

## APPELLATE CIVIL

Before Mr. Justice Rachhpal Singh and Mr. Justice Ismail

MAQSUD ALI KHAN (JUDGMENT-DEBTOR) *v.* ROOP CHAND  
(DECREE-HOLDER)\*

1940  
March, 14

*U. P. Encumbered Estates Act (Local Act XXV of 1934), section 2(g)—“Landlord”—Mutwalli and beneficiary of a Wakf is not a “landlord”—Muhammadan law—Wakf—Mutwalli, position of, qua wakf property—U. P. Encumbered Estates Act, section 7(1)—Stay of execution proceedings—Civil Procedure Code, section 115—“Case decided”—Order refusing to stay proceedings as required by the U. P. Encumbered Estates Act, section 7(1).*

A mutwalli and beneficiary of a wakf is not a “landlord” within the definition in section 2(g) of the U. P. Encumbered Estates Act, 1934. Under the Muhammadan law of wakf the endowed property vests in God, and the position of the mutwalli is only that of a manager; neither the mutwalli nor beneficiary can be regarded as the proprietor of “an interest in” the wakf property, and cannot therefore come within the definition of a “landlord”.

For the purpose of the U. P. Encumbered Estates Act wakf property under the control and management of a mutwalli should be regarded as an entirely separate estate from the personal estate belonging to him. It is manifest that the wakf estate will not be available to creditors for the satisfaction of the debts due from such person, and it is therefore outside the scheme of the Act.

The dismissal of an application under section 7 of the U. P. Encumbered Estates Act for the stay of execution proceedings is the termination of a proceeding and comes within the purview of the words “case decided” within the meaning of section 115 of the Civil Procedure Code, and a revision lies from the order of dismissal.

Messrs. *Mukhtar Ahmad, Shiva Prasad Sinha* and *Inam-ullah*, for the appellant.

Mr. *S. K. Mukerji*, for the respondent.

RACHHPAL SINGH and ISMAIL, JJ.:—This is a first appeal from an order of the Civil Judge of Saharanpur. The facts that have given rise to this appeal may be stated briefly. Khan Bahadur Naim Khan made a wakf *alul-aulad* of certain properties. Before the

\*First Appeal No. 84 of 1938, from an order of Pran Nath Agra, First Civil Judge of Saharanpur, dated the 5th of March, 1938.

1940

MAQSUD  
ALI  
KHAN  
v.  
ROOP  
CHAND

dedication of the property the founder had mortgaged it to the opposite party. A decree on foot of the mortgage was obtained by the creditor and execution proceedings with respect to the mortgage decree were started in the court below. Khan Bahadur Naim Khan is dead. His son Khan Bahadur Maqsd Ali Khan the appellant is the present mutwalli of the endowed property and in the execution proceedings Maqsd Ali Khan represented the wakf estate as mutwalli. It appears that Khan Bahadur Maqsd Ali Khan owns some property in his personal capacity. He is also in debt. An application under section 4 of the U. P. Encumbered Estates Act was made by Maqsd Ali Khan to the Collector and the application was forwarded by the Collector to the Special Judge in pursuance of section 6 of the Act. The appellant made an application in the court below purporting to be under section 7 of the Act praying for the stay of the execution proceedings with respect to the wakf estate. The learned Civil Judge rejected the application and the applicant has preferred an appeal from that order.

A preliminary objection has been raised by learned counsel for the respondent that the order of the court below is not an appealable order. In our opinion the preliminary objection is well founded and therefore must prevail. We, however, think that we should treat the appeal as a revision as in our opinion the dismissal of the application under section 7 of the U. P. Encumbered Estates Act is the termination of a proceeding and comes within the purview of the words "case decided" within the meaning of section 115 of the Code of Civil Procedure. A revision from an order dismissing an application under section 7 was entertained by this Court in several cases; see *Jwala Prasad v. Har Prasad* (1) and *Babu Ram v. Manohar Lal* (2). We now proceed to consider the case on merits.

Learned counsel for the applicant contends that the applicant as mutwalli is for all intents and purposes the proprietor of the wakf property and as such comes

(1) [1937] A.L.J. 877.

(2) I.L.R. [1938] All. 22.

1940

---

 MAQSUD  
 ALI  
 KHAN  
 v.  
 ROOP  
 CHAND

within the definition of the expression "landlord". "Landlord" is defined in section 2(g) of the Act. The definition runs thus: "Landlord means a proprietor of a mahal or of a share of or *interest in a mahal*, and includes an *ubaridar*, an under-proprietor or a sub-proprietor and a proprietor of specific plots, but does not include a mortgagee or a thekadar." It is contended that under the terms of the wakf the mutwalli is the sole beneficiary and has full control over the proceeds of the wakf estate. That being so, it is urged, the appellant has got interest in the wakf property and is the proprietor of the endowed estate. In our opinion this contention is untenable. "Interest in a mahal" means proprietary interest. Any other kind of interest enjoyed by a person will not constitute him landlord of the property within the meaning of the definition. There may be numerous beneficiaries of a wakf estate. The founder may nominate besides his heirs his servants and dependants as beneficiaries. It is conceded that such beneficiaries would not have any proprietary interest in the wakf property. It is, however, argued that the applicant being the mutwalli as well as beneficiary is in a stronger position and he is entitled to claim at least *quasi* proprietary interest in the wakf property.

It is a well established proposition of Muhammadan law that the endowed property vests in God the Almighty and the founder after the execution of the wakf ceases to have any proprietary interest in the wakf estate.

In *Vidya Varuthi v. Baluswami Ayyar* (1) their Lordships of the Judicial Committee have observed:

"But the Muhammadan law relating to trusts differs fundamentally from the English law. It owes its origin to a rule laid down by the Prophet of Islam; and means 'the tying up of property in the ownership of God the Almighty and the devotion of the profits for the benefit of human beings.' When once it is declared that a particular property is wakf, or any such expression is used as implies wakf, or the tenor of the document shows, as in

(1) (1921) I.L.R. 44 Mad. 83(840).

1940

MAQSUD  
ALI  
KHAN  
v.  
ROOP  
CHAND

the case of *Jewun Doss Sahoo v. Shah Kubeer-ood-deen* (1), that a dedication to pious or charitable purposes is meant, the right of the wakif is extinguished and the ownership is transferred to the Almighty. The doucr may name any meritorious object as the recipient of the benefit. The manager of the wakf is the mutwalli, the governor, superintendent, or curator. In *Jewun Doss Sahoo's* case the Judicial Committee called him 'procurator'. It related to a *khanqah*, a Muhammadan institution analogous in many respects to a *mutt* where Hindu religious instruction is dispensed. The head of these *khanqahs*, which exist in large numbers in India, is called a *sajjadanashin*. He is the teacher of religious doctrines and rules of life, and the manager of the institution and the administrator of its charities, and has in most cases a larger interest in the usufruct than an ordinary mutwalli. But neither the *sajjadanashin* nor the mutwalli has any right in the property belonging to the wakf; the property is not vested in him, and he is not a 'trustee' in the technical sense."

In *Muhammad Rustam Ali Khan v. Mushtaq Husain* (2) their Lordships remarked: "A receiver or manager by virtue of his appointment has no interest in the property he is called upon to control; he possesses power over it but not an *interest* in it."

It is not necessary to cite other authorities to substantiate this proposition. Learned counsel for the applicant has referred to *Muhammad Qamar Shah Khan v. Muhammad Salamat Ali Khan* (3) which was decided by a Bench of this Court of which one of us was a member. The following passage was relied upon: "If a person is liable for the payment of the land revenue along with other co-sharers in the village, then he must be deemed to be a co-sharer in spite of the fact that the estate in the share may not vest in him." In that case a suit was brought by a mutwalli for profits under section 226 of Act III of 1926. It was held that for purposes of suits for profits managers of endowed property should be regarded as proprietors. That ruling in no way supports the contention of learned counsel. Reference was also made to two cases

(1) (1840) 2 M.I.A. 390; 6 W.R. (2) (1920) I.L.R. 42 All. 609.  
(P.C.) 4.

(3) (1933) I.L.R. 55 All. 512(516).

decided by the Board of Revenue, in *Kailash Behari Lal v. Mobtida Khan* (1) and *Shiv Charan Jaitly v. Mohammad Raza Khan* (2). In those cases it was held that a mutwalli was entitled to make an application under section 4 of the Encumbered Estates Act, as representing the endowed estate. In the present case, however, the application under section 4 admittedly has been made by the applicant in his personal capacity and not *qua* mutwalli.

1940

---

 MAQSUD  
 ALI  
 KHAN  
 v.  
 ROOF  
 CHAND

An examination of the provisions of the Act clearly demonstrates the weakness of the argument advanced by learned counsel for the applicant. The scheme of the Act is that the estate of the landlord is placed at the disposal of the Collector for the liquidation of the debts due from him. It is manifest that the wakf estate will not be available to creditors for the satisfaction of the debts due from the applicant. His personal property alone can be disposed of to meet the claims of the creditors. Similarly the wakf estate will be liable for the payment of the debts with which the wakf estate is burdened. A combination of the two properties in possession of the applicant in different capacities cannot be permitted. The wakf estate should be regarded as an entirely separate estate although it is for the time being under the control and management of the applicant. It is strenuously argued that the debt was incurred before the dedication of the property as wakf. That may be so, but the applicant is not personally liable for the discharge of those debts. The applicant in his written statement did not mention the debts due from the wakf estate nor did he include the wakf properties in the list of properties supplied by him. It was at a subsequent stage that the applicant endeavoured to obtain a stay of the execution proceedings pending in respect to the wakf estate. Apparently he was encouraged to do so because the respondent presented a written statement in which he mentioned the decree passed in his favour against the wakf estate. He, however, made it clear that he was doing so by

(1) [1938] Revenue Decisions, 196. (2) [1938] Revenue Decisions, 201.

1940

MAQSUD  
ALI  
KHAN  
v.  
ROOF  
CHAND

way of precaution. The creditor's written statement will not alter the position. In our opinion the application under section 7 was misconceived and was rightly rejected. The appeal fails and is dismissed with costs.

## REVISIONAL CIVIL

Before Mr. Justice Rachhpal Singh

1940  
March, 19

MURARI LAL AND ANOTHER (DECREE-HOLDERS) v. BIBBI AND OTHERS (JUDGMENT-DEBTORS)\*

*U. P. Encumbered Estates Act (Local Act XXV of 1934), section 9(5)—No application to joint debtors whose liability is joint and several—Decree against several persons, the liability being joint and several—One of the judgment-debtors applying under the Act, the others not being made parties—Decree passed by Special Judge against him—Execution of original decree as against the other judgment-debtors is not barred.*

Section 9, sub-section 5(a), of the U. P. Encumbered Estates Act refers only to the cases where a debt is due from several persons and the liability of the various debtors can be apportioned. It can have no reference to a case where the liability of the various judgment-debtors is joint and several.

Where one of several judgment-debtors, the liability of each of whom under the decree was joint and several, applied under section 4 of the U. P. Encumbered Estates Act, the others not being made parties, and the Special Judge gave the original decree-holder a decree against him, it was held that the decree-holder was not prevented from executing the original decree against any of the other judgment-debtors, so long as the decree remained unsatisfied.

Mr. *Ram Narayan Varma*, for the applicants.

Mr. *S. S. Husain*, for the opposite parties.

RACHHPAL SINGH, J. :—This is a revision application by decree-holders arising out of a case in execution proceedings.

The facts of the case can very briefly be stated as follows. Murari Lal and Ram Prasad obtained a decree against Akbar Husain and others. I am informed that Akbar Husain and others were co-sharers in a certain village and that they have jointly