
(1924) 04 AHC CK 0015
In the Allahabad High Court

Qadir Bakhsh and Others

APPELLANT

Vs

Abdul Haq

RESPONDENT

Date of Decision : 28-04-1924

Acts Referred:

Citation : AIR 1924 All 509 : 84 Ind. Cas. 258

Hon'ble Judges : Daniels, J

Bench : Single Bench

Judgement

Daniels, J.—The short point, and the sole point, raised in this appeal is whether Qassabs (butchers), not being proprietors in the village but ryots, have a right of transfer in their homes and the sites thereof in the village of Garhi in the Amroha Tahsil of the Moradabad District, in which the property in suit is situated. The second and third defendants who are Qassabs sold their house with the site on which it stands to another butcher the first defendant. The zemindar has sued for a declaration that the sale is invalid and for the possession of the site by removal of the constructions. The learned Munsif dismissed the suit but the learned District Judge has decreed it.

2. The custom is recorded in the wajib-ularz of the village, which both parties accept but as to the interpretation of which they differ. The wajib-ularz recognises a transferable right in their houses and the sites in seven classes of persons and no others. These seven classes are Tambolis, Brahmans, Banias, Sheikhs, Saiyids, Mughals and Pathans. The first three of these are Hindus, and the remaining four" Muhammadans. The view taken by the Trial Court was that the four classes of Muhammadans specified were merely illustrative and not exhaustive, and that the custom applied to all Muhammadans whether belonging to the classes specified or not. This view is obviously untenable. The view pressed before the District. Judge and in this Court has been that all Muhammadans who are not either Saiyids, Pathans or Mughals are included under the general description "Sheikh" and that therefore, all Muhammadans are included under the four classes given. To this contention the learned Judge gives

substantially three answers. He says.

3. Firstly, that if it had been intended to include all Muhammadans it would have been perfectly easy to say so.

4. Secondly, that though it is true that all Muhammadans who are not Saiyids, Pathans or Mughals when they rise in the world claim to be Sheikhs, on the other hand there are many Muhammadans in India who do not call Sheikhs, themselves Saiyids, Pathans or Mughals, but other names such as Julahas, Nurbafs, Qassabs, etc.

5. Thirdly, that the view that low class Muhammadans and Muhammadan converts were intended to be excluded is supported by the fact that only some classes of Hindus have been given a right of alienation.

6. In my opinion the view taken by the learned Judge is correct. It is perhaps an overstatement to say that all Muhammadans of other than the four primary classes claim to be Sheikhs when they rise in the world, but it is certainly true that they very commonly do so. This is mentioned by Crooke in his Tribes and Castes of the N.W.P., Volume IV. p. 515; but on the other hand a distinction between Qassabs and Sheikhs is recognised even in the very passage on which the appellants rely. Mr. Crooke quotes a common proverb, applicable to a man who has gone up in the world, which runs:

The first year I was a butcher (Qassab), the next a Sheikh; this year if prices rise, I shall be a Saiyid.

7. It is a matter of common knowledge that Qassabs do not usually describe themselves as Sheikhs, and they are not classified as such at the Census. Table XIII of the U.P. Census Report for 1921 gives a classification of the population according to caste, tribe, race or nationality. In this table (part II. pp. 224,225) Qassabs are shown separately from either Pathans, Saiyids or Sheikhs. They are likewise classified separately in the corresponding table in the Census of India Report (Vol. I, at p. 163). They are also separately treated by Mr. Crooke, Vol. IV, pp. 190,191. The same conclusion is supported by a reference to the Official Gazetteer of the Moradabad District. It is interesting to note that according to the Gazetteer, p. 77, conversion from Hinduism has taken place in this District to a larger extent than in any other Districts in the Province as will appear from the following extract:

Probably in no other District has conversion from Hinduism occurred to such an extent. Proselytism is still in some degree an active force, judging by the number of Nau-Muslims, of whom no fewer than 12,070 were recorded, irrespective of the many who either retained their old caste, name or else adopted a recognised Muhammadan style such as Sheikh or Pathan.

8. Succeeding paragraphs are devoted to the Sheikhs, Pathans, Saiyids and Mughals and to certain very numerous classes not included under either of these four heads such as Julahas and Barhais. After these have been dealt with

there follows a paragraph on page 80 dealing with "other castes" and among these are enumerated the Qassabs or butchers with a population of 8,914. These authorities and the language of the wajib-ul-arz lead alike to the conclusion that Qassabs are treated as a separate class and that they are not intended to be included under the description "Sheikh." This is the only question which has been argued and my finding on it is against the appellants.

9. I accordingly dismiss the appeal with costs including in this Court fees on the higher scale.