

(1991) 04 MAD CK 0008
In the Madras High Court
Case No : A.S. No. 705 of 1981

Syed Ansaruddin

APPELLANT

Vs

The Tamil Nadu Wakf Board and 6 others

RESPONDENT

Date of Decision : 26-04-1991

Acts Referred:

Muslim Personal Law (Shariat) Application Act, 1937 — Section 2

Citation : (1991) 04 MAD CK 0008

Hon'ble Judges : Abdul Hadi, J

Bench : Single Bench

Advocate : S.B. Faizuddin, for the Appellant; Haja Nazirudeen for 1st Respondent and Mr. S.M. Hameed Mohideen for Respondents 2 to 7, for the Respondent

Judgement

Abdul Hadi, J.—This appeal by the plaintiff is against the judgment and decree in O.S. 4272/77 on the file of First Asst. City Civil Judge,

Madras. The suit is for declaration that the order dated 13.5.1976 of the first defendant-first respondent Wakf Board in W.A. No. 17/71, on its

file, is not binding on the plaintiff and for appointment of the plaintiff as hereditary muthavalli of the suit Wakf. The court below has granted first of

the above said two prayers, but negatived the next. The court below has negatived the above said prayer on the ground that Muslim Law does not

recognise hereditary muthavalliship. Hence, the plaintiff has preferred this appeal seeking the later relief, namely, the appointment of himself as

hereditary muthavalli. I must first of all point out that the prayer for ""appointment"" of the plaintiff as ""hereditary muthavalli"" is not maintainable at all.

The court has no power to appoint any body as hereditary muthavalli though it has power to appoint a muthavalli under certain circumstances.

(Vide S. 204(2)(d) of Mulla's Principles of Mohamedan Law). If the prayer is for declaration that the plaintiff is hereditary muthavalli, such a declaration no doubt can be granted by the court. By such a declaration, the court only puts its seal of its approval of the plaintiff's pre-existing right of hereditary muthavalliship. By appointment, it confers muthavalliship for the first time on the plaintiff. The court has no such power of conferring hereditary muthavalliship on any person.

2. Further, the Muslim Law does not recognize any right of inheritance to the office of Muthavalli (Vide S. 206 in the Principles of Mohamedan

Law, by Mulla 18th Edition). No doubt, the very same section in the above text book says that the office of Muthavalliship may become hereditary

by custom in which case the custom should be followed. For this proposition, no doubt, Mohammad Soleman Molla and Others Vs. Tasadduq

Hossain and Others, In Re: Mahomed Haji Haroon Kadwani, , Phatmabi v. Haji Musa (1913) L.L.R. 38 Madras 49 and other decisions have

quoted as authorities. But, so far as Tamil Nadu is concerned, this law based on custom cannot be applied, in view of the amendment made by the

legislature of the then State of Madras to the Central Enactment, Shariat Act, 1937, by Madras Act 18/49. While the Central Enactment Shariat

Act, abolished customary law on several matters, it retained the customary law so far as ""charities and charitable institutions and charitable and

religious endowments"". But, by the above said Madras amendment to charities and charitable institutions and charitable and religious endowments,

only the Muslim personal law is made applicable and not any custom or usage to the contrary. This is clear from the above said amendment

introduced to S. 2 of the Shariat Act, 1937. The Supreme Court also in C. Mohammed Yunus Vs. Syed Unissa and Others, has held so, no doubt

in a different context, namely whether females can be muthavallis of a Darga, as per custom or usage.

3. In view of the above said legal position, the arguments of the Learned Counsel for the appellant, based on the passage in Ex. No. A5, the

proforma report of the suit wakf, that the rule of succession to this wakf is hereditary by custom, cannot be accepted.

4. The Learned Counsel for the appellant also argued that as per Ex. A2 dated 12.11.21, the appellant's father was made the hereditary muthavalli

of the suit wakf and that hence he should be recognised as hereditary muthavalli of the suit wakf and that hence he should be recognised as

hereditary muthavalli of the suit wakf, consequent upon the death of his father on 1963. This argument also has no merits, for the following reasons:

Ex. A2 is a document executed by two persons, one American Sahib and Syed Usman Sahib and the document says that it is Masoodhi

Dharmakartha Athikara Pathiram. It is well known that Dharmakartha means the person who managed the religious institution. No doubt, from a

reading of the recitals of the said document, it is clear that those two persons were managing the suit wakf and since they were unable to manage,

they purported to give the authority to manage to the appellant's father as hereditary muthavalli. In actuality those two persons who were

muthavallis of the suit wakf were transferring the muthavalliship to the appellant's father in praesenti under the said document. But, such a transfer

of Muthavalliship is not valid under Muslim Law. Khalil Ahmad Khan v. Siddiq Ahmad Khan AIR 1974 Ald 382 and S.E. Usman Sheriff v. Abdul

Hanifa Sahib 1976 TNLJ 232 D.B. The later decision approves a similar decisions reported in Abdul Razak v. Ali Baksh AIR 1946 Lahore 200.

No doubt, the Learned Counsel for the appellant pointed out that as per Ex. A2 the above referred to two persons were not the only persons who

were managing the suit wakf, but there was also one more person who was in management along with them. Even assuming so, the above said

proposition of law holds good. That apart, it is not the case of the appellant that the above said two persons and the said other person are wakifs

of the suit wakf. The wakifs alone could if at all, make the office of the Muthavalli of a wakf hereditary if he so desires. (Vide Kalandar Batcha

Saib and Another Vs. Jailani Sahib and Others, . For that, there is no prohibition under Muslim Law, though the Mohammaden Law otherwise

does not recognise any right of inheritance to the office of Muthavalli as stated above. So Ex. A2 also will not help the plaintiff.

5. The further argument of the Learned Counsel for the appellant that the plaintiffs father was managing the wakf as muthavalli for a long number of

years and that hence on his death, his son the plaintiff should be declared as Muthavalli, as no merit, since the plaintiff has not established that the

rule of succession is hereditary. In the above circumstances, there is no reason to interfere with the judgment and decree of the court below and

hence the appeal fails and is dismissed with costs.