

LETTERS PATENT APPEAL.

Before Sir Shadi Lal Chief Justice and Mr. Justice Eforde.

ALI MAHOMED KHAN (PLAINTIFF)—Appellant,

versus

ALI AKBAR KHAN, ETC. (DEFENDANTS)—

Respondents.

Letters Patent Appeal No. 75 of 1922.

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Jan. 18.

Religious Institution—Tomb of a saint—whether mere burial of a saintly person creates a Wakf—Appointment of a Sajjada Nashin—without a Wakf—courtesy title.

M. M. K., a *Pir* of the *Chishti* sect, lived in the defendants' village Bassi Nan in the Hoshiarpur district. The second defendant was married to one of his daughters. The *Pir* died at Bassi Nan in May 1914, and was buried in a grove of mango trees belonging to the defendants in the neighbouring village of Kakkon. After his death the plaintiff A. M. K. was installed as *Sajjada Nashin*, and he claimed that the defendants had dedicated 16 *Kanals* of land to the shrine as *Wakf*, and brought the present suit for a permanent injunction restraining the defendants from interfering with the shrine and with his management thereof. Admittedly the defendants did not expressly dedicate the land under or around the tomb to religious uses.

Held, that implied dedication could not be presumed merely from the fact that the saint was buried there and that *Urs* had since been held at the tomb four or five times on his death anniversary. The *onus* was upon the plaintiff to establish a dedication of the land, express or implied, to public religious uses, and he had failed to discharge that *onus*.

Held further, that in the absence of a *Wakf*, plaintiff's title as *Sajjada Nashin* must be regarded as a mere courtesy title.

Mussammat Zinat Bibi v. Mst. Ainna (1), followed.

Tek Chand (with him *Niaz Ali*) for the appellant—It is not necessary under the Muhammadan Law to prove an express dedication of the property as *Wakf*. User of the property for religious purposes will make the property *Wakf*, and the holding of the *Urs* constituted such user: *Ramrao Narayan v. Rustam Khan* (2), *Makhdum Hassan Bakhsh v. Ilahi Bakhsh* (3), *Nabi Bakhsh v. Gangi* (4).

(1) 107 P. R. 1917.

(2) (1901) I. L. R. 26 Bom. 198.

(3) 27 P. R. 1918 (P. C.)

(4) (1919) 50 Indian Cases 118.

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The tomb of an ordinary Moslem stands on quite a different footing from the tomb of a saint. In the present case the existence of the tomb as a shrine was never denied by the defendants. The conduct of the defendants themselves shows that they regarded the shrine as a religious institution : *Mohiuddin v. Sayid-uddin* (1) and *Piran v. Abdool Karim* (2). The case of *Khwaja Mahmud v. Khwaja Muhammad Hamid* (3), did not lay down the law correctly, and this decision was therefore upset by Their Lordships of the Privy Council in *Khwaja Muhammad Hamid v. Mian Mahmud* (4). *Mussamat Zinat Bibi v. Mst. Ainna* (5) is no longer in force after this decision of Their Lordships of the Privy Council.

Badri Das (with him *Abdul Rashid*) for the respondents. The tomb of a saint may be called a shrine, but it cannot be termed a *Khankah*; a *Khankah* being a place where religious instruction is imparted—*Amir Ali's Muhammadan Law*, Fourth Edition, Volume 1, page 592. A *Khankah* is always *Wakf*, but the tomb of a saint is not *Wakf* unless an express or implied dedication to religious purposes is proved. Rulings dealing with *Khankahs* have no application to the present case. The Privy Council ruling *Khwaja Muhammad Hamid v. Mian Mahmud* (4), dealt with the *Khankah* of Hazrat Suleman at Taunsa, to which several schools for religious instruction were attached.

In the present case no dedication was ever made to the tomb : *Nur Muhammad v. Ghulam Habib* (6).

Appointment as *Sajjada Nashin* confers no rights in the absence of a *Wakf*. It is only a courtesy title : *Mussamat Zinat Bibi v. Mst. Ainna* (5).

The fact of the *Urs* being held at the tomb does not in any way lead to the conclusion that the lands under or around the tomb were *Wakf* property : *Fakhr-ud-din v. Kifayat-ullah* (7).

Tek Chand replied.

(1) (1893) I. L. R. 20 Cal. 810, 821, 822. (4) (1922) I. L. R. 4 Lab. 15 (P.C.)

(2) (1891) I. L. R. 19 Cal. 203. (5) 107 P. R. 1917.

(3) 33 P. R. 1217. (6) 106 P. R. 1892.

(7) (1910) 8 Indian Cases 578, 588.

Appeal under Clause 10 of the Letters Patent from the judgment of Mr. Justice Martineau, dated the 6th February 1922.

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The judgment of the Court was delivered by—

SIR SHADI LAL C. J.—The circumstances, which have given rise to this appeal under clause 10 of the Letters Patent are briefly as follows :—

Mian Mahomed Khan, a Pir of the Chishti sect, lived in the defendants' village, Bassi Nau, in the Hoshiarpur District. The second defendant was married to one of his daughters, and the plaintiff is the son of another daughter. The Pir died in May 1914 at Bassi Nau, and was buried in a grove belonging to the defendants in the neighbouring village of Kakkon. On the 23rd June 1914, the fortieth day after his death, a large number of persons including his disciples and representatives of the leading shrines of the Chishti sect assembled at the tomb, and the plaintiff was installed by a majority of the congregation as Sajjada Nashin. The plaintiff claims that the defendants dedicated 10 kanals of land to the shrine as wakf and he has brought the present action for a permanent injunction restraining the defendants from interfering with the shrine and with his management thereof.

Now, the Courts below have concurred in holding that the plaintiff was duly appointed a *Sajjada Nashin*, but that the alleged appropriation of the land to religious purposes has not been established. The question, which has been argued before us by the learned advocate for the plaintiff-appellant is that the land on which the tomb of the saint was erected is trust property, and that the plaintiff is entitled to a free access thereto. It is admitted that the defendants, who were undoubtedly the owners thereof, did not expressly dedicate the land under or around the tomb to religious uses, and the only question is whether a presumption of implied dedication arises from the fact that the saint was buried there, and that *urs* has since been held at the tomb four or five times on his death anniversary.

Now, it is true that on account of the saintly character of the deceased the parties intended that his tomb should be regarded as a religious institution.

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of a sort, but we are not prepared to dissent from the conclusion of Mr. Justice Martineau that the circumstances mentioned above do not justify the finding that the defendants divested themselves of their rights of ownership and appropriated the property to a religious trust. The plaintiff was undoubtedly appointed *Sanjada Nashin*, but in the absence of a *wakf* this title must, as pointed out in *Mussammatt Zinat Bibi v. Musammatt Aamna* (1), be regarded as a courtesy title.

Mr. Tek Chand for the appellant is unable to cite any authority to support the contention that the mere burial of an saintly person in a plot of land has the effect of converting that land into trust property, and we do not think that the circumstance that *urs* was held for a few years without any demur by the defendants materially advances the case for the plaintiff. It must be remembered that the deceased was the father-in-law of the second defendant, and there is nothing improbable in the theory that he himself buried the saint in the land of which he was a part proprietor. Be that as it may, the *onus* was clearly upon the plaintiff to establish a dedication, express or implied, to public religious uses, and we consider that he has failed to discharge that *onus*.

The appeal is accordingly dismissed with costs.

A. R.

Appeal dismissed.