

(1906) 11 BOM CK 0002
In the Bombay High Court

Thakur Amjal Ali Khan

APPELLANT

Vs

Nawab Ali Khan

RESPONDENT

Date of Decision : 02-11-1906

Acts Referred:

Oudh Estates Act, 1869 — Section 8

Citation : (1907) 9 BOMLR 264

Hon'ble Judges : Macnaghten, J;Atkinson, J;Arthur Wilson, J;Arthur Wills, J

Bench : Full Bench

Judgement

Macnaghten, J.—This appeal involves the right of succession to a Taluka in Oudh which is known as Akbarpur and is said to be of the value of about 15 lakhs. The Taluka was granted after the annexation to one Fazl Ali whose name was entered in lists I and II of the lists prepared in accordance with the provisions of Section 8 of the Oudh Estates Act, 1869.

2. The succession opened on the death of Fazl Ali on the 30th of August 1888.

3. Fazl Ali had four wives, including Shah-enshah Begum, the 2nd respondent, whose marriage is disputed by the appellant. If married she was Fazl Ali's third wife. Fazl Ali had also three concubines, daughters of a woman named Bandi. By his first wife Fazl Ali had one son called Akbar Ali, who was born in 1835. Akbar Ali is described in the judgment under appeal as " a headstrong young man of dissolute habits." In 1857, under circumstances which are not explained, he murdered Bandi and fled from Akbarpur. Shortly afterwards he seems to have taken possession of Kallia village belonging to the Taluka-without his father's permission. There he was joined by a woman of the name of Waziran, a daughter of one Pokhar, a menial servant in the family, with whom it is alleged that he had had an intrigue before his flight from Akbarpur. The appellant's case is that Akbar Ali was lawfully married to Waziran. It is asserted, on the other side, that there was no marriage though Akbar Ali and Waziran cohabited as man and wife. Of this union there was issue a son called Abbas Ali. Akbar Ali died in 1884 and then Fazl Ali ejected Akbar Ali's family from Kalli. They seem to have lived in

great poverty for about two years. At last Fazl Ali, though never reconciled to his son Akbar Ali, took pity upon them, brought them to Akbarpur and maintained them there. And there Waziran and her family and two prostitutes who were kept by Akbar Ali, lived together, as it is said in one apartment. Abbas Ali was the father of Amjad Ali. the plaintiff in the suit and the present appellant.

4. There was no male issue of Fazl Ali's second wife.

5. The respondent Nawab Ali, the son of Shah-en-shah, who was born in 1883, claims as the son of the third wife and as devisee under a will executed -by Fazl Ali on the 28th of August 1888, two days before his death. Mutation of names was made in favour of Nawab Ali on the 14th of October following.

6. Abbas Ali died in 1889 a year or so after the birth of Amjad Ali.

7. The present suit was instituted on the 28th of August 1900, two days before limitation.

8. There were throe principal questions dealt with by the two Courts in India-

(1) The legitimacy of Abbas Ali, or, in other words, whether Waziran was lawfully married to Akbar Ali;

(2) Whether Shah-en-shah was lawfully married to Fazl Ali; rind

(3) Whether Fazl Ali duly executed the will alleged to have been made in favour of the respondent Nawab Ali,

9. These three questions were all answered in favour of the appellant by the Subordinate Judge and all answered by the Judicial Commissioners in favour of the respondent Nawab Ali.

10. The Subordinate Judge who decided the case had not the opportunity of seeing the witnesses who were examined in Court. When ho took the case up they had been examined already, before a different Subordinate Judge, so that the Judicial Commissioners were in as good a position to judge of n the credibility of the witnesses and the weight to be attached to their evidence, as the learned Judge of First Instance. The Judicial Commissioners were so dissatisfied with the judgment of the Judge of First Instance, that they took upon themselves, as is stated in their judgment, to examine all the evidence de novo, disregarding the judgment appealed from. The hearing of the appeal before them took thirteen days. They seem to have examined the evidence in all. its bearings with the utmost care and minuteness.

12. Before this Board the first question, of course, was the legitimacy of Abbas Ali. The attention of their lordships was directed mainly, if not entirely, to it. Unless the alleged marriage of Akbar Ali and Waziran is established the appellant is out of Court. The appellant's case was argued with great ability by Mr. Ross. The question at issue seems to their lordships to be by no means free from difficulty. There is much left in obscurity. But it lay upon the appellant to bring

forward satisfactory evidence in support of the alleged marriage. Making all due allowances for the difficulties occasioned by the lapse of time and the deaths of persons who might have thrown light upon the question, their lordships are unable to differ from the conclusion on which the Judicial Commissioners arrived. Documentary evidence in support of the alleged marriage there is none. No certain inference can be drawn from the evidence as to the conduct of relations and friends. The testimony of the witnesses who came forward to speak as to the fact of the marriage seems to be wholly untrustworthy.

13. Their lordships will therefore humbly advise His Majesty that the appeal ought to be dismissed.

14. The appellant will pay the costs of the appeal,