

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, KARACHI.
II-Appeal No.194 of 2019
Tewfiq Fikree & others vs. Hafsa Fikree & others)

19.12.2024.

Ms. Sofia Saeed, advocate for Appellant
M/s Abdul Ahad Nadeem and Khuram Ashfaq, advocate for respondent No.3

J U D G M E N T

MUHAMMAD IQBAL KALHORO J: I have heard learned counsel for the parties at some length. Appellant had filed a suit for declaration and injunction and other reliefs, seeking declaration that he is *mutawali* of the *waqf* created over property No.LR-36 and LR-37 situated at the corner of Garden Road and Nishtar Road, Karachi, known as Fikree land, measuring about 55,000 Sq. Yds. owned by late Mrs. Sharaban Fikree. As per deed of declaration dated 06.10.1961 executed by first *mutawali* Mst. Sharban Fikree, she nominated, as per clause-IV, her husband Ebraheem Fikree as *mutawali*, failing him his grandson Tewfiq Fikree (Appellant No.1), and failing him the eldest male descendant of her daughters shall be *mutawali* of the *waqf*. But this was subject to one condition that the second *mutawali viz.* her husband shall have power to nominate the successor, notwithstanding the above provision. After demise of Mst. Sherban Fikree, her husband, the second *mutawali*, exercised his powers through a declaration deed dated 04.09.1984, and declared Late Mst. Rukia Fikree (Respondent No.5) as *mutawali* of the *waqf*.

2. The suit was filed in the year 1987 seeking declaration as above. In the same year, written statement was filed by all the respondents including Rukia Fikree referring to the declaration executed in September, 1984 by the second *mutawali*, husband of Mst. Sherban, that she has been appointed / declared as *mutawali* and submitted the said document with her written statement. The suit continued to be pending before the Court, and only in the year 2011 after 22 years, through an application, prayer clause was amended and cancellation of declaration dated 04.09.1984 was additionally sought. The Suit was dismissed vide judgment dated 28.03.2013 by Senior Civil Judge Karachi South on the ground of limitation to seek such cancellation as well as on merits. Appeal filed against the same judgment landed before learned 12th Additional District & Session Judge, South, Karachi and dismissed vide impugned judgment dated 19.08.2019. Hence, this second appeal.

3. During arguments, it has transpired that Mst. Rukia Fikree, the third *mutawali* of the *waqf* has expired and she in her life time had purportedly executed a declaration dated 23.08.2019 after the judgment and decree of the Appellate Court, appointing Mr. Ziyaad Gulzar as next *mutawali* of the *waqf*. Now it is an admitted position that the declaration of 1984, which was

challenged by the appellant/plaintiff in the original suit has been replaced by the subsequent declaration purportedly executed by Mst. Rukia Fikree dated 23.08.2019 and at the place of Mst. Rukia Fikree now Mr. Ziyaad Gulzar has been appointed as *mutawali* of the *waqf* property. Neither the said person was defendant, nor the declaration dated 23.08.2019 was challenged by the appellant, either in the suit or in the appeal because of the reasons that it was executed after the judgment and decree of the Appellate Court was announced.

4. However, confronted with this fact, learned counsel for the appellant has admitted that since purportedly new declaration has been executed, and another person by name Ziyaad Gulzar has been appointed as *mutawali* of the *waqf*, this appeal has virtually become infructuous because the document declaring him *mutawali* is not under the challenge in the proceedings and even if this appeal is allowed in her favour, it will not change the situation on the ground because of new declaration. Therefore, she has sought permission to file a fresh suit against Mr. Ziyaad Gulzar and challenge the same declaration executed in his favour. This position has not been questioned by the other side, and therefore, this appeal having become infructuous as per statement of appellant's counsel herself is accordingly disposed of at her request with the observation that if appellant so wishes and is advised, may file a civil suit against the above said person subject to all exceptions in accordance with law.

This second appeal is disposed of along with all pending applications in above terms.

J U D G E

Rafiq/P.A