

APPELLATE CIVIL.*Before Mr. Justice Broadway and Mr. Justice Zafar Ali.*

MIRAN BAKHSH AND ANOTHER (PLAINTIFFS),

Appellants

versus

ALLAH BAKHSH AND OTHERS (DEFENDANTS),

Respondents.

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Oct. 26.

Civil Appeal No. 1387 of 1922.*Civil Procedure Code, Act V of 1908, section 92—Sanction by Collector—whether necessary in a suit for only a declaration that land attached to a shrine is wakf, etc.*

On the death of the *gaddinashin* of a shrine a suit was instituted in which all that the plaintiffs (as disciples of the deceased) sought, was a declaration that certain land attached to the shrine was *wakf*, and that the descendants of the deceased had no proprietary rights therein, nor were they entitled to divert the produce of the land for purposes incompatible with the trust.

Held, that the suit did not fall within the ambit of section 92 of the Civil Procedure Code and therefore the Collector's sanction was not required for its institution.

Nihal Shah v. Mst. Malan (1), followed.

First appeal from the decree of H. B. Anderson, Esquire, Senior Subordinate Judge, Gurdaspur, dated the 11th May 1922, dismissing the plaintiffs' suit.

MEHR CHAND and KIDAR NATH, for appellants.

DEVI DAYAL and N. C. MEHRA, for Respondents.

JUDGMENT.

BROADWAY J.—This appeal has arisen out of a BROADWAY J. suit brought by Miran Bakhsh and Phallu Shah who claim to be the disciples of one Sultan Shah. They sued for a declaration to the effect that the defendants who are Allah Bakhsh and others, the sons and grandson of Sultan Shah, have no proprietary rights

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in the land in suit, which is land attached to the shrine known as *Khankah* Gudar Shah, of which Sultan Shah, deceased, was the *gaddinashin*. They averred that the defendants claimed to have inherited this property from Sultan Shah as their own, whereas it really was property attached to the *khankah*, and they sought for a declaration that the said property was *wakf* and that the defendants were not entitled to divert the produce of the suit-land for purposes incompatible with the trust. The defendants denied the *wakf* character of the property and pleaded, *inter alia*, that the suit was bad (a) for want of sanction under section 92 of the Civil Procedure Code, and (b) as it was barred by time. The trial Court settled two preliminary issues :—

- (1) Can the suit proceed without the Collector's sanction under section 92 of the Civil Procedure Code ?
- (2) Is the plaintiffs' suit within limitation ?

These preliminary issues were decided against the plaintiffs and their suit was dismissed. Hence this appeal.

It has been urged before us that the decision of the Court below on these two issues is wrong and that section 92 of the Civil Procedure Code did not apply to the suit.

The trial Court has held that sub-clause (c) of section 92 of the Civil Procedure Court applied. Before us it has been urged by Mr. Devi Dayal for the respondents that sub-clause (g) was also applicable. With regard to sub-clause (g) I have no hesitation in holding that it has no bearing on the question before us. The plaint does not ask for the settling of any scheme whatever so far as the property in suit is concerned. Sub-clause (c) contemplates a suit for the obtaining of a decree "vesting any property in a

trustee." In the present suit all that the plaintiffs seek is a declaration to the effect that the property should be declared to be *wakf*. The plaintiffs do not seek to interfere with the possession of this property or its management. As was held in *Nihal Shah v. Mst. Malan* (1) all that the plaintiffs asked for was that the *wakf* character of the property should be retained and they asked for a declaration to that effect. In these circumstances I do not think that the suit, as laid, falls within the ambit of section 92 of the Civil Procedure Code and I hold, therefore, that no sanction was required.

As to limitation it appears that before any satisfactory conclusion can be arrived at it is essential that we should know whether this property was or was not *wakf*. It has been urged before us that it is trust property and that, therefore, section 10 of the Limitation Act applies. On the other hand Mr. Devi Dayal has strenuously contended that the property is not *wakf* and that, therefore, the suit is barred by Article 120 of the Indian Limitation Act. *Diwan Mehr Chand*, for the appellants, concedes that if the property is not *wakf* the suit is clearly barred by limitation. In these circumstances I consider it necessary to remand the case to the trial Court for a decision as to whether the property is trust property.

I would, therefore, accept this appeal and remand the case, for decision of the issue indicated, under Order XLI, rule 23, of the Civil Procedure Code. Stamp on the appeal will be refunded and other costs will follow the event.

ZAFAR ALI J.—I agree.
N. F. E.

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Appeal accepted.
Case remanded.