

Privy Council Appeal No. 17 of 1921.

Patna Appeal No. 14 of 1919.

Bibi Akhtari Begam - - - - - *Appellant*

v.

Diljan Ali - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 20TH DECEMBER, 1922.

Present at the Hearing :

LORD PHILLIMORE.

LORD CARSON.

MR. AMEER ALI.

SIR LAWRENCE JENKINS.

LORD SALVESEN.

[*Delivered by MR. AMEER ALI.*]

The question for determination in this appeal lies within a very small compass, and turns upon the construction of the word *wāris* or "heir" used in a *wakfnama* or deed of dedication, executed by one Mir Imam Bux on the 5th May, 1874. It appears that Imam Bux had a step-sister, Bibi Peary Begum, who died in 1873. She left no heir entitled under the Mahamnadan Law to her inheritance, excepting the half-brother Imam Bux. Peary Begum appears to have brought up as foster sons two boys named respectively Mian Mehdi Husain and Mian Tasaduk Husain; and on the death of Peary Begum disputes arose between Imam Bux and these two young men respecting the property left by her. These disputes were compromised, and on the 5th May, 1874, Imam Bux, as owner of the property left by Peary Begum, executed the *wakfnama* on which the present suit is brought. The parties are governed by the Shiah (Imaania) Law.

By this document he dedicated a part of the property to various religious purposes, including a mosque and a khankah, and appointed Mehdi Husain to be the mutwalli or curator thereof. He similarly dedicated another part of the property to identical objects, and appointed Tasaduk Husain to be the mutwalli of this *wakf*. He also appointed his own son Syed Amjad Ali as naib or deputy mutwalli. The provision relating to the management of the two *wakfs* is as follows :—

“ The management, including the collection of the entire wakf estate, the distribution of the allowances to the persons receiving the same, both in perpetuity and for life, the appointment and dismissal of servants, and the payment of Government revenue, shall be made in consultation with all the three persons, viz., the two mutwallis and the naib mutwalli named above. The mutwalli Syed Mehdi Husain shall be at liberty to appoint on his own authority, and at any time he pleases, a competent person as his assistant mutwalli for the efficient management of the affairs of the *tauliat*.”

Regarding the application of the income of the *wakf* Imam Bux made the following provision :—

“ All the three persons together will, from the savings of the wakf property, continue to pay the allowance for the maintenance of all persons named herein below, viz., those for whom it is fixed in perpetuity, generation after generation, and those for whom it is fixed for life only—those for whom the allowance is fixed to be paid for ever, shall continue to get it from the above income as long as their lives continue while those for whom it (the allowance) is fixed for life only shall get it until their death. Out of the savings of the income of the wakf estate Syed Mehdi Husain, the mutwalli of the Masjid and the Khankah at Bhagalpur, shall receive an allowance of Rs. 50 per mensem ; Syed Tasaduk Husain, the mutwalli of the Imambara at Bhagalpur, the Masjid at Mohanpur, and the Imambaras at Pirpanti, etc., mentioned above, an allowance of Rs. 20 per mensem ; and Syed Amjad Ali, the naib mutwalli, an allowance of Rs. 10 per mensem, for the efficient discharge of their duties as mutwallis and naib mutwalli, and for management of the endowment properties.”

Mehdi Husain died in 1876, and on his death his widow Umda Begum succeeded to the *tauliat* or governance of the *wakf* that had been entrusted to him under the *wakfnama*. Umda Begum died on the 15th May, 1912, survived by a daughter named Mohamdi Begum and a grand-daughter, the present appellant. In the ordinary course and in accordance with the provisions of the *wakfnama*, the daughter would be entitled to the *tauliat*, but she was found to be *non compos mentis*. The grand-daughter thereupon claimed the office of mutwalli. The plaintiff Diljan, a son of Imam Bux, disputed her title, alleging that as Mohamdi Begum, the direct heir to Umda Begum, was insane and incompetent to be the mutwalli, the *tauliat* had passed to the line of the dedicator. The Revenue Courts accepted Akhtari Begam's claim, and she obtained possession of the *wakf* estate held by her grandfather.

The present suit to oust the defendant from the governance of the *wakf* was instituted by Diljan on the 13th March, 1914, in the Court of the Subordinate Judge of Bhagalpur. The defendant, Akhtari Begam, denied the plaintiff's title, and

asserted that as the next in the line of descent, according to the Shiah (Imamia) Law, owing to her mother's incompetency, she was entitled to the *tauliat* under the *wakfnama*.

The Subordinate Judge, after a careful examination of the language and the provisions of the *wakfnama*, held against the plaintiff's claim and dismissed the suit. He summed up his finding in the following words :—

“ There cannot be any doubt that the defendant is a competent person to hold the post of a mutwalli. She is a literate woman, and she can understand accounts. Moreover, when her grandmother, Umda Begam, who was illiterate, could be considered competent for that, the defendant is much more competent. She lives at Bhagalpur for the most part, and she can always have the help of her husband. This issue, viz., the issue as to competency, is found in defendant's favour.”

On appeal to the Patna High Court by the plaintiff, the learned Judges took a wholly contrary view. They thought that the word “ heir ” used in the *wakfnama* applied strictly to the person entitled to take in direct succession to the deceased mutwalli. In coming to this conclusion they seem to have placed somewhat undue reliance on the words “ waris sharye ” or “ legal heir,” used in another part of the document. They thought the expression “ legal heir ” indicated that the *wakif* meant that the *tauliat* should go to the direct heir of the deceased mutwalli, and if such heir was incompetent it was to revert to the dedicator or his heirs. They accordingly held that on the death of Umda Begam, her daughter being of unsound mind, the descent in the line of Mehdi Husain ceased, and the *wakf* reverted to Imam Bux's heirs, and they accordingly reversed the order of the Subordinate Judge and made a decree in favour of the plaintiff Diljan. In this connection it should be noted that under the Shiah Law daughter's children and descendants are not excluded from inheritance in favour of agnatic collaterals; nor does a disqualifying cause which excludes the direct heir from taking the inheritance form a bar, under the Mahommedan Law, to the succession of the next heir, the heir presumptive. The granddaughter is thus as much a “ legal heir ” under the Shiah Law as the daughter. Their Lordships are of opinion that the learned Judges of the High Court, in coming to the conclusion at which they arrived, overlooked the passage in which Imam Bux laid down the rule providing for the succession to the office of mutwalli. That rule is in these terms :—

“ In the event of slackness, negligence or discovery of misappropriation on their part, I or my heirs shall be at liberty to dispense with the services of the said mutwalli, and in case of death or dismissal of any mutwalli, if any heir belonging to the Imamia sect and competent enough to administer the wakf property be not left to the mutwalli, the naib mutwalli shall succeed him as mutwalli, and a naib mutwalli shall be appointed from among his (naib mutwalli's) heirs. In the event of no heir of the mutwallis and the naib mutwalli being found fit to manage the wakf property, selection

shall be made of a competent person from among the heirs of me, the executant. If, God forbid, no heir of mine near or remote be found, the authorities for the time being shall be competent to appoint a suitable person belonging to the Imamia sect to administer the wakf property mentioned above. But so long as the mutwallis and the naib mutwalli aforesaid shall manage the affairs of the wakf estate faithfully and efficiently, no one shall question (the tenure of the offices by the mutwallis) or be competent to complain (urge their dismissal, nor shall they be dismissed) unless the complaint is substantiated before the authorities for the time being."

It will be seen from the above that, in the event of "slackness, negligence or discovery of misappropriation on the part of the mutwallis," power is reserved to Imam Bux and his heirs to dispense with their services. At the same time it is distinctly provided that "in case of death or dismissal" (for causes already recited) of any dismissed mutwalli, the succession to the office should go to the heir of the deceased; and that when no heir "belonging to the Imamia sect, and competent enough to administer the *wakf*," is left to the mutwalli, that the naib mutwalli shall succeed him as mutwalli, and a naib mutwalli shall be appointed from among his (the naib mutwalli's) heirs. It is only in the event of no heir of the mutwalli and the naib mutwalli being found fit to manage the *wakf* property, that selection is to be made of a competent person from among the heirs to the *wakf*.

In their Lordship's opinion this passage in the *wakfnama* clearly shows that so long as the deceased mutwalli leaves a relation competent to inherit to him and otherwise qualified to administer the *wakf*, the office of mutwalli cannot revert to the dedicator's heirs.

The English cases referred to by the learned Judges of the High Court have, in their Lordship's opinion, no bearing on the present controversy.

The Subordinate Judge in this case has found clearly on the evidence that the defendant was competent to carry on the administration, and their Lordships do not find anything in the record to suggest to the contrary. They think, therefore, that the judgment and decree of the High Court should be reversed, and that of the Subordinate Judge restored, with costs in the High Court and of this appeal and they will humbly advise His Majesty accordingly.

In the Privy Council.

BIBI AKHTARI BEGAM

vs.

DILJAN ALI.

DELIVERED BY MR. AMEER ALI.

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