alone was competent to sign cheques and that the committee was not competent to sign them.

9. We are further unable to agree with the learned Judge in his conclusion that the agreements referred to in the written statement in the suit were illegal and invalid. The above conclusions dispose of one of the main grounds, if not the principal ground, on which the charge of mismanagement against the members of the committee is based. The plaintiffs have not established their case that the members of the committee had not acted bona fide and in the interest of the endowment committed to their charge, in the matter of appointing a muttawali or manager, on terms and conditions set forth in an agreement evidencing a contract of service, which is valid and binding between the parties concerned. The plaintiffs in the suit cannot have the relief prayed by them, that the committee should be removed on the ground that they had appointed a

mutawalli for a term with conditions attaching to the appointment. On the question of the members of the committee being guilty of malfeasance, misfeasance of duty, and their liability to be dismissed from office, as mentioned in Issue 7 raised in the suit, out of which this appeal has arisen, specific mention was made in the plaint of instances of maladministration, of misdeeds, of spending funds of the endowment on objectionable items and of diversion of funds to non-religious purposes, regard being had to the definite allocation of the same under different heads; charge was made that the committee had tampered with the voters' list and of their negligence in the matter of regular revision of the same.

10. It was also asserted by the plaintiffs that the members of the committee had made their position supreme in the matter of internal administration of the Hooghly imambarah, vested in the mutawalli, by a change in Rule 17 of the Rules for the management of the imambarah. These several heads have to be dealt with separately ; but it has to be kept, in view, and the position cannot be disputed that each defendant was sued individually as a member of the committee appointed under the Religious Endowments Act, 1863, and the relief claimed in the suit is purely personal, namely the removal of each individual member on grounds stated in the plaint. It has therefore to be noticed, when each of the members of the committee, defendants 1, 4 and 5 in the suit, the appellants in this Court, was elected member of the committee. Defendant 1 was so elected in the year 1919 ; defendants 4 and 5 were elected members of the committee in the year 1925, but their election was contested before the civil Court, and were held to be valid in 1928.

11. Taking into consideration now the charge of payments to Syed Ashrafuddin, as pension and bonus, it appears that these payments were being made in accordance with the terms of a registered indenture made between the members of the committee and Syed Ashrafuddin on 25th August 1916, by which a serious dispute between the parties concerned was settled. (The judgment then discussed the point and proceeded.) We are, therefore, unable to hold that there was any improper diversion of funds by any of the defendants concerned, by payments made to Syed Ashrafuddin. The payments were made in the bona fide belief that they were payments which could be legally enforced. Relating to the question of diversion of funds, it may be mentioned that regard being had to the different allocations of funds of the endowment, we are not prepared to hold that providing for expenditure for purposes not specifically mentioned in the deed of endowment, or not provided for by the Government in the matter of distribution of funds, the payments out of the Kharij Towliat Fund could be said to be an act of diversion of funds by the committee, seeing that payments were being made on account of a settlement of dispute with a person who was asserting his right to be a mutawalli of the Imambarah with the power to nominate or appoint his successor to the mutawalliship. In the above view of this part of the case, the members of the committee could not be removed for payments made by them to Syed Ashrafuddin.

12. The payment of Rs. 500 made to Raziuddin, who refused to vacate the office of mutawalli, comes up for consideration next. The money was paid at a time when defendant 1 was a member of the committee ; the other two defendants were not members of the committee at the time. The committee made the payment in settlement of a dispute, and for a purpose beneficial to the endowment, seeing that the attempt to assert the right to be in office for life, and the further claim to appoint or nominate his successor, had to be resisted by the adoption of the best possible means; and we do not see how the interest of the endowment could be better served then by a payment of an amount of Rs. 500 in the place of having to incur the expenditure of a protracted litigation, not to speak of the determined attempt to thwart the committee in their administration of the endowment. The committee's action in this behalf was perfectly bona fide, and by making the payment, they gave effect to a compromise. It may further be noticed in this connection that the claim to appoint or nominate a successor by a mutawalli of the Hooghly Imambarah was negatived by the Sadar Dewani Adalat so long ago as 1836.

13. The allegation of tampering with the voters' list was not seriously pressed before us; and it does not appear to have been a matter which was pressed for decision by the trial Court. The materials before us do not enable us to hold that there was any tampering with the voters' list by the committee. What has been characterised as " a glaring example of the committee's disregard of the interest of the endowment," is that the voters' list sent to the committee was not returned to the mutawalli at a time when the present litigation was pending before the trial Court.

14. The voters' list was unexceptionable at the time when defendants 4 and 5 were elected members of the committee in 1925 ; it has not been revised after that, although the rules relating to the revision of the list required revision every six months. It appears that mutawalli Syed Altaf Hossein was asked by the committee to submit the voters' list of the Imambara, and the mutawalli hoped to submit the same by the end of the month of November 1925. This is what appears from the letter written by the mutawalli to the committee on 14th November 1925 (Ex. Z-24. in this case); this submission however did not take place ; and the voters' list was not before the committee till the progress of this litigation. All this has to be attributed to the position taken up by the mutawalli in the matter of his relation with the committee, seeing that the voters' list had to be revised by the committee, in consultation with the mutawalli, who was immediately responsible for the preparation of the list. That the committee did not return the voters' list in the year 1928, during the course of this litigation, is not a matter for which the Mahomedan public, represented by the plaintiffs in the suit, could hold the committee responsible, and was not a thing which amounted to "a glaring instance of the committee's disregard of the interest of the endowment." On the materials before us, the mutawalli was responsible for the non-revision of the voters' list in proper time, and the defendants, as members of the committee, could not be charged with dereliction or non-performance of

their duty in that behalf.

15. The diversion of funds was a charge levelled against the members of the committee. (After stating the facts, the judgment proceeded.) In the absence of proof that the payments made out of the three-ninths share of the income and out of the income of the Kharij Towliat properties had the effect of curtailing the expenditure for religious and pious purposes as enjoined by the deed of endowment; and as directed by the Government at the time when the endowment was placed in charge of the committee, we are unable to hold that there was any diversion of funds by the members of the committee, which made them liable to answer a charge of malfeasance, misfeasance or breach of trust as made by the plaintiffs in the suit. Nor are we in a position to hold that such a diversion of funds entailed the removal of the members of the committee, under whose direction the funds were diverted. In our judgment the objects of the endowment included religious as well as charitable purposes ; the founder of the endowment, as well as the ruling power, have considered the endowment as one made for promoting the welfare of mankind, including both religious and charitable purposes. Religious purposes do not exclude charitable purposes ; and we do not find anything in the Indian Statutes or in the rule of the Mahomedan law, which draws a clear cut distinction between the religious or pious purposes on the one hand, and charitable purposes on the other. If there was a surplus remaining after defrayal of the expenditure for the purposes specifically mentioned in the deed of endowment, a surplus out of the three ninths share allocated to religious and pious purposes and a surplus out of the income of the secular properties known as the Kharij Towliat properties made by the orders of the Government, an appanage of the three-ninths share, there could not, in our judgment, be any bar to the diversion of funds of the nature arising for consideration in the case before us. In addition to the items recommended by the mutawalli, there was expenditure out of the funds of the endowment for the purposes of litigation. There is nothing to indicate that the committee incurred unnecessary expenditure on account of litigation. There were the election cases ; there could be no question that the committee had to incur expenditure for the purpose of maintaining their position: the result of the litigation justified the expenditure in this behalf.

16. It appears that some money was paid from time to time to the servants of the estate. The committee entrusted with the administration of the endowment had the full power to incur expenditure necessary for the purpose of management; and it has not been proved by the plaintiffs how the expenditure itself or the decision of the committee to incur the same was not justified and was not in the interest of the endowment. The nature of the expenditure generally brought under the head of diversion, related to payments by way of charity; and in some cases rewards to servants ; no case has been brought to our notice which could come under the category of improper diversion of funds by the committee. The unsubstantial nature of the objection to the committee's right to incur just expenditure for the purposes of management of the

endowment may be referred to in this connexion. The costs incurred by the committee for advertising the post of the mutawalli was characterised by the plaintiffs, representing the Mahomedan public, as improperly incurred. The point, altogether unworthy of notice, shows in what spirit the litigation was started.

17. The fact that one Mirza Aktar Hossain, Head Clerk of the Committee's office, was given Rs. 400, and allowed to have a conveyance allowance of Rs. 12, was referred to in connexion with the charge of making payments to their favourites, so far as the members of the committees were concerned. The evidence in the case goes to show that the amount of Rs. 400 was paid as charitable gift to a servant who had served for a long time, and the conveyance allowance was allowed when the office of the committee was removed to a place far away from the locality in which the man resided. We are unable to hold that the action of the committee was unjustifiable, or was such as called for the removal of the defendants from the office as members of the committee. It is somewhat interesting to note in this connexion the fact that Mirza Aktar Hossain's laches in the matter of making some delay in paying a sum of money to Kazimaini, the predecessor-in-office of Syed Altaf Hossein, was specially mentioned by the plaintiffs in support of their case for the removal of the members of the committee.

18. The members of the committee, the defendants in the suits, were charged with mismanagement, for the reason that they had not taken speedy action in the matter of paying off a mortgage-debt. The proposal for paying off the debt was made by the mutawalli; that proposal appears to have been accepted by the committee at one time; but on inquiry the committee countermanded their approval of the mutawalli's proposal. The mortgage-debt was eventually paid off during the course of this litigation, by the receiver appointed by the learned District Judge in 1928. In our judgment the payment of the debt was deferred owing to the friction between the mutawalli and the committee, the mutawalli showing unwillingness to act up to the direction of the committee; and we do not find anything on the materials before us which establishes any laches or default on the part of the committee to which the non-payment of the debt at an early stage could be attributed. The evidence given by Syed Altaf Hossein, on the side of the plaintiffs, does not bear out the case sought to be made out by the plaintiffs, and we are of opinion that but for the attitude taken up by Syed Altaf Hossein, after his appointment as mutawalli or manager for a second period in 1926, the mortgage-debt would have been cleared off very much earlier than the time when it was done in 1928.

19. It is not necessary to advert to the steps taken by the mutawalli in the matter of detection of an error in the accounts so far as the income realized from the Government by the committee on account of the three-ninths share was concerned. The plaintiff's case appears to be that the non-performance of his duty by the mutawalli in this behalf in proper time was gross neglect of duty and lack of supervision on the part of the members of the committee.

20. The reference to this fact only indicates the real nature of the litigation started in the name of the Mahomedan public. A question of some substance was raised with reference to the matter of repairs of the Hooghly Imambara. It was sought to be established on behalf of the plaintiffs in the suit that the committee did not take steps for procuring necessary funds for effecting the necessary repairs. A grant of Rupees 30,000 from the Government was secured by the committee in the first instance, while according to the plaintiffs the amount of Rs. 37,000 was necessary for the repairs of the building. We have it on evidence that the mutawalli prepared two estimates for necessary repairs, one for Rs. 30,000 and another for Rs. 7,000 ; and there was a further grant of Rs. 7,000 by the Government. We are unable on the materials before us, to come to the conclusion that there was anything done by the committee in the matter of repairs of the Imambara, which amounted to neglect of duty on their part justifying the removal of the defendants from the committee.

21. The negligence on the part of the committee in the matter of performance of ceremonies in connexion with the Mohur-rum in the year 1926, and the refusal to sign cheques and put the mutawalli in funds for the purpose, were mentioned in the plaint. (After stating the evidence the judgment proceeded.) On the facts and in the circumstances disclosed in evidence, it is difficult to hold that the attitude of the committee in the matter of the performance of the Mohurrum ceremony was unjustifiable, regard being had to the position created by Syed Altaf Hossein; and we are unable to hold that the plaintiffs representing the Mahomedan public could make any grievance on account of the attitude of the committee brought about by the action of Syed Altaf Hossein. The Mohurrum was duly performed, although the committee was effectively prevented from taking any part in the performance of the same, on account of the fact that the person placed in charge of the administration of the endowment by them was not allowed to perform his duties as mutawalli or manager appointed by the Committee in the place of Syed Altaf Hossein, who was discharged from service before the time for the performance of the ceremonies in connexion with the Mohurrum came. The failure on the part of the Committee to perform their duty on a particular occasion, on account of serious obstacles placed in their way, by a servant dismissed by them, who was bent upon disregarding the decision of the Committee, was not, in our judgment, a thing for which the public, interested in the endowment, could ask for the removal of the members of the Committee u/s 14, Religious Endowments Act, 1863.

22. The facts relating to what is described as the Bag Balurt case were referred to for establishing the charge of wilful mismanagement brought against the members of the Committee. It appears that Ajaz Hossein Jaffri, the person appointed Mutawalli or Manager in the place of Syed Altaf Hossein by the Committee, wanted to be substituted in Syed Altaf Hossein's place in the case above-mentioned ; the application for substitution was refused by the District Judge ; on appeal to this Court, Ajaz Hossein Jafiri was directed to be substituted as Mutawalli in the place of Syed Altaf Hossein. The District Judge of Hooghly, the

same learned Judge whose decision is in appeal before us directed the Receiver appointed by him in the present case to pay Rs. 500 to Ajaz Hossein Jaffri for conducting the case in which he was directed to be substituted as Mutawalli by this Court, on his furnishing security to the extent of that amount. It is in evidence that the security was not furnished: and the endowment suffered from the non prosecution of the case by the Mutawalli appointed by the Committee. There was in the circumstances no laches on the part of the Committee ; the person appointed by them as the Mutawalli was unable to prosecute the case owing to the fact that he failed to obtain possession of the endowment on account of the position taken up by Altaf Hossein, and failed to secure the necessary funds from the Receiver appointed in this litigation. All this took place in 1928-29, when the Committee were powerless and were practically functus officio on account of the proceedings before the Court, in connexion with the present litigation which was started on 27th July 1926. In our judgment there was no wilful mismanagement on the part of the members of the Committee, so far as the Bag Belurt case was concerned. The responsibility in the matter of the management of the case, and the consequent loss to the endowment, if any, did not in any view of the matter rest with the Committee.

23. The plaintiffs in the suit alleged and sought to establish by evidence that the members of the Committee were bent upon the deprivation of the power of the Mutawalli, so far as the internal administration of the Imambarah was concerned. It was said that Rule 17 of the Rules relating to the management of the Hooghly Imamharah, was amended by the Committee with an end in view, and that there was interference with the management of the Mutawalli. So far as the amendment of Rule 17 was concerned, it related to the power of dismissal of servants of the Imambarah, drawing a salary of less than Rs. 8 per month, by the Mutawalli. The original Rule 17 empowered the Mutawalli when he found it necessary to impose any fine upon any servant of the Imambarah for delinquency, or suspend or dismiss any of them; but cases of suspension and dismissal had to be reported to the Committee. The amendment mentioned above, limiting the Mutawalli's power of dismissal, was made on 6th February 1918, before any of the members of the Committee defendants in the suit, was elected as a member. It appears further that Maulvi Sayed Mahammad Raziuddin was present at the meeting of the Committee on 6th February 1918, when Rule 17 was amended. It is not possible to make out how the defendants in the suit could be held responsible for the amendment of Rule 17. It is also difficult to understand how it could be said that the exercise of the statutory authority vested in the Committee was exceeded in the absence of any evidence in that behalf. The amendment of Rule 17, in 1918, by itself does not establish that the defendants had exercised any power not vested in them under the law. It is worthy of notice that there is nothing before us indicating that the defendants as members of the Committee had acted beyond their power in the matter of the internal administration of the Imambarah placed in the charge of the Mutawalli or Manager appointed by them.

24. The position of the Mutawalli in relation to the Committee of Management of the Hooghly Imambarah has been discussed in detail; the appointment of a Mutawalli for a term and on conditions specified was within the competency of the Committee. The Mutawalli so appointed is a servant of the Committee, and not a Mutawalli under the Mahomedan law. It is the Committee in whom the endowment and the properties of the endowment have vested in law, and the Mutawalli appointed by the Committee has no function to discharge in the matter of administration of the endowment, excepting that delegated to him by the Committee appointing him. There can be no decree passed for the removal of the members of the Committee, if they have appointed a Mutawalli for a term with conditions attached to the appointment and if under those conditions there has been a discharge of the Mutawalli from his office. With reference to the administration of the endowment, if in the course of management there has been any error of judgment or any act done which bears the interpretation that there was mismanagement but the bona fides of which could not be questioned, and it could not be established by clear and cogent evidence that acts detrimental to the interest of the endowment were done by the Committee, no relief could be granted as contemplated by Section 14, Religious Endowments Act, 1863. In the case before us the plaintiffs have not established their case before the Court, so far as the charge of mismanagement was concerned; the so-called diversion of funds, the misapplication of the same, attributable, at the most, to error of judgment, could not be characterised as malfeasance, misfeasance or breach of trust, as sought to be done in the case. On the whole, as indicated above in detail, we are not at all satisfied that the materials placed before the Court, by the plaintiffs, entitle them to any of the reliefs claimed by them in the suit out of which this appeal has arisen.

25. The result of the conclusions arrived at by us, as mentioned above, is that the appeal to this Court by defendants 1, 4 and 5 in the suit is allowed. The judgment and the decree passed by the learned District Judge are set aside; and the suit instituted by the plaintiffs respondents is dismissed. The defendants appellants are entitled to their costs in this Court, as also their costs in the trial Court, from the plaintiffs respondents. The hearing fee in this Court is assessed at 5 gold mohurs.