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tenures and ryots and the residents of the place generally that the patni will be sold if the arrears are not paid off within the time specified; and in the case cited we find that the notice was not merely served personally on the gomashta, and shut up by him in his box, but was, as prescribed by the Regulation, stuck up on the house. There is, therefore, nothing in that case which to our minds relaxes the rules laid down in s. 8 of the Regulation.

As observed before, Baboo Aushootosh Dhur has admitted that should we take the view we have just expressed of the object of the Regulation his case must fail. We have thus arrived at the result which he foreshadowed.

The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Tottenham and Mr. Justice Bose.

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July 3.

LUCHMIPUT SINGH (ONE OF THE DEFENDANTS) *v.* AMIR ALUM (PLAINTIFF) AND OTHERS (DEFENDANTS).*

Mahomedan Law—Wuqf—Provisions for Payment of Debts and Maintenance—Minor Plaintiff—Guardian.

A Mahomedan created a *wuqf* of all his property, and appointed his minor grandson mutwali, providing that, during the minority, the property should be managed by the minor's father. The deed contained a provision that, in the first place, certain debts should be paid, and then provided that the property should be applied towards the religious uses created and the maintenance of the settlor's grandsons and their male issue. In execution of a decree against the minor's father, the endowed property was attached and sold. In a suit by the minor through his sister, as guardian, to recover possession of the property, in which suit the sister was not made guardian *ad litem* by an order of Court, but was allowed to sue by the District Judge,

Held, that the suit was maintainable as framed.

Held also, that, notwithstanding the provisions for payment of debts and maintenance, the *wuqf* was valid.

BY a *wuqfnama*, dated the 6th February 1872, one Shah Enayet Hossein endowed certain properties, which he had inherited from his wife Bibi Rujjan, for the expenses of the

* Appeal from Original Decree, No. 175 of 1880, against the decree of Moulvi Hufez Abdul Karim, Subordinate Judge of Bhagalpore, dated the 16th of April 1880.

musjid and the tomb of the holy personages of his family, the servants of a certain *asthana*, and for performing the *urs* and *fateha* at the tomb; and he appointed Shah Mahomed Amir Alum, his grandson, the minor son of Syed Shah Asudulla, as mutwali. The deed directed that so long as Shah Mahomed Amir Alum remained a minor, Syed Shah Asudulla should manage the property, and it directed that the manager should, in the first place, pay certain debts, and afterwards apply the property towards the religious uses created and the maintenance of the settlor's grandsons and their male issue. Besides the endowed property, Syed Shah Asudulla was possessed of property which he had acquired by inheritance.

In execution of a decree obtained by Brij Mohun Thakur and Huri Mohun Thakur, against Shah Asudulla, the endowed property was sold on the 7th August 1878 and purchased by Roy Luchmiput Singh.

Shah Amir Alum, who was still a minor, now instituted a suit through Mussamut Bibi Ommutul Fatema, his sister, against Roy Luchmiput Singh, Brij Mohun Thakur, Huri Mohun Thakur, and Shah Asudulla, for a declaration that the endowed property was not liable to be sold for the debts of Shah Asudulla, and for possession. Mussamut Bibi Ommutul Fatema was not appointed guardian *ad litem* by an order of Court, but was allowed to sue by the District Judge. The defendants, besides the usual pleas of fraud and collusion, pleaded that the plaintiff could not sue through Ommutul Fatema, and that the deed was invalidated by the condition for payment of debts.

The Subordinate Judge held, that it was reasonable and proper that Mussamut Ommutul Fatema should be the guardian for the purposes of the suit, and that the endowment was valid.

The defendant Roy Luchmiput Singh appealed to the High Court.

Baboo *Sreenath Dass* and Baboo *Rashbehary Ghose* for the appellant.

Mr. *R. E. Twidale*, Mr. *C. Gregory*, and Moonshee *Mahomed Yusuf* for the respondents.

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LUCHMIPUT SINGH v. AMIR ALUM.

The judgment of the Court (TOTTENHAM and BOSE, JJ.) was delivered by

TOTTENHAM, J.—This is an appeal against a decree of the Subordinate Judge of Bhagalpore, ordering restoration to the plaintiff, respondent, as mutwali, of certain property alleged to be *wuqf*, which had been acquired by the defendant No. 1, appellant, by auction-purchase in execution of a decree held by the defendants Nos. 2 and 3 against the defendant No. 4. The *wuqf* was created in 1872 by Shah Enayet Hossein, the late father of the defendant No. 4, and grandfather of the plaintiff. The plaintiff, being a minor, the suit was, with the permission of the District Judge, instituted on his behalf by his sister, Bibi Ommutul Fatema, *alias* Bibi Nur Jehan.

The defendant No. 4, Shah Asudulla Saheb, is the plaintiff's father.

When the property was attached in 1873, the debtor filed a claim on behalf of the present plaintiff, objecting that the property was *wuqf*, and not liable to be sold, the debtor being only the manager thereof during the minority of his son, the mutwali. That claim, however, was rejected, and the sale took place on the 7th of August 1878.

The judgment of the lower Court, after setting out the pleadings, held, that the suit was maintainable as brought; that the *wuqf* was a valid one in all respects; and that the purchaser at auction had acquired no right under the sale.

The contentions urged before us in appeal have been, *first*, that the suit was not maintainable by Ommutul Fatema as next friend to the minor plaintiff, and that there must be a formal order of the Court appointing a guardian *ad litem*; *secondly*, that the alleged *wuqf* is not a valid one under Mahomedan law; and *thirdly*, that the *wuqfnama* was never intended by Enayet Hossein, the maker of it, to be operative, and that, in fact, the property has always continued to be enjoyed and used as the means of support of the family.

As to the first point we think that the objection is not well founded. It was first assumed by the pleader for the appellant that the minor's father, the defendant No. 4, was his certificated guardian under Act XL of 1858. But it seems that this is not

so; and we consider that the District Judge, who undoubtedly had jurisdiction to try this suit, was competent, under s. 3 of the Act, to allow it to be instituted by the minor's sister, he considering that the father had neglected his interests in respect of the property in suit.

The next question is, whether or not the *wuqf* is a valid one according to Mahomedan law. There has always been a good deal of controversy in the Courts as to what is essential, and as to what will invalidate a *wuqf*. On the one hand it has been contended that no *wuqf* is valid unless it is solely and wholly for pious and charitable purposes enduring throughout all times; and on the other hand, there have been those who considered that what is practically a perpetual provision for the dedicator's family may be a valid *wuqf*.

The fact that the Subordinate Judge who tried this case is himself a Mahomedan gentleman of considerable attainments in Arabic learning, entitles his opinion to peculiar weight in a case of this nature; and he appears to have entertained no doubt, whatever, as to this *wuqf* being of a thoroughly legitimate character as to its constitution and objects. And singularly enough, the only matter which strikes us as one in respect of which, with reference to the decisions of the Courts, makes the character of this alleged *wuqf* at all doubtful, is the very one which the lower Court has treated as one as to which there could be no dispute as to its being a proper object of *wuqf*. For, in the *wuqfnama*, there is express provision for the maintenance of the dedicator's male descendants, in addition to the strictly pious and religious objects for which the *wuqf* purports to have been made. But the Bombay High Court has, by a Full Bench, decided that, to constitute a valid *wuqf*, there must be a dedication of the property solely to the worship of God, or to religious or charitable purposes; see *Abdul Ganne Kasam* v. *Hussen Miya Rahimtula* (1). That view has been endorsed by a Division Bench of this Court in the case of *Mahomed Hamidulla Khan* v. *Budrunnissa Khatun* (2).

This definition might seem to exclude from judicial recognition a *wuqf* of which one object is a provision for the family of the creator of it.

(1) 10 Bom. H. C. R., 13. (2) 8 C. L. R., 164.

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The lower Court, however, easily disposes of this question by the observation that "it is quite evident, and there is no necessity to quote any authority on the subject, that a *wuqf* for one's-self and for one's children is valid."

In the Bombay case the Judges, after considering all the available authorities on this question, held, that the balance was in favor of the dictum to which they gave effect; and this too was what the Division Bench, of which one of us was a member, decided in the case of *Mahomed Hamidulla Khan* v. *Budrunnissa Khatun* (1). In that case the alleged *wuqf*, which we declined to recognize, had for its object nothing connected with the worship of God or religious observances, and provided only in a very remote contingency for the poor. It was simply a perpetuity for the benefit of the dedicator's daughter and her descendants so long as any should exist.

The *wuqfnama* now before us is of a very different character; and having regard to the passage in it reciting the fact of dedication, we think that, without saying whether or no we are prepared on further consideration to adopt to the full the ruling above-mentioned, we can treat this *wuqf* as actually fulfilling the condition described, for the maker of the *wuqf*, after reciting the whole of his property of every kind, proceeds to declare that all has been endowed by him for the expenses of the musjid and the tombs of the holy personages of his family, the servants of the *asthana*, and for performing the *urs* and *fateha* at the tomb.

These are the objects of the *wuqf*, and they are all distinctly religious. They also involve to some extent charity to the poor.

We are disposed to hold this, therefore, to be a valid *wuqf* within the purview of the rulings quoted.

The subsequent direction that the manager shall maintain the future male descendants of the maker of the *wuqf* does not necessarily alter its character. Whether or not the provision or direction can be lawfully carried out, it is not necessary for us now to decide. But apart from this we are of opinion that the *wuqf* was completed by the passage which we have quoted. And we accordingly decide this point against the appellant.

(1) 8 C. L. R., 164.

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As regards the third and last objections we are of opinion that the *wuqf* being found to be a legal and valid one, it is really immaterial for the purposes of this suit to enquire how the proceeds of the property have since been applied. For no amount of misappropriation or other misconduct on the part of the manager can alter the character of the *wuqf* or render it void.

That being so, we hold that the decree of the lower Court was right, and we dismiss the appeal with costs.

This judgment will also govern Appeal No. 52 of 1881.

Appeal dismissed.

Before Mr. Justice White and Mr. Justice Macpherson.

MON MOHUN BUKSEE (DECREE-HOLDER) *v.* GUNGA SOONDERY DABEE (JUDGMENT-DEBTOR).*

1882 *April* 17.

Execution of Decree—Minor Plaintiff—Application for Execution by Guardian—Limitation Act (XV of 1877), s. 7.

A plaintiff, who has obtained a decree during his minority, has the option either of applying through his guardian to execute the decree during his minority or to wait until the expiration of his minority before executing his decree. The application of the guardian is the application of the infant. The minor is under disability during the whole period of his minority. His disability does not cease, because he, through his guardian, makes two or more applications for execution however long the interval between them, provided they are all made during his minority.

Baboo *Issur Chunder Chucherbutty* for the appellant.

Baboo *Kissory Mohun Roy* and Baboo *Mohiny Mohun Roy* for the respondent.

THE facts of this case sufficiently appear from the judgment of the Court (WHITE and MACPHERSON, JJ.), which was delivered by

WHITE, J.—The Court below held that the execution was not barred by the law of Cooch-Behar, but that it was so by the law of British India, that being the law of the Court in

Appeal from Appellate Decree, No. 342 of 1881, against the order of F. J. G. Campbell, Esq., Judge of Rungpore, dated the 3rd September 1881, reversing the order of Baboo Denobundhoo Roy, Munsif of Kooreegram, dated the 3rd May 1881.