

SMITH, C.J.  
&  
MIDDLE-  
TON, J.  
1897  
May 12

[SMITH, C.J. AND MIDDLETON, J.]

AHMET EFF. HADJI ALI EFFENDI, AS MUTAVELLI  
AND VEHBI HADJI HUSSEIN AGHA, AS NAZIR OF  
THE DJAMI DJEDID, *Plaintiffs,*

v.

BEHAEDDIN EFF. HOULOSSI EFF. AND OTHERS,  
*Defendants.*

JURISDICTION—SHERI COURT—DISTRICT COURT—CLAIM TO RECOVER MONEY  
AND PROPERTY—RELIGIOUS MATTER—C.C.J.O., SECTIONS 20 AND 29.

*The Plaintiffs, who had been appointed by Ilam of the Sheri Court, as Mutavelli and Nazir, respectively, of a Mosque, brought an action in the District Court against the Defendants, who were in possession of the property of the Mosque claiming an account and to recover possession of the property.*

*HELD: that the claim was not a religious matter concerning persons of the Mussulman faith within the meaning of Clause 20 of the Cyprus Courts of Justice Order, 1882, and that the District Court had jurisdiction to entertain the action.*

*HELD also: that the Court would not enquire into the validity of the Ilam of the Sheri Court appointing the Plaintiffs.*

APPEAL of the Defendants from the District Court of Limassol.

*Dr. Grigsby* for the Appellants.

*Diran* for the Respondents.

The facts and arguments sufficiently appear from the judgment.

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*Judgment:* This is an appeal from the judgment of the District Court of Limassol ordering the Defendants to give an account of their administration of certain vakouf properties and to deliver up possession of the properties to the Plaintiffs.

The facts are undisputed, and, so far as are material for the purposes of this appeal, appear to be as follows.

The Plaintiffs were appointed by the Sheri Court of Nicosia on the 23 Chaban, 1313 (1896), the one Mutavelli, and the other Nazir, of the Djami Djedid situate at Limassol.

Certain properties were made vakouf to this Mosque by Kiuprili Hadji Ibrahim who was the first Mutavelli, and who was succeeded at his death by his son Hadji Hussein Agha. The Plaintiff, Vehbi, is Hadji Hussein's eldest son, and the Defendants are his other sons and daughters. The Plaintiff, Ahmet Effendi, is alleged to be the son of a daughter of the dedicator, and the sister of Hadji Hussein.

Hadji Hussein died in April, 1894, and the vakouf property belonging to the Mosque was taken possession of by the Defendants.

The Plaintiffs, after their appointment by the Sheri Court, sought an account from the Defendants, and failing to obtain it, brought this action.

The District Court gave judgment in their favour, and the Defendants appealed.

It was contended for them in the first place that this action was a religious matter concerning persons of the Moslem faith, and that, therefore, the District Court had no jurisdiction to entertain it; and secondly that the Plaintiff, Ahmet Hadji Ali Effendi, had not rightly been appointed Mutavelli, inasmuch as he was suffering from physical infirmity, and also that the Vakfieh laid down that the Mutavelliship should descend to the eldest son of the dedicator, and on his death to his eldest son and so on, and that the Plaintiff as the son of a daughter of the dedicator could not properly be appointed Mutavelli.

With regard to the first point, by the Cyprus Courts of Justice Order, 1882, the jurisdiction of the Sheri Courts was restricted to the cognizance of religious matters concerning persons of the Mussulman faith, and all jurisdiction over all persons and in all cases within the jurisdiction of the Nizam Courts and within that of the Sheri Courts, *excepting that above mentioned, was conferred upon the Courts established by the Order in Council.* Unless the claim in the present action can be said to be a religious matter, therefore, there can be no doubt, that it was within the jurisdiction of the District Court. There is no definition in the Order in Council of a religious matter: but we fail to see how this action, which is a claim for an account and to recover property, can be said to be a religious matter which is within the jurisdiction of the Sheri Court.

The question as to who is entitled to be appointed Mutavelli of the Mosque may be a religious matter, but a claim for an account and a handing over of property appears to us to be a matter which is not within the jurisdiction of the Sheri Court, but is within the jurisdiction of the District Court. A claim by the Mutavelli of a Mosque for an account and the recovery of possession of vakouf property against a trespasser who had no interest in the property, or against a debtor, would clearly not be a religious matter, and we fail to see that it becomes one by reason of the fact that the Defendants claim an interest, and assert that the Plaintiff, Ahmet Eff., was improperly appointed Mutavelli.

With regard to the second point, we are asked to disregard the judgment of the Sheri Court in a matter which was within its jurisdiction,

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SMITH, C.J. and to declare that that Court was wrong in appointing Ahmet Hj. Ali  
 & as the Mutavelli of this vakf. In effect, it is sought to make the  
 MIDDLE- Supreme Court a Court of appeal from the Sheri Court, which, assuming  
 TON, J. the Sheri Court had jurisdiction to appoint this Mutavelli—and it is  
 AHMET EFF. not suggested that it had not,—is to ask us to exercise a jurisdiction  
 HJ. ALI EFF. which under Clause 22 of the Cyprus Courts of Justice Order, we have  
 AND not got.  
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It, therefore, appears to us that we are concluded by the Cadi's Ilam in this matter, and so long as that Ilam stands, the Plaintiff, Ahmet Hj. Ali, is entitled to the administration of this property. It is not open to us to go behind the Ilam, and to enquire as to his physical capacity, or as to whether there were other descendants of the dedicator entitled in preference to him to the post of Mutavelli. These are matters for the Cadi to decide, and we are not able to review his decision. We may observe that it does not appear clearly from the Vakfieh that the Plaintiff, Ahmet Hj. Ali, is disqualified by reason of his being the son of a daughter of the dedicator. The Vakfieh lays down that the trusteeship is to be vested in "the eldest, fittest and most prudent of my descendants," and there is nothing in the language used, so far as we are informed, which necessarily confines the trusteeship to descendants of males alone. This, however, as we have said, was a question for the Sheri Court.

The judgment of the Court below was not attacked on any other ground, and we give our decision on those points which alone were raised by the Appellants' Advocate.

He stated that his clients were quite prepared to render an account and to hand over the property in their hands, their resistance to the action being based solely on the question of principle, that the Plaintiff, Ahmet Hj. Ali, was not the proper person who should have been appointed Mutavelli.

For the reasons we have above stated, we shall dismiss this appeal with costs.

*Appeal dismissed.*