

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

“Any person following the preaching of Miraja-Gulam-Ahamed can certainly not be called a Mohammeden and he is anything other than a Mohammeden.”

## COURT'S JUDGEMENT AGAINST MIRZAIYAT

*Judgement by*

**SHRI SEENÁM BHAT JOSHI,**

*Learned Addl. Munsif Hubli (India)*

ANJUMAN-E-DARSUL QURAN,  
AHLE-SONNAT WALJAMAT  
43, MANGALWAR PET, HUBLI-20.  
MYSORE STATE (INDIA)



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# INTRODUCTION

Imambi Qadyani, an old woman of Hubli ( Mysore ) died on 17-6-1969. Members of the Qadyani community of Hubli attempted to take her coffin for burial to the burial - ground of Sunni Muslims. The latter objected and did not allow her to be burried in their graveyard. This gave rise to a Civil suit for declaration and permanent injunction which was filed by the President and members of the Mohammadia Anjuman Ish'at Islam, Hubli which is an organisation of the Qadyanis. Below is the full text of the order of the learned Additional Munsif, Hubli passed on 24th March 1970 on an application of the plaintiffs for temporary injunction in O. S. No. 288 of 1960.

## **ORDER.**

In the Court of the Addl. Mu sif.

Hubli.

O. S. No. 288 of 1969

Before :-

Shri. Seenam Bhat Joshi, LL. B.,  
Addl. Munsif, Hubli.

Plaintiffs :-

1. Fasilahamad Abdul Satta, Mulla age 50 years, occupation chargeman in Railway Workshop Hubli and president, Mohammedia Anjuman Ishaat & Islam Hubli, Residence Bhar - Baada, Old Hubli

2. Haji Mohammad Hussain Imamsab Ghodesawar, age 66 years, occupation Retired Railway Servant, and vice-president, Mohammedia Anjuman Ishaat Islam, Hubli, Residence ; Bhandiwad - Bais, Hubli.

3. Haji Mohuddinshah Umarashah Goruwale, age 68 years, occupation Retired, Railway Servant, residence : Bhandiwad Bais, Hubli

( By Shree M. A. R. Choudhary, Advocate ).

—Vs—

Defendants :-

1. President Anjuman Islam Hubli.

2. Haji Riyaji, Ahamed Faizabadi, age 35 years, occupation Teacher Riyajul Ulum - Ghantikere Residence : Bhandiwad, Bais, Hubli..

3. Mohamood Sharif P. Laxmeshwar, age 30 years. occupation Editor, Samaj and Urdu, Karnatak Times, daily residence: Bhandiwad, Bais, near Gaibushah Makan Hubli ...

4. Imamsab Gaffarsab Sirkhawas, age 48 years, occupation: Railway servant in Railway Workshop, Hubli, and Mutawalli - Bhar Baada Old Hubli.. residence: Bhar Baada, Old Hubli .

( Shree, A T. I. Bangaleri, and K. A Soudagar, Plaintiffs )

for defendant 1.

Shree. H B Kulkarni, and N. M. Hansi, Advocates). for defendants 2 to 5) .

### Order on J. A. No. 2/69 In O. S. No 288 of 1969

This is an application raising a very interesting and an important question regarding the rights of offering prayers, meditations and - congregational prayers in public mosque, Idagahs, Durghas, Mukabira etc., in Hubli, and to bury the dead bodies of the members of the families of the plaintiffs and others caliming themselves to be Sunni Muslims governed by the provisions of Mohamadian Law. For the purpose of preventing the defendant's and several others of the Muslim community in Hubli, in the exercise of the rights of the plaintiffs in the above said regards, the plaintiffs have filed a suit and obtained permission also to file the suit in a representative capacity and after the filing of the suit, the present plaintiff - 1 with his affidavit for a prayer is temporarily

restrain the defendants from in any manner interfering with the exercise of the rights of the plaintiffs in the matter of offering worship, prayers etc and burying the dead bodies of the members of their families and the members of Sunni - Muslims. An instance has been quoted of the dead body of one Imambi wife Umarsha Goruwale, the mother of plaintiff No 3, who died on 17.6 1969, at about 6' o'clock ( A M ) and when her dead body was carried in the coffin for the purpose of burial in the public grave yard in Gavi Mohalla, all the defendants with their followers under the leadership of defendants 2 and 3 obstructed the plaintiff - 3 and other plaintiffs in carrying the coffin to the said grave yard, and the plaintiffs were put to the difficulty and the necessity of keeping the dead body till 2-00 A M. On 18 6 1969, and we referred to bury the same in the land belonging to plaintiff No. 2' s family at Gopankop. It is also alleged in the affidavit that defendant - 3 being an Editor of 'SAMAJ & URDU KARNATAK TIMES, DAILY' at the instigation of defendant - 2 published a notification imputing defamatory statement, and Ex-communicated the plaintiff - 1 and his other associates. It is also alleged that defendant No 5 the Mutawalli of Bandiwad Baise Jamait, has been expelling the plaintiffs and other members from exercising their religious rights in the Mosque at Bhandiwad Base and the defendant No. 2 with his followers has been issuing instructions to the Mutawallis of other Mosques in Hubli, not to allow the plaintiffs or their dependents to exercise their rights of performing religious rites in all Mosques, Idagahs and Grave Yards in Hubli. Objections were filed by the defendants and

particularly defendant - 3 filed an application under order XXXIX Rule - 4 read with section 151 of C.P.C. for vacating the adinterim injunction issued already against him and other defendants. Briefly the objections by all the defendants for vacating the temporary injunction are the following The suit suffers from a patent infirmity in as much as the suit is not filed by Mohamadia Anjuman Ishait Islam, Hubli, and therefore, it is to be rejected under order 7 rule 11 of C. P. C. The Plaintiffs are not sunni - Muslims and do not follow the tenets of Islam Even the other 52 members of Mohamadia Anjuman Ishait Islam are not Mohamodans much less Sunni Muslims Further it is the definite case of the defendants particularly defendants - 3 that the plaintiffs and the other members 52 in numbers are followers of what is known as Quadiani religion and the principles are materially and substantially different. It is also made clear that they do not believe in the fact that Moham-mad Paigumber is the last prophet They believe that one Miraj Gulam - Ahmed, the founder of Quadiyani religion is the incarnation of Lord Krishna and that Macca is not a holy place whereas Quandian a village in Punjab is the holy place. It is also contended that the fact that plaintiffs so called Mohamadia Anjuman Ishait Islam are registered under the Bombay Public Trust Act and shows that Plaintiffs are not the members of the Muslim community. It is also contended that the plaintiffs do not part take in mass prayers, religions rites in Sunni Muslim Mosques, Durgas, Idagahs etc. They further state that the plaintiffs have got their own place and arrangement at Bhakle galli Hubli, where they are peacefully

observing their ceremonies. It is also contended that this court has no jurisdiction to try the suit as the principles of Wakf Act, and the rules made thereunder bar the suit. It is also contended that the burial grounds, mosques, Masjids etc., are treated by the Sunni Muslim Community as sacred places throughout the year and particularly on Idul - Fitar and Idul - Zuha when the friends and relatives of the dead offer Fatiha at the burial Ground. Such a Fatiha cannot be offered if there is a non-Sunni, Muslim body in the grave yard or Kabaristan and if a non - Sunni Muslim is allowed there, irreparable injury would be caused to the religious believes of the defendants. It is also contended finally that the suit in its present form is not maintainable as it is hit by Sec, 92, of the C.P.C.

The plaintiffs relied upon the affidavit of the plaintiff No. 1. The defendant filed as many as about 34 affidavits of various members of the community of different social status. They also relied upon a letter or an application dated 8.11.69 written by one Dy Nesir Umeer Amma Ahmadiyya Community. Quadian Gurudaspur district in Punjab. Another letter or an application dated 16.12.69 by one N. M. Mundasagar, addressed to the commissioner Hubli, Dharwar Municipal Corporation and another application dated 19.12.1970, by the same Mundasagar to the Commissioner, Hubli-Dharwar Municipal Corporation were also relied upon. Arguments, were addressed by both the counsels at length.

At this stage, we need not enter into a detailed

scussion of the questions regarding the religion of Islam the greatness of Mohamad - prophet but suffice it for our purpose to pose the following questions for our consideration before we arrive at conclusion as to whether and adinterim injunction already should be made absolute or be vacated forthwith. The first question that may be posted is, whether the plaintiffs are quadian is not belonging to the Muslim community at all? It is held that the plaintiffs belong to the quadian religion then, to my mind, it is clear that they have no rights of offering prayers, worship in Mohamedia Ishaat ect, meant for the Muslim community and they have no right to bury the dead bodies of the members of their families and the other members of quadian religion.

From the cause title of the plaintiffs in the application, prima-facie it is seen that the first plaintiff is named as Fazil, Ahmed Abdul Satta Mulla the second plaintiff is named as Haji Mohamed Hussain Imamsab and the third plaintiff is named as Haji Mohyaddin shah Umar-shah Goruwale. It is also clear that there is an association or the institution called Mohamedia Anjuman Ishaat and Islam at Hubli of which the first plaintiff is the president and the second plaintiff is the vice - president. In para 2 of the affidavit of the first plaintiff, it is sworn that the plaintiffs are sunni Muslim governed by the provision of Mohamadian law and they follow the tenets of Islam as enjoyed and enshrined in the Holy Quran, and they are offering prayers, benedictions and meditations in mosques and Idagas etc and that they also bury the dead bodies in Muslim Grave Yards or Kabrastans. It is also seen

from para 3 of the affidavit that there are as nearly as 52, members of the Mohamedia Anjuman Ishaait Islam, Hubli, which was started about 30/32 years back and registered under the Bombay public Trust Act and its registration No. is F. 7 dated 13. 11. 1952. As against the said interested statement of plaintiff - 1 in his affidavit, there are the affidavits of nearly 35 Muslims of various walks of life wherein they have sworn that the plaintiffs do not believe that prophet Mohammad is the last prophet and that they protective the faith which is quite inconsistent with Muslim Religion and one Haji - Riyaji Ahmed, a teacher has also sworn that the plaintiffs 2 and 3 who had gone to Macca in the year 1965, were taken to task by the King of Saudi - Arabia on the ground that they being not Muslims had visited Macca. From the various affidavits on behalf of the defendants, it is seen clearly that the plaintiffs, are the followers of quadian a religion which is founded by one Mirja Galam Mohammed in Punjab. It is also clear that the plaintiffs do not believe in the principles that the prophet Mohamed was the last prophet and that they do not believe in the unity of God and that they do not consider Macca to be a sacred place where as they treat Quadiayan as a sacred place. It is also seen from the affidavits that the plaintiffs have got their own mosque at Bhakale galli, and the plaintiffs have also been corresponding with the authorities of the H. D. M. C. for making a provision for a burial ground for the community.

Moreover, most of the affidavits, were not in any way impeached as being interested or motivated. More-

over, there is no estensible reason to discard the affidavits filed on behalf of the defendants. Simply, because the deponents have sworn to the affidavits on behalf of the defendant who are Muslims it is no ground to their affidavits.

The learned Counsel for the plaintiffs relied upon the community at page 24 under section 27 in the principles of Mohamedan Law" by Mulla edited by the Honourable Mr. Justice. M. Hidayatulla who is now our, Honourable chief Justice of the Supreme Court.

The commentary is as follows :-

Quadianis also follow the sunni law and so do the Able-e-Madith The cutchi Memons of Bombay and Nalaj Memons belong to the sunni - sect." The learned counsel for the defendants Shree H. B Kulkarni rightly contended with reference to the commentary that simply because the Quadianis follow the sunni law that does not necessarily mean that the Qudians are the Muslims. It was not brought to my notice by the learned counsel for the plaintiffs, that under any of the provision of Mohamedian Law, the plaintiffs who are quadianis are also Muslims Under sec. 19 of the above said ' Principles of Mohamedian Law' by Mulla a Mohammadian is defined as any person who preffesses the Muslims religion i. e acknowledges (a) that there is but one God and (b) the Mohammed is the prophet. It is also further mentioned therein that such a person may be a muslim by birth or he may be a Muslim by conversion. It is not necessary that he should observe any particular rites or

ceremonies or to be an orthodox believer in the religion, no court can test or gauge the sincerity of religious beliefs. It is sufficient if he professes the Muslim religion in the sunni that he accepts the unity of God and the prophetic character, of Mohamed'' Now applying the above said definition or the description of a mohamedian to the plaintiffs in the present case can we classify them as Mohammadian ? As I have already observed above, apart from the highly interested and the bare affidavit of plaintiff No 1 to show that plaintiffs believe in the religion of Islam and that they are sunni Muslims following the tenets of Islam, there is no other in-dependent and disinterested testimony to corroborate that the plaintiffs are sunni Muslims governed by the provision of Mohamedian law and follow the tenets of Islam as enjoined and enshrined in the Holy Quran, on the other hand, there is Plothora of evidence of not less than 33 or 34 members of the Muslim community who unequivocally swore that the plaintiffs are not Muslims that they are qadianis and that they do not believe in the fact that prophet Mohamed is the last prophet and they do not believe Macca as a sacred place, but they consider the quadian a sacred place. In that case, can be plaintiffs be legitimately considered to be Mohammedens or Muslim ? The essential requisited to be a Mohammaden are the acknowledgement of the unity or oneness of God and the prophetic character of Mohammad. Clearly the plaintiffs do not acknowledge the oneness of God and they do not clearly believe in the prophetic character of Mohammed, but they clearly owe their allegations to one Gulam Mirja Ahmed If Gulam Mirja Ahmed of Qadian is their

prophet or "Avatar" of Lord-Krishna according to them, then their ostensible belief in either Quran or Mohammed cannot be reconciled easily.

Further if they are sunai-Muslims and if they believe in the prophetic character of Mohamed, I fail to understand why some of the members of the plaintiffs association should be agitating with the authorities of the Municipal corporation for the sanction of the grant of a place for burial ground. They ought to have asserted the rights of burial in the Public Grave Yards of the Muslim Community from the beginning. The plaintiffs claim to be the residents of Hubli, from time immemorial and it is incredible that any members in the families of the plaintiffs would not have died since then and that they would not have been buried. If really the public grave yards meant for the Muslim community are also as a matter of right to be used by the plaintiffs and the members, why the defendants, all on a sudden thrust it into their heads to prevent or obstruct the burial of one Imambi on 17.6.1969. The reason is somewhere and kept back from the scrutiny of the Court for reasons known to the plaintiffs. Is it their case that since the time of their stay at Hubli only one person by name Imambi died and there was an obstruction for her burial in the public grave yard? That does not seem to be their case, and that cannot be also their case obviously because I have already stated above the plaintiffs and their members and the other 52 members of their association have been living in Hubli, since time immemorial and

naturally there should have been deaths in their families. In that case, where did they burried their dead bodies all these years ? If according to them. they had buried those dead bodies in the public grave yards claimed by the defendants as belonging to the Mulim community then there is no reason for the defendants now to obstruct the burial of the dead body of Imambi unless the defendants are convinced that the plaintiffs or Imambi who died are not Mohammadans and that they follow qudianism which appears to be anything other than Islam. It is not enough that the defendants and the other members of the Muslim community are convinced that the plaintiffs and the other 52 members are not Muslims but it must be found as a matter of fact and of law that the plaintiffs and the other 52 members professing Qadianism are not either Mohammadens or Muslims. As I already brought our the definition of the word 'Mohammaden' we have not to find out if the plaintiffs and the other 52 members come within that description. It is not enbugh that the first plaintiff alone swears in his affidavit that he and the other plaintiffs are sunni - muslims governed by the provisions of Mohamedan Law, but it must be found whether the plaintiffs believe in the oneness of God and believe in the prophetic character of Mohamed If these two belifs are not merely entertained but professed and practiced, then there is no difficulty in coming to conclusion that the plaintiffs are the Mohamadens having a right to offer prayers etc. in the public mosques and having right to bury the dead bodies in the public yards Scrupulously and deliberaterly too we find in the course of the affidavit in support of I. A.

No. 2/69, and even in the plaint that the plaintiffs do not either say that they are qadianis nor do they admit emphatically, and in unequivocal terms that they are muslims believing in oneness of God and believe in the prophetic character of Mohamed. The affidavits of the first plaintiff in support of the application is almost the prototype of the plaint. Nowheres in the course of the plaint, do we find any statement either expressly or impliedly that the plaintiffs are not Qadianis and that they are Muslims believing in the prophetic character of Mohamed and the unity of God. These are the very fundamental requisites to create rights in them to worship and burial in moques, Idagahas etc., and public grave yards respectively. One may be a very sincere devotee or a sincere follower of the tenets and principles of Qoran one may be a scholar in the original Arabic Qoran and one may be a religious Pandit being equipped fully with the Islamic works of highest authority. One may even all the way walk up to Macca the Holy place and one may even offer prayers in the mosques and one may even dine intermarry with the Muslims. All these will not either singly or cumulatively convert him or characterize him as a Mohammedan under section 19 of the Mohammedan Law, because a Hindu a Jain or a Parsee may do the above acts adopting the principles above stated and go to Macca, but these do not convert him to be a Mohammedan because essentially his belief is not founded in the oneness of God and in the prophetic character of Mohamed. No doubt, it is difficult to delve deep into the mind and break open the heart of an individual to find out if sincerely he believes in the oneness of God and believe

in the prophetic character of Mohamad, but it is not impossible to characterise him or to describe him as a Mohammadan provided he given out his mind or expresses that he believes in the one - ness of God and he belives in the prophetic character of Mohammad. Applying the above said test to the plaintiffs, we find that neither the affidavit of the first plaintiff nor the other documents relied upon by them reveals that the plaintiffs fulfil the test above stated. The very significant absence, of the mention of the expression of their beliefs in the oneness of God and in the prophetic charcter of Mohammad either in the cause of the Affidavit of the first plaintiff in support of the application clearly gives out the mind of the plaintiffs that they are not prepared to come forward clearly with the stand that they are Mehammadens as contemplated under section 19 of the Mohammadan Law.

No doubt neither the plaint nor the Affidavit of the first plaintiff discloses that the plaintiffs are Qadianis. Then the question arises as to where from the word Qadiani has been imported and how the word Qadiani assumed as much of importance and became a subject of heated controversy during the course of the arguments. That we find in the course of the objections and the affidavits of the various on behalf of the defendants. No counter affidavits have been filed on behalf of the plaintiffs or other 52 members are Qadianis. Therefore, we can safely presume that the plaintiffs are Qadianis. What is this qadianism? Who is the founder of this

faith ? Are the principles of Qadianism based upon the maxims and the fundamental principles of Islam ? or whether they are inconsistent or diagonally opposite to the tenets and the principles of Islam. The word Qadianism came to be coined after the name of either the village or a Town Khadiyan in Punjab. One Gulam Mirza Mohamed who was said to an advocate, gave up that profession and claiming to have revelations embraced or became a staunch - oppostle of God by his feminine characteristics and his diseased body in the sense that he was being afflicted with diabetes diarrhea and similar other diseases. He went to the extent of slandering Mohammad and Jesus and tried to show himself to be not merely a prophet like Jesus, but an incarnation of Lord Krishna. Some of his slogans or preachings may be reproduced in his own language.

a) I saw in a vision that I have become God Almighty and I believe that I was son in fact. While in this transcendental state I created heaven and earth. I then created Adam out of dust and moulded him in the best of forms. Thus I became the Creator of the World.

b) I heard the voice of God saying : "O Mirza ? I am from thee and thou art from Me : Thou art unto Me like a son."

c) God almighty addressed me in the English language and declared from on high :

d) " I shall help you I can what will do. Though all

men should be angry but God is with you. He shall help you : words of God cannot change."

e) Our God is made of ivory.

f) I am a prophet of God and he who does not believe in me is a Kafir.

g) Those who refuse to attest the truth of my mission are bestards.

h) I have abrogated the foolish doctrine of Jihad.

i) I am better then Jesus Christ who was a Winebibber, a foul - mouthed liar and had a predilection for the society of harlots.

J) I am on a higher moral and spiritual plane than Adam, Noah, Hussain, Abu - Bakr and all the saints put together.

k) My people should have no part and let with those who call themselves Musalmans They must not join any congregational prayers led by an Imam who does not believe in me : they must not wed their daughters to the so called Musalmans who are not my disciples.

From the above preachings, particularly the last preaching about the emphatic denunciation and condemnation of the musalmans, it is quite clear that the followers of Miraja Gulam - Ahmed are not mohameddans by any stretch of imagination. Let us now contrast the above preachings with the preachings of Islam.

- (a) God is holy so as to have son or issues.
- (b) God has given birth to none. Nor is born to God is neither the Father or any one nor son of any one
- (c) From where son is born to him. He has no wife, He has created all the things and He knows everything. Nothing is alike him. He hears and sees all the things. And nobody is there to compete with Him. There is none equal to God and none is like Him and none is like Him nor his shape
- (d) Whenever He determines for the creation of a thing, then it is His routine that He orders the things to be, then it comes to be then it comes into existence.
- (e) In my people, thirty liars will be born. Every body amongst them will say that he is a messenger and prephet of God, as I am the last of the prophets, i. e., last prophet. After me there would be no prophet Prophet Mohamed ( Peace be on him ) said once, if at all there would be any prophet after me, then he would be Umar bin Khatab. A person who does not believe Prophet Mohamed to be the last prophet, is not a maslim but he becomes a Kafir as yours'' (Prophet Mohamed's) becoming the last prophet is the essential of religion.
- (f) When any person does not have this belief that prophet Mohamed is the last prophet then he is not Muslim. And if he says that he is a messenger or says in persian that he is messenger and thereby means that he conveys the messages, then also he becomes a Kafir.

On contrasting the principles and preachings of Islam with the preachings of Mirja - Gulam - Ahmed we find clearly that Mirja - Gulam - Ahmed, the founder of Qadianism does not believe in any of the principles of Islam above mentioned; on the other hand he goes to the extent of preaching that he is the Avatar of God and he not merely does not recognise the prophetic character of Mohamed, but denies that the prophet Mohamed (peace be on him) was the last prophet. Any person following the preaching of Mirja Gulam-Ahmed can certainly not be called a Mohammeden and he is anything other than a moham - maden.

Nowhere in the course of "the Principles of Mohammeden Law by Mulla" do we find not was it brought to my notice that though Qadianis follow the sunni-law, yet they are necessarily mohammadans. Simply because Qadianis follow sunni-law, it does not ipso-facto mean that they are mohammadans. Following a particular law or being governed by a particular law does not connect that particular person professes a particular religion. Therefore, the following of sunni-law by the Qadianis does not lead to the conclusion that the Qadianis are Mohammadens. Therefore, in that view of the matter, I have no hesitation in finding that the plaintiffs have been laying a baseless claim for access to worship in the mosques of the Muslim Community and for burial in the public grave yards, of the Muslim Community.

If the plaintiffs were also the members of the Muslim

Community, if the plaintiffs had the right and did exercise their right of worship and burial in the mosques and the public grave yards respectively, then there was no necessity for the plaintiff to approach the authorities for making a provision of a burial ground for them. There was also no necessity for them to have a mosque of their own in Bhakale Galli. It is not denied by the plaintiffs that they have got a mosque at Bhakale Galli.

Therefore, the statement in the objections and in the course of the affidavits of some the persons on behalf of the defendants that the plaintiffs have got their own mosque at Bhakale Galli stands Unimpeached and uncontradicted. Therefore, there is no impediment legally to accept that statement as true to arrive at the conclusion that the plaintiffs are not believing in the principles of Islam, and appeared to have been offering prayers in their own mosque at Bhakale Galli.

If the plaintiffs and the other 56 members were in fact burying the dead bodies of the members of their families in the public grave yards and if there was no obstruction by the defendants or the other members of the Muslim Community, then, why did the plaintiffs apply to the Municipal Corporation for making a provision for burial ground. It is significant to note that prior to 17-6-1969, there was no whisper muchless any correspondence between the plaintiffs and the Corporation Authorities in regard to the provision for a burial ground. It is the death of Imambi on 17-6-1969 that gave

an impetus to the plaintiffs to come forward with an application for provision of a burial ground. Prior to that did not any body die in the families of the plaintiffs. It is improbable to believe the immortality in the families because they are also human beings. In that case, where did they bury their dead bodies?

The answer or clue to that question is to be found in their own statement that Immambi was buried in the land of plaintiff No. 2. Therefore, it is quite probable and likely too that all along the plaintiffs had been burying the dead bodies of the members of the families in the land of the 2nd plaintiff or some bodyless probably finding that the private land for burial would mean something, the plaintiff appeared to have started an agitation with the Municipal Authorities for the grant of a burial ground to them. If they were also the members of the Muslim Community as the defendants, there was no reason to the plaintiffs to have applied for the grant of a separated and for burial. And there was no reason from the defendants also to obstruct the plaintiffs from burying the dead bodies provided the plaintiffs believed or knew themselves to be Mohammadans under Sec. 19 of the Mohammadan Law

Now we come to the technical and legal objections raised by some of the counsels for the defendants. Shri. Soudagar counsel for one of the defendants contended that section 92 of the C.P T.C. has not been complied with before the institution of the suit and section 55 of the Wakf

Act also prohibits the institution of this suit. A perusal of the provisions of Sec. 92 of C.P.C. and Clauses (a) to (h) therein, I find that nowhere is it mentioned that a suit for a permanent injunction restraining the defendant from preventing the plaintiff from offering prayers etc., in the mosques, from burying the dead bodies in the public grave yards and from restraining them from publishing defamatory articles against them is brought within the clutches or the purview of Sec. 92 C.P.C. or Clauses (a) to (h) thereunder. In this connection an argument was advanced that provisions of section 9 of the C.P.C. bar the jurisdiction of this Court. A superficial reading of the provisions of Section 9 of the C.P.C. will disclose that the jurisdiction of a Civil Court is not ousted in case of a suit for claiming rights of worship and rights of burial and for a permanent injunction in that regard. The provisions of section 55 of Wakf Act come into operation only in cases or suits falling under Clauses (a) to (h) of Sec. 92 of the C.P.C. When it is found that the provisions under Section 92 of C.P.C. are not applicable, the question of the applicability of Sec. 55 of the Wakf Act does not arise. Therefore the arguments of one of the defendant's counsel about the want of sanction or permission as contemplated under Section 92 C.P.C. Under Section 55 of the Wakf Act is to be rejected as being devoid of merits and the objection regarding the jurisdiction of the Court under Section 9 of the C.P.C. is also to be over ruled.

In this connection reliance was placed on a decision

of our own Honourable High Court reported in 1957 Mysore Law Journal ( Volume 35 ) page 341 at page 346. There it was a case of the plaintiffs seeking to enforce the rights of the orphans which was a public trust. Under such circumstances, sanction under Section 92 of the C.P.C. for institution of the suit was necessary. Here, in the suit in question nowhere do we find in the course of the plaint that the public grave yards and the mosques are trust properties or governed by the Wakf Board; on doubt a plea has been raised in the course of the objection on behalf of the defendants that they are properties of the Wakf Board and that they are public trust. In para - 3 of I A No. 2/69, we find that some of the Muslims of Hubli who had much aptitude for religious activities and propagation of Islam Religion have established one Mohamadia Anjuman Ishait and Islam. About 32 to 35 years back the same has been registered under Bombay Public Trust Act with its registration No F - 7 dated 13-11-1952. The criterion for the necessity of the sanction under Section 92 of the C P C is not that the plaintiff is a public trust, but the rights claimed by the plaintiff must be in relation to the defendants which is a trust or defendant's property is a Wakf property. That has not been pleaded anywhere in the course of the plaint. The criterion to apply the provisions of section 92 C P.C. immediately after the institution of the suit is on the basis of the pleadings in the plaint but not the averments in the written statement. Therefore, applying that test to the present plaint, we find nowhere it is mentioned that the mosques and the public grave yards are the trust

properties or the Wakf properties. Therefore, in that view of the matter, the principle laid down in the above quoted case has no application. Another decision of our Honourable High Court reported in 1965 (1) Mysore Law Journal page 565 was relaid upon. It was held therein that the Civil Judge was right in concluding that he had not jurisdiction to decide the question whether the suit properties were the Wakf properties. That principle also is in applicable to the facts of this case because it is not the case of the plaintiffs that the suit properties are Wakf properties or trust properties. Therefore in that case, the principle above quoted is clearly in applicable.

In view of the discussion of the pleading in the affidavits on behalf of both parties, the question about the definition of a Mohammaden and the implications of Qadianism and the non-belief or the dis-belief of the principles of Islam by the Qadianis, I am clear in my mind that the plaintiffs cannot claim any rights of worship or burial. If they had a colour or right, then, there is a duty cast upon the court to have protected that right and if the plaintiffs had made out a prima-facie case of that colour or right, then, probably the court would have continued the adinterim injunction till the disposal of the suit. Therefore in that view of the matter, no prima-facie case is made out. The balance of convenience and probabilities are more and overwhelming in favour of the defendants. No irreparable injury or damage will be caused to the plaintiffs if the adinterim injunction already issued is vacated because they have got their own mosque where

they can offer without interruption of prayers etc. They have got thier own lands where they have been burying their dead bodies and no difficulty would be felt by them to continue the burial of the dead bodies in their lands till the separate provision is made to them by the Corporation authorities, on the other hand, the Muslim Community of Hubli consisting of about 70 to 75 thousands would be sentimentally affected if the Qadianis viz the plaintiffs in this suit are allowed to participate and to hear the prayers offered by the muslims of Hubli,

Accordingly, I pass the following:

**: O R D E R :**

The ad-interim injuction issued earlier will be vacated forthwith Further for having set afloat a commotion and created sensation and thereby disturbing the moral life of the muslims of Hubli the plaintiffs cannot go so free and they have to be mulcted with costs of this application. Accordinigly the plaintiffs will pay the cost of this application to the defendants

(Dictated to the Stenographer, transcribed, typed by her and corrected by me and then pronounced in open Court, this 24th day of March, 1970),

Sd/- Seenam Bhat Joshi 24-3-1970.

Additional Munsiff Hubli.

True Copy

Sd/- Illegible,

Copyist Examiner. Date. 20-7-1973.

**C O N C L U S I O N .**

After the above order was passed members of the Qadyani community including the plainiffs renouced

**Qadianism and reemebressed Islam at the hand of Moulana Royaz Ahmed Faizaydi Mufasssir Anjuman Darsul Quran Hubli, in the Presence of Janab F. H. Mohsin (M.P.) president of Anjuman Islam, Hubli and filed an application for dismissal of the suit. The order of the learned court is given below :-**

### **ORDER - SHEET.**

**In the Court of the Addtional Munsiff Hubli**

**O. S No. 288 of 1969.**

**Plaintiffs - Fafalahammada Abdul Sattar Mulla of old Hubli, and 2 others, Versus.**

**Defendants -President Anjuman Islam of Hubli and others.**

**Parties are by council. The plaintiffs file a memo stating that cannot substantiate their pileads in plaint and that do not prosecute the suit further. The defendants do not press for costs. Hence the suit is dismissed with no costs.**

**Sd/- Seenambhatta Joshi. 6-8-1970**

**True copy. Sd/- Illicigible 12-8-70**

**O. S 288 of 1969.**

**In the Court of the Additional Munsiff at Hubli. Plaintiff.-Fasaliahamad Mulla and others. Versus. Defendants:-Anjuman-Islam Hubli through its President and Others. Herein, the plaintiffs beg to submit a memo as under :- Since the plaintiffs cannot substantiate the pleas, raised in their plaint, they do not want to proceed with this case. The same may be dismissed accordingly. Plaintiffs.**

(1) Fazal Ahmmada Mulla, (2) Sd/- Ghodesavar  
(3) Sd/- Urdu<sup>1</sup> Sd/- M. A. Choudhari Advocate for  
plaintiff: 6-8-1970. Defendants. (1) Sd/- A. M. Khaji.  
(2) Sd/- Moulana Riaj Ahammada. (3) Sd/- M. P. Laxme  
shvar, (4) Sd/- Imamsab Sarkhvas (5) Sd/- M. M. Hansi.  
Sd/- K. A. Soudar Advocate for defendant 1. Sd/- H. B.  
Kulkarni. Advocate for defendants 2. and 3. Sd/- Idkhzn.  
Advocate for D. 4. Sd/- M. M. Hanshi Advocate for D. 5.