IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 28th OF OCTOBER, 2025

CIVIL REVISION No. 728 of 2019

ZARDAR KHAN S/O SHRI MUNIR KHAN (DIED) THR. FOLLOWING LEGAL REP. HUSSAIN KHAN AND OTHERS

Versus

M.P. STATE WAQF BOARD THR. AND OTHERS

Appearance:

Mr. K.N. Gupta - Senior Advocate, assisted by Mr. F.A. Shah and Ms. Suhani Dhariwal - Advocate for applicants.

Mr. Alok Katare - Advocate for respondent No. 1.

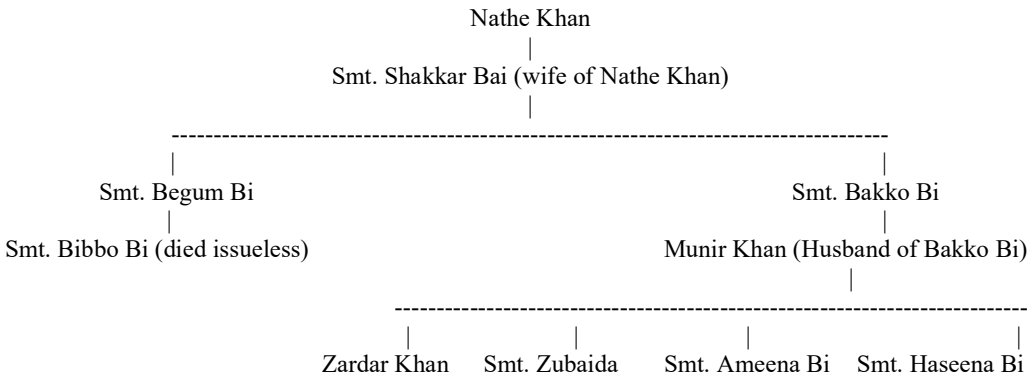
Mr. N.K. Gupta - Senior Advocate, assisted by Mr. Saket Sharma - Advocate for respondents No. 2.2 to 2.13.

Mr. Sanjay Singh Kushwaha - Govt. Advocate for respondent No. 3 / State.

ORDER

This civil revision has been filed under Section 83 (9) of Waqf Act against the order dated 22/8/2019 passed by M.P. State Waqf Tribunal, Bhopal, in Case No. 33/2006, by which the suit filed by applicants under Section 83 (2) of Waqf Act has been dismissed.

2. The facts necessary for disposal of present revision, in short, are that applicants filed a suit for declaration of title and permanent injunction, pleading *inter alia* that old Khasra No. 3891 (new Khasra No. 658), 3892 (new Khasra No. 659), 3879 (new Khasra No. 660), 3880, 3893, 3894, 3895/1, 3896/1, 3881, 3895/2 (new Khasra No. 661), and 3896/2, total area 11.519 hectares = 52 bigha of land situated in Vidisha is the disputed property. It is the case of applicants that Nathe Khan was the original owner of the property in dispute. He died in the year 1954, and after his death, the property went to his widow Smt. Shakkar Bi. The name of Shakkar Bi was also duly recorded in the revenue records. Shakkar Bi remained in possession of the property during her lifetime. Earlier, Khata No. 133 was the joint property of Nathe Khan, Nazir Khan, Shakur Khan, and Gafur Khan. After the partition, Shakkar Bi got one-third of the said property, i.e., 52 bigha, and accordingly, Shakkar Bi, came in possession as the sole owner. According to plaintiffs/applicants, the pedigree is as under:



From the year 1964, Smt. Shakkar Bi was not keeping well. Munir Khan, who was the husband of Bakko Bi, and was her son-in-law in relation, was residing with Shakkar Bi. He was looking after Shakkar Bi and accordingly, Shakkar Bi executed a registered Will dated 24/10/1964 in favor of Munir Khan. Shakkar Bi died on 4/11/1967, and thereafter, Munir Khan became the sole owner and in possession of the property in dispute by virtue of Will. It was the case of applicants that the father of applicants, namely Munir Khan, had carried out the cultivation work. Munir Khan gave one part of the land, i.e., Khasra No. 660 area 10.787 hectares to Shri Kashiram on *batai* purposes. Thereafter, Kashiram remained in cultivating possession of the property in dispute, and every

year he used to give half share in the crop. Thereafter, Kashiram gave 10.787 hectares of land to Smt. Gulab Bai, Shri Balveer Singh, Shri Vikram Singh, and Shri Surendra Singh in an illegal manner. It was claimed that since Gulab Bai and others are the *sikmi pattedar*, therefore, they are not necessary party and are not being impleaded. Munir Khan died on 12/9/1984, and accordingly, it was claimed by applicants that they became the owner and in possession of the property in dispute. It was pleaded that after the death of Munir Khan, plaintiffs were in actual cultivating possession, and from time to time, they had got the land cultivated on *batai* basis. In the month of October 2003, a notice of Civil Suit No. 7A/2003 was received from the District Court, Vidisha, which was instituted by Secretary, Waqf Board against Kashiram. Then the plaintiffs came to know that Kashiram has already obtained one *ex-parte* judgment and decree in the year 1982 against their father Munir Khan. After receiving the notice of Civil Suit No. 7A/2003, applicants came to know that the Madhya Pradesh Waqf Board is claiming ownership over the land in dispute, whereas neither the predecessors of the applicants nor

the applicants had ever executed any *waqfnama* and the property in dispute was never the waqf property. It was further claimed that the property in dispute has been unnecessarily registered as waqf property. When the applicants tried to find out the basis for declaration of the property as waqf property, then they came to know that certain pages have been inserted in the register which clearly amounts to manipulation. It was further claimed in paragraph 9 of the application that in fact Munnu Khan was the owner of the property in dispute and after his death, the property went to Nazir Khan, Sikandar Khan, Shakur Khan, and Gafur Khan, as well as Nathe Khan. The total area which was left by Munnu Khan was 158 bigha and one-third of the said land, i.e., 52 bigha of land went to Nathe Khan, whereas 106 bigha of land went to Nazir Khan, Sikandar Khan, and Gafur Khan, all the sons of Amir Khan. Nazir Khan, Sikandar Khan, and Gafur Khan had sold their share to Smt. Khatun Bi and other persons who are in possession of the same for the last 40 years. They have constructed the houses and have alienated to various other persons. Since the names of the subsequent purchasers were not mutated in the revenue

record, therefore, the land continued to remain mutated in the name of Nazir Khan, Sikandar Khan, and Gafur Khan to the extent of two-third share, whereas the one-third share was recorded in the name of Nathe Khan. It was claimed that Nathe Khan was in possession of 52 bigha of land. It was further claimed that Shakkar Bi had every right to execute a *vasiyat*. It was further claimed that Gulab Bai and others have also filed a civil suit before the Madhya Pradesh State Waqf Board which has been registered as Case No. 29/2006 and it is also pending. Similarly, Kashiram and defendant No. 8 have also filed a civil suit before the Madhya Pradesh State Waqf Tribunal, which has been registered as Case No. 29/2006, which is also pending, and accordingly, Gulab Bai and others (defendants No. 8 to 11) were later on impleaded as defendants. Accordingly, the suit was filed for a declaration that applicants are the joint owners and in possession of the property in dispute. A further declaration was sought that the disputed property is not a waqf property and the entry of the property at registration No. 399/504 is bad in law, and it is accordingly null and void. It was also prayed that defendant No. 2 be declared as the

bataidar of the land in dispute, and a permanent injunction was also sought against defendant No. 1, thereby restraining it and its officers from interfering with the peaceful possession of the applicants.

3. Defendant No. 1 Madhya Pradesh Waqf Board filed its return and claimed that the disputed land is not in the ownership of applicants whereas it is a waqf property. It was denied that Shakkar Bi was the owner of the property in dispute. It was claimed that the property cannot be alienated without the permission of the waqf. Shakkar Bi had no right to execute the *vasiyat* in respect of the property in dispute. Since the property in dispute is a waqf property, therefore, the predecessors of applicants had no right to give 10.787 hectares of land on *batai* to anybody else. It was also claimed that Gulab Bai has also instituted a suit which is pending before the waqf tribunal, and in that case, Gulab Bai and others are claiming themselves to be the owners of property in dispute. Applicants are aware of the said fact but they have not intervened in the said case. It was denied that after the death of Munir Khan, applicants became the owners of the property in dispute. It was claimed that the

property in dispute has been properly registered as waqf property. It was denied that the new papers were added in the register. It was further claimed that since the sale could not have been taken place without the permission of the Madhya Pradesh Waqf board, therefore, if any alienation has been done by Nazir Khan, Sikandar Khan and Gafur Khan, then it is bad in law in view of Section 51 of Waqf Act. The mutation entry cannot be treated as the documents of title. It was claimed that on 26/1/1938, the property in dispute was registered as Aukaf Gwalior, and on that basis, the property was registered as waqf property and a notification has also been published in the official gazette. In special plea, it was claimed that in the office of Aukaf Gwalior, the property in dispute was registered as waqf property with effect from 26/1/1938 and the registration number is 399. The property of Waqf Dargah Haji Wali has already been notified as waqf property as per the notification published in the official gazette. Even if the applicants are in possession, then their possession is that of an encroacher.

4. Defendant No. 2 Mukesh Yadav, who is the legal representative of Kashiram, filed his written statement and denied that Shakkar Bi was the owner and in possession of the property in dispute. It was claimed that earlier, 158.10 bigha of land was jointly recorded in the names of Nazir Khan, Sikandar Khan, Shakur Khan and Gafur Khan, as well as Nathe Khan, Nazir Khan, Sikandar Khan, Shakur Khan and Gafur Khan had two-third share whereas Nathe Khan had one-third share. They had subsequently partitioned the property. The disputed property went to the share of Nathe Khan who gave on lease for a period of 99 years to Kashiram, and since then, applicants or their predecessors were never in possession of the property in dispute. Shakkar Bi had no right to execute the *vasiyat,* and therefore, the execution of *vasiyat* by Shakkar Bi on 24/10/1964 was also denied. It was claimed that Kashiram, and after him, Mukesh is in cultivating possession. In special plea, it was pleaded that in *Samvat* 2003, Nathe Khan had given a *Maurusi Patta* to Kashiram on an yearly rent of Rs.70/-. Since there was some dispute with Shankar Singh, therefore, some property was left by defendant No. 2, whereas defendant

No. 2 continued to remain in possession of survey Nos. 658, 659, 660 min, 661, total area 8.384 hectares. Defendant No. 2 had filed a suit for declaration of title which was registered as Civil Suit No. 99A/1981, and by judgment and decree dated 10/7/1982 passed by I Civil Judge, Class II, Vidisha, he was declared as owner of property in dispute, and as per the provisions of Section 190 of MPLR code, defendant No. 2 had acquired the rights of *Bhumiswami*. Defendant No. 2 Kashiram has expired on 5/8/2012, and prior thereto, he had executed a Will in favor of his son Mukesh Yadav, and thereafter, Mukesh Yadav is the sole owner and in possession of the property in dispute. It was also denied that the property in dispute is a waqf property. It was also denied that the property belongs to the Aukaf department. It was further claimed that earlier Waqf Board had filed an application before the revenue court for eviction of Balchand from 7.13 bigha of land. However, the revenue court had found that the property in dispute is not a waqf property. The appeal filed before the SDO, Vidisha, was also dismissed by order dated 19/2/1992. A major portion of the disputed property has already been allotted to Engineering

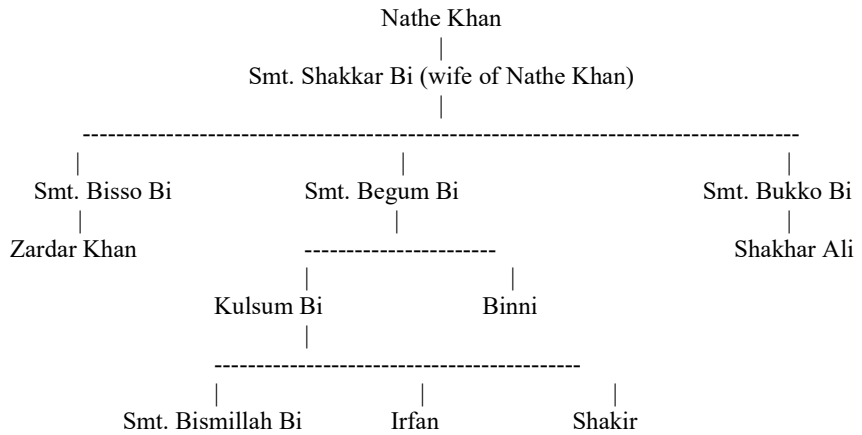
College, Railway, Khatun Bi etc. and the compensation was paid to Nazir Khan. A civil suit was filed by defendant No. 1 for declaring the judgment and decree passed in Civil Suit No. 99A/1981 as null and void, which was registered as Civil Suit No. 14A/ 2006. In that suit, defendant No.1 had claimed the property to be waqf property. It was claimed that at present, First Appeal No. 66A/ 2010 is pending against the judgment and decree passed by the trial court. Accordingly, it was prayed that Mukesh Yadav be declared as the owner and in possession, and it was also prayed that it may also be declared that the disputed property is not the waqf property.

5. It appears that the aforesaid written statement was signed by Mukesh Yadav, who was substituted after the death of Kashiram. It appears that original defendant No.2 Kashiram has also filed his written statement, and it was denied that Munir Khan was cultivating the 10.787 hectares of land. It was also denied that Kashiram had given half share in the crop to Munir Khan on yearly basis. It was also denied that Kashiram had given 10.787 hectares of land to Smt. Gulab Bai, Balveer Singh, Vikram Singh and Surendra Singh as *Shikmi Bataidar*. It was claimed that

Nazir Khan, Sikandar Khan, Gafur Khan and Shakur Khan were the sons of Amir Khan, and accordingly, they had two-third share in the property, whereas Nathe Khan had one-third share. It was admitted that Nazir Khan, Sikandar Khan and Gafur Khan had sold their share to Khatun Bi and others. However, the extent of land was not in the knowledge of original defendant No.2 Kashiram. It was admitted that 52 bigha of land is jointly recorded in the name of Nazir Khan, Sikandar Khan, Gafur Khan and Shakur Khan. In special plea, it was pleaded that Nathe Khan had given 51.12 bigha of land to Kashiram on yearly rent of Rs.70/- for a period of 99 years. Because of his dispute with Shankar Singh, Kashiram had left some part of the land and remained in cultivating possession of survey Nos. 658, 659, 660 min, and 661, total area 8.384 hectares. As per the provisions of MPLR Code, defendant No.2 got the *Bhumiswami* rights, and accordingly, he had filed a suit which was registered as Civil Suit No. 99A/1981, and the said suit was decreed by judgment and decree dated 10/7/1982, and accordingly, Kashiram was declared to be the *Bhumiswami* of 8.384 hectares of land. It was claimed that defendant No.1

has filed a Civil Suit No. 14A/2006 for declaration of judgment and decree passed in Civil Suit No. 99A/1981 as null and void which is pending in the court of I Civil Judge, Class II, Vidisha, and in that case, defendant No.2 as well as applicants both are the are party, and since the subject matter of both the suits are common, therefore, the present suit is not maintainable.

6. Defendants No. 8 to 10, namely Bismillah Bi, Irfan and Shakir, filed their written statement and denied the pedigree as projected by the applicants. According to defendants No. 8 to 10, the real pedigree is as under:



It was denied that Munir Khan was the sole owner and in possession. However, it was claimed that the property was being cultivated jointly. Munir Khan had not given any land to Kashiram on *batai* basis. All other plaint averments were denied. In special plea, it was claimed that the tribunal has no jurisdiction to decide as to whether the applicants are the owners and in possession or not. It was claimed that the only jurisdiction of the tribunal is to find out as to whether the property in dispute is a waqf property or not.

7. Defendants No. 11 to 14, namely Smt. Gulab Bai, Balveer Singh, Vikram Singh and Surendra Singh, filed their written statement. It was admitted that the property in dispute was of Nathe Khan. However, it was denied that araji No. 660 was inherited by Shakkar Bi. It was denied that Shakkar Bi was in cultivating possession. Defendants No. 11 to 14 were not aware of the fact that the property in dispute was the joint property of Nathe Khan, Nazir Khan, Shakur Khan and Gafoor Khan, and therefore, they expressed their inability to comment on the said contention. The family pedigree was also denied. It was denied that Munir Khan was the

son-in-law of Shakkar Bi and was residing along with her. It was denied that Munir Khan had looked after Shakkar Bi, and therefore, Shakkar Bi had executed a *vasiyat* in favor of Munir Khan on 24/10/1964. It was claimed that the maternal uncle of defendants No. 11 to 14, namely Jalam Singh, was in cultivating possession of the property in dispute. Khasra Nos. 3879, 3880, 3894, 3993, 3895/1, 3896/1 and 3881 were given to Kashiram on *batai*. Thereafter, in respect of the aforesaid land, a civil dispute arose between Shankar Singh and Kashiram and a civil suit was filed, which was decreed by judgment and decree dated 14/4/1969, and the suit filed by Shankar Singh in respect of Khasra Nos. 3864, 3879, 3880 and 3881 was allowed, and it was directed that Kashiram should hand over the possession of the aforesaid land to Shankar Singh. Kashiram had also preferred an appeal which was dismissed by judgment and decree dated 9/8/1972. Thereafter, a compromise was arrived at between Kashiram and Shankar Singh (defendants No. 11 to 14 are the descendants of Shankar), and 15 bigha of land was given by Kashiram to Shankar Singh. Defendants No. 11 to 14 have been impleaded as

defendants with an intention to harass them. The suit filed by defendants No. 11 to 14 is already pending before the tribunal. The registration of the property as waqf property was also disputed by defendants No. 11 to 14. In the special plea, it was claimed that the suit filed by defendants No. 11 to 14 has already reached to the stage of final hearing, and even the final hearing has already been done, but with an intention to delay the proceedings, said case has been stayed, and deliberately, defendants No. 11 to 14 have been impleaded as defendants in the present case. It was claimed that Nathe Khan had given a *patta* to Jalam Singh on 23/11/1933, and thereafter, Jalam Singh remained in cultivating possession, and thereafter, Jalam Singh acquired the *Bhumiswami* rights. Since Jalam Singh was issueless, and at the time of death of Jalam Singh and his wife Janki Bai, defendants No. 11 to 14 were residing with them, and accordingly, a Will was executed in favor of Shankar Singh on 18/4/1951, and after the death of Janki Bai, Shankar Singh, who is the father of the defendants No. 11 to 14 came in possession in the capacity of the owner.

8. The Madhya Pradesh State Waqf Tribunal framed issues on the basis of the pleadings of the parties, and after recording the evidence, dismissed the suit filed by applicants.

9. Challenging the impugned order passed by the Madhya Pradesh Waqf Tribunal, it is submitted by counsel for applicants that Shakkar Bi had executed a *vasiyat* on 24/10/1964 in favor of Munir Khan, and Kashiram was inducted as a *bataidar* who gave the said land illegally to Surendra Singh, Shankar Singh, Balveer Singh, Vikram Singh and Gulab Bai as *shikmi bataidar*. It was claimed that undisputedly, Nathe Khan was the owner of the property in dispute, and by virtue of *vasiyat* executed by Shakkar Bi, Munir Khan had become the owner and in possession of the property in dispute. It is further submitted that the Waqf Tribunal has not considered as to whether the survey as required under Waqf Act was ever conducted. The procedure, as laid down in Sections 4 to 6 of Waqf Act, for survey before declaring any property as a waqf property, was not followed. No notice was given to the land holders. It is further submitted that the tribunal has held that since the Will has not been proved in

accordance with the provisions of Indian Succession Act, therefore, the right and title of Munir Khan and the applicants has been held to be not proved, but since the Will was 30 years old document, therefore, a presumption of its execution can be drawn. It is further submitted that there is nothing on record as to who dedicated the property to the waqf. To support his contentions, counsel for applicants has relied upon the judgments passed by Supreme Court in the case of **Karnataka Board of Wakf Vs. Anjuman-E-Ismail Madris-Un-Niswan**, reported in **(1999) 6 SCC 343**, **Salem Muslim Burial Ground Protection Committee Vs. State of Tamil Nadu and Ors.**, reported in **AIR 2023 SC 2769, M. Siddiq (Dead) Through Legal Representatives (Ram Janmabhumi Temple) Vs Mahant Suresh Das and Ors.,** reported in **(2020) 1 SCC 1**, **P. Nazeer Etc. Vs. Salafi Trust and Anr. Etc.**, reported in **AIR 2022 SC 1580**.

10. *Per contra*, counsel for respondent No. 1 has supported the findings recorded by the Waqf Tribunal.

11. Heard learned counsel for parties.

Whether the vasiyat purportedly executed by Shakkar Bi in favor of Munir Khan can be said to be a valid Will or not?

12. As already pointed out, other defendants have denied that any Will was executed by Shakkar Bi in favor of Munir Khan.

13. As already pointed out by the Waqf Tribunal, the *vasiyat* has not been proved by the applicants in accordance with the provisions of Indian Succession Act. Although the counsel for applicant has challenged the said finding on the ground that since the *vasiyat* is more than 30 years old, therefore, the execution of the same can be inferred / presumed, but presumption regarding execution of a 30 years old document and proof of content thereof are two different things. Merely because the execution of a document can be presumed on the ground that it is 30 years old, that would not necessarily mean that even the contents would also stand proved automatically. Furthermore, if the so-called *vasiyat* executed by Smt. Shakkar Bi is considered, then it is clear that it is contrary to Chapter 9 of Mahomedan Law authored by Dr. Dinshaw Fardunji Mulla. Articles 115, 116, 117, 118, and 119 are important to adjudicate as to whether the

vasiyat was executed by Shakkar Bi in favor of Munir Khan or not. Article 115 of Mahomedan Law deals with persons who are capable of making Wills. It is the case of applicants that Shakkar Bi had got the property after the death of her husband Nathe Khan. Whether Nathe Khan was the owner of the property, or after his death, the entire property would go to his widow, are also important questions which shall be adjudicated at a later stage. Therefore, by keeping this question as to whether Shakkar Bi was eligible to execute a *vasiyat* in respect of the entire 52 bigha of land open, the next question would be as to whether Shakkar Bi could have executed a Will in respect of the entire land allegedly inherited by her after the death of her husband or not?

14. Article 118 of Mahomedan Law reads as under:

> *"**118. Limit of testamentary power**.- A Mahomedan cannot by will dispose of more than a third of the surplus of his estate after payment of funeral expenses and debts. Bequests in excess of the legal third cannot take effect, unless the heirs consent thereto after the death of the testator.*"

From the plain reading of this article, it is clear that a Mahomedan cannot dispose of more than a third of the surplus of his estate after

payment of funeral expenses and debts. Bequests in excess of the legal third cannot take place, unless the heirs consent thereto after the death of the testator. Therefore, as per Article 118 of Mahomedan Law, three ingredients are essential, i.e., (i) a Mahomedan cannot dispose of more than a third of the surplus of his estate, (ii) it has to be after payment of funeral expenses and debts, and (iii) bequests in excess of the legal third cannot take place unless the heirs consent thereto after the death of the testator.

15. If the pleadings of the applicants are seen, then it is clear that they had claimed that Shakkar Bi had executed a *vasiyat* in respect of the entire 52 bigha of land, which is contrary to Article 118 of Mahomedan Law because Shakkar Bi (if eligible) could not have executed a *vasiyat* in respect of more than one third of the property. Secondly, there is nothing in the pleadings and the evidence that Munir Khan had paid the funeral expenses and the debts. Unless and until the said aspect is pleaded and proved, the *vasiyat* will not come into existence. Furthermore, since the

vasiyat was in excess of one third, then the consent of the heirs of the testator was required.

16. When this aspect was brought to the notice of Shri K.N. Gupta, Senior Advocate that whether any consent was given by the legal heirs of Shakkar Bi or not, then it was submitted by Shri Gupta that as none had taken any objection, therefore, it has to be presumed that the legal heirs had given their implied consent by maintaining silence.

17. Considered the aforesaid submission made by senior counsel for applicant.

18. Article 117 of Mahomedan Law reads as under:

> *"**117. Bequests to heirs**.- A bequest to an heir is not valid unless the other heirs also consent to the bequest after the death of the testator. Any single heir may consent so as to bind his own share.*
>
> *A bequest to an heir, either in whole or in part, is invalid, unless consented to by other heir or heirs and whosoever consents, the bequest is valid to that extent only and binds his or her share. Neither inaction nor silence can be the basis of implied consent.*"

From plain reading of this article, it is clear that a bequest to an heir, either in whole or in part, is invalid, unless consented to by other heir or heirs and whosoever consents the bequest is valid to that extent only and

binds his or her share. **Neither inaction nor silence can be the basis of implied consent**. Therefore, the submission made by Shri Gupta that since the other heirs had not objected to the *vasiyat* executed by Shakkar Bi in favor of Munir Khan, therefore, it has to be presumed that all other heirs had granted consent by maintaining silence cannot be accepted.

19. Furthermore, there is a serious dispute about the pedigree. Although applicants had claimed that Shakkar Bi was survived by two daughters, but other defendants have claimed that Shakkar Bi was survived by three daughters. Under these circumstances, once there is nothing on record to show that Munir Khan had paid the funeral expenses and had also paid the debts (if any), and in absence of any evidence that the other heirs had given their written consent, it is held that the *vasiyat* executed by Shakkar Bi in favor of Munir Khan was bad in the light of Articles 117 and 118 of Mahomedan Law authored by Dr. D.F. Mulla.

Whether Shakkar Bi had any right to execute the Will?

20. It is next contended by counsel for applicants that it is clear from the Khasra Panchsala of year 1953-54, Nathe Khan was shown to

have one-third share in the property, and thus, it is clear that applicants have proved that predecessors of Nathe Khan were the owners, and accordingly, Nathe Khan had one-third share in the property in dispute.

21. Considered the submissions made by counsel for applicant.

22. Defendant No.1 had examined Mohammad Salim as DW1, who is working in the Madhya Pradesh Waqf Board. On 24/8/2013, this witness has produced a document exhibit D7 in which it is mentioned that the ex-*Naresh* of Gwalior had created the Waqf prior to 1951-52. The exact endorsement made in the register is as under.

> *''कृषि भूमि के वक्फ करने वाले भूतपूर्व ग्वालियर के नरेश द्वारा बंदोबस्त के पूर्व से* (1951-52).''

This witness was cross-examined on this aspect and he specifically stated that Waqf can be done by Hindu also. It is also mentioned that in the record available in the office of Madhya Pradesh Waqf Board the Waqf was created by the ex-ruler of Gwalior.

23. Although this witness has admitted that Waqfnama is not available in the office of the Madhya Pradesh Waqf Board, but if the entry made in the register is considered, then it is clear that Waqf was created

by the ex-ruler prior to 1951-52, and if this property was already made a Waqf property prior to 1951-52, then any entry made in the revenue record in the year 1953-54 showing that Nathe Khan had one-third share in the property will lose its effect for the simple reason that it is nowhere mentioned in the Khasra Pansala of the year 1953-54 that under whose order, the names of Nathe Khan and others were recorded in the revenue records. Further, there is no document to show that names of predecessors of Nathe Khan, and Nazir Khan, Sikandar Khan, Shakur Khan, and Gafur Khan were ever recorded in the revenue records. Since there is a material available on record to show that the Waqf was created by the ex-ruler of Gwalior prior to *Bandobast* i.e., 1951-52, therefore, it is clear that the property in dispute was a Waqf property.

24. Thus, it is held that Shakkar Bi had no right as applicants have failed to prove that Nathe Khan had one-third share in the property.

Whether disputed property is a waqf property?

25. It is next contended by counsel for applicants that the Waqf Tribunal has not considered that before declaring the disputed property as

a Waqf property, no procedure as laid down under Sections 4 to 6 of Waqf Act was followed, and therefore, has wrongly held that the property in dispute is a Waqf property.

26. In view of discussion about title of applicants, it is held that the contention of counsel for applicants that the Waqf Tribunal has not considered as to whether the procedure, as laid down under Sections 4 to 6 of Waqf Act, was followed before declaring the property as a Waqf property or not is misconceived and is hereby rejected.

27. It is the case of applicants that Nathe Khan had one-third share in the property in dispute. However, they have not filed any document to show that the predecessor of Nathe Khan was the owner. Thus, when there is a document to show that Waqf was created by the ex-ruler and there is nothing on record to show that the predecessor of Nathe Khan was the owner of the property in dispute, this Court is of considered opinion that the Waqf Tribunal did not commit any mistake by rejecting the application filed by applicants. Accordingly, it is held that applicants have

failed to prove that either Nathe Khan or his predecessors were the owner of the property in dispute.

28. Furthermore, this Court by its order dated 27/10/2025 passed in the case of Chunne Khan versus Madhya Pradesh Waqf Board and others passed in Civil Revision No. 782/2019 has held that Chunne Khan had failed to prove that Nathe Khan was the owner of the property in dispute.

29. Accordingly, order dated 22/8/2019 passed by M.P. State Waqf Tribunal, Bhopal, in Case No. 33/2006 is hereby **affirmed**.

30. This civil revision fails and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge

AKS