

**(1934) 11 AHC CK 0010**  
**In the Allahabad High Court**

Mohammad Badrul Haq Rashidi

APPELLANT

Vs

Shah Hasan Ahmad and Others

RESPONDENT

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**Date of Decision :** 30-11-1934

**Acts Referred:**

**Citation :** AIR 1935 All 278(1) : 159 Ind. Cas. 37

**Hon'ble Judges :** Ganga Nath, J

**Bench :** Division Bench

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### Judgement

Ganga Nath, J.—This is a plaintiff's appeal and arises out of a suit brought by him against the defendant-respondents for a declaration that the plot of land detailed in the plaint on which the tomb of the late Maulana Asistands was dedicated by the defendants that it is under the management of the S'ajjadah Nashin of Khankah Rashidia of Jaunpur, and the Sajjadah Nashin of Khankah Rashinda is its mutwalli, that the defendants have no right to interfere with the land so dedicated, that the registered deed of wakf dated 27th November 1922, executed by the defendants was void and ineffective, and also for a perpetual injunction restraining the defendants from burying the dead bodies of their family any more and "from erecting any building on the land which might contravene the terms of the oral wakf. The plaintiff's case was that Maulana Asi who was a revered Mohamedan saint died at Ghazipur, on 25th February 1917. The Maulana was a very pious man and his followers regarded him as a saint. He was buried in front of the house in which his grand daughter used to live. The land belonged to the defendants and they made an oral wakf. The plaintiff is a disciple of Maulana Asi. The plaintiff alleged that last year he and other disciples of the deceased Maulana wanted to make constructions on the land, but were obstructed by the defendants. The defendants contended that no oral wakf was made; that out of them those de fendants who were present at the time of the death of Maulana Asi did not make any objection to the burial of the Maulana in the plot in dispute, but rather gave implied consent to it because they desired that the dead of their family should be buried on the land which had been sanctified by the burial of the blessed corpse of the revered Maulana.

2. Both the Courts have found that the land in dispute is "musha" and belongs jointly to all the defendants and also that defendants 1 and 2, did not join in the alleged oral wakf. The Courts below held that the wakf of "musha" was invalid under the Mohamedan law and consequently no valid wakf was made. The only point for consideration in this case is whether any valid wakf of the land in dispute was made, because the plaintiff's case is based entirely on the oral wakf alleged to have been made by the defendants. It is not denied that the land in dispute is musha. The only point for determination is whether the wakf of "musha" is valid under the Mahomedan law. Under the Mahomedan law a "musha" or an undivided share in property may, according to the more approved view, form the subject of wakf whether the property be capable of division or not. But the wakf of a musha for a mosque or burial ground is not valid whether the property is capable of division or not, vide:

musha is valid though the property may be capable of partition. He has declared that a wakf of a musha for a mosque or burial ground is invalid. He gives two reasons for it, one of which is that:

the continuance of a participation in anything is repugnant to it.<sup>9</sup> becoming the exclusive right of God: see p. 233 of Hedaya.

3. The learned Counsel for the appellant has referred to rulings which relate to gifts of musha. The specific reason why a wakf of musha for tomb or mosque is invalid has been given by Abu Yusuf as stated above. I therefore agree with the finding of both the lower Courts that the wakf was invalid and consequently the plaintiff has no right of suit. It is therefore ordered that the appeal be dismissed with costs. Permission for Letters Patent appeal is granted.