

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sardar Muhammad Afzal Khan v. Nawab Ghulam Kasim Khan, from the Chief Court of the Punjab; delivered the 15th May 1903.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD ROBERTSON.

LORD LINDLEY.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Sir Andrew Scoble.*]

Shah Nawaz Khan, Nawab of Tank, died on the 10th January 1882, leaving him surviving a grandson Ghulam Kasim Khan (the son of his elder son Muhammad Akbar, who had predeceased him) and a son Muhammad Afzal Khan. At the time of the Nawab's death, the grandson was thirteen years of age, and the son about twenty-three years old. Upon their joint application, the Nawab's estate was transferred into their two names, as proprietors in equal shares, but this mutation is not relied on, as Ghulam Kasim Khan was then a minor, and the Nawab having died in debt the management of his property was undertaken by the Court of Wards.

On the 6th October 1882, the Government of India sanctioned the appointment of Ghulam Kasim Khan, the grandson of the late Nawab, to be the successor "to the title and position of "Nawab and Chief of Tank, and also to the

“entire jagir and cash assignment enjoyed by “the late Nawab,” subject to a deduction of certain emoluments “for the maintenance of the “son and the two widows left by Shah Nawaz “Khan.”

The young Nawab attained his majority in 1892, and the estate was released from the superintendence of the Court of Wards. His uncle thereupon claimed partition, basing his claim on the mutation proceedings, but the Revenue Court declined to enter into the question of title, and referred the parties to the Civil Court. The present suit was therefore instituted in February 1894, the Respondent being Plaintiff and the Appellant Defendant. The claim was to recover the half-share of Shah Nawaz's property entered in the Defendant's name in 1882, on the ground that “according to the “custom and the practice of the family” the whole of it belonged to the Chief for the time being, as head of the family and by virtue of his Chiefship. The Defendant, in his written statement, denied the custom, and asserted that “in “matters relating to succession the parties’ “family has always been bound by Muhammadan “law.” It is now admitted that the Muhammadan law does not apply, and that the decision of the claim depends upon the custom existing in the family—that is to say, whether the estate goes with the Chiefship, as alleged by the Plaintiff, or devolves according to the custom of the district, under which, the Defendant asserts, the property would be divided between the son and grandson of the late Nawab in equal shares.

The District Judge found that the Plaintiff had failed to prove the special custom alleged by him, and dismissed the suit. The Chief Court of the Punjab, on appeal, reversed this decision, and gave the Plaintiff a decree for possession of Defendant's recorded half share in seven villages,

viz., (1) Tank, (2) Hayat, (3) Budha, (4) Baloch, (5) Kaura, (6) Daggar, and (7) Rukh Ranwal. As to an eighth village, Dabarra, the Court gave the Plaintiff a decree for possession, "with this proviso that the Decree will not be executable if, within six months from this date, Defendant renounces all claim to the allowance of Rs. 5,000 *per annum* made to him by Government out of Plaintiff's grant. If he either refuses or fails to renounce such claim within such period, then Plaintiff will be entitled to execute his decree." The present Appeal is against both branches of this Decree.

A great body of evidence, both oral and documentary, was adduced as to the history of Tank and its rulers prior to the British annexation of the Punjab, from a consideration of which the Chief Court arrived at the following conclusions:—

"1. The country known as Tank proper belonged to the Chief for the time being, who was both ruler and proprietor."

"2. Succession devolved upon the eldest son of the Chief, the members of his family being entitled to maintenance only."

In these conclusions their Lordships concur. The history of the Chiefs of Tank, as shown in this Record, was marked by many vicissitudes. Originally independent they became tributary in turn to the Afghans and the Sikhs; they were sometimes in power, and sometimes in exile; but so far as the evidence extends, the succession to the Chiefship went always in the line of primogeniture, except in one instance in which the eldest son was set aside on the ground of insanity. And with the Chiefship went the ownership of the lands of the *ilaka*. As Sir John Lawrence observes, in a Memorandum of 17th March 1854, "Previous to the expulsion of the father of Shah Nawaz, he was virtually

“ the Chief and the landed proprietor of the whole of Tank. All other classes had been reduced to complete subjection.”

When the settlement of the country was made, after the introduction of British rule in 1849, it was the policy of the Government to recognise the occupiers of the soil as the proprietors of their respective lands; and although Shah Nawaz Khan asserted a proprietary title, by virtue of his Chiefship, to all the villages, sixty-seven in number, which formed the Pergunnah of Tank, his claim was eventually admitted in regard to seven only, viz., (1) Tank, (2) Baloch, (3) Budha, (4) Kaura, (5) Hayat, (6) Daggar, and (7) Dabarra. These are the villages now in dispute; the eighth, Rukh Ranwal, being a tract of grass land used for grazing horses and appurtenant to Tank. Their Lordships agree with the Chief Court that the effect of this settlement was not to create a fresh estate subject to the ordinary law of inheritance, but to continue to the Chief for the time being, as it were *jure coronae*, the proprietorship of the villages which had been founded by his ancestors, and the succession to which had theretofore been regulated by the custom of the family.

This view is supported by what took place in 1875, when, as the result of considerable negotiation, the Government of India conferred upon Shah Nawaz Khan, as an hereditary jagir, a cash allowance of Rs. 25,000 *per annum*, together with the land revenue of the seven villages above-mentioned, to be “ held on condition of good service, and descend from the Nawab integrally to the successor in the direct male line who may be selected by the Government as most competent.” In sanctioning this grant the Governor-General in Council expressly recognised that “ the status accorded to the occupiers

“ of the soil ” under the Regular Settlement could not be altered, and accordingly made no change in the position in which the Nawab already stood in regard to the proprietorship of these villages, as distinguished from their liability to payment of Government revenue.

Upon the terms of this arrangement being communicated to Shah Nawaz Khan, he “ expressed a wish that separate provision might be “ made for his younger son, Muhammad Afzal “ Khan, in the event of the elder son, Muhammad “ Akbar Khan, being selected by Government to “ succeed him as Nawab and Jagirdar at a future “ time ”; and he was informed, in reply, that “ he “ himself had always stated it to be the rule “ in the Katti Khel family that the head of the “ family should alone arrange what provision “ should be made for junior members. Such “ being the case, the authorities saw no cause to “ deviate from what was acknowledged by the “ Nawab himself to be the recognised and “ established custom of his house.” In pursuance of this suggestion, Shah Nawaz Khan, on the 23rd June 1876, applied to the Settlement Officer that the name of his son Muhammad Afzal Khan should be entered as proprietor of the village of Dabarra “ so that he may remain in “ possession of it and enjoy the whole of its “ produce, while I will have nothing to do with “ the village ”; and the Order upon this application was “ that an entry should be made “ according to the request of the Nawab, who, in “ the capacity of a Jagirdar, will hold the village “ as before.” The Chief Court held that, under these proceedings, Dabarra became “ an appanage “ conferred on Defendant as a younger son of a “ Chief for his subsistence, and as such he is “ entitled to keep it ”; but the learned Judges considered that as the Government, on the death of Shah Nawaz Khan, transferred Rs. 5,000 of

his cash allowance to the Defendant, they were "entitled to call upon the Defendant to elect " which maintenance he will take, that provided " by his father or that provided by the Govern- " ment." Their Lordships can discover no ground for putting the Defendant to this election ; the cash allowance and the assignment of the village arise from different sources, and are independent of each other ; and without expressing any opinion as to the permanency or otherwise of the alienation of Dabarra, their Lordships consider that, as regards Dabarra, the conditions imposed by the Decree of the Chief Court cannot be supported.

Their Lordships will humbly advise His Majesty that the Decree of the Chief Court, so far as it directs that the Plaintiff should receive possession of Defendant's recorded half share in the villages of (1) Tank, (2) Hayat, (3) Budha, (4) Baloch, (5) Kaura, (6) Daggar, and (7) Rakh Ranwal, be confirmed and the Appeal dismissed ; and so far as it relates to possession of Dabarra that the Appeal should be allowed, and the Defendant declared entitled to the benefit of the grant of the village for his maintenance made by Shah Nawaz Khan without renouncing his claim to the allowance of Rs. 5,000 *per annum* made to him by Government ; and that in other respects the Decree of the Chief Court should be confirmed. As the Respondent has succeeded as to the greater part of his claim, the Appellant must pay to the Respondent three-fourths of his costs of this Appeal, and the Respondent must pay to the Appellant one-fourth of his costs thereof with the usual set-off.

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