2026 INSC 314

REPORTABLE

IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

CIVIL APPEAL NOS. 13345 - 13346 OF 2015

(@ Special Leave Petition (Civil) Nos. 13229 - 13230 of 2009)

SYED MOHAMMED GHOUSE PASHA KHADRI

... APPELLANT

versus

SYED MOHAMMED ADIL PASHA KHADRI & ORS. ETC.

... RESPONDENTS

J U D G M E N T

VIPUL M. PANCHOLI, J.

1. These are the civil appeals challenging the common judgment and order dated 15.04.2008 passed by the High Court of Karnataka at Bengaluru in Regular Second Appeal Nos. 1574 of 2005 and 1575 of 2005, whereby the High Court dismissed the second appeals filed under Section 100 of the Code of Civil

Procedure, 1908 (hereinafter referred to as "*the CPC*"), and affirmed the concurrent judgments and decrees of the Courts below, which had declared Syed Mohammed Adil Pasha Khadri (Respondent No. 1 herein) as the lawful Sajjadanashin of the Hazarath Mardane-e-Gaib Dargah, Shivasamudram, located in Chamarajanagar District, Karnataka.

FACTUAL BACKGROUND

2. The present dispute concerns succession to the office of Sajjadanashin of the Hazarath Mardane-e-Gaib Dargah, Shivasamudram, located in Chamarajanagar District, Karnataka.

3. The original Sajjadanashin of the Dargah was Peer Pasha Khadri, as per the Wakf Board's Notification dated 01.04.1965. Thereafter, Peer Pasha Khadri appointed his eldest son, Akhil Pasha Khadri, as Jan-Nasheen Sajjada (i.e. successor of the Sajjadanashin) of the Dargah. On 27.10.1980, Akhil Pasha Khadri passed away, predeceasing his father.

4. On 26.02.1981, at a religious function held in the presence of Sajjadanashins of other dargahs and elders in the community, Peer Pasha Khadri appointed and nominated Syed Mohammed Adil Pasha Khadri (respondent no. 1 herein), his grandson and son of late Akhil Pasha Khadri, to be the Jan-Nasheen Sajjada of the Dargah. The appointment and nomination was reduced in writing as Khilafatnama dated 26.02.1981 (Ex. P-72). On 06.10.1988, the original Sajjadanashin passed away and the respondent no. 1 became the Sajjadanashin of the Dargah.

5. The appellant (Syed Mohammed Ghouse Pasha Khadri), being the youngest son of the original Sajjadanashin, asserts a rival claim to the office of the Sajjadanashin, relying upon certain documents, including a General Power of Attorney (Ex. D-1), a handwritten Khilafatnama (Ex. D-13) and an affidavit (Ex. D-23) executed by the predecessor. Whereas, the respondent no. 1, being the grandson of the original Sajjadanashin, claims succession to the same office on the basis of a nomination made by the predecessor in Khilafatnama dated 26.02.1981 (Ex. P-72).

6. Thus, two civil suits came to be instituted before the Principal Civil Judge (Senior Division), Mysuru:

A. O.S. No. 724 of 1988 (renumbered as O.S. No. 342 of 1995), instituted by the appellant, asserting his claim as Sajjadanashin of the Dargah. Respondent No. 1 was not made a party to the suit and later filed an impleadment application.

B. O.S. No. 233 of 1989, instituted by the respondent no. 1, seeking declaration that he was the duly nominated Sajjadanashin of the Dargah and for consequential reliefs.

7. By a common judgment and decree dated 14.11.2000, the Trial Court decreed O.S. No. 233 of 1989 and dismissed O.S. No. 342 of 1995, holding that the office of Sajjadanashin was hereditary in nature, and thus, the respondent no. 1 had been validly nominated through Khilafatnama dated 26.02.1981 (Ex. P-72) and the documents relied upon by the appellant, including Ex. D-1, Ex. D-13 and Ex. D-23, did not confer Sajjadanashin-ship.

8. The appellant preferred two separate appeals, namely R.A. No. 8 of 2004 (against the decree in O.S. No. 233 of 1989) and R.A. No. 9 of 2004 (against the dismissal of O.S. No. 342 of 1995). Both the Regular Appeals were dismissed by the First Appellate Court and the findings of the Trial Court were upheld, by a common judgment and order dated 07.07.2005.

9. The Regular Second Appeals preferred by the appellant, namely R.S.A. Nos. 1574 and 1575 of 2005, were dismissed by the High Court of Karnataka, by the impugned common judgment and order dated 15.04.2008.

10. *Vide* the impugned judgment, the High Court recorded that the Trial Court had decreed O.S. No. 233/1989 in favour of the respondent no. 1 and O.S. No. 342/1995 (appellant's suit) was dismissed, the First Appellate Court had reappreciated the evidence and affirmed the findings. Thus, there were concurrent findings of fact in favour of the respondent no. 1. The High Court accepted the concurrent finding that the office of Sajjadanashin is hereditary in nature and succession was governed by established practice and nomination. It was held

that the Khilafatnama dated 26.02.1981 (Ex. P-72) was duly proved and executed by the original Sajjadanashin, and thus, the nomination of the respondent no. 1 was valid and further rejected allegations of fabrication or interpolation with Ex. P-72. It was further held that Ex. D-1, Ex. D-13 and Ex. D-23 relied upon by the appellant did not amount to nomination and these documents did not confer Sajjadanashin-ship.

11. Thus, the High Court concluded that the findings were factual in nature, no perversity was demonstrated and no substantial question of law arose under Section 100 of the CPC. Accordingly, the Regular Second Appeals were dismissed and the Trial Court and First Appellate Court judgments were affirmed, thereby declaring the respondent no. 1 as the rightful Sajjadanashin.

12. Aggrieved by the impugned judgment, the appellant filed Special Leave Petitions (Civil) Nos. 13229 and 13230 of 2009 before this Court. This Court, by the interim order dated 14.09.2009, directed the parties to maintain status quo and, by the order

dated 04.11.2015, leave to appeal was granted, culminating into the present appeals.

SUBMISSIONS ON BEHALF OF THE APPELLANT

13. Mr. Rabin Majumder, learned Counsel appearing on behalf of the appellant, at the outset, disputes the fact that the father of the respondent no. 1 was appointed as Jannasheen Sajjada in 1966. It is stated that the father of the respondent no. 1 was never appointed as Jannasheen or Sajjadanashin of the Dargah, nor did he hold any Khilafatnama at any time. The record demonstrates that he permanently shifted to Bangalore in 1966, after mortgaging certain Dargah lands and ceased to participate in the affairs of the Dargah.

14. It is stated that during this period, the appellant was granted Khilafatnama on 06.07.1969 (Ex. D-13) and thereafter maintained and managed the Dargah continuously from 1966 to 1981 and subsequently from 1982 onwards. Only after the demise of the original Sajjadanashin in 1988 did the respondent no. 1 seek to intervene by getting himself impleaded in O.S. No. 724 of 1988 (renumbered as O.S. No. 342 of 1995), thereby

disputing the appellant's long-standing management of the Dargah.

15. Learned Counsel submitted that the Courts below committed serious errors in treating Khilafatnama dated 26.02.1981 (Ex. P-72) as conferring Sajjadanashinship despite it being only a record of Khilafat, and failing to properly interpret the Urdu, Persian and Arabic terminology used in the original document. It is stated that the document does not confer the office of Sajjadanashin, as under Islamic practice, the status of Khalifa or Jannasheen is distinct from that of Sajjadanashin, and the Courts below erred in treating the document as conferring succession to the office.

16. The office of Sajjadanashin primarily relates to spiritual functions, including religious teaching, conduct of Urs, Sandal ceremonies and spiritual discourse at the Dargah. It is submitted that the Courts below erred in treating Sajjadanashinship as a purely documentary right, contrary to the principles laid down in ***Syed Mohd. Salie Labbai v. Mohd. Hanifa (1976) 4 SCC 780***. It is further submitted that the

Courts below wrongly assumed the existence of a custom without proof, contrary to the principle that custom must be specifically pleaded and strictly proved, as held in the case of ***Ebrahim Aboobaker v. Tek Chand Dolwani, AIR 1953 SC 298***.

17. It is further submitted that the Courts below erred in ignoring material evidence, including Ex. D-1 (registered GPA of 1981) and Ex. D-23 (affidavit of the original Sajjadanashin), and the testimony of several witnesses supporting the appellant's claim to the office of Sajjadanashin. It is submitted that the affidavit executed by the predecessor Sajjadanashin was wrongly disregarded, despite affidavits being admissible evidence of intention and nomination, reliance is placed on ***Narbada Devi Gupta v. Birendra Kumar Jaiswal (2003) 8 SCC 745***.

18. It is further submitted that historically, movable and immovable assets of the Dargah, including Golak collections, Tabeez, Fateha offerings and other income, have been shared among the descendants of the original Sajjadanashin, who constitute the stakeholders of the Wakf property, and any declaration

recognizing a new Sajjadanashin cannot extinguish the established rights of other stakeholders, thus, the declaration granted by the trial court disregards this long-standing practice of shared management and benefit. In addition, it is submitted that the Wakf Board should not open the Golak solely in the presence of the Sajjadanashin, but in the presence of all stakeholders, in accordance with the established practice followed over generations.

19. Learned Counsel for the appellant submitted that Ex. P-72 suffers from the following serious suspicious circumstances:

A. The original document only recorded the grant of Khilafat to the respondent no. 1.

B. The word "Jannasheen" was subsequently inserted in the document by the same scribe, who was the maternal uncle of the respondent no. 1.

C. This interpolation occurred nine years after the death of the original Sajjadanashin and the addition was not

countersigned or authenticated with the proper seal of the original authority.

20. It is stated that these serious suspicious circumstances surrounding Ex. P-72 were ignored by the Courts below, despite the requirement of a heightened standard of proof as held in the case of ***H. Venkatachala Iyengar v. B.N. Thimmaiamma, AIR 1959 SC 443***. It is therefore prayed that Ex. P-72 be sent to the Central Forensic Science Laboratory (CFSL) for examination, in the interest of justice before final adjudication, to determine whether the word "Jannasheen" was inserted later, whether the ink and handwriting differ, and the approximate time of the original writing and subsequent additions.

21. Learned Counsel for the appellant further submitted that the burden of proof was wrongly shifted onto the appellant, though the respondent no. 1, as the propounder of Ex. P-72, bore the primary burden, reliance was placed on ***Rangammal v. Kuppuswami (2011) 12 SCC 220***.

22. Learned Counsel for the appellant further relied upon extensive documentary evidence, including 163 documents and

correspondence with the Wakf Board, demonstrating that the appellant had been recognized and functioning as Jannasheen/Sajjadanashin both during the lifetime of the original Sajjadanashin and thereafter.

23. In light of the above submissions, learned Counsel for the appellant submitted that the findings of the Courts below are legally unsustainable, having been based on misinterpretation of documents, failure to consider material evidence and incorrect application of legal principles governing succession to the office of Sajjadanashin. It is therefore submitted that the impugned judgment is liable to be set aside.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 1

24. Ms. Pritha Srikumar Iyer, learned Counsel for the respondent no. 1, at the outset, submitted that the Sajjadanashin is the spiritual head and manager of the Dargah, superior to the Mutawalli and responsible for religious guidance and administration. The position is traditionally hereditary and the founder or incumbent Sajjadanashin has the authority to

nominate a successor (Jan Nasheen) from among his disciples (Khalifas).

25. It is submitted that the Trial Court declared the respondent no. 1 as Sajjadanashin and dismissed the appellant's suit, the First Appellate Court dismissed both appeals filed by the appellant, and the High Court of Karnataka dismissed the Second Appeals, thereby confirming the findings in favour of the respondent no. 1.

26. Thus, all three courts (Trial Court, First Appellate Court, and High Court) concurrently held that:

A. Peer Pasha Khadri was the original Sajjadanashin and the office of the Sajjadanashin was hereditary in nature.

B. The respondent no. 1 was validly appointed successor (Jan Nasheen) through a religious ceremony witnessed by fakirs, murids and other Sajjadanashins.

C. The appointment was documented contemporaneously in Ex. P-72 dated 26.02.1981.

D. The appellant was present at the ceremony and attested the document as a witness, demonstrating acknowledgment of the appointment.

E. The documents relied upon by the appellant do not constitute a valid nomination of successor, as the General Power of Attorney (Ex. D-1) operated only during the lifetime of Peer Pasha Khadri and the Affidavit (Ex. D-23) does not amount to a Khilafathnama or appointment as Sajjadanashin.

27. Learned Counsel for the respondent no. 1 submitted that the contention of the appellant that only a living son can succeed as Sajjadanashin was never pleaded in the written statement and is an afterthought. In earlier proceedings, the appellant himself admitted that a Sajjadanashin can nominate any successor and there is no rigid rule of succession.

28. It is further submitted that the argument of the appellant that the respondent no. 1 resided in Bangalore was examined and rejected by both the Trial Court and the First Appellate Court.

It is stated that the evidence shows that the respondent no. 1 also resided in Shivasamudram.

29. Learned Counsel for the respondent no. 1 submitted that three courts have concurrently found, on facts and law, that the respondent no. 1 was validly appointed successor (Jan Nasheen) and is the rightful Sajjadanashin of the Dargah. In addition, the contentions raised by the appellant lack pleading, legal basis or evidentiary support, and therefore, the findings in favour of the respondent no. 1 deserves to be upheld.

ANALYSIS, DISCUSSION AND FINDINGS

30. Having heard the learned Counsel appearing for the parties and having carefully perused the pleadings, documentary material and the judgments of the Courts below, the principal question which arises for consideration before this Court is whether the High Court was justified in dismissing the Regular Second Appeals filed under Section 100 of the CPC, on the ground that no substantial question of law arose for consideration, particularly in the light of the concurrent findings recorded by the Trial Court and the First Appellate Court with respect to the

succession to the office of Sajjadanashin of Hazarath Mardane-e-Gaib Dargah, Shivasamudram.

31. At the outset, it must be emphasised that the jurisdiction of the High Court under Section 100 of the CPC is confined to examination of substantial questions of law arising from the judgment of the First Appellate Court, as held in the case of ***Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179***. It is well settled that concurrent findings of fact recorded by the Courts below cannot ordinarily be interfered with in second appeal unless such findings are shown to be perverse, based on no evidence, or arrived at by ignoring material evidence or by applying erroneous legal principles.

32. In the present case, both the Trial Court and the First Appellate Court, upon detailed appreciation of oral and documentary evidence, have recorded concurrent findings that Syed Mohammed Peer Pasha Khadri was the original Sajjadanashin of the Dargah and that the office was hereditary in nature, with the incumbent Sajjadanashin possessing the authority to nominate a successor.

33. In this regard, the First Appellate Court relied upon the admission made by the official witness of the Wakf Board. The appellate court recorded the following extract from the cross-examination of DW-6:

> *"In column No.4 there is mention that Mohammed Peer Pasha Khadri is the Sajjadanasheen... Instead of pronging as Mutatwlli by mistake it has been printed as Sajjadanasheen. It is a true that the said notification has not been so far corrected or cancelled... It is true that the designation of Sajjadanasheen is a hereditary post."*

Therefore, the appellate court rightly rejected the contention that the predecessor was merely a Mutawalli and held that the office of Sajjadanashin was hereditary in character.

34. Apart from the concurrent findings recorded by the Courts below, it is necessary for this Court to independently examine the legal principles governing succession to the office of Sajjadanashin, particularly in the context of religious endowments and Wakf institutions.

35. The office of Sajjadanashin occupies a distinctive position in Islamic religious institutions connected with Dargahs and Sufi shrines. The Sajjadanashin is not merely an administrative manager of Wakf property but is primarily the spiritual head of the shrine, responsible for preserving the spiritual lineage (silsila), guiding disciples (murids), conducting religious ceremonies such as Urs and Sandal, and maintaining the spiritual traditions associated with the shrine.

36. The legal position in this regard has been recognised by this Court in ***Syed Mohd. Salie Labbai (supra)***, wherein it was observed that the office of Sajjadanashin is fundamentally spiritual in character, though it may carry with it certain incidental rights relating to the management of the shrine. Similarly, ***Mulla: Principles of Mahomedan Law (20th Edition) in Chapter XII***, defines the office of Sajjadanashin as under:

> *"The word "sajjadanashin" (spiritual superior) is derived from sajjada, that is, the carpet used by Mahomedans for prayer, and nashin, that is, sitting. The sajjadanashin takes precedence on the carpet*

during prayers. The office of a mutawalli is a secular office; that of a sajjadanashin is a spiritual office, and he has certain spiritual functions to perform. All dargahs are not Khankhas but there is nothing uniform or rigid. All Sajjadanashins are not necessarily mutawallis of the properties of the institution. The office of mutawalli may be in another person. A Sajjadanashin was said in this case to resemble a Mahant of a Hindu Math. A sajjadanashin of a Khankhah enjoys the unique position of being a spiritual preceptor and a mutawalli. Differences between a sajjadanashin and a mutawalli were pointed out in Ikramiul Haq Shah v. Board of Wakfs (Rajasthan). The founder is generally the first sajjadanashin and after his death the spiritual line is continued by a succession of sajjadanashins."

37. At the same time, Indian courts have consistently held that succession to such religious offices is ordinarily determined by custom, usage, or nomination by the incumbent, depending upon the particular traditions governing the institution. In the context of Muslim religious institutions, the Supreme Court has recognised that offices such as that of a Sajjadanashin or Mutawalli may devolve in accordance with the established

customs of the institution, including nomination by the predecessor rather than strict rules of inheritance, as held in ***Syed Mohd. Salie Labbai (supra)***. ***Mulla: Principles of Mahomedan Law (20th Edition) in Chapter XII***, provides for the same as under:

> *"In the absence of a direction in the wakfnama the succession to the office of sajjadanashin is regulated by custom. One custom is that the "bhek" or order i.e., an electoral body consisting of fakeers and murids, instal a competent person generally a son or nominee of the late sajjadanashin. In a case before the Privy Council the "bhek" delegated their power to elect a sajjadanashin and it was held that the appointment of the sajjadanashin made in this manner was valid. If the Court is appointing a sajjadanashin, it should take account of the spiritual tradition and appoint if possible a descendant of the founder. As to the importance of nomination by the last sajjadanashin see the observations of Agha Haider J., in Ghulam Mahommad v Abdul Rashid. The Lahore High Court has decided that in the absence of directions in the Deed of Trust, or usage, a sajjadanashin can nominate his successor."*

38. From the record it transpires that the respondent no. 1 had been nominated as Jan-Nasheen Sajjada by the original Sajjadanashin through the Khilafatnama dated 26.02.1981 (Ex. P-72). The said document was accepted through a religious ceremony attended by members of the fraternity and other Sajjadanashins. It also transpired from the record that prevailing practice governing the Dargah recognises nomination by the incumbent Sajjadanashin as a valid mode of succession. It would, however, emerge that the document Ex. P-72, originally written in Urdu, Persian and Arabic, had been translated into English for the purpose of the proceedings. Upon analysing the document together with the surrounding circumstances and the oral evidence adduced by the parties, it can be said that the Khilafatnama conferred upon the respondent no. 1, the spiritual authority previously exercised by the incumbent Sajjadanashin and thereby constituted a valid act of nomination.

39. At this stage, it is relevant to observe that the execution of the said document was supported by the testimony of the attesting

witnesses. One of the witnesses, who was himself associated with another Dargah, deposed that the predecessor Sajjadanashin had formerly conferred spiritual authority upon the respondent no. 1 in the presence of several people. We find that the testimony of the said witness is credible and in fact the present appellant had failed to elicit any material in cross-examination that could discredit the evidence of the aforesaid witness.

40. From the record it also transpires that another witness also corroborated the circumstances in which the Khilafatnama was executed and described the religious ceremony during which the respondent no. 1 was nominated. Thus, the appellant has failed to point out from the documentary as well as oral evidence that the document Ex. P-72 is a fabricated document.

41. Now, it is the contention of the appellant that Ex. P-72 merely conferred Khilafatnama and did not amount to nomination as Sajjadanashin. From the examination of the aforesaid document as a whole and considering the surrounding evidence as well as the findings recorded by the Courts below, it can be

said that the document might not expressly use the term "Sajjadanashin", but, it clearly conveyed the intention of the incumbent Sajjadanashin to confer his spiritual authority upon the respondent no. 1 and to designate him as a successor. It is also the contention of the appellant herein that the word "Jan-Nasheen" had been subsequently interpolated in the said document. With regard to the said contention, we may observe that the appellant himself had admitted the existence and acceptance of the document, and once such admission was made, the burden shifted upon the appellant to establish the alleged interpolation. However, the appellant neither effectively cross-examined the attesting witnesses on this issue nor sought examination of the said document by a hand writing expert. Thus, in the absence of any substantive evidence supporting the allegation, the contention of the appellant is required to be rejected. We may add that at this stage it is not open for the appellant to contend that the said document be sent for necessary examination to the concerned expert.

42. It is a settled principle that mere suspicion cannot displace a document which has otherwise been duly proved. The burden of establishing forgery or interpolation lies on the party alleging it and this principle has been reiterated in ***H. Venkatachala Iyengar (supra)***. In the present case, the appellant failed to produce any cogent evidence to substantiate the allegation of interpolation before this Court as well.

43. It is also required to be observed at this stage that the appellant himself had earlier admitted the practice of succession through nomination by the incumbent Sajjadanashin. Thus, the admission of the appellant demonstrated that the office was not confined strongly to succession by a living son and that nomination by the incumbent Sajjadanashin was recognised in practice. Significantly, the material on record does not establish any rigid rule that the office must invariably devolve upon the eldest son of hereditary succession. Thus, the contention raised by the appellant that under Mohammadan law, only a living son may succeed to the office of Sajjadanashin is without factual basis and no material is produced by the appellant to support

this argument. The extracts produced by the appellant from ***Mulla (supra)*** in the course of oral submissions pertain to succession to property and not to appointment of a successor as Sajjadanashin.

44. On the contrary, the evidence produced before the Courts below indicates that the prevailing practice recognises the authority of the incumbent Sajjadanashin to nominate his Jan-Nasheen. We have gone through the reasoning recorded by the Courts below with regard to the aforesaid aspect based on documentary as well as oral evidence and we are of the view that the Courts below have not committed any error while recording the findings to the aforesaid effect.

45. The appellant has also relied upon certain documents, namely the General Power of Attorney (Ex. D-1), the Khilafatnama dated 06.07.1969 (Ex. D-13) and the Affidavit (Ex. D-23), to assert his claim to the office of Sajjadanashin.

46. We have examined the aforesaid documents upon which the appellant has placed reliance. From the General Power of Attorney (Ex. D-1), it can be said that the said document was

merely a power of attorney authorizing the appellant to act on behalf of the executant and did not confer any right of succession to the office. This view is consistent with the settled legal principle that a power of attorney creates only an agency relationship and does not transfer title or confer independent rights. The authority granted under such an instrument is ordinarily co-terminus with the life and authority of the principal. Consequently, a power of attorney cannot operate as a mode of succession to a religious office.

47. This position has been authoritatively affirmed by this Court in ***Suraj Lamp & Industries (P) Ltd. v. State of Haryana, (2012) 1 SCC 656***, where it was held that a power of attorney is merely an instrument of agency and cannot by itself transfer ownership or create proprietary rights. Applying the same principle, a document which merely authorises another person to act on behalf of the executant cannot be construed as conferring succession to a spiritual office such as that of a Sajjadanashin.

48. So far as the affidavit (Ex. D-23) is concerned, the same cannot be recorded as a valid instrument of nomination. It is required to be observed that from the evidence on record, it transpires that an act as significant as the appointment of a successor to the office of Sajjadanashin would ordinarily be performed through a clear and formal act consistent with the traditions of the institution. Thus, in absence of any other reliable corroborative evidence demonstrating that the affidavit represented such an act of nomination, we are of the view that the Courts below have rightly declined to treat the said document conferring any right of succession.

49. Another contention raised by the appellant is with regard to certain correspondences, photographs and oral testimonies to suggest that the appellant had been managing the affairs of the Dargah for several years. We have examined the said evidence and we are of the view that, at best, the said evidence indicated that the appellant had participated in certain managerial or ceremonial activities associated with the Dargah, however, such

participation by itself cannot establish succession to the office of Sajjadanashin.

50. With regard to the contention raised by the appellant that the respondent no. 1 resided in Bangalore and not at Shivasamudram, it is a specific finding recorded on the basis of the evidence by the Courts below that the respondent no. 1 was also a resident of Shivasamudram, and therefore, when a concurrent finding of the fact is recorded by the Courts below, at this stage, the said finding of fact cannot be interfered with.

51. The appellant has further contended that recognition of the respondent no. 1 as Sajjadanashin would extinguish the rights of other family members or stakeholders in the Wakf property. This submission is misconceived. The present litigation concerns succession to the office of Sajjadanashin and not the proprietary rights of descendants in Wakf property or income. The recognition of one individual as Sajjadanashin does not determine or extinguish the independent legal rights of other beneficiaries under Wakf law.

52. Considering the entire evidence on record, we are of the view that the respondent no. 1 was nominated as Jan-Nasheen by the original Sajjadanashin through the Khilafatnama dated 26.02.1981 (Ex. P-72) and lawfully succeeded to the office of Sajjadanashin upon the demise of the predecessor in the year 1988.

53. We have also gone through the reasoning recorded by the High Court while exercising jurisdiction under Section 100 of the CPC, we are of the view that the High Court has correctly held that no substantial question of law arose for consideration.

54. In fact, the entire challenge raised before this Court essentially seeks a re-appreciation of evidence and reconsideration of factual findings recorded by three courts. It is well settled that this Court, while exercising jurisdiction under Article 136 of the Constitution, does not ordinarily interfere with concurrent findings of fact unless such findings suffer from manifest illegality or result in grave miscarriage of justice.

55. Having examined the record, we find no such infirmity in the judgments of the Courts below.

56. In view of the aforesaid discussion, we find no merit in the present appeals.

CONCLUSION

57. Accordingly, the present Civil Appeals are dismissed.

58. Interim orders, if any, stand vacated.

59. Pending applications, if any, stand disposed of.

..... J.
[M.M. SUNDRESH]

..... J.
[VIPUL M. PANCHOLI]

NEW DELHI
02nd April, 2026

REPORTABLE

IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

CIVIL APPEAL NO(S). 4174-4177 OF 2026

(@ Special Leave Petition (Civil) Nos. 10706-10709 of 2025)

SYED MOHAMMED ADIL PASHA QUADRI
ALIAS SYED BUDAN SHA QUADRI ... APPELLANT

versus

SYED HASNAL MUSSANNA SHA KHADRI
& ORS. ETC. ...RESPONDENTS

J U D G M E N T

VIPUL M. PANCHOLI, J.

1. Leave granted.

2. These appeals are directed against the final common judgment and order dated 16.12.2024 passed by the High Court of Karnataka, Principal Bench at Bengaluru, in Regular Second Appeal (RSA) Nos. 1004, 1064, 1069, and

1141 of 2023. By way of the impugned judgment, the High Court set aside the concurrent findings and decrees of the Trial Court and the First Appellate Court, holding that the Civil Court lacked inherent jurisdiction to adjudicate the dispute regarding the Office of Sajjadanashin of a notified Waqf institution, as such power is statutorily and exclusively reserved for the Waqf Board under the provisions of the Waqf Act.

FACTUAL BACKGROUND

3. The detailed facts leading to the present litigation, as adduced from the comprehensive records and written submissions, are as follows:

3.1. The present litigation involves a challenge to the final judgment and order dated 16.12.2024 passed by the High Court of Karnataka in Regular Second Appeals (RSA) Nos. 1004, 1064, 1069, and 1141 of 2023. The core of the controversy pertains to the entitlement to the spiritual and hereditary office of Sajjadanashin of the Hazarath Akhil Shah Quadri Dargah (popularly known as the "Big Makan") situated at Channapatna, Ramanagara District.

3.2. The Suit Dargah is a notified Waqf institution, and the office of Sajjadanashin is recognized under Mahomedan Law as that of a spiritual preceptor and teacher of religious doctrine, a post which is governed by long-standing customs and is distinct from the secular office of a Mutawalli.

3.3. The historical pedigree of the institution traces back to the founder, Janab Hazrath Syed Mohammed Akhil Shah Quadri, who was a spiritual mentor to Nawab Hyder Ali Khan Bahadur of the Mysore State. Official Muzrai records dating back to 16 June 1904 (marked as Ex. P-18) reflect that the great-grandfather of the present Petitioner, Syed Sultan Mohadin Sha Khadri, was the recognized Sajjadanashin of the Suit Dargah.

3.4. Upon the demise of the great-grandfather, the office devolved upon his son, Syed Mohammed Peer Pasha Khadri (the Petitioner's grandfather), who served as the presiding Sajjadanashin for several decades. In 1964, in accordance with the custom of nominating a successor-designate (*Jan-Nasheen Sajjada*), the grandfather nominated his eldest son, Syed

Mohammed Akhil Pasha Khadri (the Petitioner's father), to the office.

3.5. A pivotal vacancy occurred on 27 October 1980, when the Petitioner's father, while serving as the nominated successor, passed away during the lifetime of the presiding grandfather. To ensure spiritual continuity, the grandfather convened a religious function on 26 February 1981, in the presence of Sajjadanashins, Mujawars, and community heads, where he nominated his eldest grandson the Petitioner, Syed Mohammed Adil Pasha Quadri as the *Jan-Nasheen Sajjada*. This nomination was formalised in a written Khilafathnama (Ex. D.1).

3.6. The Petitioner's position in this litigation is anchored in this 1981 nomination and the subsequent devolution of the office upon him following his grandfather's death on 6 October 1988. He asserts that as the eldest grandson of the first branch, his right is superior and consistent with the proved customs of the Dargah, a contention that was upheld by both the Trial Court and the First Appellate Court.

3.7. Conversely, a rival claim was asserted by the line of the original Defendant No. 3, Mohammad Adil Basha Khadri, who is the father of the current Respondent No. 1, Syed Hasnal Mussanna Sha Khadri. Respondent No. 1's position is based on the assertion that the office of Sajjadanashin had devolved to his father through a Will executed in April 1944 by an uncle, Syed Sha Mohammed Ali Basha Khadri. He further contends that his father was selected and recognized as Sajjadanashin by a congregation of Fakirs and Murids on 10 December 1987.

3.8. Respondent No. 1 maintains that he succeeded his father to the office and is the one currently performing the spiritual duties at the Dargah. His primary legal stance throughout the second appeal has been that the Civil Court lacked inherent subject-matter jurisdiction, arguing that once the Dargah was notified as a Waqf, all matters of appointment and succession fell within the exclusive domain of the Waqf Board under Section 32(2)(g) of the Waqf Act.

3.9. The litigation formally commenced on 28 November 1988, when the Petitioner's uncle, Syed Mohammed

Ghouse Pasha Quadri (Respondent No. 30), filed O.S. No. 92/1988 seeking a declaration of his own status as Sajjadanashin based on a competing 1969 nomination. The Petitioner impleaded himself as Defendant No. 8 and filed a counter-claim on 16 January 1990, seeking a formal declaration of his title.

3.10. A significant procedural detour occurred on 22 August 2002, when the suit was transferred to the Karnataka Waqf Tribunal, Bangalore. However, on 17 December 2002, the Tribunal held that the dispute was not maintainable before it and returned the matter to the Civil Court for adjudication, a decision that went unchallenged for over two decades.

3.11. Following a trial spanning 31 years, during which 8 witnesses and 59 documents were examined for the defense, and 3 witnesses and 27 documents for the plaintiff, the Trial Court (Additional Civil Judge, Channapatna) delivered its judgment on 20 December 2019. The Court dismissed the suit of the uncle and decreed the counter-claim of the Petitioner, declaring

him the rightful Sajjadanashin after finding the 1981 Khilafathnama to be genuine and duly proved.

3.12. The Trial Court specifically rejected the 1944 Will and the 1987 selection claims made by Respondent No. 1's father, noting that the office of Sajjadanashin is a spiritual headship that cannot typically be bequeathed via a testamentary document in violation of customary hereditary lines.

3.13. On 27 February 2023, the First Appellate Court (Senior Civil Judge, Channapatna) affirmed the trial court's findings in their entirety. The Court held that the Petitioner had successfully established his nomination as *Jan-Nasheen Sajjada* in a public function and that the office of Sajjadanashin occupies a superior status to that of a Mutawalli.

3.14. Aggrieved by these concurrent findings, the Respondents, including Syed Hasnal Mussanna Sha Khadri (who preferred RSA No. 1004/2023), challenged the decrees before the High Court of Karnataka. The High Court, while not delving into the merits of the competing Khilafathnamas, set aside the judgments on 16 December 2024.

3.15. The High Court reasoned that under Section 3(i) of the Waqf Act, 1995, the term "Mutawalli" explicitly includes a "Sajjadanashin". Consequently, it held that the power to appoint or recognize a Sajjadanashin of a notified Waqf institution falls within the exclusive jurisdiction of the Waqf Board, rendering the 37-year Civil Court proceedings and decrees a nullity.

3.16. The Petitioner subsequently moved to this Court via the present Special Leave Petition, filed on 17 March 2025. On 13 May 2025, this Court issued notice and directed that "status quo, as of today, shall be maintained by the parties". The Petitioner has since filed an application for clarification, alleging that Respondent No. 1 forcibly took possession and broke the locks of the Dargah on 17.12.2024, a day after the High Court's pronouncement but before the judgment was uploaded.

SUBMISSIONS ON BEHALF OF THE APPELLANT

4. Ms. Pritha Srikumar Iyer, learned counsel appearing for the appellant, primarily contended that the impugned judgment of the High Court holding that there is an implied bar on the

jurisdiction of the civil courts in matters relating to appointment of a *Sajjadanashin* is wholly erroneous in law, contrary to the scheme of the Wakf Act, 1954 and Wakf Act, 1995, inconsistent with settled principles governing exclusion of civil court jurisdiction, and is thus liable to be set aside. Learned counsel has made the following submissions:

4.1. At the outset, it was submitted that the present dispute pertains to the appointment of the Sajjadanashin of Hazrath Akhil Shah Quadri Dargah, Channapatna, Karnataka ("Suit Dargah"), which is a spiritual office. A Sajjadanashin is the spiritual head of a Khanqah/Dargah, a religious teacher and guide, whose position is higher than that of a Mutawalli, who is merely a secular manager. The High Court itself has noted this distinction in the impugned judgment. The status and incidents of the office of Sajjadanashin are recognised in Mulla's Principles of Mahomedan Law (20th Edn., Chapter XII – Wakfs), which clearly delineates the spiritual character of the office.

4.2. It was contended that the High Court has fundamentally erred in conflating the office of

Mutawalli with that of Sajjadanashin and misreading Section 3(j) of the Wakf Act, 1995 (pari materia with Section 3(f) of the 1954 Act). The definition of "Mutawalli" includes a Sajjadanashin only in limited circumstances where the Sajjadanashin performs the functions of a Mutawalli. This does not obliterate the distinction between the two offices. The Wakf Board's powers are confined to appointment and removal of Mutawallis, i.e., secular managers, and do not extend to appointment or removal of a religious head such as a Sajjadanashin.

4.3. Learned counsel submitted that the Wakf Act itself maintains this distinction. Section 64(2) of the Wakf Act, 1995 (Section 43(3) of the 1954 Act) expressly preserves the rights of a Sajjadanashin even upon removal of a Mutawalli, thereby recognising the independent and distinct status of the Sajjadanashin. It was further pointed out that during oral submissions before the High Court, counsel for the Karnataka Wakf Board (Respondent No. 24) conceded that the Wakf Board has never appointed any Sajjadanashin. This itself demonstrates that the

statutory scheme does not vest such power in the Board.

4.4. It was further contended that civil courts possess plenary jurisdiction under Section 9 of the Code of Civil Procedure to try all suits of a civil nature unless jurisdiction is expressly or impliedly barred. The exclusion of jurisdiction is not to be readily inferred. Even in relation to the Wakf Act, this Court in *Ramesh Gobindram (Dead) through LRs v. Sugra Humayun Mirza Wakf*, (2010) 8 SCC 726 has categorically held that the jurisdiction of civil courts is excluded only in respect of matters which the Act expressly requires to be determined by the Wakf Tribunal. The Wakf Tribunal is a creature of statute and cannot assume jurisdiction beyond what is conferred by Sections 6, 7, 83 and allied provisions of the Act.

4.5. Relying on *Ramesh Gobindram* (supra), it was urged that Section 85 of the Wakf Act, 1995 does not bar civil court jurisdiction in respect of all disputes relating to wakf property; it bars jurisdiction only in respect of those matters which are required by or under the Act to be determined by the Tribunal. The

present dispute-relating to succession to the spiritual office of Sajjadanashin-is not one such matter. Indeed, the suit had earlier been transferred to the Wakf Tribunal and was returned to the civil court on the ground that it was not within the jurisdiction of the Tribunal.

4.6. The reliance placed by the High Court on *S.V. Cheriyakoa Thangal v. S.V.P. Pookoya & Ors.*, 2024 SCC OnLine SC 1586 is misplaced, as that case pertained to appointment of a Mutawalli and not a Sajjadanashin. Similarly, reliance on *Fakhruddin v. Tajuddin*, (2008) 8 SCC 12 is misconceived; in that case, although this Court recognised the distinction between a Mutawalli and a Sajjadanashin, the issue of exclusion of civil court jurisdiction did not arise in the context of appointment of a Sajjadanashin. The bar on jurisdiction in that case arose in a distinct factual matrix and cannot be extended to the present case.

4.7. It was further submitted that the High Court gravely erred in raising and deciding a jurisdictional issue in 2025 in a suit instituted in 1988, after nearly 37–38

years of litigation. The original suit (O.S. No. 92/1988) was filed by Respondent No. 30 seeking declaration and injunction. The Petitioner was impleaded and filed a counter claim asserting his own status as Sajjadanashin. The Trial Court, after full-fledged trial and appreciation of evidence, dismissed the plaintiff's suit and decreed the counter claim in favour of the Petitioner by judgment dated 20.12.2019. The First Appellate Court, by judgment dated 27.02.2023, affirmed the findings and dismissed all appeals. These were concurrent findings on facts.

4.8. It was emphasised that no jurisdictional objection had been raised by the original plaintiff or other contesting respondents in their pleadings before the Trial Court or the First Appellate Court. Despite this, the High Court in second appeal set aside the concurrent judgments solely on the question of jurisdiction, holding that there was an implied ouster of civil court jurisdiction.

4.9. Learned counsel submitted that such an approach is impermissible. The suit had proceeded to full trial; the Wakf Board, though a party, did not challenge the

maintainability of the suit on the ground of lack of jurisdiction. In *Mumtaz Yarud Dowla Wakf v. Badam Balakrishna Hotel (P) Ltd.*, 2023 SCC OnLine SC 1378, this Court held that a remand order ought not to be passed on a belated plea of lack of jurisdiction in a case not involving coram non judice. In the present case, given the wide jurisdiction of civil courts under Section 9 CPC and absence of an express bar, no question of coram non judice arises.

4.10. It was further submitted that the High Court framed only limited substantial questions of law, of which Question No. 1 related to jurisdiction. Question No. 2 did not arise, as the Petitioner had pleaded and proved his entitlement to the office of Sajjadanashin. Question No. 3 regarding consequential relief also did not arise, as the Petitioner had sought and was granted consequential relief of injunction. No other substantial question of law warranting reconsideration of merits was framed. In such circumstances, remanding the matter after nearly four decades would cause grave prejudice to the

Petitioner and amount to prolonging litigation unnecessarily.

4.11. On relief, it was submitted that this Court ought not to remand the matter to the High Court. Instead, the Second Appeals ought to be rejected and the concurrent findings of the Trial Court and First Appellate Court restored. Alternatively, if this Court is inclined to remand the matter for reconsideration, appropriate directions may be issued to restore *status quo* as on the date of the impugned High Court judgment dated 16.12.2024. It was brought to the notice of this Court that subsequent to the impugned judgment, Respondent No. 1 broke open the lock of the Suit Dargah and entered the premises, claiming authority under the impugned order. Although this Court directed maintenance of status quo while issuing notice in the present SLP, the Petitioner's application for clarification was not entertained. Hence, protective directions are necessary to safeguard the Petitioner's entitlement pending final adjudication.

4.12. In sum, learned counsel submitted that: (i) there is no express or implied bar on the jurisdiction of civil courts in disputes relating to appointment of a Sajjadanashin; (ii) the High Court erred in conflating the offices of Mutawalli and Sajjadanashin; (iii) the Wakf Act does not vest power in the Wakf Board to appoint or remove a Sajjadanashin; (iv) the suit was fully tried and resulted in concurrent findings in favour of the Petitioner; and (v) remand after nearly four decades is wholly unwarranted. Accordingly, the impugned judgment deserves to be set aside and appropriate relief granted in favour of the appellant.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

5. *Per contra*, Mr. Anand Shankar Jha, learned counsel appearing for the respondent no. 1, made the following submissions:

5.1. Learned Counsel appearing for Respondent No. 1 (Syed Hasnal Musanna Sha Khadri) submitted that the impugned judgment of the High Court raises substantial questions concerning the statutory powers of Waqf Boards across the country and

correctly addresses two core issues, namely: (i) whether "Sajjadanashin" falls within the definition of "Mutawalli" under the Waqf Act, 1954 and Waqf Act, 1995; and (ii) whether the Waqf Board has jurisdiction over appointment and removal of a Sajjadanashin to the exclusion of civil courts.

5.2. It was submitted that the present dispute pertains to the Hazrath Syed Akhil Shah Quadri Dargah, Channapatna, Karnataka ("Channapatna Dargah"), and concerns entitlement to be declared as Sajjadanashin thereof. The original suit (O.S. No. 92/1988) was instituted in 1988. The Trial Court dismissed the suit but granted a declaration in favour of Defendant No. 8 (Petitioner herein). The First Appellate Court dismissed all appeals. In Second Appeal, the High Court framed substantial questions of law including whether the Waqf Board is exclusively authorised under the Waqf Acts to appoint and remove the Mutawalli and whether the jurisdiction of the Civil Court is ousted, and whether the office of Mutawalli and Sajjadanashin are one and the same.

5.3. Learned counsel submitted that Section 3(i) of the Waqf Act, 1995 (pari materia with Section 3(f) of the 1954 Act) defines "mutawalli" in inclusive terms and expressly includes within its ambit "sajjadanashin", among others. Thus, for the purpose of statutory administration and regulation of Waqf, the office of Sajjadanashin is subsumed within the inclusive definition of Mutawalli.

5.4. It was further submitted that Sections 32(2)(g), 63, 64 and 65 of the 1995 Act (and corresponding provisions of the 1954 Act) vest comprehensive powers in the Waqf Board, including:

- To appoint and remove Mutawallis (including those falling within the inclusive definition, i.e., Sajjadanashin);

- To assume direct management where no suitable person is available; and

- To exercise superintendence over the entire administration of Waqf, including religious offices integrally connected to the Dargah.

5.5. Reliance was placed on the decision of this Court in *S.V. Cheriyakoya Thangal v. S.V.P. Pookoya & Ors., (Supra)*, wherein it was held that appointment of a Mutawalli under Section 3(i) is wholly within the jurisdiction of the Waqf Board and not the Civil Court, and that the Waqf Tribunal is only an adjudicatory forum after the Board has exercised its jurisdiction.

5.6. It was further submitted that the reliance placed by the Petitioner on Section 64(2) of the 1995 Act (removal of Mutawalli not affecting personal rights as Sajjadanashin) is misplaced. Section 64(2) merely safeguards independent personal or spiritual rights and does not curtail the statutory power of the Board to regulate the office in its administrative dimension.

5.7. Learned counsel contended that if the Petitioner's argument is accepted, anomalous consequences would arise, namely:

- Appointment/removal of Mutawalli would lie before the Waqf Board;

- Appointment/removal of Sajjadanashin would lie before Civil Courts;

- Parties would bypass the specialised statutory authority and indulge in forum shopping;

- The entire statutory scheme of the Waqf Act would be rendered meaningless.

5.8. It was also submitted that there can be no estoppel against statute. In *Fakruddin (Dead) through LRs v. Tajuddin (Dead) through LRs., (Supra)*, this Court held that jurisdictional defects cannot be cured by consent, waiver or acquiescence. Hence, the fact that parties initially approached the Civil Court is legally irrelevant.

5.9. Learned counsel for the respondent No. 1 has also placed reliance upon the following decisions in support of his submission in *Kolhapur Canesugar Works Ltd. & Anr. Vs. Union of India & Ors. (2000) 2 SCC 536, Harshad Chiman Lal Modi Vs. DLF Universal Ltd. & Anr. (2005) 7 SCC 791 and Aliya Thammuda Beethathebiyyappura Pookoya & Anr. Vs. Pattakal Cheriyakoya & Ors. (2019) 16 SCC 1.*

5.10. On facts, it was pointed out that the Petitioner failed to establish valid nomination or entitlement; the

alleged Khilafatnama was not satisfactorily proved; no independent religious authority supported the alleged nomination; and the Petitioner was not residing in Channapatna nor continuously associated with the Dargah. It was submitted that in any event, the factual record does not support the Petitioner's claim.

5.11. Accordingly, Respondent No. 1 submitted that the High Court correctly examined the substantial questions of law and that the Civil Court's jurisdiction stands ousted in view of the statutory scheme.

6. Ms. Vrinda Bhandari, learned counsel appearing on behalf of respondent no. 24 has made the following submissions:

6.1. Learned Counsel appearing for Respondent No. 24 (Karnataka State Board of Waqf) submitted that the High Court's finding that disputes qua the position-holder of Sajjada Nasheen lie within the exclusive subject-matter jurisdiction of the Waqf Board is erroneous in part and requires proper statutory interpretation.

6.2. It was submitted that Section 32(1) of the Waqf Act, 1995 provides:

"Subject to any rules that may be made under this Act, the general superintendence of all [auqaf] in a State shall vest in the Board established or the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the auqaf under its superintendence are properly maintained, controlled and administered..."

6.3. Further, Section 32(2)(g) empowers the Board:

"to appoint and remove mutawallis in accordance with the provisions of this Act."

6.4. It was submitted that these provisions relate to the non-religious and administrative aspects of Waqf, such as appointment of Mutawalli as manager, protection of property, utilisation of income, and supervision of management. A Mutawalli is essentially a manager of Waqf property appointed under Section 32(2)(g), whose duties are enumerated under Section 50 of the 1995 Act and Rule 57 of the Karnataka Waqf Rules, 2017. These duties pertain to protection, preservation, maintenance and management of the Waqf institution and its properties.

6.5. On the other hand, a Sajjada Nasheen is the "spiritual superior" of a Dargah and in charge of spiritual affairs. Rule 2(xiii) of the Karnataka Waqf Rules defines Sajjada Nasheen as:

"Sajjada Nasheen means a spiritual superior of Dargah and incharge of spiritual affairs of such Dargah."

6.6. It was submitted that declaration of a Sajjada Nasheen is a religious affair over which the Waqf Board has no jurisdiction. The inclusive definition of Mutawalli in Section 3(i) must be read contextually, particularly in cases where the same individual holds both posts. A Mutawalli appointed under Section 32(2)(g) cannot automatically function as Sajjada Nasheen unless appointed under custom and succession.

6.7. Section 64(2) of the 1995 Act clarifies:

"The removal of a person from the office of the mutawalli shall not affect his personal rights, if any, in respect of the waqf property either as a beneficiary or in any other capacity or his right, if any, as a sajjadanashin."

Thus, removal of Mutawalli does not affect independent spiritual rights as Sajjada Nasheen.

6.8. It was submitted that the Waqf Board, being an administrative body, can only sanction the appointment of a Mutawalli. The post of Sajjada Nasheen is customary and must be established according to rules of succession. Any inter se disputes regarding entitlement must be adjudicated by the competent authority in law.

6.9. Without prejudice, it was submitted that if directed by this Court, the Board would adjudicate the dispute between the parties in accordance with customary and succession laws. However, based on the material on record, none of the parties have conclusively established entitlement to the post.

7. Accordingly, Respondent No. 1 and Respondent No. 24 have, on distinct yet statutory grounds, supported the interpretation of the Waqf Act within their respective spheres and have prayed that the impugned judgment be sustained or appropriate clarification be issued in accordance with the statutory scheme of the Waqf Act, 1954 and 1995.

ANALYSIS, DISCUSSION AND FINDINGS:

8. Having heard learned counsel appearing for the parties and having gone through the material placed on record, it would emerge that the controversy in the present matter pertains to the entitlement to the spiritual hereditary office of Sajjadanashin of Hazarat Akhil Shah Quadri Dargah situated at Channapattana (hereinafter referred, to as 'suit dargah'). It is the case of the present petitioner that Janab Syed Mohammed Peer Pasha Quadri was the Sajjadanashin of the suit Dargah. The grandfather of the petitioner appointed his elder son (father of the petitioner) as Jan-Nasheen Sajjada of suit Dargah as well as Shivanasamudra Dargah, in the year 1964. Thereafter, father of the petitioner died in the year 1980. It is further the case of the petitioner that on 26.02.1981 at a religious function held in presence of Sajjadanashins, Mujawars, Mutawallis of various Dargahs, Devotees and Community Heads, Syed Mohammad Peer Pasha Khadri appointed and nominated the petitioner, his eldest grand son and son of late Syed Akhil Pasha Khadri, to be the Jan-Nasheen Sajjada of the suit Dargah. It is also stated that appointment and nomination was also reduced in writing and signed by Syed

Mohammed Peer Pasha Khadri as well as those present at the function including the contesting respondent (original plaintiff). The said document was produced by the petitioner at Ex. D-1 before the concerned Trial Court.

9. It further transpires from the pleadings that the grand father of the petitioner passed away on 06.10.1988 and thereby the petitioner became Sajjadanashin of the suit Dargah as well as Shivanasamudra Dargah. Thus, the contesting respondent herein filed suit being O.S. 92/1988 for declaration and injunction asserting his claim as Sajjadanashin of the suit Dargah. In the said suit, the petitioner filed written statement along with counter claim seeking declaration and injunction in his favour in respect of the office of Sajjadanashin of the suit Dargah. At this stage, it is pertinent to mention that the suit was transferred to the Presiding Officer, Waqf Tribunal, Bangalore Division for adjudication on 22.08.2002. It is also revealed that on 17.12.2002, the Presiding Officer, Waqf Tribunal, Bangalore Division held that suit was not maintainable before the Tribunal and the same is sent back to the Civil Court. After the matter is sent back by the Tribunal to the Civil Court, the Civil Court issued notice to the parties to appear.

10. It further transpires from the record that the Trial Court, after considering the documentary as well as oral evidence, passed judgment and order on 20th December, 2019 whereby the suit filed by the contesting respondent/original plaintiff came to be dismissed and further decreed the counter claim of the petitioner.

11. The original plaintiff/contesting respondent herein preferred Regular First Appeal No. 7/2020 and 8/2020 against the dismissal of the original suit and decreeing of counter claim in favour of the present petitioner respectively. The other respondents also preferred Regular First Appeal No. 19 and 16 of 2020.

12. The First Appellate Court dismissed the appeals filed by the concerned respondents herein against which Regular Second appeals were preferred by the concerned respondents before the High Court.

13. As observed herein above, the High Court, by impugned judgment allowed the appeals by holding that there was a implied bar of the jurisdiction of the Civil Court and, therefore, the decree and the order passed by the Trial Court as well as the First Appellate Court were set aside by observing that the same are nullity. However, liberty has

been granted to the parties to approach the Waqf Board. The petitioner has, therefore, filed the present appeals.

14. The following questions are posed for our consideration in the present matter:

A. Whether the office of the Mutawalli and of the Sajjadanashin is the same?

B. Whether the Civil Court has jurisdiction to decide the issue involved in the matter?

C. Whether the High Court is right in quashing and setting aside the decree passed by the Trial Court in favour of the petitioner and also setting aside the orders passed by the First Appellate Court?

15. For considering the aforesaid questions posed before us the relevant provision of the Waqf Act of 1995, Karnataka Waqf Rules, 2017 are required to be examined.

16. Section 3 (i) of the Waqf Act (Act of 1995) defines the word Mutawalli which provides as under:

> "*(i) "mutawalli" means any person appointed, either verbally or under any deed or instrument by which a 1[waqf] has been created, or by a competent authority, to be the mutawalli of a 1[waqf] and includes any person who is a mutawalli of a waqf by virtue of any custom or who is a naib-mutawalli, khandim, mujawar, sajjadanashin, amin or other person appointed by a mutawalli to perform the duties of a mutawalli and save as otherwise provided in this Act, any person, committee*

or corporation for the time being, managing or administering any waqf or waqf property:

Provided that no member of a committee or corporation shall be deemed to be a mutawalli unless such member is an office-bearer of such committee or corporation:

Provided further that the mutawalli shall be a citizen of India and shall fulfil such other qualifications as may be prescribed:

Provided also that in case a waqf has specified any qualifications, such qualifications may be provided in the rules as may be made by the State Government;"

17. Section 32 provides for the powers of the Waqf Board which reads as under:

"*32. Powers and functions of the Board.—(1) Subject to any rules that may be made under this Act, the general superintendence of all auqaf in a State shall vest in the Board established or the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the auqaf under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such auqaf were created or intended:*

Provided that in exercising its powers under this Act in respect of any waqf, the Board shall act in conformity with the directions of the waqif, the purposes of the waqf and any usage or custom of the waqf sanctioned by the school of Muslim law to which the waqf belongs.

Explanation.—For the removal of doubts, it is hereby declared that in this sub-section, "waqf" includes a waqf in relation to which any scheme has been made by any court of law, whether before or after the commencement of this Act.

(2) Without prejudice to the generality of the foregoing power, the functions of the Board shall be— (a) to

maintain a record containing information relating to the origin, income, object and beneficiaries of every waqf;

(b) to ensure that the income and other property of auqaf are applied to the objects and for the purposes for which such auqaf were intended or created;

(c) to give directions for the administration of auqaf;

(d) to settle schemes of management for a waqf:

Provided that no such settlement shall be made without giving the parties affected an opportunity of being heard;

(e) to direct—

(i) the utilisation of the surplus income of a waqf consistent with the objects of waqf;

(ii) in what manner the income of a waqf, the objects of which are not evident from any written instrument, shall be utilised;

(iii) in any case where any object of waqf has ceased to exist or has become incapable of achievement, that so much of the income of the 1[waqf] as was previously applied to that object shall be applied to any other object, which shall be similar, or nearly similar or to the original object or for the benefit of the poor or for the purpose of promotion of knowledge and learning in the Muslim community:

Provided that no direction shall be given under this clause without giving the parties affected, an opportunity of being heard.

Explanation.—For the purposes of this clause, the powers of the Board shall be exercised— (i) in the case of a Sunni waqf, by the Sunni members of the Board only; and (ii) in the case of a Shia waqf, by the Shia members of the Board only:

Provided that where having regard to the number of the Sunni or Shia members in the board and other circumstances, it appears to the Board that the power should not be exercised by such members only, it may co-

opt such other Muslims being Sunnis or Shias, as the case may be, as it thinks fit, to be temporary members of the Board for exercising its powers under this clause;

(f) to scrutinise and approve the budgets submitted by mutawallis and to arrange for auditing of account of auqaf;

(g) to appoint and remove mutawallis in accordance with the provisions of this Act;

(h) to take measures for the recovery of lost properties of any waqf;

(i) to institute and defend suits and proceedings relating to auqaf;

(j) to sanction lease of any immovable property of a waqf in accordance with the provisions of this Act and the rules made thereunder:

Provided that no such sanction shall be given unless a majority of not less than two-thirds of the members of the Board present cast their vote in favour of such transaction:

Provided further that where no such sanction is given by the Board, the reasons for doing so shall be recorded in writing.

(k) to administer the Waqf Fund;

(l) to call for such returns, statistics, accounts and other information from the mutawallis with respect to the 1[waqf] property as the Board may, from time to time, require;

(m) to inspect, or cause inspection of, waqf properties, accounts, records or deeds and documents relating thereto;

(n) to investigate and determine the nature and extent of waqf and waqf property, and to cause, whenever necessary, a survey of such waqf property;

(na) to determine or cause to be determined, in such manner as may be specified by the Board, market rent of the waqf land or building;

(o) generally do all such acts as may be necessary for the control, maintenance and administration of auqaf.

(3) Where the Board has settled any scheme of management under clause (d) or given any direction under clause (e) of sub-section (2), any person interested in the 1[waqf] or affected by such settlement or direction may institute a suit in a Tribunal for setting aside such settlement or directions and the decision of the Tribunal thereon shall be final.

(4) Where the Board is satisfied that any waqf land, which is a waqf property, has the potential for development as an educational institution, shopping centre, market, housing or residential flats and the like, market, housing flats and the like, it may serve upon the mutawalli of the concerned waqf a notice requiring him within such time, but not less than sixty days, as may be specified in the notice, to convey its decision whether he is willing to execute the development works specified in the notice.

(5) On consideration of the reply, if any, received to the notice issued under sub-section (4), the Board, if it is satisfied that the mutawalli is not willing or is not capable of executing the works required to be executed in terms of the notice, it may, take over the property, clear it of any building or structure thereon, which, in the opinion of the Board is necessary for execution of the works and execute such works from waqf funds or from the finances which may be raised on the security of the properties of the waqf concerned, and control and manage the properties till such time as all expenses incurred by the Board under this section, together with interest thereon, the expenditure on maintenance of such works and other legitimate charges incurred on the property are recovered from the income derived from the property:

Provided that the Board shall compensate annually the mutawalli of the concerned waqf to the extent of the average annual net income derived from the property

during the three years immediately preceding the taking over of the property by the Board.

(6) After all the expenses as enumerated in sub-section (5) have been recouped from the income of the developed properties, the developed properties shall be handed over to mutawalli of the concerned waqf."

18. Section 50 of the Act of 1995 deals with duties of Mutawalli which provides as under:

"*50. Duties of mutawalli.—It shall be the duty of every mutawalli—*

(a) to carry out the directions of the Board in accordance with the provisions of this Act or of any rule or order made thereunder;

(b) to furnish such returns and supply such information or particulars as may from time to time be required by the Board in accordance with the provisions of this Act or of any rule or order made thereunder;

(c) to allow inspection of 1[waqf] properties, accounts or records or deeds and documents relating thereto;

(d) to discharge all public dues; and

(e) to do any other act which he is lawfully required to do by or under this Act."

19. Rule 57 of the Karnataka Waqf Rules (hereinafter referred to as Rules) also provides for duties of Mutawalli which reads as under:

"*57. Duties of the Mutawalli/Managing Committee.- (1) The Mutawalli or Managing Committee shall,-*

(1) take all steps to protect, preserve, maintain and manage the Waqf institution and its properties;

(2) take steps to update records of Waqf institution and its properties as provided in these rules;

(3) initiate proceedings in accordance with the provisions of the Act to recover the Waqf/Waqf properties under encroachment;

(4) identify the Waqf property which has potential for development as an educational institution, hospital, shopping centre, market, housing or residential flats and the like including agriculture/horticulture and forward the proposal for development of the same to the Board for its prior approval. The Board shall accord the approval in accordance with Act;

(5) open and operate Bank Account in any nationalized bank for the purpose of management of the affairs of the concerned Waqf institution. In the absence of the nationalized banks, the Mutawalli shall obtain prior approval of the Chief Executive Officer to open account in other banks;

(6) the interest accrued in these bank accounts shall be utilized for the needs of the destitute without expecting any reward and the transaction shall be accounted for;

(7) shall furnish quarterly progress report together with income and expenditure details in Form 49; and

(8) carry out all the duties as provided under the Act."

20. Thus, from the aforesaid provisions of the Act of 1995, it can be said that Mutawalli means any person appointed to manage/administer Waqf which includes naib-mutawalli, Idiadim, mujawar, sajjada nashin, amin or mutawalli.

21. Duties of the Mutawalli, as provided under Section 50, includes the duty to carry out direction of Waqf Board, proper maintenance of Waqf Property, keep accounts, apply income for waqf purposes and not to alienate property without permission. Similarly, Rule 57 of the Rules also provides for duties of Mutawalli which covers maintenance of accounts, budget preparation, audit compliance, reporting to Waqf Board. Thus, it can be said that the aforesaid functions of the Mutawalli are purely administrative functions. An office of Mutawalli is not a spiritual office.

22. At this stage, we would like to refer provisions contained in Section 64 of the Act of 1995 which provides as under:

> "*64. Removal of mutawalli.—(1) Notwithstanding anything contained in any other law or the deed of 1[waqf], the Board may remove a mutawalli from his office if such mutawalli—*
>
> *…*
>
> *(2) The removal of a person from the office of the mutawalli shall not affect his personal rights, if any, in respect of the 1[waqf] property either as a beneficiary or in any other capacity or his right, if any, as a sajjadanashin. …*"

23. Thus, from the aforesaid provision, it is clear that the removal of a person from the office of Mutawalli shall not

affect his personal rights in respect of Waqf property either as a beneficiary or in any other capacity or his right if any as Sajjadanashin.

24. At this stage, we would also like to examine the issue whether the office of Mutawalli and Sajjadanashin are one and the same. It is also relevant to observe at the outset that the word Sajjadanashin has not been specifically defined under the Act of 1995, however, under the Rules, it has been defined as under:

> *"Sajjadanashin means a spiritual superior of a Dargah and incharge of spiritual affairs of such Dargah."*

25. At this stage, it is required to be observed that in the impugned judgment, the High Court has discussed the aforesaid aspect while considering the aforesaid issue at issue no. IV and discussed as under:

> *"(c) Appropriate to refer to the terms "Khanqah", "Sajjadanashin" and "Dargah" as explained by Asaf A A Fyzee in his "Outlines of Mahomedan Law" IV Edn., at page 325, which is as under:*
>
> *A "Khanqah" (Persian, Carvanseral) is a Muslim Monastery or a religious institution where Dervishes and other seekers of truth congregate for religious instructions and devotional exercise. It is a muslim institution analgous in many respects to a math where religious instructions given according to Hindu faith. A "Khanqah" is founded by a Holy man in the place where his esoteric teaching acquires a certain fame and sanctity. After his*

death if he is buried there, as often happens the place may be also called his "takia' abode or resting place.

The religious head of a Khanqah is called a Sajjadanashin (literally, one who sits at the head of prayer-carpet). He is essentially a spiritual preceptor; he may- and enerally is- the mutawalli of Waqf property, thus, the secular office of a mutawalli must be distinguished from the spiritual status of Sajjadanashin.

The special feature of the office of a Sajjadanashin is that the original founder has the right to nominate his successor, who, in turn, enjoys the same right. Thus a chain of preceptors (called a Silsila) comes into being, and the followers, known as murids pay homage not only to the founder but also to the whole line, including the present link, called Pir murshid. Theoretically the most illustrious disciple is to be installed as heir-apparent, but, according to custom, in the majority of cases the office becomes hereditary. In one case the Sajjadanashin was found to be so worthless that he was removed from the mutawalliship, but was allowed to retain the spiritual office (Sajjadanashin) which was considered to be hereditary." (See Syed Shah Muhammad Kazim V. Syed Abi Saghir I.L.R. (1931) Pat. 288; Ghulam Mohammad V. Abdul Rashid I.L.R. (1933) Lah. 558 and Mohamed Oosman V. Essaq Salemahomed ILR (1938) Bom. 184).

The word Dargah, in Persian and Urdy, means a threshold. In india it is a term applied to a shrine or the Tomb of a Muslim Saint and is therefore a place of resort and prayer.

(d) Syed Ameer Ali in his "Mahommedan Law," Vol. 1, pages 443, 444, states:

'Sajjada' is the carpet on which prayers are offered. The Sajjadanashin is not only a Mutawalli but also a spiritual preceptor. He is the curator of the Dharga where his ancestor lies buried, and in him is supposed to continue the spiritual line Silsila. These Dhargas are the tombs of celebrated dervishes, who, in their lifetime, were regarded as saints. Some of these men had established Khankahs where they lived, and their disciples congregated. Many of them never rose to the importance

of a Khankah, and when they died their mausoleum become shrines or Dhargas. These dervishes professes esoteric doctrines and distinct systems of initiation. They were either Sufis or the disciples of Mian Roushan Bayezid, who flourished about the time of Akbar and who had founded an 'independent esoteric brotherhood,' in which the chief occupied a peculiarly distinctive position. They called themselves Fakirs on the hypothesis that they had abjured the world, and were humble servitors, of God; but their followers were honoured with the title of Shah or king.

Herklot gives a detailed account of the different brotherhoods and the rules of initiation in force among them. The preceptor is called the Pir- the disciple, the Murid. On the death of the Pir his successor assumes the privilege of initiating the disciples into the mysteries of Dervishism or Sufism. The relations which exists between a Pir and his Murids, as I understand the theory and practice of Dervishim, was a spiritual and personal one.

(e) Mulla in his Principles of "Mohomedan Law" (13th Edition) at page 204, has given the following description of the therm "Sajjadanashin":

The status of Sajjadanashin is higher than that of a mutawalli. He is the head of the institution and has a right to exercise supervision over the mutawalli's management. But the Sajjadanashin may also be a mutawalli and in that case, with reference to the Waqf property he is in no better position than a mutawalli. He has no power to borrow money for the purpose of carrying out the objects of the trust but he may like a mutawalli borrow money and incur debt, with the sanction of the Court, for the preservation of the Waqf property. The Court may remove a Sajjadanashin for misconduct and when framing a scheme may separate the offices of Sajjadanashin and mutawalli.

(f) Saksena in his "Muslim Law as Administered in India and Pakistan" (Third Edition) defines the rights and powers of a Sajjadanashin, at page 545, as follows:

A person may hold both the offices of a mutawalli and a Sajjadanashin, but the Court in framing the scheme u/s

92 of the CPC may separate the two offices. He should give all facilities to the devotees to perform their spiritual rites at the shrine at all reasonable hours. An new Sajjadanashin cannot be appointed by the Court, nor can he be ordered to furnish accounts. An injunction cannot be issued restraining him from alienating the property. He has full power of disposition over the income of the Waqf property, unless he spends money in Wicked living or an objects alien to his office. But it does not mean that the whole usufruct of a Khankah is at his disposal. The costs of religious ceremonies, etc., must be defrayed first. At some shrines, the members of the founder's family also, other than the Sajjadanashin, can share the surplus offerings which remain after payment of expenses. It is the duty of a Sajjadanashin to maintain accounts to show that he was rightly and properly spending money of the way/property upon expenses in connection with the object of the Waqf. It is the duty of the Sajjadanashin to apply the income of the waqf properties for the purposes of endowment. He has ordinarily full powers of disposition over any surplus income. In the exercise of that power he may, and no doubt it is very desirable that he should, provide for the needs of indigent members of the family. It may even be said that he is under amoral obligation to do so. But legally the disposition of the money is in his hands, subject to the terms of grants under which the property is held and to any proved custom of the institution. Mohammed Noor, J., of the Patna High Court has held that provision for a Sajjadanashin is not a provision for the man but for the institution. A khankah cannot exist and continue without a Sajjadanashin. In other systems, the personal expenditure of the head of such an institution has been curtailed to almost nothing by enjoining celibacy, as for instance, in the case of Christian monasteries or Hindu mutts or sangats. But islam prohibits celibacy, and a saint with family is the rule rather than an exception. In these circumstances, devotees and adherents of Khankahs have always made provisions for maintenance of the Sajjadanashin and his family, so that he may devote all his time to imparting religious and spiritual instructions to his disciples and be free from secular cares. A Sajjadanashin is an integral part of the

institution and the central figure so to speak therein. Its existence depends on his personality. In him is supposed to continue the spiritual line. Therefore, provision for his maintenance and that of his descedants is a provision for him as the head of the institution. It is a trust and not a personal grant.

"Khawja Muhammad V. Hamid AIR 11928 Lah. 778' Vidya Varuthi V. Baluswam (1922) 41 M.L.J. 346: AIR 1922 384 (Privy Council); Zooleka Bibi V. Abdein 6 Bom. L.R. 1058; Saiyad Jaffar El Edroos Vs. Saiyad Mahomed El Edroos.

(g) Since the office of Sajjadanashin as seen above is to be held and occupied by person considered to be spiritually superior and would be in charge of spiritual affairs, which falls within the realm of Islamic spirituality, it is appropriate to have a glimpse on the concept of Islamic spirituality to the extent relevant for the purpose of this case as under:

(i) Origin of the concept is traceable to verse No. 13 of Sura Hujarat, Chapter 49- of Holy Quran which states:

O mankind, we have created you from a male and a femaly, and made you into races and tribes, so that you may identify one and another. Surely the noblest of you, in the Allah's sight, is the one who is most pious of you. Surely Allah is All-Knowing, All-Aware."

(ii) Useful to refer to the preface to 'The Book of Wisdoms (Kitab Al-Hikam), A collection of Sufi Aphorisms by Shaykh Ibn 'Ata illah al-Iskandari, Translated by Victor Danner with the commentary Ikmail al-Shiyam by Shaykh 'Abdullah Gangohi' published by White Thread Press, White Thread Limited, London, UK, few excerpts of which are as under:

The discipline of Islamic spirituality had – as pointed by Mufti Taqi Usmani (b. 1362/ 1943)- a variety of titles in Arabic, such as ihsan (performing good deeds), tariqa (the Path), suluk (Good Manners) and tasawwuf (often translated as sufism). The most popular English title for Islamic spiritualilty is sufism, with the practitioner of sufism being called a sufi- the later corresponding to its

Arabic equivalent. … Tasawwuf, strictly speaking, is now method of the Orders (turuq, sing. Tariqa) and their Masters (simply called shyukh, sing shaykh). Some of the most famous Orders are the Naqhsbandi, Chishti, Qadiri, and Shadhili. Although tasawwuf is, in addition, used more generally by some non-Order scholars to simply denote the spiritual teaching of Qur'an and Sunna, or "way" of the Prophet Muhammad (PBUH).

Ibn Khaidun who linked tasawwuf to the Companions of the Prophet (PBUH), and he provided a very basic definition of tasawwuf:

"The basis of the spiritual path is dedication to worship, devotion to Allah Most High, turning away from the adornment and ornamentations of this worldly life, renunciation of what most people crave of pleasure, wealth and prestige, limiting one's interaction with the creation and being free for worship".

Imam Ahamed Sirhindi, (d. 1624) a Master of Naqhsbandi Order wrote;

"After one has acquired right beliefs (which refers to orthodox Islamic theology, or tenets of faith, known in Arabic as 'Aqida Ahl Al-Sunna Wa'l-Jama'a') and subject oneself to the rules of Shari'a, one should if God so wills, enter the path of Sufis".

More over, Junayd-al-Badhdadi(d. 297/910) one of the foremost Sufis of all time and a jurist of Imam Abu Thawr's school of jurisprudence said;

"Whoever has not memorized the Noble Quran or recorded the Hadith is not be taken as a guide in this affair because this knowledge of ours is tied (muqayyad) to the Book (of God) and Sunna."

If tasawwuf is thus connected to the Sacred Law and theology of Islam- as both Sirhindi and Junayd al-Baghdadi have mentioned then it naturally follows that the discipline, in essence, is part of Prophetic inheritance; hence it has always been the part of message of Islam.

(h) The aforesaid commentaries and exegesis on the subject of Sajjadanashin makes it clear that the both the office of Mutawalli and of the sajjadanashin can be held by a single person. Office of Sajjadanashin however carries with it higher and greater status in Islamic spirituality. There is no idol worship. That unless a person claiming to be appointed to the said office acquires and possesses such qualification and status in Islamic Spirituality, his appointment to the said post is not justified merely because he happens to be the eldes member in the male lineal descendancy. This is not a claim for person rights of an individual in respect of any estate or propitiatory assets of the deceased restricted to personal use and benefit of the claimant. This is an office requiring qualification, experience, recognition, following and adherence by many of those believe in the concept of Islamic spirituality of a particular Order and discipline at large and requires further teaching, preaching and propagating the same. It is in the interest of the institution that person claiming to the office of Sajjadanashin should be the one deserving for and qualified in al parameters as broadly noted above, needs to be appointed.

(j) In the case of Faqruddin (dead) through Lrs Vs. Tajuddin (dead) through Lrs (Supra) the Apex Court while dealing with the mode of succession to the office of Mutawalli also examined the office of Mutawalli vis-à-vis Sajjadanashin at paragraphs 29, 34, 36 and 46 has held as under:

> *29. Sajjadanashin is a spiritual office. Mutawalli is a manager of secular properties. Both of them are connected with a dargah of a Waqf. Matmi, however, is a process of mutation carried out in the revenue register in terms of Matmi Rules.*
>
> *34. The law of inheritance amongst the Mohammedans is governed by their personal laws. If the properties are Waqf properties, the offices of sajjadanashin and mutawalli are to be filled up in accordance with the law or the custom. If the properties are heritable, those who are the "Quranic Heirs" would be entitled to hold the said posts. Indisputable, the law of primogeniture has no*

application amongst the Mohammedans vis-à-vis their law of inheritance.

36. It is beyond any doubt or dispute that a mutawalli is the temporal head. He is the manager of the property. Office of sajjadanashin, however, is a spiritual office. It has to be held by a wise person. He must be fit for holding the office.

46. Inheritance or succession to a property is governed by statutory law. Inheritance of an office may not be governed by law of inheritance; but, the office of sajjadanashin is not an ordinary office. A person must possess the requisite qualifications to hold the said office."

26. From the aforesaid observation of the High Court, it is absolutely clear that as per the outlines of "Mohamedan Law (iv edition)", the special feature of the office of Sajjadanashin is that the original founder has the right to nominate his successor who in turn enjoys the same right. It is further clear that in majority cases the office of Sajjadanashin becomes hereditary. It has been also observed that in one case Sajjadanashin was found to be so worthless that he was removed from the Mutawalliship but was allowed to retain the spiritual office "Sajjadanashin" which was considered to be hereditary. Further, Mulla in his principles of "Mohamedan Law (13th Edition) has also describes the term Sajjadanashin by observing the status of Sajjadanashin is

higher than that of Mutawalli. He is the head of the institution and has a right to exercise supervision over the Mutawallis management. But the Sajjadanashin may also be a Mutawalli and in that case with reference to the Waqf property, he is in no better position than a Mutawalli. It has been further observed that the Court may remove a Sajjadanashin for misconduct and when framing a scheme may separate the office of Sajjadanashin and Mutawalli.

27. At this stage, it is also relevant to observe that in the case of *Faqruddin (dead) through Lrs Vs. Tejuddin (dead) through Lrs. (Supra)*, this Court observed in paragraph 29 that Sajjadanashin is the spiritual office. Mutawalli is the manager of secular properties. In paragraph 36 of the aforesaid decision, this Court has further observed that it is beyond any doubt or dispute that a Mutawalli is the temporal head. He is the manager of the property. Office of Sajjadanashin, however, is a spiritual office. It has to be held by wise person. He must be fit for holding the office.

28. It is relevant to observe that though the High Court has discussed the aforesaid aspect, ultimately while giving the answer to the issue no. IV has wrongly held that claim to the office of Sajjadanashin can neither be made as a matter of

right nor any rule of primogeniture and after observing the same it is also wrongly held that the Act of 1995 makes no distinction between the term Mutawalli and Sajjadanashin and ultimately High Court has committed an error while giving the finding that Civil Court has no jurisdiction to deal with the issue of appointment of Sajjadanashin.

29. At this stage, we would also like to refer the stand taken by the Respondent No. 24, Waqf Board in the written submission filed before us. It is the specific case of the Respondent No. 24 also that the role of Mutawalli of a Waqf only pertains to the administration and management of the Waqf and it is appropriate, therefore, his appointment comes within the purview of the Waqf Board as has been upheld by this Court in the case of *S.V. Cheriyakoya Thangal v. S.V. P Pookoya & Ors., (supra)*. It is also the case of the Respondent No. 24, Board that Sajjadanashin of a Waqf is the spiritual superior of a Waqf, who is incharge of only the spiritual affairs of a Waqf. Thus, it is stated by Respondent No. 24, Board that Sajjadanashin is the spiritual head of Waqf and as such declaration of Sajjadanashin is a religious affair, over which the Waqf Board would have no jurisdiction. It is also clarified by Respondent No. 24 that Sajjadanashin of a

Waqf can also discharge the function of its Mutawalli, if appointed under Section 32(2)(g) of the Act of 1995. However, a Mutawalli under Section 32(2)(g) cannot function as a Sajjadanashin and can only perform the duties as prescribed under the Act and the Rules.

30. In view of the aforesaid discussion, we are of the view that the High Court has committed grave error while concluding that Trial Court and the First Appellate Court were not justified in assuming the jurisdiction and deciding the matter pertaining the office of Sajjadanashin of suit Dargah and the same is required to be dealt with and adjudicated by the concerned Waqf Board.

31. Thus, in view of the aforesaid discussion, we are of the view that the Civil Court has jurisdiction to entertain the dispute involved in the present case and, therefore, the Trial Court has not committed any error while adjudicating the dispute involved in the present matter.

32. Even otherwise, it is required to be observed at this stage that it is the contesting respondent, the original plaintiff who has filed O.S. No. 92/1988 before the concerned Civil Court in which the present petitioner filed Written statement and filed his counter claim and after considering the evidence

adduced by the parties, the Trial Court decided the matter in favour of the present petitioner. Further during the pendency of the suit before the concerned Civil Court the case was transferred to the Waqf Tribunal (copy of the relevant document is produced at Page 152 and 153 of the compilation). The said case was registered as O.S. No. 14/2002 before the Waqf Tribunal. Thereafter, the Waqf Tribunal transferred the case to the Civil Court once again in the year 2002 itself and ultimately as observed hereinabove the concerned Civil Court, after considering the material placed before it decided the issue in favour of the present petitioner. It is pertinent to observe that the order of the Waqf Tribunal transferring the case to the Civil Court has not been challenged by the contesting respondent/original plaintiff and the said decision has attained finality. Further, at the relevant point of time also the plaintiff/contesting respondent herein did not raise the objection with regard to the jurisdiction of the Civil Court. In the Regular First Appeal filed by the contesting respondents herein they did not raise the issue of jurisdiction before the First Appellate Court also and for the

first time the issue of the jurisdiction of the Civil Court was raised in the second appeal before the High Court.

33. At this stage, we would like to refer the decision rendered by this Court in the case of *Mumtaz Yarud Dowla Waqf v. Badam Balakrishna Hotel(P) Ltd., (Supra)*. This Court has observed in paragraph 26 and 33 as under:

> *"26. Having dealt with the aforesaid principle and making it applicable to the Courts in India, we are inclined to hold that any failure on the part of the Court to do so would draw the legal maxim "actus curiae neminem gravabit' (no one shall be prejudiced by an act of Court). As a consequence, in a case where a Court has failed to check its jurisdiction and a plea has been raised subsequently and that too after receiving an adverse verdict, the forum shall not be declared as the one having lack of jurisdiction, especially when there is no apparent injury otherwise to the rights conferred under a particular statute. Indore Development Authority v. Manoharlal, (2020) 8 SCC 129,*
>
> > *"320. The maxim actus curiae neminem gravabit is founded upon the principle due to court proceedings or acts of court, no party should suffer. If any interim orders are made during the pendency of the litigation, they are subject to the final decision in the matter. In case the matter is dismissed as without merit, the interim order is automatically dissolved. In case the matter has been filed without any merit, the maxim is attracted commodum ex injuria sua nemo habere debet, that is, convenience cannot accrue to a party from his own wrong. No person ought to have the advantage of his own wrong. In case litigation has been filed frivolously or without any basis, iniquitously in order to delay and by that it is delayed, there is no equity in favour of such a person. Such cases are required to be decided on merits. In Mrutunjay Pani v. Narmada Bala Sasmal [AIR*

1961 SC 1353], this Court observed that : (AIR p. 1355, para 5)

"5. … The same principle is comprised in the Latin maxim commodum ex injuria sua nemo habere debet, that is, convenience cannot accrue to a party from his own wrong. To put it in other words, no one can be allowed to benefit from his own wrongful act."

324. In Mahadeo Savlaram Shelke v. Pune Municipal Corpn. [(1995) 3 SCC 33], it has been observed that the Court can under its inherent jurisdiction ex debito justitiae has a duty to mitigate the damage suffered by the defendants by the act of the court. Such action is necessary to put a check on abuse of process of the court. In Amarjeet Singh v. Devi Ratan [(2010) 1 SCC 417 : (2010) 1 SCC (L&S) 1108], and Ram Krishna Verma [Ram Krishna Verma v. State of U.P., (1992) 2 SCC 620], it was observed that no person can suffer from the act of court and unfair advantage of the interim order must be neutralised. In Amarjeet Singh [Amarjeet Singh v. Devi Ratan, (2010) 1 SCC 417 : (2010) 1 SCC (L&S) 1108], this Court observed : (SCC pp. 422-23, paras 17-18)

"17. No litigant can derive any benefit from mere pendency of the case in a court of law, as the interim order always merges in the final order to be passed in the case, and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim actus curiae neminem gravabit, which means that the act of the court shall prejudice no one, becomes applicable in such a case. In such a fact situation, the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from

delayed action by the act of the court. (Vide Shiv Shankar v. U.P. SRTC [1995 Supp (2) SCC 726 : 1995 SCC (L&S) 1018], GTC Industries Ltd. v. Union of India [(1998) 3 SCC 376] and Jaipur Municipal Corpn. v. C.L. Mishra [(2005) 8 SCC 423]).

18. In Ram Krishna Verma v. State of U.P. [(1992) 2 SCC 620], this Court examined a similar issue while placing reliance upon its earlier judgment in Grindlays Bank Ltd. v. CIT [(1980) 2 SCC 191 : 1980 SCC (Tax) 230] and held that no person can suffer from the act of the court and in case an interim order has been passed, and the petitioner takes advantage thereof, and ultimately the petition is found to be without any merit and is dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised."

325. In Karnataka Rare Earth v. Deptt. of Mines & Geology [(2004) 2 SCC 783], this Court observed that maxim actus curiae neminem gravabit requires that the party should be placed in the same position but for the court's order which is ultimately found to be not sustainable which has resulted in one party gaining advantage which otherwise would not have earned and the other party has suffered but for the orders of the court. The successful party can demand the delivery of benefit earned by the other party, or make restitution for what it has lost. This Court observed : (SCC pp. 790-91, paras 10-11)

"10. In … the doctrine of actus curiae neminem gravabit and held that the doctrine was not confined in its application only to such acts of the court which were erroneous; the doctrine is applicable to all such acts as to which it can be held that the court would not have so acted had it been correctly apprised of the facts and the law. It is the principle of restitution that is attracted. When on account of an act of the party, persuading the court to pass an order, which at the end is held as not sustainable, has resulted in one party gaining advantage which it would not have otherwise earned, or the other party has suffered an

impoverishment which it would not have suffered, but for the order of the court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms of money at the end of the litigation, is entitled to be compensated in the same manner in which the parties would have been if the interim order of the court would not have been passed. The successful party can demand : (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost.

11. In the facts of this case, in spite of the judgment [Karnataka Rare Earth v. Department of Mines & Geology, WPs No. 4030-4031 of 1997, order dated 1-12-1998 (KAR)] of the High Court, if the appellants would not have persuaded this Court to pass the interim orders, they would not have been entitled to operate the mining leases and to raise and remove and dispose of the minerals extracted. But for the interim orders passed by this Court, there is no difference between the appellants and any person raising, without any lawful authority, any mineral from any land, attracting applicability of sub-section (5) of Section 21. As the appellants have lost from the Court, they cannot be allowed to retain the benefit earned by them under the interim orders of the Court. The High Court has rightly held the appellants liable to be placed in the same position in which they would have been if this Court would not have protected them by issuing interim orders. All that the State Government is demanding from the appellants is the price of the minor minerals. Rent, royalty or tax has already been recovered by the State Government and, therefore, there is no demand under that head. No penal proceedings, much less any criminal proceedings, have been initiated against the appellants. It is absolutely incorrect to contend that the appellants are being asked to pay any penalty or are being subjected to any penal action. It is not the case of the appellants that they are being asked to pay the price more than what they have realised from the exports or that the price appointed by the

respondent State is in any manner arbitrary or unreasonable."

326. In A.R. Antulay [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372], this Court observed that it is a settled principle that an act of the court shall prejudice no man. This maxim actus curiae neminem gravabit is founded upon justice and good sense and affords a safe and certain guide for the administration of the law. No man can be denied his rights. In India, a delay occurs due to procedural wrangles. In A.R. Antulay [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372], this Court observed : (SCC p. 687, para 102)

"102. This being the apex court, no litigant has any opportunity of approaching any higher forum to question its decisions. Lord Buckmaster in Montreal Street Railway Co. v. Normandin [[1917] A.C. 170 (PC)] (sic) stated:

'All rules of court are nothing but provisions intended to secure the proper administration of justice. It is, therefore, essential that they should be made to serve and be subordinate to that purpose.'

This Court in State of Gujarat v. Ramprakash P. Puri [(1969) 3 SCC 156 : 1970 SCC (Cri) 29], reiterated the position by saying : (SCC p. 159, para 5)

'5. ... Procedure has been described to be a handmaid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it. Like all rules of procedure, this rule demands a construction which would promote this cause.'

Once judicial satisfaction is reached that the direction was not open to be made and it is accepted as a mistake of the court, it is not only appropriate but also the duty of the court to rectify the mistake by exercising inherent powers. Judicial opinion heavily leans in favour of this view that a mistake of the court can be corrected by the court itself without any

fetters. This is on principle, as indicated in Alexander Rodger case [Alexander Rodger v. Comptoir D'Escompte De Paris, [L.R.] 3 P.C. 465 : 17 ER 120]. I am of the view that in the present situation, the court's inherent powers can be exercised to remedy the mistake. Mahajan, J. speaking for a four-Judge Bench in Keshardeo Chamria v. Radha Kissen Chamria [(1952) 2 SCC 329 : 1953 SCR 136 : AIR 1953 SC 23], SCR p. 153 stated : (AIR p. 28, para 21)

'21. … The Judge had jurisdiction to correct his own error without entering into a discussion of the grounds taken by the decree-holder or the objections raised by the judgment-debtors.'"

328. Reliance was placed on Neeraj Kumar Sainy v. State of U.P. [(2017) 14 SCC 136 : 8 SCEC 454] There, this Court observed that no one should suffer any prejudice because of the act of the court; the legal maxim cannot operate in a vacuum. It has to get the sustenance from the facts. As the appellants resigned to their fate and woke up to have control over the events forgetting that the law does not assist the non-vigilant. One cannot indulge in the luxury of lethargy, possibly nurturing the feeling that forgetting is a virtue. If such is the conduct, it is not permissible to take shelter under the maxim actus curiae neminem gravabit. There is no dispute with the aforesaid principle. Party has to be vigilant about the right, but the ratio cannot be applied. In the opinion, the ratio in the decision cannot be applied for the purpose of interpretation of Section 24(2)."

……

33. We would like to consider one more issue by drawing a distinction between institution and adjudication. Institution of a suit before a forum where an adjudication process is the same as the other, insofar as the rights and liabilities are concerned, has got no relevancy when subsequently either an act or amendment has been brought forth conferring the jurisdiction to some other forum. In other words, the issue for consideration is the

forum to adjudicate. This principle is subject to the rider that it may not have an application when there is already a decree where a party has not raised the issue of jurisdiction at any point before."

34. Keeping in view the aforesaid decision, if the facts, as discussed hereinabove, are examined we are of the view that the issue of jurisdiction of Civil Court raised by the present contesting respondent before the High Court for the first time in second appeal was not required to be entertained by the High Court.

35. In the case of *S.V. Cheriyakoa Thangal Vs. S.V. P Pookoya & Ors. (Supra)* the Court was considering question with regard to the jurisdiction of the Waqf Board. In the said case before the Waqf Board, both the parties claimed their respective rights to Mutawalliship and Sheikhship. The Waqf Board held in favour of the concerned appellant declaring him as Mutawalli. The said order was challenged before the Waqf Tribunal. This Court in paragraph 9 & 10 has observed and held as under:

"9. Though arguments have been made at length, we are inclined to hold that the impugned order cannot be sustained in the eyes of law as the Waqf Board has rightly exercised the jurisdiction in exercise of power conferred under Section 32(2)(g) read with the definition under Section 3(i) which defines a 'Mutawalli'. We have

also perused Section 83 sub-Sections (5) and (7) of the Act which deals with the powers of the Tribunal. The Waqf Tribunal is deemed to be a civil court having the same powers that can be exercised by the civil court under the Civil Procedure Code, 1908. In other words, a dispute can be tried like a suit by the Waqf Tribunal. Under sub-section (7) of Section 83 of the Waqf Act, the decision of the Tribunal shall be final and binding upon the parties and it shall have force of a decree made by a civil court.

10. The word 'competent authority' as mentioned in the definition clause contained in Section 3(i) makes the position further clear that it is the Waqf Board which has got the jurisdiction and not the Waqf Tribunal. After all, the Waqf Tribunal is only an adjudicating authority over a dispute while the Waqf Board is expected to deal with any issue pertaining to administration. The power of superintendence cannot be confined to routine affairs of a Waqf but it includes a situation where a dispute arises while managing the property and that would certainly include a right of a person to be a Mutawalli after all, it is the Mutawalli who does the job of administering and managing the Waqf."

36. We are of the view that the facts of the present case are different. In the present case dispute is with regard to the office of Sajjadanashin. In the said case, the dispute was with regard to the appointment of Mutawalli and in the said case Waqf Board exercise the jurisdiction conferred under Section 32(2)(g) of the Act.

37. In the case of *Harshad Chiman Lal Modi Vs. DLF Universal Ltd. & Anr. (Supra*), this Court has held in para 30 and 32 as under:

"30. We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject-matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity.

.....

32. In Bahrein Petroleum Co. [(1966) 1 SCR 461 : AIR 1966 SC 634] this Court also held that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. It is well settled and needs no authority that "where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing". A decree passed by a court having no jurisdiction is non est and its invalidity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without jurisdiction is a coram non judice."

38. We cannot dispute the proposition of law laid down by this Court in the aforesaid decision, however, in view of the discussion made by us in the foregoing paragraphs and looking to the facts of the present case, the aforesaid decision would not be applicable to the present case.

39. In the case of *Aliya Thammuda Beethathebiyyappura Pookoya & Anr. Vs. Pattakal Cheriyakoya & Ors. (Supra)* this Court has held in paragraph 43 as under:

> *"43. Thus, we may conclude that while no person can claim the office of mutawalli merely by virtue of being an heir of the waqif or the original mutawalli, if they can show through a long-established usage or custom that the founder intended that the office should devolve through hereditary succession, such usage or custom should be followed. Additionally, the practice would have to comply with the requirements which are generally applicable while proving a custom i.e. it must be specifically pleaded, and should be ancient, certain, invariable, not opposed to public policy, and must be proved through clear and unambiguous evidence."*

40. We are of the view that the High Court has not gone into the merits of the case and decree rendered by the Trial Court which has been affirmed by the First Appellate Court, has been set aside only on the ground that the same is nullity as the Civil Court has no jurisdiction and, therefore, when the High Court has not gone into the aforesaid aspects, the learned counsel for the respondent No. 1 has wrongly placed reliance upon the aforesaid decision contending the facts of the case on merits before this Court.

41. It is also pertinent to mention at this stage that the civil suit has been filed by the contesting respondents/plaintiff before

the Civil Court in the year 1988 and the proceedings remained pending before various Courts for a period of 37 years and, therefore, at this belated stage, it would not be proper to relegate the party to the Waqf Board to decide the issue raised in the present proceedings.

42. In view of the aforesaid discussion our answer to the questions posed before us are as under:

A. The office of the mutawalli and Sajjadanashin cannot be said to be one and the same in view of the aforesaid discussion. Sajjadanashin of a Waqf can also discharge the function of its Mutawalli, if appointed under Section 32(2)(g) of the Act of 1995, however, Mutawalli under Section 32(2)(g) cannot function as a Sajjadanashin but can only perform the duties as prescribed under the Act and the Rules. Sajjadanashin is the spiritual head of Waqf and declaration of Sajjadanashin is a religious affair, however, role of Mutawalli of a Waqf only pertains to the administration and management of the Waqf.

B. In the present case issue is with regard to the appointment of Sajjadanashin of a suit Dargah and not with regard to the appointment of Mutawalli.

Hence, the Civil Court has jurisdiction to decide the issue involved in the present matter.

C. High Court has committed grave error in quashing and setting aside the decree passed by the Trial Court in favour of the petitioner and also the orders passed by the First Appellate Court by holding that the same are nullity as the Civil Court has no jurisdiction to entertain the dispute involved in the present matter.

43. It is required to be observed that the High Court has not dealt with the merits of the case and decided the issue with regard to the jurisdiction of the Civil Court and ultimately quash and set aside the decree of the Trial Court as well as the judgment of the First Appellate Court on the aforesaid ground by holding that the same are nullity. Thus, in view of the aforesaid discussion the impugned judgment and order rendered by the High Court in Regular Second Appeal (RSA) Nos. 1004, 1064, 1069, and 1141 of 2023 is hereby quash and set aside. The judgment and decree dated 20.12.2019 passed by the Addl. Civil Judge & JMFC, Channapatna in O.S. NO. 92/1988 as well as the judgment and decree dtd. 27.02.2023 passed by the Senior Civil Judge and JMFC, Channapatna passed in R.A. NO. 16/2020 stand

restored. However, as the High Court has not decided the issue on merits, we remit the matter back to the High Court to decide the case of the parties on its own merits in accordance with law except the issue of jurisdiction as decided by us in this appeal. Further, as the dispute between the parties is pending since the year 1988, we request the High Court to expedite the hearing and make an endeavour to decide the matter as early as possible preferably within a period of 09 months.

44. Accordingly, the appeals are partly allowed to the aforesaid extent.

45. Pending application(s), if any, stand disposed of.

.....J.
[M.M. SUNDRESH]

.....J.
[VIPUL M. PANCHOLI]

NEW DELHI,
02nd April, 2026