

(1911) 11 AHC CK 0047
In the Allahabad High Court

Nawab Nurullah Khan

APPELLANT

Vs

Musammat Hayatunnissa and Others

RESPONDENT

Date of Decision : 15-11-1911

Acts Referred:

Citation : 13 Ind. Cas. 155

Hon'ble Judges : Richards, C.J; Banerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The suit which has given rise to this appeal was brought by the plaintiff-appellant for possession of certain Immovable property. This property forms part of a jogir granted in the year 1819 by the British Government to a Pindari Chief of the name of Karim Khan. He died about the year 1827 leaving two sons, Shamsheer Bahadur Khan and Shahamut Khan. After his death the jagir was divided between these sons, the former getting a 7-annas share and the latter of 9-annas share. The plaintiff Nurullah Khan is the son of Shamsheer Bahadur Khan and in the suit out of which this appeal has arisen he claims certain property which is now in the possession of the descendants of Mariambai, one of the daughters of Shamsheer Bahadur Khan by a wife who was not the mother of Nurullah Khan. The plaintiff's contention is that, under the terms of the grant, and also in accordance with a family custom, the property which originally belonged to Karim Khan was to go to his male descendants and not to his female descendants such as the defendants to this suit. The grant, which is dated the 13th of August, 1819 is in favour of Karim Khan for life and after him to his "aulad wa ahfad," that is, to his issue and descendants. There is nothing in the grant itself to limit it to his male descendants. Subsequently, disputes arose in regard to the jagir granted to Karim Khan, and in one of the letters to which reference has been made on behalf of the appellant, namely a letter from the Officiating Secretary to the Sudder Board of Revenue, North-Western Provinces, to Secretary to the Government, North-Western Provinces, dated the 12th of May

1846, it was distinctly stated that the property was given to the Pindari Chief Karim Khan rent-free for his life and to his heirs on a quit-rent of Rs. 6,000 per annum. In the year 1862 there was litigation between the plaintiff's mother and one of the widows of Shamsheer Bahadur Khan. To this suit the two daughters of Shamsheer Bahadur Khan, by that widow were made defendants. That case was referred to arbitration and an award was made which contains this provisions: "After the death of the Musammatt the jagir, estate, will continue to appertain to the family of Nawab Shamsheer Bahadur Khan alone." In accordance with this award, two of the daughters of Shamsheer Bahadur Khan subsequently obtained a decree for their share. The present plaintiff on attaining majority brought a suit to have the award set aside and to have it declared that he alone was entitled to the property in question. That suit was dismissed by the High Court on the 17th of March 1873 on the ground that under the grant made in 1819 the jagir was not limited only to the male descendants of Karim Khan and that no family custom had been established which excluded his female descendants from inheritance. In the decree in that case it was provided that the status created by the award to which we have referred above should not be disturbed. It is contended on behalf of the plaintiff that under the award he alone is entitled to the estate upon the death of Mariambai. We are unable to accept this contention as the word therein used is "family," and not male descendants of Shamsheer Bahadur. The defendants are certainly members of the family of Shamsheer Bahadur, being his granddaughters. The award, therefore, does not hold the plaintiff's claim. As we have already stated, and as was held by the Court in 1873, the grant itself does not limit the right of succession to the male descendants of Karim Khan, and the evidence which in the present case is the same as that adduced in the former suit decided by this Court manifestly does not establish a family custom excluding females. The decision of the Court below is, in our judgment, correct and this appeal must fail. We accordingly dismiss it with costs including fees on the higher scale.