

(1974) 03 AHC CK 0019
In the Allahabad High Court
Case No : First Civil Appeal No. 14 of 1964

Khalil Ahmad Khan

APPELLANT

Vs

Siddiq Ahmad Khan and Others

RESPONDENT

Date of Decision : 21-03-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 15, 9, 92
Uttar Pradesh Muslim Waqfs (Amendment) Act, 1971 — Section 64
Uttar Pradesh Muslim Waqfs Act, 1960 — Section 2, 2(3)

Citation : AIR 1974 All 382

Hon'ble Judges : Prem Prakash, J; J.M. Lal, J

Bench : Division Bench

Advocate : Kalbe Abbas, for the Appellant; S.M. Fakhruzama, for the Respondent

Final Decision : Partly Allowed

Judgement

Jagmohan Lal, J.—This appeal relates to a Muslim Waqf-Alal-aulad known as Waqf Sohani Begum which was created by Smt. Sohani Begum by means of a waqf-deed dated 22nd March, 1929. Smt. Sohani Begum had two daughters named as Malka Mehr Nigar Begum and Ahmadi Begum. The latter died prior to the execution of the waqf-deed leaving two sons Siddiq Ahmad, plaintiff-respondent in this appeal, and Khalil Ahmad, defendant-appellant. Nigar Begum had also a son named Maqsood Ali. Out of the income of the waqf property less than 25% was to be spent on some public charities specified in the waqf-deed, while the remaining income was to be spent on paying allowances to the waqif and her descendants and to meet the expenses on some other religious ceremonies for the benefit of the family. The waqif constituted herself as the first Mutawalli and after her death her daughter Nigar Begum was to be the next Mutawalli. On her death one of her daughter's son, who was found fit and capable by the District Judge, Lucknow, was to be appointed as Mutawalli.

2. Later on under a supplementary deed dated 29-11-1938 she purported to change the scheme of Mutawalli-ship so as to appoint one of her daughter's son,

namely, Khalil Ahmad, defendant-appellant, as Mutawalli after the death of the waqif in preference to her daughter Nigar Begum. This supplementary deed was, however, challenged by Smt. Nigar Begum by a suit filed by her against Khalil Ahmad and it was adjudged as illegal. The decision Of the Civil Judge was affirmed by this court in Khalil Ahamad Khan Vs. Malka Mehar Nigar Begum and Others, .

3. Smt. Sohani Begum died on 14-12-1942. On her death her daughter Nigar Begum became the Mutawalli. She. however, migrated to Pakistan along with her son Maqsood Ali after the partition of the country with the result that her beneficiary interest in the waqf along with the office of Mutawalli held by her vested in the Custodian, Evacuee Property. In that capacity the Custodian, Evacuee Property continued to hold and manage the waqf property till 1959. There was an arrangement between him and Khalil Ahmad, defendant-appellant, by means of which the Custodian agreed to accept the capitalized value of the beneficiary's interest of the evacuee Nigar Begum and to release the property from his management and charge. The capitalized value was at first fixed at Rupees 19,200. Khalil Ahmad Khan sold one of the properties of the waqf with the permission of the District Judge for Rupees 20,500 in order to pay the capitalized value to the Custodian. The Custodian then handed over the management of this property to Khalil Ahmad Khan with effect from 1-6-1959.

4. His brother Siddiq Ahmad Khan, plaintiff-respondent, who was also a beneficiary in the waqf, was not satisfied with the management of the appellant and he made a complaint against him to the Sunni Central Board of Waqfs. The Board issued a notice to the appellant calling upon him to produce accounts in respect of the waqf property. He, however, challenged the jurisdiction of the Board to make such demand on him as, according to him, the provisions of the Muslim Waqfs Act, 1960 were not applicable to this waqf in view of Section 2 (3) of the Act. This plea of the appellant was accepted by the Board which refused to take any further action against the appellant and left the plaintiff-respondent to seek his remedy in court. The plaintiff then applied to the Board to grant permission for filing a suit u/s 64 of the Act. The Board was of the view that since this waqf was not governed by the provisions of the Act u/s 2 (3), no such permission was necessary, otherwise the Board had no objection to his filing a suit against the defendant-appellant.

5. The plaintiff then filed a suit in the court of the Civil Judge, Lucknow on 1-6-1961. The suit was filed against the defendant-appellant as well as Smt. Malka Mehar Nigar Begum. In this suit the plaintiff alleged that the defendant was not a legally appointed Mutawalli, but he was only a de facto Mutawalli to whom charge of the waqf property was given by the Custodian, Evacuee Property, He mentioned various acts of misconduct and neglect of duty on the part of the Mutawalli and prayed for his removal from that office and in his place appointment of himself as Mutawalli. He also prayed for rendition of accounts by the defendant for the period during which he was in-charge of this property as de

facto Mutawalli.

6. After filing the suit the plaintiff also applied for appointment of a Receiver during the pendency of the suit, That application was, however, dismissed by the trial Court. Against that order the plaintiff filed an appeal in this court, During the pendency of that appeal this court appointed an Advocate as Receiver of the waqf property.

7. The suit was contested by the defendant on several grounds which gave rise to the following issues: --

1. Whether the defendant No. 1 is a duly appointed Mutawalli of the waqf Sohani Begum?

2. Whether defendant No. 1 has been mismanaging the waqf property and misappropriating its property and has been causing loss to the waqf and defeating the purpose of the waqf as alleged in paras 13 to 16 of the plaint? If so, its effect?

3. Whether the defendant No. 1 has not been maintaining proper accounts of the waqf Sohani Begum? If so, its effect?

4. Whether the defendant No. 1 is acting as an agent of the defendant No. 2?

5. Whether the defendant No. 2 having migrated to Pakistan, is now no longer Mutawalli of the waqf Sohani Begum? If not, whether she is liable to be removed?

6. To what relief is the plaintiff entitled?

7. Whether the suit is liable to be stayed u/s 10, C. P. Code as alleged?

8. (a) Whether the defendant No. 1 is unfit to be appointed as Mutawalli of the waqf Sohani Begum?

(b) If so, whether the plaintiff is a fit person to be appointed as Mutawalli of the said waqf?

(c) In case none of the parties is found fit to be appointed Mutawalli, who can be appointed as Mutawalli of the waqf?

9. Whether Custodian is a necessary party?

8. The learned Civil Judge found that the defendant-appellant was not a duly appointed Mutawalli, but was simply a de facto Mutawalli. It was held that he had been mismanaging the waqf property and had misappropriated some money belonging to this waqf. Further he was not maintaining proper accounts. It was held that the defendant-appellant was not acting as an agent of defendant No. 2 who had migrated to Pakistan and was no longer a Mutawalli. On account of the defendant-appellant mismanaging the waqf property and misappropriating some of the property he was not found fit to be appointed as Mutawalli. On the other hand, the plaintiff was found to be a fit person to be appointed as such

Mutawalli. On these findings the plaintiff's suit for rendition of accounts, for removal of the defendant-appellant from the office of Mutawalli and for appointment of the plaintiff as Mutawalli of this waqf was decreed.

9. Feeling aggrieved by that decree, the defendant-appellant approached this court by filing this appeal in which the decree was assailed in so far as it related to his removal from the office of Mutawalli and appointment of the plaintiff in his place. The decree as regards the rendition of accounts was not challenged.

10. The learned counsel for the appellant argued that the suit was not maintainable because no permission had been obtained from the Sunni Central Board of Waqfs u/s 64 of the Muslim Waqfs Act, 1960. When the present suit was filed on 1-6-1961, Sub-section (3) of Section 2 provided:--

"This Act shall not apply to--(i) a waqf created by a deed, if any, under the term of which not less, than 75 per cent. of the total income after deduction of land revenue, rent and cesses payable to the State Government of the property covered by the deed of waaf. if any, is for the time being payable for the benefit of the waqif or his descendants or any member of his family;

(ii) Waqf created solely for any of the following purposes:--

(a) the maintenance and support of any person other than the waqif or his descendants or any member of his family.

(b) the celebration of religious ceremonies connected with the death anniversary of the waqif or a member of his family or any of his ancestors provided that the annual expenditure on such purposes does not exceed Rs. 2,500.

(c) the maintenance of private (i) tombs and (ii) graveyards, or

(d) the maintenance and support of the waqif or the payment of his debts, when the waqif is a Hanafi Musalman".

11. It is not disputed that under the waqf-deed relating to this waqf more that 75% of the income of the waqf property is payable for the benefit of the waqif or her descendants and members of her family as well as for celebration of religious ceremonies connected with death anniversary of the waqif and her husband. In view of this provision the entire Waqf Act including Section 64 thereof had no application to the present waqf unless the case fell within the proviso to Sub-section (3) which is not the case of any party. In the present case the position that the Waqf Act was not applicable to this waqf had been repeatedly taken up by the defendant himself. A complaint against him was made by the plaintiff-respondent No. 1 to the Sunni Central Board of Waqfs, vide application dated May 2, 1960, Ext. 22 (at page 211 of the paper book) alleging that the defendant was not maintaining proper accounts and mismanaging its affairs and that he did not show the accounts to the plaintiff, though he was entitled to see those accounts under the terms of the waqf-deed. On this complaint the Board issued a notice to the defendant-appellant vide Ext. 21 (at page 258 of the paper book).

The defendant submitted his replies vide Ext. 20 Cat page 282) and Ext. 49 (at page 287) in which he alleged that this waqf was covered by Section 2 (3) and as such the Board had no jurisdiction to call upon him to produce any accounts. The Board accepted this position by its order dated 12th May, 1950, Ext. 2 (at pp. 284-85). It expressed its inability to take any action on the plaintiff's application and left him to go to the proper court of law. The plaintiff then for the sake of formality moved another application to the Board before filing the suit seeking its permission u/s 64 of the Act. The Board on that application passed an order on 9-3-1961 vide Ext. 7 (at page 264) in which it reiterated its previous stand that since the waqf fell within Section 2 (3), no permission was necessary, otherwise, the Board had no objection to the filing of such suit. In view of these facts, the plea that the suit is defective for want of permission u/s 64 is without any merits.

12. During the pendency of this appeal the Muslim Waqfs Act, 1960 has been amended under Act XXVIII of 1971 which deleted Sub-section (3) of Section 2 with result that after that Act all private waqfs (Alal-aulads) are governed by the Act. That amendment is not, however, retrospective. The suit, out of which this appeal has arisen, being filed on 1-1-1961 does not therefore suffer from any defect of want of permission u/s 64.

13. The next point that was urged on behalf of the appellant was that under the terms of the waqf-deed Smt. Malka Mehar Nigar Begum was a duly constituted Mutawalli. When she along with her son Maqsood Hasan migrated to Pakistan, her beneficiary interest in the waqf as well as her right to be a Muta-walli of the waqf property vested in the Custodian, Evacuee Property under the provisions of the Administration of Evacuee Property Act. The Custodian on accepting the capitalized value of the beneficiary interest of the evacuee Nigar Begum transferred the office of Mutawalli to the defendant-appellant. It is contended that the Custodian was competent to transfer the management of the waqf property to the defendant-appellant and as such the appellant is holding the office of Mutawalli in that capacity. This contention cannot be accepted for the obvious reason that the office of Mutawalli is not transferable under the Mahomedan Law. In this connection a reference may be made to para. 214 of Mulla's Principles of Mahomedan Law, 16th Edition. Reliance is placed by the learned counsel for the appellant on a decision of this court in Custodian Evacuee Property Vs. Shrimati Bibijan, . It was held in this case that from a perusal of Sections 2 (f), 8 and 11 (2) it is quite clear that the property which is the subject-matter of a waqf-alal-aulad in its entirety vests in the Custodian subject to the rights of the beneficiaries under the waqf who are not evacuees, and that all the rights of Mutawalli under the waqf property and any other property also vest in the Custodian. Under the Mahomedan Law, waqf property vests in God. The provisions of Section 11, however, override the provisions of Mahomedan Law by virtue of Section 4. As the waqf property vests in the Custodian, all the rights of the Mutawalli also vest in him and the Custodian becomes entitled to administer the trust in place of the mutawalli-evacuee. In such a case it is not proper for the court to pass an order of removal of the muta-walli so long as the Custodian is in

charge of the property because he is prima facie the best person to manage the property and discharge the duties of a Mutawalli. This decision, however, does not lay down that the Custodian is also competent to transfer the mutawalliship to another person, nor do we find anything supporting this position in the Administration of Evacuee Property Act.

14. The learned counsel then argued that since the Custodian accepted the capitalized value of the beneficiary's interest of Nigar Begum evacuee and relinquished charge of this property, it amounted to civil "death of Nigar Begum and a vacancy arose in the office of Muta-walli which under the terms of the waqf-deed as well as under general law could be filled up only by the District Judge and that the Civil Judge had no jurisdiction to make appointment to the office of Mutawalli in this case. As regards general law, the argument is based on the proposition that under the Shariat Law it was the Chief Qazi who had supervisory jurisdiction over the waqfs including waqfs-alal-aulad and as such he was competent to nominate a person as Mutawalli when a vacancy arose in that office for which no provision was made in the waqf-deed or the person indicated in the waqf-deed for that office was incompetent to hold it. Under the present system of courts, it is the District Judge who takes the place of Chief Qazi. In support of this proposition reliance was placed on *Atimannessa Bibi v. Abdul Sobhan* AIR 1916 Cal 894 in which the following observation was made:--

"As the District Judge is the principal Judge in a District, he must be taken to be by reason of his office the Chief Qazi and would have all the powers of a Kazi in respect of all waqfs. Whether a Subordinate Judge or a Munsif can perform the judicial functions of a Kazi is a point which need not be considered by us in this case."

The matter again came up for consideration before a Bench of the Calcutta High Court in *Mohammad Abdul Gani Fakir Vs. Mt. Kulsan Nessa Bibi and Others*, where this decision as well as some other previous decisions were taken note of Khundkar, J. observed at page 330 of the report:--

"In our opinion, the judgment in 43 Cal 467 = AIR 1916 Cal 894, did not sufficiently consider the effect of Act 11 of 1864 which abolished the offices of Hindu and Mahomedan law officers including that of Kazis. The abolition of the office of Kazi carried with it the transfer of the functions which appertained to the Kazi. Those functions were carried over to the Civil Courts which thereupon became vested with them. The limits of the jurisdiction of those courts in the matter of suits relating to waqfs being clearly matters of procedure were, in the absence of any enactments to the contrary, left to be determined by the rules of Civil Procedure. Section 92, Civil P. C., enacts that in regard to waqfs of a public character, suits must be brought in the principal civil court of original jurisdiction or in some other Court empowered in this behalf by the Local Government. But from this it does not follow that suits in respect of waqfs of a private character must also be brought, in that court and in no other."

15. It cannot be disputed that the present waqf is not a public waqf so as to fall within the purview of Section 92. Civil P. C. It may be mentioned in passing that so far as Lucknow district is concerned, under a notification dated October 1, 1931, the Civil Judge, Lucknow, the Civil Judge, Mohanlalganj at Lucknow and the Civil Judge, Malihabad at Lucknow have also been empowered to try suits u/s 92, C.P.C. relating to public charities within the local limits of their jurisdiction. The present suit, though instituted in the court of the Civil Judge, Lucknow, was transferred to the court of the Additional Civil Judge and was tried by him. It is not known whether the Additional Civil Judge was also empowered u/s 92, C.P.C. or not. Any way, this question is not material when the waqf itself is not governed by that section. According to the later decision of the Calcutta High Court, referred to above, it appears that a suit for removal of a Mutawalli of a private waqf and appointment of another person as Mutawalli in his place was entertainable by the Civil Judge and not necessarily say the District Judge alone. In fact, in view of Section 15, C.P.C. such a suit had to be filed in the court of the Civil Judge. This matter was also considered by a Full Bench of this Court in Mohammad Ali Khan Vs. Ahmad Ali Khan and Others, . The material observation made by Wali Ullah, J. appears at page 265 of the report:--

"Under the Mahomedan system the "Kazi" was the principal Judicial Office". He was frequently associated with the "Mufti" who was the jurisconsult or the principal law officer who gave the Fatwa, or the exposition of the law applicable to cases. The Kazi, however, was the officer who- gave the actual decision. In addition to his judicial capacity the Kazi was also an important administrative officer. As observed by the Privy Council in the abovementioned case the place of the Kazi in the British Indian system has been taken by the civil court. There is no doubt whatsoever that the civil court like the Kazi, is fully competent to remove a mutawalli upon misfeasance or breach of trust, and the same is the position in regard to the appointment of a mutawalli. With regard to the procedure, however, which must be followed before the District Judge can exercise his jurisdiction in the matter of removal or appointment of a mutawalli, decisions of various High Courts in India appear to establish the following proposition that the District Judge as a principal Civil Court of original jurisdiction has, by virtue of his powers as a Kazi a general power of nominating a mutawalli when there is a vacancy in the office in a summary proceeding, that is, by means of a mere application, but he has no such power in a summary proceeding to appoint another mutawalli in place of one who is in office. The removal of a mutawalli can only be done by means of a suit properly instituted in a civil court. If the waqf be of a public, religious or charitable nature, the suit would be either under Sections 14 and 18, Religious Endowments Act of 1863 or u/s 92, Civil P. C. If, however, the waqf be of a private nature, e.g., a waqf-alal-aulad, the proper remedy would appear to be a regular civil suit under the general provisions of Section 9, Civil P. C."

It, therefore, follows that under the general law the present suit, in which the removal of the defendant from the office of de facto Mutawalli and the

appointment of the plaintiff in his place as a suitable Mutawalli had been prayed for, besides seeking rendition of accounts from the defendant, was maintainable in the court of the Civil Judge u/s 9 read with Section 15, C.P.C. and such a suit could be transferred to the court of the Additional Civil Judge and tried by him

16. Reference was then made to the specific provision contained in the waqf-deed which lays down that after the death of her (waqif's) daughter Mehar Nigar Begum, one of the descendants of her two daughters, namely, Mehar Nigar Begum and Ahmadi Begum, who was considered by the District Judge, Lucknow, as most suitable, shall be appointed as Mutawalli and if none of them was found to be a suitable person, the District Judge could appoint any other suitable person from the Muslim Community as a Mutawalli. It is argued that the District Judge was the persona designata under the waqf-deed who alone could appoint a Mutawalli out of the descendants of the two daughters (if found suitable) or from outside and that the Civil Judge or the Additional Civil Judge could not exercise this power after the civil death of Nigar Begum. In our opinion, in view of the subsequent developments that took place this clause did not come into play After the migration of Nigar Begum to Pakistan, the Mutawalliship vested in the Custodian and he started managing the property in that capacity under the Evacuee Law. Subsequently he purported to transfer the office of Muta- walli to the defendant-appellant and for two years the defendant-appellant managed that property as de facto Mutawalli, During this period, according to the plaintiff, he committed various acts of misconduct and neglect of duty and did not maintain proper accounts and show them to the plaintiff when a request to this effect was made by him. The plaintiff, therefore, thought it necessary to file a suit against him for rendition of accounts and for his removal from the office of Mutawalli. In these circumstances, the question as to who out of the descendants of the two daughters of the waqif was a suitable person to be appointed as Mutawalli could not be determined by the District Judge in a summary manner on a miscellaneous application moved before him as was held by the Full Bench of this Court in AIR 1945 All 361 (FB) (supra). This matter could only be decided in a regular suit and that regular suit u/s 15 could be filed only in the court of the Civil Judge, Lucknow.

17. To put the record straight, we may, however, mention that during the pendency of this appeal the defendant-appellant moved the District Judge, Lucknow for his appointment as Mutawalli under the above provision of the waqf-deed. Under an ex parte order pass-ed by him the District Judge appointed him a Mutawalli. That order was, however, challenged in revision filed by the plaintiff-respondent, A learned Judge of this Court allowed the revision and remanded the case. When the matter came before another District Judge, he did not think it proper to make an appointment by virtue of the above provision contain-ed in the waqf-deed in view of this case pending between the parties in which the entire matter was involved. Under these circumstances, the plea raised on behalf of the defendant-appellant that the District Judge alone could make this appointment and that the Civil Judge had no jurisdiction in this matter cannot be

accepted.

18. It may also be pointed out that the waqf-deed also contains a provision that if the Mutawalli for the time being does not maintain proper accounts or commits a breach of trust he shall be liable to be removed by the Sarkar and substituted by another Mutawalli, Obviously the word "Sarkar" in this context refers to the competent court or the authority empowered under law to remove an acting Mutawalli. At the time the present suit was filed, it was the Civil Judge who was the competent authority to do so. Thus under the terms of the waqf-deed also a suit of the present nature was to be filed before a competent authority and the question of appointment of the Mutawalli by the District Judge on the occurrence of a vacancy in the office after the death of Nigar Begum did not arise.

19. The next point that was urged on behalf of the appellant was that the evidence on record did not prove any serious misconduct or neglect of duty on the part of the defendant-appellant so as to punish him by removal from the office of Mutawalli. The learned Civil Judge on a consideration of the entire evidence on record found that the defendant-appellant had misappropriated a sum of more than Rs. 5,000 out of the sale consideration of one of the waqf properties which had been sold in order to pay the capitalized value of the beneficiary's interest of Nigar Begum evacuee to the Custodian. This property was sold for Rs. 20,500. The cash amount that was paid by the defendant-appellant to the Custodian in several installments totalled to Rupees 15,387.37 P. The balance of the sale price amounting to Rs. 5,112.63 P. was not accounted for by the defendant. His allegation that he paid another sum of Rs. 4,200 to the Custodian after the final order of the Deputy Custodian General dated 1st December, 1959. Ext. A-172 (at pp. 273-75) has not rightly been accepted by the trial Court. This order is quite clear and it leaves no room for doubt that there was no occasion for any further payment by the defendant-appellant after this order. He did not produce any receipt or file any other documentary evidence about the alleged payment subsequent to this order, The letter Ext. A-12 dated January 19/29, which the defendant-appellant received in reply to his letter, does not show that any amount was deposited by the defendant after December 1, 1959. In fact, he did not file a copy of his own letter which was replied to under this letter by the Evacuee Department. If he had done so, it would have revealed the context in which the defendant-appellant had requested the Government of India to refund the sum of Rs. 19,200 realised by the Custodian (partly in cash paid by the defendant-appellant and partly by adjustment of the profits of waqf property collected by the Custodian while he was managing this property) as capitalized value of the beneficiary interest of Nigar Begum evacuee. But he did not cleverly choose to file a copy of his letter and built an argument on the vague terms of the reply sent by the Government of India, vide Ext. A-12. We have, therefore no hesitation in agreeing with the learned Civil Judge that the amount of Rupees 5,000 and odd had been misappropriated by the defendant-appellant

20. It has further been found by the learned Civil Judge that the defendant-

appellant did not maintain proper accounts of the income and expenses relating to this waqf. It may be stated that the terms of the waqf-deed are very strict regarding the maintenance of accounts and it has been specifically provided therein that every beneficiary and even a member of the Muslim Community would be entitled to see the accounts which a Mutawalli has been enjoined to maintain properly. In the present case, the defendant-appellant was not prepared to show those accounts either to the plaintiff directly or through the intervention of the Sunni Central Board of Waqfs to which a complaint was made by the plaintiff and then a notice was issued by the Board to the defendant to produce the accounts. His reply to that notice was that the Board had no jurisdiction in the matter. He did not file any accounts with his written statement or before the date of issues. It was only at a very late stage that he filed some accounts. The trial court appointed a Commissioner to examine those accounts. The Commissioner without going into the disputed items which he was not authorised to adjudicate upon and accepting the accounts at their face value noted several irregularities in those accounts. Some of those irregularities were to the effect that though the individual items of expenses were less, their total had been inflated. The learned counsel for the appellant contended that the defendant is not a very educated person or well up in accountancy and if some discrepancies have crept in the maintenance of accounts by him, it does not necessarily mean a failure of duty on his part. Irregularity in maintaining accounts is different thing from dishonesty in those accounts, The irregularities pointed out by the Commissioner in the accounts submitted by the defendant clearly show that he has not honestly kept those accounts.

21. Some other failures on the part of the defendant in carrying out his duties as Mutawalli under this waqf have also been noted by the learned Civil Judge. He found that he had not spent money over the specified charities mentioned in the waqf-deed such as Arabic School at Nadwa, Orphanage of Mumtaz Hasan, Muslim University, Aligarh and Arabic School at Deoband Sharif. They are well known institutions and they are still in existence. The defendant admittedly did not pay the earmarked sums to these institutions. On the other hand, he tried to represent that he made those payments to some other institutions. Obviously he was not authorised to do so and his failure to pay money to these institutions amounted to a breach of trust on his part. Some other lapses on his part have also been noted by the learned Civil Judge. But in our opinion, the above three lapses are serious enough to justify his removal from that office.

22. The last question that remains for our consideration is whether the plaintiff was a suitable person after the removal of the defendant. At the time the decree was passed by the trial court nothing was brought out against the plaintiff so as to disentitle him to hold the office of Mutawalli except that he had in the past been insane for some time. The learned Civil Judge, however, noted that he was sane at that time and he was fit to discharge duties as Mutawalli. But during the pendency of this appeal he has again become insane. Under these circumstances, we do not think that it would be in the interest of this waqf to

appoint the plaintiff as Mutawalli who admittedly is an insane person at present and even if he recover alter some time, he may again develop this disease. Hence some other suitable person has to be appointed.

23. Under the Muslim Waqfs Act, as it stands after its being amended in 1971, the Sunni Central Board of Waqfs is the competent authority to make that appointment. In this case the Civil Judge in whose court the suit was filed prior to that amendment is seized of that matter and so the appointment has to be made by him. He can of course take the help of the Board by giving a notice to that body and asking it to suggest some suitable names out of whom the appointment has to be made by him. In the meantime, the Receiver who is holding charge of the property shall continue to hold that charge.

24. We accordingly allow this appeal in part. We confirm the decree pass-ed by the trial court in so far as it relates to the removal of the appellant from the office of the Mutawalli, but set it aside in so far as it relates to the appointment of the plaintiff-respondent as Mutawalli in his place. The Civil Judge shall now make a fresh appointment. In the circumstances of the case parties shall bear their own costs in this Court.