ALLAHABAD HIGH COURT

Syed Sibte Rasul

Vs

M. Sibte Nabi

(Allsop, J.)

25.09.1942

JUDGMENT

Allsop, J.

1. This appeal arises out of a suit which was instituted, in the first instance, by three plaintiffs, Sibte Nabi, Abdul Bab and Nisar Ali, against Sibte Rasul who is admittedly the mutwalli of a waqf created in or about the year 1760 by Mir Asad Ullah otherwise known as Mir Kallu, a SunniMuslim. Mir Asad Ullah had built a mosque and a school in the town of Amroha and it is admitted that he dedicated the village of Jhiran with the intention of ensuring the upkeep of these buildings or institutions. The parties agree that he himself was the first mutwalli and that the mutwallis succeeding him were, in order, Saadat Ullah, Nijabat Ullah, Siyadat Ullah and Sibte Rasul. Each mutwalli was the son of his predecessor. Either Nijabat Ullah, as asserted by the defendant, or Siyadat Ullah, as asserted by the plaintiffs, became a Shia and Sibte Rasul is a Shia too.

2. The plaintiffs claimed the reliefs that the Court should declare that the mosque and school were founded solely for the benefit of Sunnis and that the mutwalli should be removed and a committee of management, composed entirely of Sunnis, should be appointed to manage the waqf under a scheme drawn up by the Court. They also demanded that the mutwalli should furnish accounts and that a decree should be passed against him in favour of the committee of management for any sum which might be found due from him to the wakf. Their allegations were-- (1) that Mir Asad Ullah intended that the mosque and school should be used by Sunnis alone and that Sibte Rasul as a Shia was not a fit person to manage the waqf ; (2) that Sibte Rasul spent the greater part of the income of the wakf property on himself and his family spending only a nominal sum on the mosque and school and nothing at all on the other objects of the waqf which, according to them, included the maintenance of learned and holy men and students and the supply of refreshment to travellers ; (3) that the mutwalli had not kept any accounts nor filed them in Court under the provisions of the Mussalman Waqf Act (42 of 1923) ; (i) that he had not paid the dues of the superior proprietor of the village of Jhiran, that he had taken possession of all the best land to cultivate himself as his sir and khudkasht and that the property of the waqf was being wasted and was in danger of dissipation ; (5) that the mutwalli was very seriously involved in debt ; and (6) that he was virtually claiming the property as his own contrary to the interests of the waqf.

3. The learned Judge found that the mosque and school were intended mainly for the use of Sunnis but that Shias were entitled to pray in the mosque, if they wished to do so, and that their children might be educated in the school. He held that there was no reason why the mutwalli should be removed merely upon the ground that he was a Shia. On the second point, his conclusion was that Sibte Rasul was spending about four-fifths of the income from the village upon himself, as indeed was admitted, and that the mosque and school were not in a sufficiently good state of repair, were not adequately furnished and were in a dirty condition. On the third point his finding was that Sibte Rasul had not kept the accounts of the waqf and had not filed them. He referred, however, to an application made by Sibte Rasul to the District Judge asking for a direction whether he was required to file accounts and to the order of the District Judge that it was unnecessary for him to do so because the waqf was to all intents and purposes a waqf alal-aulad which did not come within the provisions of the Act. The learned Judge very naturally considered that Sibte Rasul, in these circumstances, could not be blamed for not filing the accounts in Court, but he said at the same time that he had no justification for not keeping accounts and producing them when required to do so.

4. The fourth point was not made the subject of any clear issue in the Court below and the learned Judge has not recorded any finding upon it. On the fifth point the learned Judge held that Sibte Rasul was indebted to the extent of some thing over Rs. 3000. On the last point again there was no issue and no finding. In summarising his conclusions the learned Judge said that it had been proved against the defendant that he had been spending more than four-fifths of the income of the waqf property on himself and his family, that he had not kept any accounts, that he was indebted to the extent of a little over Rs. 3000 and that the waqf property had not been maintained in an adequate state of repairs and that the mosque and school were very inadequately furnished and not kept in a proper state of cleanliness. He expressed his opinion that these were sufficient reasons for his removal. He referred, however, to a previous suit under Section 92, Civil P. C. (2 of 1910), which had been instituted against the defendant's immediate predecessor, Siyadat Ullah, and in which it had been held that the mutwalli was entitled to spend a portion of the income upon himself and his family.

5. The learned Judge found that this decision operated as res judicata between the parties but considered that it did not specify the proportion of the income which might be spent by the mutwalli on himself. He proceeded to lay down that the mutwalli might spend a sum of Rs. 1200 a year in this way out of an income of Rs. 4000 per year. His conclusion was, however, that the mutwalli might have been deceived by this decision and consequently that it would not be fair to remove him upon the ground that he had spent more than he should have on his own personal needs. For the same reason and on account of the direction of the District Judge he thought that it would not be just to require the mutwalli to account for his previous expenditure. His final decision was that there should be a board of five Sunni trustees who would supervise the affairs of the waqf but that the mutwalli should remain as the manager of the property under their control and should be the secretary of the board. Both panties appealed against the decision. The plaintiff's appeal is No. 373 of 1985. The decision in that appeal will rest upon this judgment, but for the moment we are dealing with the defendant's Appeal No. 471 of 1935.

6. The first point which has been taken in this appeal on behalf of the defendant-appellant is that the plaintiffs were not competent to institute the suit. The argument is based upon three grounds,

namely, (1) that it is not established that the Legal Remembrancer, when he gave permission for the institution of the suit, had been authorized by the Local Government to do so ; (2) that the relief claimed was not that sanctioned by the Legal Remembrancer; and (3) that the suit was instituted by only three plaintiffs whereas the Legal Remembrancer had authorised four persons to represent the public or that section of the public which was interested in the proceedings. We can deal very shortly with the first two points. The question of the authorization by the Local Government of the Legal Remembrancer to deal with the matter was not raised in the pleadings and was not the subject of any issue. The plaintiffs had no notice that they were required to produce any evidence upon the point and no evidence has been produced. The pre-sumption is that the Legal Remembrancer, when he sanctioned the institution of the suit, acted properly and in accordance with law. On the second point no material has been placed before us on which we can case a decision that the relief claimed was not in accordance with the sanction of the Legal Remembrancer. The document in which sanction was conveyed has not been printed in our paper book. This point also was not raised in the pleadings and was not the subject of an issue.

7. The third point is of much greater importance. It is true that there was no issue upon it nor very clear pleadings, but the defendant certainly did not admit in his written statement that the plaintiffs had obtained a proper permission from the legal remembrancer to institute the suit. The plaintiffs had stated in para. 23 of their plaint that they were Hanafi Muslims, that they had a special interest in the waqf and that they had obtained permission for the institution of the suit from the legal remembrancer. The defendant in his written statement, when dealing with this paragraph, said that he admitted that the plaintiffs were Hanafi Muslims but that he denied the other allegations. He also said in para 1 of his additional pleas that no cause of action had accrued to the plaintiffs and that they were not competent to institute the suit. No issue was framed upon the point but the facts are not in dispute. It is admitted that the legal remembrancer had sanctioned the institution of a suit by the three plaintiffs and a man called Shamsul Hasan. This Shamsul Hasan made an application at some time while the suit was pending that he should be impleaded as a plaintiff and the Court 'impleaded him by an order passed on 16th May 1935, the date on which the judgment was delivered. The defendant-appellant raised the question in his grounds of appeal and, as no issue of fact is involved, we consider that he was entitled to raise it. There can be no doubt that three plaintiffs cannot institute a suit under the provisions of Section 92, Civil P. C., when four have been authorised by the Advocate- General (or, in this case, the legal remembrancer) to do so. We need refer only to the following cases, namely, Mt. *All Begam v. Badrul Islam Ali Khan*[1] *Pitchayya v. Ven-katakrishnamacharlu*[2] *Darvesh v. Jainudin*[3] and *Gopal Dei v. Kanno Dei*[4]

8. The learned Judge does not deal with the question in his judgment possibly because there was no issue upon it or possibly because he thought that the defect, if any, was cured by the fact that he had impleaded Shamsul Hasan at the time when his judgment was delivered. He mentioned in his judgment that he had impleaded Shamsul Hasan before he delivered it. Learned Counsel for the plaintiffs-respondents argue that the plaint had been amended and that the name of Shamsul Hasan appeared on the record in the array of plaintiffs when the judgment was pronounced. They urge that this was sufficient to legalise the proceedings. They say that the defect was cured because Shamsul Hasan had communicated his desire to be impleaded as a party and to support the original plaintiffs. They have referred to authority in support of the proposition that formal irregularities. in the plaint should not be allowed to affect the decision of a suit upon its merits. The two cases which they have brought to our notice are *Barkatunniasa v. Muhammad Asad Ali*[5]

and *Basdeo v. John Smidt* [6]These cases deal with formal mistakes in the pleadings properly so called. The first decision arose out of a suit for preemption. It appeared from the pleadings that the plaintiff was claiming the whole of the property which was transferred but in describing the property he accidentally omitted a fraction of the whole share which was in dispute. The learned Judges looked at the substance rather than the form of the pleadings and held that the suit should not fail upon the ground that the plaintiff was not seeking to pre-empt the whole of the property transferred. In the second case the plaintiff was a corporation or a firm. The plaint had been signed by an advocate who was not, under the rules, required to produce any written authorisation to act on be-half of the plaintiff. It was also signed by a person who purported to be the agent of the plaintiff but who had not produced a power of attorney. The question of authority had not been raised in the Courts below. This Court held that the plaint had been validly presented, but there were dicta to the effect that the signing and verification of the plaint were matters of formality which would not affect the result of the suit if there were reasons to believe that the plaintiff had, in fact, intended to institute it. These rulings are not in any way relevant to the question with which we have to deal.

9. We are not concerned with any amendment of pleadings under the provisions of Order 6, Rule 17, Civil P. C. In our case, a new party was impleaded and the question is whether he could rightly be impleaded after all the evidence had been recorded, the arguments had been heard and the Court was about to pronounce judgment. We must point out that this was a representative suit in which the plaintiffs were claiming to act on behalf of a section of the public. They could not so act unless they were empowered to do so by the proper authority and naturally one of the questions before that authority was whether the applicants for permission to act were such that they could properly represent that section of the public. The basis of the rule that all those authorised by the Advocate-General to institute a suit must join as plaintiffs is that some alone cannot take it upon themselves to represent the public when all have been authorised to do so. We have to consider the matter not only in the interests of the defendant but also in the interests of the public. It is obvious that the defenant cannot be bound by the decision in a representative suit if the other side is not bound, that is, if any member of the public or section of the public which is supposed to be represented would be able to question the decision upon the ground that the plaintiffs were not entitled to represent him. When the suit was instituted and throughout the whole proceedings till the date of the delivery of the judgment, the Muslims of Amroha or the Sunni Muslims of Amroha were clearly not properly represented. It seems to us that any member of that section of the public could allege that he was not bound by any decision when the whole carriage of proceedings was in the hands of persons who were not alone entitled to act on his behalf. The mere fact that he may be said to have been represented when judgment was delivered would not disentitle him from saying that he was not bound by the ultimate decision when the pleadings, the production of evidence, the arguments and the whole conduct of the case were in the hands of persons who were not competent to act on his behalf. In our judgment the plaintiffs were not entitled to institute the suit or to conduct it and we hold that the learned Judge should not have impleaded Shamsul Hasan at the time when he did and that the suit should be dismissed on this ground alone. We have considered whether in these circumstances we should deal with the case upon its merits. On the one hand, it may be argued that it is useless for us to do so because our decision will not be binding either upon the persons alleged to be represented by the plaintiffs or upon the defendant as against those persons, but on the other hand, this is a suit in which the parties can appeal against our decision as of right and the suit was instituted in the year 1933. On the whole, we think that we should express our opinion upon the merits of the case so

as to save delay if our decision on the first point is not sustained in appeal.

10. There has been a good deal of discussion upon the question whether the decision in Suit No. 2 of 1910 is binding upon the parties. That was a suit instituted by certain Shias against Siyadat Ullah, the predecessor of the defendant, Sibte Rasul. One of the questions at issue in that suit was whether the mosque and school had been founded for the use of Shias or Sunnis and another was whether the defendant was entitled to spend any part of the income of the waqf property on the maintenance of his children. The finding was that the Sttanis had been actually using the mosque but that both Sunnis and Shias, chiefly Sunnis, had been using the school and that the defendant was entitled to spend at least some portion of the income of the waqf property, after defraying the ordinary expenses in connection with the mosque and school, on the maintenance of himself and his family. The plaintiffs-respondents have argued that this decision is not binding upon them purely upon the ground that the suit was collusive. They suggest that it was instituted by certain Shias against a Shia mutwalli with the object of obtaining a collusive decision that the mosque and school were intended for the use of Shias. They have also based an argument upon the fact that some of the plaintiffs in that suit were relations of the mutwalli.

11. We have been taken through the judgment of the learned Judge who decided that case and it seems to us that there is no basis at all for the contention that the suit was collusive. It appears from the judgment that the plaintiffs asked for no relief to the effect that the mosque and school were intended solely for the use of Shias. The question was raised in the course of the suit, but the mutwalli throughout maintained that the mosque and school were intended mainly for the use of Sunnis and, what is more, he obtained, as we have already said, a decision very largely in favour of the Sunnis. The suit was based upon personal allegations against the mutwalli which were not of a nature which would suggest that he was in collusion with the plaintiffs. The plaintiffs asked for the removal of the mutwalli and for the appointment of some other person from among the descendants of the original founder of the waqf. They also asked that the mutwalli should render accounts and that a decree for money should be passed against him, if necessary. Learned Counsel for the respondents have referred to the fact that both parties produced documents, alleged to have been executed many years before, which the learned Judge would not accept in evidence because he was not satisfied that they were genuine. We cannot see how this fact leads to the conclusion that there was any collusion between the parties. If there had been collusion each would have admitted the documents produced by the other side and the question whether the documents were genuine would never have arisen.

12. The plaintiffs-respondents do not argue that the decision did not operate as res judicata because both suits were instituted personally against the mutwallis for the time being and were not suits against the waqf. This argument, indeed, was not open to them because their case was very largely based upon a deed executed by Nijabat Ullah in favour of Siyadat Ullah by which the former purported to transfer the mutwalli-ship to the latter. This document recites the objects of the waqf and the plaintiffs-respondents apparently can rely upon it only if they treat the admissions of Nijabat Ullah as binding upon Sibte Rasul. The admissions can be binding only if Sibte Rasul is treated as a representative-in-interest of Nijabat Ullah and each mutwalli as a representative-in-interest of the one before him. If this is accepted, it is not possible to argue that a decision in a Court of law against one mutwalli is not binding upon his successor-in-interest. If the point had been raised that the decision in suit No. 2 of 1910, which was a suit against Siyadat Ullah personally, was not binding in the present suit which is a suit against Sibte Rasul

personally because Sibte Rasul is not the representative-in-interest of Siyadat Ullah except in so far as both of them represented the waqf, there might have been some force in it. We are not called upon to express any definite opinion upon this point partly because it has not been raised and partly because our conelusions upon the merits are in accordance with those of the learned Judge who decided the previous suit.

13. There has also been some discussion upon the question whether the learned Judge of the Court below was right in rejecting a document (EX. O-2) produced by the defendant. This purported to be a tauliyatnama, or deed transferring the mutwalliship, executed by Asad Ullah in favour of Saadat Ullah. It was one of the documents rejected in suit No. 2 of 1910. It was alleged to have been executed in the year 1764 and to have been produced in Court in certain proceedings about the year 1840. The fact that it was so produced is alleged to be established c by an endorsement upon it which is written in the Urdu language and by a receipt also in that language said to have been given by the officer of the Court at the time when it was produced. The judgment or order, recorded in the year 1842, is in Persian which was presumably at that time the language of the Court. "We are not in a position to say whether routine orders such as that endorsed upon this document, that it should be filed with the record, were then written in Urdu or Persian, but the fact that the order is not in the language of the Court is somewhat suspicious. In the second place, we find it difficult to understand why the defendant or his predecessor-in-interest should have kept a receipt, given for a document when it was filed, after he had withdrawn the document from the Court. We have a suspicion that this receipt was manufactured as part of an elaborate scheme to establish the validity of the document when it was first produced. These suspicions and the fact that the document was rejected in 1910 amply justify its rejection now. It is not necessary to hold that it is forged. It is sufficient to hold that the Court is not justified in presuming that it is a genuine document.

14. After the rejection of this document we are left with no evidence about the nature of
the waqf except the statement made by Nijabat Ullah in the tauliyatnama which he executed in favour of Siyadat Ullah in the year 1873, and a statement made in the judgment of 1842 to which we have already referred. We very much doubt whether the recitals in Najabat Ullah's deed are binding as admissions upon Sibte Rasul. They cannot be binding in any other way because the objects of the waqf and the nature of the trust had already been settled for all time when the waqf was created by Asad Ullah and no future mutwalli could vary those objects or the nature of the trust. The waqf remains the waqf and each mutwalli in turn represents it, but it seems to us that it cannot be said that any mutwalli in his personal capacity is the representative of any other. If we were to hold that the admissions of a mutwalli about the nature of the trust were binding upon his successor, we would be holding that any mutwalli could change the nature of the trust merely by making such admissions. Learned Counsel for the plaintiffs-respondents have urged that Nijabat Ullah was in a position to know what the original objects and nature of the waqf were, but he could obviously have had no personal knowledge of transactions which took place in the year 1760 or thereabouts. It may be that he wished to spend the income of the waqf in particular ways, but his wishes are not binding upon Sibte Basul. Our conclusion is that this document is really of no value, but even if we take it at the respondent's valuation it does not establish their proposition that the intention of Asad Ullah was that the whole income of the village should be spent upon the mosque and school or upon objects connected with them, such as the support of learned men and visitors to these institutions.

15. The defendant-appellant has contended that the intention of Asad Ullah was that some member of his family, one of his descendants, should take charge of the village of Jhiran on condition that he should maintain the mosque and school and, provided that the mosque and school were maintained, he should use the remainder of the income in any way he wished. It seems to us that there is nothing inherently improbable in the contention of the defendant-appellant. Learned Counsel for the plaintiffs-respondents have argued vehemently that once it is established that the waqf was created for religious and charitable objects it is for the mutwalli to establish that he is entitled to use any of its income for his own purposes. This argument seems to be based on a mis conception that a waqf must be entirely for religious and charitable objects in the English sense of the term or should be entirely a waqf for the benefit of the members of the waqif's family, that is, entirely a waqf alal-aulad. That this is a misconception is obvious from the fact that a pure waqf alal-aulad without any provision for any expenditure on charity would not be valid. It is true that the result of Statutes is that such a waqf is valid, if it provides only that the residue, when no member of the family remains shall be expended on religious or charitable objects, but that does not change the essential principle that there must be some intention, however remote, that religious and charitable objects shall benefit from the dedicated property. It is certainly not unusual to dedicate property by way of waqf partly for religious or charitable objects of some kind and partly for the benefit of the waqif's family. It must be remembered that the benefit of the family is in itself, according to Muslim ideas, a religious and charitable object and there is no reason for supposing that Asad Ullah could not possibly have intended that his descendant for the time being who held the village should maintain the mosque and school in a reasonable way and should spend the remainder of the income for his own purposes. It seems to us very natural that his intention should have been that the property should not be broken up and divided among various heirs, none of whom might feel any personal responsibility for the mosque or school in which he was interested, and that it should remain one entity in the hands of one of his descendants who should undertake the maintenance of the mosque and school as a charge upon the income of the village.

16. We must emphasize that the burden of proof was upon the plaintiffs. They wished to remove the mutwalli who was in possession and it was for them to show that he had been guilty of misapplication of the income of the property. In order to do that they had to show what the intention of the original founder was because they could not show that the money had been misapplied unless they could show how it should properly have been applied. In the tauliayatnama of 1873, Nijabat Ullah first says that Asad Ullah dedicated the income of the property for the maintenance of the mosque and the school and for the maintenance of learned men, students, people who learn the Qoran by heart, teachers, employees and people staying in the school and for providing food to travellers visiting the mosque and school and for repairs, for floor-cloths, lights, ropes and utensils required for the school. He then says that the income should be spent on 'the items mentioned above, such as the fixed salaries of the employees of the school' and other items. He, adds that the mutwalli should attend to the travellers staying in the school and to the congregation in the mosque and should continue all the expenses of the mosque and school according to old practice.

17. These statements seem to suggest that the expenditure on the mosque and school was approximately fixed by practice and it is quite consistent with the document that the mutwalli should undertake this ordinary expenditure and should use the balance of the income from the village for his own purposes. It seems to us that that was the view taken by the learned Judge

who decided Suit No. 2 of 1910. He speaks of ordinary expenditure on the mosque and school and points out that there was nothing in this deed to justify the conclusion that the mutwalli should use only a fixed proportion of the income for himself. The judgment or order of 1842 was passed by a Special Commissioner who had been appointed to inquire into the claims of certain people, including Nijabat Ullah, that they were entitled to hold certain property revenue free under grants made by the predecessors of the East India Company. The Company had apparently agreed to respect such grants. The Special Commissioner decided in favour of the claimants and one of the reasons which he gave for holding that they had been treated as owners of the property was that there had been a number of alienations. Among those alienations he mentioned the wakf with which we are concerned. He said that:Asad Ullah built a mosque and school at Amroha and with the intention of effecting the perpetuity and prosperity of the said institutions he set apart the village of Jhiran with the hamlet of Sultanpur for meeting the expenses of the mutwalli, the students, Ulemas (learned men) and Huffas (those who know the Koran by heart).

18. The learned Judge has quoted the passage in his judgment but has mistranslated it. The defendant-appellant argues that the passage shows that the maintenance of the mutwalli was one of the objects of the wakf. The plaintiffs-respondents say that the word 'mutwalli' is a substitution for the word 'mosque.' The document itself shows no sign of substitution. The word 'mutwalli' is as clear as it can be. The argument, however, is that the grammar of the passage indicates that the word originally must have been mosque. 'Abadi' may be said to mean 'the state of being inhabited or occupied' the opposite of being deserted or derelict. 'An' means 'that' or 'it.' 'Ibqa-i-khair' means 'the perpetuation of good.' 'Niyat' means 'intention.' The whole phrase 'ba niyat i abadiye an wa ibaq i khair,' which appears in the official translation as 'with the intention of effecting the perpetuity and prosperity of the said institutions,' may be rendered 'with the intention of preserving it and perpetuating good.' The argument is that 'an' or 'it' must refer to some singular thing and cannot refer to the mutwalli, students, learned men and huffaz and therefore some singular word such as 'mosque' must have been intended. The argument seems to us to be farfetched. The writer was obviously referring back to the mosque and school which he regarded as one institution.
Therefore Muhammad Asad Ullah, having built a mosque and school in Amroha, assigned the village of Jhiran and its hamlet Sultanpur for the expenses of the mutwalli, the pupils, the teachers and students of the Koran in order to preserve it and perpetuate the good which he had done.

19. We must remember that we are not construing a formal deed but are assigning a meaning to a passage in a judgment or report. This passage, if it has any value, supports the case of the defendant-appellant, but we do not think it has any great importance. The special commissioner was not recording any finding about the nature of the wakf which was not within the scope of his inquiry and all that we can say is that it was made to appear to him in 1842 that the expenses of the mutwalli were among the objects of the wakf. We are satisfied that the plaintiffs-respondents have failed to show that the defendant-appellant was acting contrary to the wishes and intentions of the founder of the wakf in spending on himself such part of the income as remained after the ordinary needs of the mosque and school had been met. In these circumstances it seems to us irrelevant to enquire what proportion of the income the mutwalli spent on himself or whether he was in debt or kept any accounts. The one question to be decided is whether he maintained the mosque and school in a reasonable way according to the wishes of the founder of wakf.

20. The learned Judge made a personal inspection of these buildings and has made some criticisms that they were in small ways in need of repair and that they were somewhat dirty in places, but we do not think that the inspection note discloses that there had been any serious neglect. It must be 1943 A/11 & 12 remembered that the inspection was made in the month of September immediately after the rains about the time when annual repairs are undertaken in this part of India. The Judge found that the windows of the school room were broken and the bricks supporting the window frames were loose in several places, but it appeared to him that the bricks might have been removed by some one from outside to make the condition of the building appear worse than it had been. He found some cracks in the arches of the mosque which did not affect the safety of the building and he found that some of the tombs were slightly chipped and that the thatch over a part of a courtyard had holes in it. These are defects which might be found in almost any building of this nature in this part of the country. A tent or shamiana was produced which seemed to the Judge to be old and worn out and torn in several places, but it does not appear that it was a necessary appurtenance to the mosque or school or that it was unfit for use if occasion required. The learned Judge seems to have been affected by the fact that the precincts of the mosque and school were not very clean. He refers to filthy matter which seemed to him to have been stored in a small area at the back of the mosque. We are not quite clear what he means by filthy matter. It is possible that he refers to cow-dung cakes which are dried on walls and stacked to be used as fuel. We cannot imagine that the neighbourhood was in an extraordinarily insanitary condition owing to the action of the defendant who appears to be a respectable person and whose house adjoins the mosque.

21. We have examined the evidence of the witnesses for the plaintiffs and we cannot find that they make any serious charges about the mosque or school building. Their main complaint seems to be that there are mats instead of daries (carpets made of cotton) in the mosque and that there is an insufficient supply of hot water in the winter. In our judgment there is really no reason for thinking that the defendant-appellant was not maintaining the mosque and school building in a reasonable way as things go in this country. The question of the school as an institution is complicated by the fact that the defendant, appellant apparently agreed to a proposal by the plaintiffs and other Sunnis that he should amalgamate the school attached to the mosque with a school called the Madrasa Hamidia Hanafia which had been founded by a Sunni committee in Amroha. We have on the record a letter from the members of the managing committee of the school addressed to Sibte Rasul in 1929 in which they thanked him for all his assistance and for his good management and attention to its interests. It appears that feelings between Shias and Sunnis, in Amroha have become somewhat embittered in recent years and that Sibte Rasul no longer wishes that this other school should occupy the building for which he is responsible. He instituted a suit to eject this school and this may have been one of the reasons for the institution of the present suit. It is impossible to say that Sibte Rasul was not looking after the interests of his own school when it had been amalgamated with this other school, the whole institution being managed by a committee of which the plaintiffs or some of them and he himself were members. There was certainly no positive reason for saying that he was neglecting the interests of any school existing on the basis of the wakf.

22. We are satisfied that the plaintiffs-respondents did not establish that the defendant-appellant was guilty of any such misconduct as would justify interference on the part of the Court and we consequently hold that the suit should have been dismissed. We may mention that the controversy now is of very little importance because the management of such institutions has

been under the supervision of central wakf committees since the U. P. Muslim Wakf Act (13 of 1936) was passed. The result of our findings is that the appeal of the defendant, appellant is allowed and that the suit is dismissed with costs in both Courts. The plaintiffs appealed upon the ground that the learned Judge on his own findings should have dismissed the mutwalli. In view of the fact that we consider that the plaintiffs have not made out their case, their appeal must fail and we hereby dismiss it with costs.

Cases Referred.

1('38) 25 A. I. R. 1938 P. C. 184
2('30) 17 A. I. R. 1930 Mad. 129
3('06) 30 Bom. 603
4('03) 26 All. 162
5('95) 17 All. 288
6('99) 22 All. 55