
(1937) 04 AHC CK 0010
In the Allahabad High Court

Secretary of State and Another

APPELLANT

Vs

Farid-Ud Din and Others

RESPONDENT

Date of Decision : 07-04-1937

Acts Referred:

Citation : 171 Ind. Cas. 381

Hon'ble Judges : Sulaiman, C.J.;Bennet, J

Bench : Division Bench

Judgement

1. This is a first appeal by the Secretary of State for India in Council against a decree of the, lower Court granting a declaration in favour of the plaintiffs. The plaintiffs are 12 persons, residents of Fatehpnr Sikri in Agra District, who brought a suit in that capacity against defendant No. 1, the Secretary of State for India in Council, and defendant No. 2, the Notified Area Committee, Fatehpur Sikri. Paragraph 1 of the plaint set out that during the Moghul period the dargah of Hazrat Salim Chishti was erected and the revenue of a number of villages was assigned as an endowment for the dargah and the descendants and adherents of the Saint, who were, the ancestors of the plaintiffs and that portion of Mauza Sikri, situated within the walls of Fatehpur Sikri, was also given into possession of the descendants and adherents of the Saint and the dargah as their muafi land together with all the appurtenant rights thereto. Paragraph 2 set out that the Sajjadanashin, as Superintendent on behalf of the dargah was in possession until the death of one Sajjadanashin called Sheikh Ali Ahamd, and that after that the family divided into two parties, one under the headship of Kazim Ali and the other under the headship of Shah Fazl-ud-din Husain, Although the plaint does not mention in it, we may state that the plaintiffs are descended through a female as admitted by P.W. Ahmad Ullah on page 25, line 12, and that it is the family of the descendants in the male line who have a monopoly of the office of Sajjadanashin.

2. The plaint proceeds to state that the abadi of Fatehpur Sikri remained in possession of the Dargah Committee since its establishment, and in para. 2-A

certain particulars from the settlement of the year 1840 are set out for the village Mauza Sikri and reliance is placed on the entry of Mauza Arazi Imlak. The Dargah Committee is also referred to in para. 2-O and 2-G and para. 3. The cause of action is set out in para. 7 that the Notified Area Committee has issued notices demanding rents from the plaintiffs and from their tenants and that the plaintiffs assert that the Notified Area Committee has no right to claim any rents from the plaintiffs or from their tenants, with respect to areas coloured green, from plaintiffs Nos. 11 and 12, and coloured red from plaintiffs Nos. 1 to 10, and coloured black from plaintiff No. 10. The plaintiffs asked for a declaration of their proprietary rights to the lands shown in the map according to these colours, and that the defendants Nos. 1 and 2 have no proprietary rights in the said lands or to demand rents from the tenants of those lands. The written statement filed on behalf of the Secretary of State admitted that portion of Mauza Sikri formed part of the assigned properties but it was not admitted that any land was given into possession of the descendants and adherents of the Saint as muafi, and it was alleged that the assigned properties were under the management of the Sajjadanashins, and also that the income of the properties was applied by the Sajjadanashins for the upkeep and repairs of the buildings, for the maintenance and support of the descendants of the Saint and for the religious ceremony connected with the Dargah. In para. 19 it was pleaded that the plaintiffs' ancestors were tenants of the village and their possession was merely that of ryots and that they had no adverse possession against defendants.

3. Further statements were made by the parties and Muhammad Wali-ud-Din Chishti, the leading plaintiff, stated that the plaintiffs were owners of the land in suit ever since the time of Akbar and that the land was not endowed to the tomb but to the family personally and that the land endowed to the tomb was in possession of the Dargah Committee and that the sanad on which he relied distinguishes between the two endowments. We may at once refer to this sanad. This sanad is a document printed at page 45 and it is merely a copy which has been produced. On behalf of the plaintiffs, two reports were made to the police to the effect that the original was lost. These reports, however, were made, one on March 9, 1930, and one a few days later, whereas notice had been served on some of the plaintiffs for collection of rents on September 17, 1928. Therefore, it was after the plaintiffs were aware that this claim was being made by the Notified Area that the reports in question were made and the circumstance is undoubtedly suspicious. The only sanad on which the plaintiffs rely is a copy of a sanad purporting to have been issued by the Maharaja Madho Rao Scindia of Gwalior. This is a private copy made by one of the plaintiffs. The copy is not very clear but it apparently consists of two parts, the second part being an application made to the Maharaja for a parwana. This is on the back of the paper. On the face of the paper is what purports to be an order. This order sets out as follows:

For the purpose of rendering the services relating to the tauliat, villages Madhu, etc, in the pargana aforesaid, the milak lands within the city and outside have from olden days been granted and entrusted to the Sajjadanashin, named Sheikh

Ali Ahmad Saheb of Dargah Hazrat Sheikh Salim Chishti (may peace be on him) and they have always been in his possession and occupation. Now also it has been allowed to remain as usual by order of the Sarkar. It is hereby ordered that the villages, etc., be released for good, as it has usually been, in favour of the said Sajjadanshin. They should not, in any way, interfere in it and should note it as an important order. Dated 12th Jamadiussani san 27, Julus.

4. The date of this document is the year 27 of apparently the Emperor Shah Alam and as the Emperor Shah Alam came to the throne in 1759, 27 years would bring the document to the year 1786 A.D. Now it is remarkable that no document or grant from the Emperor Akbar is produced because he was the Sovereign who was interested in this endowment and he was the founder. As regards the Maharaja Scindhia of Gwalior, he was a Hindu ruler who was by no means interested at all in this matter. In the Gazetteer of Agra on pages 163 and 164 it is stated that about 1770 the Marathas annexed the Doab, and in 1772 the Wazir of the Empire, Najaf Khan, the Rohilla, reconquered the country and drove out the Marathas in 1773, and Najaf Khan regained the fort of Agra. In 1784 the Marathas under the Scindhia, attacked Agra and captured it and held it until they were defeated in 1803 by the British under Lord Lake. Now it is extremely unlikely that the Maharaja Scindhia would have given any such sanad during this period on behalf of the Emperor.

5. The sanad mentioned that he was the agent or Vakil of the Emperor Shah Alam and that as the services had been rendered and the milak lands had been granted from olden days to the Sajjadnashin of the dargah of Salim Chishti and they had always been in possession and occupation, it was ordered that they should remain so and that the villages should be released for good in favour of the Sajjadanashin. Now as the Maharaja Scindhia had been fighting against the Emperor and had been successful in driving out his representative, it is not at all probable that he would have interested himself in maintaining such grants, and if he had done so, he would not have purported to act as the agent of the Emperor as he had flouted the authority of the Emperor and set himself up as an independent monarch representing the Peshwa from Poona. Now on account of the fact that only a copy has been produced and the circumstances of the alleged loss of the original are suspicious, we consider that this document cannot be accepted as genuine and, therefore, we lay no weight on this alleged copy of the sanad produced at page 45. On the other hand it is a matter of history as to the position of the family of Sheikh Salim Chishti. In the same Gazetteer of Agra on page 147, it is stated:

In 1569 Akbar besieged and captured the famous fort of Rantambhor, and on his return, visited Sheikh Salim Chishti at Fatehpur Sikri, where he laid the foundations of a new city. In the following year a son was born to Akbar at Fatehpur Sikri in the house of Sheikh Salim, and was given the name of Salim, though he is better known to history as the Emperor Jahangir. To commemorate the event Akbar made the place a royal abode, and built the walls and same of

the splendid edifices that adorn the city.

6. It is stated that he stayed in this city till and then went to the Punjab and on his return he made his headquarters at Agra, and Fatehpur Sikri was practically abandoned. It is a remarkable fact that no grant was made by the Emperor Akbar, but no doubt some grant, must have been made and ever since his time there is no doubt that the shrine of Salim Chishti has been endowed with certain property. The state of the city itself is described by the Gazetteer on p. 250 where it is stated:

In the early years of Jahangir's reign it was described by the traveller Finch as "ruinate, lying like a waste desert, and very dangerous to pass through at night."

7. This account was confirmed by De Lact, who wrote about 1630:

the wall remains to the present day, but the city is almost destroyed; its houses tumbled down, and the soil turned into fields and gardens.

8. It is clear, therefore, that shortly after the death of Akbar no interest was taken in Fatehpur Sikri and no doubt the family of Salim Chishti remained there and to a certain extent were in possession, of the place which was desolate. Now the next document on the record is on p. 51 which is also pre-British but which is confirmed by a later reference on p. 55. This document on p. 51 of the year 1216 Hijri, corresponding to 1798 A.D., sets out that there was a dispute between Sheik Muhammad Baqar and the widow of Shaikh Ahmad deceased relating to the office of Sajjadanashin and the parties had gone to a certain Col. John who decided the case that they should take half and half of the villages and the offerings of the shrine. A detail was appended and this detail sets out that the Balai Shahr should be divided half and half. It is probable that this Balai Shahr does include the village of Fatehpur which is situated on a high mount. In the following pages there are numerous documents from Commissioners and Collectors setting out the arrangements which were made in British times from July 29, 1914, for this endowment of the shrine of Salim Chishti. The control was exercised in accordance with one of the Bengal Regulations and this control remained until the Religious Endowments Act of 1863 was passed by which it was directed that the Board of Revenue should release from its control these properties which were endowed for religious foundations. Accordingly this property in question was released.

9. Now other documents consist of the records of two settlements. One of the settlements is the settlement of 1840 and the other is the settlement some 30 or 40 years later which began in 1872 and finished about 1880. It must be admitted that there is a certain amount of difficulty in construing these settlement documents. Now the earlier settlement is contained in record at pp. 169 to 172. That settlement had been quoted in para. 2-A of the plaint as supporting the case for the plaintiffs. It sets out at p. 171 certain details which have been wrongly headed as "bighas", but this word does not appear in the original and the actual area is in ?acres? as is shown from the total on p. 169, col. 2. Now

this document on p. 171 sets out that the village of Sikri is divided into four portions and the fourth portion which is wrongly included by a bracket in printing (the bracket not being in the original) consists of Arazi Imlak of dargah shown as total area of 830 acres, of which 433 are classed as minhai. For an explanation of this word minhai we turn to the first page which says that minhai or land deducted as not assessable includes sites of villages and otherwise barren. The claim of the plaintiffs which appears to be correct is that this area of 433 acres does include a considerable part of the village abadi of Fatehpur or the whole part. There is a note appended to this record which states:

This holding is held Lakheraji by the shrine of Fatehpur Sikri and is wholly included within the shahr panah or city wall of Fatehpur Sikri. A summary, settlement will be made of the whole in the name of the dargah reserving such subsidiary rights as are valid and reported separately hereafter.

10. The next document in order of time is printed on p. 195 and purports to be a copy of the khewat prepared in accordance with Act IX of 1933 in respect of Imlak lands appertaining to the dargah. That sets out that the area of these lands was 233 bighas 19 biswas and revenue of Rs. 786 was assessed on this area. This amount appears from other correspondence to be the income which the dargah received as collected by the Tahsildar from this land which was apparently cultivated land. It was further stated that the share of the dargah was the whole 20 biswas. This document has a date on it, which appears correct, of April 3, 1858. The column which is headed '1283 Fasli' in the printed copy is incorrect as the original bears the date 1263 Fasli, which corresponds to the year 1855-56 A.D.

11. The next documents are of the settlement of 1286 Fasli that is the settlement of 1878-79. On pp. 182 and 183 there is a khewat relating to the village of Arazi Imlak not stated in the earlier year of dargah. This sets no doubt that the first patti is owned by the Government and consists of 922 bighas 8 biswas and then follows an area of 442 bighas which is specified as perpetual muafi of a number of persons. The muafi area in question, however, is clearly a cultivated area and the 922 bighas 8 biswas undoubtedly include an area of uncultivated land in village site. The plaintiffs allege, and we think they are correct, that this entry of the whole 924 bighas 8 biswas for Government was incorrect and that part of this area was the abadi of Fatehpur Sikri of which certain portions belonged to the dargah and the plaintiffs claim that other portions belonged to the plaintiffs. This fact has also been admitted by the clerk of the notified area and some other witnesses produced by the defendants. On pp. 176 to 179 there is a document of the same settlement for the Fasli years 1282-1286 purporting to be a rent roll, and this document sets out the areas 922 bighas 8 biswas and 442 bighas and certain details as to how those areas are composed. The 922 bighas 8 biswas is shown as comprising abadi to the extent of 539 bighas 14 biswas. We may also refer to the *Ain-i-Akbari*, Vol. 2, which is the contemporaneous history of the reign of the Emperor Akbar which states in the translation by Jarrett, Ed. 1891,

p. 180:

Fatehpur was a village formerly one of the dependencies of Bianah, and then called Sikri, situated 12 kos distant from Agra. After the accession of His Majesty, it rose to be a city of the first importance.... By the command of His Majesty a mosque, a college and a religious house were also built upon the hill....

15. This shows that the college and the religious house were founded in the time of the Emperor Akbar and presumably this religious house was for the benefit of the family of Sheikh Salim Chishti. There is so far as we can find no mention in the Ain-i-Akbari of any endowment of the family of Salim Chishti by the Emperor Akbar. The fact that a village previous existed on this site is also shown by the Gazetteer of Agra District on p. 250 which states that Sikri is said to be a village of considerable antiquity, and was occupied about the 14th century by the Sikarwar Rajputs who came from Dholpur. Now the evidence for the plaintiffs shows the position of various houses and shops owned by the plaintiffs in this town of Fatehpur. On p. 21 of the printed book there is the oral evidence of Sheikh Wali-ud-din Chishti, the principal plaintiff. He states:

The land which was granted by Akbar to Sajjadanashin Pir Zadan and Khalifazadgan, who are separately in possession of portions, one portion being allotted to dargah separately. The land in dispute is our own ?milk? (property) designated in 1810 as such by the Government themselves and not before that. The portion allotted to the tomb was under the Act of 1810 under the management of the Board of Revenue, and after the Act of 1863 under the management of the present committee. The land in dispute has never been under the Board of Revenue or the Dargah Committee, but always in possession of plaintiffs and their ancestors. The land taken by the Government in return of Rs. 10,495 a year was split up into three heads: (1) Maintenance of descendants, (2) repair of building and (3) religious expenses. This Rs. 10,495 does not include the income of the land in suit.... There was an abadi going with the tomb which is separate from our abadi. Income of this property of the tomb was Rs. 305-12-0 in the year 1858. This abadi is now under the charge of the Dargah Committee which maintains a list of the property held by them.

16. The numerous letters, therefore, of Government on the record are admitted by the plaintiffs to refer to other income from the abadi and not the income which is claimed in the plaint. For the income which is claimed in the plaint there is no documentary evidence whatever of an official nature either by way of a sanad or any recognition in official letters in the time of the British Government that such a source of income was property to which the plaintiffs were entitled. On p. 171 for example the document which has been put forward by learned Counsel for the plaintiffs in argument, the settlement record of 1840 on which the plaint is based, refers to the Arazi Imlak of the dargah 830 acres, of which 453 appear to the abadi as a holding held lakheraji by the shrine of Fatehpur. Now the oral admissions of Sheikh Wali-ud-din Chishti on p. 21 indicate that the income which he has claimed is not any part of the income ever held by the

shrine, and accordingly this document and other similar documents do not support the case for the plaintiffs that the income in question does belong to the plaintiffs. On the other hand there is no doubt that these documents do largely support that portion of their case which is to the effect that the Notified Area Committee has no right to demand rent from persons including the plaintiffs who are residing in the abadi of Fatehpur Sikri. A large portion of the evidence of the plaintiffs consists of numerous sarkhats which they have filed which show that certain persons presumably residents of the abadi, agreed to pay rent to other persons who are of the family of the plaintiffs. These documents begin from 1787. There are altogether of these documents over 100 in number. We do not think it incumbent on us to examine these documents in detail but they do indicate that certain persons in the abadi of Fatehpur Sikri did agree to pay rent to various members of this family. The period, however, of adverse possession against Government is 60 years and it will have to be established by the plaintiffs that the adverse possession was within the knowledge of Government.

17. Now the plaintiffs have also alluded to certain small areas which were on one or two occasions acquired by different departments of Government such as Post Office. We do not think that the mere facts that the Post Office may have paid some small sums as compensation to the family of the plaintiffs would be any admission of title, and moreover, it is not shown that the payment was not for the value of some building which was standing on the place. It has not been established that the payment was merely for the site. We are, however, of opinion that it has not been shown that the property in question does belong to Government. The fact may well be that when the Emperor Akbar abandoned Fatehpur Sikri shortly after the year 1586, very little interest was taken by his Government and the Government of his successors in this site and the family of the Sheikh may have spread themselves over this town without let or hindrance. One point against the claim for the Government to own this property is that no nazul registers have been produced. Under the rule in the Manual of Government Orders, all immovable property of Government should have been entered in such registers. No such registers were produced and, therefore, the claim advanced by the learned Government Advocate in this Court is greatly weakened.

18. Another remarkable fact in this case is that the plaintiffs did not make the Dargah Committee a party to this litigation nor did the defence claim that the Dargah Committee should have been made a party, nor did the Dargah Committee itself come forward. The matter cannot have escaped the notice of the Dargah Committee since we are informed that the President of the Committee Mr. Akhtar Adil is the Government Pleader in Agra. Doubtless feeling his position somewhat awkward he did not conduct the case for the defence in the lower Court but deputed that task to the Assistant Government Pleader. The result is that we have no pleading in this case showing what rigats are held in the abadi of Fatehpur by the Dargah Committee but it appears to us that the official documents from the early part of 19th century overwhelmingly indicate that the Dargah Committee has been in possession of the property which was

endowed for the shrine. It is difficult to hold that the plaintiffs who are members of that family participating in the allowances distributed by the Dargah Committee have themselves as mere individuals certain rights arising from an endowment also granted by the Emperor Akbar.

19. It is not likely that the Moghal Emperor would have granted two separate endowments and it appears to us that there was only one endowment granted by the Emperor and that endowment must have come down through the centuries and must be the endowment which is now administered by the Dargah Committee. It has been pleaded on behalf of the plaintiffs that there was a division between them of the rights of this endowment. The plaintiffs rely on Ex. 6 printed on p. 51, a document of the year 1216 H. corresponding to 1798 A.D. This is a document by one Muhammad Baqar and sets out that there was a dispute between him and between Bibi Imam-un-nisa, widow of Sheikh Ahmad deceased, Sajjadanashin and mother of Sheikh Ali Ahmad deceased, Sajjadanashin, and that a certain Col. John had divided the villages and offerings half and half. In the list of properties occurs the item 'Balai Shahr' which the principal plaintiff has stated means the high part of the town. But this arrangement is the subject of a letter printed on p. 53 dated July 29, 1814, by the Board of Commissioners to the local agents at Agra. Paragraph 2 states that the Board of Commissioners agreed entirely with the decision of the Court on the suit of the widow Bibi Imam-un-nisa that the lands are not the object of inheritance on division as the lands are wakf. Therefore apparently a Civil Court had held that the mutwalli must hold all the property and that it cannot be divided among the family.

20. On p. 22 the principal plaintiff referred to this division and he does not claim that it had any effect on his family and he states that the 'Milk also were divided among Muhammad Baqar and Bibi Imam-un-nisa, who were the ancestors of the plaintiffs.' He apparently, therefore, claimed that both these persons were his ancestors. It cannot be said, therefore, that this division would have been a starting point by which certain property in the abadi might have come to the line of the plaintiffs and other property might have remained with the dargah and as we have pointed out, the division of this property was set aside by the Civil Court as stated in the letter on p. 53. On p. 55 in a letter from the Local Agents, Agra, to the Board of Commissioners dated April 29, 1818, there is a further reference to this settlement made by Col. Hessing by which half the amount was received by Muhammad Baqar and half by Musammam Imam-un-nisa until her death when Muhammad Baqar got possession of the whole income. Apparently therefore, some arrangement was made for the maintenance of this lady but on her death any division of that nature terminated. The plaintiffs, therefore, have failed to show that they had any legal basis for their alleged proprietary rights in the abadi of Fatehpur Sikri. The plaintiffs, therefore, are in actual possession by themselves by their occupation of certain houses and by their tenants in possession of other houses and also apparently of certain unoccupied land in the abadi. The first part of the declaration of their proprietary rights is a declaration

which we consider should not have been granted in the absence of evidence of legal title by a sanad or something of that nature or any evidence of title by adverse possession against an owner. But as regards the second part of the declaration, we consider that the Court below was correct in granting that part, that is "that defendants No. 1 and 2 have no proprietary rights in the said land or to demand rents from tenants of those lands? .

21. We, therefore, allow this appeal in part and we uphold the decree of the lower Court to the extent indicated and we set aside the decree of the lower Court as regards the declaration that the plaintiffs have proprietary rights. As regards costs, we consider that it would be equitable to direct that the decree of the lower Court directing the defendants to pay the costs of the plaintiffs should stand but as regards this Court, in view of partial success and failure, we direct that the parties should each pay their own costs in this Court.