
(1934) 09 PAT CK 0002
In the Patna High Court
Case No : First Appeal No. 70 of 1934

Shah Zahirul Haque

APPELLANT

Vs

Syed Rashid Ahmad and others

RESPONDENT

Date of Decision : 20-09-1934

Acts Referred:

Citation : (1934) 09 PAT CK 0002

Final Decision : Dismissed

Judgement

Wort, J.—This matter comes before us on the report of the learned Registrar expressing the view that no appeal lies. The matter arises out of an action in the Court of the District Judge, the subject-matter of the action being a wakf. The matter came on appeal to this Court whereupon in pursuance of the order passed by this Court, the learned District Judge formulated a scheme for the management of this wakf containing certain rules which regulated the appointment and discharge of a mutawalli. Under Cl. (3) of the scheme prepared by the District Judge a committee were to present candidates from whom a mutawalli was to be appointed: two candidates were to be thus presented. Under the same clause, the learned District Judge had what has been described as extraordinary powers to appoint some person other than the candidates nominated by the committee. In the circumstances of this case it appears that he declined to exercise this extraordinary power.

2. What happened was that the committee met. Votes were cast for a number of candidates and names of two candidates each of whom had received seven votes were presented to the District Judge. The petitioner or appellant before us is a person who received six votes. The learned District Judge appointed one of the candidates who had received seven votes. It then appears that the petitioner or appellant presented himself before the District. Judge, and attacked the character and eligibility of the two candidates who had been presented by the committee, urging upon the learned Judge to exercise his extraordinary powers in favour of the petitioner which the learned Judge declined to do. Now, two

questions arise. One is whether an appeal lies from the order of the District Judge; and the other whether the present appellant has any locus standi. It seems to me that the matter is determined by considerations which apply to the latter question.

3. As regards the first question as to whether an appeal lies, it is to be noticed that in pursuance of the order of the High Court the District Judge, formulated the scheme and then proceeded, in so far as is connected with the matters in dispute before us, to put it into force. No appeal was filed from the order of the Judge formulating the scheme and from that point of view it can be said that his decision with regard to this matter is final. But there is considerable doubt whether in formulating that scheme he was acting in his judicial capacity at all. It was certainly within the competence of this Court to appoint any suitable person to carry out the objects for which the learned District Judge was selected. Merely because the person designated was a judicial officer it does not necessarily follow that his performance of the duties was the performance of judicial duties; and I should have considerable doubt (if I had to decide the question) whether the formation of the scheme and carrying it into effect was a judicial order at all, and in the event of the point being decided in the negative quite clearly no appeal lay. But it seems to me that the decision of that point in the circumstances of the case would be merely academic. In the course of the argument in the case *Mr. Khurshaid Hushain* has referred to the decision in *U Ba Pe v. U Po Sein*, 1928 Rang 168 = 110 I C 41 = 6 Rang 97, in which the case of *Minakshi Naidu v. Subramanya*, (1888) 11 Mad 26 = 14 I A 160 (P C), was quoted by Heald, J.; and Mr. Husnain agrees that there can be no dispute about the proposition which was laid down by their Lordships of the Privy Council in that case which is to the following effect:

Their Lordships cannot assume that there is a right of appeal in every matter which comes under the consideration of a Judge ; such right must be given by statute or by some authority equivalent to a statute.

4. It seems to me that that proposition applies to some extent to both the points which we have to determine for the reasons which will presently appear. I now come to the consideration of the question whether the petitioner or appellant had any locus standi. It is admitted that in a sense the order made by the District Judge was in continuation of the original action. Now, this is the most that can be said on this point in favour of the appellant; and it is a concession to state that the order complained of was in continuation of the original action. Now, if that be so it is clear that the present appellant can appeal only if he were a party to the action or if he came under the rules of this Court (R. 5, Chap 6). It is clear that he is not a party to the action; he is therefore left with the contention that he comes under one of the clauses of R. 5 of the Chapter to which I have referred. Mr. Husnain urges that his client is a beneficiary within the meaning of Cl. (a). The claim to be a beneficiary is a claim entirely opposed to his present contention. If he was a beneficiary under the wakf, then the answer to his

present argument is that he is represented by the person whom he chose to bring the action in which this order which he complains of was made. The other clause which, he contends he comes under is Cl. (d), R. 5 which provides as follows:

A person whose interest arose after the date of such decree or order by reason of any creation or devolution of interest by, through or from any party to such decree or order.

5. The only part of that rule under which he can possibly come would be "whose interest arose after the date of such decree or order." It is quite clear that any interest which the appellant has was the interest which arose before the order that was made. He claims and in fact is a member of that particular section of the community from which the mutawalli was to be chosen: he therefore claims to have an interest; but the most that can be said is that he had a hope to be chosen and nothing more. Even assuming that hope could be described in law as an interest, that interest clearly arose before the decree or order and not afterwards. It is said that the committee which nominated candidates did not act in accordance with their own rules as to voting, and that, if they had acted regularly, the presentation of the appellant would have been inevitable and that therefore the appellant has an "interest" within the meaning of the rule. But it seems to have been forgotten that had the appellant been chosen as a candidate his election as mutawalli would have been by no means certain. The Judge might have rejected his candidature or elected some person under his extraordinary powers.

6. The case of Ahmad Nawab v. Abbas Husain, 1921 Pat 34 = 61 I C 76 = 6 Pat L J 43, was referred to. The subject-matter of that action was the validity of the plaintiff's election as the mutawalli. The learned Judge who tried the suit came to the conclusion that he was not a proper person, as there were certain disqualifying features regarding his election. Das, J., deciding the case in this Court arrived at the conclusion that he was not a beneficiary under Cl. (a), R. 5, Chap. 6 of the Patna High Court Rules stating:

He is clearly not a person mentioned either in (b) or (c). He does not come within (d) for his own case is that he was elected mutawalli before (and not after) the date of the decree.

7. That is the position in this case. The interest which the present appellant claims (such as it is) arose before the order complained of and therefore for that reason alone the decision must be that the appellant has no locus standi. The mere fact that he appeared before the Judge urging the merits of his own candidature advances his claim in this Court no further. It seems to me that the learned Registrar was right, but the matter may be disposed of on the ground that the present appellant petitioner has no locus standi. The cross-object ion of Shah Abdul Baqua Mohammad (respondent No. 3 in the appeal) is rejected. The order of the learned Registrar is upheld with costs: hearing fee one gold mohur

to respondent 1 and one gold mohur to respondent 2.

James, J.

8. I agree.