

Balla Mal Vs. Ata Ullah Khan

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Court : Mumbai

Decided On : Jun-23-1927

Reported in : (1927)29BOMLR1289

Judge : Sinha, Blanesburgh, Salvesen, John Wallis and Lancelot Sanderson, JJ.

Appellant : Balla Mal

Respondent : Ata Ullah Khan

Disposition : Appeal allowed

Judgement :

John Wallis, J.

1. On March 16, 1907, the late Mian Muhammed Bakhsh executed a wakfnama or a deed of wakf, by which he purported to dedicate all his remaining properties to charity subject to certain provisions for his own maintenance and the maintenance of the people who had claims on him. He died within the year, on January 15, 1908, and thereupon his son Nasir-ud-Din took possession of the properties, successfully opposed the application for mutation of names made on behalf of the present plaintiff, who was then a minor, as mutawalli of the wakf, and remained in possession until his death in July, 1913. In the following year, the house property included in the wakfnama was attached in execution by one of his creditors, and the plaintiff's objections as mutawalli to the attachment having been disallowed, he

filed the present suit by his next friend to establish the rights of wakf.

2. The Subordinate Judge at Amritsar and the High Court at Lahore both decided in his favour, and the defendants, who represent the attaching creditors, then obtained leave to prefer the present appeal to His Majesty in Council. The only question argued before their Lordships was whether under the wakfnama the properties of the settlor were validly dedicated to charitable purposes, and it was admitted that, if the wakfnama had been executed subsequently to the passing of the Mussulman Wakf Validating Act, 1913, it would not have been open to objection. It has, however, been ruled by the Board in *Khajeh Solehman Quadir v. Nawab Sir Salimullah Bahadur* 24 Bom. L.R. 1257 that the Act has no retrospective operation, and it therefore becomes necessary to examine the provisions of the deed in the light of the decisions of the Board as to wakfs which were unaffected by the Act. Under the Act a wakf is not rendered invalid because it appears that the main object of the settlor was to make a settlement of his property on his family rather than to devote it to what are ordinarily understood as charitable purposes, whereas, with regard to wakfs created before the passing of the Act, the test still is, as laid down by the Board in *Sheik Mahomed Ahsanulla Chowdhry v. Amarchand Kundu Mujib-un-Nissa v. Abdul Rahim* 3 Bom. L.R. 114; *Mutu Ramanandan Chettiar v. Vava Levvai Marakayar* ; and *Khajeh Solehman Quadir v. Nawab Sir Salimullah Bahadur* 24 Bom. L.R. 1257, was there a substantial dedication of the properties included in the wakf to charitable purposes. The test may sometimes be difficult of application, and in applying it the Courts, especially since the passing of the Act, will not be disposed to construe the provisions of the deed too strictly; but still the question must remain whether the properties included in the wakf have been substantially dedicated to charity, or whether they have been put into wakf by the settlor with the real object of effecting some non-charitable purpose such as, for instance, that of making a family settlement of his property which would otherwise be invalid as opposed to the Muhammadan law of succession.

3. In the present case Mian Muhammed Bakhsk had already made a charitable disposition, in accordance with his means, by the creation of an earlier wakf, which is mentioned in the deed; and it appears fairly clear that it was because Nasir-ud-

Din, his only son, was a man of bad character, that he decided to put the rest of his property into wakf. This he was at full liberty to do, provided that he devoted it substantially to charity. Further, seeing that he was putting all his remaining property into wakf, it necessarily followed that he must be at liberty to make some provision for the maintenance of himself and of those who were dependent on him for the term of their lives, and such provisions would be in no way inconsistent with a substantial dedication to charity. On the other hand, if it should appear that the bulk of the income was settled on the line of his own descendants, and need only go to charity on failure of such line, an event which might be indefinitely postponed, then the fair inference might be that his object was to make a settlement on his family which would not otherwise have been possible, and that property settled on such terms could not properly be said to be substantially dedicated to charity.

4. Lastly, in considering this question regard must be had to the provisions themselves rather than to the language in which they are expressed, because even where the intention was not to make a substantial dedication to charity, the object of the draftsman would be to make it appear as far as possible that it was so.

5. With these observations their Lordships will proceed to examine the provisions of the deed, of which the material terms were as follows:-

I, Muhammad Bakhsh, son of the late Mian Saudagar of Nurpur, Caste Gill, resident of Amritsar, Katra Ghanayan, do hereby declare as follows :-

The immoveable estate, mentioned below, is exclusively owned, acquired, built and founded by me without the partnership of anybody else and the same is in my proprietary possession. I follow the Muhammadan Law. ...

Since with the object of earning reward in the next world as well as in this world I have for a long time been maintaining the poor, the needy, the servitors at the Mosque, students receiving religious education, widows, revered Sayeds, and orphans, in general, and the under-mentioned persons (who are my kith and kin) in particular, thinking the same to be good deed, and I have for a long time been

cherishing the idea that the said good work should continue even after my death and that the said persons should be looked after and maintained as before even after my death, as I have been looking after and maintaining them during my lifetime. Therefore I, in order to complete and accomplish the said object, have hereby, of my own accord and free will while in the enjoyment of my right senses and sound health and without the inducement of any other person, made the entire aforesaid property wakf from to day, and giving up my proprietary rights in toto I agree.. The entire income from the said property (after it has been deposited with the Mutwalli for the time being, and after the expenses, in connection with the Government demands, pay of the servants engaged for the above-mentioned wakf property, repairs, and other expenses which may be necessary for the said property, and also the expenses in connection with the disputes over the said property have been deducted therefrom) shall, through the Mutwalli, be divided half-yearly at the time of Kharif and Rabi harvests amongst the following persons :-

1. The poor, the needy, the Sayeds, servitors at the Mosque, students receiving religious education, widows, orphans, Rs. without distinction of name and place of residence ... 73

2. I, who make the property wakf, for my own maintenance ... 280

3. Nasir-ud-Din, my son ... 120

4. Musammat Sardar Begum, wife of my son, so long as she remains abad with my son as his wife ... 120

If my son divorce her and she, even then, lives with me, obediently to me, and leading a life of chastity, and acts in accordance with my directions, she would get ... 60

5. Musammat Iqbal Bibi, wife of Abdul Ahad, and Abdul Ahad Kureshi, and their direct lineal descendants ... 60

6. Ghulam Hassan, son of Azim Bakhsh, and Musammat Sahibo, widow of Azim Bakhsh, deceased ... 60

7. Musammat Rabia, daughter of Nabi Bakhsh, my brother-in-law (wife's brother)
... 60
8. Musammat Ghulam Fatima, wife of Muhammad Sultan... 24
9. Musammat Azizan, daughter of Ghasita, my mother's sisters's daughter ... 12
10. In case the income from the estate after deduction of the aforesaid expenses is not so sufficient as may be divided amongst the persons mentioned in paragraphs Nos. 2 to 9 according to their respective fixed shares, the fixed amount of each one's share shall be decreased proportionately.
11. In case the income from the estate, after deduction of the expenses and after setting apart the stipend of each of the aforesaid persons, exceeds, the surplus amount shall be given to Muhammadan Schools and the mentioned in paragraph No. 1 as desired by the Mutwalli.
12. In the event of the death of any of the persons mentioned in paragraphs Nos. 2 to 9, the money allotted to his (or her) share shall be given proportionately to the other persons who may be alive or to some of them or to any one of them whom the Mutwalli thinks it proper to give, or the Mutwalli himself, according to his choice, shall give as much of it to the persons mentioned in paragraph No. 1 as he thinks proper.
15. The Mutwalli for the time being shall continuously receive Rs. 120 out of the income half-yearly as compensation for his services rendered in connection for his supervision and management of the said property made wakf, The said amount shall also be considered as forming part of the expenses in connection with the said property.
19. The sums which have been allotted as stipends to the persona mentioned in paragraphs Nos. 6 to 9 have been allotted in the name of God to earn reward simply on the understanding that they, being helpless widows, orphans and needy, cannot maintain themselves, but that they stand in need of support. For this reason the entire amount to be given in the name of God, shown in paragraphs No. 1 and Nos. 6 to 9, shall be considered to be Rs. 199 in all for each half-year in

addition to the amount which shall be given under paragraph No. 12.

21. If none of the persons mentioned in paragraphs Nos. 2 to 9 remains alive, all the sums allotted to them shall, in the name of God, be wholly and solely spent for the poor, the orphans, the needy, Sayeds, servitors at Mosques, students receiving religious education, widows and for other lawful charitable purposes.

22. I will remain Mutwalli of the said estate till my lifetime. After my death, only that person shall be the Mutwalli whom I appoint as such by virtue of a written will bearing my signature. In the event of my not appointing any Mutwalli by virtue of a written will signed by me, the male member of my family, who will be fit, honest and debtless, and is of good character, shall be the Mutwalli. After the appointment of the said Mutwalli, if my son, Nasir-ud-Din, bears a good character and is debtless, and lets Musammat Sardar Begum live in his house lovingly and peacefully, then, under such circumstances, after a period of three years the person named above can be Mutwalli of the property made wakf. After Nasir-ud-Din, his direct male lineal descendants can be successively appointed Mutwallis and can, in my place, be entitled to get my whole maintenance allowance. In case there is no male descendant from the line of Nasir-ud-Din, Dear Ata Ullah Khan, son of Raja Allah Dad Khan, shall be the Mutwalli and shall be entitled to get the said maintenance allowance. When my line of descent or that of my brother, Ghulam Rasul, becomes extinct, the then Anjuman Islamia Amritsar can be the Mutwalli of the property made wakf. But so long as my line of descent and that of my brother, Ghulam Rasul (no matter if there remains only one person alive), do not become extinct, the said Anjuman shall, in no way, interfere in the trust of the said property.

24. I, as Mutwalli and as the person making the property wakf, shall, till my lifetime, reside in the Haveli, made wakf, situate in Amritsar, Katra Ghanayan. After me, Nasir-ud-Din, my son, with his wife and children, and Ghulam Hassan with his family, and Musammat Sahibo, mother of Ghulam Hassan, shall reside in the said Haveli till their lifetime.

6. The first thing to be observed about these provisions is that out of the annual expenditure of Rs. 1558, provided for in paragraphs 1 to 9, Rs. 146 are applied for

purely charitable purposes, Rs. 1,100 for the support of the settlor and his family, and Rs. 312 for the support of the dependants mentioned in paragraphs 6 to 9. If the Rs. 146 devoted to charity were necessarily to be increased as the life annuities fell in, there could, in their Lordships' opinion, be no question as to the validity of the wakf. Unfortunately, this is not the scheme of the deed. Under paragraph 12, as the annuities fall in, the money allotted for them is to be divided by the mutawalli proportionately among the surviving annuitants, or be given in his discretion to some or one of them, or he is to give as much as he thinks proper to the persons mentioned in Article 1, that is to say, for purely charitable purposes.

7. Further, it is to be observed that even this provision is not applied unconditionally to the amount of Rs. 500 reserved for his own maintenance, In paragraph 22, which confers the office of mutawalli, after his own death, conditionally on his son, and failing this, on his son's descendants and afterwards on his male agnates, and on failure of that line on the Anjuman at Amritsar, he provides that while the office is held by his descendants or agnates, they are to have the annuity of Rs. 500 reserved for his own maintenance in addition to the mutawalli's salary of Rs. 240, provided for in paragraph 12.

8. Paragraph 24 also confers upon his son with his wife and children and upon some of the dependants mentioned in paragraphs 6 to 9 a right to reside in the family house for life.

9. The result is, that so long as there are agnates of the settlor in whom the office of mutawalli can vest, the mutawalli is to get an amount of Rs. 500 in addition to his salary of Rs. 240 as mutawalli, and the mutawalli is also to pay the descendants of the settlor's daughter, so long as there are any, annually Rs. 120 and so much of the remaining lapsed balance as he chooses. He is not under any obligation to spend any of this sum for charity, though it is in his discretion to do so. In these circumstances it seems difficult to say that the properties have been substantially dedicated to charity. Here it is necessary to observe that the law as laid down by the Board is, that the properties must be substantially dedicated to charity, not, as one of the learned Judges of the High Court has observed in passing orders on the application for leave to appeal, that the gift to charity should

be substantial. It appears to their Lordships that the wakf in question fails to satisfy this test, and they will accordingly humbly advise His Majesty that the appeal be allowed and the suit dismissed with costs throughout.

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