

(1912) 01 MAD CK 0032
In the Madras High Court

Katil Sheik Ummar Saheb

APPELLANT

Vs

Khazi Budan Khan Saheb

RESPONDENT

Date of Decision : 05-01-1912

Acts Referred:

Citation : (1914) ILR (Mad) 228 : 25 Ind. Cas. 898

Hon'ble Judges : Sundara Aiyar, J; Spencer, J

Bench : Division Bench

Judgement

1. The plaintiff, who is the Khazi of the Kundapur Jumma Masjid appointed by Government, instituted the suit in this case against the defendant to restrain him from officiating at marriages celebrated in the place and for the recovery of a sum of Rs. 11 which the defendant had received as fees for four nikahs performed by him in violation of the plaintiff's rights. The Munsif dismissed the suit, holding that the plaintiff had no cause of action against the defendant, as he acquired no exclusive right by his appointment as Khazi to officiate at marriages. The District Judge reversed his judgment and passed a decree in the plaintiff's favour. The Munsif relies, in support of his conclusion, on Section 4 of the Khazis Act XII of 1880 Clauses (b) and (c) of which lay down that nothing herein contained, and no appointment made hereunder, shall be deemed to render the presence of a Kazi or Naib Kazi necessary at the celebration of any marriage or the performance of any rite or ceremony, or to prevent any person discharging any of the functions of a Kazi. We agree with the Munsif that the section shows, that an appointment under the Act does not confer on the appointee any exclusive franchise or any exclusive right to officiate at marriages. Section 2 of the Act enacts that the Local Government may, if it thinks fit, after consulting the principal Muhammadan residents, appoint one or more Khazis whenever it appears to it that any considerable number of Muhammadans resident in any local area desire that one or more Khazis should be appointed for such local area. This section supports the view adopted by the Munsif. So far as any claim under the Act is concerned, it is clear to our minds that the plaintiff has no right to restrain any person from discharging any of the functions of a Khazi.

Regulation III of 1808, which was in force until it was repealed by Act IX of 1864, also contained no provisions conferring any exclusive right on a person appointed as Khazi under it. The opinion of Sir Rowland Wilson, the learned writer, on Muhammadan Law, is also in support of the Munsif's construction. See page 137. Mr. Sitarama Rau for the respondent relies on Muhammad Yussub v. Sayad Ahmed 1 B.H.C.R. App. 18 in support of his contention that the plaintiff has an exclusive right. But the plaintiff in that case did not claim the office under an appointment made under any statute. He was appointed by the Governor of Bombay as the representative of the Sovereign power which according to Muhammadan Law had the right to appoint Khazis. The office so created was a judicial and administrative office, and registration of marriages and officiating at them were only part of the functions of the office-holder. The plaintiff there complained of the breach of his rights in general, including his judicial and administrative rights. There can be no doubt that a judicial or administrative office created by the Sovereign confers rights and privileges of an exclusive character. Act XII of 1880 expressly says that a Khazi appointed under that Act is to have no judicial or administrative powers. We must hold that that case has no bearing on the one before us. Another case was relied on for the respondent -- Sayed Hashim Saheb v. Huseinsha 13 B.P 429. The suit in that case related to the office of Khatib in a mosque; as also Mira Mohidin v. Asan Mohidin 17 M.L.J. 421, which was also cited for the appellant. An office which requires the holder to perform duties in connection with an institution would ordinarily carry with it rights of an exclusive character, and does not interfere with the right possessed by all persons to exercise any profession or calling they might choose to adopt. The object of the Khazis Act of 1880 was merely to appoint a person whose duty it would be to render certain services to such Muhammadans as may choose to resort to him for certain purposes, and does not confer on him any exclusive right to perform the functions which his office requires him to discharge. This was the view adopted in Bhoolwa v. Syud Vnwur Ulee (1851) S.D.A.N.W.P. 127 and in Zeenutoollah Cazee v. Nujeeboollah (1835) 6. Ben. S.D.A. 86 : 6 Sel. Rep. 36. The respondent also contends that by the custom of Muhammadans the Khazi has the exclusive right of officiating at marriages. But as pointed out in Muhammad Yussub v. Sayad Ahmed 1 B.H.C.R. App. 18 the office of Khazi is not one created by the community of Muhammadans but by the Sovereign, whose administrative power is the source of the Khazis' rights. Moreover, we do not understand the plaint in this case as asserting any right based on an enforceable legal custom.

2. We reverse the decision of the lower Appellate Court and restore that of the Munsif with costs here and in the lower Appellate Court.