Supreme Court of India
Anjuman Islamia And Ors. vs Munshi Tegh Ali And Ors. on 17 December, 1970
Equivalent citations: (1971) 3 SCC 814, 1971 III UJ 131 SC
Author: K.S. Hegde
Bench: J Shah, A Grover, K Hegde
JUDGMENT K.S. Hegde, J

1. This is a defendant's appeal by special leave. The suit from which this appeal arises is one for damages. The plaintiffs' case is that they are the owners of a plot named 'Badi Takia'. On 27-2-1959 defendants Nos. 3 and 4 brought a Tazia from their house and kept the same in a portion of Badi Takia (the place where they kept the Tazia is shown in the plan produced into Court). Despite the plaintiffs' protest the defendants did not remove the Tazia Hence the plaintiffs were constrained to bring the suit claiming damages. The defendants denied the plaintiffs' title to Badi Takia. Their case was that Badi Takia was a wakf property; the plaintiffs were in possession of the same in their capacity as Mutawallis. Hence the . defendants had a right to place the Tazia Two questions arose for decision before the trial Courts. They are (1) whether the plaintiffs have title to Badi Takia and (2) if they were the owners of the property, whether there has been a wakf of Badi Takia or pay part thereof. The trial Court came to the conclusion that the plaintiffs were the owners of Badi Takia and there has been no wakf of the same. In appeal the learned District Judge agreed with the trial Court that at one time the plaintiffs were the owners of Badi Takia but he held that an inference of wakf of that Takia should be drawn on account of certain circumstances The High Court in second appeal agreed with the Courts below that the plaintiffs were the owners of the Badi Takia no case of wakf by declaration of intention or by a will is either pleaded or proved; the proof adduced is not sufficient to hold that the entire Badi Takia is wakf property; all that could be said is that the mosque in Badi Takia is a wakf property The High Court did not decide whether the school in Badi Takia continues to be wakf property.

2. The trial Court, appellate Court as well as the High Court have concurrently come to the conclusion that the plaintiffs and their ancestors have been holding and managing the property for a very long time. Therefore it is for the defendants to establish that the same has now become wakf properly. As mentioned earlier no case of wakf by declaration of intention or by a will is either pleaded or proved. Hence the only question for decision is whether the defendants have been able to establish that the Badi Takia has become wakf property on the basis of long and immemorial user.

3. It is established by evidence that although the mosque in Badi Takia was got constructed by the plaintiff's ancestOrs. Muslims were generally allowed to offer their 'Namaz' prayers in that mosque for a period of at least 25 years or more. On the basis of that evidence the High Court has come to the conclusion that the mosque is a wakf property. The 1st plaintiff has also admitted that he ha d given some lands in Badi Takia in wakf for a school. But it appears that that school is not now functioning. In view of that circumstances, the High Court did not decide the question whether the school is a wakf property. Badi takia is an extensive plot. Hence the mere proof of the fact that the mosque therein is a s is also possibly wakf property does not lead to the conclusion that the entire Badi Takia is wakf property. In view of the relief claimed in the plaint, the only point that the Court had to decide was whether the plot on which the Tazia was placed was wakf property. On that

question no satisfactory proof was placed by the defendant before the Court. Hence we agree with the judgment and decree of the High Court.

4. In the result this appeal fails and the same is dismissed with costs.