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**(1947) 03 PRI CK 0007**

**In the Privy Council**

**Case No :** Privy Council Appeal No. 33 of 1945

K.S. Mahomed Aslam Khan

APPELLANT

Vs

Khalilul Rehman Khan and others

RESPONDENT

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**Date of Decision :** 13-03-1947

**Acts Referred:**

**Citation :** (1947) AIR(PC) 97

**Hon'ble Judges :** John Beaumont, Lord Du Parcq, Lords Thankerton, JJ.

**Advocate :** Hy. S.L. Polak and Co., T.L. Wilson and Co., Chinna Durai, W.W.B. Ramsay, C.S. Rewcastle, H.J. Umrigar, S.P. Khambatta, for the Appearing Parties.

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## Judgement

Lord Thankerton

Their Lordships do not find it necessary to hear counsel for the respondents.

2 Counsel for the appellant has based his appeal on two alternative grounds which are set forth in the reasons at the end of his case. The first one is: "Because the estate of the Khan of Garhi Habibullah is attached to his office." That is, the appellant's office. "Alternatively, because the Khan had made a complete gift of his estate to the defendant who is in possession of the estate by virtue of that gift."

3 With regard to the first point, Mr. Khambatta agreed that unless he could call in aid the three Sanads referred to in the certified history which is on p. 33 of the 2nd part of the Record, where their Lordships find this: "They hold three Sanads of that time"-unless he had that then his case must rest on custom only, and that would be of no use to him now because of the recent Shariat law.

4 With regard to the three Sanads it simply says: "They hold three Sanads of that time." Their Lordships will assume that they were grants from the Mogul rulers of the period. There is no evidence that those grants were in any way accepted or ratified by the British Government.

5 Secondly, there is no evidence what the contents of those Sanads were, or

even that they related to the property in suit. Their Lordships are unable to deduce from the reference to the three Sanads any finding in favour of the appellant.

6 That being so, the first ground of claim disappears.

7. Their Lordships now turn to the alleged gift. The original gift appears in a daily diary on 1-5-1930 which is to be found at p 52 of the 2nd part of the Record. Again Mr. Khambatta agreed that so far as the terms of that entry are concerned they do not constitute a competent gift according to Mohamedan law, because there is a reservation of possession of the property by the donor during his life. It will be noted that towards the end of that entry there is the authority for having a mutation made in the proper register in favour of the alleged donee.

8. Their Lordships then come to the entry in the register of mutation No. 3061 at p. 55 of the 2nd part of the Record and in column 15 the entry is to be found. The alleged donor Mohd. Akram Khan appears according to that statement of the entry to make the entry in the daily diary the basis entirely of his mutation. It is clearly based upon that mutation. That is on 1-5-1930, and so far as the new entry is concerned it cannot be based on anything but the entry in the daily diary, and it could not be evidence of an out and-out-gift.

9. Mr. Khambatta referred their Lordships to an order of 7-5-1930, at p. 57 of the 2nd part of the Record when Mohd. Akram Khan appeared before the Tahsildar. That records that he had admitted the correctness of the new entry of 1-5-1930, which is clearly based on the entry in the daily diary; and accordingly it does not seem to their Lordships that that order of 7th May-any more than column 15 of 1-5-1930- can be read as evidence of a gift out-and out.

10 Mr. Khambatta again agreed that if these entries are to be so read, he had no case left because apart from these entries he had no evidence of any out and out gift subsequent to the entry in the daily diary.

11 Accordingly their Lordships are of opinion that the appeal fails and they will humbly advise His Majesty that the judgment of the Court below should be affirmed and the appeal dismissed; the appellant will pay the respondents' costs of this appeal.