
(2007) 10 AP CK 0060

In the Andhra Pradesh High Court

Case No : Second Appeal No. 847 of 1997

Syed Ali Murtuza Quadri

APPELLANT

Vs

Syed Abdul Raoof Quadri and Others

RESPONDENT

Date of Decision : 04-10-2007

Acts Referred:

Andhra Pradesh Court Fees and Suits Valuation Act, 1956 — Section 24
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, Order 41 Rule 33, 80, 9
Constitution of India, 1950 — Article 133
United Provinces Muslim Wakf Act, 1936 — Section 42, 56, 63

Citation : (2008) 6 ALD 522

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : M.T. Ghorī, for the Appellant; V. Venkataramana, for Respondent No. 1, M.V. Ahmed, for Respondent No. 2 and Mirza Saifullah Baig, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—The unsuccessful first defendant being aggrieved of the reversing judgment and decree made in A.S. No. 71 of 1991 on the file of the II Additional District Judge, Warangal, had preferred this Second Appeal.

2. The first respondent herein is the plaintiff in O.S. No. 950 of 1983 on the file of the II Additional District Munsif, Warangal. Respondent Nos. 2 to 5 herein are defendant Nos. 2 to 5 respectively in the said suit-O.S. No. 950 of 1983. The first respondent herein, as plaintiff, had instituted the said suit for declaration that the plaintiff is Sajjadha of Dargah Hazrath Mashooq Rabbani, situated at Warangal to the extent of Gai Khadeem being the successor of Janishin of late Syed Shah Ali Quadri and for a consequential relief prohibiting the defendants from interfering with the functions carried on by the plaintiff as such. On the strength of the respective pleadings of the parties, having settled the issues, the Court of first instance recorded the evidence of P.Ws.1 to 3 and D.Ws.1 to 6, marked Exs.A-1 to A-32 and Exs.B-1 to B-149, Exs.X 1 to X-3, recorded the findings disbelieving the stand taken by P.W-1 and also Ex.A-1, and equally disbelieved the stand

taken by D.W-1 and ultimately, dismissed the suit with costs. Aggrieved by the same, the matter was carried by way of appeal, by the unsuccessful plaintiff, in A.S. No. 71 of 1991 on the file of the II Additional District Judge, Warangal. It is also brought to the notice of this Court that the first defendant being aggrieved of certain adverse findings recorded by the Court of first instance appeared to have preferred Cross-Objections under Order 41 Rule 22 of the Code of Civil Procedure, but, as can be seen from record, these Cross-Objections were filed as an interlocutory application and it also appears that the Cross-Objections, was not numbered, but, was returned and re-submitted and was being called along with the appeal and ultimately, on 10.06.1997, the following order was made:

Since the judgment in appeal is pronounced today, this petition is closed.

May be for the said reason, the appellate Court had not touched the Cross-Objections at all and the appellate Court having framed the point for consideration at para No. 17 proceeded to discuss with the respective pleadings of the parties in elaboration and concentrated more on the respective stands taken by the parties in the pleadings. After recording certain findings commencing from paras 18 to 24 allowed the appeal with costs throughout. Aggrieved by the same, the present Second Appeal is preferred.

3. On 13.11.1997, this Court made the following order:

Heard the learned Counsel for the caveator. Admit in view of the substantial questions of law raised in the grounds of appeal.

4. In C.M.P. No. 17263 of 1997, interim suspension as prayed for had been granted on the said date. On 18.11.1997, in C.M.P. No. 18240 of 1997, this Court made the following order:

Heard both sides. With the consent of both the parties, the following order is passed:

The appellant herein shall perform Sandalurs for the whole day on 22.11.1997 and the first respondent herein will carry out the same ceremony on 23.11.1997 and on 24.11.1997 all can do it.

This order is passed without prejudice to the rights of any of the parties. Post the Second Appeal after Pongal Vacation before the Court taking the Second Appeals for final hearing on priority basis after obtaining directions from the Hon"ble the Chief Justice.

5. Thus, the matter is coming up for final hearing and the matter had been heard finally. Sri M.T. Ghorl, learned Counsel representing the appellant, meticulously had taken this Court through the respective pleadings of the parties, the issues settled by the Court of first instance, the evidence available on record, the findings recorded by the Court of first instance and also the findings recorded by the appellate Court. The learned Counsel would maintain that though Cross-Objections had been preferred, the said Cross-Objections had been left

untouched. Even if it is to be taken that these Cross-Objections had not been lodged in accordance with law, inasmuch as the adverse finding as against the appellant had been called in question as being a successful party in the Court of first instance, the appellate Court in the light of Order 41 Rule 22 and Order 41 Rule 33 of the CPC could have considered all these aspects while making the judgment. The learned Counsel would maintain that the conduct of the plaintiff also would clearly go to show that for certain extraneous reasons the plaintiff had thought of this litigation and the litigation is not a bona fide one at all. The learned Counsel further placed strong reliance on Ex.B-22 and in the light of the same, the learned Counsel would contend that the relief of perpetual injunction in relation to the office of Sajjadha cannot be re-agitated again, in the light of the decree for perpetual injunction which is in favour of the appellant and operative as against the first respondent. The learned Counsel also would maintain that may be the present suit is for a declaration and a consequential relief of injunction, but when a clear issue relating to injunction had been decided in a prior litigation between the same parties, the first respondent cannot be permitted to re-agitate that question and this aspect was lost sight off by the appellate Court. While further commenting in relation to the findings recorded by the appellate Court, the learned Counsel would maintain that the pleadings made by the respective parties have to be looked into, but the said pleadings cannot be taken as proof, and unless and until the oral and documentary evidence available on record is appreciated and proper findings are recorded by the appellate Court, the judgment made by the appellate Court cannot be said to be the one in accordance with law. The learned Counsel also pointed out to certain decisions which had been relied upon by the Court of first instance and had been referred to even by the appellate Court and ultimately, the learned Counsel would conclude that in the peculiar facts and circumstances, this is a fit case where the Second Appeal to be allowed.

6. Sri Vedula Venkataramana, learned Counsel representing the first respondent-plaintiff, would maintain that in the light of the categorical findings recorded by the appellate Court, these findings, being predominantly findings of fact, need not be disturbed in a Second Appeal. The learned Counsel also would contend that for an office of Sajjadha, there is no control by the Wakf Board at all and the provisions of the Wakf Act cannot be made applicable.

7. The learned Counsel also would contend that in the light of the said Act, to contend that the civil Court has no jurisdiction to entertain a suit of this nature cannot be sustained, since there is no other remedy available to the first respondent-plaintiff, in the light of the same and also in the light of the Section 9 of the Code of Civil Procedure, the suit is perfectly maintainable. The learned Counsel also had explained the distinction between the office of Sajjadha and the office of Muthawalli and would comment that in certain cases there may be combination of both. The learned Counsel further would maintain that these aspects are governed by the provisions of the Mohammedan law and taking into consideration the close proximity of relationship between the parties to the office

of Sajjadha, appropriate findings had been recorded by the appellate Court and inasmuch as no substantial question of law as such is involved in the Second Appeal, the same is liable to be dismissed.

8. Sri M.V. Ahmed, learned Standing Counsel representing the Andhra Pradesh Wakf Board, would maintain that in certain circumstances the office in controversy may be a combination of the functions of Sajjadha and the functions of Muthawalli as well, and in the light of the same, no hard and fast rule as such can be laid down relating to the control of the Wakf Board in this regard. The learned Counsel would maintain that be that as it may, in the light of the provisions of the Andhra Pradesh (Telangana Area) Atiyat Enquiries Act, 1952 (for short "the Act"), the procedure laid down thereunder to be followed. The learned Counsel, ultimately, would conclude that so far as the controversial questions are concerned, it is between the contesting parties to agitate the same.

9. Heard the learned Counsel on record. Perused the respective pleadings of the parties, the evidence available on record, the findings recorded by the Court of first instance and the findings recorded by the appellate Court. For the purpose of convenience, the parties hereinafter will be referred to as plaintiff and the first defendant as shown in O.S. No. 950 of 1983 on the file of the II Additional District Munsif, Warangal.

10. The substantial questions of law on the strength of which the Second appeal had been admitted, as specified supra are hereunder:

1. (a) A Plaintiff who claims a right to hold a religious office by virtue of nomination under a document, which was held to be forged and brought up, can the court still grant declaration in his favour on the basis of the plea raised in the written statement.

(b) Should not a person who holds the office of Sajjada Nasheen (a teacher of religious precepts and rules of life and a head of religious institution. He is the curator of the Dargah) possess certain a special qualifies and spiritual knowledge of the religion.

(c) Muslim law does not recognize the rule of Primogeniture to any religious office and certainly not for Sajjada Nasheen and Muthawalli. The person who holds the office must be a learned man.

(d) The only issue framed by the trial Court and accepted by the appellate Court was "whether the plaintiff was appointed as Sajjada Nasheen by a previous holder of Sajjada". When the appellate Court confirmed the finding, can it decree the suit.

II. The following question of law arise for consideration of the above Second Appeal

2(a) The appellate Court erred in thinking that there was custom of brother's Sons taking over when the incumbent died issueless. The plaintiff never pleaded

alternatively and no issue was framed Defendant has only setout what happened.

(b) When there was no plea and no issue no relief could be granted to the plaintiff on the basis of defence raised by the defendant.

(c) The appellate Court ought to have noticed that the plaintiff is not qualified to hold the religious office.

(d) The learned appellate Judge ought to have seen that the "brathery" appointed the defendant as Sajjada Nasheen and Muthawalli and accepted by the Wakf Board.

He was learned and pious well versed. He would have been retained as Sajjada Nasheen a fit person to impart religious instructions.

(e) The incumbent who died as the first wife, son's son of Waliullah the plaintiff is Waliullah's first wife son's Second Wife son. The first defendant Waliullah second wife's sons son.

(f) The learned appellate Judge ought to seen that since 1978 the defendant has been continuously discharging the duties of the Dargah as Sajjada Masheen and Muthawalli and ought not to have granted the injunction order against the defendant.

(g) The learned Judge ought to have seen that if defendant is not entitled to hold the office of the Sajjada Nasheen and Muthawalli, how the plaintiff can get the declaration he was Sajjada Nashen and Muthawalli when his plea was not accepted.

(h) If there is any dispute regarding the religious office of the Sajjada Nasheen and Muthawalli the Wakf Board can appoint u/s 42 of the Wakf Act of 1954 and u/s 63 of the Wakf Act of 1995.

(i) The defendant pleaded that he has been performing the function of Sajjada Nasheen and Muthawalli since the time of death of the previous incumbent which was recognized by the Wakf Board. The Court ought not to have interfered by the grant of declaration in favour of the person who is not capable of imparting the religious instructions.

(j) The learned appellate Judge ought to have seen that the plaint presented in the Court of Second Additional Munsif Warangal is barred by limitation and the suit is liable to be dismissed.

Before taking up further discussion on the substantial questions of law, which had been referred to supra, it may be appropriate to have a look at the respective pleadings of the parties. It is no doubt true that except the first defendant, the other defendants had not contested the said suit at all. However, at the stage of Second Appeal, the learned Standing Counsel representing the second defendant-the Andhra Pradesh Muslim Wakf Board, Hyderabad, made certain submissions.

11. The suit is for declaration of an office of Sajjadha or Dargah Hazrath Mashooq Rabbani, situated at Warangal to the extent of Gai Khadeem situated at Warangal and for a consequential relief of permanent injunction. The averments made in the plaint are as under:

That Syed Shah Ali Quadri Sajjadanashin of Dargah Hazrath Mashooq Rabbani, Ilaqa Gadi Khadeem, died issueless on 5-10-1978 was the grand son of Shahab-e Muntaqab, No. I Syed Ali Quadri. That Syed Shah Ali Quadri during his life time nominated and appointed plaintiff as his janishin and Sajjadanishin of Dargah Hazrath Mashooq Rabbani by declaration and Pronouncement on the occasion of the Urus of Hasrath Mashooq Rabbani in the presence of the congregation on 5-10-1969 corresponding to 22nd Rajjab 1389 H, as per Islamic Shahera Shareef and since then the plaintiff was helping the deceased in performing his duties. The said nomination of the plaintiff was performed with certain ceremonies at the time of said Urus in the presence of respectable persons, the invitees and the congregation. The said nomination was reduced to writing by the deceased Sajjadha as is evidenced by Kilafath and Sajjadhagi name, and also by the invitation. That the plaintiff was helping the deceased Sajjadha in performing his religious duties of the said Dargah and stated above and acquired the acknowledge of and as the qualities to perform and discharge the duties as Sajjadha-Nashin, and the plaintiff has all the acquired qualifications to be appointed as Sajjadha. The said Deceased Sajjadha had every right to appoint and nominate the Plaintiff as his successor in office, and the Plaintiff is the Nephew (Deceased's brother's younger son Syed Sarver Quadri) of the deceased Sajjadha. After the demise, the Plaintiff was recognized as the Sajjadha in the presence of Respectable persons as evidenced by the document Dt.10-11-1978. That one Syed Ali Murtuza Quadri Defendant No. 1 is trying to claim as Janasheen of the deceased Syed Shah Ali Quadri the Sajjadanashin of the said Dargah. Deft. No. 1 is the cousin brother of the deceased Sajjadha as such he cannot claim succession to the said office, in the presence of this Plaintiff, who is the nephew as evidenced and as stated supra. The Mohammadan law does not permit the cousin in the presence of nephew, to be Sajjada; as evidenced by Fatwa, from Jama-e-Nizamia, pronounced as per law.

That Defendant No. 1 with ulterior motive and malafide intention to mislead the public, printed invitation cards and tried to hold Dastar Bandi function on 14-11-1978; which could not take place, because of timely action taken by the Plaintiff; on the other hand, after the 40th day ceremony; the function of dastarbandi of Plaintiff was held on 10-11-1978, and the plaintiff was recognized and made Sajjada as desired by the deceased in the presence of respectable persons, who attended the function. The said pronouncement was published in local Urdu daily News paper Rehunuma-e-Deccan Dated: 12-11-1978. Thus, the plaintiff has a legal right to be declared as Sajjada by this Court, and no other person or persons have any right or claim to be the Sajjadanashin of the said Dargah.

That the dargah Mashooq Rabbani is at village Urus Jagir, Dist. Warangal and the Qutubshahi Kings, granted seven villages hamlets, for the maintenance of the said Dargah, and after Inam enquiry the said villages with hamlets, were released in favour of the Dargah as per Muntaqab No. 359 of 1298 F. After the abolition of Jagirs, objection was raised before the Jagir Administrator with regard to the nature of the grant. The civil Court by its order Dated: 22-12- 1969 upheld the claim and declared that the grant is purely in respect of the Institution for the lunger of Dargah and that the commutation amount, to the extent of 90% after deducting 10% towards the expenses of supervision, to be retained by the Government. The parties were entitled since time immemorial, there are two Sajjadars of the said Dargah, who are performing the religious functions separately; and are described as sajjada of "GADDI QADEEM" and Sajjada of "GADDI JADEED", and the father of Defendant No. 4 Syed Shah Mustafa Quadri was the sajjada of the Dargah (Gaddi Jadeed) the grandson of Muntakhab Holder No. 2; and after the demise of the said Sajjada, Defendant No. 4 was declared Sajjada nashin of the deceased. Thus, the plaintiff and Defendant No. 4 are the only persons entitled to draw the amount of Mahle Shariyat i.e., the commutation amount payable.

That the Jagir Administrator was paying the quarterly instalments in compliances with the order of the civil Court which was to the effect that 90% would be given to the Institution for longer expenses and 10% would be returned by the Government towards the supervision; and the claimants i.e., both the Sajjadas, would receive and comply with the terms and condition of the compromise Decree. That the quarterly instalment had been fixed out of which half relate to the brand of the predecessors of the plaintiff and the other half relate to the branch of Defendant No. 2, and as per items of the compromise, out of the amount of Mahele Shart, each Sajjada should pay Wakf fund and then deduct four annas from a Rupee to meet the expenses of "Ud and Gul" of Dargah and the remaining twelve annas should be distributed between the defendants of Sahebe Dargah including the Sajjadas and the decree holders; as per decree of the Civil Court, under the head of lunger and Sharity; who are about 900 in number. That the above facts constitute cause of action against the Defendants arose at Hyderabad on 10-11-1978 when the defendant No. 3 the Jagir Administrator asked the plaintiff to obtain a decree and against Defendant No. 1 arose on 14-11-1978 when he tried to hold the Dastarbandi function and later when he is trying to interfere in the ceremonies that are being performed by the Plaintiff and Defendants 2 and 5 are impleaded as amounts are distributed by them; and defendant No. 4 is impleaded as he receives half the amount. That the Court has jurisdiction to entertain the present suit. That the subject matter of declaration and injunction namely the institution is located at Warangal within the local limits of its Jurisdiction. Hence, the suit.

12. The averments made in the written statement of the first defendant are as under:

Defendant No. 1 has denied in general all the allegations that are made in the plaint except those are admitted in written statement.

The suit Dargah was originally a part of the Dargah Mashooq-e-Rabbani; in Qazipura now styled Ur Jagir, Warangal. The Dargah owes its inception to Janab Jalaluddin Syed Abdul Razzak a native of Baghdad who came to India to spread the gospel of the prophet. Mohammed and ultimately to Warangal in 919 Hijri correspondent to 1537 A.D.A.T. that time Sultan Quli Qutub Shah (Founder or the Qutub Shani Dynasty of Golconda) was the ruler of that area. Janab Jalaluddin Syed Abdul Razzak had been decorated with the honorific title Masdooq-e-Rabbani. The said Janab Jalaluddin took up residence in Qazipura where he attained saintliness and died on 7th Rajjab 977 Hijri corresponding to 1596 A.D. over his grave a Dargah was constructed which became famous as the Dargah of Mashooq-e Rabbani. Considerable properties and cash grants were conferred on the Dargahs of Mashooq-e-Rabbani by the Ruler and rich Jagirdars and nobles in course of time for its upkeep and maintenance and these grants are burdened with service an Mashoortual Qidmat. They are not unconditional grants for the maintenance of feeding house or" "langer" as claimed Syed Shah Moinuddin Qadri the sold surviving son of the deceased saint was the first Sajjadanashin and Muthawalli of the Dargah Mashooq-e-Rabbani. He was succeeded in that office by his son Syed Shah Aulia Sultan-ul-Fakhra who was again succeeded by his son Syed Shah Qader Shan Qadri, alias Hajsan Abdul Khader, who died issueless and was succeeded by his brother's son Syed Shah Ali Qadri I. Syed Shah Ali Qadri I died survived by three sons Syed Hasan Abdul Qadri, Syed Shah Abdul Khader Qadri and Syed Shah Mohiuddin Qadri. The eldest son Syed Hasan Abdul Qadri as usual became the Sajjadanasheen and Muthawalli of the Dargah-Mashooq-e-Rabbani. He died without male issue, survived by his two brothers. During his life-time the brothers complained to the concerned authorities that their elder brother was appropriating all the income of the Dargah to himself.

The question then arose as to which of the two brothers should become the Sajjadanasheen and Muthawalli of the Dargah. By common consent the authorities bifurcated the office of Sajjadanashin and Muthawalli. Syed Shah Abdul Khader Qadri became the Sajjadanashin and Muthawalli of the Dargah styled as Garhi or Gaddi Kadeem while the other brother Syed Shah Mohinuddin Qadri became the Sajjajdanasheen and Muthawalli of the Dargah styled Garhi or Gaddi Jadeed (New).

A half share of the income of the Dargah was set apart for the maintenance and upkeep of the Dargah while each of the brother was entitled to a four annas share in the income of the Dargah for their personal maintenance. This was in about 1085 Hijri which is also borne but the Royal Firman then issued. Thereafter the descendants of the two brothers from father to eldest son came to hold the respective offices of Sajjadanasheen and Muthawalli of the Dargahs Gaddi Khadeem and Gaddi Jadeed and were in enjoyment of the income therefrom in

the proportion above stated. It must be stressed that the office of Sajjada and Muthawalli was occupied only by the eldest son of the office holder of either of the Gaddis from generation to generation if there are more than one son and there was no practice or custom of nomination prevalent throughout the story of the Dargah. A series of Sanada followed after 1085 Hijri which referred to Gaddi Khajdeem and Gaddi Jadeed and the successive sends treated the grants as Mashrutual Khidmat and various pronouncements of the Government officers kept in view this bifurcation of the Dargah as Gaddi Khadeem and Gaddi Jadeed.

Thus the office of Sajjadanashin and Muthawalli of Gaddi Kadeem devolved from Syed Abdul Khader Qadri on his eldest son Syed Jamal Khader Qadri, then on the latter's eldest son Syed Shah Qader Shah Qadri, then on the brother's eldest son Syed Shah Ali Qadri II, then in the latter's eldest son Syed Shah Aliulla Qadri and then on the latter's eldest son Syed Shah Ali Qadri III. The said Syed Shah Ali Qadri III had two wives. His eldest son by his first wife Syed Shah Waliullah Qadri became the Sajjada after his father. Through his second wife Syed Shah Ali Qadri III had a eldest son Syed Shah Noinuddin Ahmed Qadri who is the father of this first defendant.

Syed Shah Waliullah Qadri the Sajjada and Muthawalli of Gaddi Kadeem was twice married. Through his first wife was born Syed Shah Ali Qadri IV who succeeded "his father as Sajjada and Mutawalli of Gaddi Kadeem and as holder of the office he died on 5.10.1978 after holding the office for well night seventy years. Syed Shah Waliullah Qadri had through his second wife a son Syed Shah Qadri who died in 1961, leaving two sons the plaintiff and Syed Khader Mohiuddin Qadri. Thus the plaintiff is step brother's son of the deceased Sajjadanashin and Muthawalli of Gaddi Kadeem. The office of Sajjada and Muthawalli of Gaddi Jadeed devolved similarly from father to eldest son. This Syed Shah Mohiuddin Qadri was succeeded by his eldest son Syed Shah Ali Qadri, then the latter's eldest son Syed Shah Jamal Qadri, then by the latter's eldest son Syed Shah Ali Qadri, then by the latter's eldest son Syed Shah Hasan Qadri then by the latter's eldest son Syed Shah Kidayat Ali, then by the latter's eldest son Syed Shah Abdul Nabi, then by the latter's eldest son Syed Mustaphs and then by his eldest son Syed Durvaish Mohiujddin Qadri who is the present Sajjada and Muthawalli of Gaddi Jadeed and the fourth defendant in this suit. He has no concern with the suit Dargah Kadeem or the office of Sajjada and Muthawalli thereof. He is not a necessary proper party to this suit. The suit is time barred.

The above history of the origin of the Darga Mashooq-e-Rabbani at Warangal in 1595 A.D. the creation and subsequent devolution of the office of Sajjada and Muthawalli thereof and the bifurcation thereof into Dargah Gaddi Kadeem and Gaddi Jadeed with separate Sajjadas and Muthawallis in or about the year 1085 Hijri and thereafter the devolution thereof in the individual lines upto 5-10-78 when the late Sajjada and Muthawalli of Gaddi Kadeem died intestate and issueless would unmistakably establish the basic fact that the office of Sajjada

and muthawalli of the Dargah, whether it be Qaddi Kadeem or Gaddi Jadeed, was devolving according to the rule of primogeniture from father to eldest son. The devolution was never on the basis of the custom of nomination at any time.

The late Sajjada and muthawalli of the Dargah Gaddi Kadeem Syed Shah Ali Qadri IV had an only daughter Smt. Waheedunnisa Begum who was married to the 4th defendant who later became the Sajjada and Muthawalli of Dargah Gaddi Jadeed, but she died issueless in the year 1954. The 4th defendant thereafter married the sister of the present plaintiff and as such naturally the 4th defendant is inclined towards the present plaintiff. All the above facts which are to the knowledge of the plaintiff and 4th defendant have been deliberately suppressed with ulterior motives. The plaintiff therefore has not come to Court with clean hands.

Regarding the plaint para 1, the deceased Syed Shah Ali Qadri IV was one of the grandsons of Syed Shah Ali Qadri III and eldest son of Syed Shah Waliullah Qadri and the latter in his turn was the eldest son of Syed Shah Ali Qadri III. Regarding para 2 of the plaint, it is not true that the deceased Sajjada Syed Shah Ali Qadri IV during his life time appointed the plaintiff as his successor in office on 05.10.1969 in the presence of the congregation on the occasion of the Urs of Hazrath Mashooq-Rabbani nor is it true that the plaintiff was thereafter helping the deceased in performing his duties as Sajjada, nor is it true that certain ceremonies were performed at the time of the said Urs at the time of the said nomination. It is not true that the said nomination was reduced to writing by the deceased Sajjada or that it is evidenced by Khilafat and Sajjadaginama or by invitations alleged to be marked as documents I and II. The plaintiff is put to strict proof thereof. The said Khilafat and Sajjadaginama and invitations shown as documents I and II even if true are not at all legally valid and binding on the successors in office as nomination was not recognized by custom as a mode of appointment of a successor Sajjada and Mutawalli. In fact as already pointed out there was no such custom of nomination in the history of Dargah at anytime.

The averments in para 4 of the plaint constitute a piece of self advertisement and blowing one's own trumpet. It is not true that the plaintiff was helping the deceased Sajjada in performing his religious duties of the said Dargah or that he acquired the knowledge or has the qualities and qualifications to perform and discharge the duties of Sajjadanashin. The deceased Sajjada had no right or power to appoint and nominate anybody let alone the plaintiff as his successor in office. The deceased brother's younger son was never known as Syed Sarwar Qadri as claimed in the plaint. It is not true that after the demise of the Sajjada Syed Shah Ali Qadri IV, the plaintiff was recognized as the successor Sajjada in the presence of respectable persons nor was such a thing evidenced by a document dated 10.11.1978, as alleged in the plaint.

Regarding plaint para 5, it is not at all true that this first defendant "is trying to claim" as Janasheen of the deceased Syed Shah Ali Qadri IV. This defendant and the deceased are children of brothers. It is not at all correct to say that the

plaintiff is under Mohammedan Law as heir to the estate of the deceased or to an office held by the deceased. This defendant is no doubt performing the duties and functions of the Dargah Kadeem during the lifetime and ever since the death of the late Sajjada and he has also been recognized as such by the A.P. Wakf Board which is in law vested with the power to exercise supervision over all wakfs in the State of Andhra Pradesh. The Fatwa relied upon by the plaintiff is not true and even if it be true has neither legal validity nor force and is not binding on this defendant.

The averments in para 6 of the plaint are mischievous and mala fide. This defendant no doubt invited the public for the annual Urs which was to be held in the Gaddi Kadeem. The Dastarbandi function and all the associated functions were held normally as usual successfully under the supervision of this defendant in the Gaddi Kadeem. It is not true that the functions did not take place or the plaintiff intervened or that the plaintiff performed the Dastarbandi ceremony and allied functions on 10.11.1978. The plaintiff has no right to be declared as Sajjada of the Dargah Gaddi Kadeem. This defendant is entitled and qualified in law, in all respects to be Sajjada and Mutawalli of Gaddi Kadeem. Regarding the averments in para 7 of the plaint, it is true that seven villagers were granted by the Qutub Shahi Kings for maintenance of the Dargah. The averments in para 8 of the plaint are not true. The plaintiff is put to strict proof thereof.

The averments in para 9 of the plaint are extraneous and irrelevant to the determination of the question as to who is the Sajjada and Mutawalli of the Dargah Gaddi Kadeem.

The details of the cause of action of para 10 of the plaint for the suit are neither correct nor true. The plaintiff has no cause of action for the suit.

The averments in para 11 of the plaint are concocted and put forward to confer jurisdiction on this Hon''ble Court to entertain this suit. It is submitted that this defendant is a resident of House No. 3-4 Kazipet Jagir, Warangal. The plaintiff deliberately gave a wrong address at No. 5-1-57, Bagh Mohiuddin Pasha, Hyderabad. Similarly the fourth defendant is a resident of Urs Jagir, Warangal, but his address is given as No. 3-5-785/1, King Koti, Hyderabad.

It is submitted that the plaintiff seeks to establish his right to the office of Sajjada and Mutawalli of the Dargah of Mishooq-e-Rabbani, Gaddi Kadeem at Urs Jagir, Warangal which is located beyond the territorial jurisdiction of this Hon''ble Court. Merely because all the defendants or some of them are residents of Hyderabad, the cause of action for the suit cannot be said to arise within the limits of territorial jurisdiction of this Hon''ble Court. Therefore, this Hon''ble Court has no territorial jurisdiction to entertain this suit.

13. It is further submitted that even if this suit does not concern to immovable property, then the right concerned in this suit is not of a civil nature and this Hon''ble Court has no jurisdiction to entertain this suit. Defendant No. 2 submits that the copy of plaint served on him in the paras 11 and 12 are having

corrections and it is not visible, so if any allegation and defendant No. 1 reserve his right to file additional written statement after obtaining the certified copy.

14. Further the Dargah of Mashooq-e-Rabbani, Gaddi Kadeem comes within the superintendence of the A.P. Wakf Board. The appointment of a Sajjada and Mutawalli of a Dargah which is a Muslim Wakf is controlled by a special statutory body namely the Andhra Pradesh Muslim Wakf Board. Section 42 of the Muslim Wakfs Act vests exclusive power in the Andhra Pradesh Muslim Wakf Board in regard to the appointment of Sajjada and Mutawalli of a Dargah. As such the Civil Courts cannot take cognizance of the same. The Hon''ble Court has thus no jurisdiction to entertain this suit which beyond limitation.

15. The plaintiff is not exercising nor has he exercised any rights as Sajjada or Mutawalli of the Dargah in question. The plaintiff cannot therefore claim any permanent injunction restraining this defendant from exercising any power or right as Sajjadanashin or Mutawalli of the said Dargah. The plaintiff therefore is not entitled to the permanent injunction prayed for.

16. The suit has not been properly valued. The suit ought to have been valued u/s 24(a) of the Andhra Pradesh Court Fees and Suits Valuation Act.

17. If the suit is properly valued this Hon''ble Court will have no pecuniary jurisdiction to try this suit. The suit is bad for want of a notice u/s 56 of the Wakfs Act to the second defendant. The suit is bad for want of a statutory notice u/s 80 C.P.C. to the third and fourth defendants. In any event the fourth defendant has no concern with the subject matter of suit and is not a necessary or proper party to the suit.

18. It is submitted that the plaintiff is not entitled to any of the reliefs prayed for. The suit may be dismissed with costs of this defendant.

19. The issues settled by the Court of first instance are as under:

1. Whether the plaintiff was appointed as Janishin and Sajjadanishin of Dargan Hazarath and he was recognized as Ibajad after demise of Syed Shah Ali Quadri?
2. Whether plaintiff is entitled for injunction as prayed for?
3. Whether the suit is not properly valued?
4. To what relief?

20. The oral and documentary evidence available on record is as under:

Appendix of evidence For Plaintiff: P.W. 1 Syed Abdul Roof Quadri P.W. 2 Syed Jalaluddin Quadri P.W. 3 Syed Habeebullaha Quadri For Defendants D.W. 1 Syed Ali Murtuza Quadri D.W. 2 Syed Habibosan Quadri D.W. 3 Syed Mustafa Quadri D.W. 4 Mohd. Faisuddin D.W. 5 Syed Ahmed Quadri @ Zubair D.W. 6 Syed Durwesh Moheuddin Quadri Exhibits marked for the Plaintiff Ex.A.1/05.10.1969 Nomination in Urdu Ex.A.1/A Signature on Ex.A.1 Ex.A.2/ - Urdu News Paper cutting Ex.A.3/ - Invitation card in Urdu Ex.A.4/ - Invitation Card in Urdu Ex.A.5/

- Urdu News Paper cutting Ex.A.6/22.12.1959 C.C. of Decree in O.S.9/58 Ex.A.7/29.10.1984 Proceedings ROC. No. A14/7703/84 Ex.A.8/26.10.1978 Certificate of eligibility equal to "Moulvi" issued by Ameer Jami Nazamia Ex.A.9/ - Certified copy of the Mulhakat Ex.A.10/ - Annexure in Urdu and English Ex.A.11/ - C.C. of Decree in O.S.9/58 Ex.A.12/10.11.1978 Initial proceedings of Selection of Sajjada to P.W. 1 Ex.A.13/ - Fathuva Ex.A.14/ - Urdu paper cutting (marked Subject to production of entire News paper) Ex.A.15/ - Urdu paper cutting (marked Subject to production of entire News paper) Ex.A.16/ - Urdu Paper cutting (marked subject to production of entire news paper) Ex.A.17/ - Urdu paper cutting (marked subject to production of entire news paper) Ex.A.18/ - Temporary injunction order in I.A. No. 181/79 Ex.A.19/ - Signature of Syed Liyakhat Ali on Ex. A.12 Ex.A.20/ - Signature of Syed Ali Pash on Ex.A.12 Ex.A.21/ - Signature on Ex.A.1 Ex.A.22/ - Signature on Ex.A.1 Ex.A.23/ - Signature on Ex.A.1 Ex.A.24/ - Signature on Ex.A.1 Ex.A.25/ - Signature on Ex.A.1 Ex.A.26/ - Signature of President on Ex.A.1 Ex.A.27/ - Signature of P.W. 3 on Ex.A.1 Ex.A.28/ - Signature on Ex.A.1 Ex.A.29/ - Signature on Ex.A.1 Ex.A.30/ - Signature on Ex.A.1 Ex.A.31/ - Affidavit of petitioner Ex.A.32/ - Temporary injunction order in I.A. No. 181/1980 Exhibits marked for the Defendants Ex.B.1/14.11.1978 Representation Ex.B.1/A - Name of the scribe on Ex.B.1 Ex.B.1/B - Signature of D.W.1 on Ex.B.1 Ex.B.1/C - Signature of D.W.5 on Ex.B.1 Ex.B.1/D - Signature of D.W.6 on Ex.B.1 Ex.B.1/E - Signature of the shareholder Ex.B.2/ - Representation of Ex.B.2 Ex.B.3/ - Application in Urdu Ex.B.4/ - Translation of Ex.B.3 Ex.B.5/ - Petition in Urdu Ex.B.6/ - Translation of Ex. B.5 Ex.B.7/ - Letter from Inspector/Auditor of Wakf Board Ex.B.8/ - Translation of Ex.B.7 Ex.B.9/ - Memo issued by Inspector/Auditor of Wakf Board Ex.B.10/ - Translation of Ex.B.9 Ex.B.11/ - Programme in Urdu Ex.B.12/ - Translation of Ex.B.11 Ex.B.13/ - Urdu paper cutting Ex.B.14/ - Translation of Ex.B.13 Ex.B.15/ - Urdu paper cutting Ex.B.16/ - Translation of Ex.B.15 Ex.B.17/ - Urdu paper cutting Ex.B.18/ - Translation of Ex.B.17 Ex.B.19/15.06.79 Invitation card Ex.B.20/17.06.79 Invitation in Urdu Ex.B.21/11.03.88 Invitation card Ex.B.22/06.11.81 Photostat copy of Decree in O.S.422/80 Ex.B.23/ - Geological tree Ex.B.24/ - Booklet Ex.B.25/ - Paper in Urdu Ex.B.26/ - Khilafathnama granted in Kilafath to D.W.1 Ex.B.27/ - Khilafathnama Ex.B.28/12.12.87 D.W.1 granted Khilafath to Saleem Pasha Ex.B.29/12.12.1987 Wall posters of the Urdu Ex.B.30/26.09.1989 Wall poster of Urus Syed Hidayath Ali Shah Quadri Ex.B.31/20.06.1983 Certificate issued by Inspector, Wakf Board Ex.B.32/14.08.1982 Certificate issued by Inspector, Wakf Board Ex.B.33/ - Application of D.W.1 to Collector, Warangal Ex.B.34/07.05.1982 Application of D.W-1 to Collector, Warangal. Ex.B.35/1.05.1983 Application of D.W-1 to Collector, Warangal. Ex.B.36/01.05.1983 Application of D.W-1 to S.P., Warangal. Ex.B.37/19.04.1984 Application of D.W-1 to S.P., Warangal. Ex.B.38/06.04.1985 Application of D.W-1 to Collector, Warangal. Ex.B.39/07.04.1989 Application of D.W-1 to S.P., Warangal. Ex.B.40/27.03.1986 Application of D.W-1 to S.P., Warangal. Ex.B.41/07.02.1988 Application of D.W-1 to District Collector, Warangal. Ex.B.42/07.03.1988 Application of D.W-1 to S.P., Warangal.

Ex.B.43/24.02.1989 Application of D.W-1 to District Collector, Warangal.
 Ex.B.44/24.02.1989 Application of D.W-1 to S.P., Warangal. Ex.B.45/18.02.1990
 Application of D.W-1 to District Collector, Warangal. Ex.B.46/24.07.1976 Tent
 hose bills. Ex.B.47/12.07.1977 Tent hose bills. Ex.B.48/30.06.1978 Tent hose
 bills Ex.B.49/02.03.1990 Electricity bills. Ex.B.50/01.02.1990 Electricity bills.
 Ex.B-51/06.01.1990 Electricity bills. Ex.B.52/13.12.1990 Electricity bills.
 Ex.B.53/02.11.1990 Electricity bills. Ex.B.54/ Electricity bills.
 Ex.B.55/19.08.1999 Electricity bills. Ex.B.56/02.05.1989 Electricity bills.
 Ex.B.57/06.07.1989 Electricity bills. Ex.B.58/10.07.1989 Electricity bills.
 Ex.B.59/10.04.1989 Electricity bills. Ex.B.60/05.06.1989 Electricity bills.
 Ex.B.61/03.10.1988 Electricity bills Ex.B.62/06.08.1988 Electricity bills
 Ex.B.63/06.08.1988 Electricity bills Ex.B.64/06.07.1988 Electricity bills
 Ex.B.65/04.05.1989 Electricity bills Ex.B.66/07.04.1988 Electricity bills
 Ex.B.67/05.06.198 Electricity bills Ex.B.68/10.02.1988 Electricity bills
 Ex.B.69/19.01.1988 Electricity bills Ex.B.70/12.11.1987 Electricity bills
 Ex.B.71/11.12.1987 Electricity bills Ex.B.72/September 1989 Electricity bills
 Ex.B.73/12.05.1987 Electricity bills Ex.B.74/17.03.1987 Electricity bills
 Ex.B.75/12.12.1986 Electricity bills Ex.B.76/18.11.1986 Electricity bills
 Ex.B.77/15.06.1986 Electricity bills Ex.B.78/21.05.1985 Electricity bills
 Ex.B.79/18.02.1985 Electricity bills Ex.B.80/15.12.1984 Electricity bills
 Ex.B.81/09.10.1989 Electricity bills Ex.B.82/02.03.1990 Electricity bills
 Ex.B.83/01.02.1990 Electricity bills Ex.B.84/06.01.990 Electricity bills
 Ex.B.85/13.12.1989 Electricity bills Ex.B.86/02.11.1989 Electricity bills
 Ex.B.87/07.10.1989 Electricity bills Ex.B.88/06.09.1989 Electricity bills
 Ex.B.89/19.08.1989 Electricity bills Ex.B.90/06.07.1989 Electricity bills
 Ex.B.91/05.06.1989 Electricity bills Ex.B.92/05.06.1984 Electricity bills
 Ex.B.93/02.05.1989 Electricity bills Ex.B.94/14.03.1989 Electricity bills
 Ex.B.95/06.02.1989 Electricity bills Ex.B.96/01.12.1989 Electricity bills
 Ex.B.97/02.01.1989 Electricity bills Ex.B.98/02.11.1982 Electricity bills
 Ex.B.99/26.06.1981 Electricity bills Ex.B.100/28.11.1979 Bharath tiles
 Ex.B.101/15.02.1989 Kirana bills Ex.B.102/12.01.980 Kirana bills
 Ex.B.103/13.05.1982 Kirana bills Ex.B.104/17.11.1979 Kirana bills
 Ex.B.105/17.11.1989 Kirana bills Ex.B.106/17.11.1976 Kirana bills
 Ex.B.107/11.05.1983 Press bill Ex.B.108/13.03.1988 Press bill
 Ex.B.109/20.03.1979 Press bill Ex.B.110/ Cash Bill Ex.B.111/- Cash bill
 Ex.B.112/13.05.1981 Cash bill Ex.B.113/02.05.1982 Cash bill Ex.B.114/- Press
 bill Ex.B.115/- Press bill Ex.B.116/- Kirana bill. Ex.B.117/ Kirana bill. Ex.B.118/-
 Kirana bill. Ex.B.119/ Kirana bill. Ex.B.120/- Kirana bill. Ex.B.121/- Kirana bill.
 Ex.B.122/- Receipt Ex.B.123/- Receipt Ex.B.124/- Receipt Ex.B.125/- Receipt
 Ex.B.126/- Tent house receipt. Ex.B.127/ Tent house receipt. Ex.B.128/- Tent
 house receipt. Ex.B.129/- Tent house receipt. Ex.B.130/- Tent house receipt.
 Ex.B.131/-05.05.1983 Kirana bill. Ex.B.132/22.05.1983 Kirana bill Ex.B.133/-
 Receipt. Ex.B.134/ Invitation about the celebration of Hazrath Ghouse Azam dt.
 09.01.1985 and 10.01.1985 Ex.B.135/ Petition submitted by Syed Ali Murtuza
 Quadri to Secretary, A.P.Muslim Wakf Board. Ex.B.136/20.03.1990 Suit Dargah

map issued by A.P.Wakf Board. Ex.B.137/05.09.1989 Letter written by defendant No. 1 to M.A.Rasheed. Ex.B.138/- Reply of L.XB 137 from M.A.Rasheed to D.W-1. Ex.B.139/- Photo. Ex.B.140/- Photo. Ex.B.141/- Photo. Ex.B.142/- Photo. Ex.B.143/- Photo. Ex.B.144/ Photo. Ex.B.145/- Photo. Ex.B.146/ Photo. Ex.B.147/- Photo. Ex.B.148/- Photo. Ex.B.149/- C.C. of Judgment in O.S.329/1982.

Exhibits marked for the Court Ex.X.1/- C.C. of pending of suit Dargah, Sajjada and share holder issued by the Secretary of Revenue Board, Hyderabad. Ex.X.2/- One of the share holder/name Syed Abdul Khader marked in Ex.X.1. Ex.X.3/ Pronote.

21. The findings recorded by the Court of first instance in brief are as under:

The rival contentions of the parties had been recorded. The evidence of P.Ws. 1 to 3 had been discussed at length. Exs.A-1 to A-13 had been dealt with in elaboration and execution of Ex.A-1 was disbelieved. In the light of several of the inconsistencies in the evidence of P.Ws. 2 and 3 as well, it also recorded findings in detail appreciating the evidence of D.Ws.1 to 6 and recorded findings in detail in relation to the evidence of biradari people, D.Ws.3 to 5 in particular and further, recorded findings in elaboration in relation to Ex.A- 1-Nomination in Urdu, and came to the conclusion that Ex.A-1 is a created document. However, in the light of the voluminous documentary evidence available that the first defendant had been looking after the affairs of the Dargah in question and further taking into consideration the proximity of the close relationship to the deceased Sajjadha and also taking into consideration O.S. No. 675 of 1979 on the file of the IX Assistant Judge, City Civil Court, Hyderabad, and further referring to Exs.B-33 to B-45-the applications addressed by the first defendant to the District Collector and Superintendent of Police, Warangal, came to the conclusion that the plaintiff is not entitled to the reliefs prayed for and ultimately, dismissed the suit.

22. In the Appeal preferred by the first defendant A.S. No. 71 of 1991, at para 17 the following point for consideration had been framed:

The only point that arises for determination is who among the plaintiff or the first defendant is entitled to succeed to the office of the Sajjada nasheen representing the branch of Gaddi Khadeem and who among them are entitled to maintain the suit Dargah in the capacity of Muthawalli after the demise of last Sajjada nasheen Syed Shah Ali Quadri-VI.

23. It is pertinent to note that from the very framing of the point for consideration, it was recorded that the question to be decided is in relation to the succession to the office of the Sajadda nasheen and further, among the rival claimants who were entitled to maintain the Dargah in question after the demise of late Sajjada nasheen Syed Shah Ali Quadri-VI.

24. On a careful reading of the findings recorded at paras 18 to 24, this Court is

thoroughly satisfied that the appellate Court had only concentrated on the relative nearness of the relationship and the proximity to the deceased-last Sajjada and related findings. At the outset, it may be stated that it is a reversing judgment. The appellate Court being the final Court of fact is expected to appreciate the whole oral and documentary evidence available on record and record appropriate findings. It is also needless to say that in the light of the nature of controversy between the parties to the office in question, the very framing of the point for consideration at para 17, in the considered opinion of this Court, is unsatisfactory. It is no doubt true that the Court of first instance disbelieved the respective stands taken by both the parties and ultimately, negated the reliefs prayed for by the plaintiff. It is pertinent to note that Ex.B-22, a crucial document had not been considered in proper perspective. Ex.B-22 is the decree in O.S. No. 422 of 1980 on the file of the Principal District Munsif at Warangal. The said suit was filed for perpetual injunction by the appellant-first defendant as against the present plaintiff and another and the suit decree reads as hereunder:

This Court doth order and decree that the suit of the plaintiff be and is hereby decreed as hereunder:

(1) That the defendants 1 and 2, their relatives employees and followers be and are hereby restrained permanently from in any way interfering in performing the Urus function of "Dargah of Mashooq Rabbani" Urus Jageer, Warangal by the plaintiff as Sajjada of "Dargah Mashooq Rabbani."

25. Reliance was also placed on the under noted decisions by the Court of first instance:

(1) Patna High Court in Shah Najihuddin Ahmad Vs. Amir Hasan Khan and Others, ; (2) the judgment of Lahore in Mian Ahmed v. Mian Ghulam and Ors. reported in AIR 1949 Lah 65 Privy Council in AIR 1938 202 (Privy Council) , Khawaja Muhammad v. Mian Mahmud and Ors. reported in 1922 PC 384 In Gulam Mohammad v. Abdul Rashid reported in AIR 1933 Lah 905 Mian Ahmed Yar v. Main Ghulam Nabi and Ors. reported in AIR 1949 Lah 65 In Cherupu Veneeta @ Babu Rao v. State of A.P. reported in 1968 (1) Weekly Reporter page 251; (8) judgment of Calcutta High Court in Shethia Mining and Manufacturing Corporation Ltd. Vs. Khas Dharmaband Colliery Company Pvt. Ltd., .

26. Reliance was also placed on the under noted decisions by the appellate Court:

(1) Patna High Court in Shah Najihuddin Ahmad Vs. Amir Hasan Khan and Others, the judgment of Lahore in Mian Ahmad v. Mian Ghulam and Ors. reported in AIR 1949 Lah 65 the judgment of Privy Council in AIR 1938 202 (Privy Council) in Khawaja Muhammad v. Mian Mahmud and Ors. reported in 1922 PC 384 In Ghulam Mohammad v. Abdul Rashid reported in AIR 1933 Lahore page 905; (6) Mian Ahmad Yar v. Mian Ghulam Nabi and Ors. reported in AIR 1949 Lah 65.

27. Certain submissions were made in relation to the jurisdiction of the Civil Court as well in the light of the provisions of the Act. The different provisions of the said Act had been relied upon and elaborate submissions were made by the learned Counsel on record. The learned Counsel representing the first respondent-plaintiff strongly relied upon the decision of the Supreme Court in P.M.A. Metropolitan v. Moran Mar Marthoma 1995 SC 2001, wherein at paras 27 and 28, it was observed as under:

To begin with the objection to the maintainability of the suit u/s 9 of the CPC was probably not raised in 1954 and 1959 and if raised was not pressed. But that by itself may not preclude defendant-appellant from raising it, even in this Court as the bar or lack of jurisdiction can be entertained, at any stage, since an order or decree passed without jurisdiction in non est in law. What then is the scope of the Section? Does it comprehend suits for declaration that the Syrian Churches are Episcopal? Could the respondent-plaintiff claim declaration that Malankara Association had become autocephalous and no priest could refuse to recognize the authority of the Catholico? Could the plaintiff seek injunction, restraining the priests or Deacon from performing any other sacramental services and prohibits the defendants from interfering with the administration of the Malankara Church? How would the bar of jurisdiction operate if only part of relief is cognizable? To appreciate these aspects it is necessary to set out the Section itself and examine its scope and then advert to facts:

9. Courts to try all civil suits unless barred. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation I - A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of question as to religious rites or ceremonies.

Explanation II - For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation-I or whether or not such office is attached to a particular place.

One of the basic principles of law is that every right has a remedy. Ubi jus ibi remedium is the well known maxim. Every civil suit is cognizable unless it is barred, "there is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous the claim, that the law confers no such right to sue" Smt. Ganga Bai Vs. Vijay Kumar and Others, . The expansive nature of the Section is demonstrated by use of phraseology both positive and negative. The earlier part opens the door widely and latter debars entry to only those which are expressly or impliedly barred.

The two explanations, one existing from inception and latter added in 1976 bring out clearly the legislative intention of extending operation of the Section to such religious matters where right to property or office is involved irrespective of

whether any fee is attached to the office or not. The language used is simple but explicit and clear. It is structured on the basic principle of a civilizes jurisprudence that absence of machinery for enforcement of right renders it nugatory. The heading which is normally key to the Section brings out unequivocally that all civil suits are cognizable unless barred. What is meant by it is explained further by widening the ambit of the Section by use of the word "shall" and the expression, all the suits of a civil nature unless expressly or impliedly barred".

Each word and expression casts an obligation on the Court to exercise jurisdiction for enforcement of right. The word "shall" makes it mandatory. No Court can refuse to entertain a suit if it is of description mentioned in the Section. That is amplified by use of expression, "all suits of civil nature".

The word "civil" according to dictionary means, "relating to the citizen as an individual; civil rights". In Black's Legal Dictionary it is defined as, "relating to provide rights and remedies sought by civil actions as contrasted with criminal proceedings". In law it is understood as an antonym of criminal. Historically the two broad classifications were civil and criminal. Revenue, tax and company etc., were added to it later. But they too pertain to the larger family of "civil". There is thus no doubt about the width of the word "civil". Its width has been stretched further by using the word "nature" along with it. That is even those suits are cognizable which are not only civil but are even of civil nature. In Article 133 of the Constitution an appeal lies to this Court against any judgment, decree or order in a "civil proceeding". The expression came up for construction in *S.A.L. Narayan Row and Another Vs. Ishwarlal Bhagwandas and Another*, . The Constitution Bench held "a proceeding for relief against infringement of civil right of a person is a civil proceeding". In *Arbind Kumar Singh Vs. Nand Kishore Prasad and Others*, it was held to extend to all proceedings which directly affect civil rights". The dictionary meaning of the word "proceedings" is "the institution of a legal action, "any step taken in a legal action". In Black's Law Dictionary it is explained as, "in a general sense, the form and manner of conducting juridical business before a Court or judicial officer. Regular and orderly progress in form of law, including all possible steps in an action from its commencement to the execution of judgment.

Term also refers to administrative proceedings before agencies, tribunals, bureaus, or the like". The word "nature" has been defined as "the fundamental qualities of a person or thing; identity or essential character; sort; kind; character". It is thus wider in content. The word "civil nature" is wider than the word "civil proceeding". The Section would, therefore, be available in every case where the dispute has the characteristic of affecting one's rights which are not only civil but of civil nature.

28. On a careful analysis of the oral and documentary evidence available on record, which had been shown above, the voluminous documentary evidence placed on behalf of the appellant would go to show that he had been transacting

the affairs of the Dargah in question. No doubt, the crucial question is as to who is entitled to succeed to the office of Sajjada. Incidentally, it is brought to the notice of this Court that there are certain properties attached to the Dargah in question and evidence is also available on record in this regard. On a overall appreciation of the facts and circumstances, though an adverse finding had been recorded, disbelieving the stand taken by the appellant by the Court of first instance, such finding even without preferring an independent appeal can be challenged by the successful party and in the background of Order 41 Rule 33 of the Code of Civil Procedure, this aspect could have been dealt with in elaboration by the appellate Court. It is true that though an attempt was made by the appellant to lodge the Cross-Objections relating to the same, the Cross-Objections had not been pursued in accordance with law and hence, the appellate Court had made such an order which had been already specified supra. On the aspect of the jurisdiction of the civil Court and also the scope and ambit of the Act and further, on the aspect of the nature of the office, whether it is a combination of both Sajjada and Muthawalli or it is an exclusive office of Sajjada alone, may be, the parties have to let in further evidence. Apart from this aspect of the matter, the important crucial question is that when the evidence of biradari people, D.Ws.3 to 5, in particular, is available on record and when voluminous oral evidence had been let in and several documents had been relied upon by the parties, just touching certain documents and elaborately discussing the pleadings and the respective stands taken by the parties and jumping to a conclusion that the first respondent is entitled to the decree of declaration and perpetual injunction, even in a way totally ignoring Ex.B-22, in the considered opinion of this Court, may not be just and proper. Even otherwise, the very point for consideration framed by the appellate Court is far from being satisfactory. Hence, viewed from any angle, this Court is of the considered opinion that the appellate Court had not recorded the findings in accordance with law and hence, this Court is not inclined to express any further opinion in detail and suffice to state that the judgment and decree in A.S. No. 71 of 1991 on the file of the II Additional District Judge, Warangal are liable to be set aside and accordingly, the matter is remanded to the II Additional District Judge, Warangal, to decide the matter afresh in accordance with law, after giving opportunity to both the parties to let in further evidence, if they require to do so, by giving top priority to the matter since it is sufficiently an old one.

29. Accordingly, the Second Appeal is allowed to the extent indicated above. No order as to costs.

30. Before parting with the case, it is unfortunate that the Wakf Board, which is expected to put forth the view point of the Wakf Board, had not taken any interest. This Court is not inclined to express any further opinion on this aspect since an order of remand is being made, suffice to state that the Andhra Pradesh Wakf Board is expected to assist the Court as the Wakf Board is concerned with the general superintendence, having control over the wakf properties.