

*Privy Council Appeals Nos. 62 and 63 of 1934*

Pir Ahsanullah Shah - - - - - *Appellant*  
v.  
Pir Ziauddin Shah - - - - - *Respondent*  
  
Same - - - - - *Appellant*  
v.  
Same - - - - - *Respondent*

*Consolidated Appeals*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF SIND

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 26TH JANUARY, 1937.

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*Present at the Hearing :*

LORD ROCHE.

SIR SHADI LAL.

SIR GEORGE RANKIN.

[*Delivered by* SIR SHADI LAL.]

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The dispute in these two appeals relates to a Moslem shrine situated in the province of Sind, commonly known as the Durgah of Jhandáwálá Pir. It is common ground that Pir Rashidulla Shah was the last sajjádánashin (the person who sits on the sajjádá or the carpet on which prayers are offered), or spiritual preceptor, of the Durgah, and also the mutwalli of the wakf property attached to it. He died in May, 1922, leaving five sons. The eldest of them, Ziauddin Shah, thereupon, claimed to be the successor of his father as sajjádánashin and mutwalli, and asked for the possession of the wakf property. His claim was resisted by the third son, Ahsanullah Shah, who advanced various grounds to defeat the plaintiff, and to support his own right to succeed the deceased Pir in both the offices. The Subordinate Judge dismissed the suit, but on appeal his view was overruled by the Court of the Judicial Commissioner, Sind, who decided the case in favour of the plaintiff.

The defendant has appealed to His Majesty in Council, and the main question for determination is whether the plaintiff has established his right to succeed to the offices of sajjádánashin and mutwalli.

It may be stated at the outset that it is no longer suggested by either of the parties that the succession is regulated by right of inheritance or by election by the

members of the congregation. Nor is there any deed of dedication, or any evidence of usage prevailing in the institution, which governs the succession, except that both the offices are held by one and the same person. The parties are agreed that the mutwalli for the time being can nominate his successor, and that the person so nominated is entitled to succeed him.

It appears that in 1900 Pir Rashidullahah executed a document called hibanama (deed of gift), in which the defendant was marked out as his successor. But the Pir lived thereafter for many years, and it is undeniable that in 1916 he executed another document which is in the nature of a will. This document states in clear terms that he appoints the plaintiff to be his successor, and it is signed in token of his consent by the defendant himself. It is clear that it abrogated the deed of 1900. The defendant, however, urges that the rule allowing the incumbent of the office to nominate his successor, which derives its authority from the Mohammedan law, prescribes that the nomination can be valid only if it was made while the incumbent was on his deathbed, or was suffering from a mortal illness, but not when he was in good health. This contention, which appears to be supported by some authorities on the Mohammedan law, would prevent a mutwalli from appointing his successor if he died suddenly without any expectation of death, and render ineffective any appointment made by him at a time when he was not on his deathbed or suffering from such illness.

It is, however, unnecessary to make any pronouncement on the subject, as their Lordships concur with the Court of Appeal in India that Rashidullahah, not only nominated the plaintiff as his successor by the instrument executed by him in 1916, but also described him as his successor in various letters written by him in 1921. He also confirmed the nomination to several respectable persons who had conversations with him during his last illness and within a short time prior to his death. Three of these persons were officials who occupied responsible positions under the Government, and they say that the late Pir told them in 1921 and 1922 that the plaintiff was to succeed him. The learned Judges of the Appellate Court rightly attached importance to their testimony, and no attempt has been made to impeach their credit. But the most important witness on the subject is a physician who treated the Pir for a month before his death. He states that the deceased showed him the document of 1916 and told him that he had appointed his son (the plaintiff) as his successor. This witness is related to both the parties, and appears to be a disinterested person.

It appears that the late Pir was a strong supporter of the Khilafat movement, and knowing, as he did, that the plaintiff shared his political views, it was only natural that he should favour the succession of a son who would help

that movement after his death. Moreover, the plaintiff was, not only the eldest son, but also best fitted to perform the functions of the head of the institution.

The evidence, documentary as well as oral, fortified, as it is, by the circumstances of the case, leaves little doubt that Pir Rashidullahah appointed the plaintiff to be his successor; and the appointment satisfies the condition mentioned above.

But it is claimed by the defendant that he *was* the last person nominated by his father to succeed him, but he has failed to establish his claim. There is no document subsequent to 1916 to support his claim, and the oral evidence produced by him is wholly unreliable, and has been rightly rejected by the Court of Appeal in India.

The Subordinate Judge, who tried the case, did not think that the late Pir made any declaration in favour of his eldest son during his illness; and, as the learned Judge had the advantage of seeing the witnesses and watching their demeanour, his finding, so far as it depends upon the credibility of oral evidence, cannot be lightly interfered with. His judgment is an unusually lengthy document and contains an elaborate discussion of matters which are not altogether relevant. That discussion has tended to obscure the real question in controversy between the parties, and to lessen the importance of the documentary evidence furnished by the deed executed by Rashidullahah in 1916, and the letters written by him in 1921, only a few months before his death. It is to be observed that the law gives a right of appeal from a judgment of a trial Court on questions of fact as well as on questions of law, and the Court of Appeal, after carefully weighing and considering the judgment, has to make up its own mind, and cannot shrink from overruling it, if, on a full consideration of all the material, it is satisfied that that judgment is clearly wrong. The learned Judges, who heard the appeal in the present case, have given convincing reasons for dissenting from the Trial Judge; and their Lordships, after examining the evidence, concur in the conclusion reached by them.

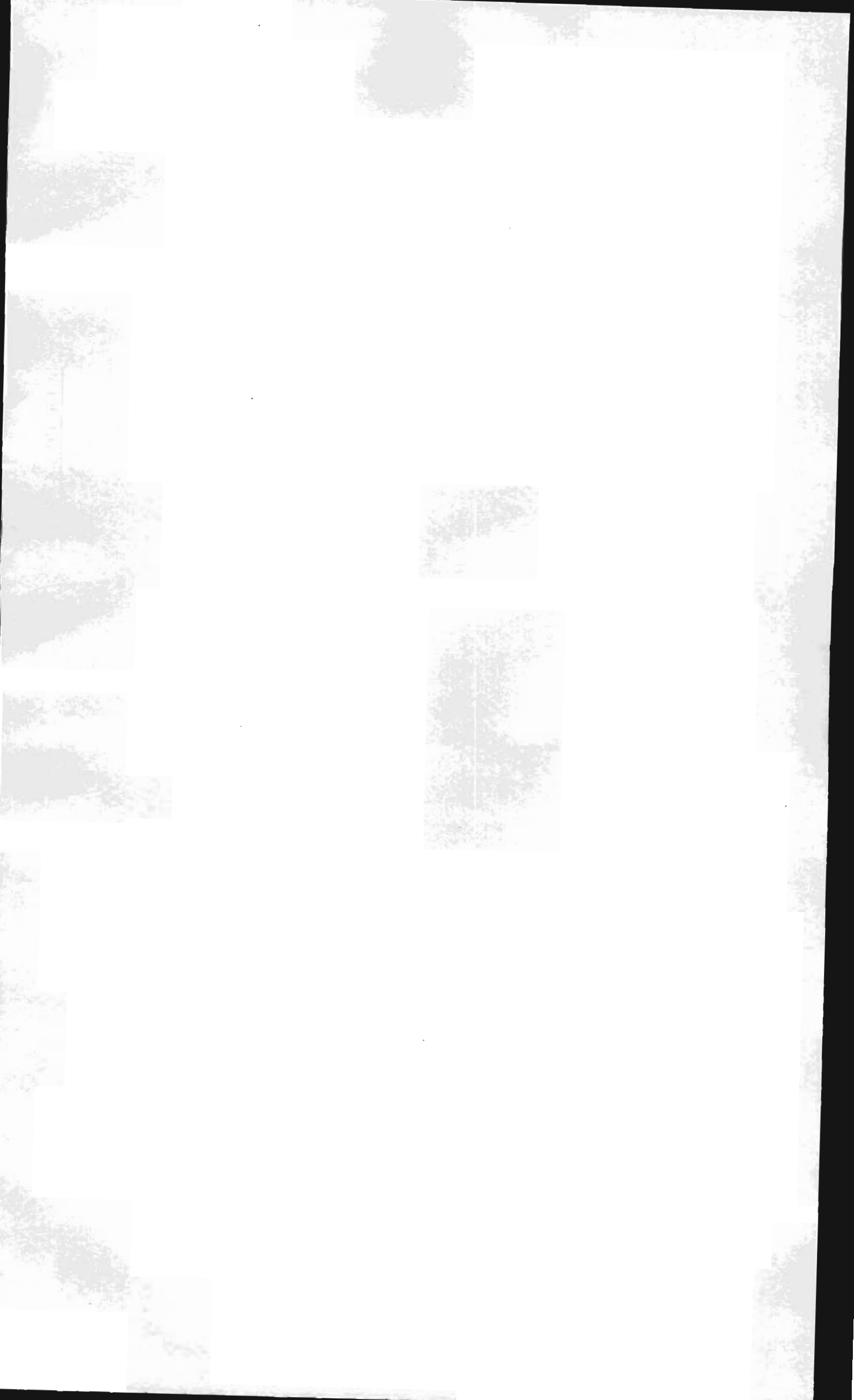
It must, therefore, be held that the plaintiff was validly appointed to the office of mutwalli, and also of sajjádánashin. The defendant's appeal arising out of the suit brought by the plaintiff to establish his title to both these offices consequently fails.

This disposes of the principal suit, and their Lordships must now deal with the suit instituted by the plaintiff to recover a library. The library was gifted to him by his father in 1909. The gift, which was said to have been made by word of mouth, was subsequently confirmed by the document of 1916, which has already been referred to. There is evidence to show that the library was in the possession of the plaintiff in September, 1922, when he was forcibly dispossessed by the defendant.

The question, however, is whether the library was the private property of the late Pir, or, as urged by the defendant, formed part of the wakf property dedicated to the shrine. There is no reliable evidence that it belonged to the Pir in his private capacity, and all the circumstances point to the conclusion that it was possessed by him as the head of the Durgah. Indeed, the learned counsel for the plaintiff admits that he seeks to recover possession of it, not as his private property, but as a wakf property which appertains to the institution. The defendant can not, and does not, lay any claim to it, if it is held to be trust property.

Their Lordships think that the library should be declared to form part of the wakf property attached to the shrine, and that the decree of the Court of Appeal should be modified accordingly. As the plaintiff has established his right to be the mutwalli of the wakf property, he is entitled to recover possession of the library, together with its appurtenances as described by the Court of the Judicial Commissioner.

The result is that while Appeal No. 62 of 1934 is dismissed *in toto*, the connected appeal, No. 63 of 1934, is accepted so far as to make it clear that the library is not the private property of the plaintiff but is wakf property. He is entitled to recover possession of the library with its appurtenances and hold it in his capacity as the head of the Durgah of Jhandáwálá Pir. The appellant, having failed on the vital points, must pay the costs of both the appeals. Their Lordships will humbly advise His Majesty accordingly.



In the Privy Council

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PIR AHSANULLAH SHAH

v.

PIR ZIAUDDIN SHAH

SAME

v.

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*(Consolidated Appeals)*

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DELIVERED BY SIR SHADI LAL

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