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case. The circumstances under which the grant was made to the defendant, the form of the grant itself ("to him and his heirs,") the fact of its being made with the consent of the other members of the reigning family, and that the defendant has had the management, and probably shared the profits of the property from that time to the present, might well have induced him honestly to suppose that he had a right to retain possession, at any rate during his own life. He had, moreover, good reason to expect that he himself would have become the Raja on the death of Ram Sing, and the change in his religion appears to have been the only reason why his claims have been set aside. It seems to us, therefore, that he was fully justified in taking the opinion of the Court, before giving up the property; and, as the judgment of the Subordinate Judge was in his favor, he should not be made responsible for the costs of this appeal.

We think, therefore, that this case should be made an exception to the general rule, and that each party should pay his own costs in both Courts.

Appeal allowed.

Before Mr. Justice Macpherson and Mr. Justice Beverley.

LUTIFUNNISSA BIBI AND OTHERS (DEFENDANTS) APPELLANTS *v.* NAZIRUN BIBI (PLAINTIFF) RESPONDENT.*

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August 29.

Mutwali, Suit by—Religious trust—Charitable trust—Civil Procedure Code (Act X of 1882), ss. 30, 539—Act XX of 1863.

The plaintiff sued to recover possession as *mutwali* of certain parcels of land, alleging that they were dedicated as *wuqf* and that the profits were "applied to the feeding of wayfarers and travellers, to lighting the mosque and shrine in the evening, and to meeting the expenses of repeating prayers on the occasions of *Id* and *Bukhrid*, and that the said profits were never spent for personal purposes." The plaintiff based her right to sue, upon the fact that her deceased husband had been *mutwali*, and she prayed that the property in suit might be declared *wuqf*, and that certain alienations made by her step-son, since her husband's death, might be set aside.

* Appeals from Appellate Decrees Nos. 188, 189 of 1883, against the decree of F. W. Badcock, Esq., Officiating Judge of Hooghly, dated October 10th, 1882, affirming the decrees of Baboo Kedar Nath Mozoomdar, Second Subordinate Judge of that district, dated September 16th, 1879.

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Held, that the trust to which the suit related was one partly for charitable, and partly for religious, purposes. As far as it related to the former, it was governed by s. 539 of the Civil Procedure Code, and if viewed in the light of the latter, by Act XX of 1863; and that the suit, not being properly framed in compliance with the provisions of either of those enactments, was not maintainable.

Held, further, that even supposing the endowment alleged, was neither a public charity within the meaning of s. 539 of the Civil Procedure Code, nor a religious endowment to which Act XX of 1863 applied, the plaintiff was not entitled to sue alone, as it was clear upon the face of the plaint that others were interested in the subject-matter of the suit, and therefore that she could only sue on behalf of all who were so interested, having first obtained the leave of the Court, and having otherwise complied with the provisions of s. 30 of the Civil Procedure Code.

THE facts of this case are sufficiently stated for the purpose of this report in the judgment of the High Court.

Baboo *Uma Kali Mookerjee* for the appellants.

No one appeared for the respondent.

The judgment of the High Court (MACPHERSON and BEVERLEY, JJ.) was delivered by

MACPHERSON, J.—In this case the allegations of the plaintiff are to this effect. She states in her plaint that the resumed mehal Harishpur, and four parcels of *lakheraj* land in four other mauzas were dedicated as *wuqf* by a former Maharajah of Burdwan, and that the profits were ever since "applied to the feeding of wayfarers and travellers, to lighting the mosque and shrine in the evening, and to meeting the expenses of repeating prayers on the occasions of *Id* and *Bakhrid*, and that the said profits were never spent for personal purposes." She then goes on to say that after the death of her husband, Syed Mokram Ali, the defendant No. 1, who is her step-son, sold the mehal Harishpur and granted a *mocurrari potta* of the four parcels of *lakheraj* lands to defendant No. 2, ostensibly in the name of defendant No. 3, and that defendant No. 2 accordingly took possession of all the properties in Bysack 1274. She therefore prays that the properties in suit may be declared to be *wuqf*, that the sale and lease may be set aside, that the connection of defendant No. 1 with the properties

may be terminated on the ground of his having committed waste, and that she herself may be put in possession as *mutwali*.

The defence was that the properties in question were not *wuqf* at all, but the ancestral property of Mokram Ali and his brother Koim Ali, by whose heirs they had been transferred to defendant No. 2 and his wife Lutifunnissa Bibi.

[The learned Judge here stated the names of the properties in suit and the dates of certain sales and *mocurrari pottas* connected with these properties.]

The present suit was instituted on 3rd March 1879, but Lutifunnissa Bibi was not made a party till 19th May 1879.

The material issues fixed in the case were these :

Has the plaintiff a cause of action ?

Is the claim barred by limitation ?

Are the properties *wuqf* or the ancestral heritable property of the family ?

On these issues the first Court held that the plaintiff as widow of the late *mutwali* had a right to bring this suit, that the suit was not barred by limitation, that there was no satisfactory evidence that mehal Harishpur was *wuqf*, but that the four parcels of *lakheraj* lands were *wuqf* "for the purpose of carrying on the rites of religion and for feeding the poor," and a decree was accordingly given to the plaintiff for possession of these four properties as *mutwali*.

Against this decision both defendant No. 2 and his wife appealed to the Judge, but their appeals were unsuccessful. They have now preferred a second appeal to this Court.

No one having appeared for the respondents, the appeals have been heard by us *ex parte*.

The appeals only relate to the four parcels of *lakheraj* land granted in *mocurrari* lease to defendant No. 2, Sheikh Parbuddin, and his wife Lutifunnissa. In appeal 188 Parbuddin is the appellant and in appeal 189, Lutifunnissa.

Several points have been raised before us.

The suit having been instituted against Parbuddin on 3rd March 1879, it is contended that so much of it as relates to Niyamatunissa's share leased to him on 20th January 1867 is barred

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by limitation. Again, Lutifunnissa, not having been made a party till 19th May 1879, it is contended that the suit is barred as regards the share of the properties leased to her by Mahafiz Hosein on 5th March 1869. It is further urged that there is no sufficient evidence that the property in question was ever dedicated as *wuqf*, and more particularly that the excess lands 12*b*, 13*c*, 1*c*, in mehal Gangeswar were improperly found to form part of the endowment.

The main contention, however, is, that the plaintiff had no right to bring this suit at all, and, we think, the case may be disposed of on this ground without going into the other questions raised.

It is urged that if this endowment is a *public* charity, the suit should have been instituted under the provisions of s. 539, Civil Procedure Code, by two or more persons directly interested in the trust with the written consent of the Collector. If, on the other hand, the endowment is a religious trust, it is contended that the suit should have been brought under Act XX of 1863, after sanction obtained under s. 18 of that Act. In either case, it is said, the plaintiff had no sufficient interest to entitle her to sue, nor could she sue to obtain for herself possession of the properties.

According to the plaint in this case, the trust is one partly for charitable and partly for religious purposes. So far as the trust was "for the feeding of wayfarers and travellers," it was a trust for the benefit of a considerable portion of the public answering a particular description, and was therefore a trust for a public charitable purpose. The object of the plaintiff's suit was to oust the *mutwali*, get herself appointed in his place, and have the properties vested in her. Section 539 of the Code applies to a suit of this nature, which is really one for the administration of the trust, and such a suit can only be brought in accordance with the provisions of that section.

But even supposing that the endowment in this case was neither a *public* charity within the meaning of s. 539 of the Civil Procedure Code, nor a religious endowment to which Act XX of 1863 is applicable, the plaintiff was not entitled to sue alone to be appointed *mutwali* and to obtain possession of the property. The first Court

holds that she was entitled to bring this suit because she was a wife of Mokram Ali, the late *mutwali*, but we cannot agree that this is a sufficient reason. Even if we regard her as suing as a person interested in the trust, then on the face of the plaint there are other persons interested, and she could only sue on behalf of all who were so interested, and in order so to sue, she should have obtained the permission of the Court, and otherwise complied with the provisions of s. 30 of the Civil Procedure Code; not having done so, we think, she had no right of action. In whatever light the suit be regarded therefore, we think it clear that it was not properly framed and will not lie. The decree of the lower Appellate Court is accordingly reversed, and the suit dismissed with costs in all the Courts.

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Appeal allowed.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Beverley.

JOY PROKASH LALL AND ANOTHER (PLAINTIFFS) *v.* SHEO GOLAM SINGH AND OTHERS (DEFENDANTS.)[*]

1884 *September* 12.

Award—Judgment in accordance with award—Appeal—Defendants not all joining in reference to arbitration.

The question whether, under s. 522 of the Code of Civil Procedure, an appeal will lie against a decree given in accordance with an award, depends upon whether the award upon which the decree is based is a valid and legal award.

A plaintiff and some of the defendants to a suit applied to refer the suit to arbitration (certain other of the defendants not having joined in the application); an award was passed and a decree made in accordance with such award. The plaintiffs objected to the validity of the award on the ground that all the parties to the suit had not joined in referring the suit to arbitration; the objection was dismissed, and judgment given in accordance with the award. *Held*, that an appeal would lie from a decree dismissing the objection and confirming the award; but that under the special circumstances of the case, justice was so clearly in favor of the view that the award was good, that the Court, although not entirely approving of certain decisions of the High Court (*Shitanath Biswas* v. *Kishen*

[*] Appeals from Appellate Decrees Nos. 666 and 667 of 1883, against the decrees of J. F. Stevens, Esq., Offg. Judge of Sarun, dated the 9th of January 1883, affirming the decree of Baboo Kali Prosunno Mookerji, First Subordinate Judge of Sarun, dated 1st December 1882.