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09 MARCH 1994

2311 PATHUSHA, K.M. Problems of awkaf and mutawallis  
-VAKIF, in Tamil Nadu. *Journal of Objective Studies*, 4 i  
-MÜTEVELLİ (1992) pp.136-141

# PRINCIPLES OF MAHOMEDAN LAW

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should exclude the more remote. (a) However, different view was taken while maintaining that the rule of exclusion of remoter by nearer heirs does not apply to endowed property. Thus, if the wakf is in favour of the descendants "generation after generation", the implication is that the nearer line or class takes first, and after them the line next after. But the principle that the children of a predeceased son are excluded by their uncles and aunts does not apply to endowed property. Hence, where there are no such words as "generation after generation" the profits are to be divided equally among all the descendants. (b)

The need of wakf cannot be struck down merely on the ground of being aimed at excluding wakif's son, a profligate. Wakf in favour of some members of family and excluding some others is not valid. (c)

Witness produced by claimant was not only interested but his evidence was self-contradictory as well. Propositus having left behind property worth lacs of rupees but claimant took no steps after his death to secure her shariat share in his property. Claimant was held unable to prove her relationship with deceased property-holder by independent evidence of unimpeachable character and contention that deceased could not dedicate more than one-third of this property without consent of legal heirs was unfounded. (d)

**191. Forfeiture of interest under Wakfnama on remarriage of widows:** A condition in a deed of wakf that the interest given by the deed to a widow or to the wife of a beneficiary shall be forfeited on her remarriage is not invalid. (e) The Wakfnama, being a gift, may expressly provide for the order of succession and the Wakf will not be invalid because such provisions are contrary to the rules of inheritance. (f)

#### Of Mutawallis or Managers of Wakf Property.

**192. Mutawalli:** Under the Islamic Law the moment a wakf is created all rights of property pass out of the wakf and vest in the Almighty. The mutawalli has no right in the property belonging to the wakf; the property is not vested in him, and he is not a trustee in the technical sense. He is merely a superintendent or manager. (g) The admissions of a

- (a) Maqsood Ali v. Zahid Ali; ('54) A A 385.
- (b) Mazhar Ali v. Murtuja; ('58) A Andh. Pra. 8.
- (c) Ghulam Shabbir v. Nur Begum; P L D 1977 S C 75.
- (d) Chief Administrator, Auqaf v. Najab Begum; P L D 1979 Pesh. 7.
- (e) Latafatunnisa v. Shaharbanu; (1932) 139 I C 292; ('32) A O 108.
- (f) Birjis Mahal v. Humayun Reza; (1944) 23 Pat. 203; ('44) A P 234.
- (g) Vidya Varuthi v. Balusami; (1921) 48 I A 302, 312; 44 Mad. 831; 65 I C 161; ('22) A P C 123; Abdur Rahim v. Narayan Das; (1923) 50 I A 84, 90; 50 Cal. 329; 71 I C 646; ('23) A P C 44; Saadat Kamel Hanum v. Attorney-General, Palestine; (1939) 183 I C 101; ('39) A P C 185; Daw Ein v. Daw Chan The; (1940) Rang. 136; 186 I C 210; ('39) A R 365.

mutawalli about the nature of the trust are not binding on his successors. (a)

**Suit for a declaration:** A mutawalli may sue in his personal capacity for a declaration that he is mutawalli without suing for possession. (b)

**Suit for possession:** A mutawalli is entitled to sue for possession, though the property is not vested in him. (c) Limitation is under Art. 142 from the date of dispossession and Art. 134 does not apply. (d)

**Appointment of mutawalli by arbitration:** The office of mutawalli of a public wakf, being in the nature of a public office, the question as to which of two persons is entitled to be mutawalli cannot be referred to arbitration. (e) But where A claims that certain property is wakf property and that he is the mutawalli thereof, and B denies that the property is wakf property, an award made by an arbitrator that each shall be entitled to an equal share in the management and profits of the property until the matter is decided by the Court, is perfectly valid. (f)

**Superintendent or manager:** Although the wakf property is not vested in the mutawalli he has the same rights of management as an individual owner. He is not bound to allow the use of the wakf property for objects which though laudable in themselves are not objects of the wakf. The Muslim community cannot compel the mutawalli of a mosque to allow a school building to be erected on a site attached to the mosque. (g) Again although a mutawalli is not a trustee in the sense in which the expression is used in English law he has duties akin to those of a trustee and if he wrongfully deprives a beneficiary of the profits he is liable for interest in cases in which, under Section 23 of the Trusts Act, a trustee would be liable. (h) It has even been said that in the case of a private wakf (i.e., a wakf for the family of the founder where only the ultimate benefit is reserved to charity) the mutawalli is not a mere superintendent or manager but is "practically speaking the owner" (i) *sed quere*.

**Mutawalli not duly appointed:** The liabilities of a mutawalli not duly appointed are the same as those of a duly appointed mutawalli. (j)

- (a) Sibte Rasul v. Sibte Nabi; (1942) A L J 722; ('43) A A 74.
- (b) Muhammad Jafar v. Muhammad Taqi Khan; (1934) 9 Luck. 170; 145 I C 1003; ('33) A O 517.
- (c) See (g), on page 266.
- (d) Wahid Ali v. Mahboob Ali Khan; (1936) 11 Luck. 297; 156 I C 92; ('35) A O 425.
- (e) Muhammad Ibrahim v. Ahmad; (1910) 32 All. 503, 6 I C 219.
- (f) Moazzam v. Raza; (1924) 46 All. 856; 81 I C 851; ('24) A A 818.
- (g) Syed Ahmed v. Hafiz Zahid; (1934) 153 I C 1095; ('34) A A 732.
- (h) Kishwar v. Zafar; (1935) 55 All. 164, 146 I C 733; ('33) A A 186.
- (i) Mohammad Qamar v. Salamat Ali; (1933) 54 All. 512, 147 I C 926; ('33) A A 407.
- (j) Jawaharbeg v. Abdul Aziz; ('56) A N 257.

## وظائف ناظر الوقف في الفقه الإسلامي

نور بنت حسن بن عبدالحليم قاروت<sup>(\*)</sup>

### المقدمة

الحمد لله الذي أمرنا بأداء الأمانة بعد أن عرضها على السماوات والأرض فأشفقن منها. والصلاة والسلام على الصادق الأمين الذي أدى الأمانة ونصح الأمة وجاهد في الله حق جهاده. وأشهد أن لا إله إلا الله وأن محمداً عبد ورسوله. وبعد:

فإن ناظر الوقف وضعت في عنقه أمانة لو قام بها تحقق له، وللوقف، ومصارفه، خير عظيم. والعكس بالعكس. فكم من أوقاف تُوقف جريان ثوابها على أصحابها بسبب إهمال ناظر الوقف.

وكم من أوقاف ضاع أصلها وامحى أثرها بسبب تضييع من ناظر الوقف.

وكم من غلة للوقف صرفت في غير وجهها بسبب سوء فهم من ناظر الوقف.

وكم من غني ثري مليء امتنع عن وضع ماله في صدقة جارية بسبب ما أشيع من قلة أمانة ناظر الوقف.

وكم من أرحام قطعت وخصومات اشتعلت بسبب سوء تصرف من ناظر الوقف.

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