

ORIGINAL CIVIL.

Before Mr. Justice Woodroffe.

In the matter of WOOZATUNNESSA BIBEE.*

1908

August 25

Mahomedan Law—Wakf property—Jurisdiction.

Under Mahomedan Law, the High Court has jurisdiction to authorise dealings with *wakf* property.

Shama Churn Roy v. Abdul Kabcer (1) followed.

ORIGINAL SUIT.

THIS was an application by a *mutwalli* under Act XXVII of 1866 and Act XXVIII of 1866 for the sanction of the Court to grant a lease of certain premises, which were the subject of a *wakf*, created by a *wakfnamah*, dated July 19th, 1905.

On July 19th, 1895, one Shamsul Ulama Moulvie Mahomed Illahallad, a Sunni Mahomedan of the Hanafi sect, who had established a mosque at No. 42, Moonshee Alimuddin's Street, in Calcutta, executed a *wakfnamah*, whereby he dedicated certain premises, including Nos. 13, 14, 20, Holwell's Lane, and No. 105, Old Boytokhana Bazar Road, within the jurisdiction of this Court, as also certain premises outside the jurisdiction of this Court, to the purposes of this mosque. By the *wakfnamah* he appointed himself the first *mutwalli* of the trust and directed that, after his death, his widows should be *mutwallis* in succession in the order of the dates of their respective marriages.

Moulvie Mahomed died intestate on April 24th, 1901, leaving three widows, the petitioner, Mussamut Woozatunnessa Bibee, a Sunni Mahomedan of the Hanafi sect, the first, and two others, a daughter and a sister, his heirs under the Hanafi School of Mahomedan Law. The petitioner as the eldest widow came into possession of the estate of the deceased, and on March 19th, 1904, obtained letters of administration of

* Ordinary Original Civil Jurisdiction,
(1) (1898) 3 C. W. N. 168.

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the property and credits of the deceased. The premises Nos. 13, 14 and 20, Holwell's Lane, and No. 105, Old Boytokhana Bazar Road, dedicated to the *wakf*, were covered with tiled huts and yielded a monthly rental of Rs. 90-8.

On March 8th, 1908, the petitioner, with the object of disposing of the trust property in a more beneficial manner, agreed to grant a lease of these premises, for a period of 30 years, at a rental of Rs. 130 per month subject to the sanction of this Court. It was the grant of this lease that the petitioner now applied to the Court to sanction.

Mr. B. C. Mitter for the petitioner. Under Mahomedan Law, this Court is vested with the powers exercised by the *Kazi* under the Mahomedan *régime*, and can sanction dealings with *wakf* property. Before any alienation of *wakf* property can be made by a *mutwalli*, the sanction of the *Kazi* or, in other words, of a Judge of this Court is essential. See *Shama Churn Roy v. Abdul Kabeer* (1). A similar order was made by Stephen J. in *In the matter of a wakfnamah, dated May 30, 1896* (2).

WOODROFFE J. I will make an order in terms of the prayer of the petition, not under the Acts, which head the petition, but on the authority of *Shama Churn Roy v. Abdul Kabeer* (1), which lays down that this Court has jurisdiction under Mahomedan Law to authorise dealings with *wakf* property. A similar order was made by Mr. Justice Stephen on the 2nd July 1906.

The petition shows that the present rent is Rs. 90-8, less taxes, and this has to be recovered from a number of small tenants. It is now proposed to let the property at a rental of Rs. 130 to one tenant for 30 years. This appears to me to be beneficial. I make the order and give liberty to the applicant to carry out the arrangement.

Attorneys for the petitioner : *Alum and Mitter*.

T. C.

(1) (1898) 3 C. W. N. 158.

(2) (1906) Unreported.