IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE IJAZ UL AHSAN

CIVIL APPEALS NO.542-L AND 543-L OF 2012
(Against the judgment dated 29.10.2010 of the Lahore High Court, Lahore passed in C.Rs.No.349 & 350/2004)

Al-Haj Deewan Bakhtiyar Syed Muhammad — In C.A.542-L/2012
Diwan Azmat Said Muhammad — In C.A.543-L/2012
... Appellant(s)

VERSUS

Deewan Maudood Masood — In C.A.542-L/2012
Maudood Masood and another — In C.A.543-L/2012
... Respondent(s)

For the appellant(s): Sardar Muhammad Aslam, ASC
Ch. Akhtar Ali, AOR
(In C.A.542-L/2012)

Rana Ijaz Ahmed Khan, ASC
(In C.A.543-L/2012)

For the respondent(s): Syed Iftikhar Hussain Gillani, Sr. ASC
(In both cases)

Date of Hearing: 22.1.2018

JUDGMENT

MIAN SAQIB NISAR, CJ.- The dispute in these appeals with leave of the Court between the parties is primarily about the appointment of the 26th *sajjadanashin* of the famous shrine of Baba Farid Ganj Shakkar *(RA)*. Baba Farid Ganj Shakkar *(RA)* is one of the most prominent Sufi mystic figures of the Chishti Order of Sufis who came to the Subcontinent in the twelfth century and on account of his piety was considered to be one of the most outstanding sufi saints of his times, being revered across the Subcontinent for his spiritual guidance. During his lifetime he had a large number of *mureeds*, and his Khannakah was soon home to many travelers in search of spiritual/Sufi guidance. Many people

accepted Islam at his hands and till today countless individuals turn towards the shrine for the rejuvenation of their faith. Unfortunately, like all Sufi mystic personalities, his stay in this world was for a limited period and he left for his eternal abode on the 5th of Moharrum, 661 A.H., at the age of 92. At the time of his demise, he appointed his *sajjadanashin* and this remains the practice till date: that before the passing away of each *sajjadanashin* he nominates an agnate who is also a *mureed* as the next *sajjadanashin* or on account of any inability of the incumbent to act as such a new *sajjadanashin* is appointed for the shrine. This is also apparent from the earlier judgments with regards to the *sajjadanashin* of the same shrine in **Sayad Muhammad v. Fatteh Muhammad (22 ILR 24 [Calcutta])** and **Deewan Ghlam Rasul v. Ghualn Qutab-ud-Din (AIR (29) 1942 Lah. 142)**. The significance of the *gaddi nashin*/*sajjadanashin* has been explained in paragraph 220 of the principles of Muhammadan's Law by D.F. Mullah; the *sajjadanashin* of a shrine is a spiritual guide, distinct from a *mutawali* who is the manager or administrator of the same. A *sajjadanashin* may not necessarily be a *mutawali* which latter post is an exclusively secular post limited to the matters of management of the shrine alone, whereas on the shoulders of the *sajjadanashin* rests the responsibility of the spiritual functions of guidance of the mureeds and the performance of *rasoomaat* etc, which require a person of outstanding character and one capable of leading the community and inspiring the mureeds. Thus this post and the nomination for the same carries immense importance in the hearts of a substantial section of the pubic and their spiritual guidance/rejuvenation/beliefs rest in the customs and rituals of this shrine, the person who guides these in his capacity

as *sajjadanashin* must therefore be one who is rightfully entitled to the same on the basis of the express declaration / nomination of the Dewan / *sajjadanashin* who preceded him. It may be pertinent to mention here that we have been apprised by the learned counsel for the appellant that the usual practice of succession / appointment of the *sajjadanashin* is that he holds the *gaddi* nominates his successor himself, and such successor must be an agnate and a *mureed*. The Dewan Ghulam Qutab-ud-Din, son of Dewan Said Muhammad who was *sajjadanashin* of the shrine, breathed his last breath on 19.8.1986. During his lifetime he had appointed his son, the respondent, as a successor / *sajjadanashin* and in this regard a press publication was also made which appeared on 14.11.1980 in Daily *Mashriq (Exh.D.1 on pg 318 of CA 542-l/2012)*. However, subsequently *vide* another publication dated 13.9.1981 appearing in Daily *Nawa-i-Waqt* and Daily *Mashriq (Exh.P.2 on pg 307-310 in CA 542-L/2012)*, Dewan Qutab-ud-Din revoked the earlier announcement of *sajjadanashin* and declared that the new *sajjadanashin* would be appointed by him from amongst his sons, whom he deemed to be competent to hold the *gaddi / sajjadanashinship*. Be that as it may, Dewan Qutab-ud-Din passed away on 19.8.1986 and on 17.10.1986 the appellant *(in Civil Appeal No. 542-L of 2012)* who is the real paternal uncle of the respondent *(in Civil Appeal No. 542-L of 2012 and respondent No.1 in Civil Appeal 543-L of 2012)* filed a suit for declaration that the appointment of the respondent as *sajjadanashin* was invalid and that he should be restrained from acting as such. He asserted that the cancellation of the *sajjadanashinship* of the respondent, published *vide* advertisement dated 13.09.1981 was still intact and that thereafter Dewan Qutab-ud-Din had never appointed or nominated the

respondent as *sajjadanashin*. In support of his assertions he got 16 witnesses examined, PW-1 to PW-16 including his own statement as PW-6, while also submitting documentary evidence, Exh.P1 to Exh.P.13. The respondent on the other hand, contested the appellant's claim, getting 21 witnesses examined, DW-1 to DW-21 including his own witness statement as DW-19. In the written statement filed by the respondent it was mentioned that the late Dewan Qutab-ud-Din during his lifetime, but close to his death, had orally nominated him as *sajjadanashin*. Be that as it may, after framing of the relevant issues the said suit was decreed in favor of the appellant by the learned Trial Court on 19.7.1993 *(pages 113 to 147)*. However the respondent filed Civil Appeal No.95/ADJ of 1996 whereby the learned Appellate Court overturned the above decision on 8.5.1996 *(pages 91 to 107)* and decreed the suit in favor of the respondent, setting aside the findings of the learned Trial Court. On the other hand, during these proceedings the appellant in Civil Appeal No. 543-L/2012 *(respondent No.2 in CA No.542-L/2012)* who is the real brother of the respondent, had filed an application under Order 1 Rule 10, Section 151 and Section 107 of the CPC for being impleaded as party in the proceedings in Civil Appeal No.95/ADJ of 1996, which application had been dismissed. Thereafter, the appellant *(in CA 542-L/2012 and paternal uncle of the respondent)* assailed the judgment of the learned Appellate Court which revision petition was allowed *vide* judgment dated 29.5.2006 whereby the judgment of the Trial Court was restored. When the respondent filed Civil Petition No.1037-L/2006 *(and the brother of the respondent, Dewan Azmat Said Muhammad filed CP No. 687/2006 against the dismissal of his impleadment application)* against the same before this Court, it was observed that an alarmingly long period of one year had been

consumed in the writing of the judgment dated 29.5.2006 which was heard on 15.6.2005. Thus by order of this Court dated 15.01.2007 the said judgment was set-aside and the matter was remanded to the learned High Court for expeditious disposal as far as possible within a period of three months. Resultantly, in compliance with the said order, the matter was heard by the learned High Court on 25.9.2007 and a decision was given on 25.10.2007 decreeing the suit in favor of the respondent *(dismissing the application of impleadment of the Dewan Azmat Said Muhammad)*. This judgement has been impugned before us.

2. The learned counsel has attacked the judgment of the learned Appellate Court as also the learned High Court on the grounds of four findings which he claims are absolutely misconceived and a result of misreading of evidence;

(i) that the *Auqaf* department had no authority to appoint *sajjadanashin*;

(ii) Exh.P.1 was found by the learned Single Judge to be an 'isolated incident';

(iii) that the appellant had produced no cogent evidence to support his claim that he was performing all *rasoomats*/ceremonies/rituals alongside with the Dewan Qutab-ud-Din, in effect being second in command to him;

(iv) that DW-20, Ghulam Fareed Chishti had not been cross-examined with regards to the material particulars and therefore DW-20's statement remains unrebutted;

therefore, the declaration of the appointment as *sajjadanashin* of the respondent stands established. It is argued that the learned High Court has failed to consider the effect of Exh.P.1 and Exh.P.2 and that in the facts and circumstances the learned High Court

should have remanded the matter back to the learned Appellate Court for the decision, rather than reappraising the evidence on the record. Reliance in this regard is placed upon the judgments reported as **Adamjee Jute Mills Ltd. Vs. The Province of East Pakistan and others (PLD 1959 SC 272)** and **Asadullah Khan Vs. Abdul Karim (2000 SCJ 441)**.

3. We considered the judgment challenged before us in light of the leave granting order which is reproduced below:-

> *"We have heard learned counsel for the parties at some length. Learned counsel for the petitioner (in C.P. No. 51-L of 2008) who also challenged the proprietary and vires of this Court's judgment dated 15.1.2007 passed in Civil Petition No. 687 of 2006 and C.P. No. 1037-L of 2006 which was allowed and the case was remanded to the learned High Court to decide Civil Revision No. 349 and 350 of 2004 afresh, on a second thought, elected not to press this point but confined his submissions on the merits of the impugned judgment of the learned High Court dated 29.10.2007.*
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> *2. Leave is granted, inter alia, to consider whether there was any custom relatable to succession of "Sajjada Nasheen" of the shrine of "Baba Farid Ganj Shakkar (R.A.)"; whether the respondent was appointed as "Sajjada Nasheen" in terms of the said custom; whether the declaration published in two national Dailies dated 13.9.1981 on behalf of the then "Sajjada Nasheen" to the effect that he had cancelled the appointment of respondent as "Sajjada Nasheen" during his life time was ever rescinded during the life time of the said declarant; whether the finding of the learned High Court in Para 16 of the impugned judgment to the effect that the testimony of Ghulam Fareed Chishti (DW-20) remained unrebutted notwithstanding the lengthy cross-examination to which he was subjected to is tenable in law; and whether the petitioner has any justifiable claim to be "Sajjada Nasheen" with reference to any custom, usage or practice."*

In light of the above, we find that extensive evidence has been led by both the parties in support of their respective claims. Reliance of the appellant is exclusively founded upon Exh.P.1 and Exh.P.2 i.e. a letter by the Auqaf Department and the revocation of the nomination of the respondent as the *"sajjadanashin"*, respectively. It is submitted that during the time when the Dewan Qutab-ud-Din had gone for *Hajj* it was the appellant who had been appointed as *sajjadanashin* and, therefore, it is he who was competent and capable of holding the post of *sajjadanashin* as evidenced in Exh.P1. It further mentioned that in Exh.P.2 it is clearly and unequivocally stated by the respondent's own father that he is not capable of holding the sacred office and, therefore, he is being removed. We are afraid that from the findings of the Appellate as also the learned High Court it is clear that the relationship between Dewan Qutab-ud-Din and the appellant was sour and they also had some litigation dispute going on during the lifetime of the late *sajjadanashin* / Dewan. It is evident from the record, particularly Exh.D.16 which is a copy of the statement of the late Dewan Qutab-ud-Din in Qazaf proceedings initiated by the wife of the appellant wherein the late *sajjadanashin* / Dewan had in very clear words expressed his dismay at the behavior of the appellant, condemning him for bringing disgrace to the entire family. Furthermore, the record in Exh.D.5 shows that there was a criminal complaint *(page 323 of the 542-L/2012)* made by the late Dewan Qutab-ud-Din against the appellant under Section 452, 506, 427, 440, 148, 149 of the Pakistan Penal Code, 1860 *(PPC)* which leaves no shred of doubt that the terms between the late *sajjadanashin* Dewan Qutab-ud-Din and him (appellant) were such that the former was being criminally intimidated by the latter. It is also

pertinent to note that Ex.P.2 being relied on so vehemently by the appellant, in fact when read in detail reflects that the incumbent *sajjadanashin* was to choose the *sajjadanashin* from amongst his agnates/sons, whereas the appellant is the brother of the late *sajjadanashin*. It is further established that at the time of the death of Dewan Qutab-ud-Din the appellant was not present beside him, moreover in his own witness statement as PW-6 he has stated that he only came to know about the demise of the late Dewan Qutab-ud-Din through the newspapers. Not only did the appellant not attend the *Nimaz-e-Jinaza* of the late *sajjadanashin* but was also absent from his *Qul* and *Chehlum*. As against the above, the oral evidence produced by the respondent is overwhelming and regardless of whether the material facts stated in the statement of DW-20 have been cross-examined or not the statement has not at all been shattered or impeached by the appellant during cross-examination; besides the statements of DW-20 and DW-21 have not been subjected to cross-examination, and thus stand unrebutted. Moreover, the appellant has also submitted that the respondent was incapable of performing the duties of a *sajjadanashin* relying on an incident of stampede during an Urs ceremony, which incident has been examined in a judgment of the Lahore High Court in WP No. 16974/2001 wherein the learned High Court has held that the responsibility of the unfortunate incident cannot be attributed to the respondent alone. Even otherwise, it has been conceded by the learned counsel for the appellant that Dewan Qutab-ud-Din had never appointed the appellant as *sajjadanashin* and it is also conceded by him that per the custom and also a history of over seven hundred years of the shrine, the nomination of the successor is always the absolute

discretion of *sajjadanashin* holding the post. In the absence of any written evidence of the same and the fact that the respondent has successfully been able to prove his case through witness statements and documentary evidence produced, the express nomination by the late *sajjadanashin* Dewan Qutab-ud-Din is the only conclusive factor of determining the entitlement of *sajjadanashinship* of the shrine of Baba Farid (RA).

4. We have considered the judgment of the learned High Court which is quite elaborate, each and every aspect of the matter has been taken into consideration and on the basis of proper reading and appreciation of the evidence: factual finding has been given by the learned High Court affirming the finding already given by the learned Appellate Court which has set aside the factual finding of the learned Trial Court, therefore, we do not find that in these cases any point which is covered by the leave granting order has been established warranting the interference and setting aside of the judgment in question. Resultantly, we do not find any merit in these appeals which are hereby dismissed.

5. Above are the reasons for our short order of even date, whereby the titled appeals were dismissed.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
22nd of January, 2018
Approved for reporting
Waqas Naseer