

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Akbar Khan (since deceased) and others v. Ramzan Khan and others, from the Court of the Judicial Commissioner of Oudh; delivered the 8th December 1904.

Present at the Hearing :

LORD MACNAGHTEN.

LORD LINDLEY.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Sir Andrew Scoble.*]

Muradi Bibi, a Mahomedan lady, resident at Mohungunj, in the Rae Bareli district of the Province of Oudh, died on the 7th of January 1881, possessed of considerable property. After her death, and some consequent litigation, her estate was thus divided: one half-share went to her husband Abdul Wahid Khan; one-third share to her mother Shaluka Bibi; and one-sixth share to residuaries. The present litigation is between two classes of alleged residuaries, the Plaintiffs claiming through one Bhagmul, by right of descent from a common ancestor in the male line, while the Defendants are, or represent, the brothers of Muradi's mother, Shaluka Bibi.

Muradi Bibi derived her property by gift from her maternal grandmother, Gauhar Bibi, the senior widow of Muazzam Khan, by whom it appears to have been acquired. The question for determination is whether Muazzam Khan is descended from Rae Beg, the same common ancestor as Bhagmul; in other words, whether

Muazzam Khan's grandfather, Mahtab Khan, is the same person as Bakhto, the son of Rae Beg and the brother of Achche, who was the great-grandfather of Bhagmul.

In support of this contention several pedigrees have been produced, not one of which is in itself admissible evidence of the statements it contains. The most trustworthy is a pedigree filed in connection with the settlement of the village of Rupra, in the Gurgaon district of the Punjab, of which Bhagmul's family were the proprietors, but this pedigree merely shows that Bhagmul's ancestor Rae Beg, through whom the common descent is claimed, had three sons, Achche (from whom Bhagmul is undoubtedly descended), Bakhto, and Kallu, as to which two last nothing more is said than that they are "not entered in the *khewat*," nor is it stated that either of them left any descendants. The other pedigrees are equally irrelevant.

The Subordinate Judge of Rae Bareli, by whom the case was tried in the first instance, found it proved "by the evidence of the members of the family that Bakhto and Mahtab Khan are names of one and the same person"; and in support of this finding he relied on the evidence of three witnesses, Mehrab Khan, Bhure Khan, and Rajjab Ali Shah. The Judicial Commissioner, on the other hand, held that the Plaintiffs had "not proved the common descent of Bhagmul and Muradi Bibi from Rae Beg," and in this Judgment their Lordships concur. Upon examination, the evidence relied on by the Subordinate Judge is wholly insufficient to support the conclusion at which he has arrived. Mehrab Khan, who is a man of respectable position, and a distant kinsman of Bhagmul's family, says: "Bhagmul's father's name was Anni Rae. Anni Rae's father's name was Khwaja Ali . . . Khwaja Ali's father's

" name was Achche. Achche had two brothers,
 " namely, Kallu and Mahtab Khan, also known
 " as Mahto. These three were the sons of Rae
 " Beg. Mahtab was also known as Mahto and
 " Bakhto." In cross-examination, he says, " my
 " ancestors called Mahtab as Bakhto. My father
 " and paternal uncle used to say this." Bhure
 Khan, who comes from the village of which
 Mehrab Khan is Lambardar, but who is
 apparently not a member of the family, recites
 a pedigree, which he says he " came to know
 " about " from his father, grandfather, and uncle,
 but as he was only five or six years old when his
 father died, much reliance cannot be placed
 upon his recollection of what his father told
 him of a family with which he was not connected.
 He further says that he heard from his brother
 Makhmula, that " Mahto is also known as
 " Bakhto." Makhmula is alive, but was not
 called as a witness. Rajjab Ali Shah is a fakir,
 70 years of age, who knew Bhagmul for 40
 or 50 years, and read the prayers at his funeral.
 He says, " when I went to Abdul Rahman and
 " Abdus-subhan Khan, sons of Muazzam Khan,
 " I heard that Mahtab Khan is called by the
 " names ' Mahto ' and ' Bakhto. ' Abdul Rahman
 " Khan and Abdus-subhan Khan are dead. Bhag-
 " mul belonged to Mewati tribe ; Muazzam Khan
 " was also Mewati ; his nephew was Bhagmul. I
 " came to know this when Abdul Rahman and
 " Abdus-subhan Khan came to Bhagmul's place in
 " a feast. I came to know that they were related
 " as nephews and uncle by their staying at his
 " (Bhagmul's) place and eating there." As they
 were all Mewatis there is nothing remarkable in
 their doing so. But in cross examination he
 says, " I do not know the names of Bhagmul's
 " forefathers." Nor does he know the names of
 Bhagmul's brothers, for while he says he " read
 " the funeral prayers of Ewaz Khan," he adds,

“ I do not know what relationship did Ewaz “ Khan bear to Bhagmul,” although Ewaz and Bhagmul were brothers, and lived in the same village. It is evident that his knowledge of the family and its history was exceedingly slight; and his ignorance of comparatively recent facts is scarcely consistent with his professed knowledge of the names borne by a man who must have died many generations ago. In their Lordships’ opinion it would be unsafe to rely on the very unsubstantial evidence of these witnesses.

The view which their Lordships take on this point is sufficient to decide this Appeal. Upon the question whether Bhagmul survived Muradi Bibi it is unnecessary to pronounce an opinion. They will humbly advise His Majesty that the Decree of the Court of the Judicial Commissioner should be affirmed and this Appeal dismissed. The Appellants will pay the costs of the Appeal.
