

(1928) 02 PRI CK 0009

In the Privy Council

Case No : Privy Council Appeal No. 22 of 1926

Mt. Hussain Bibi

APPELLANT

Vs

Sayad Nur Hussain Shah and others

RESPONDENT

Date of Decision : 21-02-1928

Acts Referred:

Citation : (1928) AIR(PC) 106

Hon'ble Judges : Lancelot Sanderson, Carson, Shaw, JJ.

Advocate : Chapman Walker and Shephard, Francis and Harkar, B. Dube, H. R. Majid, for the Appearing Parties.

Judgement

Lord Shaw

This is an appeal from the judgment and decree of the High Court of Judicature at Lahore dated 16th April 1924, reversing a judgment and decree of the District Judge dated 3rd January 1923.

The appeal arises out of a suit brought by the plaintiffs under S. 14, Religious Endowments Act, 20 of 1863, in respect of a religious institution at Lahore known as the Takia Rasul Shahian.

Under that section

any person or persons interested in any mosque, temple or religious establishment or in the performance of the worship or of the service thereof or the trust relating thereto may sue the trustee, manager or superintendent for any misfeasance, breach of trust or neglect of duty and the civil Court may direct specific performance, damages, etc., and may also direct the removal of such trustee, manager, superintendent or member of the committee.

The case has been fought out in the Courts below on the footing that a wakf existed, of which the appellant Hussain Bibi was gaddi nashin and trustee - with of course, the responsibilities which attach to such a position. The judgment of

the District Judge narrates that Hussain Bibi has been judicially held to be the de facto trustee or gaddi nashin of this particular institution, and he proceeds to deal with the case upon that footing.

From the High Court judgment it is only necessary to cite this, namely, that the defendant repudiated the allegations made by the plaintiffs in their plaint that is, acts of misfeasance, etc., and contended that she had been duly appointed a gaddi nashin and had properly managed the institution.

In these circumstances, the Board heard with astonishment the first and fundamental proposition of the learned counsel for the appellant to the effect that the question was whether there was a wakf at all. The Courts below had not heard this audacious proposition and had disposed of the case in foro contentioso on the main subject of dispute, viz., whether there had been such mal-administration of the wakf by the appellant as gaddi nashin as warranted her being removed from office.

It seems perfectly plain, not only from the facts in this case, but from the records of previous litigation, that the wakf existed and that she was gaddi nashin thereof; but it is unnecessary to go into that topic, for it would not be in accordance with the practice of the Board to permit litigation to be so conducted.

It is not in accordance with justice to the parties that after an appeal has been made to the Privy Council they should for the first time learn what the true nature of the case to be made against them is, nor is such a course fair to the Colonial Courts, whose judgments would thus be attacked upon remarks which they had not had an opportunity of considering: *White v. Victoria Lumber and Manufacturing Co., Ltd.* 1910 A. C. 606 : 80 L. J. P. C. 38 : 103 L.T. 323.

The same observation applies to a further proposition attempted by the learned counsel to the effect that, if this was a wakf, it was not public, but private. That was not the position maintained in the Courts below, and no such distinction of that kind was attempted nor was any bar set up to the ambit of responsibility of the gaddi nashin on any such ground.

The facts of this case are of such a quality that the slightest sketch thereof seems sufficient to justify the High Court in having removed this lady from office. That Court finds that she has been bringing the income of the trust property to her own private use. As to conserving the property, the High Court believes one witness to the effect that the defendant and her father have even removed the tomb of a previous incumbent of the shrine and have been tying a she-buffalo on that place.

As to the building, the shrine and hostel have become dilapidated; the income has been spent for the appellant's own personal uses, and there has been steady misappropriation. It is unnecessary to enter at length into the cases of neglect, etc., in detail. One of the purposes for which the wakf was instituted was to make provision for fakirs and dervishes, and to arrange for their residence and

comfort in a hostel; to perform certain services at the shrine; and, in short, to look after and maintain the mosque as a structure and as a place of worship with an imam to lead the prayers. Every one of these duties has been neglected.

Without further discussing the details of this neglect, their Lordships may now refer to the two principal elements of the case - which appeared to them by themselves to justify the removal of the lady from office. She has been persistently setting up a title to various portions, if not to the whole, of the property as her own personal estate. This of itself might not be sufficient; that is to say, it is possible to figure a case in which the property has been carefully and judiciously managed while the trustee had the impression that the property was his or her own. That would be a case of mistaken impression as to right, but no mismanagement of the subject of the trust, a unique case which would require very special proof. But the present case is entirely different, because the appellant has not merely set up her own title to the property, but she has alienated various portions thereof, asserting in the sale deeds granted by her that the property was her own. These various transactions are narrated in the judgment of the High Court. There seem, therefore, all the elements of disqualification to be present. The case when it has reached this stage is beyond further argument. It falls within the ordinary principles of the insistence by the law of India upon honest administration and management of a wakf or religious institution and upon conformity to, and not defiance of, the trusts for which such an institution is established. A breach of those obligations is a ground for removal from office. In recent years this Board has reiterated those principles, and reference may be made to *Raja Pearey Mohan Mukerji v Monohar Mukerji* A. I. R. 1922 P. C. 235 : 18 Cal. 1019 : 48 I. A. 258 (P. C.). *Srinivasa Chariar v. Evalappa Mudaliar* A. I. R. 1922 P. C. 325 : 45 Mad. 565 : 49 I. A. 237 (P. C.). *Vaidyanatha Ayyar v. Swaminatha Ayyar* A. I. R. 1924 P. C. 221 (2) : 47 Mad. 884 : 51 I. A. 282 (P.C.).

Their Lordships will humbly advise His Majesty that the appeal should be disallowed with costs.