

THE
INDIAN LAW REPORTS
LAHORE SERIES.

APPELLATE CIVIL.

Before Broadway and Tapp JJ.

GULZAR SHAH AND ANOTHER (DEFENDANTS)

Appellants

versus

SARDAR ALI SHAH (PLAINTIFF)
DASAUNDHI KHAN AND OTHERS } Respondents.
(DEFENDANTS)

1930

March 12.

Civil Appeal No. 22 of 1927.

Religious Institutions—Disciple of deceased gaddi nashin—whether his legal representative—Civil Procedure Code, Act V of 1908, Order XXII, Rule 3—Claim to office of gaddi nashin—Personal claim—coming to an end on death of claimant.

Held, that where the succession to the office of *gaddi nashin* and *mutwalli* of a *dera* is not hereditary, but dependent on election, a person who claims to be the only disciple of a deceased appellant, and thus his only heir and legal representative cannot be regarded as the appellant's legal representative for the purpose of carrying on an appeal.

Held also, that the right to such offices is a personal one and comes to an end on the death of the person claiming it.

Sham Chand Giri v. Bhayaram Panday (1), relied upon.

First appeal from the decree of Maulvi Barkat Ali, Senior Subordinate Judge, Ludhiana, dated the 31st August 1926, decreeing the plaintiff's suit.

J. L. KAPUR, for Appellants.

FAKIR CHAND and DEV RAJ SAWHNY, for Plaintiff-Respondent.

BROADWAY J.—It appears that there is a *takia* in the town of Ludhiana known as the *dera* or *takia* Shah-i-Shuhada. One Sain Jhandu Shah was the

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gaddi nashin and *mutwalli* of this institution and died on the 25th of October, 1922, leaving him surviving a relict of the name of *Mussammat* Saidi, whose relationship with him is a little obscure, for she is described as his mistress but it appears, has, in some litigation, been held to be his wife. In 1924, on the 1st of November, two suits were instituted, one by Sardar Ali Shah who claimed to have been duly elected by the *bhek* as the *sajjada nashin*, and the other by Sain Gahne Shah who, similarly, claimed to have been elected by the *bhek* as the *mutwalli*. Various members of the fraternity were made defendants, and it appears that one Ghulzar Shah applied to be added as a defendant and in his written statement denied the appointment of Sardar Ali Shah and Gahne Shah as *sajjada nashin* and *mutwalli*, respectively, claiming that as a matter of fact he himself had been elected by the responsible body, that is, the *bhek*, as the incumbent of both these offices. It is clear that Gulzar Shah definitely admitted that succession to these offices was not hereditary but dependent on election by a proper body of electors.

These two suits were disposed of by one judgment, on the 31st of August 1926, by the learned Senior Subordinate Judge of Ludhiana, who held that the plaintiffs in each case had been duly elected to the offices they claimed, and that although Gulzar Shah had also been elected to both these offices, his election was not effective as against the election of the two plaintiffs. The plaintiffs were, therefore, granted decrees declaring their respective rights.

Against these two decrees Gulzar Shah filed two appeals to this Court. He joined with him *Mussammat* Saidi as a co-appellant although it is a little diffi-

cult to see in what way she was concerned or how the decrees affected her.

Sometime in June 1927, while these appeals were pending in this Court, Gulzar Shah died, and on the 26th of July 1927 an application was made by one Sher Muhammad *alias* Sher Shah, purporting to be under Order XXII, rule 3 of the Civil Procedure Code. In this application he alleged that he (Sher Muhammad *alias* Sher Shah) was the only disciple of Sain Gulzar Shah, deceased, and thus his only heir and the legal representative of the deceased and he, therefore, claimed that his name should be brought on to the record in substitution of that of Sain Gulzar Shah. A formal order was passed in his favour subject to all just exceptions, and at the hearing before us to-day objection was taken by Mr. Fakir Chand to the effect that as Gulzar Shah's rights were purely personal ones the appeals in both the cases had abated and that Sher Muhammad *alias* Sher Shah could not be regarded as Gulzar Shah's legal representative for the purpose of continuing the appeals. Reliance was placed on *Sham Chand Giri v. Bhayaram Panday* (1), and it was urged that Gulzar Shah's claim to be elected *gaddi nashin* and *mutwalli* was a purely personal one which died with him.

On the other hand Mr. J. L. Kapur for Sher Muhammad *alias* Sher Shah urged that each of the cases had a twofold aspect; firstly, there was the claim by Gulzar Shah that he was the elected *gaddi nashin* and *mutwalli* and, secondly, that in any event, Sardar Ali Shah and Gahne Shah had not been duly elected to the offices of which they had been declared to be the holders. *Qua* the first position he admitted that the appeals must be regarded as having abated but

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he strongly urged that *qua* the second there was a right which could be and had been succeeded to by Sher Muhammad *alias* Sher Shah.

Sham Chand Giri v. Bhayaram Panday (1), undoubtedly dealt with a Hindu institution but it seems to me that the principles therein enunciated are of universal application. It was there held that the right to an office such as *mahant* was a personal one and that on the death of the person claiming it that right came to an end. In the case before us it has been admitted in the pleadings, that succession to both these offices is not hereditary nor does it necessarily go from office-holder to his *chela* or disciple, but is dependent on an election by a specific body called the *bhek*. In these circumstances it is only the person duly elected who has any right to hold either of these two offices and his right is dependent entirely on his election. On his death succession opens out and is again dependent on the will of the electors, although I understand that the *bhek* is either bound to appoint one of the *chelas* or as a matter of fact does appoint one of those persons. In any event it seems to me that the right must be regarded as a strictly personal one and that, therefore, the present applicant Sher Muhammad cannot be regarded as the legal representative of the deceased Gulzar Shah entitled to continue either of these two appeals.

I would, therefore, hold that the appeals have abated and I would dismiss them accordingly, leaving the parties, however, to bear their own costs.

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TAPP J.—I agree.

A. N. C.

Appeals dismissed.