

Raza Ali Vs. Moazzam Ali

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Court : Allahabad

Decided On : Jun-21-1922

Reported in : AIR1923All12; 70Ind.Cas.836A

Judge : Gokul Prasad, J.

Appellant : Raza Ali

Respondent : Moazzam Ali

Judgement :

Gokul Prasad, J.

1. This appeal arises out of a suit brought under the following, circumstances: Musammat Mahmudunnissa made a waqf of certain, property in the year 1884 and she appointed her son, Mustafa Ali, as the first mutwalli. The rules for succession, to the office of mutwalli were, not fixed by the lady. It appears that in the year 1910 some misunderstanding arose between the two sons of Mustafa Ali and Mustafa Ali himself about the dower of Mustafa Ali's wife, and his sons further claimed to be appointed as managers of the property endowed by their grand-mother. These disputes were referred to the arbitration of one Ghulam Ameer and he decided that Mustafa Ali should continue to be mutwalli during his lifetime and that after his death, his two sons, the plaintiff and the defendant in the present suit, would be joint mutwallis and act according to the deed of endowment executed' by their grandmother, Musammat Mahmudunnissa. The present suit has been brought by

the plaintiff for recovery of half the income of the endowed property from the defendant on the ground that he is a joint mutwalli and as such is entitled to half of the income of the endowed property. The profits claimed were for Rabi 1326 F and Kharif 1327 F. The defendant contended that the plaintiff was not a co-mutwalli with him; he also contended that the profits of Rabi 1326 had been collected by Mustafa Ali himself and those for Kharif 1327 had been collected by the defendant-appellant.

2. The First Court came to the conclusion that, having regard to the case of Mohammad Ibrahim Khan v. Ahmad Said Khan 6 Ind. Cas. 219 : 32 A. 503 : 7 L.A.J. 761, the appointment of the plaintiff as a mutwalli by an arbitration proceeding, referred to above, was not a valid appointment and, therefore, the plaintiff had no cause of action to sue. He dismissed the suit. The lower Appellate Court has reversed this decree and the defendant comes here in second appeal.

3. The defendant's learned Counsel relies upon the case of Mohammad Ibrahim Khan v. Ahmad Said Khan 6 Ind. Cas. 219 : 32 A. 503 : 7 L.A.J. 761 and contends that Mustafa Ali and his sons (the plaintiff is one of those sons) could not have appointed a successor to the office of mutwalli by reference to arbitration and, therefore, the plaintiff had no right of suit. As I have already stated above, it appears from the reference to arbitration that there were only two points of dispute, namely, (1) the realisation by the sons of the amount of dower-debt due to their deceased grand-mother, and (2) the management of the endowed property which the plaintiff claimed in presenti for themselves. There is no doubt in my mind, after reading the whole agreement, that one of the questions to be decided by the arbitrator was as to who was the person who should remain in charge and management of the endowed property and in my opinion, this case falls exactly within the purview of the rule of law laid down in the case of Mohammad Ibrahim Khan v. Ahmad Said Khan 6 Ind. Cas. 219 : 32 A. 503 : 7 L.A.J. 761 namely; that in a matter like this the parties can not, choose their own Court but that this is a matter which has to be decided by the Judge who looks to the interest of the members of the public interested in the endowment. It is a matter of a public nature which has to be settled by arbitration or compromise, but it is a matter which has to be decided by the rules of Muhammadan Law. According to that law, if

no rules of succession to the towliat are made by the creator of the endowment the right of appointing a mutwalli, vests first in the founder, after his death in the executor and in case of failure of the above two, in the Qazi or the officer of the Civil Court. It has been argued by the learned Counsel for the plaintiff-respondent that a mutwalli has a right to appoint his own successor, but Mr. Ibn-i-Ahmad, on the other hand, contends that an appointment of a successor by the mutwalli is not valid unless sanctioned by the Court. Any how, it seems, that the evil against which the decision in the case of Mohammad Ibrahim Khan v. Ahmad Said Khan 6 Ind. Cas. 219 : 32 A. 503 : 7 L.A.J. 761 was directed might also arise in cases where disputes like the present about towliat are settled by arbitration and I think, on, the principle laid, down in that case, that the appointment-of the plaintiff as a co-mutwalli in the present case was invalid. The plaintiff, therefore, had no right to bring the suit and the decision of the Court of first instance was a correct decision and should not have been disturbed. I, therefore, allow the appeal, set aside the decree of the lower Appellate Court and restore that of the Court of first instance with costs in all Courts.

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