

1934

GAERWAR  
BARODA  
STATE  
RAILWAY  
v.  
MUHAMMAD  
HABIB-UL-  
LAH

made until the date when the copy of the decree was ready.

As this point might be taken in appeal, we direct that copies of both the judgment and the decree be filed. For the reasons given above we hold that the application is within time. The valuation of the suit in the court below being above Rs.10,000 and the valuation of the proposed appeal to His Majesty in Council being also above Rs.10,000, and the courts in India having differed, the case satisfies the requirements of law under section 110 of the Civil Procedure Code, and we certify accordingly.

### REVISIONAL CIVIL

*Before Mr Justice Rachhpal Singh*

1934  
December, 4

WAHID HASAN AND OTHERS (APPLICANTS) v. ABDUL RAHMAN AND OTHERS (OPPOSITE PARTIES)\*

*Mussalman Wakf Act (XLII of 1923), section 10—Existence of wakf denied by defendant—No power to investigate into question of existence or otherwise of a wakf—Jurisdiction.*

An application was made to a District Judge to take action under section 10 of the Mussalman Wakf Act, XLII of 1923, against certain persons, alleged to be mutwallis of certain wakf properties, for having failed to file accounts, etc., required by the Act. In reply these persons denied the existence of any wakf relating to the properties:

*Held*, there is nothing in the Mussalman Wakf Act of 1923 to show that any power has been conferred on the court to go into the question as to whether or not the properties, about which an application is made, are wakf properties. The Act is applicable only to those cases in which the existence of the wakf is admitted. It does not confer jurisdiction on the court to determine the question as to the existence of a wakf; so, if at the outset the existence of a wakf is denied, the court has no jurisdiction to proceed with the case any further.

Mr. M. Mahmudullah, for the applicants.

Messrs. Haider Mehdi and S. N. Sahai, for the opposite parties.

1934

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WAHID  
HASAN  
v.  
ABDUL  
RAHMAN

RACHHPAL SINGH, J.:—This is a revision application arising out of an application made by the applicants in the court of the learned District Judge, asking that action under section 10 of Act XLII of 1923 be taken against the defendants.

Wahid Hasan filed an application in the court of the learned District Judge praying that action under section 10 of the Mussalman Wakf Act of 1923 be taken against the defendants. After filing the application, Wahid Hasan did not enter appearance and the other applicants got their names substituted in his place. The allegations were that the defendants were holding as mutwallis certain wakf properties and that they had not furnished accounts. The learned District Judge, in whose court the application was made, sent it on for disposal to the learned Additional District Judge.

When the case was taken up by him it was found that the defendants denied that the properties in question were wakf properties. The learned Additional District Judge was of opinion that because the existence of the wakf had been denied he was precluded from proceeding with the matter any further. He was of opinion that he had under the Act no power to make an inquiry as to whether or not the properties in question were wakf properties. He, therefore, dismissed the application. Against that order the present revision application has been preferred.

After hearing the learned counsel appearing on both sides, I am of opinion that the order passed by the learned Judge of the court below is correct and should be affirmed. There is nothing in the Mussalman Wakf Act of 1923 to show that any power has been conferred on the district court to go into the question as to whether or no the properties, about which applications are made, are wakf properties. This was the view taken by a learned Judge of the Patna High Court in

1924

WAHID  
HASAN  
v.  
ABDUL  
RAHMAN

the case of *Ali Mohammad v. Collector of Bhagalpur* (1), where it was held that there is no provision in the Act authorising the court as defined in that Act to determine as to whether any property which is denied to be a wakf property is wakf within the meaning of the Act. The learned counsel appearing for the applicants has relied on a Bench decision of this Court in *Nasrullah Khan v. Wajid Ali* (2) and has contended that certain observations made in that ruling by the learned Judges who decided it support his contention. I find myself unable to agree with this contention. As pointed out by the learned counsel appearing for the respondents, in that case the defendant had actually filed accounts in the court of the District Judge relating to the property in question in that case, thereby admitting that the property was wakf property and he was the mutwalli of the same. The facts of the case before me are altogether different, and so it cannot be said that the ruling cited is applicable. Here the existence of the wakf is denied, and, as I have already remarked, the Act does not confer jurisdiction on the district court to determine the question as to the existence of wakf or otherwise. To me it appears that the Act is applicable only to those cases in which the existence of the wakf is not denied. As soon as a party denies the existence of wakf, the court referred to in the Mussalman Wakf Act would have no jurisdiction to proceed with the case any further. The only order that can be passed is that the applicants should get the matter settled by instituting a regular suit.

In these circumstances I am of opinion that the order passed by the learned District Judge was correct and I therefore dismiss the application with costs.

(1) A.I.R., 1927 Pat., 189.

(2) (1929) I.L.R., 52 All., 167.