

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR.JUSTICE M.G.S.KAMAL

R.S.A.NO.1004 OF 2023 (DEC/INJ)

C/W

R.S.A.NO.1064 OF 2023 (DEC/INJ)

R.S.A.NO.1069 OF 2023 (DEC/INJ)

R.S.A.NO.1141 OF 2023 (DEC/INJ)

IN R.S.A.NO.1004/2023

SRI. SYED ADIL BASHA QUADRI
SINCE DEAD BY HIS LRS,

1. SYED HASNAL MUSSANNA SHA KHADRI,
AGED ABOUT 53 YEARS,
2. SYED ISRAR SHA KHADRI
AGED ABOUT 51 YEARS,
3. SYED VAZEER PASHA
AGED ABOUT 45 YEARS,
4. SYED AKHIL SHA
AGED ABOUT 40 YEARS,
5. SYED AZEEZ PASHA
AGED ABOUT 35 YEARS,

APPELLANT NOS.1 TO 5
CHILDREN OF LATE SYED ADIL BASHA KHADRI,
R/AT AKHIL SHA MOHALLA,
BADA MAKKAN, CHANNAPATNA DISTRICT

RAMANAGARA DISTRICT - 562 160.

... APPELLANTS
(BY SRI. SYED AKMAL HASAN, ADVOCATE)

AND:

SYED AZADULLAH SINCE DEAD BY HIS LRs

SYED YASEEN PASHA KHADRI
S/O LATE SYED AZADULLAH,
SINCE DEAD BY HIS LRs,

1. SYED SALMAN,
AGED ABOUT 23 YEARS,
2. SYED USMAN
S/O LATE SYED YASEEN PASHA KHADRI,
AGED ABOUT 13 YEARS,

RESPONDENT NOS.1 & 2 ARE
CHILDREN OF
LATE SYED YASEEN PASHA KHADRI,
REPRESENTED BY GUARDIAN HIS BROTHER
SYED SALMAN, RESPONDENT NO.2,
BOTH ARE RESIDING AT
AKIL SHA BADA MAKKAN,
CHANNAPATNA,
RAMANAGARA - 562 160.

3. SYED TAJ PASHA
S/O LATE YASEEN PASHA KHADRI
4. SYED SHAHAULLAH
S/O LATE SYED AZADULLAH,

RESPONDENT NOS.3 & 4 ARE
RESIDING AT M G ROAD,
BADA MAKAN, CHANNAPATNA,
RAMANAGARA - 562 160.

SYED YADULLAH SINCE DEAD BY HIS LR_s

5. VALI PASHA
AGED ABOUT 69 YEARS,
6. SALEEM PASHA
AGED ABOUT 67 YEARS,
7. JAMEEL PASHA
AGED ABOUT 65 YEARS,
8. WASEEM PASHA
AGED ABOUT 61 YEARS,

SYED AHMED PASHA
AGED ABOUT 69 YEARS,
SINCE DEAD BY HIS LR_s,

9. SYED AKMAL PASHA,
S/O LATE SYED ASLAM PASHA KHADRI,
AGED ABOUT 54 YEARS,
10. SYED TAJAMMUL PASHA
S/O LATE SYED AHMED PASHA,
AGED ABOUT 48 YEARS,
11. SYED JOHAR PASHA
S/O SYED AHMED PASHA,
AGED ABOUT 45 YEARS,
12. SYED MUJAMMIL PASHA
S/O LATE SYED AHMED PASHA,
AGED ABOUT 35 YEARS,

SYED ASLAM PASHA KHADRI
S/O LATE SYED AHMED PASHA
SINCE DECEASED BY HIS LR_s,

13. MASTER SYED TANVEER PASHA,
S/O LATE SYED ASLAM PASHA KHADRI
14. SYED MUKRAM PASHA
S/O LATE SYED ASLAM PASHA KHADRI,
REP BY NATURAL GUARDIAN
SMT. SYED JABEEN TAJ,

ALL ARE RESIDING AT
AKIL SHA BADA MAKKAN,
CHANNAPATNA,
RAMANAGARA - 562 106.

SYED AMEER
AGED ABOUT 68 YEARS,
SINCE DEAD BY HIS LR_s,
15. SYED SHARFUDDIN,
S/O LATE SYED AMEER,
AGED ABOUT 47 YEARS,
RESIDING AT AKIL SHA BADA MAKKAN,
CHANNAPATNA,
RAMANAGARA DISTRICT - 562 106.

SHARIFF KHAN
AGED ABOUT 70 YEARS,
SINCE DEAD BY HIS LR_s,
16. MUDASIR ALI KHAN,
S/O SHARIEF KHAN,
AGED ABOUT 41 YEARS,
17. MAQSID ALIK KHAN
S/O SHARIEF KHAN,
AGED ABOUT 35 YEARS,
18. NIZAM ALI KHAN
S/O SHARIEF KHAN,
AGED ABOUT 33 YEARS.

19. KARNATAKA STATE BOARD OF WAQFS,
NO.6, CUNNINGHAM ROAD,
BENGALURU,
BY ITS SECRETARY.
20. SYED MOHAMMED ADIL PASHA QUADRI
ALIAS SYED BUDAN SHA QUADRI,
SHOWN AS 75 YEARS IN APPEAL MEMO,
S/O LATE AQUIL BASHA QUADRI,
R/AT DARGAH-E-HAZARAH SHARDEN GAUIB,
SHIVANNA-SAMUDRAM,
MYSORE DISTRICT.

SYED USMAN PASHA QUADRI
SINCE DEAD BY HIS LR_s

21. SYED ASLAM PASHA KHADRI
S/O LATE SYED USMAN PASHA QUADRI
AGED ABOUT 68 YEARS,
22. SYED AKRAM PASHA
S/O LATE SYED USMAN PASHA QUADRI,
AGED ABOUT 65 YEARS,
23. SYED AYUB PASHA
S/O LATE SYED USMAN PASHA QUADRI,
AGED ABOUT 63 YEARS,
24. SYED FIYAZ PASHA
S/O LATE SYED USMAN PASHA QUADRI,
AGED ABOUT 61 YEARS,
25. SYED YASEEN PASHA
S/O SYED USMAN PASHA QUADRI,
AGED ABOUT 57 YEARS,

RESPONDENT NOS.21 TO 25 ARE
R/AT C/O AKHIL SHA DURGA MOHALLA,
BADA MAKAN, CHANNAPATNA,
RAMANAGARA DISTRICT.

26. SYED MOHAMMED GHOUSE PASHA QUADRI
S/O LATE SYED MOHAMMED PEER PASHA QUADRI,
AGED ABOUT 63 YEARS,
DARGAH-E-HAZRATH SYED AKHIL SHA
QUADRI BIG MAKKAN,
CHANNAPATNA.

.....RESPONDENTS

(BY SRI. SUBHASH SRINIVASA RANGACHAR, ADVOCATE FOR
C/R20;
SMT. SWATHI ASHOK, ADVOCATE FOR R19)

THIS RSA IS FILED UNDER SECTION 100 OF CPC
PRAYING TO ALLOW THIS APPEAL AND SET ASIDE THE
JUDGMENT AND DECREE PASSED BY THE LOWER APPELLATE
COURT PRL. CIVIL JUDGE AND JMFC, CHANNAPATNA IN
R.A.NO.19/2020 DATED 27.02.2023 CONFIRMING THE
JUDGMENT AND DECREE PASSED BY THE CIVIL JUDGE AND
JMFC AT CHANNAPATNA IN O.S.NO.92/1988 DATED
20.12.2019 AND ETC.

IN R.S.A.NO.1064/2023

SYED MOHAMMED GHOUSE
PASHA QUADRI
S/O LATE SYED MOHAMMED PEER
PASHA QUADRI
AGED ABOUT 78 YEARS,
SAJJADA NASHINE, DARGAH E
HAZARTHA SYED AKHKIL SHA
QUADRI BIG MAKAN,
CHANNAPATNA - 562 160

... APPELLANT

(BY SRI. RAGHU PRASAD B.S., ADVOCATE)

AND:

SYED YASEEN PASHA KHADRI
SINCE DEAD BY HIS LR's,

1. SYED SALMAN,

AGED ABOUT 23 YEARS,

2. SYED USMAN
AGED ABOUT 14 YEARS,
REPRESENTED BY
NATURAL GUARDIAN BY FULL
BROTHER SYED SALMAAN
AGED ABOUT 20 YEARS
R/AT BADA MAKAN,
CHANNAPATNA - 562 160
3. SYED TAJ PASHA
AGED ABOUT 51 YEARS
4. SYED AZADULLAH
AGED ABOUT 49 YEARS
5. SYED SHAHAULLAH
AGED ABOUT 47 YEARS
1 TO 4 ARE SONS OF
LATE SYED AZADULLAH,
RESIDING AT M.G. ROAD,
BADA MAKAN, CHANNAPATNA,
RAMANAGARA - 562 160.
6. VALI PASHA
AGED ABOUT 53 YEARS,
7. SALEEM PASHA
AGED ABOUT 51 YEARS,
8. JAMEEL PASHA
AGED ABOUT 49 YEARS,
9. ZAFARULLAH PASHA
AGED ABOUT 47 YEARS
DEAD AND NO LR'S
10. WASEEM PASHA
AGED ABOUT 45 YEARS,

ALL 5 TO 8 ARE SONS OF
LATE SYED YADULLAH
ALL ARE R/AT M G ROAD,
BADA MAKAN, CHANNAPATNA,
RAMANAGARA DISTRICT - 562 160.

11. SYED HASNAL MUSSANNA
SHA KHADRI,
AGED ABOUT 37 YEARS
12. SYED ISRAR SHA KHADRI
AGED ABOUT 33 YEARS
13. SYED VAZEER PASHA
AGED ABOUT 27 YEARS
14. SYED AKHIL SHA
AGED ABOUT 21 YEARS
SYED ADIL BASHA QUADRI
R/AT AKIL SHAI MOHALLA,
BADA MAKAN, NAGARCHI ROAD,
CHANNAPATNA,
RAMANAGARA DISTRICT - 562 160.

SYED AHAMED PASHA
MAJOR SINCE DEAD BY LRS

SYED ASLAM PASHA
AGED ABOUT 48 YEARS
SINCE DEAD BY LR'S

15. SYED TANVEER PASHA
AGED ABOUT 12 YEARS
16. SYED MUKRAM PASHA
AGED ABOUT 15 YEARS
REP. BY NATURAL MOTHER/
GUARDIAN JABEEN KHANUM
W/O LATE SYED ASLAM PASHA
MAJOR

ALL ARE R/AT BADA MAKAN,
CHANNAPATNA,
RAMANAGARA DISTRICT - 562 160

17. SYED AKMAL PASHA
AGED ABOUT 54 YEARS
18. SYED TAJAMMUL PASHA
AGED ABOUT 48 YEARS
19. SYED JOHAR PASHA
AGED ABOUT 45 YEARS
20. SYED MUJAMMIL PASHA
AGED ABOUT 35 YEARS

ALL ARE R/AT BADA MAKAN
CHANNAPATNA TOWN
RAMANAGARA DISTRICT - 562 160

SYED AMEER
SINCE DEAD BY LRS

21. SYED SHAFRUDDIN
AGED ABOUT 43 YEARS
R/AT BADA MAKAN,
CHANNAPATNA - 562 160

SHARIEF KHAN
SINCE DEAD BY LR'S

22. MUDASSIR ALI KHAN
AGED ABOUT 47 YEARS
23. MUDASSID ALI KHAN
AGED ABOUT 39 YEARS
24. NIZAM ALI KHAN
AGED ABOUT 33 YEARS

ALL ARE R/AT BADA MAKAN

CHANNAPATNA - 562 160

25. KARNATAKA STATE BOARD OF
WAQF REP. BY ITS SECRETARY,
NO.6, CUNNINGHAM ROAD,
BENGALURU.
26. SYED ASLAM PASHA KHADRI
AGED ABOUT 55 YEARS

SYED AKRAM PASHA
AGED ABOUT 52 YEARS
SINCE DEAD BY LR'S
27. SYED SALMAN
AGED ABOUT 23 YEARS
C/O AKHIL SHA DARGA MOHALLA,
BADA MAKAN
28. SYED AYUB PASHA
AGED ABOUT 50 YEARS

SYED FIYAZ PASHA
SINCE DEAD BY LR'S
29. SYED IRSHAD PASHA
AGED ABOUT 18 YEARS
REP. BY GUARDIAN / MOTHER
SMT. RASHEEDA BEGUM
AGED ABOUT 50 YEARS
R/AT MIG 35, 2ND STAGE,
K.H.B.COLONY,
V.T.C MANDYA CITY,
P.O. MANDYA - 571 401
30. SYED YASEEN PASHA
AGED ABOUT 43 YEARS

ALL ARE CHILDREN OF
LATE SYED USMAN PASHA QUADRI

ALL ARE AT C/O AKHIL SHA DARGA
MOHALLA, BADA MAKAN
CHANNAPATNA,
RAMANAGARA DISTRICT - 562 160

31. SYED MOHAMMED ADIL PASHA
QUADRI TAREEQI
SYED BUDAN SHA QUADRI
S/O LATE AQUIL BASHA QUADRI
DARGAH E HAZARATH, MARDANE
GAYAB SHIVANASAMUDRAM,
KOLLEGAL TALUK, MYSORE DISTRICT
WORKING 'SYED AADIL PASHA AND
BROS OLD MOTOR PARTS DEALERS
K.G.ROAD, MOTHINAGAR,
BENGALURU - 02
32. SYED MOHUSEEN PASHA
S/O LATE SYED ASADULLA
AGED ABOUT 47 YEARS
R/AT BADA MAKAN, M.G.ROAD,
CHANNAPATNA,
RAMANAGARA DISTRICT - 562 160
33. SYED ZAKHIR PASHA
S/O LATE SYED USMAN PASHA QUADRI,
AGED ABOUT 53 YEARS
R/AT BADAMAKAN,
CHANNAPATNA, RAMANAGARA DISTRICT,
RAMANAGARA - 562 160

...RESPONDENTS

(BY SRI. SUBHASH SRINIVASA RANGACHAR,
ADVOCATE FOR C/R31)

THIS RSA IS FILED UNDER SECTION 100 OF CPC
PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED
20.12.2019 PASSED BY THE ADDL. CIVIL JUDGE & JMFC,
CHANNAPATNA IN O.S.NO.92/1988 DECREETING THE
COUNTER CLAIM AND ALSO THE JUDGMENT AND DECREE

DATED 27.02.2023 PASSED BY THE SENIOR CIVIL JUDGE AND JMFC, CHANNAPATNA PASSED IN R.A.NO.08/2020 DISMISSING THE APPEAL AND DECREE THE SUIT IN THE INTEREST OF JUSTICE AND EQUITY.

IN R.S.A.NO.1069/2023

SYED MOHAMMED GHOUSE
PASHA QUADRI
S/O LATE SYED MOHAMMED PEER
PASHA QUADRI
AGED ABOUT 78 YEARS,
SAJJADA NASHINE, DARGAH E
HAZARTHA SYED AKHKIL SHA
QUADRI BIG MAKAN,
CHANNAPATNA - 562 160.

... APPELLANT

(BY SRI. RAGHU PRASAD B S, ADVOCATE)

AND:

SYED YASEEN PASHA KHADRI
SINCE DEAD BY LRs,

1. SYED SALMAN,
AGED ABOUT 23 YEARS,
2. SYED USMAN
AGED ABOUT 14 YEARS,
REPRESENTED BY
NATURAL GUARDIAN BY FULL
BROTHER SYED SALMAAN
AGED ABOUT 20 YEARS
R/AT BADA MAKAN,
CHANNAPATNA - 562 160
3. SYED TAJ PASHA
AGED ABOUT 51 YEARS
4. SYED AZADULLAH
AGED ABOUT 49 YEARS

5. SYED SHAHAULLAH
AGED ABOUT 47 YEARS
1 TO 4 ARE SONS OF
LATE SYED AZADULLAH,
R/AT M G ROAD,
BADA MAKAN, CHANNAPATNA,
RAMANAGARA - 562 160.
6. VALI PASHA
AGED ABOUT 53 YEARS,
7. SALEEM PASHA
AGED ABOUT 51 YEARS,
8. JAMEEL PASHA
AGED ABOUT 49 YEARS,
9. ZAFARULLAH PASHA
AGED ABOUT 47 YEARS
DEAD AND NO LR'S
10. WASEEM PASHA
AGED ABOUT 45 YEARS,

ALL 5 TO 8 ARE SONS OF
LATE SYED YADULLAH
ALL ARE R/AT M G ROAD,
BADA MAKAN, CHANNAPATNA,
RAMANAGARA DISTRICT - 562 160.
11. SYED HASNAL MUSSANNA
SHA KHADRI,
AGED ABOUT 37 YEARS
12. SYED ISRAR SHA KHADRI
AGED ABOUT 33 YEARS
13. SYED VAZEER PASHA

AGED ABOUT 27 YEARS

14. SYED AKHIL SHA
AGED ABOUT 21 YEARS
SYED ADIL BASHA QUADRI
R/AT AKHIL SHAI MOHALLA,
BADA MAKAN, NAGARCHI ROAD,
CHANNAPATNA,
RAMANAGARA DISTRICT - 562 160.

SYED AHAMED PASHA
MAJOR SINCE DEAD BY LRS

SYED ASLAM PASHA
AGED ABOUT 48 YEARS
SINCE DEAD BY LR'S

15. SYED TANVEER PASHA
AGED ABOUT 12 YEARS
16. SYED MUKARAM PASHA
AGED ABOUT 15 YEARS
REP. BY NATURAL MOTHER /
GUARDIAN JABEENA KHANUM
W/O LATE SYED ASLAM PASHA
MAJOR

ALL ARE R/AT BADA MAKAN,
CHANNAPATNA,
RAMANAGARA DISTRICT - 562 160.

17. SYED AKMAL PASHA
AGED ABOUT 54 YEARS
18. SYED TAJAMMUL PASHA
AGED ABOUT 48 YEARS
19. SYED JOHAR PASHA
AGED ABOUT 45 YEARS
20. SYED MUJAMMIL PASHA

AGED ABOUT 35 YEARS

ALL ARE R/AT BADA MAKAN
CHANNAPATNA TOWN
RAMANAGARA DISTRICT - 562 160.

SYED AMEER
SINCE DEAD BY LR'S

21. SYED SHAFRUDDIN
AGED ABOUT 43 YEARS
R/AT BADA MAKAN,
CHANNAPATNA - 562 160.

SHARIEF KHAN
SINCE DEAD BY LR'S

22. MUDASSIR ALI KHAN
AGED ABOUT 47 YEARS

23. MUDASSID ALI KHAN
AGED ABOUT 39 YEARS

24. NIZAM ALI KHAN
AGED ABOUT 33 YEARS

ALL ARE R/AT BADA MAKAN
CHANNAPATNA - 562 160.

25. KARNATAKA STATE BOARD OF
WAKF REP BY ITS SECRETARY,
NO.6, CUNNINGHAM ROAD,
BENGALURU.

26. SYED ASLAM PASHA KHADRI
AGED ABOUT 55 YEARS

SYED AKRAM PASHA
AGED ABOUT 52 YEARS
SINCE DEAD BY LR'S

27. SYED SALMAN
AGED ABOUT 23 YEARS
C/O AKHIL SHA DARGA MOHALLA,
BADA MAKAN
28. SYED AYUB PASHA
AGED ABOUT 50 YEARS

SYED FIYAZ PASHA
SINCE DEAD BY LR'S
29. SYED IRSHAD PASHA
AGED ABOUT 18 YEARS
REP. BY GUARDIAN / MOTHER
SMT. RASHEEDA BEGUM
AGED ABOUT 50 YEARS
R/AT MIG 35, 2ND STAGE,
K.H.B.COLONY, V.T.C MANDYA CITY,
P.O. MANDYA - 571 401.
30. SYED YASEEN PASHA
AGED ABOUT 43 YEARS

ALL ARE CHILDREN OF
LATE SYED USMAN PASHA QUADRI

ALL ARE AT C/O AKHIL SHA DARGA
MOHALLA, BADA MAKAN
CHANNAPATNA,
RAMANAGARA DISTRICT - 562 160.
31. SYED MOHAMMED ADIL PASHA
QUADRI TAREEQI
SYED BUDAN SHA QUADRI
S/O LATE AQUIL BASHA QUADRI
DARGAH E HAZARATH, MARDANE
GAYAB SHIVANASAMUDRAM,
KOLLEGAL TALUK, MYSORE DISTRICT
WORKING 'SYED AADIL PASHA AND
BROS OLD MOTOR PARTS DEALERS
K.G.ROAD, MOTHINAGAR,

BENGALURU - 560 002.

32. SYED MOHUSEEN PASHA
S/O LATE SYED ASADULLA
AGED ABOUT 47 YEARS
R/AT BADA MAKAN, M.G.ROAD,
CHANNAPATNA,
RAMANAGARA DISTRICT - 562 160.
33. SYED ZAKHIR PASHA
S/O LATE SYED USMAN PASHA QUADRI,
AGED ABOUT 53 YEARS
R/AT BADAMAKAN,
CHANNAPATNA, RAMANAGARA DISTRICT,
RAMANAGARA - 562 160.

...RESPONDENTS

(BY SRI. SUBHASH SRINIVASA RANGACHAR, ADVOCATE
FOR C/R-31)

THIS RSA IS FILED UNDER SECTION 100 OF CPC
PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED
20.12.2019 PASSED BY THE ADDL. CIVIL JUDGE & JMFC,
CHANNAPATNA IN O.S.NO.92/1988 DECREETING THE
COUNTER CLAIM AND ALSO THE JUDGMENT AND DECREE
DATED 27.02.2023 PASSED BY THE SENIOR CIVIL JUDGE
AND JMFC, CHANNAPATNA PASSED IN R.A.NO.07/2020
DISMISSING THE APPEAL AND DECREE THE SUIT IN THE
INTEREST OF JUSTICE AND EQUITY.

IN R.S.A.NO.1141/2023

1. SRI. SYED ASLAM PASHA KHADRI
S/O LATE SYED USMAN PASHA
AGED ABOUT 73 YEARS
2. SRI. SYED AYUB PASHA
S/O LATE SYED USMAN PASHA
AGED ABOUT 58 YEARS

3. SRI. SYED FIYAZ PASHA
S/O LATE SYED USMAN PASHA
DEAD BY HIS LR'S

3(a) SMT. RASHEEDA BEGUM
W/O LATE SYED FIYAZ,
AGED ABOUT 44 YEARS

3(b) KUM. RIDA TASKEEN
D/O LATE SYED FIYAZ
AGED ABOUT 20 YEARS

3(c) MASTER. SYED IRSHAD PASHA
D/O LATE SYED FIYAZ
AGED ABOUT 18 YEARS

ALL ARE RESIDING AT
C/O AKHIL SHA, DARGA MOHALLA,
BADA MAKAN, CHANNAPATNA
RAMANAGARA DISTRICT

4. SRI SYED YAASEEN PASHA
S/O LATE SYED USMAN PASHA
AGED ABOUT 51 YEARS

ALL ARE RESIDING AT
PASHA MOHALLA,
C/O AKHIL SHA, DARGA MOHALLA,
BADA MAKAN, CHANNAPATNA,
RAMANAGARA DISTRICT.

...APPELLANTS

(BY SRI. SYED ROOHULLA.M, ADVOCATE)

AND:

1. SRI. SYED MOHAMMED GHOUSE
PASHA QUADRI
S/O LATE SYED MOHAMMED
PEER PASHA QUADRI

2. SRI SYED TAJ PASHA

S/O LATE SYED AZADULLAH
AGED ABOUT 43 YEARS

3. SRI SYED SHAHAULLAH
S/O LATE SYED AZADULLAH
AGED ABOUT 38 YEARS

BOTH ARE RESIDING AT
M.G.ROAD, BADAMAKAN
CHANNAPATNA
RAMANAGARA DISTRICT

4. SRI VALI PASHA
S/O LATE SYED YADULLAH
AGED ABOUT 51 YEARS

5. SRI SALEEM PASHA
S/O LATE SYED YADULLAH
AGED ABOUT 49 YEARS

6. SRI JAMEEL PASHA
S/O LATE SYED YADULLAH
AGED ABOUT 47 YEARS

7. SRI WASEEM PASHA
S/O LATE SYED YADULLAH
AGED ABOUT 43 YEARS

ALL ARE RESIDING AT
M.G.ROAD, BADA MAKAN
CHANNAPATNA
RAMANAGARA DISTRICT

8. SRI SYED HASNAL MUSSANNA SHA KHADRI
S/O LATE SYED ALI BASHAKHADRI
AGED ABOUT 35 YEARS

9. SRI SYED ISTRAR SHA KHADRI
S/O LATE SYED ALI BASHAKHADRI
AGED ABOUT 33 YEARS

10. SRI SYED VAZEER PASHA
S/O LATE SYED ALI BASHAKHADRI
AGED ABOUT 27 YEARS
11. SRI SYED AKHIL SHA
S/O LATE SYED ALI BASHAKHADRI
AGED ABOUT 22 YEARS
12. KARNATAKA STATE BOARD OF WAQFS
NO.6, CUNNINGHAM ROAD
BENGALURU
REP BY ITS SECRETARY.
13. SRI SYED MOHAMMED ADIL PASHA QUADRI
AGED ABOUT 63 YEARS
TAREEQU NAME SYED
BUDAN SHANN QUADRI
S/O LATE AQUIL BASHA QUADRI
DARGAH EHAZARATH, MYSORE DISTRICT
KOLLEGAL TALUK, MYSORE DISTRICT
WORKING AT OLD MOTOR PARTS
DEALER, K.R. ROAD, MOTHINAGARA
BENGALURU-560 002.
- 14 . SRI SYED MOHUSEEN PASHA
S/O LATE SYED AZADULLA
AGED ABOUT 47 YEARS
R/AT BADA MAKKAN
CHANNAPATNA TOWN.
- 15 . SRI SYED SALMAN
S/O LATE SYED YASEEN PASHA KHADRI
AGED ABOUT 23 YEARS
- 16 . SRI SYED USMAN
S/O LATE SYED YASEEN PASHA KHADRI
AGED ABOUT 13 YEARS
SINCE MINOR REPRESENTED BY
HIS ELDER BROTHER SYED SALAM
AS A NATURAL GUARDIAN

BOTH ARE R/AT AKIL SHA BADA MAKAN
CHANNAPATNA TOWN
RAMANAGARA DISTRICT.

- 17 . SRI. SYED AKMAL PASHA
S/O. LATE SYED ASLAM PASHA KHADRI,
AGED ABOUT 54 YEARS,
- 18 . SRI. SYED TAJMMUL PASHA
S/O. LATE SYED AHMED PASHA,
AGED ABOUT 48 YEARS,
- 19 . SRI. SYED JOHAR PASHA
S/O. LATE SYED AHMED PASHA,
AGED ABOUT 45 YEARS,
- 20 . SRI. SYED MUJAMMIL PASHA
S/O. LATE SYED AHMED PASHA,
AGED ABOUT 35 YEARS,
- 21. SRI. SYED ASLAM PASHA KHADRI
S/O. LATE SYED AHMED PASHA KHADRI,

SINCE DEAD BY HIS LRS.,
- 21(a) SRI. SYED TANVEER PASHA,
S/O. LATE SYED ASLAM PASHA KHADRI,
AGED ABOUT 18 YEARS,
- 21(b) MASTER. SYED MUKARAM PASHA
S/O. LATE SYED ASLAM PASHA KHADRI,
AGED ABOUT 13 YEARS,

BOTH ARE RESIDING AT
AKIL SHA BADA, MAKKAN,
CHANNAPATNA TOWN,
RAMANAGARA DISTRICT.

- 22 . SRI. SYED SHARFUDDIN

S/O. LATE SYED AMEER,
AGED ABOUT 50 YEARS,

23 . SRI. MUDASSIR ALI KHAN
S/O. LATE SHARIF KHAN,
AGED ABOUT 44 YEARS,

24 . SRI. MAQSID ALI KHAN
S/O. LATE SHARIF KHAN,
AGED ABOUT 38 YEARS,

25 . SRI. NIZAM ALI KHAN
S/O. LATE SHARIF KHAN,
AGED ABOUT 36 YEARS,

BOTH ARE RESPONDENT NOS.22 TO 25
RESIDING AT SYEDWADI,
CHANNAPATNA TOWN,
RAMANAGARA DISTRICT.

...RESPONDENTS

(BY SRI. SUBHASH SRINIVASA RANGACHAR, ADVOCATE FOR
C/R-13)

THIS RSA IS FILED UNDER SECTION 100 OF CPC
PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED
20.12.2019 PASSED BY THE ADDL. CIVIL JUDGE & JMFC,
CHANNAPATNA IN O.S.NO.92/1988 DECREETING THE
COUNTER CLAIM AND ALSO THE JUDGMENT AND DECREE
DATED 27.02.2023 PASSED BY THE SENIOR CIVIL JUDGE
AND JMFC, CHANNAPATNA PASSED IN R.A.NO.16/2020
DISMISSING THE APPEAL AND DECREE THE SUIT IN THE
INTEREST OF JUSTICE AND EQUITY.

THESE APPEALS HAVING BEEN RESERVED FOR
JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY,
DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE M.G.S. KAMAL

CAV JUDGMENT

A suit in O.S.No.92/1988 on the file of Additional Civil Judge and JMFC, Channapatna (hereinafter referred to as trial Court') is filed by one Syed Mohammed Ghouse Pasha Quadri - the plaintiff seeking relief of declaration declaring him to be the Sajjadanashin of Hazarat Akhil Shah Quadri Dargah, Channapattana (hereinafter referred to as 'suit dargah') and for consequential relief of permanent injunction against defendants 1 to 6 and the Karnataka State Board of Waqf -the defendant No.7, in which nephew of the plaintiff namely Syed Mohammed Adil Pasha Quadri, got himself impleaded as defendant No.8 and while denying the case of the plaintiff he made a counter claim to declare him as Sajjadanashin of the suit Dargah. Thereafter one Syed Usman Pasha Quadri got himself impleaded as defendant No.9 also claiming to have been appointed as Sajjadanashin of the suit Dargah. By the impugned Judgment and decree dated 20.12.2019 the trial Court while dismissing the suit of the plaintiff decreed the counter claim made by defendant No.8 with cost.

2. As against the dismissal of his suit plaintiff preferred a regular appeal in R.A.No.7/2020 and as against grant of counter claim in favour of defendant No.8, he filed another appeal in R.A.No.8/2020. Similarly defendant No.3 filed R.A.No.19/2020 and the legal representatives of defendant No.9 filed R.A.No.16/2020 on the file of Senior Civil Judge and JMFC, Channapatna (hereinafter referred to as 'First Appellate Court'). The First Appellate Court by its common Judgment and decree dated 27.02.2023 dismissed the aforesaid regular appeals and consequently confirmed the aforesaid Judgment and decree passed by the trial Court.

3. Aggrieved by the aforesaid Judgment and decree passed by the trial Court and confirmed by the First Appellate Court, plaintiff is before this Court in RSA Nos.1064/2023 and 1069/2023 while defendant No.3 is in RSA No.1004/2023 and legal representatives of defendant No.9 are in RSA No.1141/2023.

4. **Case of the plaintiff:**

a) That one Janab Syed Mohammed Akhil Shah Quadri was the teacher and mentor of Nawab Hyder Ali Khan Bhadur

of Mysore State. His tomb is situated in the outskirts of town of Channapatna (suit dargah). That the father of the plaintiff Janab Syed Mohammed Peer Pasha Quadri was the Sajjadanashin of the suit Dargah. This was recognized by the Karnataka State Board of Waqf by its endorsement dated 12.01.1981. Father of plaintiff passed away on 06.10.1988. During his life time he had appointed plaintiff to succeed as Sajjadanashin of the suit Dargah. That defendants 1 to 6 who are also the Haqdars have been interfering with the plaintiff's rights in performance of his duties as Sajjadanashin and conducting of Sandal and Urs ceremony of said saint.

b) That the father of defendants 1 to 3, late Syed Mohammed Peer Pasha Quadri had caused hindrance and interference even during the life time of father of the plaintiff which had caused intervention of local Tahsildar resulting in a Resolution dated 18.08.1964 being passed reconstituting a Committee. Even after the death of father of the plaintiff, defendant No.3 published pamphlets describing himself as Sajjada though plaintiff had already been nominated by his father. Said act of the defendant No.3 in active support of

defendant Nos.1, 2, 4, 5 and 6 had caused unrest, law and order situation in the vicinity of suit Dargah. Hence, the suit.

5. The case of the defendant Nos.2 and 3.

(a) Defendant Nos.2 and 3 in their written statement denying the claim of the plaintiff contended that father of the plaintiff had been appointed as a Manager of suit Dargah and he was unable to conduct the Sandal and Urs in a proper manner and for the said reason Tahsildar had intervened during which period father of defendants 1 to 3 who was the Muzawar (Sajjada) was conducting the Sandal and Urs.

(b) It is further asserted that father of the plaintiff was never the Sajjada of suit Dargah and he had no right to appoint anyone much less the plaintiff as his successor. Plaintiff who had nothing to do with the suit Dargah was taking undue advantage of the similarity between the names of his father and the father of defendants 1 to 3 and with the instigation of persons who were inimically disposed to these defendants had filed a suit in O.S.No.405/1987 creating trouble and tension in the smooth functioning of Sandal and

Urs. Neither the plaintiff nor his father lived at Channapatna and at no point of time they were the Sajjada of suit Dargah.

(c) That previously in the year 1944 one Syed Sha Mohammed Ali Basha Quadri was the Sajjada of suit Dargah enjoying the income of Dargah as its Makandar. He was also authorized to conduct Sandal and Urs by the Muzarra Commission, Mysore, thus he was the actual Sajjada of the Dargah. Said Syed Sha Mohammed Ali Basha Quadri is none other than the uncle of Syed Mohammed Peer Pasha Quadri, the father of defendants 1 to 3. He bequeathed his rights in favour the father of the defendants 1 to 3 under a Will of 1944. After the death of Syed Sha Mohammed Ali Basha Quadri, the father of the defendants 1 to 3 became the Sajjada. As such, he continued to perform and celebrate Sandal and Urs as Sajjadanashin of the suit Dargah. Accordingly, the Office of Sajjadanashin devolved upon his 4th son who is defendant No.3 in the suit. Thus, the defendant No.3 became the Sajjadanashin both as a son and also by selection by Fakirs and Murids. This is evidenced by the letter dated 10.12.1987 issued by one Alhaj Syed Yousufulla Sha,

Sadar Sar Khalifa Rafai Ahmad Khadri who is the head of all Fakirs and Kalifas.

Contending so, sought for dismissal of the suit.

6. **The case of defendant No.7-State Board of Waqf;**

DefendantNo.7- Karnataka State Board of Waqf in its written statement denying the claim of the plaintiff, contended that Sajjadanashin is a hereditary Mutawalli who can be appointed only by duly constituted authority empowered by law. No such authority has at any time appointed Syed Mohammed Peer Pasha Khadari or anyone else as Sajjadanashin of suit Dargah. A mere communication addressed as Sajjadanashin could not make him Sajjadanashin which might have been got written collusively with the concerned clerk of the Board. It is further contended that neither father of the plaintiff nor defendant No.3 was the Sajjadanashin of the suit Dargah. As such neither the plaintiff nor the defendants 1 to 3 have any right or entitlement of being the Sajjadas. Hence sought for dismissal of the suit.

7. **The case of defendant No.8;**

Defendant No.8 initially filed his written statement on 16.01.1990 denying the case of the plaintiff, which was subsequently amended seeking counter claim, contending inter alia;

a) That grand-father of the defendant No.8 Syed Mohammed Peer Pasha Kadari who was also father of the plaintiff was the Sajjadanashin of two Dargahs situated at Shivanasamudra, Sathegala Post, Kollegala Taluk, Mysore District as well as of the suit Dargah. That as per the custom and usage in these two Dargahs upon the death of Sajjadanashin, the Office of Sajjadanashin would be succeeded by his eldest son. The preceding Sajjadanashin was having authority and power to nominate his successor to succeed him and the successor was called the "Jan Nasheen Sajjada" (the Sajjadanashin designate). That his grandfather said Syed Mohammed Peer Pasha Khadari nominated his eldest son Syed Mohammed Akhil Pasha Khadari who was the father of defendant No.8 as his successor who died on 27.10.1980. Immediately thereafter in order to sustain the custom said Syed Mohammed Peer Pasha Khadari on

26.02.1981 in the presence of Sajjadanashins, Mujawars, Mutawallis of various Dargahs, devotees, Community heads nominated defendant No.8 to be the "Jan Nasheen Sajjada" of the suit Dargah and conferred upon him Khilafat which is an act of spiritual preceptor, the said proceedings were reduced in writing signed and witnessed by said Syed Mohammed Peer Pasha Khadari and those who had assembled including the plaintiff. Defendant No.8 thus became the Sajjadanashin of the suit Dargah after the demise of his grand father on 06.10.1988 according to the customs and legal principles.

(b) That knowing the dispute between the plaintiff and the defendant No.8, the defendant Nos.1 to 6 are conducting Dargah festival without Sajjadanashin unlawfully for a gain after the death of earlier Sajjadanashin. That neither the plaintiff nor the defendants 1 to 6 have acquired any right or title to occupy the post after 06.10.1988, it is only the defendant No.8 who is entitled to occupy the post of Sajjadanashin of the suit Dargah. Hence, sought for relief of declaration declaring him to be the Sajjadanashin of the suit Dargah and for consequential relief of permanent injunction.

8. Plaintiff filed written statement to the counter claim denying the claim made by the defendant No.8.

9. **The case of defendant No.9;**

Defendant No.9 in his written statement denying the claim of the plaintiff contended that one Hazarath Mohammed Akhil Shah Khadri had two sons namely, Syed Budhan Shah Khadri and Syed Usman Sha Khadri. Syed Budhan Shah Khadri died unmarried. Syed Usman Sha Khadri had three sons. Syed Manjle Shah Khadri first son from his first wife, Syed Peer Pasha Khadri second son through his second wife and Syed Jamal Shah Khadri third son from his third wife. Upon the demise of Syed Usman Shah Khadri his eldest son from his first wife Syed Manjle Shah Khadri was appointed as Sajjadanashin. After his life time his eldest son Syed Mohiuddin Shah Khadri was appointed as Sajjadanashin. Said Syed Mohiuddin Shah Khadri was the grandfather of the Defendant No.9. Thus the Defendant No.9 being the direct descendent of the Hazarath Mohammed Akhil Shah Khadri himself is the only rightful claimant to post of the

Sajjadanashin and upon his demise his legal representatives are entitled for the said post.

Hence, sought for dismissal of the suit.

10. Based on the above pleadings the trial Court framed the following issues and additional issues.

Issued framed on 30.05.1989

"1. Does plaintiff prove that his father was legally appointed as Sajjadanashin of the Suit Dargah recognized by the defendant No.7?

2. Does the plaintiff prove that during the life time of his father he was nominated as Sajjadanashin of suit Dargah?

3. Does plaintiff prove that he is Sajjadanashin of suit dargah under hereditary right?

4. Do defendant Nos.2 and 3 prove that one Syed Sha Md. Ali Basha Kadari was previous sajjada of suit dargah in 1994?

5. Do defendant 2 and 3 further prove that the Syed Md. Basha Kadari bequeathed his rights in favour of their father?

6. Do defendant 2 and 3 further prove that after death of their father they became sajjada of suit dargah.

7. Does defendant No.3 prove that office of Sajjadanashin of suit dargah devolved upon him ?

8. Does defendant No.3 prove that the pamphlets printed in 1987 describing him as sajjadanashin of suit dargah was with the permission of Waqf Board.

9. Does the plaintiff was entitled to declaration as prayed for?

10. Does he entitled for injunction as prayed?

11. To What order or decree?

Additional Issues framed on 12.11.1992

1. Whether defendant No.8 proves the allegations made in para 12 and 13 of the written statement?

2. Whether defendant No.8 further proves the allegations made in para 15 and 16 of the written statement?

3. Whether he entitled decree as prayed for?

Additional Issues framed on 13.10.1998

1. Whether defendant No.8 proves that his father was nominated as successor by presiding Sajjada Nashin?

2. Whether defendant No.8 proves that later he was nominated as SajjadaNashin of suit dargah.

Additional Issues framed on 09.04.2012

1. Whether the LRs of defendant No.3 prove that defendant No.3 appointed/nominated his first son Sri.Syed Hasnal Mussan Sha Khadri as Sajjada Nashin on 16.07.2011 as alleged?

11. Plaintiff examined himself as PW1 and exhibited 26 documents as Ex.P1 to Ex.P26 and additional witnesses have been examined as PW2 and PW4 and got exhibited Ex.P.27. By a memo dated 04.09.2012, plaintiff sought for discarding the evidence of PW.3. Defendant No.8 examined himself as DW1 and got exhibited Ex.D1 (during the cross-

examination of PW.1) and closed his side. Defendant Nos.1 to 6 examined defendant No.2 as DW2 and exhibited documents marked as Ex.D2 to Ex.D36 and also examined defendant No.3 as DW3 and three additional witnesses as DW.4 to DW.6. General Power of attorney holder of Defendant No.9 was examined and the legal representative of defendant No.9 examined as DW7 and DW8 and got marked Ex.D30 to Ex.D.59.

12. The Trial Court on appreciation of the evidence answered issue Nos.1 to 10 in the negative, additional issue Nos.1 to 3 framed on 12.11.1992 in the affirmative, additional issue Nos.1 and 2 framed on 13.10.1998 in the affirmative and the additional issue No.1 framed on 09.04.2012 in the negative and consequently, dismissed the suit of the plaintiff and decreed the counter claim of the defendant No.8 by its judgment and decree dated 20.12.2019. Aggrieved by the dismissal of the suit and grant of counter claim, plaintiff filed a regular appeal in R.A.No.7/2020 and R.A.No.8/2020 respectively. Aggrieved by grant of counter claim, legal representatives of defendant No.9 filed a regular appeal in

R.A.No.16/2020 and defendant No.3 filed a regular appeal in R.A.No.19/2020.

13. The First Appellate Court on considering the grounds urged in the memorandum of the appeal framed following points for its consideration:

(i) Whether the plaintiff Mohammed Syed Ghouse Pasha Khadri had proved before the Trial Court that his father was the Sajjadanashin of the suit dargah?

(ii) Whether the plaintiff had proved that he had acquired the right to the office of the SajjadaNashin under a hereditary right and during the life time of his father he was nominated as Sajjadanashin of suit Dargah?

(iii) Whether the defendant No.2 and 3/Appellants in R.A.19/2020 have proved that one Syed Sha-Md Ali Basha Khadri was the Sajjadanashin of suit Dargah in the year 1944?

(iv) Whether the defendant No.2 and 3 have proved that the said Syed Sha-Md Ali Basha Khadri had bequeathed his right in favour of their father by name Syed Md. Peer Pasha Khadri as per the Will Deed of April 1944 as alleged in written statement?

(v) Whether the defendant No.2 and 3 have proved that the defendant No.3 Late Syed Adil Basha Khadri appointed/nominated his first son Syed Hasnal Mussnna Sha Khadri as Sajjadanashin of suit Dargah on 16.07.2011 as alleged by them in their additional written statement?

(vi) Whether the defendant No.8 Syed Mohammed Adil Pasha Khadri had proved before the trial court that his father Syed Mohammed Akhil Pasha Khadri was being nominated as successor to the post of Sajjadanashin in the year 1964?

(vii) Whether the defendant No.8 proved before the trial court that his grand father who was the presiding Sajjadanashin of the suit dargah had nominated him as Jan Nasheen Sajjada of the two Dargahs namely Hazarath Akhil Sha Khadri (Bada Makhan, Channapatna) and Hazarath Mardane Ghaib situated at Shivana Samudram by conferring Khilafathnama in the presence of religious heads and elders of the community in a public function held on 26.02.1981?

(viii) Whether the legal heirs of defendant No.9 have proved that their father Syed Usman Pasha Khadri was the Sajjadanashin of the suit Dargah?

(ix) Whether the legal heirs of defendant No.3 proved that inspite of exercise of due diligence they were unable to produce documents which now they have produced along with I.A.No.20 under Order 41 Rule 27 r/w/s 151 of C.P.C.?

(x) Whether the legal heirs of defendant No.3 proves that the documents furnished along with I.A.20 are material documents to prove and adjudicate dispute between themselves and respondents?

(xi) Whether the legal representatives of the defendant No.3 proves that the trial court had refused to receive the documents now furnished by them along with I.A.No.24 U/O 41 Rule 27(a) r/w/s 151 of C.P.C.?

(xii) Whether the legal representatives of defendant No.3 proves that inspite of due diligence they were unable to produce documents which now they have produced before this court along with I.A.No.24?

(xiii) Whether the legal representatives of defendant No.3 proves that the documents furnished by them along with I.A.No.24 are material documents for the proper adjudication of this matter?

(xiv) Whether there are any grounds to interfere with the findings given by the trial court?

(xv) What order?

14. The First Appellate Court on re-appreciation of the evidence answered point Nos.1, 6 and 7 in the affirmative and point Nos.2 to 5 and 8 to 14 in the negative and consequently dismissed all the regular appeals by its common judgment and order dated 27.02.2023. Being aggrieved by the same, the defendant No.3 is before this Court in R.S.A.No.1004/2023, the plaintiff is before this Court in R.S.A.Nos.1064/2023 and 1069/2023 and legal representatives of defendant No.9 are before this Court in R.S.A.No.1141/2023.

SUBSTANTIAL QUESTIONS OF LAW:

15. Since common facts and grounds are urged in all these appeals this Court by order dated 18.04.2024, admitted the appeals to consider the following substantial questions of law:

"(1) Whether the Trial Court and the First Appellate Court are justified in assuming the jurisdiction in deciding the matter pertaining to the Office of Sajjadanashin of DARGAH of HAZRATH AKHIL SHAH QUADRI a notified WAQF institution, which in terms of provisions of WAQF Act, 1995 is required to be dealt with and adjudicated by the Karnataka State Board of WAQF-Defendant No.7 and any decision thereof to be decided by the WAQF Tribunal constituted under Section 83 of the WAQF Act, 1995?"

(2) Whether the Trial Court and the First Appellate Court are justified in granting relief of counter claim made by defendant No.8 in the absence of specific pleading and proof with regard to hereditary and customary rights based on which the said counter claim was made and also ignoring the provisions of Personal Law of the parties governing right of inheritance?"

16. Again by order dated 20.09.2024, this Court framed following additional substantial question of law:

(3) Whether in the facts and circumstances of the case, trial Court and first appellate Court are justified in decreeing the counter claim of defendant No.8 by granting mere relief of declaration in the absence of any prayer for consequential relief?"

17. **Submission of Sri. Raghu Prasad B.S., learned counsel appearing for the plaintiff:**

Reiterating the grounds urged in the memorandum of appeal and taking this Court through the oral and documentary evidence extensively learned counsel submitted that;

(a) That the Trial Court and the First Appellate Court failed to appreciate the oral and documentary evidence produced by the plaintiff in their proper perspective in that while they relied upon the only document - Ex.D1 produced by the defendant No.8, declined similar documents produced by the plaintiff. Thus, the

impugned judgment and decree of the Trial Court confirmed by the First Appellate Court suffers from perversity.

(b) That the office of Sajjadanashin could only be inherited by a person nominated by earlier Sajjadanashin, who was qualified to the post and defendant No.8 to whom the Trial Court and the First Appellate Court declared to have been nominated as Sajjadanashin neither stayed at Channapatna nor has conducted any ceremonies as he was residing and doing business at Bengaluru.

(c) The trial Court and the First Appellate Court rejected the suit of the plaintiff on the premise of plaintiff failing to plead and prove the customs whereas decreed the counter claim of defendant No.8 even in the absence of he pleading and proving the customs clearly demonstrating the impugned judgments and decree suffering from illegalities and perversity.

(d) That the counter claim of the defendant No.8 ought to have been tried as a separate suit and since the defendant No.8 had merely sought for declaration of his right without seeking consequential reliefs, in view of provisions of Section 34 of Specific Relief Act, the trial Court and the First Appellate Court ought to have rejected the counter claim.

(e) Relying upon the judgments of the Apex Court in the case of (i) ***Executive Officer Arulmigu Chokkanatha Swamy Koil Trust, Virudhunagar Vs Chandran*** and others reported in ***AIR 2017 SCC 1034***, (ii) ***Anathula Sudhakar Vs P Buchi Reddy (dead) by Lrs*** and others reported in ***(2008) 4 SCC 594*** (iii) ***Venkataraja and others Vs Vidyane Doureradjaperumal dead by Lrs and others*** reported in of ***(2014) 14 SCC 502***, he submitted that admittedly defendant No.8 was not in possession of the office of sajjadanashin of suit Dargah and the counter claim made seeking declaratory relief along with relief

of permanent injunction was not maintainable and the same ought to have been dismissed.

(f) Referring to the Judgment in the case of **Joseph John Peter Sandy Vs Veronica Thomas Rajkumar and anr** reported in **2013 AIR SCW 2604** submitted that since the plaintiff had specifically denied his signature on Ex.D1 onus of proof of the document was on the defendant No.8 who propounded the said document. He further submitted neither the witnesses nor the scribe of the document-Ex.D1 was examined to prove its execution. The document could not therefore have been relied upon by the trial Court and first appellate Court.

(h) He also relied upon the Judgment in the case of **Santosh Hazari Vs Purushottam Tiwari (dead) by Lrs.** reported in **AIR 2001 SC 965** to contend that High Court has jurisdiction to hear appeal on any other substantial question of law not proposed by the appellants if the case involves such a question upon the reasons to be recorded.

Hence, sought for allowing of the appeal.

18. **Sri. S.A.H Razvi, learned counsel for the defendant No.3 submitted that;**

(a) Referring to the Judgment of the Apex Court in the case of ***S.V.Cheriyakoa Thangal Vs S.V.P.Pookoya and others*** passed in ***SLP.No.3182/2019*** submitted that appointment of Mutawalli which includes Sajjadanashin is wholly within the jurisdiction of Waqf Board under Section 32(2)(g) and Civil Court have no jurisdiction to appoint the Mutawalli.

(b) Referring to the Judgments of the Apex Court in the case of ***Balvant N Viswamitra and others Vs Yadav Sadashiv Mule (dead) through Lrs and others*** reported in ***(2004) 8 SCC 706*** and in the case of ***Kiran Singh and others Vs Chaman Paswan and others*** reported in ***(1995) 1 SCR 117*** he submitted that a void decree can be challenged at any stage even in the execution or collateral proceedings.

(c) That with the Waqf Act, 1995 constituting Tribunal and all matters pertaining to any Waqf were to be decided by the Tribunal under Sections 83 to 85 of the Waqf Act, 1995. As such, the suit and the appeal were not maintainable.

(d) That though defendant No.8 claimed that he was holding the post of Sajjadanashin from the year 1988 after the death of his grand father by virtue of custom, at paragraph No.15 of his written statement/counter claim has admitted that the defendant Nos.1 to 6 were conducting the dargah festivals.

(e) That the Trial Court and the First Appellate Court failed to appreciate that though defendant No.8 claimed that he was appointed as Sajjadanashin on 26.02.1981, by his grand father and father of the plaintiff who was Sajjadanashin of Shivanasamudra as well as Channapatna, has however made the counter claim only when he got himself impleaded into the suit of the

plaintiff and filed the counter claim on 16.01.1990 which is bared by limitation.

(f) That the trial Court and the First Appellate Court erred in relying upon the document at Ex.D1 produced and marked by defendant No.8 during the cross-examination of PW.1 and both defendant No.8 and plaintiff have denied their signatures on Ex.D1. Thus, without proof of the said document, the trial Court and the First Appellate Court could not have granted the counter claim.

(g) Referring to Judgment in the case of ***Faqrudin Vs Tajuddin (Supra) (2008) 8 SCC 12*** at paragraph 32 he submitted that the holder of office of Sajjadanashin must have a special qualification which the defendant No.8 himself admitted to be an illiterate. That the trial Court and the First Appellate Court had failed to appreciate the admission made by the defendant No.8 that during the time of death of his grand father he was residing at Shivanasumadra, while his grand father was residing at Channapatna and that defendant No.8 was

an illiterate and did not know reading and writing and he did not know conducting of Urs at Channapatna and that he was not even aware of names of fakirs and muridhs etc.

(h) That the trial Court and the First Appellate Court erred in holding that Ex.D2 to Ex.D4 reveal that Syed Mohammed Adil Shah Khadri was a makandar of dargah and not Sajjadanashin. That there is no discussion of the documents produced by the defendant Nos.1 to 3.

(i) That admittedly defendant Nos.1 to 3 are in possession of dargah and also its keys. That neither the plaintiff nor the defendants have sought for keys or possession of the dargah. As such, the counter claim without consequential reliefs was not maintainable.

(j) Since, defendant No.8 claimed his appointment was based on customs, was required to specifically plead the customs and to lead cogent evidence in proof of the same and in the absence of the same could not have decreed the counter claim. He relied upon the judgment

of the Apex Court in the case of **ALIYA THAMMUDA BEETHATHEBIYYAPPURA POOKOYA AND ANOTHER VS. PATTAKAL CHERIYAKOYA AND OTHERS** reported in **AIR 2020 SCC 2892** and referring to paragraph 24 of the said Judgment submitted that defendant No.8 could not have been appointed merely because by virtue of he being the eldest grand son of the father of the plaintiff without pleading and proving the customs.

Hence sought for allowing of the appeals.

19. **Submission of Sri M Syed Roohulla learned counsel for the legal representatives of defendant No.9 reiterating the contents of written statement submitted that;**

(a) That the trial Court and first appellate court have neither framed issue nor have appreciated the pleading and evidence of defendant No.9.

(b) Referring paragraph 98 of the judgment of the trial Court learned counsel pointed out that even according to the findings of the trial Court Defendant No.8 has not

been functioning as Sajjadanashin and has been residing in Bangalore and that there has been dispute ever since his appointment as per alleged Exhibit D1. As such a counter claim without consequential relief could not have been granted in favour of Defendant No.8.

(c) Referring to paragraph No.105 of the judgment of the trial Court learned counsel submitted that when there is serious dispute with regard to signatures found on the exhibit D1 there has been no signature verification done in the manner known to law. Thus, the said document has not been proved and as such the same could not have been relied upon by the courts below. Ex.D1 refers to Makandar and not Sajjadanashin. No claim could have been laid based thereon.

(e) That reasons and findings given by the Trial Court on Issue No. 11 with regard to issuance of notice under Section 56 of Waqf Act, 1954 are contrary to the facts and law.

(d) That the Trial Court and the First appellate court had no jurisdiction to try the suit as it is the defendant No.7-Karnataka State Board of Waqf which is competent to appoint the Sajjadanashin to the suit dargah.

(e) He relied upon the judgment in the case **Abdus Subhan Vs. Karnataka State Board of Waqf, Bangalore** reported in **2006 SCC Online Kar. 609: (2007) 2 Kant LJ 71: (2007) 1 AIR Kant R 425: 2007 AIHC 1329**, where it is held that *"in a case involving jurisdiction of Tribunal under Waqf Act, 1995', a plaint can be returned at any stage of the proceedings under Order 7 Rule 10 (1) of Code of Civil Procedure if by virtue of a new legislation, a situation may arise requiring the party to present the case before the Court, which has jurisdiction over the matter"*

Hence, sought for allowing of his appeal.

20. **Submission of Sri Subhash Srinivas Rangachar, learned Counsel for the defendant No.8**

justifying the impugned Judgment and decree;

(a) Referring the judgment of the Apex Court in the case of ***Sardar Khan and others Vs Syed Najmul Hassan (Seth) and others*** reported in ***(2007) SCC 727*** wherein it is held that the Waqf Act 1995 will not be applicable to the pending suits or proceedings commenced prior to 01.01.1996, he submitted that present suit was filed on 28.11.1988 and written statement and counter claim was filed by the defendant No.8 on 15.01.1990 after impleading himself, which is, much prior to coming into force of the Waqf Act 1995, which is having prospective effect. That the parties were governed by the Waqf Act 1954 and any dispute that arose was to be resolved or adjudicated before the Civil Court only under the provisions of the Waqf Act 1954.

(b) that since no pleading or objection with regard to the jurisdictional issue was raised either before the Trial Court or before the First Appellate Court, a belated plea on jurisdiction cannot be allowed to be taken at this

stage of the proceedings. As such, the first substantial question of law would not arise.

(c) He further referred to the order sheet of the Trial Court dated 22.08.2002 and 19.12.2002 (page 57, 58 and 59 of the order sheet in OS No.92/88) to point out the matter had indeed been transferred to the Waqf Tribunal, Bangalore Division and thereafter sent back to the trial Court for adjudication. That even if the trial Court did not have jurisdiction no prejudice is caused to the plaintiff and other defendants. In support of the above submissions he relied upon the judgment in the case of **KONDIBA DAGADU KADAM VS. SAVITRI BAI SOPAN GUJAR AND OTHERS** reported in **(1999) 3 SCC 722** wherein at paragraph No.6, it is held that;

"If the question of law termed as a substantial question stands already decided by a larger Bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court, its merely wrong application on the facts of the case would not be termed to be a substantial question of law. Where a point of law has not been pleaded or is found to be arising between the parties in the absence of any factual format, a litigant should not be allowed to raise that question as a substantial question of law in second appeal. The mere appreciation of the facts, the documentary evidence or the meaning of entries and the contents of the document

cannot be held to be raising a substantial question of law. But where it is found that the first appellate court has assumed jurisdiction which did not vest in it, the same can be adjudicated in the second appeal, treating it as a substantial question of law. Where the first appellate court is shown to have exercised its discretion in a judicial manner, it cannot be termed to be an error either of law or of procedure requiring interference in second appeal. This Court in Reserve Bank of India v. Ramkrishna Govind Morey held that whether the trial court should not have exercised its jurisdiction differently is not a question of law justifying interference”.

and the judgment in the case of **RAMESH CHAND ARDAWATIYA VS. ANIL PANJWANI** reported in **(2003) 7 SCC 350** wherein at paragraph No.19 it has been held as under:

19.An exclusion of jurisdiction of Civil Court is not to be readily inferred. (See Dhulabhai etc. v. State of Madhya Pradesh and Anr. - (1963) 3 SCR 662). An objection as to the exclusion of Civil Court's jurisdiction for availability of alternative forum should be taken before the Trial Court and at the earliest failing which the higher Court may refuse to entertain the plea in the absence of proof of prejudice.

(d) Referring to Section 112 of the Waqf Act 1995 he further submitted that any action taken prior to coming into force of the Waqf Act, 1995 is saved by virtue of Section 6 of General Clauses Act. In this regard, he

relies upon the judgment in the case of **Mohd. Idris and others Vs. Sat Narain and others** reported in **(1966) 3 SCR 15**. wherein at paragraph No.7 of its judgment it has been held as under;

This suit was filed on May 27, 1952 when the Abolition Act was not on the statute book. When the Abolition Act was passed it did not repeal the U.P. Agriculturist Relief Act. Both the Acts, therefore, continued on the statute book till July 12, 1953. On that date Act XVI of 1953 was passed. Section 67 of that Act repealed the U.P. Agriculturist Relief Act. While repealing the Act it was not stated whether the repeal was to operate retrospectively or not but by S. 1 (2) the amending Act itself was deemed to have come into force from the first day of July, 1952, that is to say, simultaneously with the Abolition Act. It may, therefore, be assumed that the U.P. Agriculturist Relief Act was also repealed retrospectively from July 1, 1952. The question is : whether the right of the plaintiff to continue the suit under the old law was in any way impaired. Section 6 of the U.P. General Clauses Act lays down the effect of repeal and it is stated there as follows :-

6. Effect of repeal.

Where any Uttar Pradesh Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(e) affect any remedy, or any investigation or legal proceeding commenced before the repealing Act shall have come into operation in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such remedy may be enforced and any such investigation or legal proceedings may be continued and concluded; and any such penalty, forfeiture or punishment imposed as if the repealing Act had not been passed.,' The question is whether a different intention appears in either the Abolition Act or the amending Act XVI of 1953, for otherwise the old proceeding could continue before the Munsif. There is nothing in the Abolition Act which takes away the right of suit in respect of a pending action. If there be any doubt, it is removed when we consider that the U.P. Agriculturist Relief Act was repealed retrospectively from July 1, 1952 only and it

is not, therefore, possible to give the repeal further retrospectively so as to affect a suit pending from before that date. The jurisdiction of the Assistant Collector was itself created from July 1, 1952 and there is no provision in the Abolition Act that pending cases were to stand transferred to the Assistant Collector for disposal. Such provisions are commonly found in a statute which takes away the jurisdiction of one court and confers it on another. From these two circumstances it is to be inferred that if there is at all any expression of intention, it is to keep s. 6 of the General Clauses Act applicable to pending litigation. The doubt, if any be left, is further removed if we consider a later amending Act, namely, Amending Act XVIII of 1956. By that Act Schedule 11, which created the jurisdiction of the Assistant Collector in suits for ejectment of asamis was replaced by another Schedule. The entry relating to suits for ejectment of asamis, however, remained the same. But S. 23 of the amending Act of 1956 created a special saving which reads as follows "23. Saving.-

(i) Any amendment made by this Act shall not affect the validity, invalidity, effect or consequence of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred or any jurisdiction already exercised, and any proceeding instituted or commenced before any court or authority prior to the commencement of this Act shall, notwithstanding any amendment herein made, continue to be heard and decided by such court or authority.

(ii) An appeal, review or revision from any suit or proceeding instituted or commenced before any court or authority prior to the commencement of this Act shall, notwithstanding any amendment herein made, lie to the Court or authority to which it would have laid if instituted or commenced before the said commencement."

(e) That the term 'Mutawalli' is different from the term 'Sajjadanashin'. That though the definition of the term Mutawalli under the Waqf Act, 1995 includes both the terms, Sajjadanashin is purely a spiritual office and Waqf Board has no power to appoint Sajjadanashin.

(f) That there is no provision under the Waqf Act, 1995 either prescribing the qualification or the mode and method of appointment of Sajjadanashin. It is because, Islam does not recognize Dargah and idol worship and that the concept of Dargah does not fall under the five pillar of Islam.

(g) Referring the paragraph 9 of the plaint and paragraph 9 of the written statement of the defendants 2 and 3 he submitted that there is clear admission to the effect that office of Sajjadanashin is hereditary and is filled only by nomination. In the instant case customs and traditions provide only nomination to the post of the Sajjadanashin. There is no question of application of rule of inheritance. That the Defendant No.8 has been appointed as Sajjadanashin by his grand father as per Ex.D1. Sajjadanashin is required to conduct only Sandal and Urs requiring no special qualification.

(h) That both the Trial Court and the First Appellate Court have on appreciation of pleadings and evidence

have come to concurrent findings and conclusion, which cannot be interfered with by this Court in exercise of its jurisdiction under Section 100 of Code of Civil Procedure. In this regard, he relied upon the judgment in the case of **KARNATAKA BOARD OF WAQF VS. ANJUMAN-E-ISMAIL MADRIS-UN-NISWAN** reported in **(1999) 6 Supreme Court Cases 343**, wherein at paragraph Nos.12, 13, 14 it has been held as under:

12. This Court had repeatedly held that the power of the High Court to interfere in second appeal under Section 100 CPC is limited solely to decide a substantial question of law, if at all the same arises in the case. It has deprecated the practice of the High Court routinely interfering in pure findings of fact reached by the courts below without coming to the conclusion that the said finding of fact is either perverse or not based on material on record.

13. In Ramanuja Naidu v. V. Kanniah Naidu' this Court held: (SCC Head note)

"It is now well settled that concurrent findings of fact of trial court and first appellate court cannot be interfered with by the High Court in exercise of its jurisdiction under Section 100 of Civil Procedure Code. The Single Judge of the High Court totally misconceived his jurisdiction in deciding the second appeal under Section 100 of the Code in the way he did."

14. In Navaneethammal v. Arjuna Chetty this Court held: (SCC Head note)

"Interference with the concurrent findings of the courts below by the High Court under Section 100 CPC must be avoided unless warranted by compelling reasons. In any case, the High Court is not expected to reappreciate

the evidence just to replace the findings of the lower courts.

...Even assuming that another view is possible on a re-appreciation of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the first appellate court was based on material."

(i) That neither the plaintiff nor the other defendants had raised the contention of defendant No.8 not pleading and proving the customs and traditions, which is raised for the first time in these appeals which is impermissible. He relied upon the judgment of the Apex Court in the case of **SMT. CHANDER KALI VAI AND OTHERS VS. SHRI JAGDISH SANGH THAKUR AND ANOTHER** reported in **(1977) 4 SCC 402**

(j) He further relied upon the judgment of the Hon'ble Apex Court in the case of Govindaraju vs Mariamman reported in (2005) SCC 500 wherein at paragraph Nos.16 and 18;

16. As per settled law, the scope of exercise of the jurisdiction by the High Court in Second Appeal under Section 100 is limited to the substantial questions of law framed at the time of admission of the appeal or additional substantial questions of law framed at a later date after recording reasons for the same. It was observed in Santosh Hazari's case (supra) that a point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be a 'substantial' question of

law must be debatable, not previously settled by law of the land or a binding precedent and answer to the same will have a material bearing as to the rights of the parties before the Court. As to what would be the question of law "involving in the case", it was observed that to be a question of law 'involving in the case' there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by the court of facts and it must be necessary to decide that question of law for a just and proper decision between the parties.

(k) On the issue of maintainability of the counter claim in view of proviso to Section 34 of Code of Civil Procedure, he submitted that there is no prohibition in law to seek only a relief of declaration. That in any case the second prayer in the counter claim is sufficient to construe it as a relief for injunction. He further submitted a relief sought by the defendant No.8 does not involve any possessory rights of the property. It is a relief in respect of legal character/status and nothing more. In this regard he relied upon judgment of the hon'ble Apex Court in the case of **Vemareddi Ramaraghava Reddy and others Vs. Kondooru Seshu Reddy and others** reported in **(1966) Supp SCR 270 and M/s.Supreme General Films Exchange Ltd., Vs. His Highness Maharaja Sri.Sir Brijnath Singhji Deo of Mahir and others**

reported in **(1975) 2 SCC 350, K.Mahadeva Shastry Vs. Director Post Graduate Ananthpur** reported in **AP LJ 1980 (2) HC DB.**

Contending as above sought for dismissal of the appeals.

DISCUSSION AND ANALYSIS:

21. Heard and perused the records.

Regarding substantial question of law No.1:

Whether the Trial Court and the First Appellate Court are justified in assuming the jurisdiction in deciding the matter pertaining to the Office of Sajjadanashin of DARGAH of HAZRATH AKHIL SHAH QUADRI a notified WAQF institution, which in terms of provisions of WAQF Act, 1995 is required to be dealt with and adjudicated by the Karnataka State Board of WAQF-Defendant No.7 and any decision thereof to be decided by the WAQF Tribunal constituted under Section 83 of the WAQF Act, 1995?

22. Learned counsel for the appellants contended that the Trial Court and the First Appellate Court had no jurisdiction to try and adjudicate the dispute as it is the defendant No.7-Karnataka State Board of Waqf which is empowered under the statute to appoint or remove Mutawalli. That since definition of Mutawalli includes the term "Sajjadanashin", the power of appointment and removal even to the post of "Sajjadanashin" shall be exercised by defendant

No.7-Waqf Board. As such it is contended that Judgment and decree passed by the trial Court and First Appellate Court is a nullity.

23. Learned counsel for defendant No.8 on the contrary submitted that since the issue of jurisdiction was neither pleaded nor raised either before the Trial Court or before the First Appellate Court, the same cannot be raised by the appellants at this belated stage. That Waqf Act, 1995 neither defines the term Sajjadanashin nor prescribes any qualification, mode or method of appointment. In any case the Waqf Act 1995 which is prospective in nature cannot be made applicable to the pending proceedings. Hence, it is vehemently submitted the substantial question of law on jurisdiction does not arise.

24. Substantial question of law No.1 involving above controversy is dealt with in five segments as under for the sake of convenience;

I Whether objections with regard to jurisdiction can be raised in a Second Appeal?

(a) The Apex Court in the case of ***Hasham Abbas Sayyed Vs Usman Abbas Sayyed and others- (2007) 2 SCC 355*** dealing with the question of lack of inherent jurisdiction, at paragraphs 22 and 23 has held as under:

"22. The core question is as to whether an order passed by a person lacking inherent jurisdiction would be a nullity. It will be so. The principles of estoppel, waiver and acquiescence or even res judicata which are procedural in nature would have no application in a case where an order has been passed by the Tribunal/Court which has no authority in that behalf. Any order passed by a court without jurisdiction would be coram non judice being a nullity, the same ordinarily should not be given effect to. [See Chief Justice of Andhra Pradesh and Another v. L.V.A. Dikshitulu and Others - AIR 1979 SC 193 & MD Army Welfare Housing Organisation v. Sumangal Services (P) Ltd. (2004) 8 SCC 619].

23. This aspect of the matter has recently been considered by this Court in Harshad Chiman Lal Modi v. DLF Universal Ltd. and Another [(2005) 7 SCC 791], in the following terms :

*"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 nullity."

We may, however hasten to add that a distinction must be made between a decree passed by a court which has no territorial or pecuniary jurisdiction in the light of section 21 of the Code of Civil Procedure; and a decree passed by a court having no jurisdiction in regard to the subject matter of the suit. Where as in the former case, the appellate court may not interfere with the decree unless prejudice is shown, ordinarily the second category of the cases would be interfered with.

(Emphasis supplied)

(b) In the case of **Faqrudin (supra)** relying upon the aforesaid Judgment the Apex Court, at paragraph 51 has held that

"A jurisdictional fact would not attract principle of estoppel as there can be no estoppel against the statute."

(c) Reliance placed on by the learned counsel for the Defendant No.8 on the Judgment of the Apex Court in the case of **Kondiba Dagadu Kadam (supra)** to contend that

"Where a point of law has not been pleaded or is found to be arising between the parties in the absence of any factual format a litigant should not be allowed to raise that question as substantial question of law in the second appeal."

(d) However the Apex Court in the very same Judgment and in the very same paragraph No.6 has held as under:

"But where it is found that first appellate Court has assumed the jurisdiction which it did not vest in it, same can be

adjudicated in the second appeal treating it as substantial question of law."

(e) Thus, objections that are required to be raised at the earliest opportunity are with respect to 'territorial' or 'local jurisdiction' and 'pecuniary jurisdiction' and not with regard to 'jurisdiction over the subject matter'. In the instant case what needs to be seen is whether the objection to the jurisdiction raised by the appellants is with regard to 'jurisdiction of the trial Court over the subject matter of the dispute' or with respect to 'territorial or pecuniary jurisdiction' if it is with regard to the jurisdiction over the substantial matter same can be raised in the second appeal.

II *Whether the Waqf Board is exclusively authorised under the provisions of the Waqf Act 1954 and the Waqf Act 1995 to appoint and remove the Mutawalli? And whether the jurisdiction of the Civil Court in this regard is ousted?*

(a) Necessary to advert to provisions of the Waqf Act, 1954 (hereinafter referred to as the 'Act, 1954') which was repealed by the Waqf Act, 1995 (hereinafter referred to as the 'Act, 1995'). The term "Sajjadanashin" has not been defined either under Act, 1954 or under the Act, 1995. However the said term is included in the definition of the term "Mutawalli" as found in Section 3 (i) of both the Acts which is as under:

3(i)“**mutawalli**” means any person appointed, either verbally or under any deed or instrument by which a waqf has been created, or by a competent authority, to be the mutawalli of a 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 fulfill 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;]

(b) Power to appoint a Mutawalli is vested with the Waqf Board which is incorporated as per Section 13 of the Act, 1995 (which is pari materia with Section 9 of the Act, 1954) with the composition of members as contemplated under Section 14 of the Act, 1994 (which is pari materia with Section 10 of the Act, 1954).

(c) Section 32 of the Act, 1995 (which is pari materia with Section 15 of the Act, 1954) provides for powers and functions of the Board. Section 32(2)(g) (which is pari materia with Section 15(2)(g) of the Act, 1954), specifically provides

for power of the Board to appoint Mutawalli which reads as under:

Section 32(2)

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

(d) Section 63 of the Act, 1995 (which is pari materia with Section 42 of the Act, 1954) provides for power to appoint Mutawallis.

"63. Power to appoint mutawallis in certain cases.-

When there is a vacancy in the office of the mutawalli of a ¹[waqf] and there is no one to be appointed under the terms of the deed of the [waqf], or where the right of any person to act as mutawalli is disputed, the Board may appoint any person to act as mutawalli for such period and on such conditions as it may think fit".

(e) Section 64 of the Act, 1995 (which is pari materia with Section 43 of the Act, 1954) sets out elaborate powers and procedure to be followed by the Board for the purpose of removal of the Mutawalli which is as under:

64. Removal of Mutawalli – (1) Notwithstanding anything contained in any other law or the deed of waqf, the Board may remove a mutawalli from his office if such mutawalli—

- (a) has been convicted more than once of an offence punishable under section 61; or
- (b) has been convicted of any offence of criminal breach of trust or any other offence involving moral turpitude, and such conviction has not been reversed and he has not been granted full pardon with respect to such offence; or
- (c) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him

unfit to perform the functions and discharge the duties of a mutawalli; or

(d) is an undischarged insolvent; or

(e) is proved to be addicted to drinking liquor or other spirituous preparations, or is addicted to the taking of any narcotic drugs; or

(f) is employed as paid legal practitioner on behalf of, or against, the waqf; or

(g) has failed, without reasonable excuse, to maintain regular accounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by sub-section (2) of section 46; or (h) is interested, directly or indirectly, in a subsisting lease in respect of any waqf property, or in any contract made with, or any work being done for, the waqf or is in arrears in respect of any sum due by him to such waqf; or

(i) continuously neglects his duties or commits any misfeasance, malfeasance, misapplication of funds or breach of trust in relation to the waqf or in respect of any money or other waqf property; or

(j) willfully and persistently disobeys the lawful orders made by the Central Government, State Government, Board under any provision of this Act or rule or order made thereunder;

(k) misappropriates or fraudulently deals with the property of the waqf.

(2) 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.

(3) No action shall be taken by the Board under sub-section (1), unless it has held an inquiry into the matter in a prescribed manner and the decision has been taken by a majority of not less than two-thirds of the members of the Board.

(4) A mutawalli who is aggrieved by an order passed under any of the clauses (c) to (i) of sub-section (1), may, within one month from the date of the receipt by him of the order, appeal against the order to the Tribunal and the decision of the Tribunal on such appeal shall be final.

(5) Where any inquiry under sub-section (3) is proposed, or commenced, against any mutawalli, the Board may, if it is of opinion that it is necessary so to do in the interest of the waqf, by an order suspend such mutawalli until the conclusion of the inquiry: Provided that no suspension for a

period exceeding ten days shall be made except after giving the mutawalli a reasonable opportunity of being heard against the proposed action.

(6) Where any appeal is filed by the mutawalli to the Tribunal under sub-section (4), the Board may make an application to the Tribunal for the appointment of a receiver to manage the waqf pending the decision of the appeal, and where such an application is made, the Tribunal shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), appoint a suitable person as receiver to manage the waqf and direct the receiver so appointed to ensure that the customary or religious rights of the mutawalli and of the waqf are safeguarded.

(7) Where a mutawalli has been removed from his office under sub-section (1), the Board may, by order, direct the mutawalli to deliver possession of the waqf property to the Board or any officer duly authorised in this behalf or to any person or committee appointed to act as the mutawalli of the waqf property.

(8) A mutawalli of a waqf removed from his office under this section shall not be eligible for re-appointment as a mutawalli of that waqf for a period of five years from the date of such removal.

(f) Section 65 of the Act, 1995 (which is *pari materia* with Section 43A of the Act, 1954) provides for assumption of direct management of certain waqf by the Board where no suitable person is available for appointment as mutawalli of the waqf or where the Board is satisfied that for the reasons to be recorded by it in writing that the filling up of the vacancy in the office of a mutawalli is prejudicial to the interest of the waqf etc.

(g) Under Sections 70 and 71 of the Act, 1995 (which is pari materia Sections 44 and 45 of the Act, 1954), the Board is empowered to conduct inquiry into the administration of the wakf with the power of a Civil Court as provided under Code of Civil Procedure 1908 which are as under:

70. Inquiry relating to administration of waqf.—Any person interested in a waqf may make an application to the Board supported by an affidavit to institute an inquiry relating to the administration of the waqf and if the Board is satisfied that there are reasonable grounds for believing that the affairs of the waqf are being mismanaged, it shall take such action thereon as it thinks fit.

71. Manner of holding inquiry.—(1) The Board may, either on an application received under section 2[70] or on its own motion,— (a) hold an inquiry in such manner as may be prescribed; or (b) authorise any person in this behalf to hold an inquiry into any matter relating to a waqf and take such action as it thinks fit.

(2) For the purposes of an inquiry under this section, the Board or any person authorised by it in this behalf, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) for enforcing the attendance of witnesses and production of documents.

(h) It is relevant also to refer Rules 54, 55 and 56 of the WAQF Rules, 2017 providing procedure for appointment of Mutawallis which read as under;

54. Appointment of Muthawallies or Managing Committees.— (1) The Board shall appoint Mutawallies or constitute managing committees under clause (g) of sub-section (2) of Section 32 on receipt of proposals forwarded Management in accordance with the respective Scheme of Management.

(2) Such committees shall initiate process of constitution of succeeding committee as per the approved Scheme of

Management three months prior to the expiry of the term of the committee and shall complete the entire process of constitution of succeeding committee within two months prior to expiry of the term of the committee.

(3) The District Waqf Officer of the respective district shall supervise the process of appointment/constitution of succeeding committee.

(4) If in the event of the existing committee fails to initiate and complete the process for constitution of succeeding committee within the time prescribed under sub-rule (2) of Rule 52 of the District Waqf Officer shall Initiate such process within two months prior to the expiry of the term of the existing committee and complete the process prior to the expiry of the term of the existing committee.

(5) If for any reasons succeeding committee is not constituted or appointed, the management and supervision of such Waqf Institution shall automatically vest with the concerned District Waqf Officer and the District Waqf Officer or any other Officer authorized by the Board shall carry out duties and functions as delegated by the Karnataka State Board of Auqaf. He shall take action to get the succeeding committee constituted within a period of three months.

(6) Such committees shall cease to have any power or authority for management of such Waqf Institution including operation of bank accounts after expiry of the term.

55. Appointment of Mutawalli.-

(1) While appointing the Mutawalli the Board shall have due regard to the contents of Deeds of Waqf (waqifnama), providing for appointment of Mutawalli custom, usage pertaining to appointment of Hereditary Mutawallis.

(2) _____

(3) If any person appointed as Mutawalli dies, or refuses to act in terms of the Waqfnama or is removed under this Act, or if the office of Mutawalli otherwise becomes vacant and there is no provision in the deed of Waqf regarding succession to the office, the Mutawalli may be appointed as per Rule 53.

(4) While appointing the Hereditary Mutawalli, the Board shall have regard to the following; namely.-

(a) The Board shall not disregard the directions of the waqif;

(b) The Board should not appoint a stranger so long as there is any member of the waqif's family in existence qualified to hold the office; and

(c) Where there is a contest between lineal descendants of the waqif and one who is not a lineal descendant the Board is not bound to appoint the lineal descendant if he is otherwise not qualified to be appointed as Mutawalli and in such cases the Board may in exercise of its discretion, appoint others claimant to the Mutawalli.

56. Appointment of Mutawalli under Section 63. - Notice regarding filling up of vacancy of Mutawalli.-

(1) Whenever there is a vacancy in the office of the Mutawalli of a Waqf and there is no one to be appointed under the terms of the Deed of Waqf, the Chief Executive Officer or an Authorised Officer on his behalf shall issue a Public Notice in Form 47 in respect of appointment of Mutawalli.

(2) Whenever there is a vacancy in the office of the Mutawalli of Waqf and the right of any person to act as Mutawalli is disputed, such Notice shall be in Form 48."

(i) Thus, from the aforesaid broad provisions of the Act 1954 and the Act 1995 and the Rules, 2017 it is clear that the power to appoint "Mutawallis" which includes 'Sajjadanashin' is vested with the defendant No.7-Karnataka State Board of Waqf and the rules framed thereunder lays down elaborate procedure for said purpose.

(j) It is a trite law that a statute may expressly exclude the Jurisdiction of Civil Court in respect of certain matters which otherwise are within its jurisdiction. An implied ouster may have to be inferred from the scheme of the statute where even without any express provision the jurisdiction of the civil court has been excluded. Intention of legislature to vest exclusive powers of appointment as well as removal of mutawalli with Waqf Board is discernible. In that, it is the Waqf Board which is vested with the statutory powers to manage, supervise, control and administrate all affairs of Waqf institutions and their properties coming within its jurisdiction. The term "Waqf" as defined under section 3(r) of the Act 1995 means the permanent dedication by any person, of any movable or immovable property for any purpose recognised by Muslim Law as pious, religious, or charitable and includes waqfs, grants and properties mentioned thereunder. Invariably it includes Dargah and its properties as well. Status of Mutawalli qua the Waqf is akin to a Trustee. The Mutawalli is made directly answerable and accountable to the Waqf Board.

(k) The entire Chapter VI of the Act 1995 consisting of Sections 44 to 71 which includes Sections 63 and 64 as seen above, providing powers to Board to appoint and remove the Mutawallis under the circumstances envisaged thereunder, (which is *pari materia* to Chapter V of the Waqf Act, 1954 consisting of Sections 31 to 45)deals with various duties and responsibilities of the Mutawalli of a Waqf institution and being made accountable to the Board also provide for penalties and consequences for his failures in discharging his duties. Further as noted above Sections 70 and 71 falling under the same chapter cloth the Board with quasi judicial powers of holding inquiry into the administration of the Waqf with powers of a Civil Court under the Code of Civil Procedure 1908 for the purposes contemplated thereunder. In that sense it is a complete code in itself. This is an ongoing process. No Mutawalli or even Sajjadanashin can claim right to hold the office eternally, even if he is found to be unfit or incapable or his continuance as such is found to be detriment to the interest of Waqf institution concerned. This power is therefore exclusively vested with the Waqf Board which under the statute requires to keep vigil on the affairs of the Waqf

institutions. Considering the diverse issues envisaged under chapter VI of the Act 1995 that may arise periodically in respect of affairs of a given Waqf and its nature it is the Waqf Board under the statute with its composition as provided under section 14 is Competent Authority to deal with the subject. Order if any that may be passed by the Waqf Board on this subject is made amenable for challenge before Waqf Tribunal by filing application as provided thereunder.

(I) Another aspect of the matter is that even if a person obtains as declaration with regard to his claim to the Office of Mutawalli or Sajjadanashin as the case may be from a Civil Court as an alternate forum, such declaration of his status cannot eternally bind either the Waqf institution in respect of which such declaration is obtained or the Waqf Board which is vested with powers and duties of supervision, control, management and administration of waqf institutions, inasmuch as the office of the Mutawalli or the Sajjadanashin is susceptible of periodical changes and alterations depending upon various factors as envisaged under Chapter VI of the Waqf Act 1995.

(m) Thus the jurisdiction of the Civil Court and for that matter even the jurisdiction of the Waqf tribunal constituted under section 83 the Act 1995 is impliedly ousted by the statute as far as the 'subject matter' pertaining to the appointment and removal of Mutawalli, which includes Sajjadanashin, is concerned. Consequently reliance placed on by the learned counsel for defendant No.8 on the judgment in the case of **Ramesh Chand (Supra)** is of no avail.

III Whether Judgment and Decree passed by the Trial Court and the First Appellate Court is without jurisdiction and hence a nullity?

(a) Apex Court in the case of **S.V.CHERIYAKOYA THAGAL VS. S.V.P. POOKOYA AND OTHERS** in **Civil Appeal No.4629/2024 (SLP. (civil) No.3182/2019)** has held that appointment of Mutawallis which includes Sajjadanashin is wholly within the jurisdiction of the WAQF Board. The said order is extracted hereunder for immediate perusal.

"Leave granted.

This case has got a chequered history. The lis which started in the year 1987 in the form of a Civil Suit O.S. No.5/1987 on the file of Munsif Court, Androth, still continues in one form or

another. After the completion of the earlier round of litigation, the present lis was started at the instance of the appellant, duly followed by the respondents. Before the Waqf Board, both the parties claimed their respective rights to Mutawalliship and Sheikhship. By an elaborate order the Waqf Board held in favour of the appellant declaring him as a Mutawalli. Being aggrieved, respondents filed an application by invoking Section 83 of the Waqf Act, 1995 before the Waqf Tribunal. The waqf Tribunal, after affording opportunities to both the sides, inter alia, held that there is no perversity in the decision rendered by the Waqf Board.

A plea was also taken both before the Waqf Board and the Waqf Tribunal, on the question of jurisdiction. It was contended by the respondents that it is the Waqf Tribunal which has got the original jurisdiction to decide the issue pertaining to Mutawalliship and, therefore, the Waqf Board did not have the jurisdiction. On a revision being filed, the High Court was pleased to set aside the judgment and decree of the Waqf Tribunal inter alia holding that the Waqf Board did not have the jurisdiction and, therefore, the matter has to be decided afresh only by the Waqf Tribunal. Challenging the said decision, the present appeal is filed before us.

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 Code of Civil Procedure, 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. 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. In such view of the matter, we are of the view that the impugned order cannot be sustained in relegating the matter to an adjudicating authority by treating it as a competent authority, which is none other than the Waqf Board. However, in the case on hand, the High Court did not go into the merits of the case. In such view of the matter, while setting aside the impugned order, we are remitting the matter to the High Court to decide the revision on merits, in accordance with law except the issue of jurisdiction as decided by us in this appeal. We request the High Court to expedite the hearing and make an endeavour to dispose it of as early as possible in view of the fact that the revision is of the year 2015 and the dispute is pending from the year 1987 onwards. The appeal accordingly stands allowed. All issues are left open to be decided by the High Court. Pending application(s), if any, stand disposed of. "

(Emphasis supplied)

(b) One other submission made by the learned counsel for defendant No.8 that upon the constitution of Waqf Tribunal, matter was transferred from the Trial Court to the Tribunal and the matter was thereafter again sent back to the Trial Court. Reference in this regard is made to the order sheet of the Trial Court dated 22.08.2002 and 19.12.2002. It is necessary note, except the noting in the order sheet, there is no order with regard to any adjudication/determination on the question of jurisdiction. The learned counsel for the defendant No.8 has not placed any material in this regard except pointing out to the order sheet. As such, the notings in

the said order sheet would not be an impediment in raising the issue of jurisdiction in this appeal.

(c) Useful in this regard to refer to the judgement of the Apex Court in the case of **Kiran Singh and others V. Chaman Paswan and others** reported in **AIR 1954 SC 340** wherein dealing with decree passed without jurisdiction is nullity at Paragraph 6 has held as under;

"6. The answer to these contentions must depend on what the position in law is when a Court entertain a suit or an appeal over which it has no jurisdiction, and what the effect of Section 11 of the Suit Valuation Act is on that position. It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pose any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non judice, and that its judgment and decree would be nullities. The question is what is the effect of Section 11 of the Suits Valuation Act on this position."

(d) Following the aforesaid judgment the Apex Court in the case of **Sushil Kumar Mehta V. Gobind Ram Bohra (dead) through his Lrs.** reported in **(1990)1 SCC 193**

dealing with the defect of jurisdiction paragraphs 8, 9 and 10

has held as under ;

8. This statement of law was approved not only by the House of Lords in several cases, but also by this Court in Premier Automobiles Ltd., v. K.S. Wadke, where this Court was called upon to consider whether the Civil Court can decide a dispute squarely coming within the provisions of the Industrial Disputes Act. While considering that question, this Court laid down four propositions and third of them is relevant for consideration here. It is as follows: (SCC pp.513-14, para 23)

"(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act."

9. Thus on construction of relevant provisions of the Act and in the light of the position in law it must be held that the provisions of Section 13 of the Act applies to the building leased out to the appellant by the landlord and the Controller was the competent authority to pass a decree of ejectment against the appellant and the Civil Court lacked inherent jurisdiction to take cognizance of the cause and to pass a decree of ejectment therein. The next question is whether the impugned decree is a nullity and whether the plea can be raised in execution and further whether the decree in the suit does not operate as res judicata.

10. In Kiran Singh & Ors. v. Chaman Paswan, the facts were that the appellant had undervalued the suit at Rs.2,950 and laid it in the Court of the Subordinate Judge, Monghyr for recovery of possession of the suit lands and mesne profits. The suit was dismissed and on appeal it was confirmed. In the second appeal in the High Court the Registry raised the objection as to valuation under Section 11. The value of the appeal was fixed at Rs.9,980. A contention then was raised by the plaintiff in the High Court that on account of the valuation fixed by the High Court the appeal against the decree of the court of the Subordinate Judge did not lie

to the District Court, but to the High Court and on that account the decree of the District Court was a nullity. Alternatively, it was contended that it caused prejudice to the appellant. In considering that contention at page 121, a four Judge Bench of this Court speaking through Venkatarama Ayyar, J. held that: (SCR p.121)

"It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject matter of the action, strikes at the every authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non judice, and that its judgment and decree would be nullities."

IV Whether the office of Mutawalli and Sajjadanashin are one and the same? Whether the Act prescribes any qualification for their appointment?

(a) The learned Counsel for the Defendant No.8 contended that office of Sajjadanashin is different from the office of Mutawalli and that merely because there is a reference to the term to the Sajjadanashin in the definition of the term Mutawalli, same cannot be equated to the office of Mutawalli and that the Act, 1995 does not prescribe any qualification, mode or method of appointment of the person who claims his right to the Office of Sajjadanashin because

Islam does not recognize Dargah and idol worship and that the concept of Dargah does not fall under five pillars of Islam. The said submissions are adverted to hereunder with reference to the Act, Rules and commentaries on the subject.

(b) "Sajjadanashin" is a terminology in Sufism which means one who sits on the "Sajjada" or "Musalla" a prayer carpet or prayer mat. He is the Spiritual Head and Spiritual Preceptor who conducts and carries forward the mission of his Spiritual Master called Pir or Shaykh at his Shrine or Khanqah discharging religious, spiritual and customary ceremonies besides presiding over religious and spiritual congregations. Though the term "Sajjadanashin" has not been specifically defined either under the Act 1954 or under the Act 1995, same finds mention under the Karnataka Waqf Rules, 2017 which reads as under;

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

(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, Carvanserai) 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 generally 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. Essaqa Salemahomed ILR (1938) Bom. 184).

The word Dargah, in Persian and Urdu, 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 professed 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 relationship 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 term "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 on 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 descendants 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 1928 Lah. 778; Vidya Varuthi v. Baluswam (1922) 41 M.L.J. 346 : ILR Mad. 831 : 48 I.A. 302 : AIR 1922 P.C. 123 ; 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 this 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 female, 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 has – 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 spirituality 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 Khaldun 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-Baghdadi(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 Qur'an or recorded the Hadith is not to 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 eldest member in the male lineal descendancy. This is not a claim for personal 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 all 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 or a Waqf. Matmi, however, is a process of mutation carried out in the revenue register in terms of the 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. Indisputably, 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.

(Emphasis supplied)

(I) Thus from the above, it is clear that claim to the office of Sajjadanashin can neither be made as a matter of right, nor on the rule primogeniture. It is purely on the basis of merit, qualification, experience, recognition, adherence and followings. The Qualifications are implicit under the scheme of the Act 1954 as well as Act 1995. Necessary also to note neither the Act, 1954 nor the Act, 1995 make any distinction between the term 'Mutawalli' and 'Sajjadanashin'. This is because a person may hold both the Offices. Therefore the contentions of the learned counsel for defendant No.8 that the Act, 1994 does not provide for the appointment of Sajjadanashin and that therefore the same requires to be adjudicated by the civil court cannot be accepted.

V Whether the Waqf Act 1995 is applicable to the pending proceedings of this nature which were initiated under the repealed Act 1954?

(a) Relying upon the Judgment of the Apex Court in the case of **Sardar Khan and others (supra)** as well as **Mohammed Idris and others (supra)** the learned counsel for defendant No.8 submitted that since the suit was instituted in the year 1988 much prior to coming into force of the Act 1995 the provisions of the new Act cannot be made applicable to the pending proceeding and that actions taken under the repealed Act, 1954 are saved by virtue of Section 112 of the Act, 1995.

(b) Necessary to note that in the case of **Sardar Khan and others** the issue that was dealt with was with regard to exclusivity of jurisdiction of the Waqf Tribunal in respect of dispute relating to 'Waqf property' and inapplicability of the provisions of the Act, 1995 to the pending proceedings that were initiated prior to its coming into force and in respect of appeal filed against such decree that was passed after its coming into force. It was pertaining to interse jurisdiction of the Waqf Tribunal and the Civil Court and reference to the

provisions of Sections 6 and 7 of the Act, 1995 and there was no issue either with regard to claim to the 'office of Sajjadanashin' or with regard to exclusive 'power of the Waqf Board' in dealing with the same.

(c) The Judgment in the case of ***Mohammed Idris and others (supra)*** deals with the effect of Section 6 of the General Clauses Act which has no application to the instant case. Submission of learned counsel for the defendant No.8 referring to Section 6 of the General Clauses Act, that the suit in the instant case having been instituted prior to coming into force of the Waqf Act, 1995 before the Civil Court is saved as the said Act is given prospective effect, is of no avail inasmuch as even under the Act, 1954 as noted above power to appoint Mutawalli was granted/vested exclusively with the Waqf Board, which power continued to vest with the Waqf Board even under the Act 1995 as well. Also necessary to note that even when the suit was filed in the year 1988, it could not have been entertained, in view of provision contained under Sections 15(2)(g) and 42 of the Act, 1954 which continued in terms of Sections 32(2)(g) and 63 of the

Act, 1995. Thus there was no any change due to repeal of the Act, 1954.

(d) Applicability and intent of Section 6 of General Clauses Act is succinctly expressed by the Apex Court in the case of ***Kolhapur Canesugar Works Ltd., and anr Vs Union of India and others*** reported in ***AIR 2000 SC 811*** wherein at paragraph 38 the Apex Court has held as under:

"38. The position is well-known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this Rule, an exception is engrafted by the provisions of Section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in Section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the Legislature is that the pending proceeding shall not continue but a fresh proceeding for the same purpose may be initiated under the new provision."

(e) Thus, there exists no circumstances or the requirement to have recourse to the provisions of Section 6 of the General Clauses Act to the facts and circumstances of the case involved in the case at hand. Thus, the repeal of the Act 1954 did not alter the position. It is not the case of taking away any vested right or creating any new right by the repealing Act to be made applicable prospectively. Therefore, arguments advanced by learned counsel for defendant No.8 to contend that the Act 1995 has no retrospective application cannot be countenanced.

25. Conclusion: From the above discussion and analysis the substantial question of law No.1 is answered as under:

(a) Exclusion of jurisdiction of a Court as to the 'Subject Matter' of the dispute by reason of limitation imposed by a statute can be raised at any stage of the proceedings and the principles of estoppel, waiver and acquiescence have no application;

(b) In light of the scheme of the Act, 1954 as well as the Act 1995 and provisions contained under section 32(2)(g) and under chapter VI of the Act 1995 (which are pari materia with Section 15(2)(g) and Chapter V of the Act, 1954) jurisdiction of the Civil Court and

even the jurisdiction of the Waqf Tribunal is impliedly ousted and is vested with the Waqf Board so far as the subject matter pertaining to the appointment and removal of mutawalli, which includes Sajjadanashin, is concerned.

(c) The office of Mutawalli is temporal in nature and office of Sajjadanashin is spiritual in nature. Both the offices can be held by a single person. Office of Sajjadanashin however carries with it higher and greater spiritual status and the qualification to hold and occupy the said office is implicit to nature of the office, as such Waqf Board being the Competent Authority is empowered to deal with the same;

(d) Provisions of the Act 1995 are applicable even to the pending proceedings concerning the dispute with regard to the appointment and removal of the Mutawalli and Sajjadanashin which were initiated under the repealed Act 1954. The Trial Court and the First Appellate Court were therefore not justified in assuming the jurisdiction and deciding the matter pertaining to the Office of Sajjadanashin of Suit Dargah and same is required to be dealt with and adjudicated by the Karnataka State Board of Waqf-Defendant No.7.

(e) That the trial Court and First Appellate Court had no jurisdiction to entertain the suit and

adjudicate the dispute, the decree passed therefore is held as one without jurisdiction and a nullity.

(f) Resultant, parties are at liberty to approach the respondent No.7 -The Karnataka State Board for Waqf staking their claim for appointment to the post of Sajjadanashin of the suit dargah. In that view of the matter, there is no necessity of adverting to other substantial questions of law formulated above.

Consequently, the following:

ORDER

Appeals are allowed.

I. Judgment and decree dated 20.12.2019 passed in O.S.No.92/1988 on the file of Additional Civil Judge and JMFC, Channapatna and Judgment and order dated 27.02.2023 passed in R.A.No.7/2020, R.A.No.8/2020, R.A.No.16/2020 and R.A.No.19/2020 on the file of Senior Civil Judge and JMFC, Channapatna are set aside as the same suffer from lack of jurisdiction and consequently all findings are also set aside without going into the merits of claims made by the parties.

II. It is open for the parties to approach respondent No.7- The Karnataka State Board for Waqf to seek

such relief/remedy as may be available under the provisions of law referred to hereinabove.

III. The respondent No.7- The Karnataka State Board of Waqf shall in such an event provide sufficient opportunity to the parties to justify and establish their claim to the office of Sajjadanashin of the suit Dargah and shall pass appropriate orders keeping in view the observations with regard to the office of Sajjadanashin as made hereinabove.

**Sd/-
(M.G.S. KAMAL)
JUDGE**

SBN/RU