SIRAJUL HAQ KHAN & OTHERS

v.

THE SUNNI CENTRAL BOARD OF WAQF, U. P. & OTHERS

1958

September 16.

(VENKATARAMA AIYAR, GAJENDRAGADKAR and A. K. SARKAR JJ.)

Waqf—Suit against Central Board — Notice—Limitation—United Provinces Muslims Waqf Act (U. P. XIII of 1936), ss. 5, 53—The Indian Limitation Act (IX of 1908), s. 15.

The respondent No. 1, a Central Board constituted under the United Provinces Muslims Waqf Act, 1936, by a notification under s. 5(1) of the Act dated February 26, 1944, took into management the properties of a Darga Sharif and on October 18, 1946, the appellants, three of the five members of the Managing Committee of the said Darga Sharif, brought the suit, out of which the present appeal arises, for a declaration that the Darga properties did not constitute a waqf within the meaning of the Act and that the respondent No. 1 had no lawful authority to issue the notification and assume management of the said properties. It was urged on behalf of respondent No. 1 that the suit had not been brought within one year as prescribed by s. 5(2) of the Act, and was as such barred by limitation; and, that since the notice prescribed by s. 53 of the Act had admittedly not been served on the respondent, the suit was incompetent. It was found that in an earlier suit, brought with the sanction of the Advocate General, against the Managing Committee for their removal and the framing of a fresh scheme, a decree had been passed against the appellants on October 16, 1941, and it directed them not to interfere with the affairs of the Darga as members of the said Committee and to comply with the direction removing them from office. On appeal the said decree was set aside by the Chief Court on March 7, 1946. It was contended on behalf of the appellants that s. 5(2) of the Act had no application and even if it had, the suit was within time by virtue of the provisions of s. 15 of the Limitation Act.

Held, that the contentions raised on behalf of the appellants must be negatived.

The expression "any person interested in a waqf" used in s. 5(2) of the United Provinces Muslims Waqf Act, 1936, properly construed, means any person interested in a transaction that is held to be waqf by the Commissioner of Waqfs appointed under the Act and as such the appellants fell within that category.

Where a literal construction defeats the object of the statute and makes part of it meaningless, it is legitimate to adopt a liberal construction that gives a meaning to the entire provision and makes it effective.

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Chaturbhuj Mohanlal v. *Bhicam Chand Chorosia & Sons*, (1948) 53 C.W.N. 410, *Mathu Kutty* v. *Varoe Kutty*, A.I.R. 1950 Mad. 64 and *Lal Chand* v. *Messrs. Basanta Mal Devi Dayal & Ors.*, (1947) 49 P.L.R. 246, referred to.

Rules of limitation are arbitrary in nature and in construing them it is not permissible to import equitable considerations, and effect must be given to the strict grammatical meaning of the words used. Section 15 of the Limitation Act can be attracted only where a suit has been stayed by an injunction or order and the test would be whether its institution would or would not be an act in contempt of the court's order.

Nagendra Nath Dey v. *Suresh Chandra Dey*, (1932) 34 Bom. L. R. 1065, *Narayan Jivangouda* v. *Puttabai*, (1944) 47 Bom. L.R. 1, *Beti Maharani* v. *The Collector of Etawah*, (1894) I.L.R. 17 All. 198 and *Sundaramma* v. *Abdul Khader*, (1932) I.L.R. 56 Mad. 490, relied on.

Musammat Basso Kaur v. *Lala Dhua Singh*, (1888) 15 I.A. 211, held inapplicable.

The order of the court in the earlier suit was neither an injunction nor an order of the nature contemplated by s. 15 of the Limitation Act and so that section was inapplicable.

Offerings made from time to time by the devotees visiting the Darga Sharif were by their very nature an income of the Darga, and failure to mention them in the notification under s. 5(1) of the Act, did not render the notification defective.

The provision as to notice under s. 53 of the Act was applicable to suits in respect of acts of the Central Board as well as suits for any relief in respect of the waqf.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 121 of 1955.

Appeal from the judgment and decree dated April 22, 1953/24th February, 1954, of the Allahabad High Court (Lucknow Bench) in F. C. Appeal No. 50 of 1947, arising out of the judgment and decree dated April 15, 1947, of the Court of the Civil Judge, Bahraich, in Regular Suit No. 25 of 1946.

S. K. Dar, Ch. Akhtar Hussain and *C. P. Lal*, for the appellants.

Ch. Niyamatullah, Onkar Nath Srivastava, J. B. Dadachanji, S. N. Andley and *Rameshwar Nath*, for respondent No. 1.

1958. September 16. The Judgment of the Court was delivered by

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GAJENDRAGADKAR J.—The suit from which this appeal arises relates to a shrine and tomb known as Darga Hazarat Syed Salar Mahsood Ghazi situated in the village of Singha Parasi and properties appurtenant to it. The plaintiffs who have preferred this appeal are members of the Waqf Committee, Darga Sharif, Bharaich, and, in their suit, they have claimed a declaration that the properties in suit were not covered by the provisions of the United Provinces Muslims Waqfs Act (U. P. XIII of 1936) (hereinafter described as the Act). The declaration, the consequential injunction and the two other subsidiary reliefs are claimed primarily against respondent 1, the Sunni Central Board of Waqf, United Provinces of Agra and Oudh. Two trustees who did not join the appellants in filing the suit are impleaded as pro forma defendants 2 and 3 and they are respondents 2 and 3 before us. It appears that respondent 1 purported to exercise its authority over the properties in suit under the provisions of the Act and that led to the present suit which was filed on October 18, 1946 (No. 25 of 1946). The appellants' case is that the properties in suit are outside the operative provisions of the Act and not subject to the jurisdiction of respondent 1, and so, according to the appellants, respondent 1 has acted illegally and without jurisdiction in assuming authority over the management of the said properties. That is the basis of the reliefs claimed by the appellants in their plaint.

The appellants' claim was resisted by respondent 1 on several grounds. It was alleged that the properties in suit did form a waqf as defined by the Act and were covered by its operative provisions. It was urged that respondent 1 was a duly constituted Sunni Central Board and it was authorised to exercise supervision over the management of the said waqf. The case for respondent 1 also was that the appellants' suit was barred by limitation and was incompetent inasmuch as before the filing of the suit the appellants had not given the statutory notice as required by s. 53 of the Act.

On these pleadings several issues were framed by the

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learned trial judge; but the principal points in dispute were three:

(1) Are the properties in suit governed by the Act?

(2) Is the suit in time? and

(3) Is the suit maintainable without notice as required by s. 53 of the Act?

The learned trial judge held that the properties in suit cannot be held to be waqf as defined by the Act. In his opinion it was not the village Singha Parasi but its profits free from land revenue that had been granted in trust for the shrine and its khadims; and since the usufruct of the profits was subject to the condition of resumption and since the profits had not been vested in the Almighty, the grant cannot be construed to be a waqf as contemplated by Muhammadan Law. On the question of limitation the learned judge held that s. 5(2) of the Act applied to the suit; but, according to him, though the suit was filed beyond the period of one year prescribed by the said section, it was within time having regard to the provisions of s. 14 of the Limitation Act. The plea raised by respondent 1 under s. 53 of the Act was partly upheld by the learned trial judge; he took the view that the first three reliefs claimed by the appellants were barred but the fourth was not. In the result the learned judge granted a declaration in favour of the appellants to the effect that "the shrine in question together with its attached buildings and the Chharawa were not waqf properties within the meaning of the Act." As a consequence, an injunction was issued restraining respondent 1 from removing or dissolving the committee of management of the appellants and respondents 2 and 3 "not otherwise than provided for under s. 18 of the Act in so far as the management and supervision of those properties are concerned in respect of which the appellants were not being granted a decree for a declaration sought for by them in view of the absence of the notice under s. 53 of the Act". The rest of the appellants' claim was dismissed. This decree was passed on April 15, 1947.

Against this decree respondent 1 preferred an appeal in the High Court of Judicature at Allahabad (Lucknow Bench) and the appellants filed cross objections. The High Court has reversed the finding of the trial court on the question as to the character of the properties in suit. According to the High Court the said properties constituted waqf as defined by the Act. The High Court has also held that the suit filed by the appellants was barred by limitation and was also incompetent in view of the fact that the statutory notice required by s. 53 of the Act had not been given by the appellants prior to its institution. As a result of these findings the appeal preferred by respondent 1 was allowed, the appellants' cross-objections were dismissed, the decree passed by the trial court was set aside and the appellants' suit dismissed (April 22, 1953). The appellants then applied for and obtained a certificate from the High Court to prefer an appeal to this Court under Art. 133 of the Constitution. That is how this appeal has come to this Court.

Though the dispute between the parties raises only three principal issues, the facts leading to the litigation are somewhat complicated; and it is necessary to mention them in order to get a clear picture of the background of the present dispute. It is believed that Syed Salar Mahsood Ghazi was a nephew of Muhammad Ghazni and he met his death at the hands of a local chieftain when he paid a visit to Bahraich. On his death his remains were buried in village Singha Parasi by his followers and subsequently a tomb was constructed. In course of time this tomb became an object of pilgrimage and veneration. Urs began to be held at the shrine every year and it was attended by a large number of devotees who made offerings before the shrine. It is partly from the income of these offerings that the tomb is maintained. Certain properties were endowed by the Emperors of Delhi in favour of this tomb and accretions were made to the said properties by the savings from the income of the endowed properties and the offerings brought by the devotees.

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The tomb was managed by a body of persons known as Khuddams of the Darga. This body had been looking after the Darga and the performance of ceremonies and other services at the shrine. Whilst the management of the Darga was being thus carried on, Oudh came to be annexed in 1856 and the proclamation issued by Lord Canning confiscated all private properties and inams in the said State. The properties attached to the Darga were no exception. Fresh settlements were, however, subsequently made by the Government as a result of which previously existing rights were revived usually on the same terms as before. This happened in regard to the properties appertaining to the Darga.

It would appear that in 1859 or 1860 a Sanad had been granted to Fakirulla who was the head of the khadims in respect of rent-free tenure of the village Singha Parasi. The grantee was given the right to collect the usufruct of the village which was to be appropriated towards the maintenance of the Darga. The grantee's son Inayatulla was apparently not satisfied with the limited rights granted under the Sanad and so he brought an action, Suit No. 1 of 1865, claiming proprietary rights in the said properties. Inayatulla's suit was substantially dismissed on November 11, 1870, by the Settlement Officer. It was held that the proprietary rights of the Government in respect of the properties had been alienated for ever in favour of the charity and so the properties were declared to vest in the endowment. Inayatulla's right to manage the said properties under the terms of the grant was, however, recognized. Soon after this decision, it was brought to the notice of the Chief Commissioner in 1872 that the khadims at the Darga were mismanaging the properties of the Darga and were not properly maintaining the Darga itself. On receiving this complaint a committee of mussalmans was appointed to examine the affairs of the Darga and to make a report. The committee submitted its report on February 20, 1877, and made recommendations for the improvement of the management of the Darga and its properties. According to the committee, it was

necessary to appoint a jury of five persons including two khadims to manage the Darga and its properties. Meanwhile some of the lands appurtenant to the Darga had been sold and offerings made by the devotees as well as other properties had become the subject-matter of attachment. In the interest of the Darga, Government then decided to take possession of the properties under the provisions of Pensions Act (XXIII of 1873.) This decision was reached after the Government had considered the report made by the Deputy Commissioner on August 31, 1878. The result of declaring that the properties were governed by the provisions of the Pensions Act was to free the properties from the mortgages created by the khadims. The management of the Darga and its properties by the Government continued until 1902.

During this period Inayatulla attempted to assert his rights once more by instituting a suit in the civil court in 1892. In this suit Inayatullah and two others who had joined him claimed possession of the Darga together with the buildings appurtenant thereto and village Singha Parasi. Their claim was decreed by the trial court; but on appeal the said decree was set aside on July 20, 1897. The appellate court of the Judicial Commissioner held that Inayatulla's allegation that the proprietary interest in the properties vested in him was not justified. Even so, the appellate court observed that it was not proper or competent for the Government to interfere in the management of the waqf and its properties; the Darga was a religious establishment within the meaning of Religious Endowments Act (XX of 1863) and the assumption of the management of the Darga and its properties was unauthorised and improper.

As a result of these observations the Legal Remembrancer to the Government of the United Provinces of Agra and Oudh filed a suit, No. 9 of 1902, under s. 539 (present s. 92) of the Code of Civil Procedure. This suit ended in a decree on December 3, 1902. By the decree the properties in suit were declared "to vest in the trustees when appointed". The decree further provided for a scheme for the management of

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the Darga and its properties. The scheme thus framed came into operation and the trustees appointed under it began to manage the Darga and its properties. The scheme appears to have worked smoothly until 1934. In 1934 Ashraf Ali and others claimed (Suit No. 1 of 1934) that an injunction should be issued restraining the defendants from taking part in the management of the affairs of the Darga. The plaintiffs also prayed that the defendants should be prohibited from spending monies belonging to the waqf on frivolous litigations due to party feelings. On May 7, 1934, the learned District Judge expressed his regret that animosity and party feelings should find their way in the management of a trust and issued an order directing the defendant committee that no money out of the Darga funds should be spent either in the litigation pending before him, or in any other litigation, without the sanction of the court.

For nearly six years after the date of this order the Darga and its properties appear to have been free from any litigation. This peace was, however, again disturbed in 1940 when a suit was filed (No. 1 of 1940) with the sanction of the Advocate-General by five plaintiffs against the managing committee and its trustees for their removal and for the framing of a fresh scheme. On October 16, 1941, the suit was decreed. The managing committee and the trustees, however, challenged the said decree by preferring an appeal to the Chief Court. Their appeal succeeded and on March 7, 1946, the decree under appeal was set aside, though a few minor amendments were made in the original scheme of management.

Whilst this litigation was pending between the parties, the United Provinces Muslim Waqfs Act (U.P. XIII of 1936) was passed in 1936 for better governance, administration and supervision of the specified muslim waqfs in U. P. In pursuance of the provisions of the Act, respondent 1 was constituted and, under s. 5(1), it issued the notification on February 26, 1944, declaring the properties in suit to be a Sunni Waqf under the Act. After this notification was issued, respondent 1 called upon the committee of management of

the waqf to submit its annual budget for approval and to get its accounts audited by its auditors. Respondent 1 also purported to levy the usual contributions against the waqf under s. 54 of the Act. The members of the committee of management and the trustees with the exception of two persons held that the properties in suit did not constitute a waqf within the meaning of the Act and that respondent 1 had no authority or jurisdiction to supervise the management of the said properties. That is how the appellants came to institute the present suit on October 18, 1946, against respondent 1. That in brief is the background of the present dispute.

For the appellants Mr. Dar has raised three points before us. He contends that the High Court was in error in coming to the conclusion that the properties in suit constituted a waqf over which respondent 1 can exercise its authority or jurisdiction and he argues that it was erroneous to have held that the appellants' suit was barred by s. 5(2) and was incompetent under s. 53 of the Act. Mr. Dar has fairly conceded that if the finding of the High Court on the question of limitation or on the question of the bar pleaded under s. 53 was upheld, it would be unnecessary to consider the merits of his argument about the character of the properties in suit. Since we have reached the conclusion that the High Court was right in holding that the suit was barred under s. 5(2) and was also incompetent under s. 53 of the Act, we do not propose to decide the question as to whether the properties in dispute are waqf within the meaning of the Act. The plea of limitation under s. 5(2) as well as the plea of the bar under s. 53 are in substance preliminary objections to the maintainability or competence of the suit and we propose to deal with these objections on the basis that the properties in dispute are outside the purview of the Act as alleged by the appellants.

Before dealing with the question of limitation, it would be useful to refer to the relevant part of the scheme of the Act. Section 4 of the Act provides for the survey of waqfs to be made by the Commissioner

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of Waqfs appointed under sub-s. (1) of s. 4. Sub-section (3) requires the Commissioner to ascertain and determine inter alia the number of Shia and Sunni Waqfs in the district, their nature, the gross income of the properties comprised in them as well as the expenses incurred in the realisation of the income and the pay of the mutawalli. The Commissioner has also to ascertain and determine whether the waqf in question is one of those exempted from the provisions of the Act under s. 2. The result of this enquiry has to be indicated by the Commissioner in his report to the State Government under sub-s. (5). Section 6 deals with the establishment of two separate Boards to be called the Shia Central Board and the Sunni Central Board of Waqfs. Section 18 defines the functions of the Central Boards and confers on them general powers of superintendence over the management of the waqfs under their jurisdiction. After the Boards are constituted a copy of the Commissioner's report received by the State Government is forwarded to them and, under s. 5, sub-s. (1), each Central Board is required as soon as possible to notify in the official gazette the waqfs relating to the particular sect to which, according to the said report, the provisions of the Act apply. It is after the prescribed notification is issued by the Board that it can proceed to exercise its powers under s. 18 in respect of the waqfs thus notified. It is the notification issued by respondent under s. 5 (1) and the subsequent steps taken by it in exercise of its authority that have led to the present suit.

Mr. Dar contends that the provisions of s. 5 (2) do not apply to the present suit, and so the argument that the suit is barred by limitation under the said section cannot succeed. It is clear that the notification was issued on February 26, 1944, and the suit has been filed on October 18, 1946. Thus there can be no doubt that if the one year's limitation prescribed by s. 5 (2) applies to the present suit it would be barred by time unless the appellants are able to invoke the assistance of s. 15 of the Limitation Act. But, according to Mr. Dar, the present suit is outside s. 5 (2)

altogether and so there is no question of invoking the shorter period of limitation prescribed by it.

Let us then proceed to consider whether the present suit falls within the mischief of s. 5 (2) or not. Section 5 (2) provides that:

"The mutawalli of a waqf or any person interested in a waqf or a Central Board may bring a suit in a civil court of competent jurisdiction for a declaration that any transaction held by the Commissioner of waqfs to be a waqf is not a waqf, or any transaction held or assumed by him not to be a waqf is a waqf, or that a waqf held by him to pertain to a particular sect does not belong to that sect, or that any waqf reported by such Commissioner as being subject to the provisions of this Act is exempted under section 2, or that any waqf held by him to be so exempted is subject to this Act."

The proviso to this section prescribes the period of one year's limitation to a suit by a mutawalli or a person interested in the waqf. Sub-section (4) of s. 5 lays down that the Commissioner of the waqfs shall not be made a defendant to any suit under sub-s. (2) and no suit shall be instituted against him for anything done by him in good faith under colour of this Act.

The appellants' argument is that before s. 5 (2) can be applied to their suit it must be shown that the suit is filed either by a mutawalli of a waqf or any person interested in the waqf. The appellants are neither the mutawallis of the waqf nor are they persons interested in the waqf. Their case is that the properties in suit do not constitute a waqf under the Act but are held by them as proprietors, and that the notification issued by respondent 1 and the authority purported to be exercised by it in respect of the said properties are wholly void. How can the appellants who claim a declaration and injunction against respondent 1 on these allegations be said to be persons interested in the waqf, asks Mr. Dar. The word 'waqf' as used in this sub-section must be given the meaning attached to it by the definition in s. 3 (1) of the Act and since the appellants totally deny the existence of such a waqf they cannot be said to be interested in the 'waqf'. The

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argument thus presented appears prima facie to be attractive and plausible; but on a close examination of s. 5 (2) it would appear clear that the words "any person interested in a waqf" cannot be construed in their strict literal meaning. If the said words are given their strict literal meaning, suits for a declaration that any transaction held by the Commissioner to be a waqf is not a waqf can never be filed by a mutawalli of a waqf or a person interested in a waqf. The scheme of this sub-section is clear. When the Central Board assumes jurisdiction over any waqf under the Act it proceeds to do so on the decision of three points by the Commissioner of Waqfs. It assumes that the property is a waqf, that it is either a Sunni or a Shia waqf, and that it is not a waqf which falls within the exceptions mentioned in s. 2. It is in respect of each one of these decisions that a suit is contemplated by s. 5, sub-s. (2). If the decision is that the property is not a waqf or that it is a waqf falling within the exceptions mentioned by s. 2, the Central Board may have occasion to bring a suit. Similarly if the decision is that the waqf is Shia and not Sunni, a Sunni Central Board may have occasion to bring a suit and vice versa. Likewise the decision that the property is a waqf may be challenged by a person who disputes the correctness of the said decision. The decision that a property does not fall within the exceptions mentioned by s. 2 may also be challenged by a person who claims that the waqf attracts the provisions of s. 2. If that be the nature of the scheme of suits contemplated by s. 5 (2) it would be difficult to imagine how the mutawalli of a waqf or any person interested in a waqf can ever sue for a declaration that the transaction held by the Commissioner of the waqfs to be a waqf is not a waqf. That is why we think that the literal construction of the expression "any person interested in a waqf" would render a part of the sub-section wholly meaningless and ineffective. The legislature has definitely contemplated that the decision of the Commissioner of the Waqfs that a particular transaction is a waqf can be challenged by persons who do not accept the correctness of the said decision, and it is this class of persons who are

obviously intended to be covered by the words "any person interested in a waqf". It is well-settled that in construing the provisions of a statute courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective; an attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. In our opinion, on a reading of the provisions of the relevant sub-section as a whole there can be no doubt that the expression "any person interested in a waqf" must mean "any person interested in what is held to be a waqf". It is only persons who are interested in a transaction which is held to be a waqf who would sue for a declaration that the decision of the Commissioner of the Waqfs in that behalf is wrong, and that the transaction in fact is not a waqf under the Act. We must accordingly hold that the relevant clause on which Mr. Dar has placed his argument in repelling the application of s. 5 (2) to the present suit must not be strictly or literally construed, and that it should be taken to mean any person interested in a transaction which is held to be a waqf. On this construction the appellants are obviously interested in the suit properties which are notified to be waqf by the notification issued by respondent 1, and so the suit instituted by them would be governed by s. 5, sub-s. (2) and as such it would be barred by time unless it is saved under s. 15 of the Limitation Act.

In this connection, it may be relevant to refer to the provisions of s. 33 of the Indian Arbitration Act (X of 1940). This section provides that any party to an arbitration agreement desiring to challenge the existence or validity of an arbitration agreement shall apply to the court and the court shall decide the question on affidavits. It would be noticed that the expression "any party to an arbitration agreement" used in the section poses a similar problem of construction. The party applying under s. 33 may dispute the very existence of the agreement and yet the applicant is described by the section as a party to the

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agreement. If the expression "any party to an arbitration agreement" is literally construed it would be difficult to conceive of a case where the existence of an agreement can be impeached by a proceeding under s. 33. The material clause must therefore be read liberally and not literally or strictly. It must be taken to mean a person who is alleged to be a party to an arbitration agreement; in other words, the clause must be construed to cover cases of persons who are alleged to be a party to an arbitration agreement but who do not admit the said allegation and want to challenge the existence of the alleged agreement itself. This liberal construction has been put upon the clause in several judicial decisions: *Chaturbhuj Mohanlal* v. *Bhicam Chand Chororia & Sons* (1); *Mathu Kutty* v. *Varoe Kutty* (2); *Lal Chand* v. *Messrs. Basanta Mal Devi Dayal & Ors.* (3). We may also point out incidentally that in dealing with an application made under s. 34 of the Arbitration Act, it is incumbent upon the court to decide first of all whether there is a binding agreement for arbitration between the parties; in other words, the allegation by one party against another that there is a valid agreement of reference between them does not preclude the latter party from disputing the existence of the said agreement in proceedings taken under s. 34. These decisions illustrate the principle that where the literal meaning of the words used in a statutory provision would manifestly defeat its object by making a part of it meaningless and ineffective, it is legitimate and even necessary to adopt the rule of liberal construction so as to give meaning to all parts of the provision and to make the whole of it effective and operative.

Before we part with this part of the appellants' case it is necessary to point out that the argument urged by Mr. Dar on the construction of s. 5(2) is really inconsistent with the appellants' pleas in the trial court. The material allegations in the plaint clearly amount to an admission that the Darga and its appurtenant properties constitute a waqf under the

(1) (1948) 53 C.W.N. 410. (2) A.I.R. 1956 Mad. 64.
(3) (1947) 49 P.L.R. 246.

Act; but it is urged that they do not attract its provisions for the reason that the waqf in question falls within the class of exemptions enumerated in s. 2 (ii)(a) and (c) of the Act. "The Darga waqf", says the plaint in para. 11, "is of such a nature as makes it an exception from the purview of the Act as provided by s. 2 of the Act". Indeed, consistently with this part of the appellants' case, the plaint expressly admits that the cause of action for the suit accrued on February 26, 1944, and purports to bring the suit within time by relying on ss. 14, 15, 18 and 29 of the Limitation Act. In their replication filed by the plaintiffs an attempt was made to explain away the admissions contained in the plaint by alleging that "if ever in any paper or document the word 'waqf' had been used as a routine or hurriedly then it is vague and of no specific meaning and its meaning or connotation is only trust or amanat"; and yet, in the statement of the case by the appellants' counsel, we find an express admission that the subject-matter of the suit is covered by the exemptions of s. 2, cls. (ii) (a) and (ii) (c). Thus, on the pleadings there can be no doubt that the appellants' case was that the Darga and its properties no doubt constituted a waqf under the Act, but they did not fall within the purview of the Act because they belong to the category of waqfs which are excepted by s. 2(ii) (a) and (c). The argument based on the application of s. 2 has not been raised before us and so on a consideration of the pleadings of the appellants it would be open to respondent 1 to contend that the appellants are admittedly interested in the waqf and their suit falls within the mischief of s. 5 even if the words "any person interested in a waqf" are literally and strictly construed.

The next question which calls for our decision is whether the appellants' suit is saved by virtue of the provisions of s. 15 of the Limitation Act. That is the only provision on which reliance was placed before us by Mr. Dar on behalf of the appellants. Section 15 provides for "the exclusion of time during which proceedings are suspended" and it lays down that "in computing the period of limitation prescribed for any

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suit or application for the execution of a decree, the institution or execution of which has been stayed by an injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made and the day on which it was withdrawn, shall be excluded". It is plain that, for excluding the time under this section, it must be shown that the institution of the suit in question had been stayed by an injunction or order; in other words, the section requires an order or an injunction which stays the institution of the suit. And so in cases falling under s. 15, the party instituting the suit would by such institution be in contempt of court. If an express order or injunction is produced by a party that clearly meets the requirements of s. 15. Whether the requirements of s. 15 would be satisfied by the production of an order or injunction which by necessary implication stays the institution of the suit is open to argument. We are, however, prepared to assume in the present case that s. 15 would apply even to cases where the institution of a suit is stayed by necessary implication of the order passed or injunction issued in the previous litigation. But, in our opinion, there would be no justification for extending the application of s. 15 on the ground that the institution of the subsequent suit would be inconsistent with the spirit or substance of the order passed in the previous litigation. It is true that rules of limitation are to some extent arbitrary and may frequently lead to hardship; but there can be no doubt that, in construing provisions of limitation, equitable considerations are immaterial and irrelevant, and in applying them effect must be given to the strict grammatical meaning of the words used by them: *Nagendra Nath Dey* v. *Suresh Chandra Dey* (1).

In considering the effect of the provisions contained in s. 15, it would be useful to refer to the decision of the Privy Council in *Narayan Jivangouda* v. *Puttabai* (2). This case was an offshoot of the well-known case of *Bhimabai* v. *Gurunathgouda* (3). It is apparent that the dispute between Narayan and Gurunathgouda

(1) (1932) 34 Bom. L.R. 1065. (2) (1944) 47 Bom. L.R. 1.
(3) (1932) 35 Bom. L. R. 200 P.C.

ran through a long and protracted course and it reached the Privy Council twice. The decision of the Privy Council in *Bhimabai's case* (1) upholding the validity of Narayan's adoption no doubt led to a radical change in the accepted and current view about the Hindu widow's power to adopt in the State of Bombay, but this decision was of poor consolation to Narayan because the judgment of the Privy Council in *Narayan Jivangouda's case* (2) shows that Narayan's subsequent suit to recover possession of the properties in his adoptive family was dismissed as barred by time. The dispute was between Narayan and his adoptive mother Bhimabai on the one hand and Gurunathgouda on the other. On November 25, 1920, Gurunathgouda had sued Bhimabai and Narayan for a declaration that he was in possession of the lands and for a permanent injunction restraining the defendants from interfering with his possession. On the same day when the suit was filed, an interim injunction was issued against the defendants and it was confirmed when the suit was decreed in favour of Gurunathgouda. By this injunction the defendants were ordered "not to take the crops from the fields in suit, not to interfere with the plaintiff's *wahiwat* to the said lands, not to take rent-notes from the tenants and not to obstruct the plaintiff from taking the crops raised by him or from taking monies from his tenants". Two important issues which arose for decision in the suit were whether Narayan had been duly adopted by Bhimabai in fact and whether Bhimabai was competent to make the adoption. These issues were answered against Narayan by the trial court. Bhimabai and Narayan appealed to the Bombay High Court, but their appeal failed and was dismissed: *Bhimabai* v. *Gurunathgouda* (3). There was a further appeal by the said parties to the Privy Council. The Privy Council held that the adoption of Narayan was valid and so the appeal was allowed and Gurunathgouda's suit was dismissed with costs throughout. In the result the injunction granted by the courts below was dissolved on November 4, 1932. On

(1) (1932) 35 Bom. L. R. 200 P. C. (2) (1944) 47 Bom. L.R. 1.
(3) (1928) 30 Bom. L. R. 859.

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November 25, 1932, Narayan and Bhimabai filed their suit to recover possession of the properties from Gurunathgouda. They sought to bring the suit within time inter alia on the ground that the time taken up in litigating the former suit or at least the period commencing from the grant of temporary injunction on February 25, 1920 to November 4, 1932, when the injunction was dissolved by the Privy Council, should be excluded under s. 15 of the Limitation Act. This plea was rejected by the trial court and on appeal the same view was taken by the Bombay High Court. Rangnekar J. who delivered the principal judgment exhaustively considered the relevant judicial decisions bearing on the question about the construction of s. 15 and held that the injunction issued against Narayan and Bhimabai in Gurunathgouda's suit did not help to attract s. 15 to the suit filed by them in 1932: *Narayan* v. *Gurunathgouda* (1). The matter was then taken to the Privy Council by the plaintiffs; but the Privy Council confirmed the view taken by the High Court of Bombay and dismissed the appeal: *Narayan* v. *Puttabai* (2).

In dealing with the appellants' argument that the injunction in the prior suit had been issued in wide terms and in substance it precluded the plaintiffs from filing their suit, their Lordships observed that there was nothing in the injunction or in the decree to support their case that they were prevented from instituting a suit for possession in 1920 or at any time before the expiry of the period of limitation. It appears from the judgment that Sir Thomas Strangman strongly contended before the Privy Council that since the title of the contending parties was involved in the suit, it would have been quite futile to institute a suit for possession. This argument was repelled by the Privy Council with the observation that "we are unable to appreciate this point, for the institution of a suit can never be said to be futile if it would thereby prevent the running of limitation". There can be little doubt that, if, on considerations of equity the application of s. 15 could be extended, this was pre-

(1) (1938) 40 Bom. L.R. 1134. (2) (1944) 47 Bom. L. R. 1.

eminently a case for such extended application of the said provision; and yet the Privy Council construed the material words used in s. 15 in their strict grammatical meaning and held that no order or injunction as required by s. 15 had been issued in the earlier litigation. We would like to add that, in dealing with this point, their Lordships did not think it necessary to consider whether the prohibition required by s. 15 must be express or can even be implied.

There is another decision of the Privy Council to which reference may be made. In *Beti Maharani* v. *The Collector of Etawah* (1), their Lordships were dealing with a case where attachment before judgment under s. 485 of the Code of Civil Procedure had been issued by the court at the instance of a third party prohibiting the creditor from recovering and the debtor from paying the debt in question. This order of attachment was held not to be an order staying the institution of a subsequent suit by the creditor under s. 15 of Limitation Act of 1877. "There would be no violation of it" (said order), observed Lord Hobhouse, "until the restrained creditor came to receive his debt from the restrained debtor. And the institution of a suit might for more than one reason be a very proper proceeding on the part of the restrained creditor, as for example in this case, to avoid the bar by time, though it might also be prudent to let the court which had issued the order know what he was about". In *Sundaramma* v. *Abdul Khader* (2) the Madras High Court, while dealing with s. 15 of the Limitation Act, has held that no equitable grounds for the suspension of the cause of action can be added to the provisions of the Indian Limitation Act.

It is true that in *Musammat Basso Kaur* v. *Lala Dhua Singh* (3) their Lordships of the Privy Council have observed that it would be an inconvenient state of the law if it were found necessary for a man to institute a perfectly vain litigation under peril of losing his property if he does not; but this observation must be read in the context of facts with which

(1) (1894) I.L.R. 17 All. 198, 210, 211. (2) (1932) I.L.R. 56 Mad. 490.
(3) (1888) 15 I.A. 211.

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the Privy Council was dealing in this case. The respondent who was a debtor of the appellant had agreed to convey certain property to him setting off the debt against part of the price. No money was paid by the respondent and disputes arose as to the other terms of the agreement. The respondent sued to enforce the terms of the said agreement but did not succeed. Afterwards when he sued for the debt he was met with the plea of limitation. The Privy Council held that the decree dismissing the respondent's suit was the starting point of limitation. The said decree imposed on the respondent a fresh obligation to pay his debts under s. 65 of the Indian Contract Act. It was also held alternatively that the said decree imported within the meaning of Art. 97 of Limitation Act of 1877 a failure of the consideration which entitled him to retain it. Thus it is clear that the Privy Council was dealing with the appellants' rights to sue which had accrued to him on the dismissal of his action to enforce the terms of the agreement. It is in reference to this right that the Privy Council made the observations to which we have already referred. These observations are clearly obiter and they cannot, in our opinion, be of any assistance in interpreting the words in s. 15.

It is in the light of this legal position that we must examine the appellants' case that the institution of the present suit had been stayed by an injunction or order issued against them in the earlier litigation of 1940. We have already noticed that Civil Suit No. 1 of 1940 had been instituted against the appellants with the sanction of the Advocate-General for their removal and for the settlement of a fresh scheme. The appellants were ordered to be removed by the learned trial judge on October 16, 1941; but on appeal the decree of the trial court was set aside on March 7, 1946. It is the period between October 16, 1941, and March 7, 1946, that is sought to be excluded by the appellants under s. 15 of the Limitation Act. Mr. Dar contends that the order passed by the trial judge on October 16, 1941, made it impossible for the appellants to file the present suit until the final decision of the

appeal. By this order the appellants were told that they should not in any way interfere with the affairs of the Darga Sharif as members of the committee and should comply with the decree of the court by which they were removed from the office. It is obvious that this order cannot be construed as an order or an injunction staying the institution of the present suit. In fact the present suit is the result of the notification issued by respondent 1 on February 26, 1944, and the subsequent steps taken by it in the purported exercise of its authority under the Act. The cause of action for the suit has thus arisen subsequent to the making of the order on which Mr. Dar relies; and on the plain construction of the order it is impossible to hold that it is an order which can attract the application of s. 15 of the Limitation Act. We have already held that the relevant words used in s. 15 must be strictly construed without any consideration of equity, and so construed, we have no doubt that the order on which Mr. Dar has placed reliance before us is wholly outside s. 15 of the Limitation Act. We would, however, like to add that this order did not even in substance create any difficulty against the institution of the present suit. The claim made by the appellants in the present suit that the properties in suit do not constitute a waqf and the declaration and injunction for which they have prayed do not infringe the earlier order even indirectly or remotely. We must accordingly hold that the High Court was right in taking the view that s. 15 did not apply to the present suit and that it was therefore filed beyond the period of one year prescribed by s. 5(2) of the Act.

That takes us to the consideration of the next preliminary objection against the competence of the suit under s. 53 of the Act. Section 53 provides that "no suit shall be instituted against a Central Board in respect of any act purporting to be done by such Central Board under colour of this Act or for any relief in respect of any waqf until the expiration of two months next after notice in writing has been delivered to the Secretary, or left at the office of such

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Central Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left". This section is similar to s. 80 of the Civil Procedure Code. It is conceded by Mr Dar that if s. 53 applies to the present suit the decision of the High Court cannot be successfully challenged because the notice required by s. 53 has not been given by the appellants before the institution of the present suit. His argument, however, is that the notification issued by respondent 1 on February 26, 1944, did not refer to the Darga and offerings made by the devotees before the Darga and he contends that the present suit in respect of these properties is outside the provisions of s. 53 and cannot be held to be barred on the ground that the requisite notice had not been given by the appellants. We are not impressed by this argument. Column 1 of the notification in question sets out the name of the creator of the waqf as Shahan-e-Mughalia and the name of the waqf as Syed Salar Mahsood Ghazi. In col. 2 the name of the mutawalli is mentioned while col. 3 describes the properties attached to the waqf. The tomb of Syed Salar Mahsood Ghazi which is the object of charity in the present case is expressly mentioned in col. 1 and so it is futile to suggest that the tomb or Darga had not been notified as a waqf by respondent 1 under s. 5(1). In regard to the offerings we do not see how offerings could have been mentioned in the notification. They are made from time to time by the devotees who visit the Darga and by their very nature they constitute the income of the Darga. It is unreasonable to assume that offerings which would be made from year to year by the devotees should be specified in the notification issued under s. 5(1). We must, therefore, reject the argument that any of the suit properties have not been duly notified by respondent 1 under s. 5(1) of the Act. If that be so, it was incumbent upon the appellants to have given the requisite notice under s. 53 before instituting the present suit. The requirement as to notice applies to

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suits against a Central Board in respect of their acts as well as to suits for any relief in respect of any waqf. It is not denied that the present suit would attract the provisions of s. 53 if the argument that the Darga and the offerings are not notified is rejected. The result is that the suit is not maintainable as a result of the appellant's failure to comply with the requirements of s. 53. We would accordingly confirm the finding of the High Court that the appellants' suit is barred by time under s. 5(2) and is also not maintainable in view of the fact that the appellants have not given the requisite notice under s. 53 of the Act.

The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.

RADHA SUNDAR DUTTA

v.

MOHD. JAHADUR RAHIM AND OTHERS

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September 18.

(VENKATARAMA AIYAR, GAJENDRAGADKAR and A. K. SARKAR JJ.)

Grant—Construction—Patni settlement—Chaukidari Chakaran lands—Resumption and transfer to Zamindar—Grant of the lands by the Zamindar on Patni to person who held the village in Patni settlement—Distinct Patni—Sale of lands for arrears of revenue—Validity—Bengal Patni Taluks Regulation, 1819 (Ben. Regulation VIII of 1819), ss. 8, 14—Village Chaukidari Act, 1870 (Ben. VI of 1870), ss. 48, 50, 51.

The lands in question are situate in lot Ahiyapur which is one of the villages forming part of the permanently settled estate of Burdwan and had been set apart as Chaukidari Chakaran lands to be held by the Chaukidars for rendering service in the village as watchmen. At the time of the permanent settlement the income from these lands was not taken into account in fixing the *jama* payable on the estate. Some time before the enactment of the Bengal Patni Taluks Regulation, 1819, the entire village of Ahiyapur was granted by the then