

1881  
 BULAKHIDAS  
 v.  
 KESHAVLAL.

families. No doubt it involves the application of the same rule to widows, of whom, in the paragraph immediately preceding the one which we have cited, Nilakuntha says: "If there be more than one, they will divide the wealth, and take shares"; and such rule, when applied to widows, would not be in accordance with that which the Privy Council has held to prevail in Bengal and Madras: *Bhugwandeem Doobey v. Myna Bacc* <sup>(1)</sup>; *Gajapathi Nilamani v. Gajapathi Radhamani* <sup>(2)</sup>. But, as regards the devolution of the estate of one of two widows, the result of the two rules would not, practically, be different. If the widows take a joint estate, the surviving widow takes the undivided share of the other widow by right of survivorship. If they take several estates, the surviving widow would take the divided share of the deceased widow by right of inheritance, as her husband's next heir.

We reverse the decree of the Acting Assistant Judge, and remand the case in order that it may be determined whether the suit is barred by limitation, and, if not, whether the plaintiff is entitled to succeed to Kashi's half share under Kashi's will, and, if not, whether he is her next heir.

Costs to follow the final decision.

*Decree reversed.*

(1) 11 Moore's Ind. App., 487.

(2) I. L. R., I Mad., 290.

## APPELLATE CIVIL.

*Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice Melvill.*

July 19.

SAYAD MAHOMED ALI (ORIGINAL DEFENDANT), APPELLANT, v. SAYAD GOBAR ALI (ORIGINAL PLAINTIFF), RESPONDENT.\*

*Mahomedan law—Wakf—Grant—Descent per stirpes—Grant in inám to grantee and his children, without restriction as to names, in order that they may pray for the perpetuity of Government.*

A *sanad* of the Emperor Sháh Jehán, dated A. D. 1651-52, granted in *inám* to one Sayad Hasan the village of Dharoda and certain lands of another village in these terms:—"Let the whole village above mentioned, as well as the above-mentioned land, be hereby settled and conferred as above, manifestly and knowingly as a help for the means of subsistence for the children of the above-mentioned Sayad

\* Second Appeal, No. 336 of 1880.

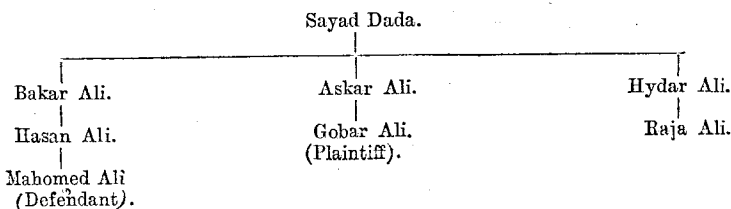
Hasan without restriction as to names, in order that, using the income thereof from season to season and from year to year for their own maintenance, they may engage themselves in praying for the perpetuity of this ever-enduring Government”.

*Held* that this grant did not constitute *wakf*, or a religious endowment, making the village descendible to the issue of the donee *per stirpes* (that is, allowing representation) rather than according to the ordinary Mahomedan law; and the direction that the donee and his issue were to pray for the perpetuity of the then existing Government, meant no more than an inculcation of gratitude for the gift; and that neither neglect to fulfil the direction nor the downfall of the Government would work a forfeiture or avoidance of the grant.

Although a *wazifa* grant may be a religious endowment, such is neither necessarily nor even generally its nature. Hence the use of term *mauzif* (alias *wazif* or *wazifa*), with regard to the grant of a village, does not stamp the grant as a *wakf* or religious endowment.

THIS was a second appeal from the decision of S. H. Phillpotts, Judge of Ahmedabad, reversing the decree of R. B. Mukundraya Maniraya, Subordinate Judge (First Class) of Ahmedabad.

The Emperor Shah Jehan in A. D. 1651-52 granted in *inam* the village of Dharoda, pargana Matar, in the collectorate of Kheda, to one Sayad Hasan. The substantial words of the *sanad* ran thus:—“ Let the whole village above mentioned as well as the land above mentioned be hereby settled and conferred as above, manifestly and knowingly as a help for the means of subsistence for the children of the above-mentioned Sayad Hasan, without restriction as to names, in order that, using the income thereof from season to season and from year to year for their own maintenance, they may engage themselves in praying for the perpetuity of this ever-enduring Government.” In pursuance of this grant the descendants of Sayad Hasan have been enjoying the proceeds of the village of Dharoda. The last holder of the half share of the village was one Sayad Dada, whose descendants were as follows:—



1881

SAYAD  
MAHOMED  
ALI  
v.  
SAYAD  
GOBAR ALI.

Of the sons of Dada the youngest, Hydar Ali, died first, and Raja Ali succeeded as a sharer. The plaintiff's father died next, and the plaintiff succeeded him. Next died Raja Ali childless. Then died Bakar Ali, leaving his grandson Mahomed Ali, the defendant. Under these circumstances the plaintiff sued to establish his right to a half share of the proceeds of the village enjoyed by Raja Ali, on the ground that the property was *wakf*, and, as such, descendible *per stirpes*. He also set up a family custom.

The defendant denied that the property was *wakf*, and that any custom favouring representation existed in the family; and contended that, in accordance with the ordinary principles of the Mahomedan law, the plaintiff was entirely excluded, and could claim no more than a third share.

The Subordinate Judge rejected the plaintiff's claim: the District Judge reversed his decree, and awarded the claim.

The defendant appealed to the High Court.

*Nanabhai Haridas*, Government Pleader, for the appellant.

Rao Saheb *Vasudev Jaganath Kirtikar* for the respondent.

The judgment of the Court was delivered by

WESTROPP, C. J.—The learned District Judge founded his decree on the assumption that the village of Dharoda is held by the family of Sayads, who are the contending parties in this suit, as a religious endowment, to which the passages which he quoted from the *Khizanat ul Muftien* and the *Alamgiri*, as given at page 342 of the Appendix to McNaghten's Mahomedan Law, are applicable. To us it seems that those passages are properly applicable to what is known to Mahomedan law as *wakf*, and not to a mere grant to a man and his children, without restriction as to names, for his and their maintenance,—they engaging themselves in praying for the perpetuity of the then existing Government. The *farman* or *altamgha* grant, which contained that limitation, was dated A. D. 1651-52, and seemed to be a renewal of a former grant, but with the additional provision in favour of the children of the donee “without restriction as to names”, which addition is not sufficient to enable us to say that the village was to be descendi-

ble to the issue of, the donee *per stirpes* (i. e. allowing representation) rather than according to the ordinary Mahomedan law. Our Persian interpreter says that he has never previously met the expression "children without restriction of names". We are unable to say that such a grant, as that contained in the *farman* of 1651-52, constitutes *wakf*, and we are inclined to think that the direction that the donee and his issue were to pray for the perpetuity of the then existing Government, meant no more than an inculcation of gratitude for the gift; and that neither neglect to fulfil the direction, nor the downfall of the Government, would have worked a forfeiture or avoidance of the grant (see the now repealed Bombay Regulation XVII of 1827, sec. 38, cl. 2). Nor would a Civil Court have given damages for the neglect, or enforced the offering of the prayers by any proceeding in the nature of *mandamus* or injunction. An attempt, however, was made on behalf of the plaintiff (the respondent) to show, *dehors* the *farman* of 1651-52, that the village of Dharoda was, in fact, held as a religious endowment; and for this purpose a passage, alleged to have been extracted from the *Mirat Ahmadi*, the historical work in Persian of Ali Mahamadkhan, at one time revenue minister of the province of Gujarat, was given in evidence. That passage (if genuine and accurate) seems to us to show that the villages of Basna, Aishpad, and Sarsa were held by the Shahya Sayads for the purpose of meeting their own expenses as managers of the shrine or sanctuary of the Pir Sayad Mahamad Shah Alam Saheb Bokari and a masjid and monastery appendant thereto, situate in the district of Rasulebad, and the expenses of the fairs or festivals held in connection with that shrine, but that the villages of Dharoda, Nehali, Bakrol (Yakrol), Amburali and Jalalpor were held for the maintenance (*vajh-maash*) of the same Sayads "in accordance with the ancient *farmans* of mauzif" (*wazifa*, *wazif*). Distinguishing thus between the objects for which those two sets of villages were granted, that extract does not appear to us to carry the case any further in favour of the plaintiff than the *farman* of 1651-52. For the respondent, however, it was argued that *mauzif* alias *wazif* meant a religious endowment; but the learned Government Pleader, on behalf of the defendant, has referred to Johnson's Persian and Arabic Dictionary, page 1274,

1881

---

SAYAD  
MAHOMED  
ALI  
v.  
SAYAD  
GOBAR ALI.

1881

SAYAD  
MAHOMED  
ALI  
v.  
SAYAD  
GOBAR ALI.

column I, where we find the following passage:—“ ‘ Muwazzaf, allowed a fixed pay or pension—*wazifa*—ordained, limited. ‘ Muwazzif’ one who orders a daily stipend”; page 1370 “ ‘ wazifat’ (pl. *wazasif* and *wazu f.*) a pension, stipend, salary, soldier’s pay, allowance of provisions, commons (by the day, month or year), any thing stipulated or agreed upon, a task, religious duty, employment, post, office, use, purpose.” “ ‘ Wazifkhuwur’ a pension.” Professor H. H. Wilson in his Glossary, page 557, describes ‘ *wazifa*’ as “ a pension, a stipend, a grant of land rent free, or at a quit rent, to pious persons, or for past services: revenue collected at a stipulated or fixed rate for a certain quantity of land”, and ‘ *wazifadar*’ as “ the holder of a pension or of a rent-free grant of land.” Mr. E. P. Robertson, in his Glossary at page 49, plac. 2, speaks of ‘ *wazifa*’ as “ land granted rent free or at a quit rent by the Mahomedan Government to pious persons for past services, and to Kazis. It now (he continues) in many instances pays *salami* to Government. Some of the *Padshahi* and other grants are still forthcoming. When Gujarat was subordinate to the Court of Delhi, the Emperors of Hindustan and their subordinate Governors gave many grants even of entire villages under the term *wajipha*, signifying a deduction,—that is, an authorized deduction from the gross revenue on account of alienations. In addition to the above there are lands, which are called ‘ *wajipha*’, that were claimed by purchase or gift from the late Governments, and for which many of the proprietors hold vouchers; while, with regard to others, the plea of long possession is all that they can urge in support of their claims.” Morley (Digest, Vol. I, p. 646) mentions ‘ *wazifah*’ as “ lands assigned for the payment of pension or stipend.” There are three cases reported by Borradaile <sup>(1)</sup> in relation to *wazifa* lands, in none of which cases are the lands there in litigation treated as held by way of religious endowment or *wakf*. Of *wazifa* lands in the district of Surat, the Bombay Gazetteer <sup>(2)</sup> says that they were granted by the Mussalman rulers, and yield a small quit rent of from annas six to rupees three per bigha. In the same work <sup>(3)</sup>, with respect to similar lands in the district of Broach, occurs the following passage:—“ The second class of lands held free

(1) 2nd ed., Vol. I, 131; Vol. II, 370, (2) Vol. II, p. 221, published in 1877.

1881

---

 SAYAD  
 MAHOMED  
 ALI  
 v.  
 SAYAD  
 GOBAR ALI.

of service are those known as *wazifa* or stipendary lands. This is a Mussalman form of gift, and is of importance in this district, as the estates of the *thakors* are technically alienations of this class. In a report on the alienated lands of the Broach subdivision in 1776<sup>(1)</sup>, *wazifa* lands are said to have extended over 5,873 acres, representing a yearly revenue of Rs. 30,000. Most of these lands were, it was stated, then enjoyed by Mahomedans, Kajis, Sayads, Fakirs and others who chiefly resided at Surat. Some of these alienees held under grants from the Delhi Emperors, others under grants from the Ahmedabad Sovereign, and a third class under grants from the Nawabs of Broach. These lands are now said to have almost entirely passed into the hands of Hindu money-lenders—Wanias, Brahmins, Brahma Kshatris, and others." In a report of Mr. Davies, Collector of Broach, dated 13th December, 1847, and published at page 92 of No. XXX of the New Series of the Selections from the Records of the Bombay Government, a particular species of *wazifa* is mentioned under the name of 'wuzzeefa khyrat' as denoting "lands held in prescriptive endowment of Mahomedan shrines (included under the general term of *Pasaeeta* in Appendix A to Regulation XVII of 1827)"; and at page 95 Mr. Davies says: "The 'wuzzeefa khyrat' is analogous to devasthan, the one being a Mahomedan and the other a Hindu term for lands originally bestowed with one and the same object, the support, viz., of religious establishments. I do not anticipate that much would be resumable out of this class of lands, nor indeed any, except in cases where the alienation was found to be continued to the benefit of individuals rather than of establishments." '*Khyrat*', *khairat*, is by H. H. Wilson<sup>(2)</sup> described as "alms, charity; lands given as charitable endowments: (the term is more especially applicable to grants or alms given by or to Mahomedans)." It is derived from 'kair' which, Wilson says, means "good, well, best"<sup>(3)</sup>.

The result of these references is that, although a *wazifa* grant may be a religious endowment, such is neither necessarily nor

(1) Mr. Perrott's Rep. 16th May, 1776, Pol. Dep., Diary No. 70.

(2) Glossary, p. 274, and see 2 Malcolm's Central India, pp. 28, 74, 3rd ed.; Galloway's India, p. 76.

(3) Glossary, p. 274.

1881

SAYAD  
MAHOMED  
ALI  
v.  
SAYAD  
GOBAR ALI.

even generally its nature. Hence the use of the term 'mauzit' (*alias* wazif, wazifa,) with regard to Dharoda does not stamp the grant of that village to the Sayads as a religious endowment or *wakf*; and, as already observed, it is, as an allotment of maintenance, placed in antithesis to Basna and two other villages devoted to the purpose of maintaining the fairs or festivals held in connection with the shrine of Shah Alam. The plaint, filed by Sayad Hasan Ali against the Talukdari Settlement Officer in February, 1875, does not aid the respondent: inasmuch as the claim there made (third in order) in respect of village expenses in relation to the fairs is expressly rested on agreement by way of compromise, and not upon the terms of any original grant. To countervail the inference sought by the respondent to be drawn from the Mirat Ahmadi and the plaint just mentioned, that, *dehors the farman*, it appeared that the village of Dharoda must originally have been granted to the Sayads for the purpose of supporting the shrine and its fairs, the appellant was rightly permitted to use in evidence the record in Special Appeal 254 of 1871, a suit in which the present respondent Gobar Ali and others of his family, were defendants. Those defendants had, in their written statement, set up against the plaintiff (who sued to establish the title of his judgment-debtor Ladli Begum to a share in the village of Dharoda) as a defence that she had not any share in the village,—it being a joint ancestral property, and a charitable endowment which could not be divided. But, in the judgment of Mr. F. D. Melvill (our late esteemed colleague), then Acting District Judge of Ahmedabad, it is stated that "on the hearing of the (regular) appeal it is admitted by the respondents that their plea—that the property is an endowment, and, therefore, not liable to the rules ordinarily applicable in regard to its descent and alienation—cannot be sustained." He held her entitled to a twelfth share in Dharoda as heir of her husband Gulam Mahamad (one of the Sayads), which decree was affirmed with costs in this Court by Sir C. Sargent and Mr. Justice M. Melvill on the 22nd January, 1873, and is at direct variance with the mode of descent insisted upon by the respondent (Gobar Ali), the plaintiff in the present case.

It may be that there are instances in which grants by way

of *maddad i. maash* or *wazifa* are accompanied by such circumstances and conditions as to render them religious endowments, and descendible in a manner different from the ordinary law of descent prevailing amongst Mussalmans ; but the present case is not, in our opinion, such an instance.

1881  


---

 SAYAD  
 MAHOMED  
 ALL  
 v.  
 SAYAD  
 GOBAR ALL.

*Bibi Kuneez Fatima v. Bibi Shahba Jan* <sup>(1)</sup> in many of its circumstances resembled the present case. The grant there in question was held not to amount to *wakf*; yet there, as here, the grant was made to a Sayad the descendant of a Pir, was described as '*aima' ayma* <sup>(2)</sup>, and stated to be for the support of himself and his family, and he was to pray for the grantor. There was the additional circumstance in that case, not found in the *farman* with which we have to deal, that one of the objects of the grant was to defray the expenses of a khankah, *i.e.*, "a monastery, a place where religious mendicants of the Mahomedan religion temporarily reside"<sup>(3)</sup>. Whether we should concur with the High Court of Calcutta in holding that a grant for the support of a khankah is not a religious endowment, we do not express any opinion, and it is not necessary that we should do so.

The terms of the sanad by way of *maddad i. maash* in *Shah Uzeezollah v. The Collector of Saharanpur* are not set forth in the report in 4 Sadr Divani Adalat (Calcutta) Reports, 312 ; but we observe that the law officers of the Sadr Adalat (page 316) described it, in their opinion, as "*sadkah*"<sup>(4)</sup> or "for charitable purposes." It was a grant by a Hindu potentate (Madhavrav Scindia) to Shah Abdulla and other faquirs.

We reverse the decree of the District Judge and restore that of the Subordinate Judge. The respondent having had the opinion of the District Judge in his favour, and there having

(1) 8 Calc. W. Rep., 313, 315.

(2) Wilson's Gloss., 13. He describes it as "land granted by the Mogul Government either rent free or subject to a small quit rent to learned and religious persons of the Mahomedan faith or for religious and charitable uses in relation to Mahomedanism."

(3) Wilson's Gloss., 278.

(4) 'Sadka', Wil. Gloss., 550. "Alms, property, dedicated to pious uses, voluntary alms in distinction to those imposed by law : also propitiatory offerings to avert sickness from a friend or relative indisposed."

1881

SAYAD  
MAHOMED  
ALI  
v.  
SAYAD  
GOBAR ALI.

been two instances in which the succession to shares in Dharoda has by the family been permitted to be *per stirpes*—the mode of descent for which he contends—we direct that the parties, respectively, do bear their own costs of this appeal. Those two instances, though insufficient to constitute an ancient and invariable custom, probably induced him to bring this suit. He must pay the costs in both of the Courts below.

*Decree reversed.*

## APPELLATE CIVIL.

*Before Mr. Justice Melvill and Mr. Justice Kemball.*

November 21.

ISA'K MAHAMAD AND ANOTHER (PLAINTIFFS), APPELLANTS, v. BA'I KHATIJA' AND OTHERS (DEFENDANTS), RESPONDENTS.\*

*Registration—Presentation—Residence of executant—Intending to register—Special cause—Registration Act VIII of 1871, Sections 31 and 85.*

The words “any person intending to register any document” in section 31 of the Registration Act VIII of 1871 include, not only the person or persons in whose favour a document is executed, but also any person or persons executing the same.

Under the provisions of that section, therefore, the presentation of a document for registration, on special cause shown, at the residence of a party executing it, is valid.

The registering officer is the judge of the sufficiency of the special cause; and, if he is satisfied, the Civil Court has no power to question his decision on that point.

Assuming the presentation at the residence of one of the executants of a document for registration to be an irregularity, it is one which, if committed in good faith, is covered by the provision of section 85 of Act VIII of 1871.

THIS was a second appeal from the decision of S. Hammick, Acting Assistant Judge of Surat, confirming the decree of Rao Saheb Chunilal Maneklal, Subordinate Judge of Broach.

On the 21st of August, 1874, the defendant, Khatija executed to the plaintiffs, Isak Mahamad and Ardesar Nasarvanji, a deed of sale of a certain field for Rs. 999. The deed was registered on the 5th of September following; but the defendants refusing to give up possession of the field, the plaintiffs brought the present suit.

\* Second Appeal, No. 279 of 1880.