

**(1926) 06 AHC CK 0049**  
**In the Allahabad High Court**

Tawassul Hussain

APPELLANT

Vs

Abrar Hussain and Others

RESPONDENT

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**Date of Decision :** 01-06-1926

**Acts Referred:**

**Citation :** AIR 1927 All 225 : (1927) ILR (All) 3

**Final Decision :** Dismissed

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## Judgement

1. We consider that the chief difficulty which has arisen out of these proceedings is accounted for by the reluctance of the Courts below to face the facts before them and give a definite decision. Mt. Izzat Fatma is an old Muhammadan widow, who in the year 1923 executed a certain waqfnama and also a sale-deed, The applicant, who is her sister's son, then came before the Court in Cawnpore with an application for an inquisition in insanity which was not supported by any affidavit or any medical certificate. The proceedings dragged on for a considerable time for one reason or another and finally the learned District Judge has come to the conclusion that the woman is not of unsound mind. It is true that this is not a very definite conclusion, but the reason for that is that the applicant did not produce any definite evidence. We have read a statement which this lady made to a Commissioner appointed by the Court when she was admittedly living with the applicant. She stated that she was subject to fits of insanity and she denied all knowledge of any waqfnama or transfer of her property. It does not appear to us that these are the statements of an insane person. They were made with a very obvious motive, namely, to do exactly what the applicant wanted. It is not our experience that insane persons ever admit themselves to be insane, and we think that this lady, in view of her other intelligent remarks, was not really ignorant of the nature of a waqfnama.

2. As to her examination in Court by the learned Judge, sitting in a dooly and wrapped up in a burqa, or her examination by the Civil Surgeon which appears to have been conducted under equally unsatisfactory conditions, we are certainly not of opinion that there is any proof that the lady was insane or incapable of

managing her affairs.

3. We consider, moreover, that the applicant must have been aware of the judgment of this Court, *Muhammad Yaqub v. Nazir Ahmad* [1920] 42 All. 504, in a case coming from this very district, in which it was definitely stated that applicants in cases of this kind should come to Court fortified with a valid medical certificate of insanity. In Cawnpore there are always competent lady doctors and we cannot see why the applicant was unable to have this lady put under observation by a lady doctor who could have given a valuable opinion as to her mental state.

4. We do not, therefore, see our way to interfere with the finding of the lower Court, but, having regard to the somewhat peculiar circumstances of this case, we consider that the parties should pay their own costs, and we also, in dismissing this appeal, do so without prejudice to any further application that the applicant may choose to make, supported by a certificate from a lady doctor, based on a sufficient period of observation.