

(1982) 03 AHC CK 0038
In the Allahabad High Court
Case No : Second Appeal No. 2298 of 1974

Gulam Rasool and Another	Vs	APPELLANT
Mst. Noor Jahan and Others		RESPONDENT

Date of Decision : 15-03-1982

Acts Referred:

Waqf Act, 1954 — Section 2(1)

Citation : AIR 1982 All 511

Hon'ble Judges : K.M. Dayal, J

Bench : Single Bench

Advocate : A. Hajele, for the Appellant; M.A. Qadeer, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Dayal, J.—The present second appeal has been filed by the defendants. One Gulam Habib Saudaghar was the owner of the property in dispute. His wife was Smt. Suqgrabi. He executed a gift-deed in the year 1934 creating a Waqf Al-alaulad in favour of his sons Gtriam Hussain, Gulam Basool and Gulam Nabi and daughter Smt. Kudrat Ilahi. He also provided that he would be the first mutwalli and thereafter his wife would be mutwalli and then his son Gulam Hussain and thereafter Gulam Rasool and then Gulam Nabi. The income was to be distributed according to Shariat. It was further provided that every heir of the settlor was entitled to be benefited by the waqf and so the heirs of descendants. In case there was no one left in the family the income would go to a mosque. The suit was filed by the heirs of Gulam Hussain, the eldest son. It was alleged that Gulam Hussain had died in lifetime of settlor. Gulam Rasool and Mst. Sughrabi widow of Gulam Habib were appropriating the entire income of the property of the waqf. A decree of rendition of account was sought. The defence was that the plaintiff's predecessor-in-interest Gulam Hussain having expired in the lifetime of settlor, his heirs had no right to claim by share in the income of the waqf or plaintiffs property. It was further alleged that the defendants Nos. 1 and 2 have been spending huge amounts on plaintiffs though they were not bound to do so.

Several other allegations were made. The suit having been decreed by the court below a preliminary decree was passed against the defendants Nos. 1 and 2. The main argument of the appellants appears to be that as Muslim Personal Law was to be applied under the waqf deed the grand children i. e. the plaintiffs who were the heirs of the predeceased son would not come within the purview of the beneficiaries of the waqf.

2. I am not prepared to accept that argument. First reason is that according to the waqf-deed the predecessor-in-interest of the plaintiffs L e. Gulam Hussain was mentioned as one of the beneficiaries in the waqf. It was not a will deed by Gulam Habib but it was a waqf created by him. Gulam Habib gave away all his rights which vested in God. From the same moment Gulam Hussain became entitled to a share in the income and the subject matter of the waqf according to the waqf-deed. There was no question of inheritance opening on the death of Gulam Habib. The rights of Gulam Hussain came into being the moment waqf was created. On his death, subsequently, the rights would not revert back but would devolve on his heirs. In view of this state of affairs the date of death of Gulam Habib does not make any difference in the right of the plaintiffs to claim the share in the income of the waqf.

3. The learned counsel for the respondents has drawn my attention to para No. 489 of Muslim Law by Tyabji IVth Edition which reads as under:--

"Where, under a dedication several objects or beneficiaries are entitled to take the benefit, they will (in the absence of anything to indicate a different sanction) take simultaneously, and in equal shares."

4. The learned counsel further relied upon Clause 4 of para No. 545 of the same Volume which reads as under:--

"The benefit of a waqf for a person's son's and his children, and the children of his children for ever so long as they are descendants", is taken per capita males and females taking equally and the children of daughters being included."

5. In the present case the waqf-deed provides the distribution of the income according to the share in the Shariyat. It does not exclude any one after its execution. The moment the waqf-deed was executed, the descendant of the settlor became entitled. The shares that are to be divided according to Shariyat do not mean that the person who was mentioned in the waqf-deed as a beneficiary, his heirs will be deprived of the shares belonging to him. The rights in Gulam Hussain commenced on the execution of the waqf-deed and they could not be taken back till his branch was extinguished. The date of death of settlor was wholly irrelevant for the purposes of determining the beneficiaries of the waqf.

6. In the result, the present appeal fails and is dismissed. The judgment of the courts below are substantially correct. There will be no order as to costs.