

Hafiz Muhammad Shafi Vs. Dost Muhammad

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Court : Allahabad

Decided On : Jun-07-1916

Reported in : AIR1916All162; 36Ind.Cas.204

Judge : Walsh and; Sunder Lal, JJ.

Appellant : Hafiz Muhammad Shafi

Respondent : Dost Muhammad

Judgement :

Sunder Lal, J.

1. This is a suit brought by one Hafiz Muhammad Shafi for possession of certain endowed property, on the ground that he is the mutaivalli of the said endowment. The endowment was made by Hafiz, Sakhawat Husain by a document dated the 25th of July 1892. Under that document Sakhawat Husain appointed as the first rnutawulli his wife Musammat Rajunnissa, but the latter had no authority to appoint a successor to her office as a mutaivalli. Both Sakhawat Husain and Musammat Rajunnissa are now dead. Under the said document the author of the wakf desired the residents of the town and learned men in Muhammadan Law belonging to his persuasion to look after the wakf and to get some suitable person appointed as mutawatti. One class of these persons is described in the deed as Ulamai Din-i-Muhammadi Amil Bil Hadis' and it is quite clear that Sakhawat Husain was referring to persons of his own persuasion who were learned in Muhammadan

Law, The second class of persons to whom he is supposed to have referred in the document is described as 'Raoosa-i-Kasba Sai fil Khair' namely residents of the town who were indent upon doing good deeds. This undefined body was to see that a proper person is appointed mutawalli to succeed his wife. Under the Muhammadan Law the founder of a wakf or his executor is entitled to appoint a successor to the mutaivalli, and the question before the Court is whether the persons referred to in the deed in general terms without the name can under the circumstances be said to be the executors appointed by him. Mr. Sbafi-uz-zaman has argued that any person who has knowledge of the Muhammadan Law and professing the same religion as the wakif or a resident of the town intent upon doing good deeds who accepts the office, becomes an executor of the author of the wakf and is entitled to appoint a mutwalli. In support of this contention he has relied upon passages at pages 662, 663, 664 and 665 in Ameer Ali's Muhammadan Law. These passages do mean no more than this. If the author of the wakf has named a certain number of persons as his executors, such or so many of them as accept the duty are to be deemed as his executors. Those passages have no bearing on a case like the present. In the case now before us an undefined, uncertain an') fluctuating body of men has been referred to in the deed. It is not possible to say whether a particular Muhammadan of the town is learned in ' Muhammadan Law or he is intent upon doing good deeds. It is impossible to say what persons exactly come within the qualification mentioned. We do not think that the expressions in the deed amount to appointing the persons referred to therein as executors for the purpose of appointing a successor to the mutawalli, nor do we think that any of them undertaking the duty thereby becomes an executor under the law. The plaintiff was accordingly appointed a mutawalli by a body of persons who had no authority to appoint him as such. He was not a mutawalli under the law and his suit, therefore, failed. It is for the Muhammadan community to take steps under Section 92 of the Code of Civil Procedure to get a suitable person appointed as a mutawalli. We understand that some proceedings in this matter are pending. The matter is, however, not before us. The plaintiff has failed to make out his title. The suit was rightly dismissed and we dismiss this appeal with costs including fees on the higher scale. The decree in the case will not issue until the deficiency in Court-fee is made good by the respondent.

Walsh, J.

2. I only desire to add one word. I think the judgment of the District Judge is an excellent one and has put the thing on the right ground.

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