

**Saiyid Ali Vs. Ali Jan**

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**Court :** Allahabad

**Decided On :** Nov-27-1912

**Reported in :** (1913)ILR35All98

**Judge :** Henry Richards, Knight C.J. and ;Banerji, J.

**Appellant :** Saiyid Ali

**Respondent :** Ali Jan;sajjad Husaln and ors.

**Judgement :**

Henry Richards, Kt., C.J. and Banerji, J.

1. The facts connected with this appeal are shortly as follows: In the year 1856 one Musammat Bikani Bibi made a deed of waqf of certain property for the purpose of meeting the expenses of a certain mosque and imambara. The deed provided that she had appointed one Syed Himayat Ali, son-in-law of her husband's eldest brother, to be the nazir and mutawalli and that after him the fittest and ablest in the family, who should be a follower of the Shia sect, and a good and religious man, should be appointed, generation after generation, as nazir and mutawalli of the waqf. In the course of time the office of mutawalli was held by the plaintiffs father. During his incumbency a suit was instituted before the District Judge of Jaunpur alleging that he had been guilty of breaches of trust and seeking to remove him from being mutawalli. That suit was instituted under the provisions of Section 539 of the Code of Civil Procedure of 1882, which was then in force.

The result of the suit was that the learned District Judge removed the plaintiff's father from the office of trustee and appointed the defendant Syed Ali Jan Bahadur mutawalli in his place. An appeal was taken to this Court against the decree of the District Judge, but pending the hearing the plaintiff's father died. At the instance of the present plaintiff he was brought on to the record as the representative of his father, the appellant, but when the case came on for hearing it was dismissed, the appellant's counsel stating that he was unable for certain reasons to press the appeal.

2. The present suit has now been instituted claiming various reliefs, but there can be no question that in substance the plaintiff asks that the present mutawalli should be removed and that he should be appointed mutawalli in his place, and that he should have a declaration that he is entitled to hold the trust property as mutawalli. The plaintiff claims that he fulfills the various conditions mentioned by the maker of the waqf as essential qualifications of the mutawalli,

3. The court below has dismissed the suit upon the ground that the suit is not maintainable. It was contended amongst other things that the trust was not a trust for a public purpose of a charitable or religious nature within the meaning of Section 92. In our opinion, having regard to the terms of the waqf, and its description as given in the plaint itself, it is impossible to hold that the present trust was not trust created for public purposes of a charitable and religious nature, and we do not consider it necessary to say anything further upon this point.

4. As already stated the plaintiff himself had his name brought on the record as the representative of his deceased father, and the appeal was decided with him as a party. This perhaps would be almost sufficient ground for dismissing the present appeal. It is however urged that he could not legally have been brought on to the record because the cause of action did not survive. He was there, it is said, not as his father's son and heir, but as a person claiming to be, in the events which had happened, the person who was entitled to be appointed mutawalli. We therefore do not decide the appeal upon this ground. The important question is whether or not the present suit is maintainable. Bearing in mind that the trust was a trust created for a public purpose of a religious or charitable nature, it is clear that the

defendant now is and was at the time of the institution of this suit in fact the duly appointed mutawalli of the trust. It is, therefore, obvious that the plaintiff seeks in the present suit to have him removed from his office and to have himself appointed mutawalli instead of the defendant. There is an express provision in Section 92 of the present Code of Civil Procedure that no suit claiming relief of this nature can be instituted, save in conformity with the provisions of Sub-section (1), that is to say, it can only be brought by two or more persons after sanction has been obtained in the manner provided by the section.

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