

(1936) 01 CAL CK 0032**Calcutta High Court****Case No:** S.A. No. 147 of 1934

Sayed Arsal Hossain

APPELLANT

Vs

Sm. Naresh Nandini Dasi

RESPONDENT

Date of Decision: Jan. 27, 1936**Final Decision:** Dismissed**Judgement**

M.C. Ghose, J.

This is an appeal by the Plaintiff in a suit for recovery of khas possession of a plot of land described in the plaint by ejecting Defendant No. 1. The Plaintiff is the mutwalli of a wakf estate. The land in suit is within that estate. It was held by one Golam from whom in 1895 one Bholanath purchased it. Then in April, 1897, Bholanath executed a kubuliyat whereby the previous rent of Rs. 19-0-6 ps. was enhanced to Rs. 25-0-6 ps. plus an yearly sidha of Re. 1-8 as. and the rent so fixed was agreed to be the permanent rent. Bholanath and his successors held the land on those terms until, in April, 1927, Defendant No. 1 purchased it whereupon the Plaintiff instituted the suit on the grounds that it was an ordinary occupancy-holding; that the previous holder had no right to transfer it; that Defendant No. 1 had obtained no right by the transfer and that the landlord was entitled to khas possession. The Defendant resisted the suit on the ground that it was a raiyati holding at a fixed rent and as such he was entitled to transfer the same. The Court of Appeal below has found on the evidence that the holding in suit was at a fixed rate of rent and that as such it could be lawfully sold without the landlord's consent. Then a question was raised that the Plaintiff, not being the absolute owner of the estate but a mutwalli of a wakf estate, was not bound by the terms of a permanent lease. The terms of the wakfnama are that one-fifth share of the profits are to be spent for religious and charitable purposes and that the mutwallis are to appropriate the remaining four-fifth share of the profits and that the present Plaintiff was one of the persons who granted the permanent lease to Bholanath in 1807. The Court of Appeal holds that the lease will hold good during the life-time of the Plaintiff and that he cannot eject the Defendant. It is urged in appeal that the wakf property is God's property

and that the mutwalli had no power to give a permanent lease of any portion of it and that the Defendant, if he feels aggrieved by the personal action of the Plaintiff, may claim damages against the Plaintiff but that he cannot keep the land which is a part of the wakf estate. On the other side the case of Vidya Varathi Thirtha v. Balusami Ayyar L.R. 48 IndAp 302: S.C. 26 C. W. N 537 (1922) and Abdur Rahim v. Narayandas Aurora L.R. 50 IndAp 84: S.C. 28 C.W.N. 121 (1922) were quoted and also the case of Bibi Jabeda Khatoon v. Mozaffarali Hussain 30 C.W.N. 807 (1925) which was upheld in appeal by the Privy Council in 1930 in the case of Mahammad Mazaffarali v. Jabeda Khatun L.R. 57 IndAp 125: S.C. 34 C.W.N. 462 (1930). On consideration of the decisions in the reported cases and considering the facts of the case, it appears that the decision on the point of law by the Court of Appeal below was correct.

2. The appeal is dismissed with costs. The cross-objection is not pressed and is dismissed. Leave to appeal is refused.