

Sain Maule Shah ... .. *Appellant*

*v.*

Ghane Shah, deceased (now represented by Fateh  
Mohammed) and others ... .. *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 3RD MAY, 1938

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*Present at the Hearing :*

LORD THANKERTON

LORD WRIGHT

SIR SHADI LAL

[*Delivered by* SIR SHADI LAL]

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The question raised by this appeal relates to the appointment of a sajjadanashin of a Moslem shrine situate at Ludhiana in the Province of the Punjab. The shrine is known as takia Shah Shuhada, and belongs to a sect of ascetics called Madari fakirs. The sajjadanashin of the shrine was one Sain Jhandu Shah, who died on the 25th October, 1922. The matter in controversy between the parties is whether the appellant Maule Shah was validly appointed to succeed Sain Jhandu Shah in the office of the sajjadanashin of this institution.

A takia is a place where a fakir or dervish (a person who abjures the world and becomes an humble servitor of God) resides before his pious life and teachings attract public notice, and before disciples gather round him, and a place is constructed for their lodgement (*Mohiuddin v. Sayiduddin*, I.L.R. 20, Cal. 810 at p. 822).

A takia is recognised by law as a religious institution, and a grant or endowment to it is a valid wakf or public trust for a religious purpose.

The sajjadanashin (literally meaning a person who sits on the sajjada or prayer mat) is the spiritual preceptor of a religious institution. He has the privilege of imparting to his disciples spiritual knowledge. He has charge of the spiritual affairs of a religious institution, while the mutwali has charge of its temporal affairs. In some cases the office of sajjadanashin and the office of the mutwali are combined in one and the same person.

The succession to the office of the sajjadanashin depends on the rules, if any, made by the founder. But there are no such rules applicable to the shrine in question, and the succession is regulated by the usage which governs the institution. Now, there is ample evidence, and, indeed, the parties are agreed, that election by the bhik or religious fraternity is the rule followed for appointing the sajjadanashin of the takia in question. Whether, in addition to election, there should be a nomination, or confirmation, by the head of a superior shrine, is a matter upon which the parties are not unanimous.

The shrine in question belongs, as already stated, to Madari fakirs, an order of fakirs which was founded by Zinda Shah Madhaar of Syria, whose shrine is situated at Mukrampur or Makanpur, about 30 miles from Cawnpore in India. It appears that, on the 8th April, 1925, the appellant Maule Shah, accompanied by two other fakirs, approached Sayad Nazir Ahmad, the head of the shrine at Makanpur, and asked him to attend an assembly of Madari fakirs and other persons at Ludhiana. Sayad Nazir Ahmad acceded to his request, and arrived at Ludhiana on, or before, the 18th July, 1925. On that day a document or agreement in writing was submitted to him by the fakirs assembled at Ludhiana, requesting him to appoint a successor to Jhandu Shah. It is to be observed that this document was signed, not only by a large number of fakirs and the heads of Madari shrines of the neighbourhood, but also by the respondent Sardar Ali Shah. The signatories declared that the office of the Gaddi Nashin (sajjadanashin) had been vacant since the demise of Jhandu Shah, and unanimously requested Sayad Nazir Ahmad to confer the office on "anyone who is fit and whom he deems fit" for the office of the sajjadanashin of the takia. In compliance with this request, Sayad Nazir Ahmad granted, on that day, a sanad selecting Maule Shah, a "disciple of Jhandu Shah" for the office of the sajjadanashin of the shrine. This sanad also was signed by the representatives of various shrines and other Madari fakirs.

There is evidence to show that Sayad Nazir Ahmad himself tied a turban on the head of Maule Shah in the presence of the assemblage, and other persons, who attended the gathering, offered turbans and presents in cash to him in token of accepting him to be the head of the shrine. Their names are mentioned in a list, with the presents made by them. Maule Shah, on his part, entertained all of them at a feast which cost him about Rs.3,000.

The trial Judge holds that the evidence, both oral and documentary, produced by the plaintiff in support of his claim, proves that he had complied with the usage regulating the succession to the office of the sajjadanashin, and the learned Judge has accordingly granted a decree to him.

From this decree Ghane Shah, who claimed to be the mutwalli of the shrine appointed by Sardar Ali Shah, brought an appeal to the High Court. The appeal was accepted by that Court on the ground that the proceedings

taken by Maule Shah for his election cannot be regarded as an election "in which the electors exercised a free and independent choice of a successor to the deceased sajjada." The learned Judges of the High Court criticised the method employed by Maule Shah in first "obtaining the good will and support of Sayad Nazir Ahmad," and "the unauthorised delegation to him of their powers by a certain section of the fraternity." They expressed the view that the result was, in the circumstances, a foregone conclusion.

Their Lordships are unable to concur in the conclusion reached by the learned Judges. Sayad Nazir Ahmad was admittedly the head of the shrine of the founder of the Order of Madari fakirs, and he was held in high esteem by the members of the bhek or the religious fraternity of the takia. The plaintiff was, therefore, justified in finding out whether his election would meet with the approval of the head of the parent shrine, whose consent is regarded by some witnesses to be essential to a proper election. Be that as it may, it is clear that when he arrived at Ludhiana, he adopted the proper attitude and did not take action until he was requested by all the persons interested in the matter. It cannot be said that the members of the bhek were coerced or unduly influenced in making their choice. Indeed, it is not suggested that the usage governing the election of a sajjadanashin provides a special procedure for conducting the election. There is no such thing as secret voting in the community consisting of these fakirs, and there can be little doubt that what is contemplated by the usage is that the view of the fraternity should be ascertained as to who would be regarded by them as a suitable person to discharge the functions of the sajjadanashin. It is obvious that a proposal should be made by a member of the Madari fraternity, and it was only natural that the members of the bhek should make a request to the head of the most important Madari shrine to give them a lead in the matter. Their Lordships think that the validity of the election in this case cannot be impugned on any reasonable ground. It must, therefore, be held that Maule Shah was duly elected by the bhek to the office of the sajjadanashin.

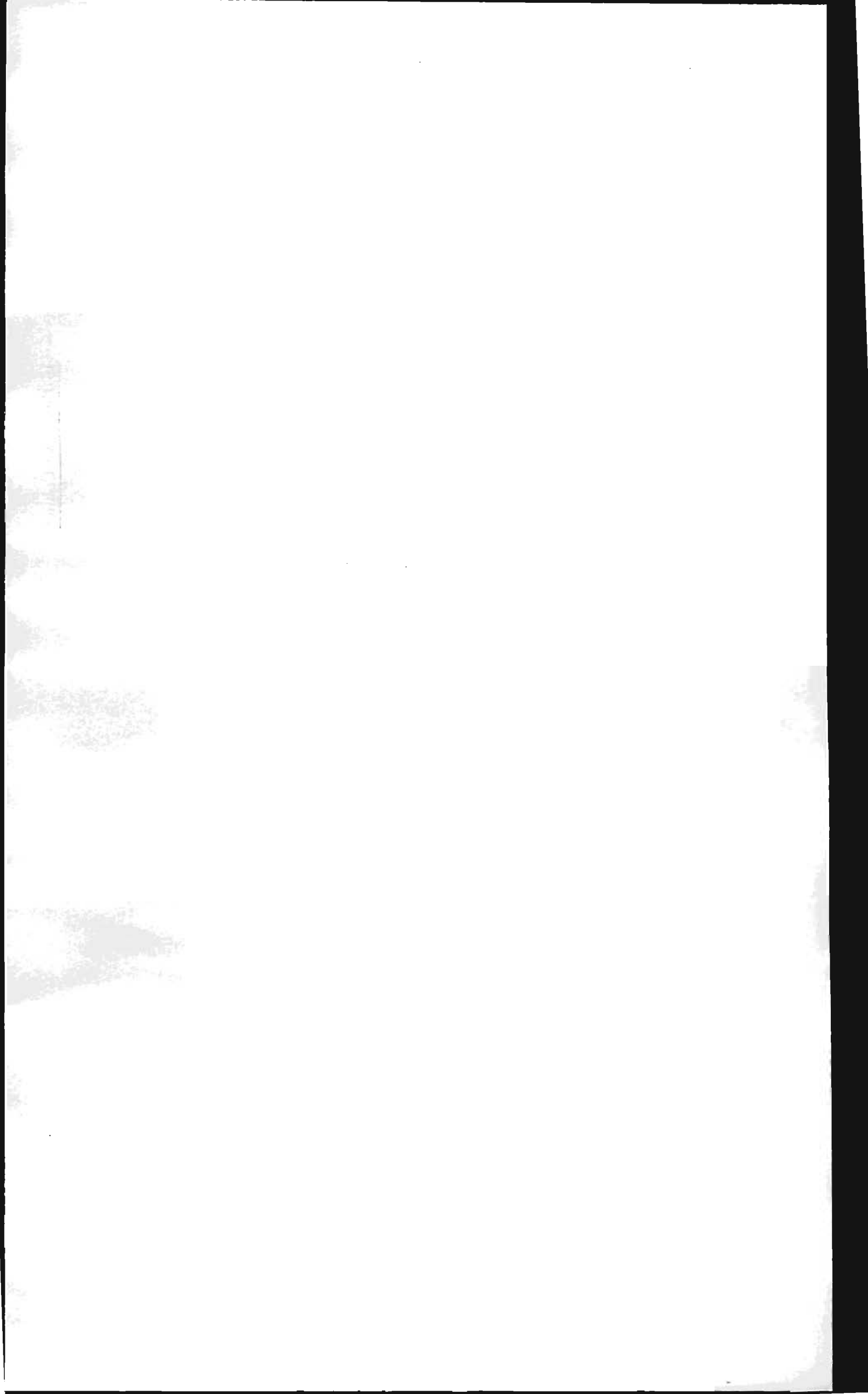
It is, however, argued that he was not a disciple of Jhandu Shah, but there is sufficient evidence to refute this contention. It is significant that he is described as a disciple of the late sajjadanashin in the sanad granted to him by Sayad Nazir Ahmad, and this document is signed by a large number of fakirs. Moreover, Sayad Nazir Ahmad deposes that he himself made enquiries as to the status of Maule Shah, and was satisfied that he was a disciple of the deceased sajjadanashin.

The respondent Sardar Ali Shah, however, claims that he was selected sajjadanashin by the bhek on the 28th October, 1922, the third day after the death of Jhandu Shah. There can be no doubt that, if he was validly elected in October, 1922, there was no vacancy in the office of the sajjadanashin which could be filled by the subsequent election of Maule Shah in July, 1925. The question is

whether there was a previous election of Sardar Ali Shah, which rendered the subsequent election of the appellant inoperative. It is said that a document was executed in favour of Sardar Ali Shah on the date of the alleged election, but that document has not been produced. It is not disputed that the contents of the document cannot be proved by oral evidence. There is, therefore, no proof that the election, if any, was held by the bhek in accordance with the usage of the institution. Indeed, the agreement, executed on the 18th July, 1925, by the heads of the various shrines and other Madari fakirs requesting Sayad Nazir Ahmad to confer the office of the sajjadanashin on a fit person, states in clear terms that the office of the sajjadanashin of the takia in question has been vacant since the death of Jhandu Shah, and contains a request that the office should be conferred upon a suitable person. The agreement bears the signature of Sardar Ali Shah himself, and it is idle to suggest that he was induced by fraud to sign the document. This plea runs counter to the evidence of Sayad Nazir Ahmad in whose presence the document was signed by Sardar Ali Shah and other Madari fakirs. The objection on the ground of a prior election of Sardar Ali Shah cannot, therefore, be sustained.

It is not clear whether the usage followed by the institution prescribes that the sajjadanashin-elect should be approved by the head of a superior shrine, but their Lordships do not consider it necessary to discuss the matter, because it is common ground that the appellant's succession to the deceased sajjadanashin received the approval of the head of the shrine, which is recognised by the Madari fakirs as superior to all other Madari shrines in the country.

Upon an examination of all the relevant circumstances their Lordships are of opinion that the appellant Maule Shah has established that he was duly elected to the office of the sajjadanashin of the takia Shah Shuhada. The result is that the appeal preferred by him should be allowed, the decree of the High Court be discharged, and that pronounced by the trial Judge be restored. The respondents 1 and 2 must pay the costs incurred by the appellant here and also in the High Court. Their Lordships will humbly advise His Majesty accordingly.



In the Privy Council

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SAIN MAULE SHAH

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GHANE SHAH, DECEASED  
(NOW REPRESENTED BY  
FATEH MOHAMMED) AND OTHERS

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DELIVERED BY SIR SHADI LAL

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