

**Muhammad Ismail and anr. Vs. Muhammad Ishaq and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/451749](http://sooperkanoon.com/451749)

**Court :** Allahabad

**Decided On :** Mar-02-1921

**Reported in :** AIR1921All224; (1921)ILR43All508

**Judge :** Grimwood Mears, Kt. C.J. and ;Pramada Charan Banerji, J.

**Appellant :** Muhammad Ismail and anr.

**Respondent :** Muhammad Ishaq and ors.

**Judgement :**

Grimwood Mears, Kt. C.J. and Pramada Charan Banerji, J.

1. This and the connected appeal No. 410 arise out of a suit brought under Section 92 of the Code of Civil Procedure. It was alleged that one Musammat Wafatan made a waqf of certain property for the construction of a mosque and that a breach of the said trust had been committed. It was prayed that new trustees should be appointed and many other reliefs were asked for.

2. The alleged waqf is said to have been made under a will executed by Musammat Wafatan. That document in its preamble states that besides making a disposition of her property it was necessary to make some provision for charitable purposes for the benefit of her soul. The document then directs that her brothers Dilawar and Shukr-ullah should, as regards three shops and a house with a shop, sell the said property and with the proceeds of the sale construct a mosque. It is further provided in the document that if Dilawar and Shukr-ullah wanted to keep

the property, they should devote the value thereof, which is mentioned in the document as being Rs. 2,500, to the construction of a mosque and continue to be the owners of the property. This alleged will was made in 1898. Musammat Wafatan died in 1900 and shortly afterwards Shukr-ullah died. Dilawar lived until 1909: but nothing was done with respect to the property. After the death of Dilawar, in execution of a decree obtained against one of his sons, Yakub, a portion of the property was sold by auction and was purchased by Bihari Lal, who is the principal respondent in this appeal. The learned Judge has held that there was no valid waqf and has dismissed the suit as against Bihari Lal. At the same time he proceeded to try the suit as against the other defendants, and in the end he appointed new trustees and provided a scheme for the management of the trust. This was somewhat inconsistent in view of his finding that there was no valid waqf. The plaintiffs have preferred this appeal and it is contended on their behalf that a valid waqf of the three shops and the house in dispute was created by Musammat Wafatan. In our opinion upon a true construction of the will of Musammat Wafatan there was a waqf of the value of the property for the erection of a mosque and not of the property itself. The property was not to be appropriated to the erection of a mosque but the proceeds of the sale of the property, whether it was purchased by a stranger or kept by Dilawar and Shukr-ullah, were to be devoted to the construction of a mosque. In these circumstances we think that the waqf was in fact; a waqf of the value of the property and not as we have said above of the property itself. This being our view, there was no case against Bihari Lal, the purchaser of a part of the property, and the suit was rightly dismissed as against him. We accordingly dismiss this appeal with costs to Bihari Lal.