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landlord and tenant was admitted, it would be in the power of the defendant to a suit in the Court of Revenue or of the respondent to an application in that Court to oust the jurisdiction of the Court of Revenue by simply denying the legal relation alleged to exist between him and the plaintiff. The result would be that Courts of Revenue would be Courts having jurisdiction only where the parties consented. That would be rather an extraordinary conclusion to arrive at when we bear in mind that suits under section 93 of Act No. XII of 1881 can only come before the Civil Court in the stage of appeal, and that the jurisdiction of the Civil Court is absolutely barred, either as a Court of original jurisdiction or as a Court of appeal, in all applications to which section 95 of that Act applies. Not only was the dispute in this case one in which an application under section 95 of Act No. XII of 1881 might have been made, but the application of Musammat Subarni and her son was in substance an application under section 95. It was an application which could not be granted without a determination in her favour of the question as to whether she was a tenant of the occupancy holding. In our view this question cannot be litigated in the Civil Court. The decree of the Court of Revenue is final, that decision, by reason of section 96 (b), having the effect of a judgment of a Civil Court, subject to appeal to a Court of Revenue. We allow this appeal and dismiss the suit with costs in all Courts.

Appeal decreed.

APPELLATE CIVIL.

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July 18 and
25.

Before Mr. Justice Know and Mr. Justice Blair, and subsequently before Sir John Edge, Kt., Chief Justice and Mr. Justice Blennerhassett.

MUHAMMAD SIRAJ-UL-HAQ AND OTHERS (PLAINTIFFS) v. IMAM-UD-DIN,
(DEFENDANT).*

Act No. X of 1863, sections 14, 15—Religious endowment—Jurisdiction—Court Fee—Act No. VII of 1870 (Court Fees Act) Sch. ii, Art. 17, cl. 6.

Held that Act No. XX of 1863 was applicable to an endowment whereby certain shops had been purchased by subscription and dedicated to the support of a mosque, and was also applicable in respect of a person in possession of the

* First Appeal No. 28 of 1896 from an order of L. G. Evans, Esqr., District Judge of Aligarh, dated the 14th December 1895.

endowed property and professing to act as *mutawalli* even though he might not have been lawfully appointed. *Dhurrum Singh v. Kissen Singh* (1) and *Sheoratan Kuari v. Ram Pargash* (2) referred to.

Semble that a suit under section 14 of Act No. XX of 1863 against the superintendent of a religious endowment for misfeasance is a suit which for the purpose of payment of court fees falls within art. 17, cl. (vi), of the second schedule of Act No. VII of 1870. *Delroos Banoo Begum v. Ashgar Ally Khan* (3), *Sonachala v. Manika* (4) and *Omrco Mirza v. Jones* (5) referred to.

THIS was an appeal from an order of a District Judge returning the plaint in a suit purporting to be a suit under section 14 of Act No. XX of 1863 on the ground that the Court had no jurisdiction to entertain the suit. At the hearing a preliminary objection was raised as to the sufficiency of the court fee paid upon the plaint, which objection was overruled by the following order:—

KNOX and BLAIR, J.J.—A preliminary objection is raised to the hearing of this appeal. The objection is to the effect that the court fee paid by the appellants in the Court below is insufficient. The suit is one brought by certain Muhammadan gentlemen in connection with a mosque called the Moti Masjid, situate in the city of Koil, of which the respondent is the *mutawalli*. The reliefs prayed for in the plaint are four in number, over and above the usual prayer for costs. They are as follows:—

1. That Hafiz Imam-ud-din, defendant, may be dismissed from the post of the *mutawalli* of the Moti Masjid under section 15 of Act No. XX of 1863.

2. That for the management of the aforesaid appropriated property the following seven persons, *viz.*, Khan Bahádur Kunwar Muhammad Lutf Ali Khan, Mumtaz-ud-dowlah, Nawáb Muhammad Faiyaz Ali Khan, the Honorable Haji Muhammad Ismail Khan, Hafiz Maulvi Muhammad Inayat-ullah, Khwaja Muhammad Husain, Muhammad Sarfaraz Khan and Maulvi Shaikh Muhammad Yusuf Ali, who have been approved of by the Muhammadans of the city, may be appointed new *mutawallis* (superintendents).

(1) I. L. R., 7 Calc., 767.

(2) I. L. R., 18 All., 227.

(3) 15 B. L. R., 167.

(4) I. L. R., 8 Mad., 516.

(5) I. L. R., 10 Calc., 599.

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3. That the Moti Masjid and the whole of the appropriated property appertaining to the said Moti Masjid may be placed under the charge of the new *mutawallis*.

4. That for its future management a scheme according to the form annexed to this plaint or according to any other form which may be proper may be devised by the Court so that the work may be done in accordance with it.

The plaint was originally filed on a 20 rupees stamp. The suit professes to be brought under section 15 of Act No. XX of 1863. In order to consider the merits of this preliminary objection it is best first to consider what is the nature of the action which can be brought under section 15 of Act No. XX of 1863. Section 15 defines the interests which entitle a person to sue, and for the nature of the suit which can be brought we must look to section 14. By that section any person interested in a mosque may sue in a Civil Court the superintendent of such mosque for any misfeasance, breach of trust or neglect of duty committed by such superintendent in respect of the trust vested in him. This is the only kind of suit specified in section 14. That suit being laid, the action which the Civil Court may take upon the suit is next set out. In the present case the plaintiffs have not contented themselves with simply suing the superintendent for the breach of trust committed by him. They have gone on to dictate to the Court the action which that court should take. It is important to bear this in mind. The learned vakil who made the preliminary objection based his objection upon the case of *Delroos Banoo Begum v. Ashgar Ally Khan* (1). That was also a suit which professed to be based upon section 14 of Act No. XX of 1863. That suit was brought not merely for the purposes set out in section 14 of the Act. The plaintiffs claimed a share of the produce of the trust estate as an appurtenance to the office of *mutawalli*. They also asked that they might be made *mutawallis* in place of the defendant. Such a suit was clearly not one for a declaratory decree alone. In the case before us the plaintiffs, although they have burdened their plaint with

(1) 15 B. L. R., 167.

dictating to the Court the way in which they wished the Court to exercise its powers, have neither asked to be appointed themselves as *mutawallis* nor have they asked for any benefit of any kind to be awarded to them as the result of the suit. Herein is a marked difference between the case of *Delroos Banoo Begum v. Ashgar Ally Khan* and this case. The next case cited to us in the same behalf was the case of *Sonachala v. Manika* (1). There is nothing in the report which shows whether that suit was laid under the Act or Regulation prevalent in Madras which corresponds with Act No. XX of 1863. But in that case the plaintiff did not bring a suit against the trustees only for misfeasance or breach of trust but also for the removal of the defendant from management, for the appointment of the plaintiff as manager, and for the removal of certain buildings. It also was a case differing from the one before us. In reply our attention was called to several precedents to be found in the Madras series of the Indian Law Reports; but they were all precedents connected with *tarwads* and in no way connected with the case before us. The case of *Omrao Mirza v. Jones* (2) was also cited, and under that precedent the plaintiffs, who had under orders of the Court paid Court fee upon the value given by them for the purposes of jurisdiction on the several reliefs claimed by them, contended that no further Court fee need be paid and the case might, as held by the Court below, be held to be one falling under section 7, sub-section 4, cl. (e) of Act No. VII of 1870. They did not, however, abandon the contention that the case was one which really fell under sch. ii, article 17, cl. (vi) of the Court Fees Act (Act No. VII of 1870). The precedent *Omrao Mirza v. Jones* would apparently support the plaintiffs in the contention that they have in any case paid sufficient Court fees. If it were necessary in this case to decide whether the case was one which fell under sch. ii, article 17, cl. vi of Act No. VII of 1870, we should have been inclined to hold that it does, as in our opinion a suit laid as this suit is under section 14 of Act No. XX of 1863 is a suit merely against the superintendent for misfeasance. It is a suit of a

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(1) I. L. R., 8 Mad., 516.

(2) I. L. R., 10 Cal., 599.

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peculiar nature, and, so far as we can see, it is not one in which it is possible to estimate at a money value the subject matter of the suit and is not otherwise provided for in the Court Fees Act. In any case sufficient Court fees in our opinion have been paid and the preliminary objection fails.

The appeal subsequently came on before a different Bench for disposal on the merits.

The facts of the case sufficiently appear from the order reported above and from the subsequent judgment on the appeal.

Mr. *Amir-ud-din*, for the appellants.

Manlvi Ghulam Mujtaba, for the respondent.

EDGE, C. J. and BLENNERHASSETT, J.—This appeal has arisen in a suit against one Hafiz Imam-ud-din, who was acting, whether duly appointed or not, as the *mutawalli* of a mosque. The suit was filed in the Court of the District Judge. An objection was taken that the District Judge had no jurisdiction, and he made an order returning the plaint to be presented to the proper Court. There was no question as to the local jurisdiction of the District Judge. The real question was—was the suit one to which section 14 of Act No. XX of 1863 applied? The District Judge considered that that section did not apply; hence his order. The plaintiff has appealed.

For the respondent-defendant it has been contended that section 14 of Act No. XX of 1863 can only apply to a mosque which has been endowed with land, and that it can only apply when it is alleged that the defendant was lawfully appointed trustee of the mosque.

The contention as to the land arises in this way. Certain Muhammadans in the city subscribed and purchased with the subscription certain shops with which the mosque was endowed. They became *wagf*. They are not the less *wagf* because they are the result of subscription and not the result of a dedication by a single owner. When the shops were purchased and dedicated to the mosque the land upon which they stood passed with them. Indeed there is nothing in the point. The contention appears to be that

because it is not said in the plaint that the land on which the shops stood was specially dedicated to the mosque there was no dedication of the land.

We agree with the judgment of the High Court of Calcutta in *Dhurrum Singh v. Kissen Singh* (1) that section 14 of Act No. XX of 1863 is generally applicable to all religious endowments of this nature. In *Sheoratan Kunwari v. Ram Pargash* (2) it was decided by this Court that it was not essential to bringing a suit under section 14 of Act No. XX of 1863 that the endowment should ever have been taken under the Board of Revenue.

As to the other point, the defendant, although he appears to have entered upon the mutawalliship without election or specific appointment does not pretend that he is a trespasser. He does not say that he is not the *mutawalli* of the mosque. We find him in possession professing to be the *mutawalli* of the mosque, and as such section 14 of Act No. XX of 1863 would apply to him.

The suit was properly brought in the Court of the District Judge, who alone had jurisdiction. We allow this appeal with costs. We set aside the order of the Court below with costs and direct the District Judge to receive the plaint and to enter it on the file of pending suits in his Court and to proceed with the suit according to law. The plaint, which is at present on the file in this Court, will be returned to the counsel for the appellants that it may be presented to the District Judge.

Appeal decreed.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Blennerhassett,
 QUEEN-EMPRESS v RAM SUNDAR AND ANOTHER.

Criminal Procedure Code, section 188—Act No. XLV of 1860, section 363—Kidnapping from lawful guardianship—Offence committed outside British territory—Jurisdiction—Certificate of Political Agent.

The absence of the certificate of the Political Agent required by section 188 of the Code of Criminal Procedure is an absolute bar to the trial of a case to which the provisions of that section apply.

(1) I. L. R., 7 Calc., 767.

(2) I. L. R., 18 All., 227.

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