
Ghazafar Ali Khan Vs Musammat, Kaniz Fatima and Another

Appeal from Oudh

Court: Calcutta High Court

Date of Decision: April 29, 1910

Citation: (1910) 04 CAL CK 0049

Final Decision: Dismissed

Judgement

Sir Arthur Wilson, J.

This is an appeal from a judgment and decree of the Court of the Judicial Commissioner of Oudh, which overruled

the decision of the Subordinate Judge of Sitapur. The suit out of which the appeal arises was brought by the present Appellant in the last-

mentioned Court to establish title to and recover possession of an eight-anna share in the village of Bambhauri, the Plaintiff's claim being based

upon his alleged right to recover the property in question as heir to his father, Chaudhri Muzaffar Ali Khan. About the parentage of the Appellant

there is no dispute, and of all the questions raised in the case, one only remains for consideration on the present appeal, and that is whether the

Appellant is to be regarded as the legitimate son of his father. On this question the Subordinate Judge decided in the Appellant's favour, but he

was overruled by the Court of the Judicial Commissioner.

2. Their Lordships are of opinion that the learned Judges of that Court were right.

3. It may be stated at once that the sole question is, whether on the evidence in the case, coupled with all legitimate presumptions, it is shown that

the Appellant was born in wedlock. No question has been raised either in India or before their Lordships--such has been raised in many cases--as

to any possible legitimation by subsequent acknowledgment or treatment.

4. There was no evidence of marriage between the parents of the Appellant.

5. The learned Judges fully recognised that prolonged cohabitation might give rise to a presumption of marriage, but that presumption is not

necessarily a strong one, and their Lordships agree that it does not apply in the present case, for the mother before she was brought to the father's

house was, according to the case on both sides, a prostitute.

6. The learned Judges next notice certain instances in which the deceased father is said to have acknowledged the mother as his wife but the effect

of such acknowledgment has been rightly estimated by the learned Judges.

7. The next point relied upon by the Appellant was that two of his sisters, whose legitimacy was as much open to question as his own, were

married to respectable men, and the marriages conducted with due formalities. This is a point worthy of consideration, but it would be easy to

attribute too much weight to it.

8. Their Lordships are of opinion that the decision of the Judicial Commissioner's Court was right. They will humbly advise His Majesty that this

appeal should be dismissed. The Appellant will bear the costs.