

APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice N. J. Wadia.

AHMED IBRAHIM SINGAPORI (ORIGINAL APPLICANT), APPLICANT v. THE
COLLECTOR OF SURAT (ORIGINAL OPPONENT), OPPONENT.*

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March 13

Mussalman Wakf Act (XLII of 1923), ss. 2 (b), 3, 4, 5—“The Court”—Interpretation—Jurisdiction—Test—Corpus—Not income—Contribution to fund—Mussalman Wakf (Bombay Amendment) Act (Bom. Act. XVIII of 1935), s. 6C, s. 6D, s. 6I.

Throughout the Mussalman Wakf Act, 1923, the expression “the Court” referred to therein is the Court mentioned in s. 3 of the Act, that is, the Court within the local limits of whose jurisdiction the wakf property is situate.

“The Court” referred to in the Mussalman Wakf (Bombay Amendment) Act, 1935, is the same Court as that referred to in the Mussalman Wakf Act, 1923.

In determining the question as to whether the mutwallis of a wakf can be called upon to contribute to the Wakf Administration Fund under s. 6I of the Mussalman Wakf (Bombay Amendment) Act, 1935, the only relevant fact to consider is the place where the property is situate and s. 3 of the main Act and s. 6D of the Amendment Act make it clear that the property of the wakf referred to in the sections is the corpus, and not the income.

The High Court directed an inquiry under s. 6C of the Amendment Act to ascertain whether the whole or any substantial portion of the property of the wakf was situate within the jurisdiction of the District Court of Surat.

CIVIL REVISION APPLICATION from an order passed by N. J. Shaikh, District Judge, Surat.

Jurisdiction.

Ahmed (applicant) was the trustee of the Rasoolbibi, daughter of Gulam Mohmad Madan Wakf.

The wakf in question was created at Rangoon and the subject-matter of the wakf consisted of movable and immovable properties situate in Burma.

Under the Mussalman Wakf (Bombay Amendment) Act, 1935, a committee is appointed in each district and the

* Civil Revision Application No. 167 of 1938 (with C. R. A. Nos. 168 to 175, 178 to 181 and 277 of 1938).

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various wakfs have to contribute towards its expenses according to a graded scale as provided in the Act.

The applicant, as the trustee of the above wakf, used to submit the accounts to the District Judge, Surat, and to pay contribution towards the expenses of the said wakf committee.

The District Judge, Surat, issued a notice dated March 22, 1937, to the applicant calling upon him to pay a contribution towards the said fund.

Thereupon the applicant applied (Application No. 32 of 1937) to the Court of the District Judge requesting the learned Judge to vacate the said notice as the wakf in question was not subject to his jurisdiction, and, in the alternative, the applicant asked for an enquiry under s. 6C of the Act of 1935.

The learned Judge dismissed the application observing, *inter alia*, as follows :—

“ It is not denied that the bulk of the income is spent in objects of charities in Rander and the mere fact that most of these trusts held shares of companies in Burma would not be any ground to exempt them from the operation of the Act. I have given my most earnest consideration to the question and hold that these wakfs have been registered under the Government of India Act of 1923 in this district and as such they are liable to pay the quota as required by the Bombay Act 18 of 1935.”

Ahmed applied to the High Court.

G. N. Thakor, with R. J. Thakor, for the applicant.

B. G. Rao, Assistant Government Pleader, for the opponent.

BEAUMONT C. J. These are a series of Civil revision applications, which all raise the same point and are directed to a single judgment given by the learned District Judge of Surat.

The facts are not quite the same in all the applications, but in the first application, which is No. 167 of 1938, the

facts are that there is a wakf, the mutwallis of which reside within the limits of the jurisdiction of the Surat District Court, but the whole of the property of the wakf, which consists of immoveable property and shares, is situate in Burma. The shares are shares in companies registered in Rangoon, and the general rule is that the local situation of a share is the place where the share can be transferred on the register of the company. As far as the evidence goes, there is nothing to suggest that these Rangoon companies have any office within the Surat District at which their shares can be transferred. So that, we deal with the application on the footing that the whole of the corpus of the wakf property is situate in Burma, which is now outside British India, though, in our opinion, the real question is whether the property is situate within the local limits of the jurisdiction of the Surat District Court, and it does not matter whether property not so situate is situate within or without British India. The question which arises is, as to whether the mutwallis of this wakf can be called upon to contribute to the Wakf Administration Fund under s. 6I of the Mussalman Wakf (Bombay Amendment) Act, 1935.

Under s. 3 of the Mussalman Wakf Act, 1923, which is an all-India Act, it is provided that within six months from the commencement of the Act every mutwalli shall furnish to the Court within the local limits of whose jurisdiction the property of the Wakf of which he is the mutwalli is situated, or to any one of two or more such Courts, a statement containing the following particulars, namely :—(a) a description of the wakf property sufficient for the identification thereof ; (b) the gross annual income from such property ; and other particulars which it is not necessary here to mention. Then, under s. 4 the Court can direct the publication of certain notices, and under s. 5 the mutwalli has to furnish the Court with certain statements. In our opinion, throughout the Act “the

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Court" referred to is the Court mentioned in s. 3, that is the Court within the local limits of whose jurisdiction the wakf property is situate.

Under the Bombay Amendment Act of 1935, the main Act is amended in various particulars, but it seems to us that throughout the whole of the amendments "the Court" referred to is the same Court as that referred to in the principal Act. Under s. 6I, which is the section in question in the present case, it is provided that every wakf shall, for the purpose of meeting the charges and expenses incidental to the registration, superintendence, administration and control of wakfs, the maintenance of the registers of wakfs, the scrutiny and audit of accounts of wakfs, the institution and defence of suits and proceedings relating to wakfs, and generally carrying into effect the purposes of the Act, be liable to pay to the Wakf Administration Fund of the district concerned the contribution therein mentioned. In our opinion, the only wakfs, which can be called upon to make a contribution to that Fund, are the wakfs as to which, under the principal Act, the Court directing a contribution to be made has jurisdiction, and that is in this case the Surat District Court.

The view of the learned District Judge was that, inasmuch as the bulk of the income is spent in Surat or its neighbourhood and the trustees reside there, he had jurisdiction to direct a contribution to the Fund in respect of all wakfs which have been registered in the district of Surat. But, in our opinion, there is nothing in the Act which extends the jurisdiction of the Court to cases in which the trustees reside within the district, or in which they apply income within the district. It seems to us that the only relevant fact to consider is the place where the wakf property is situate, and s. 3 of the main Act and also s. 6D of the Amendment Act in our view, make it clear that the property of the wakf referred to in the sections is the

corpus, and not the income. No doubt in a case where the trustees of a wakf live in a place where the beneficiaries of the wakf also live, though the property of the wakf is situate elsewhere, and the trustees merely employ an agent to collect the income of the wakf property and transmit it to them, there would be some force in the contention that the trustees could be called upon to account at the place where they collect and distribute the income; but we are unable to give that meaning to the Act. It seems to us that the jurisdiction of the Court is confined entirely to cases in which the wakf property is situate within the limits of its jurisdiction.

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In all these cases we think that there will have to be an enquiry under s. 6C of the Amendment Act to ascertain whether the whole or any substantial portion of the property of the wakf is situate within the jurisdiction of the District Court of Surat, unless in any case the Collector is prepared to admit that no property is so situate. If in fact it be found that no property is so situate, in our view the District Court has no jurisdiction in respect of the wakf and cannot call upon the mutwallis for any accounts. Probably in that event, it would be better to amend the register by striking the particular wakf off the register in the Surat Court; but, as no application is before us to amend the register, we make no order in that respect. In cases in which some property of the wakf is situate within the local limits, contribution in respect of that property can be levied. The cases will have to be referred back to the District Court to be dealt with in accordance with these views.

We make no order as to costs.

Cases referred back.

Y. V. D.