

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Court of Wards for the property of Makhdum Hassan Bakhsh v. Ilahi Bakhsh and others, from the Chief Court of the Punjab (P.C. Appeal No. 94 of 1911); delivered the 26th November 1912.

PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD MOULTON.

SIR JOHN EDGE.

MR. AMEER ALI.

[DELIVERED BY LORD MACNAGHTEN.]

In the immediate neighbourhood of the city of Multan there is a large tract of unculturable or uncultivated land generally known as the Mai Pak Daman or the Pak Daman graveyard. From time immemorial it has been used by the Mohammadan community in Multan for the purpose of burying their dead. But there is no evidence to show when or how it was originally set apart for the purpose of a burial ground.

In the judgment of the Chief Court in this case there occurs the following passage giving, as their Lordships think, a very probable account of the origin and early history of this graveyard :—

“ Bahawal Hakh, the famous saint, was born in the 12th
“ century of the Christian Era. He had a son, Sadr-ud-din,
“ whose wife was called Mai Pak Daman. She was revered
“ as a saint, and her body was buried in a shrine within the
“ area in suit. No one can tell when the surrounding land
“ was definitely set aside as wakf ; but we can safely
“ conjecture that, in the first instance, Musalmans began to

[88.] J. 187. 135.—11/1912. E. & S.

A

“ bury their dead here and there in the waste land about
 “ her tomb, because of the desire to be buried near the body
 “ of a saint. There can be doubt that for hundreds of
 “ years the land about her tomb has been used as a burial
 “ ground, and though there is no direct proof of dedication
 “ as wakf, we can safely conclude that long before 1858 it
 “ had become wakf at least by user.”

The year 1858 referred to in the above passage is the date of a representative public meeting of Mohammadans called by the authorities for the purpose of considering the question of Mohammadan graveyards for the city. At that meeting a resolution was passed apparently in accordance with the suggestion of the Government to the effect that owners of khankahs or shrines should keep open graveyards in their own khankahs, that four old graveyards, of which Mai Pak Daman was one, should be kept open for the whole Mohammadan community, that three new graveyards should be provided, and that all other graveyards should be closed. The predecessor in title of the person for whom the Court of Wards is now acting took part in giving effect to this resolution.

The resolution was sanctioned by Government, and in 1867 a robkar was published giving notice that if any Mohammadan buried a corpse outside the authorised places it would be taken up and buried in one of those places.

In the Record of Rights of the last settlement an area of land which comprises the land in this suit is entered as “in the possession of the “ Mohammadans,” and is described as Kabristan or Ghair-mumkin Kabristan, that is “graveyard “ or unculturable land forming portion of a “ graveyard.” In the ownership column Makhdum Hassan Buksh, now represented by the Court of Wards, is entered as “owner.” It would seem that he was properly entered as owner, being trustee and custodian of the shrine of the Saint Mai Pak Daman, and being or claiming to be the

recognised head of the Mohammadan community in Multan.

In this state of things the Appellant, the Court of Wards for the property of Makhdum Hassan Buksh, advertised for public sale a piece of ground lying within the area of the graveyard as described in the settlement papers.

Thereupon certain Mohammadan residents in Multan of different classes and various occupations combined together and brought this suit as co-Plaintiffs, claiming an injunction to restrain the proposed sale, and also asking for a declaration that certain lands described in the settlement records as graveyard, and comprising an area considerably larger than that now in suit, was inalienable as wakf. It appeared in the course of the suit that on part of the land described as "graveyard" in the settlement papers there had been encroachments, that part had been acquired for public purposes, and that some lots had been, as it was alleged, sold by the Makhdum for his private purposes. So, in order to avoid all questions which might be raised with regard to land which had been so dealt with, the plaint was amended, and the area for which protection was claimed was limited to a piece of ground measuring 437 kanals and 4 marlas, or something between 40 and 50 bighas.

The District Judge dismissed the suit with costs. On appeal the Chief Court granted the relief asked for by the Plaintiffs, but without costs. From this order of the Chief Court the Court of Wards has appealed to His Majesty in Council.

The only substantial ground of appeal urged before the Board was that the area known as the Pak Daman graveyard was not one continuous burial ground, but merely an area of uncultivated ground in which here and there there were to be found graves or clusters of graves, and the

defence set up was that vacant ground unoccupied by graves remained the private property of Makhdum Hassan Buksh, and that the Court of Wards was bound or entitled to deal with it for the benefit of his estate without regard to the claim advanced by or on behalf of the Mahommadan community in Multan.

The Punjab Land Revenue Act, 1887, Act XVII. of 1887, Section 44, enacts that "an entry made in a Record of Rights in accordance with the law for the time being in force . . . shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor."

Their Lordships agree with the Chief Court in thinking that the land in suit forms part of a graveyard set apart for the Mussulman community, and that by user, if not by dedication, the land is wakf. The entry in the Record of Rights seems conclusive on the point. It is obvious that if it were held that within the area of the graveyard land unoccupied or apparently unoccupied by graves was private property and at the disposal of the recorded owner, it would lead to endless disputes, and the whole purpose of the Government in setting aside land as an open graveyard for the Mohammadan community in Multan would be frustrated.

Their Lordships will therefore humbly advise His Majesty that the Appeal should be dismissed.

The Appellant will pay the costs of the Appeal.



In the Privy Council.

THE COURT OF WARDS FOR THE
PROPERTY OF MAKHDOM HASSAN
BAKHSH

?.

ILAHI BAKHSH AND OTHERS.

DELIVERED BY LORD MACNAGHTEN.

LONDON :

PRINTED BY EYRE AND SPOTTISWOODE LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1912.