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Muhammad Jafar and anr. Vs. Muhammad Ibrahim and anr.

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Court : Chennai

Decided On : Oct-24-1900

Reported in : (1901)ILR24Mad243

Judge : Arnold White, C.J. and ;Subrahmania Ayyar, J.

Appellant : Muhammad Jafar and anr.

Respondent : Muhammad Ibrahim and anr.

Judgement :

1. This suit is brought under the Religious Endowments Act XX of 1863. As regards the second defendant the suit does not lie under the Act and as against him it must be dismissed, Sivayyav. Rami Reddi I.L.R. 22 Mad. 223.

2. As regards the first defendant, it has been argued on his behalf that no suit lies inasmuch as the plaintiffs ask for a declaration and Section 14 of the Act does not, in terms, confer upon the Civil Court jurisdiction to make a declaration. The first defendant relied on the decision of this Court in Mahalinga Rau v. Vencoba Ghosami I.L.R.4 Mad. 157. In that case, however, there was no claim for the removal of the manager. In the present case the plaintiffs ask for the removal of the manager and their prayer for a declaration is introductory or ancillary to that claim. Upon this ground the present case is distinguishable from the case of Mahalinga Rau v. Vencoba Ghosami I.L.R. 4 Mad. 157.

3. The fact that the inam which is the source from which the expenses of the mosque have been mainly defrayed is described in exhibit C as 'devadayam' shows beyond question that the mosque is a public mosque and not the private property of the first defendant. In the face of this evidence the defendant's vakil did not attempt to support the finding of the District Judge that the mosque is not a public mosque.

4. We think the plaintiffs are entitled to a declaration that the inam garden is the endowed property of the musjid which is a public mosque and that the mortgage deed of November 28th, 1892, is not binding on the institution in so far as it relates to the inam property; and we direct the first defendant within six months from this date to pay off the incumbrance created by that mortgage in so far as it affects the inam property.

5. As regards the claim for the removal of the first defendant from his office as manager it seems probable on the evidence that the first defendant, in setting up a right of private property in ton mosque, was acting under the bond fide belief that the mosque was the private property of his family. This is really the only ground upon which the claim for his removal is based, since, apart from this, there is practically no evidence of misconduct by the first defendant in his capacity as manager.

6. We accordingly allow the appeal and make a declaration in the terms indicated above.

7. We have not thought it necessary to go the length of dismissing the first defendant from his office of manager, but we think he ought to pay the costs of this suit hare and in the Court below. As: regards the second defendant we make no order as to costs.

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