
(2008) 04 KAR CK 0021

In the Karnataka High Court

Case No : Regular Second Appeal No. 1574 of 2005

Syed Mohammed Ghouse Pasha Khadri

APPELLANT

Vs

Syed Mohammed Adil Pasha Khadri represented by G.P.A.
Holder Syed Farooq Pasha, The Secretary, Karnataka Board of
Wakf and The Administrative Officer, Mysore District Wakf
Committee

RESPONDENT

Date of Decision : 15-04-2008

Acts Referred:

Waqf Act, 1954 — Section 56, 67, 85

Citation : (2008) 04 KAR CK 0021

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : M.S. Rajendra Prasad, in RSA Nos. 1574 and 1575 of 2005 and S.R. Anuradha, in RSA No. 2022 of 2005, for the Appellant; S. Subhash, for Kumar and Kumar for Caveator R-1, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—These three appeals arise out of two suits viz., OS No. 233 of 1989 and 342 of 1995, on the file of court of Principal Civil Judge (Sr Dn), Mysore, which were disposed of by a common judgment and decree rendered in these two suits on 14-11-2000.

2. While OS No. 233 of 1989 was a suit for declaration that the plaintiff therein is the Sajjadanashen of the subject matter of the suit - Dhargah of Hazarath-e-mardane Gaib - at Shivanasamudram, Kollegal taluk and the first defendant - a rival claiming to this position -should be restrained by an order of permanent injunction from interfering in any manner with the plaintiff's peaceful possession and functioning in the office of Sajjadanashen of the suit-dhargah, the suit filed by the first defendant herein through OS No. 342 of 1995 is for the same relief, seeking for a declaration that the plaintiff in this suit should be declared as the Sajjadanashen of the suit dhargah and to restrain the first defendant therein from interfering with the functioning of the plaintiff as Sajjadanashen

3. Though it would appear OS No. 342 of 1995 is the latter suit, in reality, it is not so, as OS No. 342 of 1995 is a later numbering for the OS No. 724 of 1988, which was in the first instance filed only against the State Wakf Board and the District Wakf Committee, seeking for a declaration and also to restrain them from interfering with the enjoyment of the Dhargah etc., and in which suit, the plaintiff in OS No. 233 of 1989 has filed an application for impleadment as party defendant and as such application had not been promptly ordered and a temporary restraint order which the plaintiff therein had obtained against the Wakf Board was sought to be enforced against the applicant, the applicant had come up with an independent suit in OS No. 233 of 1989, as his application for impleadment had not been ordered, but kept in abeyance.

4. Interestingly, in OS No. 233 of 1989, the plaintiff in OS No. 342 of 1995 alone figured as the defendant and in the other suit, only the Wakf Board and district Wakf committee figured as defendants, whereas this plaintiff was not a defendant.

5. It appears that the application which had been filed in OS No. 724 of 1988 [later re-numbered as OS No. 342 of 1995] by the plaintiff in OS No. 233 of 1989 for his impleadment, nevertheless was ordered in the year 1995 and it is because of this, the plaintiff in OS No. 233 of 1989 later became third defendant in OS No. 342 of 1995.

6. Even in OS No. 233 of 1989, though the plaintiff in OS No. 342 of 1995 was the only defendant, Wakf Board was impleaded as second defendant, perhaps to get over the possible adverse finding of the suit being dismissed for non-joinder of necessary parties, as had been contended by the defendant in the suit i.e. by not imploding the Wakf Board as a party-defendant.

7. The subject matter of both the suits being the status of Sajjadanasheen of the Dhargah of Hazarath Mardan-e-Gaib of Shivanasamudram, the undisputed position of the parties i.e. both the plaintiffs in the two suits, was that the grandfather of plaintiff in OS No. 233 of 1989 and father of plaintiff in OS No. 342 of 1995, by name Syed Mohammed Peer Pasha Khadri was the Sajjadanasheen of the said Dhargah and both the parties claiming to be the successors of the original Sajjadanasheen Syed Mohammed Peer Pasha Khadri, who died on 6-10-1988.

8. While the plaintiff in OS No. 233 of 1989 claimed to this status being the grandson of the undisputed earlier Sajjadanasheen Syed Mohammed Peer Pasha Khadri through his father Syed Mohammed Adil Pasha Khadri, who was the son of Syed Mohammed Peer Pasha Khadri through his first wife, the plaintiff in OS No. 342 of 1995 claimed this status being the second son of the original Sajjadanasheen Syed Mohammed Peer Pasha Khadri through his second wife. The following genealogy of the parties would depict the position more picturesquely:

Syed Mohammed Peer Pasha Khadri [died on 6-10-1988] | | Three wives &

(Three sons) ----- | | | I Wife II
Wife III Wife | | | | Syed Md Akhil Pasha 1. Sultan Mohinuddin No issues
Khadri [five sons] Shah Khadri | 2. Syed Md Ghouse | Pasha Khadri | Syed Md
Adil Pasha [Plaintiff in OS No. 724 of 1988 Khadri - renumbered as OS No. 342 of
1995

[Plaintiff in OS No. 233 of 1989

9. The plaintiff in OS No. 233 of 1989 claimed through a record appointing him as the successor to the office in a religious function held on 26-2-1981[Exp72] called as khilafatnama, that he was nominated as the successor, was witnessed by many persons, religious heads, elder persons of the community etc., and the function which was claimed to have been held for the specific purpose of appointing the successor to the office of Sajjadanashen by the erstwhile Sajjadanashen Syed Mohammed Peer Pasha Khadri; the second son through the second wife of Syed Mohammed Peer Pasha Khadri the plaintiff in OS No. 342 of 1995 claimed through documents viz., registered power of attorney dated 20-7-1981 [ExD1] and an affidavit dated 12-3-1982 [ExD23] of the original Sajjadanashen, purporting to appoint the plaintiff to be the Sajjadanashen.

10. Very obviously, each suit was contested by the defendant who was aspiring for the status, having filed their written statements. The Wakf Board had also filed its written statement disputing the maintainability of the suits for want of issue of a statutory notice in terms of Section 56 of the Wakf Board Act, 1954 [for short, the 1954 Act], which governed the field then, and also raised a feeble defence for the claim of the two plaintiffs to the suits to Sajjadanashen on the premise that the Wakf Board even in terms of the notification dated 1-4-1965 wherein the properties of the dhargah in question was shown to be a wakf property, had indicated that the original Sajjadanashen Syed Mohammed Peer Pasha Khadri, under whom either plaintiff was claiming had been described as muthuvalli and therefore the status of successor cannot be more than what had been indicated in terms of the gazette notification issued by the wakf board.

11. The two suits though had been clubbed together, issues were framed separately, in the light of such disputed pleadings of the parties and the issues and additional issues framed by the trial court in both the suits are as under:

ISSUES IN OS No. 233 OF 1989:

1. Whether the plaintiff proves that the deceased Sajjadanashin Syed Mohammed Peer Pasha Khadri appointed him as Janisheen on 26/2/1981?
2. Whether the plaintiff proves that custom for succession to the office of Sajjadanashin as pleaded in the plaint?

OR

Whether the defendant proves the custom in that behalf as pleaded in his written statement?

3. Whether the defendant proves that he was appointed as Janisheen Sajjadanishin and whether he further proves that he is the Sajjadanashin after the death of his father?
4. Whether the suit is bad for non-joinder of the wakf Board?
5. Whether the interference alleged by the plaintiff is true?
6. Whether the plaintiff is entitled to the relief of declaration and injunction as prayed for?
7. To what reliefs the parties are entitled?

Addl. Issues framed on 23/8/95

1. Whether the plaintiff proves that his grand father Syed Mohammed Peer Pasha Khadri was the Sajjadanashin of the Dargah at Shivasamudram?
2. Whether the plaintiff proves that his grand father Syed Mohammed Peer Pasha Khadri was the lineal descendant of the saint whose tomb is situated at Shivasamudram or he was the lineal descendant of the Wakf of the said Dargah?
3. Whether the 2nd and 3rd defendants prove that Syed Mohammed Peer Pasha Khadri was only a Manager Manager Muthavalli of the suit Dargah?
4. Whether the 2nd and 3rd defendants prove that the notification bearing No. MWB 19(2) 1965 dated 1/4/1965 is not binding on them and the plaintiff is required to prove that his grand father Syed Mohammed Peer Pasha Khadri was the Sajjadanishin Independent of the notification?
5. Whether the 2nd and 3rd defendants are estopped from contending that the plaintiffs grand father Syed Mohammed Beer Pasha Khadri was not the Sajjadanashin?
6. Whether the suit is not maintainable in view of provisions of Section 15(g) of Act 29 of 1954?

Addl. Issue framed on 15/1/1997

1. Whether the suit is bad for want of notice u/s 56 of the Wakf Act?

Addl. Issue framed on 24/6/1999

1. Whether defendants 2 and 3 prove that his Court has no Jurisdiction to try this case for the reasons stated in para No. 15 of their written statement.

ISSUES IN OS NO. 342 OF 1995

1. Does the plaintiff prove that deceased Syed Mohammed Peer Pasha Khadri was recognised as Sajjada Nashin of the Dargah Hazarath Mardane Gaib, Shivasamudram?

OR

Do defendants 1 and 2 prove that Syed Mohammed Peer Pasha Khadri was functioning only as Mujawar of the Dargah Hazrath Mardane Gaib and the management of Dargah was with defendants 1 and 2?

2. Does the plaintiff prove that during the life time of his father Syed Mohammed Peer Pasha Khadri, he was recognised as Janisheen-E Sajjada of the Dargah by the 2nd defendant?

3. Does he further prove that during the life time of his father, he requested the Wakf Board to recognise him as the Jan Nasheen E-Sajjada and the 1st defendant has recognised him as Sajjadanashin?

4. Does he further prove that he has been functioning as the Sajjada Nashin of Dargah since then?

5. Does he further prove that he is in possession of the Dargah after his father's death and managing the affairs of the Dargah and performing daily and annual rituals?

6. Does the 3rd defendant prove that as per the customs and usages of the Dargah whenever Sajjada Nashin dies, the office of the Sajjada Nashin shall go to the eldest son?

7. Does he further prove that the deceased Syed Mohammad Peer Pasha Khadri had nominated his eldest son Syed Mohammed Akhil Pasha Khadri (the father of the 3rd defendant) as Janisheen Sajjada?

8. Does he further prove that after the death of his father as per the custom and usage, Syed Mohammed Peer Pasha Khadri in the presence of spiritual heads and devotees nominated this defendant as his Jan Nasheen sajjada on 22/6/1981 to succeed to his office?

9. Is the suit not maintainable?

10. Whether the defendants prove that the plaintiff's father was not at all entitled to appropriate the surplus income after deduction of statutory six percent of the income to the Wakf Board?

11. Is the plaintiff entitled to the reliefs of mandatory and perpetual injunctions as prayed for?

12. To what reliefs the parties are entitled?

Addl. Issue:

1. Does the plaintiff prove that he is entitled to the Golak amount?

Addl. Issue framed on 24/6/1999

1 Whether defendants 2 and 3 prove that this Court has no Jurisdiction to try this case for the reasons stated in para No. 15 of their written statement?

12. The trial court answered the issues in favour of the plaintiff in OS No. 233 of 1989, including the issue relating to the maintainability of the suit, on the premise that no relief was sought for against the Wakf Board to attract the requirement of Section 56 of the 1954 Act. However, the trial court did answer the additional issue No. 3, which is whether the second and third defendants prove said Syed Mohammed Peer Pasha Khadri, who had enjoyed the position of muthuvalli of the Dargah in question against the Wakf Board and in the ultimate analysis declared the plaintiff in OS No. 233 of 1989 to be the Sajjadanashen etc.

13. The plaintiff in OS No. 342 of 1995, figuring as third defendant in OS No. 233 of 1989, preferred RA No. 8 of 2004 as against the judgment and decree which he suffered in OS No. 233 of 1989 and RA No. 9 of 1994 as against the dismissal of his own suit in OS No. 342 of 1995. The Wakf Board, which did not prefer any appeal on its own, chose to file cross-objection in RA No. 8 of 2004, which was against the judgment and decree passed in OS No. 233 of 1989, in so far as the Wakf Board is concerned, which wanted to canvass the point that the suit was not maintainable and therefore the judgment and decree should be set aside and not necessarily for the purpose of grant of judgment and decree in favour of the appellant therein.

14. The lower appellate court, which heard the two appeals together, dismissed both the appeals in terms of its judgment and decree dated 7-7-2005, affirming the judgments and decrees passed by the trial court in both the suits in their entirety and though has not expressly mentioned anything about the outcome of the cross-objection that had been filed by the Wakf Board in RA No. 8 of 2004, it has to be inferred that in view of the affirmation of the judgment and decree as passed by the trial court in its entirety, the cross-objection also is dismissed.

15. It is against this common judgment of the lower appellate court, the first defendant in OS No. 233, has come up with two appeals in RSA No. 1574 of 2005 and 1575 of 2005 against the judgment and decree he has suffered in OS No. 233 of 1989 and dismissal of his own suit in OS No. 342 of 1995, the Wakf Board had come up with RSA No. 2022 of 2005, purporting to be against the judgment it has suffered in OS No. 233 of 1989 to the extent of the finding against the Board with regard to the maintainability of the suit and the finding that the Wakf Board has failed to prove that the plaintiffs were only muthuvallis and not Sajjadanashen, as claimed by the plaintiffs, and also purporting to be aggrieved by the dismissal of the cross-objection before the lower appellate court.

16. Though these appeals are listed for admission, I have taken up the appeals for disposal, as records are before the court and Sri M S Rajendra Prasad, learned Senior Counsel appearing for Sri Chandramouli, learned Counsel for the appellants in RSA No. 1574 and 1575 of 2005, Ms Anuradha, learned Counsel for the appellant in RSA No. 2022 of 2005 and Sri S Subhash, learned Counsel for the common respondent viz., the plaintiff in OS No. 233 of 1989, have all been heard on the merits.

17. Appearing on behalf of the appellants in RSA No. 1574 and 1575 of 2005, Sri M S Rajendra Prasad, learned senior counsel, would very vehemently urge that the trial court has committed two serious errors in law, particularly in accepting the Exp72 not only as a valid document but as a document conferring on the plaintiff in OS No. 233 of 1989 the right to function as Sajjadanasheen of the Dargah in question. It is submitted that the trial court has committed a serious error in law in the manner in which this document has been appreciated; that except for Exp72, there is nothing on record in support of the case of the plaintiff in OS No. 233 of 1989 for his suit relief and when once this document was not able to support the case of the plaintiff, the suit should have been dismissed. What is pointed out is that the contents of the document, which was in Urdu language containing Persian and Arabic words, has not been properly understood and appreciated by the trial court as well as the lower appellate court. Learned senior counsel would submit that the English translation did not contain the accurate translation true to the original document, but the document itself was not genuine document and this document which is a made up or cooked up document by the plaintiff in OS No. 233 of 1989, cannot be taken into consideration.

18. It is also submitted that the trial court committed a serious error in not giving due importance to ExD1, a registered power of attorney executed in the year 1981 by the original Sajjadanasheen, under whom both the parties were claiming rights, which undoubtedly gave authority for the plaintiff in OS No. 342 of 1995 to function in place of the original Sajjadanasheen and this is in consonance with the affidavit which has been sworn to by the very Sajjadanasheen, appointing the plaintiff in OS No. 342 of 1995 to be the Sajjadanasheen, clearly clinching the issue in favour of the plaintiff in OS No. 342 of 1995 and therefore this suit should have been decreed. Submission is that such power of attorney operates as evidence gives rise to the question of law which has been wrongly answered by the courts below and therefore the second appeals require to be examined and allowed by correctly answering this question of law as to whether the courts below have properly appreciated the evidence on record and particularly Exp20, 72 and ExD1 and 2 and also has to be allowed by reversing the judgment and decree of the courts below.

19. Appearing on behalf of the appellant in RSA No. 2022 of 2005, Ms Anuradha, learned Counsel, would submit that an important question of law would arise in this appeal, particularly with regard to the maintainability of the very suit in OS No. 233 of 1989, which has been decreed by the trial court and affirmed in appeal by the lower appellate court; that when the parties did not dispute non-issue of legal notice to the Board as contemplated u/s 56 of the 1954 Act, there was a clear bar to the examination of the suit by the court below and the suit should have been dismissed at the threshold. It is also submitted that mere impleadment of the Board as a party defendant will not cure this defect, particularly when the Board had raised the contention that the suit was not maintainable and also had disputed the claim of the plaintiff on the merits of the

matter also for claiming the status of Sajjadanasheen, either under Exp72 or otherwise and therefore submits that the appeal required to be examined on this question of law.

20. Though the court below did not as much exhibited any awareness to the impact of Section 85 of the Wakf Act, 1995 [for short, the 1995 Act], which is a provision which bars institution of suit against the Wakf Board or in respect of any dispute with the Wakf Board, in civil court, which is exclusively determinable by the tribunal set up for this purpose under this Act, the courts below not exhibited any awareness as to the impact of this provision of law and overlooking this provision itself gives rise to a question of law which has to be examined by this Court and answered and for such purpose the second appeal filed by the Board has to be admitted.

21. On the other hand, Sri Subhash, learned Counsel for the common respondents, who entered caveat, would submit in so far as the maintainability of the suit is concerned, the courts below having very rightly answered the question, particularly as the plaintiff in OS No. 233 of 1989, who was not seeking for any relief as against the Board, nor was seeking correction of any action taken by the Board, the suit as filed originally was only against the sole defendant, who was the plaintiff in OS No. 342 of 1995 and the wakf board had been impleaded as party defendant, at the instance of the court, which sought to exercise its power u/s 56 of the 1954 Act and therefore the question of suit being not maintainable does not arise.

22. By drawing attention to Section 56, which reads as under:

56. Notice of suits by parties against the Board: No writ shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules made thereunder, until the expiration of two months next after notice in writing has been delivered to, or left at the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.

learned counsel would submit that the Section is attracted only if the plaintiff in a suit seeks any relief against the Wakf Board in respect of any act purported to be done in pursuance of this Act or any Rules made thereunder, and in fact the plaintiff also not seeking any relief against the Board and seeking the support of the Board notification dated 1-4-1965 [Exp26], there is nothing to show that the plaintiff is seeking any relief against the interest of the Board and therefore Section 56 was not attracted and if Section 56 is not attracted, the bar against the maintainability of the suit is not attracted.

23. Submission is that on a proper understanding of Section 56, the Section is for barring a suit only in a situation where the plaintiff is seeking some relief against the Board and if no relief is sought for, no need for issue of notice to the Board. In support of this contentions. Sri Subhas learned Counsel, would rely

upon the decision of the Gujarat High Court in the case of Syed Khersha Sajanshah Mutvalli Vs. The Bhuj Municipality and Another, .

24. In so far as the appreciation of evidence by the courts below is concerned, submission of Sri Subhash is that the appellants in RSA Nos. 1574 and 1575 of 2005 are concerned, they are estopped from questioning the English version of ExP72, as it was by consent that the lower appellate court had obtained an alternative English translation from a senior counsel at Bangalore, who was conversant with Urdu language and whose translation it was not materially different from the translation as had been obtained through the commissioner before the trial court having accepted, and ultimately the lower appellate court on through examination of the document, having found that the purport and the intent of the document being to appoint the plaintiff in OS No. 233 of 1989 to be the successor to function as Sajjadanasheen, that intention is to be given effect to and therefore the technical meaning to be assigned to the wordings as to whether it was a khilafatnama or not did not make much difference because of the words, which is aimed at appointing the successor and accordingly the plaintiff in OS No. 233 of 1989 having been appointed as such, there is nothing wrong in the findings recorded by the courts below.

25. In the context of appreciating the evidence under ExD1 and 23, learned Counsel for the respondent would submit that the courts below have rightly appreciated the effect of these documents and have drawn necessary inferences; that ExD1 admittedly a power of attorney cannot be one to confer any title or to appoint the power of attorney holder to be the successor, as the power of attorney is co-terminus with the authority and not beyond the person granting the authority.

26. In so far as ExD23 is concerned, Sri Subhash would very rightly point out that a serious matter such as appointing a successor to be Sajjadanasheen of a reputed dargah, would not be dealt with by the holder of office in such a manner by issue of an affidavit that too at an advanced age of 96 years and in the absence of any other proof it can never be claimed as for the purpose of varying Exhibit P72, which was a document, which had come into existence in the context of a very well attended public religious function organized for the very purpose of appointing a Sajjadanasheen in his place and well attended by dignitaries, important persons and religious heads also, witnessed by many persons and two of the attesting witnesses having been examined and even applying the rule of preponderance of probabilities, ExP72 is clearly a clinching evidence against the defendants and the courts below have appreciated this evidence in the proper perspective and therefore there is no scope for interference on this aspect in the second appeals.

27. In so far as the appreciation of evidence by courts below is concerned, I find that the courts below have not committed any error much less any serious error in law, which can be construed a substantial question of law decided wrongly. I also find that the appreciation of evidence, particularly ExP72 and D1 and 23,

has been made in right perspective and having regard to the contest of the issue between the parties. I do not find any scope for varying the finding and therefore RSA Nos. 1574 and 1575 of 2005 have to be necessarily dismissed.

28. However, with regard to RSA 2022 of 2005, it is very vehemently urged that the suit itself was not maintainable, in view of non-issue of a notice u/s 56 of the 1954 Act. Here again, while the effect of Section 56 in case there is no notice issued under this Section in a suit filed against the Board, is a question of law if had been wrongly decided by the courts below, I find that the submission of Sri Subhash, learned Counsel for the plaintiff in OS No. 233 of 1989 merits acceptance, for the reason that the suit originally was filed against the sole defendant against whom the plaintiff was competing for the post of Sajjadanasheen of the dargah in question and the relief claimed only against this defendant. Though later, at the instance of the court, the plaintiff had added the wakf board and the district wakf committee as defendants 2 and 3, no relief as such has been claimed in the suit as against these subsequently added defendants.

29. Even in terms of the judgment and decree passed by the courts below, the decree is only in favour of the plaintiff as against the first defendant and there is no decree passed against the defendants 2 and 3, though technically it can be presumed that the decree binds.

30. If no relief in the context of any action taken by the wakf board is sought for by the plaintiff in the suit, then, the provisions of Section 56 are not attracted and when Section 56 is not attracted, just because the Board happens to be a party does not necessarily attract Section 67. It is only when an express relief is sought for in terms of Section 56, notice is also necessary and even if the Board is a party and no relief is sought for, the bar u/s 56 does not operate. The bar is with a specific object of providing a reasonable opportunity to the Board to answer the claim made against it and if there is no claim made, there is no need for the Board to get sufficient time for examining the question to avoid litigation. In fact the plaintiff had in the first instance had not even impleaded the Board as a party-defendant. Therefore this question has been rightly answered by the courts below holding that the suit is maintainable.

31. However, Ms Anuradha, learned Counsel for the Wakf Board has very vehemently urged that the trial court having answered the additional issue No. 3 in OS No. 233 of 1989 and to the extent that the issue has gone against the wakf board, it should be taken that a relief granted against the wakf board, in the sense that the suit was one for correcting any action or granting any relief against the Board. Submission is that the defendant-wakf board having taken a specific stand that the plaintiffs forefather viz., Syed Mohammed Peer Pasha Khadri having been declared only as a mutuvalli, and the plaintiff claiming the status of Sajjadanasheen, to this extent, it amounts to an adverse decree against the Board and so far this finding stands, it amounts to an adverse decree, without notice to the board, the plaintiff could not have got an adverse decree

against the Board.

32. In answer to this argument, Sri Subhash, learned Counsel for the respondents in these appeals would point out to the very Board's notification dated 1-4-1965, which has been marked as Exp26, and submits that the Board itself had recognized that Syed Mohammed Peer Pasha Khadri was not only holding the position of hereditary muthavalli but was a Sajjadanasheen in describing his name and therefore it can never be construed as a finding adverse to any action or notification issued by the board and that the plaintiff was not claiming anything more than what was contained in the notification dated 1-4-1965.

33. While the decree as granted by the courts below in favour of the plaintiff and only as against the first defendant, declaring the status of the plaintiff as against the first defendant to be the Sajjadanasheen is definitely one binding on the first defendant and no decree having been granted against the Board, it cannot be made use of against the Board for claiming any concluded position under the terms vis-a-vis the wakf board, to allay the fears of the Board and also to protect the interest of the plaintiff to the extent that the board had recognized the position of the earlier mutavalli, particularly as under the 1954 Act, while mutavalli had been defined and Sajjadanasheen had not been defined, it is made clear that the judgment and decree granted by the courts below in terms of the declaration binds only the first defendant in so far as the position as indicated in terms of the Board notification dated 1-4-1965 and the description given in the notification binds the Board irrespective of the judgment and decree granted by the court below and to this extent there cannot be any dispute by the Board and it is open to the plaintiff to claim the benefit as a successor to the erstwhile mutavalli i.e. Syed Mohammed Peer Pasha Khadri under Exp72 to the extent the Board itself in fact recognized the position of Syed Mohammed Peer Pasha Khadri under Exp36 dated 1-4-1964. This clarification is issued as technically the Board wants to contest the position and if any judgment and decree should have been obtained against the Board in respect of any action that could have been done only after issue of notice to the Board u/s 56 of the 1954 Act, and once it has been held that the plaintiff was not seeking for any relief against the Board in the suit, the decree in the suit cannot be construed as conferring such position, but, a relief or position which otherwise is available under the Act. and under the notification dated 1-4-1964; is in no way diminished or taken away by the judgment and decree, but the judgment and decree only seeks to sustain that position vis-a-vis the first defendant.

34. In so far as the argument with regard to the applicability of Section 85 of the 1995 Act is concerned, I find that the section itself is not attracted, for the reason that even Section 56 of the 1954 Act was not attracted and the suit was one which could have been proceeded before a civil court without any relief against the Board, such matters do not go to the special tribunal at all and therefore the contention that the suit before the civil court was not tenable in law

because of Section 85 and the suit had become bad, cannot be accepted.

35. In the result, while RSA Nos. 1574 of 2005 and 1575 of 2005 are dismissed, RSA No. 2022 of 2005 is disposed of with the above clarification.