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Court : Allahabad

Decided On : Feb-11-1902

Reported in : (1902)ILR24All257

Judge : John Stanley, C.J. and ;Burkitt, J.

Appellant : Hamid Ali and anr.

Respondent : Mujawar HusaIn Khan and anr.

Judgement :

Burkitt, J.

1. This is an appeal against a decree of the District Judge of Allahabad, dated September 19th, 1898, by which he dismissed the plaintiffs' suit.

2.The reliefs asked for by the plaintiffs in the prayer to their plaint were--(1) for the removal of the first-named defendant, Mujawar Ali, from the office of mutawalli of certain property detailed in the plaint, which the plaintiffs alleged to be waqf or endowed property; (2) for a declaration that that property was not saleable in execution of a decree obtained by the second defendant, Musammat Dhan Devi, that the sale of that property and its purchase at the execution sale by Musammat Dhan Devi was null and that her possession was unlawful.

3. The first defendant did not appear to defend the suit. The second defendant denied that the property in suit was waqf, and also pleaded that on the death of Faiyaz Husain Khan, father of the first defendant, the alleged waqif, the property was recorded by the Revenue authorities in the name of his son, the first defendant, as full owner, who, as such, mortgaged the properties in suit to her deceased husband, Mul Narain, who took the mortgage is good faith, and without any knowledge of the allege waqf.

4. The learned District Judge found that the waqf was valid, but also found that it had never been acted on. He, therefore, dismissed the suit. The plaintiffs appeal. They by their memorandum of appeal contend that there are no grounds for the finding that effect was not given to the waqf, and that it is a valid and subsisting endowment.

5. The waqif, Muhammad Faiyaz Ali Khan, was a Muham-madan of the Shia sect. In considering this appeal we have, therefore, to apply to it the rules of the Shia law regarding waqf. Those rules will be found at great length in the elaborate judgment of Mr. Justice Mahmood, when delivering the judgment of the Full Bench of this Court in the case of Agha Ali Khan v. Altaf Hasan Khan (1892) I.L.R. 14 All. 429.

5. The waqf-namah under consideration in this appeal is made up of two parts, one purporting to bear date of May 7th, 1878, and the other (which is called a will) being dated May 11th, 1878. But as a matter of fact they constitute but one instrument; and though the first part may perhaps have been written out on May 7th, both parts were executed and attested by the same witnesses on one and the same day, namely, May 11th, and were both presented for registration on May 13th by the executant, Muhammad Faiyaz Ali Khan.

6. It was contended that under the rule laid down in the case cited above the appropriation of the property in the present case was bad as being a testamentary waqf, in which possession had not been given by the waqif to the mutawalli. Such is not the case in my opinion. The first part of the waqf-namah is that which contains the dedicatory words. It is in this part that the executant purports to appropriate certain property to the Hazrat Imam Husain, and purports to retain

possession of it thenceforth as mutawalli, and not as beneficial owner. The second part, which is styled a will, does not purport to make any testamentary disposition of any property in favour of the succeeding mutawalli. It merely recites the appropriation made in the earlier part, dated May 7th, and then goes on to make certain rules respecting the management of the property. The appropriation, if valid, is complete under the terms of the first part of the waqf-namah, and it is under that part, and not under the will, that the settlor's sou, the first defendant, would have taken as mutawalli. Therefore, in my opinion, the appropriation is not nugatory as being a testamentary waqf.

7. Turning now to the waqf-namah, the first and most important matter to be ascertained is the object for which the waqf was constituted.

8. As to that question the settlor leaves no room for doubt. The waqf-namah begins with an assertion that 'it is incumbent on every individual to protect his life and property, and life is transient,' especially in his case, as he had been 'unwell for a long time,' and that, therefore, he had dedicated the property now in dispute to the Hazrat Imam Husain 'in order to obtain benefit in the next world,' and has retained the ownership in his own hands as mutawalli and manager for his life without any power to transfer. That property, he adds, 'shall never, and under no circumstances, be made the subject of inheritance.' In the second part of the waqf-namah he sets forth more fully his reasons for, and the object of, the dedication. After again alluding to his illness and that 'transient life is uncertain,' the settlor proceeds as follows: 'As I myself have seen the condition of my own four brothers and the ruin and miserable state of their property and families and children after their death, it is necessary and incumbent on me to make some arrangement of my property. I have, therefore, dedicated the whole of my property detailed below to God, the Apostle, and the holy Imams (on whom be peace), to obtain an everlasting benefit in the next world, and have appropriated the same by executing the waqf-namah, dated 7th May.' There is a declaration that the endowed property shall never be open to inheritance. The meaning of the above clearly is, that the settlor having seen the miserable condition to which his four brothers and their families and children and property had been reduced (presumably because the properties of his four brothers, being subject to the law of inheritance, had been

wasted, and their families reduced to indigence) felt it incumbent on himself to make 'some arrangement' of his own property to avoid those evils. With this object the plan he adopts is to make a dedication of it to the Hazrat Imam Husain in order to obtain benefit in the next world. That is to say, he attempts to establish a perpetuity in favour of his own descendants as beneficiaries, an estate which shall not be subject to the law of inheritance, which shall not be susceptible of transfer, and which therefore cannot be wasted by his descendants as the properties of his brothers had been wasted. And this he purports to do under the guise of a dedication to God, the Apostle, and the holy Imams. Beyond this there is no dedication of any sort. There is no dedication (such as is usual in waqfs) to any charitable or religious uses, nor any dedication, whether immediate or ultimate, for the benefit of the poor. Under the first part of the waqf-namah the settlor assumes possession as mutawalli of the endowed property, untrammelled by any dedication to any purpose, or by any direction as to how he is to use the revenues. He says, no doubt, that it is his intention to specify in detail in writing the powers he possesses in respect of the waqf property in a separate will, but adds that this 'will' should always be acted on after his death) but that during his life he will manage the property and look after the affairs of the imambara as he may think expedient. So there was no obligation on him during the remainder of his life to do any of the acts he in the will directs his successors to perform, but after him 'everything shall be always done in accordance with the terms specified in the will.' As long as he lived the waqf was practically in abeyance, or rather did not come into existence.

9. Turning now to the terms of the 'will,' which sets forth the powers the mutawalli is to possess in respect of the management of the waqf property, the settlor in the first paragraph reiterates his determination that after him the property shall not be subject to the law of inheritance. In the second paragraph he recites the appointment made in the first part of his son (the first defendant) to be mutawalli, with his wife, Musammat Pizza Begam, as the son's guardian during his minority, for the performance of the affairs mentioned in the will, she being bound to act 'in accordance with what is written hereafter and declared to be the rule of practice.' In the third paragraph the guardian is directed to act under the advice of three persons, namely, Mir Imdad Ali, Khan Bahadur, whose son is one of the plaintiffs appellants in this case; Wahid Husain Khan and Inayat Ali Khan, whose wife

(sister of the settlor) is another of the plaintiffs appellants in this case. Very large powers are given to these persons and to the majority of them. They are even authorized to remove the mutawalli. The next three paragraphs have reference to the education and training of the settlor's son and to the succession to the office of mutawalli. The latter 'is always to be one of the settlor's descendants, and in case of a failure of male descendants, then a female or a relative, or an able man of another sect, may be appointed as a paid mutawalli, but such paid mutawalli is to be paid as little as possible, and is in no case to get more than Rs. 10 per month.

10. The seventh, eighth, and ninth paragraphs are not very important.

11. The tenth paragraph, however, is most important. It provides that if the settlor have left any debts the succeeding mutawalli should pay them first of all by curtailing all the expenses. The meaning of this is, that the first duty incumbent on the mutawalli is to pay any debts his father, the settlor, may have left unpaid; that this is to be done first of all, and that it is to be accomplished by reducing the expenditure, for which provision is subsequently made. This condition alone is sufficient to vitiate the waqf, even if otherwise unobjectionable. That such is the law applicable to Shias is most unmistakably laid down in Shama Churan Sircar's Tagore Law Lectures of 1874, p. 473, and in Syed Ameer Ali's Muhammadan Law, Vol. 1, p. 411. This matter alone is, in my opinion, quite sufficient to justify us in dismissing this appeal.

12. I think it right nevertheless to discuss the remaining paragraphs of these 'rules of practice' (dastur-ul-amal). The eleventh paragraph provides that certain trees are to be left standing, and offerings of flowers made at certain places, and a chapter of the Quran to be recited, the benefit of which is to be transferred to the benefit of the souls of deceased Musalmans. The concluding portion of this paragraph seems to imply that it is the duty of the mutawalli to provide for all the male descendants of the settlor who became 'paiks.' The twelfth paragraph directs the mutawalli to provide the petty sum of Rs. 30--one rupee a day--during the fasting month (Ramzan)--to be spent daily in the ceremonial breaking of the fast (after sunset) during the month, and in the morning ceremony on the 21st of that month. Then a sum of Rs. 80 is provided for illuminations and assemlies (majlis),

with directions as to the special dishes to be served on the-3rd, 7th, and 8th, and a majlis is to be held on every Friday between the 3rd and 40th days. If there be any unexpended balance this paragraph provides that there should be a proper and economical distribution of it, and again 'let there be some distribution on some day.' A sum of Rs. 100 is to be spent on the procession in honour of the 40th day, but out of this sum Rs. 20 is to be given as usual to the females (of the settlor's family) for their expenses on the days preceding the 40th day. Then follows a provision that Rs. 10 are to be spent in fireworks to be lee off as usual, and that a fund of Rs. 100 annually should accumulate for five years to be spent in additions to the imambara, and in helping some descendants of the settlor to go to Mecca if there be any surplus. The last clause of this paragraph is not of much importance. Now as to all the above matters directed in this will there is a finding by the lower Court which has not been contested in this appeal, that everything therein directed had been usually done in the life-time of the settlor. They all (with the exception perhaps of the accumulation of Rs. 100 for five years) are such acts as any pious Muhammadan gentleman of the Shia sect in good circumstances would do of his own accord. I am in full accord with the opinion of the lower Court, that no effect ever was given to this waqf-namah. The settlor died in July 1878. What happened after his death we do not know, except that the property which his father had purported to dedicate was at once recorded in the name of the a on as full owner in the official records. The son was not of age then. But when he did come of age, he lost no time in raising money on the property, the first loan being in 1893 and the last in 1895. It was not till 1898 that the present plaintiffs (who as near relatives must have known what Mujawar Ali was doing) instituted the present suit after the property had been sold to pay the debts which Mujawar had imposed on it. In less than three years he had borrowed nearly Rs. 4,000, treating the alleged waqf property as his own arid borrowing money on its security. It is only at the last moment that the plaintiffs came in, and alleging that Mujawar Ali had no power to alienate the property, they ask the Court to deprive the mortgagee of the fruits of her decree against it. After a careful consideration of the whole case, I am of opinion that the waqf-namah on which the appellants rely is not a valid instrument. It contains no dedication of the property to the worship of God. It contains no immediate or ultimate dedication of that property to any unfailing religious or

charitable object, or for the relief of the poor. It seems to me to have been nothing more than a mere paper transaction. The one object of the settlor appears to me to have been to settle the property on his descendants in perpetuity, so as to remove it from the operation of the law of inheritance, and prevent the recurrence of the evils he had seen in his brothers' families. That, and not the worship of God or the benefit of his fellow-Musalmans, was his sole object. He settles the property first on himself, and then on his son and descendants, and instructs the latter to carry on certain ceremonial observances which he had been accustomed to perform. This is not a case of a dedication to the worship of God or to religious and charitable uses, with a prevision engrafted thereon for the benefit of the settlor's family, but is a case of a perpetual endowment on the family with instructions to do certain ceremonial acts, some of which may be of a religious nature. Such a dedication is not, in my opinion, valid. It may also be strongly doubted whether there was in this case that strict seisin by the mutawalli which the Shia law requires. The settlor did no doubt draw up the paper waqf-namah, in which he says that thenceforth he holds the property as mutawalli. But he did nothing more except to register the paper. He in no way changed the outward appearance of the title by which he remained in possession. If he had been sincere in his desire to divest himself of his proprietary title, he would have at once applied to the Revenue authorities to have his name no longer recorded in the public registers as owner of the dedicated property, and instead to have a new entry made recording him as mutawalli. This he did not do, nor after his death did his son's guardian have a correct entry made. It is admitted that Mujawar Husain Khan was, after his father's death, entered as full owner, and not as mutawalli. The respondent's husband, when he consulted the village papers previous to accepting the mortgage, would not have found any indication that, Mujawar Husain Khan had not a full and absolute title to the property, nor that fifteen years previously that property had become waqf. On the above facts I am unable to say that the settlor, notwithstanding his paper declaration to that effect, did really obtain that seisin as mutawalli which the Shia law requires.

13. For all the above reasons I have come to the conclusion that the decision of the Court below dismissing the suit is right. I would, therefore, dismiss this appeal with costs.

Stanley, C.J.

14. The suit out of which this appeal has arisen has been brought by. the plaintiffs, who are members of the family of the late Faiyaz Husain Khan, to have it declared that certain properties situate in the district, and also in the city of Allahabad, and in the district of Fatehpur, are waqf properties, and that a sale of a part of the property which was held on the 20th of December, 1807, at the instance of the defendant, Musammat Dhan Devi, the widow of Munshi Mul Narain, a mortgagee, in execution of a mortgage decree obtained by Mul Narain, wasfliull and void. By the plaint the plaintiffs also seek to have the defendant, Mujawar Husiin, he is the son af Faiyaz Husain Khan, removed from' the office of mutawalli of the property, and to have some other person appointed in his place. The facts are shortly as follows:

On the 7th of May, 1878, Faiyaz Ali Khan executed a deed purporting to dedicate to Hazrat Imam Husain the properties belonging to him in order to obtain benefit in the next world. The deed runs as follows: 'I, Muhammad Faiyaz Ali Khan, son of Ashraf Ali Khan, resident of muhalla Dariabad, one of the muhallas of the city of Allahabad, do declare as follows: It is incumbent on every individual to protect his life and property, and life is transient, as clear from the tenor of the holy verse, viz. 'Every soul shall taste of death,' and life is altogether uncertain, especially in my case, who have also been unwell for a long time, therefore I, while in a sound state of body and mind, and in possession of all my senses, have dedicated (made a waqf of) of my own free will and accord, the under mentioned property, consisting of the zamindari, houses, and groves owned and possessed by me, to Hazrat Imam Husain (peace be on him), in order to obtain benefit, in the next world, and have retained the ownership of the same in my hands as a mutawalli (superintendent) and manager for my life without any power of transfer whatever. I shall reduce into writing in detail and specify the powers which I possess in respect of the management of the waqf property in a separate will, which should always be acted upon after my death. During my life I, the executant, myself will manage the property as a mutawalli (superintendent), and look after the affairs of the imambara and repairs, etc, as will be deemed expedient; and after me everything shall always be done in accordance with the terms specified in the will,

which I will execute hereafter. After my death my own son, Mujawar Husain Khan alias Salwat Husain Khan, besides whom T have no other male issue, shall be the mutawalli (superintendent) of the appropriated (waqf) property under the guardianship of my wife, Musammat Fizza Begam, according to the terms of the will to be hereafter executed by me. During the minority of the said son, the said Musammat shall perform all the affairs as guardian of the said mutawalli (superintendent). The under mentioned property, which I have willingly appropriated, shall never, and under no circumstances, be made the subject of inheritance. I have consequently written these presents by way of waqf-namah (deed of appropriation) amounting to a deed of gift in respect of the property specified below that it may serve as evidence.' Then follow the details of the properties so dedicated.

15. This document which I shall describe as the waqf-namah was written on the 7th of May, but was not attested until the 11th, and on the 13th of May it was registered. On the same day on which the waqf-namah was attested Faiyaz Ali Khan also executed a will, which commences with the following recital:

'As I have been unwell for a long time and the transient life h uncertain, and as I myself have seen the condition of my four own brothers, and the ruin and miserable state of their property and families and children after their death, it is necessary and incumbent on me to make some arrangement of my property. I have, therefore, dedicated the whole of my property detailed below to God, the Apostle, and the holy Imams (on whom be peace) to obtain an everlasting benefit in the next world, and have appropriated the same by executing the waqf-namah (deed of appropriation), dated the 7th May. I execute this will to the following effect that it may be enforceable for ever, and that everything be done in accordance with its terms. Inheritance shall never open in respect of the under-mentioned, property which has been appropriated for good (pious) purposes.' In Clause 1 of this document the testator declares that no one has a right to, or share in, the property, nor shall inheritance open in respect of it after him, and that even the mutawalli shall have no power to transfer or mortgage any part of it. In Clause 2 he appoints his son, the defendant Mujawar Ali Khan, mutawalli, and in the succeeding Clauses 3, 5, and C, provision is made for the management of the

property, and also for the removal and appointment of muta-wallis. In Clause 12 a sum of Rs. 850 is fixed to defray all the expenses in connection with the ceremony of mourning, the breaking of fast in the month of Ramzan, and the Shab-i-Barar, etc. It is in this last-mentioned clause that the objects of the dedication of the property are specified. From the view which I have formed of the case and upon which I am prepared to decide it, it is unnecessary for me to refer more particularly to the provisions of the will. The net income of the property is stated in the details attached to the will to be Rs. 862-34. In respect of the application of Rs. 350 only of this amount are directions given in the will. Faiyaz Husain Khan died on the 5th July, 1878, and upon his death his son, Mujawar Husain Khan, entered into possession of the properties. He in the years 1892, 1893, 1894, and 1895, borrowed moneys, amounting in the aggregate to Rs. 3,900, from Mul Narain, on the security of mortgages of the property which his father purported to dedicate as waqf. Mul Narain brought a suit to recover the amount due to him, and ' obtained a decree on the 21st of April, 1896, and he having died, his widow, the respondent Dhan Devi, took out execution of the decree, and caused part of the property to be sold by auction, and herself purchased it on the 20th of December, 1897, and obtained possession. It is to have this sale set aside that the present suit was instituted. Faiyaz Husain Khan belonged to the Shia community of Muhammadans, and it is by the Shia law, therefore, that any question arising in the case must be determined.

16. The learned District Judge held that the waqf-namah and wasiyat-namah (will) were really parts of one and the same transaction, and must be read together, and that so reading them, although the main purport of the waqf was to creat a trust and prevent the descendants of the waqf from ruining and alienating the property, still enough of the income of the property had been set apart for religious purposes, and that the religions element in: the waqf was not nominal and fictitious, but was large enough to make a valid waqf. He held, however, that the waqf had not been given effect to, and that the defendant, Mujawar Husain, held possession of the property as owner and not as mutawalli, and that the suit was not therefore maintainable, and he accordingly dismissed it. For the appellants, it was at first contended by their Learned Counsel that the waqf-namah and the will must be read together, and that their combined effect was to create a valid

dedication of the property to religious and pious purposes. When, however, he was met by the argument that under the Shia law a waqf can only be created by act inter vivos and not by will, he fell back on the contention that the waqf-namah of itself, independently of the will, was an effectual dedication of the property as waqf. Now that the contemporaneous document was intended to operate as a will, and as a will only appears to me to be manifest from its language. The executant describes it as such in clear terms. In the earlier part of it he states: 'I execute this will to the following effect:' and again in another place he uses in respect of it the words 'this will,' and at the end of the document states: 'I have consequently executed this will-that it may always be carried out and enforced after my death.' In the waqf-namah moreover he states his intention to execute a will. In it is the following direction, viz. 'after me (Faiyaz Ali) everything shall always be done in accordance with the terms specified in the will which I will execute hereafter.' The document being a will it was open to the testator at any time during his life to revoke it, and if there was not a binding dedication of his property already created by the waqf-namah, to make any disposition of, or give any their directions he might please in regard to, his property. Let me then first consider the question whether, independently of the will, the waqf-namah, according to the Skia Jaw, constituted a valid and binding dedication of the property. The only dedication purported to be made by it is a dedication 'to Hazrat Imam Husain,' the motive expressed being 'to obtain benefit in the next world.' The objects for which the dedication is made are nowhere stated in the instrument, but it is stated that the property is under no circumstances to be made the subject of inheritance. To discover the objects of the waqf, one must turn to the will. Now to constitute a valid waqf, there must be a dedication of property to God, or to religious or charitable purposes. This was so decided in the case of Abdul Ganne Kasam v. Hussen Miya Rahimtulla (1873) 10 Bom. H.C. Rep. 7 a decision which was adopted by a Divisional Bench of the High Court at Calcutta in the case of Mahomed Hamidulla Khan v. Lotful Huq (1881) I.L.R. 6 Calc. 744 in which the alleged waqf had for its objects nothing connected with the worship of God or religious observances, and provided only in a remote contingency for the poor. It was in fact a perpetuity for the benefit of the waqifs daughter and her descendants. In the case to which I have referred of Abdul Ganne Kasam v. Hussen Miya Rahimtulla Melville, J., in

the course of his judgment, remarks as follows: 'We think that it is necessary, in order to constitute a waqf, that the endowment should be to religious and charitable uses; and that it is not sufficient that the mere term waqf should be used in the grant. To hold otherwise would be to enable every person by a mere fiction to create a perpetuity of any description.' Ayyar, J., in the case of Pathukutti v. Avathalakutti (1888) I.L.R. Mad. 66 remarks in his judgment: 'It seems to me that unless the ultimate application of the property to religious or charitable use can be predicated with certainty from the deed of settlement, it cannot be said that one essential ingredient, viz. application to charity, is not wanting, and that a valid waqf is created.' Ameer Ali, J., in his learned treatise on Muhammadan Law, in dealing with the Shia law relating to waqf, states that 'with the exception of Ibn Junaid most of the writers are agreed in holding that a dedication, when the object is not mentioned either expressly or impliedly, is void' (Muhammadan Law, Vol. 1, p. 406), and Baillie, in his Digest of Muhammadan Law (p. 217, Vol. 2, 2nd edition), observes that 'if a man should make an appropriation without mentioning its objects the appropriation would be void.'

17. In Mr. Shama Churun Sircar's Tagore Law Lectures of 1874, at page 407, the principle is thus expressed under the heading 'Condition required of the object of waqf, number DCCCXXVIII. He (in whose favour a waqf is made) must be in existence, capable of owning property and distinctly indicated; he must not be one in whose favour it is unlawful to make waqf.' In his treatise on Muhammadan Law (2nd Ed., Vol. I, p., 401) Mr. Justice Ameer Ali gives as one of the four requisites concerning the maukoof-alaik, or beneficiary, that he must be muyyin, or specified. Turning now to the waqf-namah in the present case, we find that while the motive of the dedication is stated by Faiyaz Ali Khan as being to protect his property, and the dedication is made to Hazrat Imam Husain 'in order to obtain benefit in the next world,' no object whatever of the waqf is specified. The dedication is not expressed to be made in the way of God or for any pious or charitable purpose. It is simply a dedication for such purposes and objects as the waqif should by will specify. It appears to me, therefore, that one of the essential conditions of a valid dedication is wanting, and that the waqf is consequently void, unless it be that the will can be called in to' supplement the provisions of the waqf-namah and cure the defect which I have pointed out. Can this be done? I think not; and for this reason,

that according to Shia law property cannot be made waqf by will. The law upon this subject is elaborately discussed by Mahmood, J., in his judgment in the case Agha Ali Khan v. Altaf Hasan Khan (1892) I.L.R. 14 All. 429 in the course of which the learned Judge treats of the exact nature and constitution of waqf as understood in the Shia law, and points out how the Shia law recognises waqf, not as a unilateral disposition of property, as it is recognised in the Sunni law, but as a contract which, according to the requirements of juristic notions irrespective of either of these two systems, must be a transaction inter vivos, and this ex necessitate rei. According to Mr. Justice Ameer Ali, there are four essential requisites on which depends the legality of a waqf--(1) that it must be perpetual, (2) that it must not be contingent, (3) that possession must be given of the thing dedicated, or more properly, the property should cease to be the property of the donor, and (4) that the right of the donor should be entirely divested there from. Mr. Baillie in his treatise states these conditions thus: (1) It (the waqf) must be perpetual, (2) absolute and unconditional, (3) possession must be given of the maukoof or thing appropriated, and (4) it must be entirely taken out of the waqif or appropriator himself. In the case before us, the second and fourth of these requisites appear to be wanting, for although, the donor purported to dedicate the property when he executed the waqf-namah, and also purported to assume possession of it as mutawalli, no definite objects existed for which he was to hold possession. The waqf-namah was designed not to take effect until the death of Faiyaz Ali, although it assumed in some respects the form of a disposition inter vivos. The operation of the waqf was in fact suspended during the life of the waqif, and this we have held is not permitted by the Shia tow in the unreported case of Syeda Bibi v. Mughal Jan F.A. No. 300 of 1898 decided on the 24th January, 1902.

18. Faiyaz Ali retained control over the property during his life, and could deal with it as he pleased. Only upon his death could his will have any operation. The operation of the dedication was in fact suspended during the life of Faiyaz Ali, and during this period Faiyaz Ali in effect reserved for himself the profits of the property as well as the power of revoking his will and disposing of the property as he might think fit. The waqf-namah was no more than a declaration by Faiyaz Ali that his property was waqf, and that he would by his will specify the object of the

dedication. It seems to me that the object of the two documents not improbably was to enable him to retain unfettered control of the property during his life-time, and at the same time in case he did not revoke or alter his will, to secure the transmission of it to his descendants in perpetuity, trammelled only with some pious and charitable trust. If this was not his object, it is difficult to understand why he did not specify the objects of the dedication in the waqf-namah, instead of in an instrument drawn up and executed simultaneously with the wnqf-namah.

19. For these reasons I am of opinion that the waqf-namah was an imperfect dedication of the property according to the Shia law, and that the will does not cure the defect inherent in it, and so no valid waqf has been created.

20. It is unnecessary for me to deal with any other aspect of the casa; but I may observe that if the waqf-namah and the will can be read together, as my brother Burkitt considers that they can, I should have difficulty in coming to any other conclusion than that at which he has arrived, namely, that the dedication was not so much intended to satisfy pious or charitable objects as to secure the preservation of the donor's property for his family. The appeal will therefore be dismissed with costs.

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