

Judge v. Muslim Society of Toronto Inc

[1973] 2 O.R. 45

Ontario Supreme Court [High Court of Justice]

Holland, J.

Judgment: January 18, 1973

Lawyers:

A.C. Thompson, Q.C., for plaintiffs and defendants by counterclaim

W.G. Dingwall, Q.C., for defendants and plaintiffs by counterclaim

Decision of Judge Holland:

1. This action, broadly speaking, involves a religious dispute between two groups of Muslims which, for convenience, will be called the Pakistani group and the Albanian group.
2. In order to deal with the matter it is necessary to consider the facts. The history of the Muslim Society of Toronto Inc. is summarized in ex. 30. Prior to 1952 there was little, if any, Muslim activity in Toronto. In that year the Albanian Muslim Society was formed with the group celebrating the major Islamic festivals in rented halls. In 1957 Muslim Society of Toronto Inc., a non-share corporation, was incorporated under the laws of the Province of Ontario as a non-profit and charitable organization, hereinafter referred to as the Society. In 1961 the Society purchased real property on Dundas St. which was used as a religious centre. This property was sold in 1968 since larger premises were required and property was purchased on Boustead Ave. in 1969 from the trustees of Morningside-High Park Presbyterian Church. A duplicate deed was filed as ex. 33 and the purchaser is shown as Muslim Society of Toronto Inc. The purchase price was \$125,000, of which \$60,000 was paid in cash with the balance being secured by a mortgage back for one year without interest. The evidence discloses that the original members of the Society were, for a great part, Muslims with Albanian origin together with some Muslims from Jugoslavia, Egypt and the West Indies. In the 1960's, and in particular during the latter part of that decade, and in 1970, 1971 and 1972, there was a heavy influx of Muslims from the subcontinent of India and in particular from Pakistan. I will refer to these more recent arrivals as the Pakistani group and I will refer to the original members of the Society as the Albanian group. Some of the Pakistani group who attended religious meetings and prayers at the Boustead property became members of the Society and some did not. A dispute arose between the two groups. The Pakistani group are possibly more orthodox in their religious views than the Albanian group and

their demands included a demand that the Boustead premises be kept open 24 hours a day for the purpose of worship, that Muslims be permitted to remain on the premises for 24 hours a day for some considerable periods of time, particularly during the Holy month of Ramadan, that no social gatherings be held in the building and that women dress themselves in a particular way while on the premises. Historically, the Albanian group had only opened their place of worship for the purpose of prayers on Fridays and Sundays, being the two prime religious days of the week. It must be borne in mind that the Society is not a society of rich people but generally a society of poor people and the costs of keeping the premises open for longer periods were considered to be excessive. The conflict between the two groups increased in intensity to the extent that the Albanian group, because of abuse and because of disturbances at the Boustead property, have now, for the greater part, moved away and perform their religious observances in a school-room rented for the purpose apparently on Sundays only. Evidence was adduced, which I accept, that the Albanian group, recently, were greatly hampered in collecting moneys for the purposes of the Society, which moneys would be used for the running of the property and the payment of the amounts due on the mortgage back above referred to. At the present time the Pakistani group have physically taken over control of the Boustead property and have paid certain accounts so that services which had previously been cut off have now been reinstalled. The plaintiffs Judge and Asghar are not members of the Society. The defendants Ally and Kerim are respectively president and vice-president of the Society.

3. The first question to decide is whether or not this is a properly constituted class action within the wording of Rule 75, which reads as follows:

75. Where there are numerous persons having the same interest, one or more may sue or be sued or may be authorized by the court to defend on behalf of, or for the benefit of, all.

4. The word "Jami", in the style of cause, means main and the Boustead Ave. property was designated as the Jami' Mosque of Toronto. In my view the words "on behalf of themselves and all members and adherents of the Jami' Mosque of Toronto" are too vague and wide to sufficiently define the members of a class. The short summary of facts set out above indicates that there are two disputing groups, both of which groups could be described as members and adherents of the Jami' Mosque of Toronto. Many of those sheltering in the Mosque, on a 24-hour per day basis, were recent immigrants waiting for landed immigrant status and, although such persons could possibly be described as adherents to the Jami' Mosque of Toronto, they would hardly qualify as members of the mosque. In fact, I cannot think of any person who could be specifically described as members of the mosque; there are members of the Society and there are persons who attend the premises for religious purposes but there is no membership of the mosque as such. In addition, under Rule 75 the members of the class must have the same interest. It could hardly be said that all members and adherents of Jami' Mosque of Toronto have the same interest. On the face of the matter there are two conflicting

groups, opposed in interest that could be said to make up the category of members and adherents of the Jami' Mosque. Further, the members of the class must have an interest. The interest referred to in Rule 75 is a common interest in the sense that all persons represented will gain some relief although possibly in different proportions and perhaps in different degrees: *Drohan et al. v. Sangamo Co. Ltd.*, [1972] 3 O.R. 399. A religious interest is, by itself, not sufficient: *Watch Tower Bible and Tract Society et al. v. A.-G. Can.*, [1945] O.W.N. 537. The Courts of this country will not allow their process to be used for the enforcement of purely ecclesiastical decrees or orders: *Ukrainian Greek Orthodox Church et al. v. Trustees of Ukrainian Greek Orthodox Cathedral of St. Mary the Protectress*, [1940] S.C.R. 586, [1940] 3 D.L.R. 670.

5. It is suggested on behalf of the plaintiffs that the Boustead property is held pursuant to the *Religious Institutions Act, R.S.O. 1970, c. 411*, and that as a result the property is held in trust for the class as set out in the style of cause and that an interest under Rule 75 is thereby created. The Religious Institutions Act provides one method whereby land may be held belonging to a religious society or congregation. It does not require that all land belonging to a religious society or congregation be held under the provisions of the Act. In this case no trustees were appointed under the provisions of s. 1 of the said Act and the Muslim Church is not covered under the provisions of ss. 19, 20 and 21 of the said Act. In fact, as set out above, the Boustead Ave. property was taken in the name of the Society and held in the name of the Society as the Dundas St. property had been held before. It could well be argued that the Society holds the Boustead property in trust for the members of the Society. However, as pointed out above, the plaintiffs Judge and Asghar are not members of the Society at the present time and were not members of the Society at the time of the commencement of this action.
6. For the above reasons I have come to the conclusion that this action is not properly constituted as a class action and on this basis alone the action must be dismissed. The same reasoning, of course, applies to the counterclaim against "Mansoor Ali Judge and Khawja M. Asghar and Murza Qadoor on behalf of themselves and all members and adherents of the Jami' Mosque of Toronto". Accordingly, the counterclaim must also be dismissed.
7. In case the matter should proceed further, I think it is proper for me to deal with the merits of the action quite apart from the question as to whether or not the action and counterclaim are properly class actions. The prayer for relief in the statement of claim was amended at the opening of trial and many claims have been put forward. The claims set out in paras. 16 A, C, D, E, G, and H, were not pressed in argument. This leaves only the claims set out in paras. 16 B and F. Paragraph B claims an accounting of all receipts by the defendants for the acquisition, operation and support of the Jami' Mosque, including proceeds from the sale of 3047 Dundas St. W., Toronto, and including membership dues and fees. In my view the plaintiffs would not be entitled to this relief on the simple basis that the plaintiffs Judge and Asghar are not members of the Society and were not members of the Society at the time of the institution of the

action. As stated by counsel for the defence, the accounts are available to be produced to any and all members of the Society. It was not suggested on behalf of the plaintiffs that there was anything improper in connection with these accounts or that there had been any sort of misappropriation of funds.

8. Paragraph 16 F asks for a declaration that the lands and buildings of the Jami' Mosque are held by the defendant Society in trust for the congregation of the Jami' Mosque and that the members of the congregation may invoke the Religious Institutions Act. For the reasons set out above it is my view that the land in question is not held pursuant to the provisions of the Religious Institutions Act. It is my view, therefore, that this claim for the above declaration must be refused.
9. Cases involving religious disputes of this type are always unfortunate and create great bitterness. From a practical point of view the Pakistani group is in complete physical control of the Boustead property and the Albanian group has been ousted and is carrying on worship in rented premises elsewhere. The Boustead property was purchased with moneys provided mainly from the sale of the Dundas St. property and from moneys donated to the Society which was composed primarily of the Albanian group. It would have seemed to me to be a simple solution for the Pakistani group to repay to the Albanian group the moneys provided by the Albanian group for the purchase of the property in return for title to the property and thus enable the Albanian group to purchase a new place of worship separate and apart from the Pakistani group. This, of course, is quite apart from the merits of the action.
10. For the reasons set out above the action will be dismissed with costs and the counterclaim will be dismissed without costs.
11. Action dismissed.