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PEER GULAM JILANI

v.

PEER GULAM NASEER AND ORS.

(Civil Appeal Nos.10770– 10772 of 2013)

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JULY 24, 2019

[ASHOK BHUSHAN AND NAVIN SINHA, JJ.]

- Muslim Law: Rules of Zabta (Constitution) – Interpretation of – Nomination of Sajjadah Nashin and Mutawalli – Fourth Sajjadah Nashin and Mutawalli nominated his grandson (daughter's son)-respondent no. 1 as Sajjadah Nashin and Mutawalli – Challenge to – Held: Rule 1 of the Zabta cannot be read as laying down any hereditary succession to the office of Sajjadah Nashin and Mutawalli nor can be read to lay down succession to lineal descendants – Succession to the Sajjadah Nashin and Mutawalli is selection by Sajjadah Nashin and Mutawalli – Zabta of Dargah refers to spiritual Sect “Silsila” and the word family (Khandan) has not been used in the limited sense – Respondent who was daughter's son of fourth Sajjadah Nashin and Mutawalli and who also traced his lineage from the real brother of founder of Dargah, cannot be said to be person not belonging to ‘Khandan’ – Furthermore, Sajjadah Nashin who has been given right to select his successor, his selection and nomination has to be given weight – Even a person of minor age can be selected as Sajjadah Nashin and Mutawalli – Word ‘Sagir Sinn’ in Rule 2 does not mean ‘minor son but means ‘minor age’ – Thus, the courts below correct in reading the Zabta and holding that respondent was eligible to be nominated as Sajjadah Nashin and Mutawalli.*

Dismissing the appeals, the Court

- G HELD:** 1.1 The succession to the Sajjadah Nashin and Mutawalli is not hereditary succession but it is selection by Sajjadah Nashin and Mutawalli. The Zabta of Dargah refers to spiritual Sect “Silsila” and the word family (Khandan) had not been used in the limited sense. Rule 1 of the Zabta cannot be read as laying down any hereditary succession to the office of Sajjadah Nashin and Mutawalli nor Rule 1 can be read to lay down

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succession to lineal descendants. The respondent who was daughter's son of 4th Sajjadah Nashin and Mutawalli and who has also traced his lineage from Shahabuddin real brother of founder of Dargah, cannot be said to be person not belonging to 'Khandan'. All the three Courts below have rightly held him to be fully eligible. Furthermore, Sajjadah Nashin who has been given right to select his successor, his selection and nomination has also to be given weight. There is no dispute between the parties that even a person of minor age can be selected as Sajjadah Nashin and Mutawalli. [Para 11-13] [1130-C-H; 1131-A-B]

1.2 It cannot be accepted that use of word 'Sagir Sinn' in Rule 2 means 'minor son. Firstly, in the courts below appellant never raised an issue or contention that word 'Sagir Sinn' used in Rule 2 means 'minor son'. When no such issue or submission was raised, appellant cannot be allowed to raise this submission in this Court for the first time. Secondly, the Hindi translation is looked into which is actual translation of Urdu words in the Zabta. In the counter-affidavit, the respondent has brought on the record Hindi translation which is in Devnagri translation of actual Urdu words. The word used is "Sagir Sinn". The word "Sagir Sinn" is a combination of two words 'Sagir Sinn'. Word 'Sinn' is a Persian word. In English Persian Dictionary word age has been mentioned as 'Sinn'. In another Persian-English Dictionary one of the meanings to the Persian word 'sinn' is year, age, period of life. Various combination of other different words using word 'sinn' has also been defined like 'sinni balugh, sinni tamiz, sinni shaikhukhiyat. The word 'Sagir Sinn' also gives the meaning of "minor age". In no manner the word "Sagir Sinn" can be read as minor son. [Para 14- 17] [1131-C-H; 1132-A-B]

1.3 All the three courts have not committed any error in reading the Zabta and coming to the conclusion that respondent was eligible to be nominated as Sajjadah Nashin and Mutawalli. [Para 18] [1132-B]

*English Persian Dictionary by A. N. Woollaston;
Persian-English Dictionary by S. Steingass
- referred to.*

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A CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 10770-10772 of 2013

From the Judgment and Order dated 05.07.2012 of the High Court of Judicature for Rajasthan at Jaipur in S.B.C.S.A. Nos. 504, 506 and 507 of 2004

B V. K. Shukla, Pramod Swarup, Sr. Advs., Ms. Pareena Swarup, Iqutedar Nazami, Praveen Swarup, Advs. for the Appellant.

Alok Shukla, Nihal Ahmad, Delawer Hussain Usta, Aftab Ali Khan, M. Z. Chaudhary, Safeer Farooqi, Syed Imtiyaz Ali, Rahat Ali Chaudhary, Ms. Archana Pathak Dave, Mrs. Niranjana Singh, Advs. for the

C Respondents.

The Judgment of the Court was delivered by

ASHOK BHUSHAN,J.

D 1. These appeals have been filed against the judgment dated 05.07.2012 of the High Court of Rajasthan at Jaipur Bench dismissing three Second Appeals filed by the appellant by confirming the judgment and order of the First Appellate Court as well as of the trial court.

2. Brief facts of the case giving rise to civil suit between the parties and these appeals need to be noted are:

E 2.1 In the year 1838 Khwaja Haji Muhammed Najmuddeen Sahib founded the Dargah in Fatehpur, District Sikar, Rajasthan. During his lifetime, he nominated his son Maulana Naseeruddeen Sahib as his successor to the office of Sajjadah Nashin and Mutawalli of the Dargah. Maulana Naseeruddeen

F Sahib during his lifetime nominated Gulam Najmuddeen Sahib, who was aged 3 years at that time as Sajjadah Nashin and Mutawalli after him. Gulam Najmuddeen Sahib after attaining majority nominated Gulam Sarwar Sahib as his successor to the seat of Sajjadah Nashin and Mutawalli of the Dargah. Gulam Sarwar Sahib became the third Sajjadah Nashin and Mutawalli of the Dargah. Gulam Sarwar Sahib while functioning as Sajjadah Nashin and Mutawalli framed a Constitution (Zabta) in the year 1932 of the Dargah by laying down Rules for nomination of Sajjadah Nashin and Mutawalli,

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for management of Dargah and other Rules and Principles for Dargah. Original Zabta was in Urdu which has been filed as Ex.2 along with translated copy in English and Hindi in the suit. Gulam Sarwar Sahib, the third Sajjadah Nashin and Mutawalli nominated Nurul Hasan as the 4thSajjadahNashin and Mutawalli during his lifetime by a Will dated 02.12.1951.

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- 2.2 Nurul Hasan, the 4thSajjadah Nashin and Mutawalli got registered the Dargah in the Muslim Wakf Board of Rajasthan, copy of Zabta was also submitted at the time of registration of the Deed. The Zabta before being submitted in the Wakf Board for registration was acknowledged by 4thSajjadah Nashin and Mutawalli, petitioner and other members of the Khandan. Fourth Sajjadah Nashin and Mutawalli, Nurul Hasan made declaration executing Will on 12.09.1979 nominating his grandson (daughter's son) - Gulam Naseer, the respondent No.1 to these appeals, as Sajjadah Nashin and Mutawalli. The Will was also got registered on 16.11.1979 at Sub-Registrar, Ajmer. On 03.08.1982, 4thSajjadah Nashin and Mutawalli passed away. Before his death, he also made declaration and confirmation of nomination in favour of respondent No.1.
- 2.3 After the death of 4thSajjadah Nashin and Mutawalli when certain disturbance in the management of Dargah was created by the appellant and some other persons, a Suit No.96 of 1982 (Peer Gulam Naseer vs. Shri Abrar Ahmad and 10 others) was filed by the respondent through his guardian and father Maujam Ali. The suit was filed for the permanent injunction. A temporary injunction was granted in the suit. Interim injunction granted by the trial court although was set aside by the Appellate Court but ultimately was restored by the High Court on 28.10.1988 in Civil Revision Petition No. 657 of 1986. Against the judgment of the High Court, SLP(C)No.14030 of 1989 was filed, which was dismissed. Review Petition also came to be dismissed. Another Suit No. 12 of 1989(Peer Gulam Jilani vs. Gulam Naseer and 05 others) was filed by the appellant praying for permanent injunction against the respondent.

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- A 2.4 Another Suit No.59 of 1986 (Gulam Naseer vs. Gulam Jilani and 23 others) was filed by the respondent. Suit No.96 of 1982 filed by the respondent No.1 was registered as Suit No.13 of 1989 in the Court of District Judge.
- B 2.5 The trial court decided all the three suits by a common judgment dated 17.04.2003. Suit No.96 of 1982 filed by the respondent No.1 was decreed and defendants of the suit were restrained by way of permanent injunction. Suit No.96 of 1995 filed by the appellant for permanent injunction against the respondent was dismissed whereas Suit No.59 of 1986 filed by the respondent was decreed. The trial court upheld the nomination of the respondent by 4thSajjadah Nashin and Mutawalli by declaration and Will dated 12.09.1979, declaration was held proved by the trial court. The trial court also held that the respondent No.1 was fully eligible to be nominated as Sajjadah Nashin and Mutawalli.
- C 2.6 Aggrieved against the judgment of trial court dated 17.04.2003, the appellant filed three appeals under Section 96 of the CPC, which appeals were heard and dismissed by the First Appellate Court vide its judgment dated 04.09.2004. Aggrieved against the judgment of the First Appellate Court dated 04.09.2004 three second appeals were filed by the appellant, which were dismissed by the High Court by the impugned judgment dated 05.07.2012. The appellant aggrieved against the judgment of the High Court dismissing the three second appeals has come up in these appeals.
- F 3. We have heard Shri V.K. Shukla, learned senior counsel appearing for the appellant. Smt. Aishwarya Bhati, learned senior counsel, has appeared for the respondent.
- G 4. Learned counsel for the appellant submits that affairs of Dargah are to be managed by the Constitution (Zabta), English translation of which is filed as Annexure-P1 in these appeals. He submits that as per Rules 1 and 2 of the Zabta, Sajjadah Nashin and Mutawalli has to be from the family. The respondent No.1 does not belong to the family of the founder of the Wakf and he being daughter's son of 4th Sajjadah Nashin& Mutawalli, Nurul Hasan cannot be treated to be from the family
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and could not have been appointed. It is submitted that the appellant being brother of Nurul Hasan Sahib, 4thSajjadah Nashin and Mutawalli, he is from the family of the founder and was accepted as Sajjadah Nashin and Mutawalli by Murids. He submits that the use of words “Sagir Sinn” in Rule 2, which means minor son fully re-enforces the submission of the appellant that it is only male descendant in the family, who can be nominated as Sajjadah Nashin and Mutawalli. It is submitted that the respondent No.1 was not being eligible for the appointment Sajjadah Nashin and Mutawalli, all the courts below committed error in not appointing the appellant as Sajjadah Nashin and Mutawalli, and in holding that the respondent No.1 was eligible for appointment as Sajjadah Nashin and Mutawalli.

5. Learned counsel for the respondent refuting the submissions of the learned counsel for the appellant submits that all the three Courts have correctly interpreted the Zabta. It is submitted that the appellant is incorrectly interpreting the word ‘Khandan’ used in Zabta. The word ‘Khandan’ is an expansive word, which shall clearly include the respondent No.1 in the ‘Khandan’. It is submitted that the word ‘Khandan’ used in Zabta refers to a spiritual Sect ‘Silsila’ and all those who were included in the spiritual Sect are eligible for appointment as Sajjadah Nashin and Mutawalli. It is further submitted that the respondent both by being daughter’s son as well as from lineage of Shahabuddeen Sahib great grandfather of the respondent No.1, who was real brother of Khwaja Haji Najamuddeen, the founder of Dargah is included in ‘Khandan’. The restricted meaning of ‘Khandan’ as sought to be given by the appellant is incorrect. It is, further, submitted that the interpretation of word ‘Sagir Sinn’ as occurring in Rule 2 of Zabta is again incorrect. It is submitted that the word ‘Sagir Sinn’ occurring in Zabta has been wrongly translated in English as minor son. The word ‘Sinn’ is a Persian word which means ‘age, year’ and does not mean son as sought to be interpreted by the appellant. He submits that Rule 2 meant that Sajjadah Nashin and Mutawalli can declare on his internal spiritual light any person of minor age as his successor. The word ‘Sagir Sinn’ never meant as minor son. It is submitted that all the Courts below have rightly interpreted the Zabta and there is no merit in the submission of the appellant.

6. We have heard learned counsel for the parties and perused the records.

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- A 7. The only argument which has been raised before us for consideration by the appellant is alleged mis-interpretation of Zabta by Courts below. Learned counsel for the appellant interpreting Rules of Zabta contends that person to be nominated as Sajjadah Nashin and Mutawalli has to be from family of founder and further he has to be a lineal descendant from founder. The ineligibility of the respondent is canvassed on the ground that he was daughter's son of 4thSajjadah Nashin and Mutawalli, who nominated him and he is not a son as lineal descendant. The submission isthat he does not belong to 'Khandan' of founder. The trial court has framed several issues in suits which were decided by it. The Issue No.7 which relates to the submission raised C before us is as follows:

“7) Whether Nurul Hasan has no authority to nominate his successor, who is a stranger to the family ?”

- D 8. The pedigree of founder of Dargah was on the record. Gulam Naseer's father, Maujam Ali traced his lineage from Shahabuddeen, the real brother of Khwaja Haji Najamuddeen, founder of the Dargah. The trial court while considering the Issue No.7, after considering the evidence on record including the oral evidence returned the following findings in paragraph Nos. 89, 93 and 98:

- E “89.....It is not mentioned in the Japta that the succession to the office of Sajjadah Nashin and Mutawalli should be from the descendants or Haji Najmuddin Saheb or Maulana Naseerudin Saheb rather it is mentioned in the Japta that a trained person of this “Khandan” should be appointed to this post. The further, reference of the words “Muntkhib”, “Bait” and “Khilafat” in the Japta clarifies the position that the word “Khandan” does not refer strictly to the family, as it is used for the blood relations. But the “Khandan” means “sect”. No other conclusion can follow from the interpretation of the worse “Muntkhib”, “Bhait” and “Khilafat”. I can not accept the interpretation of the word “Khandan” to be the family succession, as it has been disclosed by Gulam Jilani DW1. If the intention of the maker of the Japta was that the succession to this office shall be heritable, no one prevented him from making a clear provision in this regard.

G 93. The use of the words “Sulemani Sect” and “Silsila” in the Japta points out that its maker never intended to make succession

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to this office hereditable. However, it does not mean that the descendants of Hazi Najmuddin or Maulana Naseerudin have been totally excluded for being chosen as the Sajjadah Nashin and Mutawalli. Their descendant may also be nominated to this office. In nutshell, the proposed Sajadah-Nashin and Mutawalli may be a stranger or he may be a descendant from the founder of the Wakf in question. The condition is that he should confirm to the standards mentioned in the Regulations discussed in the Japta and the outgoing Sajjadah Nashin and Mutawalli should confer Khilafat on him by doing the Bait on the hand and he should also nominate/declare him as his successor after his death because it is supposed to continue the spiritual line, commonly known as “SILSILA”. A

98. Let us now proceed on another assumption that only a descendant from Khawaja Najmuddin or Maulana Nasiruddin can be appointed to this post and this stranger has no role to play in Gulam Naseer PW2 has stated that his father is the descendant of Shahabuddin, who was the real brother of Khawaja Najmuddin, Maujam Ali PW1 has also confirmed his testimony. In this connection two Sajras Ex.101 and 102 have been placed on record. In this connection Gulam Jilani DW1 has stated that:

“Ahmad baksh saheb ke pote hone ke nate vadi unke putra najimuddin saheb va unke pote maulana Nasruddin saheb ke bhi pote lagte hai” E

Gulam Jilani DW1 has also stated that the property rights of the descendants from one grandfather are different but the descendants constitute one “Khandan”. The above admission from the mouth of defendant clearly show that the plaintiff also belongs to the “Khandan” of Najmuddin Saheb and Maulana Naseeruddin Saheb.” F

9. We may extract the relevant portion of Rules 1 and 2 of Zabta on which much emphasis was given by the learned counsel for the appellant. Relevant part of Rule 1 is as follows:

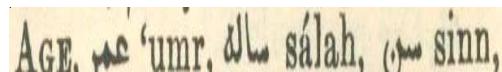
“The Sajjadah Nashin and Mutawalli of this abode (Dargah) of exalted highness ought to be a trained person from the line of this family and formally entered into Bai-at(murid) in this very spiritual Sect (silsila) and should be enlightened with the knowledge H

- A and sanctity and also well acquainted with and acting upon the mystic path as propagated by the Sulemani Najmi family so that he may accordingly educate to those who are desirous to search the truth and believes himself to be a trustee of the poor and the innocent. In case of any negligence he shall be answerable to God.”
- B 10. Relevant portion of Rule 2 on which learned counsel for the appellant has given emphasis is to the following effect:
- “If the Sajjadah Nashin by virtue of revealing his internal spiritual light declares any minor son as his successor, in that case till attaining majority and knowledge,”
- C 11. Rule 1 of the Zabta cannot be read in a manner as suggested by the counsel for the appellant. Had the Zabta intended to lay down line of succession through lineal descendants, it would have been clearly provided. The succession to the Sajjadah Nashin and Mutawalli is not hereditary succession but it is selection by Sajjadah Nashin and Mutawalli. Following portion of Rule 1 makes it clear:
- “It shall be obligatory upon the Sajjadah Nashin and Mutawalli to select his successor during his life time keeping in view the conditions prescribed in the aforesaid lines so that no faction or dispute arises thereafter. If the Sahib-e-Sajjadah expires before such a selection, it would then be the duty of the main members of this venerable family and virtuous murids to select such a person who is gifted with the aforesaid high qualities and thereby to entrust him with all the affairs of the Dargah, and the rights of such a Sajjadah Nashin would be the same as those of his predecessor-Sajjadah Nashin and in case there are several such qualified persons the decision will be taken in accordance with the customs and traditions prevailing in this Dargah since the very beginning.”
- D 12. The Zabta of Dargah refers to spiritual Sect “Silsila” and the word family (Khandan) had not been used in the limited sense as sought to be contended by the appellant.
- E 13. Rule 1 of the Zabta cannot be read as laying down any hereditary succession to the office of Sajjadah Nashin and Mutawalli nor Rule 1 can be read to lay down succession to lineal descendants as
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sought to contend. The respondent who was daughter's son of 4th Sajjadah Nashin and Mutawalli and who has also traced his lineage from Shahabuddin real brother of founder of Dargah, cannot be said to be person not belonging to 'Khandan'. All the three Courts below have rightly held him to be fully eligible. Furthermore, Sajjadah Nashin who has been given right to select his successor, his selection and nomination has also to be given weight. There is no dispute between the parties that even a person of minor age can be selected as Sajjadah Nashin and Mutawalli.

14. Coming to the second submission of the learned counsel for the appellant that use of word 'Sagir Sinn' in Rule 2 means 'minor son'. There are two reasons due to which this submission cannot be accepted. Firstly, in the Courts below appellant never raised an issue or contention that word 'Sagir Sinn' used in Rule 2 means 'minor son'. When no such issue or submission was raised, appellant cannot be allowed to raise this submission in this Court for the first time.

15. Secondly, to satisfy ourselves, we have also looked into the Hindi translation, which is actual translation of Urdu words in the Zabta. In the counter-affidavit, the respondent has brought on the record Hindi translation which is in Devnagri translation of actual Urdu words. The word used is "Sagir Sinn". The word "Sagir Sinn" is a combination of two words 'Sagir Sinn'. Word 'Sinn' is a Persian word. In English Persian Dictionary by A.N. Wollaston, word age has been mentioned as 'Sinn'. Following is stated in the Dictionary:



16. In another Persian-English Dictionary by S. Steingass one of the meanings to the Persian word 'sinn' is year, age, period of life. Various combination of other different words using word 'sinn' has also been defined like 'sinni balugh, sinni tamiz, sinni shaikhukhiyat to the following effect:

"...sinn, A tooth; nib of a pen; an indentation; a horn; year, age, period of life; a wild bull; greedy eating; name of a mountain near Madinah; also of a place sinni balugh(balughat, taklif), Age of puberty, mature age:- sinni

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A *tamiz(tamyiz, shu'ur), The age of discretion; - sinni shabab, Youth; -sinni shaikhukhiyat, Mature age; old age; -sinn u sal, Age, (many) years."*

B 17. The word ‘Sagir Sinn’ also gives the meaning of “minor age”.
In no manner the word “Sagir Sinn” can be read as minor son as contended by the appellant.

C 18. All the three Courts have not committed any error in reading the Zabta and coming to the conclusion that respondent was eligible to be nominated as Sajjadah Nashin and Mutawalli. We do not find any merit in these appeals which are accordingly dismissed.

Nidhi Jain

Appeals dismissed.