

1967 Present : Sirimane, J., and Siva Supramaniam, J.

S. Y. ISSADEEN, Appellant, and M. I. M. ATHEEK
and others, Respondents

S. C. 87/65 (Inty.)—D. C. Matara, 7056

Muslim Mosques and Charitable Trusts or Wakfs Act, No. 51 of 1956—Section 39 (1) (2)—Inapplicability thereof to a proceeding in respect of an earlier decree of Court resulting in a Muslim Charitable Trust—Interpretation Ordinance (Cap. 2), s. 6 (3) (c).

Where, after the Muslim Mosques and Charitable Trusts or Wakfs Act, No. 51 of 1956, came into force, an application is made to a Court to fill a vacancy in the office of trustee in terms of a scheme of management drawn up and approved by that Court earlier under the repealed Muslim Intestate Succession and Wakfs Act, No. 10 of 1931, in respect of a Muslim Charitable Trust, section 6 (3) (c) of the Interpretation Ordinance renders it unnecessary to commence proceedings in a new action with a certificate from the Commissioner appointed under the new Act No. 51 of 1956. Subsections (1) and (2) of section 39 of the new Act were meant to apply to a proceeding relating to a Muslim Charitable Trust which has commenced when there has been no order or decree made by a Court earlier relating to such a trust.

APPPEAL from an order of the District Court, Matara.

M. T. M. Sivardeen, for 1st respondent-appellant.

N. E. Weerasooria, Q.C., with *N. E. Weerasooria (Junior)*, for petitioners-respondents and 2nd respondent-respondent.

June 11, 1967. SIRIMANE, J.—

A scheme for the management of a Muslim Charitable Trust has been drawn up and approved by the Court in these proceedings in or about March, 1933, under the Muslim Intestate Succession and Wakfs Act, No. 10 of 1931, which has now been repealed.

This scheme has been amended from time to time, and Counsel are agreed that the last of such amendments was in 1949.

The amended scheme appears in volume 4 of the record. By its terms it appoints two trustees, one to represent the descendants of the son of the author of the trust and the other to represent the descendants of his daughter. These two trustees were the 1st respondent and T. S. M. Ibrahim.

Ibrahim has died, and the present application was made to Court by the petitioners (who are described by the learned District Judge as “persons interested in the trust”) to fill the vacancy, by the appointment of the second defendant as co-trustee.

The learned District Judge allowed this application, and in this appeal against that order it was urged that under the provisions of the new Muslim Mosques and Wakfs Act, No. 51 of 1956, it was incumbent on the petitioners to commence proceedings in a new action with a certificate from the Commissioner appointed under that Act. Our attention was drawn to section 39 (2) which provides that no action other than one instituted by the Commissioner shall be entertained by the District Court unless the plaint is accompanied by a certificate under the hand of the Commissioner that the action has been approved by the Board. Section 39 (1) enacts that, subject to the provisions of subsection 2, the Commissioner or any five persons interested in the trust may *institute an action to obtain a decree* for certain purposes, for example, for the appointment of trustees or the settlement of a scheme for the management of a trust.

I am of the view that this section in the new Act was meant to apply to a proceeding relating to a Muslim Charitable Trust which has commenced when there has been no order or decree made by a Court earlier relating to such a trust.

In this case, as pointed out by Counsel for the respondents to this appeal, there is already a decree or order made on 8.10.49 approving a certain scheme.

Para. 11 of that scheme makes provision for the filling of vacancies in the office of trustee when the need arises.

The present application by the petitioners is no more than an application to the Court to give effect to its decree adopting the scheme of 8.10.49.

A somewhat similar application in these very proceedings had come up in appeal before this Court on 3.2.1938 (S.C. 138). That, too, was an application by certain petitioners for the appointment of two trustees according to the scheme that was in force at that time. Objection had been taken to that application on the ground that leave of Court, as required by section 16 (1) of the repealed Ordinance, No. 10 of 1931, had not been obtained before such application was made. The District Judge overruled the objection. In appeal, Poyser, J. said: "The petition of the 23rd July, 1936, can, in my opinion, be regarded as an application to the District Court by interested parties to give effect to the order of the 18th of March, 1933, by filling vacancies among the Trustees which have occurred."

I think the learned District Judge was right in taking the view that the present application was one in a proceeding which was pending and that the provisions of section 6 (3) (c) of the Interpretation Ordinance, Chapter 3, would apply.

The appeal is dismissed with costs.

SIVA SUPRAMANIAM, J.—I agree.

Appeal dismissed.

