

(1914) 07 AHC CK 0022
In the Allahabad High Court

Saiyed Abul Hasan and Another

APPELLANT

Vs

Saiyed Aziz Ahmad and Others

RESPONDENT

Date of Decision : 29-07-1914

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : AIR 1914 All 894 : 25 Ind. Cas. 661

Hon'ble Judges : Henry Richards, C.J.; Banerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal arises out of a suit in which the plaintiffs sought a declaration that certain sale-deeds and leases should be declared null and void and cancelled and that the plaintiffs or some other persons should be appointed mutwallis to manage the property specified in the plaint and therein called Mauza Satpura, Perganah Bilram, and that the defendants of the third party should be dispossessed. There is a further prayer that the defendants of the second party should be removed from their office as mutwallis.

2. The suit was brought in the Court of the District Judge under the provisions of Section 92 of the Code of Civil Procedure. It is alleged that the property in question. was dedicated to the expenses of the tomb of one Salah-ud-Din Chisty, that the plaintiffs and the defendants of the first and second party were the descendants of the saint, that the defendants of the second party had made the leases and sale-deeds in contravention of the trust and had thereby proved themselves unworthy of being any longer mutwallis. The real object of the suit is to get back the property sold and as might be expected the defendants of the first and second party take very little interest in the matter. Having got the money which was payable under the leases and sale-deeds the defendants of the second party would probably not be displeased if their transferees were dispossessed. Even the plaintiffs themselves have not always treated the property as wakf. It is said, however, that they have repented and would in

future be good and faithful trustees.

3. Section 92 of the CPC provides that in the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature * * * * the Advocate-General" (in these Provinces the Legal Remembrancer "or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate-General (the Legal Remembrancer) may institute a suit whether contentious or not, in the principal Civil Court of original jurisdiction, or in any other Court empowered in that behalf by the Local Government with-in the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree", amongst other things, for the removal of trustees and the appointment of new trustees and the vesting of the trust property in the new trustees so appointed.

4. It is necessary in order that the plaintiffs should maintain the present suit that they should establish the existence of a trust for public purposes of a charitable or religious nature." Very little evidence was given as to the origin of the alleged trust. The learned District Judge at page 17 of his judgment says: "There is a paper which I found on the file received from the office of the Collector of Etah. It is clearly a translation of an ancient document. It appears to be a sanad of some Emperor. It relates in terms to the village of Satpura and is headed with a reference to Salah-ud-Din Chisty. It says: Be it known that Mauza Satpura was granted to Hafiz Amirullah for the dargah without any co-sharer with effect from 1174 "Fasli and, therefore, having given the said village to the possession of and for the expenses of Hafiz Amirullah it is ordered that no one should in any way interfere with it, and that the grantee above named should perform the services of the same dargah, spend the income on his subsistence expenses as well as in the maintenance of the said dargah," This document was not apparently proved, but the learned Judge was prepared to act upon it and we are disposed to do the same. There is further the fact that the village in question has always, been revenue free, which, no. doubt, suggests that it has always been held at least for a religious purpose." The oral evidence shows that for many years a small sum has been expended in connection with the shrine, but far the larger portion of the income has been expended by the descendants of the saint upon themselves. There is - also some evidence that food is distributed and alms given at the shrine on occasions. We think it is quite unnecessary for us in the present suit to determine whether or not a valid trust under the Muham-inadan Law was created. What we have to do is to see whether or not it has been established that there was a trust for a public purpose. If there was no such trust then the provisions of Section 92 of the CPC do not apply. A suit, relating to rights as the plaintiffs or any other persons may have, to enforce the private trust would not be brought under the provisions of Section 92 in the Court of the District Judge, but in the ordinary Civil Court. In our opinion, it is impossible to hold upon the evidence that the existence of any trust for a public purpose has been established. There is no evidence that there was even a mosque at the time of the grant. The absence of mention" of mosque suggests that none existed. The

grant was in fact to a descendant of a pious Musalman for his own expenses and the up-keep of the tomb of his ancestor. We wish to say that we express no opinion one way or another on the question of the existence of a valid wakf under the Muhammadan Law.

5. Under these circumstances the appeal fails and is dismissed with costs, including fees on the higher Scale.