

against decrees) is another general Section relating to appeals, but that is in terms confined to appeals from decrees, and Section 363 is not one of the Sections repealed in the first Section of Act XXIII of 1861,

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of 1868.

In the case to which we were referred by Mr. Mayne, reported in 1 M. H. C. Rep. 197, the petition was, as we have ascertained by referring to the papers on record, presented in the course of a regular appeal then pending in this Court, and our present decision is therefore not in any way in conflict with that case.

This application must therefore be dismissed.

Petition dismissed.

Appellate Jurisdiction (a)

Regular Appeal No. 106 of 1867.

HUSSAIN BEEBEE.....Appellant.

HUSSAIN SHERIF, and another... Respondents.

According to Muhammadan Law a woman may manage the temporal affairs of a mosque, but not the spiritual affairs connected with it, the management of the latter requiring peculiar personal qualifications.

THIS was a Regular Appeal from the decree of E. B. Foord, the Civil Judge of Berhampore, in Original Suit No. 10 of 1867. The plaintiff in this suit claimed the joint right with the defendants to the office of priest of the Shekh Fareed Shukkurganj mosque situated at Itchapore, which she asserted was enjoyed by her late husband Syed Kassim, and to recover from them a third share of the lands of the village of Telukuncha, and a fourth of the lands of the village of Mashagapuram, which are attached to the aforesaid office, the former of which she alleged were usurped by the defendants during the life time, and the latter after the death of her late husband. The defendants denied that the plaintiff's late husband had any right to the office in question, and pleaded that although he managed to get possession of the lands in question during their (defend-

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ants') minority, he executed a document (marked No. 1), in their favor on the 12th November 1862, by which the said lands were restored to their possession. Defendants further pleaded that plaintiff had no right to claim lands granted for the endowment of a religious office.

The Civil Judge dismissed the suit.

The plaintiff appealed.

Mayne for the appellants, the plaintiff.

Branson for the respondents, the defendants.

The Court delivered the following

JUDGMENT:—The plaintiff in this suit seeks to recover possession from the defendants of certain lands forming part of the endowment of a mosque; and she also prays that the defendants may be prohibited from interfering with her turn of performing the púja service therein.

Her claim is based upon the allegation that her late husband, Syed Kassim, was, jointly with the defendants, possessed of and entitled to the muzuwari right, which is described in the plaint as the right "to make púja" and in the defendants' written statement as "the power of conducting all the affairs, such as reading Korán, distributing rice to the fakirs, performing festivals, &c.," in the mosque; and the plaintiff describes herself as muzuwari or pújari by profession, as, no doubt, her husband was and the defendants are.

It is clear, therefore, to us that the Civil Judge correctly describes the suit in his judgment when he says that "the plaintiff in this suit claims the joint right with the defendants to the office of priest" of this mosque, and that it is only by virtue of her alleged right to hold this religious office that she sets up any title to the lands in question.

Mr. Mayne, on behalf of the appellants, admitted that he was unable to find any authority in Muhammadan Law for saying that a woman was competent to hold any religious office in connection with a mosque; and it appears to us that the authorities are clear the other way.

In the case of *Doe d. Janu Beebe v. Abdoollah Barbu* (Fulton 345), it was held that a female might act as Mutawallé or superintendent or trustee of property appropriated to charitable uses, but then the distinction is pointed out between a Mutawalle and the holder of a religious office as a Guddee nisheen. See p. 359 where Ryan C. J. says—"It is equally clear and without dispute that a female may act as Mutawalle. It is hardly necessary to cite authorities for this position. The note in Mr. McNaghten's Book, p. 343, points out the distinction between the Guddee nisheen (or superior of an endowment) and Mutawalle, and adds the office of trustee, *i. e.*, Mutawalle, may be held by a woman and the duties may be discharged by proxy." 1868.
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In the note above referred to Mr. McNaghten explains that the Guddee nisheen has charge of the spiritual, the Mutawalle of the temporal, affairs of the endowment; and that the latter office may be held by a woman, and the duties may be discharged by proxy; but that the former requiring peculiar personal qualifications may not.—Cases 3 and 4 amongst the precedents of endowments, at pp. 329 and 331: and a case at p. 22 of 6 S. D. A. Bengal R. illustrate this distinction. In Sadagopan Charlu's Manual, p. 31(a) (quoting Elb: 63) the same distinction is stated.

Upon this ground alone it seems to us that the plaintiff's claim fails, but considering what is the admitted relationship of the parties, that the defendants are the only male heirs of the founder, that the plaintiff's late husband had no title to the office except such as he derived through his 1st wife and her sister under the document marked C. (a document, as it seems to us, of very questionable validity), we are by no means prepared to say that there is any such improbability in the defendants' case, respecting the execution of document No. 1, as would warrant us in holding that it was not genuine in opposition to the clear conviction of the Civil Judge on the subject. The decree therefore must be affirmed with costs.

Appeal dismissed.