

Before Mr. Justice Pullan and Mr. Justice Niamat-ullah.

ABDUL WAHAB (DEFENDANT) v. SUGHRA BEGAM
(PLAINTIFF).*

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December,
18.

Muhammadian law—Waqf—Provision for salary and pension to servants—Valid object—Waqif may reserve to himself the power of naming beneficiaries and fixing amounts subsequently—Mutwalli cannot subsequently reduce amount so fixed.

A provision for the salary and pension of servants is a valid object of waqf.

A waqif may reserve to himself the power of naming beneficiaries and fixing their amounts subsequent to the execution of the deed of waqf, provided charitable intention is clearly indicated in the deed. If a provision is expressly made in the deed of waqf, it is not open to the waqif to revoke it or to derogate from it. But if he has deliberately deferred making provision on a particular subject to a future date, and does thereafter make such provision, such provision should be considered to be a part and parcel of the deed itself.

If the pay or pension of servants was made a valid object of the waqf, and the waqif has subsequently fixed, in the circumstances mentioned, the amounts to be paid to specified servants, it is not open to a subsequent *mutwalli* to reduce the amounts.

Mr. T. A. K. Sherwani, for the appellant.

Mr. A. M. Khwaja, for the respondent.

PULLAN and NIAMAT-ULLAH, JJ. :—These are defendant's appeals arising out of two suits, one brought by Mst. Sughra Begam, the respondent in Second Appeal No. 473 of 1929 and the other by Rahim Bakhsh, the respondent in Second Appeal No. 474 of 1929, for recovery of arrears of maintenance fixed by Khurshed Ali Khan who executed a deed of waqf on the 1st of April, 1919, by which he dedicated property yielding a net income of Rs. 7,000 a year for certain charitable purposes. Khurshed Ali Khan died on the 28th of December, 1926, up to which date he acted as *mutwalli*. The

*Second Appeal No. 473 of 1929, from a decree of J. Allsop, District Judge of Aligarh, dated the 13th of February, 1929, confirming a decree of Siraj-ud-din, Munsif of Koil, dated the 18th of September, 1928.

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defendant appellant succeeded his father in the office of the *mutwalli*. Among other provisions contained in the deed of waqf one is in favour of the respondents who were old servants of Khurshed Ali Khan. A certain amount was mentioned in the deed of waqf to be paid as salaries and pensions of the waqif's servants, whose names were not specified nor were the amounts mentioned. It was, however, clearly stated that particulars as regards names and the amounts should be taken from the pay bills bearing his signature. Apparently the waqif had not decided as to what amount should be paid to each servant, and he reserved the power of nominating beneficiaries out of the servants and the allowances to each for a subsequent occasion. During the seven years which intervened between the date of the waqf and his death he paid Rs. 60 a month to Mst. Sughra Begam and Rs. 30 a month to Rahim Bakhsb. It should be mentioned that the two are wife and husband. The pay bills in which these salaries are entered bear the signature of Khurshed Ali Khan. It has also been found by the lower courts that the defendant appellant himself paid allowances to the respondents at the above rates after the death of Khurshed Ali Khan before the period in suit. Relations between the parties became strained, and it became necessary for the respondents to institute the suits which have given rise to these appeals. The defence, so far as it is necessary to state for the purposes of the present appeals, was that according to Muhammadan law it is not one of the valid objects of the waqf to make provisions for salaries and pensions of servants; that no allowances having been fixed in the deed of waqf, subsequent action of Khurshed Ali Khan should be considered the act of a *mutwalli*, who is not entitled to amend the provisions of the deed of waqf; and that in any case it is open to a succeeding *mutwalli* to reduce the salaries and pensions to reasonable amounts. Both the lower courts have overruled these defences and decreed the plaintiff's claim.

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The learned District Judge, who has written an excellent judgment dealing with the various questions raised before him, has held, and we think rightly, that a provision for the salary and pension of servants is a valid object of waqf. In Ameer Ali's Mahomedan Law, Vol. 1, page 276, Fourth Edition, a number of valid objects of waqf are stated. One of them is the waqif's own descendants; another is kindred and neighbours. Even strangers are mentioned as objects of bounty. Dependants and servants are specifically mentioned as persons for whose maintenance provision can be made in a waqf. Tyabji in his notes under section 457 of his book on Muhammadan Law, Second Edition, has also mentioned that provisions for individuals may be a charitable object according to Muhammadan notions. We entertain no doubt that the view taken by the learned District Judge is correct and is borne out by the authorities to which reference has been made. The learned counsel for the appellant contended that only the poor can be beneficiaries under the waqf, if they do not belong to the family of the waqif. He argues that in so far as Mst. Sughra and Rahim Bakhsh are possessed of other sources of small incomes, they cannot be classed among the indigents. He has quoted no authority in support of his contention which is opposed to the rules given by Ameer Ali and Tyabji, already referred to. The words "rich" and "poor" are relative terms, and it cannot be stated that a person having a certain minimum income cannot be considered to be indigent in any circumstances. It is obviously a very laudable act for a Muhammadan to make provision for his faithful servants. We may note that the pensions granted to the respondents are for their life only, and that after their death that part of the income will lapse into the general purposes of the waqf.

It is next contended that the waqf deed being silent as regards the amount payable to each servant, and the

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allowances having been fixed by Khurshed Ali Khan at the time when he was not the owner of the property but a *mutwalli*, the respondents are not entitled to the allowances claimed by them. On general grounds there is nothing to prevent a waqif from reserving to himself the power of naming beneficiaries subsequent to the execution of the deed of waqf, provided charitable intention is clearly indicated in the deed. In Ameer Ali's book on Mahommedan Law, Volume I, page 426, Fourth Edition, it is stated to be the rule that "The waqif can reserve to himself, at the time of the dedication, the power to alter the beneficiaries of the trust by either adding to their number or excluding some, or to increase or reduce their interest in it. He cannot do so afterwards." It is obvious that, if a provision is expressly made in the deed of waqf, it is not open to the waqif to revoke it, or to derogate from it. But if he has deliberately deferred making provision on a particular subject to a future date and does make such provision, such provision should be considered to be a part and parcel of the deed itself. As regards the contention that it is open to a subsequent *mutwalli* to reduce the amount fixed by the waqif, we are clearly of opinion that if the pay or pension was made a valid object of the waqf, as we think it was in the present case, it is not open to any *mutwalli* to interfere with it. This contention has in our opinion no force.

In the view of the case we have taken, these appeals have no force and are dismissed with costs.