

(1910) 08 MAD CK 0003
In the Madras High Court

Mohideen Khan Sahib

APPELLANT

Vs

Balai Khan Sahib Alias Beran Khan Sahib and Others

RESPONDENT

Date of Decision : 25-08-1910

Acts Referred:

Citation : 7 Ind. Cas. 868

Hon'ble Judges : Munro, J;Abdur Rahim, J

Bench : Division Bench

Judgement

1. The suit is not one falling u/s 539 of the Code of Civil Procedure, inasmuch as it asks for the removal of a trustee--vide Rangasami Naickan v.

Varadappa Naichan 17 M. 462. The fact that no sanction was got under that section is, therefore, immaterial. As to the objection u/s 14 of Act

XX of 1863, we think it necessary before deciding it to have a finding as to whether the trust in question was under the superintendence of the

Board of Revenue prior to Act XX of 1863. Fresh evidence may be taken. The finding should be submitted within six weeks and seven days will

be allowed for filing objections.

2. [In compliance with the above order, the District Judge of South Arcot submitted the following

FINDING.

3. I have been directed to return a finding on the following issue:

Whether the trust in question was under the superintendence of the Board of Revenue prior to Act XX of 1863.

4. Finding:-- The case coming on for hearing on 11th instant one witness was examined on behalf of plaintiff. He is the President of the

Muhammadan Religious Institution Committee of Cuddalore Taluk. He proves that the mosque in question which is at Pakkiripalayam is not under

the control of the Committee of which he is President. I presume that their Lordships have framed the above issue in order that they may know

whether the mosque in question is one to which the provisions of Act XX of 1863 apply, for it has been held in *Jam Ali v. Bam Nath Mundul* 8 C.

32 that the provisions of Act XX of 1863 apply, not to all mosques, but only to those mosques for the support of which endowments in land have

been made by the Government to private individuals. It is not denied that land was granted by the Government for the support of the mosque in

question. In para 3 of the plaint it is alleged that the original ancestor Ajmeersha Fakir got under a Parwana 11 Nawab cawnies of wet and dry

lands from the Nawab's Government and that the Parwana directs that the mosque shall be maintained from the income of the suit lands. By

Section 2 of Madras Regulation VII of 1817, the general superintendence of all endowments in land for the support of mosques was vested in the

Board of Revenue. I, therefore, find that the trust in question was under the superintendence of the Board of Revenue prior to Act XX of 1863.

5. This appeal coming on for final hearing after return of the finding of the lower Court, the Court delivered the following

6. The finding is that the trust was under the superintendence of the Board of Revenue prior to Act XX of 1863. Objections have been taken to

the finding but it is unnecessary to consider them. For even if no sanction is necessary u/s 18 of Act XX of 1863, the case is one in which many

others are interested, and the plaintiff cannot sue without obtaining permission u/s 35 of the Civil Procedure Code. The fact that the plaintiff is a

trustee can make no difference having regard to the scope of the suit. No permission was obtained u/s 30 of the CPC and the suit was, therefore,

rightly dismissed.

7. The appeal is dismissed with costs. The plaintiff will pay the Court-fees which would have been paid by him if he had not been permitted to

appeal as a pauper.