Privy Council Appeal No. 121 *of* 1936

Musammat Wallan - - - - - - *Appellant*

v.

Fazla and others - - - - - - *Respondents*

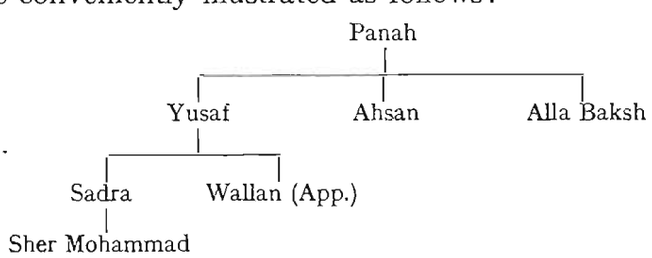
FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

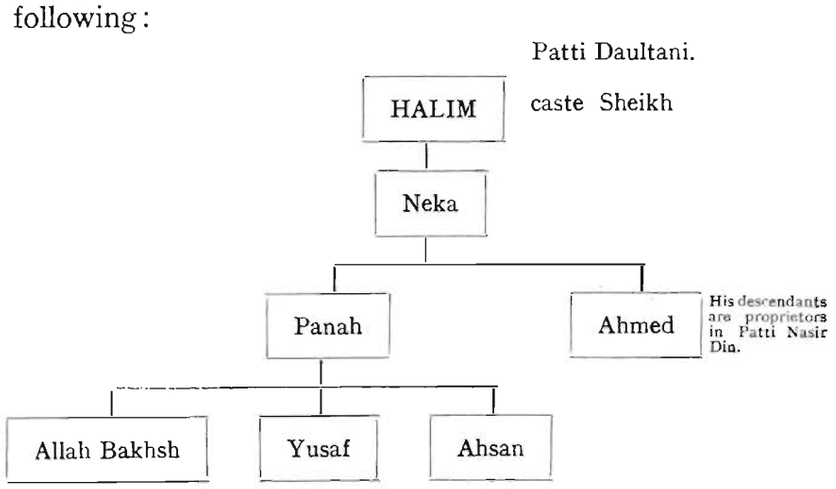
JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 21ST FEBRUARY, 1939

Present at the Hearing:
LORD ROMER.
LORD PORTER.
SIR GEORGE RANKIN.
[*Delivered by* LORD ROMER.]

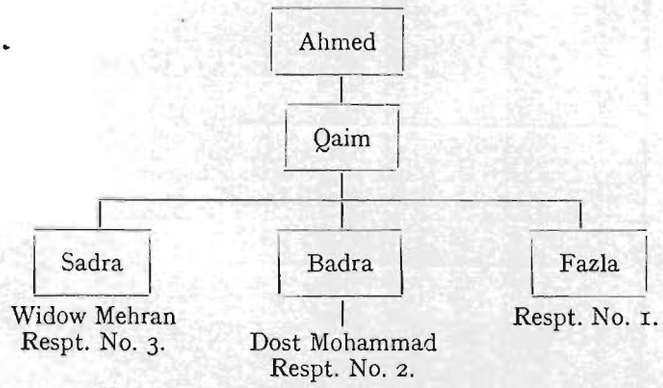
The question to be determined upon this appeal is whether the appellant or the respondents are entitled to succeed according to the Punjab customary law to certain land of which one Sher Mohammad was possessed at the date of his death without issue in or about October, 1929. The land, which is comprised in the Patti Daultani, in a village called Lilhani, had been acquired in the years 1879 and 1881 by one Yusaf and the appellant's claim to it can be conveniently illustrated as follows:



Ahsan and Alla Daksh and any issue they may have had appear to have predeceased Sher Mohammad. Now in the revised settlement made in 1890-91, being the first revised settlement made after Yusaf had acquired the property, the pedigree table of proprietors of the village contains the following:

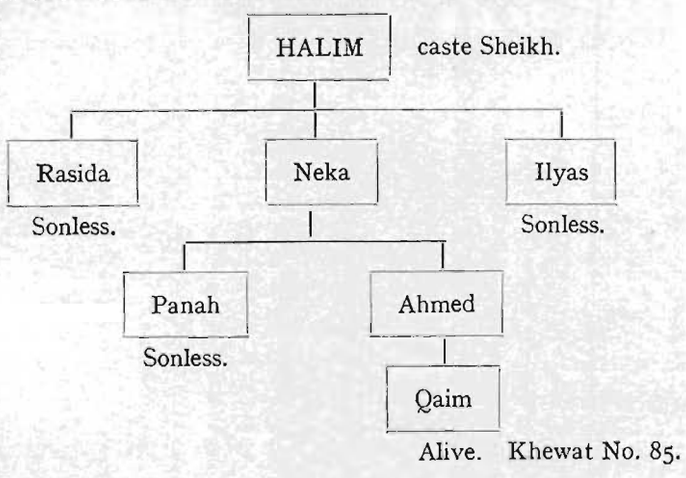


It would appear from this that Panah, the father of Yusaf, was the son of Neka and that Panah had a brother, Ahmed, whose descendants were proprietors in Patti Nasir Din. Who these descendants now are appears from the following pedigree:



If therefore Panah, the father of Yusaf, was in truth the son of Neka, as indicated by the pedigree of 1890-91, the respondents were "collaterals" of Sher Mohammad, and were entitled to succeed to his ancestral property in preference to the appellant.

The appellant, however, contends that the Panah who was the father of Yusaf was not the same person as the Panah who was the son of Neka and the brother of Ahmed; that this last mentioned Panah died sonless; and that Panah, the father of Yusaf, was the son of one Haji. If she be right in this contention the respondents are not collaterals of Sher Mohammad and the appellant is entitled to the property in dispute. In view of the fact that under section 44 of the Land Revenue Act an entry made in a record of rights is presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor the onus is thrown upon the appellant of showing that the pedigree table prepared at the revised settlement in 1890-91, the relevant extract from which has been set out above, is erroneous. For admittedly there is no later entry that is inconsistent with the facts recorded in that extract. The appellant contends, however, that she has discharged this onus in the following way. In the first place she produces what is alleged to be an extract from the pedigree table of the village Lilhani prepared at the regular settlement of 1856. The extract which appears to have been made in April, 1931, is stated in the record in this case to be as follows:



It would appear, however, from the answer to interrogations administered to the Special Quanungo or Revenue Officer that the word "sonless" does not appear in the pedigree table under the "ghuri" or square in which the name Panah appears, but that there is a blue circle (whether in pencil or ink is not stated) round the name, and that according to the table of references given in the pedigree table this mark indicates a sonless person. In the next place the appellant produces a copy of a petition of plaint filed by Yusaf on the 28th March, 1870, as agent for his father Panah. In this plaint Yusaf describes his father as being the son of Haji, caste sheikh, aged 105 years.

It was in reliance upon this evidence that the appellant on the 9th March, 1931, filed her plaint in the present suit in the Court of the Subordinate Judge, Sargodha, for a declaration that she is the absolute owner of the land left by Sher Mohammad and that the respondents "have no concern whatsoever therewith."

The suit came on for hearing early in January, 1932. The respondents at the trial relied very naturally on the pedigree table prepared on the revised settlement of 1890-91. As to the pedigree table of 1856 it was contended by them that it had been tampered with and that the blue mark shown in the ghuri of Panah had been fraudulently inserted at a later date. They further contended that in the suit of 1870 Yusaf had admitted that Ahmed was his father's brother. In that suit which, as already stated, was brought by Yusaf on behalf of his father Panah, it was claimed that Panah was the owner of some land in the village of Lilhani which in consequence of Panah's absence at the time of settlement of 1856 had been shown in the settlement as being "shamilat" or village common land and the object of the suit was to have the land shown as Panah's property. To that suit there were 127 defendants, co-sharers in the village, including one Qaim, who appears to have been the Qaim the son of Ahmed referred to above. Of these defendants 36, including Qaim, filed a statement admitting the justness of the plaintiff's claim. "The plaintiff," they said, "a collateral of ours, is a proprietor. He was absent at the time of the settlement. Consequently the entire land owned by him was entered as shamilat of the entire village. In fact the land of the plaintiff is shown with that of his first cousin Qaim in the settlement papers." What may be the precise meaning of this last sentence is not very clear. But the statement that Qaim was the first cousin of Panah is plain enough. Other defendants opposed the plaintiff's claim, but none disputed his relationship to Qaim. Nor did Yusaf in the written reply that he had been ordered to submit, as he said, "for elucidation of the facts of the case." On the contrary. Pleading in the name of Panah, he referred to Qaim in these terms: "Qaim, son of Ahmed, who is my brother's son . . ." The suit appears to have been unsuccessful, though their Lordships have not been informed for what reason, the judgments in the suit not having been put in evidence in the Courts below in the present case.

On the 29th January, 1932, the Subordinate Judge gave judgment in the present case in favour of the appellant. He held that Panah, son of Neka, entered as brother of Ahmed, father of Qaim, in the pedigree table of 1856, was a different person from the Panah, the father of Yusaf. In so holding he relied upon the fact that the Panah in that pedigree was shown therein as having died sonless. The entry he said was correct, and no tampering with the entry was apparent. With regard to the statements made by Yusaf in the 1870 suit he appears to have treated the description of the plaintiff Panah as being the son of Haji as being wholly inconsistent with his being the son of Neka, and said that Yusaf's allegation that Qaim, son of Ahmed, was nephew of the plaintiff Panah, was not taken as correct. Otherwise, he said, that suit would undoubtedly have been successful. Why it should have succeeded if the plaintiff were the son of Neka but failed if he were not is by no means clear to their Lordships. But in any case it is a question that could only be decided after reading the judgments given in the suit, and those judgments were not in evidence before the learned judge. Except for stating that the respondents' counsel placed reliance upon the pedigree table of 1890-91, the learned judge made no reference to that important piece of evidence.

On the 8th January, 1935, the matter came by way of appeal before the High Court of Judicature at Lahore. The appeal was allowed. It was held by Addison and Din Mohammad JJ. that Panah, the father of Yusaf, was the son of Neka as shown by the revenue entries in 1890-91. They said that everything in the suit of 1870 was consistent with those entries except the mention of Panah's father's name as being Haji, but that this circumstance was of little importance seeing that any person who performs the pilgrimage is described as Haji. With these observations their Lordships are in complete agreement, and were it not for the pedigree table of 1856 it would be unnecessary for them to say more. But the High Court thought it obvious that the original entry had been changed for the purposes of the present suit. Their reasons for so thinking were these. The copy of the pedigree produced by the appellant had the word "sonless" written below the ghuri containing Panah's name, and that copy was made in April, 1931. The respondents on the other hand produced a copy that had been made in December, 1921, and in this copy the word "sonless" did not appear under the ghuri. But, as already stated, the entry as it now appears has not the word "sonless" but a blue line round Panah's name signifying the same thing, and the copyist of April, 1931, may have been merely translating the blue line. It is on the other hand at least possible that the copyist of December, 1921, would have attached no significance to the blue line by itself and so failed to reproduce it; for it appears that the ghuries of some other owners who died sonless have both the blue colour inside and the word "sonless" written underneath. The original entry may therefore have shown a blue line round Panah's name. But even if it did the matter is of little importance

in face of the conclusive evidence furnished by the pedigree of 1890-91 and the statements made by Yusaf in the 1870 suit. For it is plain from what was alleged in that suit that Panah and Yusaf were absentees when the 1856 settlement was prepared and it is conceivable that in their absence it was mistakenly assumed that Panah had died and left no sons or that it was to the interest of some one at that time to represent fraudulently that this was so. It seems only fair to the appellant that this possible view of the matter of the 1856 pedigree should be stated.

Subject to this their Lordships agree both with the conclusion arrived at by the High Court and the reasoning on which their conclusion is based.

The judgment of the High Court concluded with these words "It is not disputed that defendants are entitled to succeed if they are collaterals." But it was sought on behalf of the appellant to contend before their Lordships that even if the defendants are collaterals the appellant is the preferential heir to the property of which Sher Mohammad died possessed as the land in suit was not ancestral. This contention, however, was not put forward either before the Subordinate Judge or before the High Court, and it cannot be put forward now.

For these reasons their Lordships are of opinion and will humbly advise His Majesty that the appeal should be dismissed. The appellant must pay the costs of the appeal.

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In the Privy Council

MUSAMMAT WALLAN

v.

FAZLA AND OTHERS

DELIVERED BY LORD ROMER

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