

(1907) 07 PRI CK 0002

In the Privy Council

Shahzadi Begam

APPELLANT

Vs

Secretary of State For India

RESPONDENT

Date of Decision : 03-07-1907

Acts Referred:

Citation : (1907) 34 ILRPC 1059 : (1907) 34 IndApp 194

Hon'ble Judges : Robertson, Collins, Arthur Wilson, JJ.

Judgement

Collins, J. 1. The plaintiffs in this case, Shahzadi Begam and Puti Begam, claimed to be the heirs of one Mir Amir Ali Khan, who died on the 30th October 1897 intestate. The claim was opposed by the now respondent, who contended that the deceased had left no heir, and that his estate had escheated to Government. There were numerous other claimants whose cases were successively dismissed by the District Judge of Dacca. He decided, however, that the plaintiffs had proved their case and granted administration accordingly. On appeal by the Secretary of State to the High Court at Fort William, the decision of the District Judge was overruled. Hence the present appeal. Since this appeal was entered, viz., on the 9th June 1904, Shahzadi Begam died, and by an order of the High Court of the 16th May 1905, on the application of the respondent, the appeal was allowed to proceed at the risk of the surviving appellants, viz., Puti Begam, and two other persons who had purchased from the plaintiffs nearly the whole of the interests acquired by the latter on the death of Mir Amir Ali. On the 25th April 1906, Puti Begam, the other plaintiff, died, and by an order of His Majesty in Council of the 21st December 1906 her legal representatives were substituted as appellants in her place. 2. When the suit first came before the District Judge a very wide field of controversy was open, and three issues were framed by him as arising for decision as to the descent and relationship of the parties, all which issues he decided in favour of the plaintiffs. On the hearing in the High Court the findings as to two of these issues were accepted by the now respondent, and the area of controversy has thus been most materially narrowed. In order to make the point left in dispute intelligible, it will be necessary to state as shortly as possible what was the alleged relationship of the

parties. 3. The plaintiffs contended, and it must now be taken as admitted, that the deceased was the great-grandson of a lady called Haidari Begam, said to have been a daughter of Nawab Sarfaraz Khan. It must also now be taken as established that the plaintiffs, Shahzadi Begam and Puti Begam, were the great-grand-daughters of one Mirza Mahsum, said to be a son of the same Nawab Sarfaraz Khan and brother of Haidari Begam. The point in dispute is that which was formulated by the District Judge as the third issue, viz., was Mirza Mahsum the uterine brother of Haidari Begam? If he was, it is admitted that the plaintiffs' claim is established, and it is not necessary to follow out the family history further. The learned Judge had before him evidence both oral and written, and as part of the latter two documents, either of which, if admissible and genuine, has been treated by both sides as conclusive upon the issue in the plaintiffs' favour. They are what has been called a kursinama, or genealogical table, and a certified copy of an ewaznama, or deed of exchange, dated January 1782. The kursinama purported to have been filed in a suit in 1804, in which Haidari Begam had established her right to a share in a certain taluk which had come to her sister Fatima alias Bukshi Begam from her husband, Mirza Bakar, in lieu of dower. On the death of Fatima, one Mirza Mahomed, the husband of Hayatunnissa Begam, who owned a certain share in the taluk, took forcible possession of Fatima's share to the exclusion of Haidari and her co-plaintiffs described in the decree as "the full brothers and sisters" of Fatima. Mirza, in support of his claim, had put in a fictitious pedigree, and it was to rebut this that the kursinama now in question was said to have been filed by Haidari. The result was a decree upholding the claims of Haidari and her co-plaintiffs, and it is to the share thus adjudicated to Haidari that the deceased Mir Amir Ali Khan ultimately succeeded, and that is the subject of the present litigation. The kursinama was filed in this suit by the plaintiffs on the 10th January 1899. What purported to be the original was produced at the trial. It does not appear that any objection was made to its admissibility, though that point has been strongly pressed before their Lordships. It was, however, contended that it was a forgery concocted some hundred years later, after this suit had begun, and though this view was rejected by the District Judge, it found acceptance in the High Court. The latter Court drew the inference, contrary to the finding of the District Judge, that Haidari Begam had not filed a kursinama at all in the suit of 1804, and thought they detected a tremor in the signature of the Collector, Mr. Legros, not visible in his signature on other papers in the same record. They also placed some reliance on the fact that it did not purport to have been endorsed, but it was pointed out to their Lordships that the same observation might have been made with regard to all the other original documents produced from the same record. Another point seems to have weighed heavily with them viz., that the plaintiffs, though they had applied as early as January 1898 for copies of certain documents relating to the proceeding of 1804, did not apply for the kursinama till the 9th January 1899. But this delay was clearly explained by Mr. De Gruyther, who referred to the order of the District Judge who, finding that he had a great many applicants to deal with in July 1898, postponed the hearing of Shahzadi Begam's case till

January 1899. Their Lordships are by no means satisfied that the grounds upon which the High Court rely support the inference which they draw that Haidari never did put in a kursinaina. On the contrary, it seems to their Lordships that the terms of her petition make this suggestion improbable. She says: "After their death, the said Mirza filed a feraz contrary to the kursinama and obtained a decree." The High Court suggest that the words in the original do not involve the insertion of the definite article before kursinama which appears in the English translation, but, be this as it may, she is clearly asserting a contrariety between the feraz put forward by Mirza and the pedigree for which she is contending, with the result that the decree which was made and affirmed divided the estate among the persons who are shown on the kursinama now produced to have been the heirs of Fatima Begam: see Exhibits F. 2 and F. 13. Having carefully weighed the arguments on both sides as to the genuineness of the kursinama, their Lordships are clearly of opinion that the difficulties in accepting the theory of the High Court far out-weigh those involved in the contrary hypothesis, and they, therefore, adopt the opinion on this point of the learned Judge who tried the case. Their Lordships are further of opinion that it is now too late for the respondent to take an objection to the admissibility of a document which was received without objection at the trial. 4. With regard to the ewaznama, or deed of exchange, a certified copy of it was produced from the custody of Shahzadi Begam and was found to be written on paper bearing the same stamp and watermark as the other contemporary documents in the record of that litigation. Their Lordships agree with the District Judge that it was admissible in evidence, and, for the reasons given by him, adopt his conclusion as to its genuineness. Though these two documents, together or separately, might suffice to decide the issue in the appellants' favour, their case by no means rests on these documents alone. On the contrary, the oral evidence and the documents other than the two named would, in their Lordships' view, suffice of themselves to raise a strong presumption in favour of the appellants. The High Court seem to have underestimated the weight given by the trial Judge to these elements in the case. Shahzadi Begam, in an examination extending over 10 days, in which she displayed very remarkable gifts of memory and intelligence, gave evidence which, if it can be relied upon, proved the plaintiffs' case. She was a lady of about 80 years of age, and was thoroughly at home in the family history, a large part of which was covered by her own life, and she deposed to the relationship of Mirza Mahsum, from whom she and her co-plaintiff, Puti Begam, were descended, to Haidari, the ancestress of the deceased Mir Amir Ali, as children of Yusuf Ali alias Feda Ali Khan, afterwards known as Nawab Sarfaraz Khan, giving the names of Fatima and the other children who appear as her heirs in the decree in the taluk-suit in 1804. According to her story she had learnt the family history before her own time largely from conversations with her grandmother, Miskina Khanum. She was quite unshaken on cross-examination. The District Judge evidently regarded her as trustworthy, for he relies in terms upon her statement as to one link in the chain of the family history. 5. In addition to the evidence of this lady there was also that of Gholam Mustafa, an ex-pleader and

Honorary Magistrate, to whom the learned District Judge refers favourably, who spoke to the terms of acknowledged blood-relationship which had existed between the deceased and Shahzadi Begam. 6. Besides this oral evidence there were the other documents referred to by the learned Judge in his judgment, which confirm the common descent of the claimants and the deceased from Nawab Sarfaraz Khan, e.g., Exhibits F2, F3, F8, F9, F10, F11 and F13. 7. Their Lordships will therefore humbly advise His Majesty that the decree of the High Court be reversed, and the decree of the District Judge restored, and that the respondent pay to the appellants their costs of the appeal to the High Court. 8. The respondent will pay to the appellants the costs of the appeal to His Majesty in Council.