
(1935) 09 AHC CK 0019
In the Allahabad High Court

Haji Amir Ahmad and Another

APPELLANT

Vs

Mohammad Ejaz Husain and Another

RESPONDENT

Date of Decision : 19-09-1935

Acts Referred:

Mussalman Wakf Act, 1923 — Section 2(e)

Citation : AIR 1936 All 15

Hon'ble Judges : Sulaiman, C.J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sulaiman, C.J.—This is a defendant's appeal arising out of a suit for recovery of possession of certain lands with trees standing upon them on the allegation that the plaintiffs are mut-wallis under a deed of wakf dated 8th April 1916 executed by one Iftikhar Ud-din and the defendants are trespassers who have taken a sale-deed from the widow of the deceased. The first Court held that the deceased had only occupancy rights in the land and was not the full proprietor of the site and therefore thought that the wakf of the grove was invalid according to the Mahomedan law. On appeal the lower appellate Court has come to the conclusion that although Iftikhar Uddin was originally an occupancy tenant of the site he had acquired the interest of a grove-holder in the grove standing upon the lands which interest was transferable and was of a permanent character. The Court has accordingly held that inasmuch as he had the right to maintain the grove and replace old trees by planting new trees for ever his rights could be dedicated. The wakf was made professedly under the Musalman Wakf Validating Act, Act 6 of 1913. We must in second appeal accept the finding that the wakif had acquired the full rights of a grove-holder and was not a mere occupancy tenant of the lands, and further that his rights were transferable. There can be no doubt that the wakif had full dominion over such rights which he could transfer in any way he liked although the ownership of the site did not vest in him and could not be transferred by him. At the same time he and his heirs had the right to maintain the grove on the land for all time and they were not liable to ejectment

at the will of the zamindar of the lands.

2. The question raised in appeal is that the Mahomedan law contemplates that the property which is the subject-matter of wakf should be in the full proprietorship of the wakif and anything short of that is not capable of being made a wakf of. This proposition is too broadly stated. No doubt the essence of a wakf is its permanent character. Any property which is temporarily or for a limited period or without right in the possession of the wakif cannot be validly dedicated because such a dedication can never be of a permanent character. But it does not follow that the subject-matter of the wakf must necessarily be the full proprietary interest in Immovable property. On the other hand although there was at one time some difference of opinion, this Court in *Abu Sayid Khan v. Bakar Ali* (1902) 24 All 190 held that according to the Musalman law a wakf of even moveable property could be validly constituted. The learned Judges expressly dissented from the view expressed in *Calcutta*. There is even authority for the proposition that wakf of moneys and shares in Joint Stock Companies and other modern forms of investments might well be the subject-matter of a valid wakf. All difficulties that might have arisen under the strict Mahomedan law are now removed so far as wakfs governed by the Musalman Wakf Validating Act is concerned. In Section 2(1) "wakf" is defined as

The permanent dedication by a person professing the Musalman faith of any property for any purpose recognised by the Musalman law as religious, pious or charitable.

3. This definition is practically reproduced in Section 2(e), Musalman Wakf Act (Act 42 of 1933) also. It obviously follows that a wakf can be made of moveable just as well as of Immovable properties and that in fact "any property" can be made wakf of provided there is "a permanent dedication" of it, and provided further that the object of the wakf is a purpose recognised by the Musalman law as religious, pious or charitable. We think that the definition of "wakf" as given in this enactment is quite general in its character and would certainly include wakf of full grove-holders' rights over which the grove-holder has a permanent dominion. The rights of a grove-holder as now recognised by the Tenancy Act are not rights of a temporary character nor is he liable to ejection arbitrarily. So long as the grove-holder and his heirs and transferees maintain the grove and the land does not lose its character of a grove, even the old trees when they fall down can be replaced by new ones and in that way the land can retain its character as a grove for ever. There seems to be nothing even in the strict Mahomedan law against the dedication of such permanent rights which amount to a permanent occupation of the land and full proprietary right over the trees that stand on the land and also the right to maintain the grove as such on the land. The position in our opinion has been made still clearer by the definition of the word "wakf" in the Musalman Wakf Validating Act which has a very wide and comprehensive scope and must include the rights of a grove-holder.

4. We are therefore of the opinion that the plaintiffs are entitled to maintain the

suit as trustees under the wakf of 1916. We accordingly uphold the decision of the lower appellate Court and dismiss the appeal with costs.