
(2008) 06 PAT CK 0026

In the Patna High Court

Case No : C.R. Nos. 1741, 1752 and 1769 of 2005

Syed Hassan Francis Imam

APPELLANT

Vs

The Muzaffarpur Properties Pvt. Ltd.

RESPONDENT

Date of Decision : 24-06-2008

Acts Referred:

Citation : (2008) 06 PAT CK 0026

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—All the aforesaid three civil revisions were heard together and are being decided by this common order as they arise out of the same suit bearing Title Suit No. 262 of 1991 and all the revisions have been filed by the same person, namely Syed Hassan Francis Imam, who is plaintiff No. 2 in the suit, challenging different parts of the same impugned order dated 06.06.2005 passed by learned 7th Subordinate Judge, Patna.

2. The aforesaid suit was originally filed by one Shamim Amna Imam, daughter of late Syed Mehdi Imam against only defendant-opposite parties No. 1 and 2 claiming that the suit property, generally known as "Shantiniketan" (holding No. 542) over 23 kathas of land surrounded by boundary wall situated at Frazer Road, P.S. Kotwali, Town and District Patna, originally belonged to her grand father late Syed Hassan Imam, who dedicated it along with his other properties to waqf-alal-aulad by Waqfnama dated 28.04.1931 and, thereafter, it was registered as a Waqf. After the death of said Syed Hassan Imam a dispute arose between his son (Syed Mehdi Imam) and daughters from his first wife on one hand and on other hand his second wife Mrs. Nattie Imam and her son Syed Askari Hadi Ali Augustine Imam (opposite party No. 2) and the matter was referred to the arbitration of two Hon''ble Judges of the Patna High Court, namely Hon''ble Mr. Justice Sir Stewart Mac Pherson and Hon''ble Mr. Justice Khwaja Md. Noor. The said two Arbitrators after hearing the parties and considering their respective claims gave their Award in the year 1935 dividing the entire 16 annas of Hassan Imam Waqf Properties into two blocks, out of which one was 10 annas

block including "Shantiniketan" (suit premises), for which Syed Mehdi Imam was appointed the Mutawalli, whereas, the other was 6 annas block (which did not include the suit property) for which Mrs. Nattie Imam was appointed the Mutawalli and after her death her only son Syed Askari Hadi Ali Augustine Imam, namely defendant-opposite party No. 2 became the Mutawalli of the 6 annas block. Both the said blocks with their respective Mutawallis were duly registered as separate waqfs and both the said Mutawallis managed their respective waqf properties as per the Waqfnama, the Arbitration Award and the provisions of law. Subsequently by a registered deed of lease dated 28.08.1970, the then Mutawalli of 10 annas block of the Waqf Estate, namely late Syed Mehdi Imam gave the suit property on lease settlement to the said original plaintiff after due permission of the then Bihar Subai Shia Majlis-e-Awquaf (now Bihar State Shia Waqf Board) and since then the original plaintiff Sahmim Amna Imam remained in possession and used the said properties as her lease-hold. It was also claimed in the plaint that on 22.05.1988 defendant-opposite party No. 2 Syed Askari Hadi Ali Augustine Imam (father of the petitioner) executed a sale-deed on 09.02.1988 with respect to the suit property in favour of defendant-opposite party No. 1 and got it registered on 11.04.1988. It was also claimed that defendant-opposite party No. 2 had no manner of any right, title, interest and possession over the suit properties nor any waqf property can be sold by any one.

3. In the said circumstances, the original plaintiff claimed the following reliefs in the said suit:

(i) On adjudication of the facts and circumstances it be declared that the alleged deed of sale signed on 09.02.1988 and registered on 11.04.1988 executed by the defendant No. 2 in favour of the defendant No. 1 at Dhanbad in respect of the property in Schedule I of the plaint is void, fraudulent, illegal, without any consideration, not binding on the plaintiff or even on her settlee and defendant No. 1 has not acquired any right, title and interest thereon in respect of the property described in Schedule I of the plaint.

(ii) A declaration be made as to the perfect right, title and interest of the plaintiff over the suit property as exclusive permanent settlee ever since the settlement made in the favour of the plaintiff on 28.08.1970 and it be further declared that the defendant No. 2 had no right, title and interest ever since the award was made and acted upon and in the alternative his right, title and interest if any was extinguished by adverse possession for several 12 years and he has no right to execute the sale deed dated 11.04.1988 in favour of the defendant No. 1.

(iii) It be further declared that late Mr. Mehdi Imam as the Mutawalli after the settlement dated 28.08.1970 had the right to realize the rent noted in the settlement deed as Mutawalli under the supervision of the Waqf Board.

(iv) Possession of the plaintiff over the suit land be confirmed and if during the pendency of the suit, the plaintiff is dispossessed from the suit property the delivery of possession of the said property be given to the plaintiff and the

plaintiff be put in possession of the same by the court.

(v) A permanent injunction restraining the defendants No. 1 and 2 from disturbing or interfering with the possession of the plaintiff over the suit land be passed and the defendants Nos. 1 and 2 further be restrained from changing the physical feature of the suit land in any way.

(vi) Cost of the suit be awarded to the plaintiff.

(vii) Any other relief or reliefs for which the plaintiff is found to be entitled be granted to her by the court.

4. The said suit continued but the original plaintiff Shamim Amna Imam died issueless on 23.05.1988 leaving behind her mother Mrs. Sayeeda Mehdi Imam, who had also become the Mutawallia of the said Ten Annas Block of the Waqf Estate as her husband, namely Syed Mehdi Imam, who was the earlier Mutwali, had died. In the said circumstances, said Mrs. Sayeeda Mehdi Imam was substituted as plaintiff in place of her daughter in the title suit on 24.01.2000. It also transpires that much later by order dated 18.09.2001 the petitioner was also substituted as plaintiff No. 2 in the said suit on the basis of an alleged Will said to have been executed in his favour by the original plaintiff. Thereafter on 17.04.2003 the substituted plaintiff No. 1 Mrs. Sayeeda Mehdi Imam filed a petition for withdrawal of the suit simplicitor but the learned court below by order dated 29.05.2003 held that the said petition for withdrawal shall be considered at the time of hearing of the suit. However, before hearing of the suit could start, the said substituted plaintiff No. 1 Mrs. Sayeeda Mehdi Imam died on 22.02.2004 without any child or grandchild alive, whereafter on 10.05.2004 substituted plaintiff No. 2 (petitioner) filed a petition in the court below for accepting him as the sole plaintiff of the suit.

5. On 21.05.2004, opposite party No. 4 Faiz Murtaja Ali filed a petition for being substituted in place of Mrs. Sayeeda Mehdi Imam (plaintiff No. 1) claiming to be her nephew. On 22.05.2004 opposite party No. 5 Dr. (Mrs) Shahida Hassan filed a petition for being substituted in place of Mrs. Sayeeda Mehdi Imam (plaintiff No. 1) claiming to be the Mutawallia of the said Waqf Estate having been appointed by the Bihar State Shia Waqf Board (hereinafter referred to as "the Waqf Board" for the sake of brevity). On 14.10.2004 opposite party No. 3 Syed Akabir Hussain filed a petition for being substituted in place of Mrs. Sayeeda Mehdi Imam (plaintiff No. 1) on the basis of her alleged Will dated 20.02.2004. On 14.10.2004 opposite parties No. 6 to 9 filed a petition for being added as defendants in the suit on the basis of genealogical table of the entire larger family.

6. By impugned order dated 06.06.2005 learned Subordinate Judge VII, Patna, rejected the petition of plaintiff No. 2 (petitioner) dated 10.05.2004 for accepting him as the sole plaintiff and allowed the petitions of opposite party No. 4 (Faiz Murtaza Ali) dated 21.05.2004, opposite party No. 5 (Dr. (Mrs.) Shahida Hassan) dated 22.05.2004 and opposite party No. 3 (Syed Akabir Hussain) dated

14.10.2005 adding them as co-plaintiffs in the suit and also allowed the petition of opposite parties No. 6 to 9 dated 14.10.2004 adding them as co-defendants in the suit.

7. Against the entire impugned order dated 06.06.2005, including all parts thereof defendant-opposite party No. 1 filed a civil revision (C.R. No. 1767 of 2005), which was heard and considered in detail by a Bench of this Court, whereafter by order dated 12.04.2006 it was found that no jurisdictional error was committed by the learned court below in permitting the substitutions and hence the said civil revision was dismissed with a liberty to the parties to raise the issue of non-joinder and/or cause of action at the time of hearing of the suit in accordance with law.

8. The petitioner, who was plaintiff No. 2 in the learned court below, filed three civil revisions against three parts of the impugned common order dated 06.06.2005 passed by the learned court below, out of which Civil Revision No. 1741 of 2005 was filed by him against that part of the said order by which the substitution petition of opposite party No. 5, namely Dr. (Mrs) Shahida Hassan was allowed, whereas Civil Revision No. 1752 of 2005 was filed by him against that part of the said order by which the substitution petition of opposite party No. 4, namely Faiz Murtaza Ali was allowed and Civil Revision No. 1769 of 2005 was filed by him against that part of the said order by which his petition dated 10.05.2004 for accepting him as the sole plaintiff was rejected.

9. So far Civil Revision No. 1769 of 2005 is concerned, it may be noted that plaintiff No. 2-petitioner had not challenged that part of the impugned order by which the substitution petition of opposite party No. 3 Syed Akabir Hussain for impleading him as a co-plaintiff was allowed and hence that part of the impugned order has attained finality specially when this Court has dismissed Civil Revision No. 1767 of 2005 filed by defendant-opposite party No. 1 and had affirmed the impugned order of the learned court below. In the said circumstances, the claim of plaintiff No. 2-petitioner for accepting him as the sole plaintiff cannot be legally allowed and hence Civil Revision No. 1769 of 2005 has got no merit at all, nor there appears to be any jurisdictional error in the said part of the impugned order.

10. So far Civil Revision No. 1741 of 2005 is concerned, it is against that part of impugned order dated 06.06.2005 by which opposite party No. 5, namely Dr. (Mrs.) Shahida Hassan was substituted as co-plaintiff in place of deceased plaintiff No. 1 namely Mrs. Sayeeda Mehdi Imam. The objection of the petitioner is that the suit property was not a waqf property and was personal property of late Syed Mehdi Imam, who settled the same with the original plaintiff Shamim Amna Imam by a registered deed dated 28.08.1970 and hence opposite party No. 5, namely Dr. (Mrs.) Shahida Hassan cannot be legally substituted as co-plaintiff merely on the basis of her claim that she was the Mutawallia of the Waqf Estate including the suit property. It was also claimed by the petitioner that the waqf in question admittedly being waqf-alal-aulad cannot legally come under the

purview of the Waqf Act nor the Board has any authority over the same. In this regard learned Counsel for the petitioner relied upon the provisions of Section 3(1) of the Waqf Act, 1954 and also upon a decision of a division bench of this Court in case of Begum Asma Jafar Imam and Another Vs. The State of Bihar and Others, in which it was decided that "waqfs Alal Aulad which are strictly in terms of 1913 Act shall be excluded from the scope of 1954 Act" and that "the provisions of the 1954 Act are not applicable to the said waqf Alal Aulad and as such the respondent has no jurisdiction to interfere with the administration and management of the Imam Waqf Estate." It was also claimed that the subsequent decision of another Division bench of this Court in case of Mohammed Arshad Vs. State of Maharashtra and Others, , taking a different view, is per incuriam.

11. Although the term "waqf" is not defined or mentioned in Quran, but there are some verses in the holy book from which the concept of waqf is built upon and is also found in the percepts and practices of the Prophet of Islam. It is held in Quran that "it is not righteousness that you turn your faces to the East and the West, but righteous is he who believes in God and the Last Day of Judgment and the Angels and the Holy Scriptures and Prophets sent by God from time to time all over the world and gives his wealth for love of God to his kinsfolk and to orphans and to needy and to way farers and to those who ask". In this regard, Chapters: verses of Quran, namely 2:177, 2:215, 4:36, 17:26 etc. may be referred to. According to a noted Hadith of Tirmizi, Prophet had declared "tie up the property and devote the usufruct to human beings and it is not to be sold or made subject to gift or inheritance; devote its produce to your children, your kindred, and the poor in the way of God."

12. Considering the provisions of Quran and the "Hadith" of the Prophet, it was held by Imam Abooyoosuf that it was lawful for a person to appropriate his property on himself and after him on such a person or persons as he thinks fit and then upon the poor. This view finds place in the great commentary on Mohammendan Law, namely Hedaya, which is followed by the Hanafi Sect of Muslims. According to Imam Jafar-e-Sadique, waqf is a contract, the fruit or effect of which is to tie up the original of a thing and to leave its usufruct for the use of the person for the benefit of whom the appropriation (waqf) was made as per the wishes of the waqif (dedicator). Such an appropriation or waqf can be made either for the kinsman of the waqif or for his charitable and pious purposes as per the provisions of Fiqah-e-Jafriya which is followed by the Shia Sect of Muslims. The laws as per Sharah-e-Hedaya and Fiqah-e-Jafriya, had been compiled and translated from the original texts and authorities by Neil. B.E. Baillie in the Digest of Moohummadan Law.

13. In a decision in the case of Vidya Varuthi Thirtha Swami Gal v. Balusmy Iyer, reported in AIR 1922 PC 123, the Judicial Committee of Privy Council specifically held that "waqf" constitutes the tying up the waqf property in the ownership of God, the Almighty and devotion of the profits for the benefit of human beings. Justice Ameer Ali in his book Mohemmedan Law has noted various Hadith of the

Prophet declaring that making of provision for oneself or one's children against future want is a pious act and if a dedication is made for the said purpose it would amount to Sadaquah and that charity begins with those who are bound to you and are of whom you are in charge and that a man who with a pious motive provides the means of subsistence for his family is doing charity and the prophet of Islam also declared it to be a holy act (Bokhari and Nisai). In that view of the matter the term "waqf" was defined in Mulla's Principles of Mahomedan Law as permanent dedication by a person professing the Mussalman faith of any property for any purpose recognized by Mussalman Law as religious, pious or charitable.

14. An enactment, namely the Mussalman Waqf Validating Act, 1913, (Act No. VI/1913) was made to declare the rights of Mussalman to make settlements of property by way of waqf in favour of their family, children and descendants which came into force on 7th March, 1913 in which "waqf" was defined in Section 2 as permanent dedication by a person professing Mussalman faith of any property for any purpose recognized by the Mussalman as religious, pious or charitable and in Section 3 of the said Act, it was provided that such a waqf can be created by a waqif for maintenance and support wholly or partially for his family, children or descendants also. Sections 2(1) and 3(a) of the said Act read as follows:

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,-

(1) "Wakf" means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognized by the Mussalman law as religious, pious or charitable.

3. Power of Mussalmans to create certain wakfs.- It shall be lawful for any person professing the Mussalman faith to create a wakf which in all other respects is in accordance with the provisions of Mussalman law, for the following among other purposes:

(a) for the maintenance and support wholly or partially of his family, children or descendants,

15. It transpires that later the concept of waqf was divided into three heads; public waqfs, quasi public waqfs and private waqfs, out of which public waqfs meant those trusts which were dedicated for the public at large and quasi public waqfs meant those trusts which were dedicated primarily for public purposes and partly for private purposes of individuals, whereas private waqfs meant those trusts which were dedicated for making provisions only for private individuals, including the family and relations of the waqfs (dedicators). In that view of the matter, the Mussalman Waqf Act, 1923 was enacted in which "waqf" was defined as permanent dedication by a person professing the Mussalman faith of any property for any purpose recognized by the Mussalman Law as religious, pious, or charitable, but does not include any waqf, such as, described in Section 3 of the Mussalman Waqf Validating Act, 1913 (Act No. VI/1913) under which any

benefit is for the time being claimable for himself by the person by whom the waqf was created or by any of his family or descendants. However, the effect of this enactment of 1923 appears to have been nullified by the Mussalman Waqf Validating Act, 1930 (Act No. XXXII of 1930) which came into force on 25th July, 1930 which not only affirmed the provisions of the Mussalman Waqf Validating Act, 1913, but also made it retrospectively effective to waqfs created before the commencement of 1913 Act.

16. In the aforesaid circumstances, the Bihar Waqfs Act, 1947 (Bihar Act VIII/1948) was enacted which came into force on 3rd March, 1948 in the entire State of Bihar for supervision and control of all the Waqf Estates situated therein. Section 2(m) thereof defines the term "waqf" as follows:

2(m) "Waqf" means the permanent dedication of any property, movable or immovable, for any purpose recognized by Muslim Law as religious, pious, or charitable and includes a waqf alal Aulad and a waqf by user, such as, Masjid, Idgah, Imambarah, Dargah, Khanquah, Maqbara, Graveyard, Grave, Takia, Rauza, Yatimkhana, Madrasa, Robats Sarai, Shafa Khana and Mausoleum.

17. This Bihar Waqfs Act, 1947 remained in force in the State of Bihar till 12th of April, 1973 when the operation of the Waqf Act, 1954 (Central Act No. XXIX/1954) was extended to Bihar. It may be stated in this regard that the aforesaid Waqf Act, 1954 defined "waqf" in Section 3(1) thereof as follows:

3(1) "wakf" means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognized by the Muslim Law as pious, religious, or charitable and includes-

(i) a waqf by user;

(ii) grants (including mashrut-ul-khidmat) for any purpose recognized by the Muslims Law as pious, religious or charitable; and

(iii) a waqf al-al-aulad to the extent to which the property is dedicated for any purpose recognized by Muslim Law as pious, religious or charitable; and "waqif" means any person making such dedication.

18. However, the said Central Waqf Act, 1954 was not enforced in the State of Bihar till 1973, when it was extended to the State of Bihar by Gazette of India Extraordinary Notification dated 12.04.1973 (Part II, Section 3(i) page 539) issued under the provision of Section 1(3) of the Act. Although the aforesaid Central Waqf Act, 1954, did not come into force in the State of Bihar for about 19 years, but it created great confusion as to whether waqf-alal-aulad comes within the purview of religious and charitable purposes as per the Quran, Hadith and the great commentaries followed by various sects of Mohammedans. In the said circumstances, The Waqf (Bihar Amendment) Act, 1974 (Bihar Act III/1975) was enacted and was published in Bihar Gazette Extraordinary dated 28.02.1975 amending Clause (1) of Section 3 of the Waqf Act, 1954 by substituting Sub-clause (iii) by another Sub-clause (iii), including waqf alal-aulad within the

definition of waqf. Sections 1 and 2 of the said amending Act read as follows:

1. Short title and commencement.-(1) This Act may be called the Wakf (Bihar Amendment) Act, 1974.

(2) It shall be deemed to have come into force with effect from the 12th of April, 1973.

2. Amendment of Section 3 of Act (XXIX) of 1954).- For Sub-clause (iii) of Clause (1) of Section 3 of the Wakf Act, 1954 (Act XXIX of 1954) the following sub-clause shall be substituted, namely-"(iii) Wakf-al-aulad"

19. This amendment was made effective from 12th April, 1973, the date on which the Waqf Act, 1954 was extended to the State of Bihar. In the said circumstances, it is quite apparent that right from the year 1913, when the first enactment with respect to waqf was made, waqf-alal-aulad continuously remained included within the definition of "waqf" in the State of Bihar. So far the decision of a division bench of this Court in case of Begum Asma Jafar Imam and Another Vs. The State of Bihar and Others, and relied upon by learned Counsel for the petitioner, is concerned, no doubt it has been held therein that waqf alal-aulad is excluded from the scope of the Waqf Act 1954 Act and its provisions are not applicable to waqf alal-aulad. But it may be noted in this regard that the said decision was given on 01.07.1974 after the Waqf Act of 1954 was extended to the State of Bihar on 12.04.1973, but by then the amending Act, namely the Waqf (Bihar Amendment) Act, 1974 was not enacted as it was published subsequently in Bihar Gazette Extraordinary dated 28.02.1975. However by the said amending Act, waqf alal-aulad was substituted in the definition of "waqf" u/s 3(1) of the Waqf Act, 1954 which was made applicable retrospectively with effect from 12.04.1973, the date on which the Waqf Act, 1954 was extended to the State of Bihar as per Section 1(2) of the Amending Act. In the said circumstances, the effect of the decision in case of Begum Asma Jafar Imam and another (supra) was nullified by the aforesaid Amending Act and thus learned Counsel for the petitioner was not justified in placing reliance on the said decision nor on its basis any subsequent decision of this Court taking a different view in terms of the amending Act can be held to be per in curiam.

20. Admittedly the waqf was created by the dedicator, namely Syed Hassan Imam, by waqfnama, dated 28.04.1931 and on that date the Mussalman Waqf Validating Act, 1913 and the Mussalman Waqf Validating Act, 1930 were in force and according to those enactments, the term "waqf" included waqf-alal-aulad for maintenance and support wholly or partially of the family, children or descendants of the dedicator. In the said view of the matter, the waqf in question has throughout been treated as waqf according to various enactments and it had remained under the supervision and control of the Waqf Board, where it was duly registered. Furthermore, the title suit in question, namely T.S. No. 262 of 1991, out of which these civil revisions have arisen, was filed in the court of Subordinate Judge, 1, Patna, on 18.05.1991 and on that date the provision of

the Waqf Act, 1954 as amended by the Waqf (Bihar Amendment) Act, 1974, was in force, according to which the term "waqf" included the waqf-alal-aulad also and as such the provision of the said Act was applicable to the waqf in question as well to the suit out of which these civil revisions have arisen. In the said circumstances, the aforesaid title suit or any appeal or revision arising out of it will have to be governed by the provisions of the Waqf Act, 1954 as amended by the Waqf (Bihar Amendment) Act, 1974 and will not be affected by any subsequent enactment, including the Waqf Act, 1995 which had no retrospective effect. Furthermore, the provision of Section 112 of the Waqf Act, 1995 itself makes it quite apparent and reads as follows:

112. Repeal and savings.- (1) The Wakf Act, 1954 (29 of 1954) and the wakf (Amendment) Act, 1984 (69 of 1984) are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.

(3) If, immediately before the commencement of this Act, in any State, there is in force in that State, any law which corresponds to this Act that corresponding law shall stand repealed:

Provided that such repeal shall not affect the previous operation of that corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under the corresponding law shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act was in force on the day on which such things were done or action was taken.

21. The matter with respect to another premises of the aforesaid Syed Hassan Imam waqf estate of which the instant suit premises is also a portion, had come up for consideration before a Division Bench of this Court in MJC No. 596 of 2005 filed by one of the opposite parties of the instant civil revisions against other opposite parties of these civil revisions and by judgment dated 02.11.2006, their Lordships specifically held that it was yet another attempt to somehow grab a prime property under personal ownership, although for over half a century it was known to the world as part of a waqf created by Mr. Syed Hassan Imam, Bar-at-Law, one of the luminaries of the Bar of this Court. It was also held that after the death of the Mutawallies Syed Mehdi Imam and Mrs. Sayeeda Mehdi Imam, a race had started for grabbing the properties of the waqf estate in question situated in the heart of the city of Patna and a dispute arose among such persons, including opposite party No. 2, the mutawalli of Six Annas Block of the Waqf Estate and father of the petitioner, for grabbing the properties of Ten Annas Block of the Waqf Estate and for frittering it away in haste-post-haste manner for personal aggrandizement by persons, who were neither mutawalli of the waqf estate, nor were eligible for being appointed mutawalli according to the terms of the waqf, claiming that the said waqf properties were not part of the waqf estate,

rather they were their personal properties by devolution. The said decision is reported in Mohammed Arshad Vs. State of Maharashtra and Others, .

22. So far the claim of the original plaintiff Shamim Amna Imam in her pleadings in plaint is concerned, it is quite apparent from a bare perusal of the plaint of Title Suit No. 262 of 1991 that she had based her case on the fact that the suit property was part of the waqf properties dedicated by Syed Hassan Imam by waqfnama dated 28.04.1931 and after his death his son Mr. Syed Mehdi Imam became Mutawalli of the Ten Annas Block of the Waqf Estate as per the arbitration award of the two Hon'ble Judges of this Court in the year 1935 and was recorded as such and the said Mutawalli made a lease settlement on 28.08.1970 in favour of the said original plaintiff after due permission of the Waqf Board, where the property was recorded as waqf property. It is quite apparent that after the death of the original plaintiff, her mother Mrs. Sayeeda Mehdi Imam, who was also mutawallia of the waqf estate, was substituted as plaintiff in the suit on 24.01.2000 in place of the original plaintiff and she also maintained the same claim as made by the original plaintiff in her plaint. The claim of opposite party No. 5 is also same as she is grand daughter of the daughter of the dedicator Late Syed Hassan Imam and as such the Waqf Board had duly appointed her as mutawallia of the waqf estate in question and thus she appears to be fittest person who can step into the shoes of the original plaintiff Shamim Amna Imam or the subsequent plaintiff No. 1 Mrs. Sayeeda Mehdi Imam, who have left no issue.

23. It may be noted in this connection that petitioner of these civil revisions, who was earlier substituted as plaintiff No. 2, namely Syed Hassan Francis Imam, is none else than the son of defendant-opposite party No. 2 Syed Askari Hadi Ali Augustine Imam, who is the mutawalli of the Six Annas Block of the Waqf Estate and as such the petitioner is a beneficiary of that waqf estate. His claim in these civil revisions is obviously supported by his father, namely opposite party No. 2. However, plaintiff No. 1 Mrs. Sayeeda Mehdi Imam was herself the mutawallia of Ten Annas Block of the Waqf Estate and thereafter the Board having duly appointed opposite party No. 5 Dr. (Mrs.) Shahida Hassan as mutawallia of the said waqf estate, she was fully justified in filing a petition in the court below for being substituted in place of the deceased plaintiff No. 1 Mrs. Sayeeda Mehdi Imam. In the aforesaid facts and circumstances, this Court is satisfied that the learned court below has rightly allowed the petition of opposite party No. 5 Dr. (Mrs) Shahida Hassan and substituted her in place of the deceased plaintiff No. 1, by the impugned order and hence there is no merit in C.R. No. 1741 of 2005 at all, nor there is any jurisdictional error in the said part of the order in question.

24. So far Civil Revision No. 1752 of 2005 is concerned, it is against that part of the impugned order dated 06.06.2005 by which opposite party No. 4, namely Faiz Murtaza Ali was impleaded as co-plaintiff in the said title suit. The objection of the petitioner is that the suit property was the personal property of Late Syed Mehdi Imam who settled the same with the original plaintiff Shamim Amna Imam

by a registered deed of lease dated 28.08.1970, whereafter the said original plaintiff executed a will in favour of the petitioner and hence after the death of the original plaintiff the suit property devolved upon the petitioner and hence the said opposite party No. 4 cannot raise claim on the basis of inheritance, being the nephew of plaintiff No. 1. However, the learned court below by its impugned order dated 06.06.2005 allowed the petition of opposite party No. 4 and impleaded him as a co-plaintiff in the suit and the said order has already been affirmed by this Court vide order dated 12.04.2006 passed in Civil Revision No. 1767 of 2005 which was filed by defendant-opposite party No. 1 challenging the impugned order. In the said order dated 12.04.2006, this Court specifically held that it did not consider it fit to interfere with the impugned order as it was found that there was no jurisdictional error in permitting the substitution. However, in the said order this Court had specifically observed that the parties will be at liberty to raise issue of non-joinder of plaintiff and/of cause of action at the time of hearing of the suit. In the said circumstances, this Court cannot take a different view and the claim of the petitioner in the said C.R. No. 1752 of 2005 has to be rejected.

25. From an overall general perusal of the facts and circumstances of the suit and the civil revisions, as well as the materials on record, it is quite apparent that the suit was originally filed by Shamim Amna Imam with specific claims and for specific reliefs, as detailed in paragraph 2 above, in which the basis of her claim was the waqf and she filed the suit only for upholding her right of lease as settled by the ex-mutawalli Syed Mehdi Imam after due permission from the Waqf Board. It also transpires from the pleadings in these civil revisions that although the claim of plaintiff No. 1, namely Mrs. Sayeeda Mehdi Imam as well the claim of opposite party No. 5 Dr. (Mrs) Shahida Hassan are quite in consonance with the claim of original plaintiff Shamim Amna Imam, but the claims of other parties, namely plaintiff No. 2 Syed Hassan Francis Imam (petitioner), opposite party No. 3 Syed Akabir Hussain and opposite party No. 4 Faiz Murtaza Ali, appear to be quite contradictory, as all of them claim the suit property as a personal property, one of them claiming on the basis of a will by original plaintiff, whereas the other claiming on the basis of a will by plaintiff No. 1 and the third claiming on the basis of inheritance from plaintiff No. 1. Since the said pleadings are quite at variance with each other, the learned court below is bound to face difficulties in proceeding with suit, which now has four plaintiffs, who are at logger heads and their claims are quite contrary to each other. Hence, in the aforesaid circumstances, the learned court below should also implead opposite party Nos. 3, 4 and 5 as co-plaintiffs alongwith the earlier substituted plaintiff No. 2, namely the petitioner and allow them to file their respective pleadings and if pleadings of any of the aforesaid four co-plaintiffs are found contrary to the pleadings of the original plaintiff Shamim Amna Imam in her plaint, as detailed in paragraph 2 above, such co-plaintiff should be transposed to the category of defendants and only those co-plaintiff or co-plaintiffs should be allowed to remain as plaintiff whose pleadings are in consonance with the

plaint of the original plaintiff Late Shamim Amna Imam.

26. The main issues involved in the suit as per the pleadings in the plaint are the effect of the provisions of the Waqf Act on the lease in question with respect to a waqf property by the then mutawalli to his daughter (original plaintiff) and also the genuineness and validity of the sale deed executed by defendant No. 2 in favour of defendant No. 1 with respect to the suit property. In the said circumstances, the learned court below will also have to consider the desirability of impleadment of the Bihar State Shia Waqf Board as party to the suit in view of the facts and circumstances of the case as well as the provision of Section 57 of the Waqf Act 1954 and the decision of a Division Bench of this Court in case of Maulvi Reza Ansari and Others Vs. Shyamlal Sah and Others, . Since the aforesaid suit is of the year 1991, the learned court below is also directed to decide the suit expeditiously without giving any undue adjournment to any of the parties.

27. With the aforesaid observations/directions, C.R. No. 1741 of 2005, C.R. No. 1752 of 2005 and C.R. No. 1769 of 2005 are hereby dismissed. But in the facts and circumstances of these cases there would be no order as to cost.