

(1944) 05 AHC CK 0015
In the Allahabad High Court

Mt. Shah Jahan Begum and Others

APPELLANT

Vs

Ibn Ali and Others

RESPONDENT

Date of Decision : 08-05-1944

Acts Referred:

Citation : AIR 1945 All 69 : (1944) 14 AWR 199

Hon'ble Judges : Allsop, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Allsop, J.—This appeal under the Letters Patent arises out of a suit u/s 92, Civil P.C. It appears that one Muzaffar Ali Khan executed a deed of wakf on 18th March 1907. He dedicated certain property, which at that time produced an income of Rs. 17-8-0 a month, in order to give some assistance to a school and a mosque. A sum of Rs. 5 was to be paid to two men for reciting parts of the Quran after prayers. Of the balance Rs. 10 a month was to be paid to the plaintiff, Ibn Ali, who was the Pesh namaz at the mosque and the manager and the first teacher of the school. Other small sums of annas 8 a month were to be expended on repairs, lighting and similar objects. Muzaffar Ali Khan appointed himself mutwalli and reserved to himself the right to make modifications in the terms of the wakf. In exercise of this right he executed a further deed on 8th January 1910, by which he appointed Ata Husain, Mahmood Ali, Ismail Hasan and Ejaz Ali to be the mutwallis after his death. He died in or before 1915 and it appears that thereafter Ata Husain alone undertook the management of the property as mutwalli. Ibn Ali and another man instituted the suit which has given rise to this appeal on 11th June 1931. They impleaded all the four persons who had been appointed mutwallis but claimed a relief against Ata Husain alone. Their prayer was that he should be removed from the position of mutwalli and that he should render accounts for the whole period during which he was in charge. The relief was based on the allegation that he had mismanaged the property and applied the income in a manner which was not in accordance with

the terms of the wakfnama. The learned Judge of the trial Court found that the allegations were untrue, that the accounts had been properly and carefully kept and that the income had all been spent on proper purposes. He consequently dismissed the suit. In the first appeal a Single Judge of this Court agreed with the trial Court in these findings except on one point. It was provided in the wakfnama that the expenditure on the various purposes set forth in the deed should be rateably enhanced if the income from the property increased. It is admitted that the income has been approximately doubled and one of the complaints made by Ibn Ali was that his salary of Rs. 10 a month should have been approximately doubled also. Ata Husain maintained that the mutwalli was not bound to pay any salary at all because the school had ceased to exist and that the mutwalli, in consultation with the committee who were appointed to assist him, had decided merely to continue the payment of Rs. 10 a month on general charitable grounds to assist a holy man. The learned Single Judge of this Court examined the provisions of the wakfnama and came to the conclusion that the salary ought to have been paid and he consequently set aside the decree of the trial Court and remanded the suit for decision, according to law, with the direction that an enquiry should be made into the amount of the income every year so that it might be ascertained exactly how much should have been paid in each year to Ibn Ali in excess of the sum of Rs. 10 which had admittedly been paid to him at least till a short time before the suit was instituted.

2. Matters were in some measure complicated by the fact that Ata Husain had died while the first appeal was pending and his present heirs had been impleaded in his place. A question arose before us whether a decree requiring these present heirs to render accounts could properly be passed but in the view which we take of this matter the question need not be decided. The suit was properly instituted u/s 92, Civil P.C., on the allegation that there had been general mismanagement. It seems to me that a suit u/s 92 is properly a representative suit filed in the interests of the public or the section of the public who are interested in the proper administration of the trust. Both the trial Court and the learned Single Judge of this Court have recorded findings that there was no general mismanagement and no reason has been shown to us why we should differ from them on this point.

3. The learned Single Judge of this Court was concerned with the private disputes between Ibn Ali, as one of the beneficiaries, and the trust through its mutwalli. We do not think that the dispute was one which properly arose in a suit u/s 92. The interests of the public were in no way affected by that dispute and there was no allegation that the public had suffered in any way on account of the nonpayment of the full allowance to Ibn Ali if he was entitled to an allowance of more than us. 10 a month. On the findings there was no cause of action for a suit u/s 92, Civil P.C. If Ibn Ali felt that he was entitled to a larger sum than he had received it was open to him to institute a suit for recovery of the money. If we were to hold that such a suit could be instituted u/s 92, we should of necessity have to hold, in accordance with the provisions of Sub-section (2) of

that section, that a separate suit could not be instituted and we do not doubt that a beneficiary who claims a private right, as distinguished from setting up the rights of the public, can institute a suit to assert that right without the sanction of the Advocate-General.

4. It seems to me that the judgment of the learned Single Judge of this Court is based on the assumption that the ultimate result will be a decree in favour of Ibn Ali, if it is found that he had not been paid the full amount of the allowance to which he is entitled. With the greatest respect we consider that that is not a decree which can properly be passed in a suit u/s 92. It was argued on behalf of the respondent that the learned Single Judge contemplated a decree in favour of the trust and not a decree in favour of Ibn Ali but we still do not think that the interests of the public are involved in any way. It has been found as a fact and we have not been shown that the finding is wrong that the money which was saved from the allowance was spent on other public purposes which would have been admissible under the terms of the deed if there was no Pesh namaz or if the Pesh namaz was not entitled to any salary. The public benefited by this expenditure and they will gain nothing if any additional sum is paid to Ibn Ali directly or is paid to the trust merely so that it may be passed on to Ibn Ali by the present trustee or trustees. Had the finding of fact been embodied in the plaint we are satisfied that no cause of action would have appeared for a suit u/s 92. We, therefore, set aside the decree of the learned Single Judge of this Court and restore the decree of the trial Court. The plaintiffs-respondents will pay the costs of the appellants in this Court, i.e., the costs of the first appeal and of this Letters Patent appeal. Ibn Ali has also died. If his representatives want to prosecute his case for any additional allowance, they may, if so advised, do so by means of a separate suit.