

Moazzam Ali Vs. Raza Ali

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Court : Allahabad

Decided On : May-29-1924

Reported in : (1924)ILR46All856; 81Ind.Cas.851

Judge : Cecil Henry Walsh, Acting C.J. and ;Ryves, J.

Appellant : Moazzam Ali

Respondent : Raza Ali

Judgement :

1. In our opinion this decision cannot be supported. The learned Judge has misapplied the decision in the case of Mohammad Ibrahim Khan v. Ahmad Said Khan 6 Ind. Cas. 219 : 7 A.L.J. 761 : 32 A. 503 which was founded upon an earlier case, namely, Mahadeo Prasad v. Bindeshri Prasad 30 A. 137 : 5 A.L.J. 101; A.W.N. (1908) 51 : 3 M.L.T. 208 in which it was held 'that the appointment of a guardian to a minor, not being a matter of private right as between parties, is not a question which can be settled by reference to arbitration'. That is to say, the Court has a kind of parental control over a minor, and a special jurisdiction over the guardian, and it cannot allow that jurisdiction to be taken out of its hands by any private arrangement between the parties. In the decision in the case in Mohammad, Ibrahim Khan v. Ahmad Said Khan 6 Ind. Cas. 219 : 7 A.L.J. 761 : 32 A. 503 that principle was applied to the mere appointment of a mutwalli, and we express no opinion as to whether it was rightly applied or not. But that is not the question in this suit. It cannot really be better put than the learned District Judge

did it. Independently of the question, of the appointment of a mutwalli, it being still an open question as to whether this waqf is a valid one and whether a mutwalli has lawfully been appointed, the parties referred certain differences to an arbitrator, who, by his award, determined their rights. As the learned District Judge says: 'the status of the parties has been determined by the award, and each is entitled to an equal share in the management and profits of this property'. That is (what the plaintiff sued for, and the defence really, amounts to an act of impudence. That is to say, under the cloak of public right, public charity, and religious endowment, the defendant claims to stick to the whole of the profits of this property to the exclusion of the party who is entitled to half. The law is not so foolish as to deprive a plaintiff of his just civil rights in a suit of this nature. The appeal must be allowed, and the decree of the lower Appellate Court restored with costs, including in this Court fees on the higher scale.

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