

(1937) 12 BOM CK 0019
In the Bombay High Court

Altaf Hussain

APPELLANT

Vs

Ale Rasul Khan

RESPONDENT

Date of Decision : 20-12-1937

Acts Referred:

Citation : (1938) 40 BOMLR 755

Hon'ble Judges : Thankerton, J;Shadi Lal, J;George Rankin, J

Bench : Full Bench

Judgement

Shadi Lal, J.—The dispute in this case relates to the distribution of the offerings made by the pilgrims to the tomb of Khwaja Moinuddin Chisti at Ajmer. The tomb in question, generally known as Durgah Khwaja Sahib, Ajmeir, has, for centuries past, been a place of pilgrimage for devout Moslems; and the presents made by the pilgrims to the durgah have led to frequent disputes between the sajjadanashin (called diwan sahib) on the one side, and the khadims (servitors) on the other side. The sajjadanashin is a descendant of the saint, while the khadims are the descendants of the original disciples of the saint.

2. In September, 1912, diwan Sharfuddin, the predecessor of the present sajjadanashin, granted to the khadims, a perpetual lease of the sajjadanashin's share of the offerings made at the shrine for Rs. 500 a year. For about ten years there was no controversy between the sajjadanashin and the khadims about the division of the offerings. In 1922 diwan Sharfuddin died and was succeeded by diwan Syed Ale Rasul Ali Khan, who refused to recognise the validity of the lease granted by his predecessor in respect of the sajjadanashin's share of the offerings. His refusal resulted in the revival of the old dispute, and ultimately led to the present litigation.

3. The main combatants are the sajjadanashin and the khadims, but there is also a Durgah Committee which is interested in the offerings. This committee consists of persons who were appointed, under the Religious Endowments Act, XX of 1863, to perform the duties of the trustees of the durgah property. The trial Judge adjudicated upon the rights of the various parties ten the dispute, but on

appeal his decision has been modified by the Judicial Commissioner of Ajmer Merwara in respect of a few matters which will be discussed presently. The sajjadanashin as well as the khadims are dissatisfied with the appellate judgment, and have appealed to His Majesty in Council. Their Lordships, after examining the arguments submitted to them, do not think that that judgment can be successfully challenged except on one small point.

4. In view of the importance of the points in controversy, their Lordships, however, consider it advisable to discuss them seriatim.

5. On the question of the validity of the perpetual lease of the sajjadanashin's share of the offerings, the Court of Appeal, concurring with the trial Court, holds that the right to receive a share of the offerings is a right attached to the office of the diwan, and that each successive incumbent of that office is entitled to receive that share as long as he holds the office. An alienation made by a diwan of his share in the offerings cannot bind his successors. This decision has not been impugned by the learned Counsel for the khadims, and it is, therefore, clear that the lease cannot preclude the present diwan from claiming his legitimate share in the offerings.

6. As regards the offerings made by the pilgrims, it was conceded by all the parties before the Court of Appeal that a distinction must be drawn between those articles, such as qabarposhes (coverings for the tomb), which are presented for the use of the durgah, and the other offerings which are made at the durgah. While the offerings belonging to the latter category may be divisible between the diwan and the khadims, those made for the specific use of the durgah are the property of the durgah. The khadims, however, claim that an article presented for the use of the durgah becomes the property of the durgah only if the donor pays a tawan or custody money to them in respect of that article. There is, however, no documentary evidence to support the theory that the khadims are entitled to an article presented for the use of the shrine, if the donor thereof does not pay them custody money. They place their reliance only on oral evidence, which has been rightly disbelieved by the Court of Appeal. Indeed, the claim is wholly unreasonable and cannot be sustained. The qabarposhes, as well as gold or silver vessels or implements presented for the use of the durgah, must, therefore, be kept by the Durgah Committee on behalf of the durgah ; and neither the diwan nor the khadims are entitled to participate in those offerings.

7. There remains the question of the respective rights of the diwan and the khadims in the offerings which are not the exclusive property of the durgah. It is contended by the diwan that he is entitled to all the offerings made at the durgah to the exclusion of the khadims, and this claim is based upon a firman alleged to have been granted by the Emperor Shah Jahan in 1640 A.D. This firman is, however, of doubtful authenticity, and the Courts below have concurred in holding that the firman has not been acted upon, and that the practice, which has been followed by the successive diwans and khadims in respect of the

distribution of the offerings, runs counter to the terms of the firman. Their Lordships see no valid reason for departing from the concurrent findings on a question of fact, and the claim of the diwan to exclude the khadims from a share in the offerings at the durgah must, therefore, be rejected. This is the only point raised by the diwan in his appeal, and that appeal must, therefore, fail.

8. It appears that the offerings, which are not intended for the use of the durgah, are made at various places in the buildings attached to the shrine ; but all the valuable presents are made within the main building or the sacred dome which contains the tomb of the Saint. Now, the khadims maintain that the diwan is entitled to share only in the offerings made at the foot of the tomb, and that he has no right to share in the offerings made at other parts of the tomb. The Court of Appeal holds that there is no evidence to support this distinction, and it is significant that no such distinction was suggested by the khadims in their written statement. The finding of the appellate Court on the issue must, therefore, be affirmed.

9. There are certain other offerings of small value which have by usage been regarded as the exclusive property of the khadims, whether they are made inside the dome or outside. The learned Judicial Commissioner finds that to this category belong copper coins and cowries, and gold and silver articles (other than coins) of a value of less than eight annas and also cotton cloth of an inferior quality. The khadims urge that they are entitled to all coins of two annas or less in value, and that it is immaterial whether they are made of copper or any other metal such as silver or nickel. It appears that the khadims, who worked as servants of the shrine, were allowed to take coins of a small value which were given by the pilgrims for their services, and there is no valid reason why the sajjadanashin, who occupies a position of importance and dignity, should claim a share in coins of small value which are given by the pilgrims as rewards for the services rendered to them by the servitors. Nor is there any evidence to suggest a differentiation between coins of copper and those of other metals. Indeed, it is doubtful whether the learned Judge of the appellate Court intended to make any such distinction. Their Lordships think that the khadims are entitled to all the coins not exceeding two annas in value irrespective of whether they are made of copper or any other metal. To this extent the appeal preferred by the khadims is allowed, but in all other respects the judgment pronounced by the Court of Appeal must be affirmed.

10. Their Lordships desire to make it clear that the Durgah Committee referred to in the judgment appealed against is a committee to hold and to administer the durgah property on behalf of the durgah, and has no right as against the institution.

11. The result is that while the appeal brought by the diwan should be dismissed, that preferred by the khadims should be allowed only to the extent mentioned above. Considering that the khadims succeed on only one minor point but fail in all other respects, their Lordships think that the parties should bear their own

costs here. They will humbly advise His Majesty accordingly.