

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, J.
Ghulam Mustafa Mughal, J.

Civil Appeal No.209 of 2018
(PLA Filed on 30.5.2018)

Qari Abdul Wahid s/o Feroz Din, caste Gujjar,
r/o Koteeah, Tehsil Tarrkhal, District Pallandri.
..... APPELLANT

VERSUS

1. Qari Abdulah Ishaq s/o Muhammad Ishaq,
caste Sudhan r/o Jandali, Tehsil
Rawalakot, District Poonch.
2. Abdul Manan s/o Abdul Rehman, caste
Gujjar r/o Nar Habibabad, Tehsil Tararkhal
District Sudhunoti Pallandri.
..... RESPONDENTS

(On appeal from the judgment of the High Court dated
5.4.2018 in Civil Appeal No. 80 of 2017)

FOR THE APPELLANT: Mr. Asghar Ali Malik,
Advocate.

FOR THE RESPONDENTS: Sardar Shamshad Hussain
Khan, Advocate.

Date of hearing: 30.10.2019.

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeal by leave of the Court arises out of the judgment dated 5.4.2018 passed by the Azad Jammu & Kashmir High Court in civil appeal No. 80 of 2017.

2. The brief facts forming the background of the captioned appeal are that Abdul Manan, respondent No.2, herein, filed a suit for declaration-cum-perpetual injunction and cancellation of *Waqafnama* dated 26.8.2011 against the appellant, herein, in the Court of Civil Judge Tararkhal on 3.1.2012. It was averred that land measuring 1 kanal 1 marla out of land listed in the suit was obtained through *waqafnama* by Qari Abdul Wahid, appellant, herein, in the name of Masjid Ahl-e-Hadith on 26.8.2011. It was further averred that *Jamia Masjid* in Tararkhal was of *Jamiat Ahl-e-Hadith* and the plaintiff has been performing his duties as Ameer, whereas the fact of the matter is that there was no existence of Jamaat Ahle-e-Hadith in the said village. It was further averred that

the defendant for the last one week joined *Jammat Ahl-e-Hadith* and wanted to obtain the possession of the aforesaid Masjid of *Jamiat Ahl-e-Hadith* by giving a fake *Waqafnama* of *Jammat Ahl-e-Hadith*, which was illegal and liable to be cancelled. It was stated that mutation No. 555 entered in this regard by the defendant was also liable to be cancelled. The suit was contested by the respondent by filing written statement. A counter suit was also filed by Qari Adul Wahid, appellant, herein, for declaration and perpetual injunction against Qari Abdullah and another before the same Court on 1.1.2012. It was averred in the suit that the disputed land was purchased from one Muhammad Ismail son of Hassan Muhammad through agreement dated 14.4.1981 in lieu of Rs.75,000/- for the purpose of construction of Masjid, hence, the defendants have no right to interfere in the matter of aforesaid Masjid. This suit was also resisted by the respondents by filing written statement, wherein they refuted the claim of the plaintiff.

The learned trial Court consolidated both the suits, framed issue in light of the respective pleadings of the parties and directed them to lead evidence pro and contra. At the conclusion of the proceedings vide judgment dated 10.12.2016 decreed the suit in favour of the Abdul Manan, respondent, herein, and set aside the *Waqafnama* dated 26.8.2011 as well as mutation No. 555, whereas, the counter suit filed by Qari Abdul Wahid, appellant, herein, was dismissed. Feeling aggrieved from the said judgment and decree, the appellant, herein, preferred two appeals before the District Judge Sudhnuti on 26.12.2016. The learned District Judge consolidated both the appeals and vide judgment and decree dated 19.10.2017 accepted the same. The judgment dated 19.10.2017 passed by the District Judge was further assailed through an appeal by the respondents, herein, before the Azad Jammu & Kashmir High Court on 1.11.2017. The learned High Court vide impugned judgment and decree dated 5.4.2018

while accepting the appeal has set aside the judgment and decree dated 19.10.2017 passed by the District Judge and restored the judgment and decree dated 10.12.2016 passed by the Civil Judge Tararkhal.

3. Mr. Asghar Ali Malik, the learned Advocate appearing for the appellant argued that a suit was filed by Abdul Manan against Qari Abdul Wahid for cancellation of the *Waqafnama* and a counter suit was also filed by Qari Abdul Wahid, appellant, herein, against Qari Abdullah and another. The suits were contested by the respondents and ultimately vide judgment and decree dated 10.12.2016 the learned trial Court dismissed the suit filed by Abdul Wahid and the counter suit filed by Abdul Manan was decreed. The learned Advocate submitted that feeling aggrieved from the judgment and decree dated 10.12.2016, an appeal was filed before the District Judge Pallandri, which was accepted and the judgment and decree passed by the trial Court was set aside. The learned Advocate

argued that Qari Abdullah, respondent, herein, filed an appeal before the Azad Jammu & Kashmir High Court, which was accepted illegally and against the record and the judgment and decree passed by the learned District Judge was set aside and that of the Civil Judge Tararkhal has been restored. He argued that during pendency of the appeal, Qari Abdullah, respondent, herein, has died, therefore, the Mosque Committee, who is managing the mosque may be allowed to be impleaded in line of respondents.

4. Sardar Shamshad Hussain Khan, the learned Advocate appearing for the respondents has objected to the application and submitted that Qari Abdul Wahid is a sole appellant and appeal stood abated and the mosque Committee cannot be impleaded in his place as he has not filed the appeal through Masjid Committee or as Mohtemam Masjid Committee.

5. We have heard the learned Advocates representing the parties and have gone through

the record of the case. A perusal of record reveals that Qari Abdul Wahid is a sole appellant and he has filed the appeal against the judgment and decree passed by the learned High Court dated 5.4.2018 in his personal capacity. He has not filed the appeal through mosque Committee, therefore, the question of substitution of Masjid Committee in his place is legally not tenable. The appeal has abated, which is hereby dismissed.

No order as to costs.

JUDGE

Muzaffarabad.
4.11.2019

JUDGE.

Qari Abdul Wahid vs. Qari Abdullah & another

ORDER:

Judgment has been signed. It shall be announced by the Registrar after notice to the learned counsel for the parties.

JUDGE

JUDGE

Muzaffarabad
4.11.2019.