APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

SHEKH KARIMODIN, (ORIGINAL DEFENDANT), APPELLANT, *v.* NAWA'B MIR SAYAD ALAMKHA'N, (ORIGINAL PLAINTIFF), RESPONDENT.* 1885. *September* 3.

Mahomedan law—Grant to grantees and their aulad va ahfad—Meaning of the word "ahfad"—Wakf—Construction—Tavlyat and sajjadanashin, right of females to hold the offices of.

A certain village was granted by the Mogul Government in *inám* to two persons and their "*aulad va ahfad*" for the maintenance of a *durgá* (mausoleum) of a *pir* (saint). The plaintiff and the defendant were the descendants of the original grantees.

In 1878 the plaintiff sued the defendant for the recovery of the profits of a one-fourth share in the *inám*, claiming to be entitled thereto through his mother and grandmother, who was a daughter of the son of the great-grandson of one of the two original grantees. It was contended *(inter alia)* for the defendant that the expression *aulad va ahfad*, used in the grant, would include only the lineal male descendants, and not the plaintiff, who claimed through females, who were incapable of performing the spiritual offices connected with the mausoleum. The Court of first instance dismissed the plaintiff's claim. He appealed, and the lower Appellate Court allowed his claim to the extent of one-eighth share. On appeal by the defendant to the High Court,

Held, confirming the decision of the lower Appellate Court, that the plaintiff was entitled to share both in the offices of the *durgá* and the endowment. The term "*ahfad*," being a term of the largest and most general signification, includes the descendants of females as well as of males. The primary object of the grant was to provide for the *tavlyat* and the office of *sajjadanashin* of the mausoleum of the saint, and with that view to supply the means for the maintenance of the persons who should perform the offices, as well as for the ordinary expenses of keeping up the mausoleum. A female could not be the *sajjadanashin*, whose duties were of a strictly spiritual nature requiring peculiar personal qualifications so as to exclude female descendants from participating in the endowment, but it would not follow that males, who established their descent from the *propositus* through females, should be excluded. Had the intention of the grant in the present case been to limit the class of descendants exclusively to persons claiming through males, the expression "*aulad dar aulad*" would have been used, instead of the general expression "*aulad va ahfad.*"

Hussain Beebee v. *Hussain Sherif*(1) and *Mujavar Ibrámbibi* v. *Mujavar Hussain Sheriff*(2) referred to and distinguished.

* Second Appeal, No. 430 of 1883.

(1) 4 Mad. H. C. Rep., 23. (2) I. L. R., 3 Mad., 95.

1885.

SHEKH KARIMODIN v. NAWÁB MIR SAYAD ALAMKHÁN.

THIS was a second appeal from the decision of E. Cordeaux, District Judge of Poona.

In 1660-61 the Government of Aurangzebe granted the village of Kasalgaum, in the Pooná District, in *inám* in equal shares to Shekh Sadulá and Shekh Farid and their *aulad va ahfad* "for the expenses of the *durgá* of Pír Shekh Salláhudin." The plaintiff and the defendant were the descendants of the original grantees.

In 1878 the plaintiff brought a suit to recover the profits of one-fourth share of the said *inám* village, claiming the same as a descendant of Shekh Farid through plaintiff's mother, Afzal Begum, and his grandmother, Rahimunissa, who was a daughter of Shekh Shábudin, the son of the great-grandson of Shekh Farid, one of the two original grantees. He alleged that his mother, Afzal Begum, had enjoyed the said one-fourth share till her death; that after her death his father managed the same during his (the plaintiff's) minority for him; and that since his father's death, which took place in 1868, the defendant had refused to hand it over to the plaintiff, and had wrongfully appropriated the whole profits of the *inám*.

The defendant contended that the *inám* was a *wakf* and that, according to the Mahomedan law, neither the plaintiff nor his mother were entitled to any share therein. He denied the plaintiff's allegation as to enjoyment of any part of the revenues of the *inám* by the plaintiff, his mother, or his grandmother; and, lastly, contended that the plaintiff's suit was time-barred.

The Subordinate Judge of Pooná, who tried the case, dismissed the plaintiff's suit with the following remarks:—" * * * The plaintiff, as the descendant of the female stock, cannot inherit according to the terms of the *sanad*, or the Mahomedan law, and, even if he could be held to inherit, he has failed to prove that either his grandmother or his mother or his father used to receive the profits of the *inám* as alleged in the plaint. For much more than the last twelve years the plaintiff did not receive the share of the profits he claims; and as his suit would be governed by article 144 of Schedule II of Act XV of 1877, it would be barred by limitation."

1885.

SHEKH KARIMODIN v. NAWA'B MIR SAYAD ALAMKHÁN.

From this decision the plaintiff appealed, and the lower Appellate Court held that the grant to *aulad va ahfad* did include female descendants, and admitted the plaintiff's claim to the extent of a one-eighth share.

The defendant preferred a second appeal to the High Court.

B. Tyabji, (*Pándurang Balibhadra* with him), for the appellant.—The words used in the grant are to the *aulad va ahfad*, which mean male descendants of the grantees, such as sons and their sons, and so on. See Johnson's Persian and Arabic Dictionary, p. 35. The grantees were to perform certain religious duties, such as *sajjadanashin* and *tavlyat*. The office of *sajjadanashin* being of a purely spiritual nature, women are incapable of performing it. The Mahomedan law debars females from all spiritual affairs. See Macnaghten's Mahomedan Law, p. 343, note; *Ibid.*, pages 420, 332 and 333; Baillie's Digest of Mahomedan Law, 571. See, also, *Mujavar Ibrámbibi* v. *Mujavar Hussain Sherif*[1]; *Shah Ahmud Hossain* v. *Shah Mohiooddeen Ahmud*[2]; *Hussain Beebee* v. *Hussain Sherif*[3]. The plaintiff, who claims through a female, has no right to any portion of the grant, for he does not come within the term '*aulad*.' See *Abdul Ganne Kásam* v. *Hussen Miya Rahimtulá*[4].

Mahádev Chimnáji A'pte for the respondent.—The expression "*aulad va ahfad*" does not mean lineal male descendants, but is a general expression, and includes all descendants, whether male or female. The cases cited for the appellant are not in point, for in those cases the grant was to lineal descendants only. Here the grant was a general grant, and was not strictly confined to the performance of religious duties. The grantor's intention was to provide for the maintenance of the family of the grantees. If the intention were to exclude females, instead of the general expression *aulad va ahfad* the expression *aulad dar aulad* would have been used, and this latter would have barred females from participating. Although a female cannot perform spiritual duties, she can be a trustee of an endowment. See Macnaghten's

(1) I. L. R., 3 Mad., 95.
(2) 16 Calc. W. R., 193 Civ. Rul.
(3) 4 Mad. H. C. Rep., 23.
(4) 10 Bo m.H.C. Rep., 7.

1885.

SHEKH KARIMODIN v. NAWA'B MIR SAYAD ALAMKHÁN.

Mahomedan Law, 329, case 3; *Ibid.*, 334, Q. 3; *Ibid.*, p. 343. The case of *Abdul Ganne Kásam* v. *Hussen Miya Rahimtulá*[1] is in favour of the respondent.

SARGENT, C. J.—The plaintiff in this case seeks to recover the profits of a one-fourth share of the village of Kasalgaum, which was, in A.D. 1660-61, granted in *inám* in equal shares to Shekh Sadulá and Shekh Farid *aulad va ahfad* "for the expenses of the *durgá* of the Pir Shekh Salláhudin." The plaintiff claims from Shekh Farid through his mother, Afzal Begam, and his grandmother, Rahimunissa, who was a daughter of Shekh Shábudin, who is admitted to have been the son of the great-grandson of Shekh Farid. The defendant, who is in possession of the rents of the entire village, is descended from Shekh Sadulá, and contends that the plaintiff has no title to share in the moiety granted to Farid, as he traces his descent through females.

The District Judge has held that female descendants are included in the expression *aulad va ahfad*, and admitted the plaintiff's claim to the extent of a one-eighth share. The standard works of reference for the meaning of Arabic terms, such as Johnson's, Richardson's and Molesworth's Dictionaries, can leave, we think, no doubt that "*ahfad*" is a term of the largest and most general signification; and, indeed, it was almost admitted in argument that, in popular speech, it is equivalent to "descendants," and may include the descendants of females; but it was said that such would not be its meaning in a formal grant, which, as in the present case, imposed duties on the grantees incapable of being performed by a woman, and that here it must be confined to lineal descendants through males.

Now, doubtless, the language of the *sanads* granted from time to time in this case makes it sufficiently clear that the primary object of the authorities was to provide for the *tavlyat* and office of the *sajjadanashin* of the mausoleum of the Saint Salláhudin, and, with that view, to supply the means for the maintenance of the persons who should perform those offices, as well as for the ordinary expenses usually incidental to the keep-

(1) 10 Bom. H. C. Rep., 7.

ing up of a sacred tomb. It is further clear, upon the authorities, that, although a female may be the *mutawalli*, or the person performing the duties of the *tavlyat* of the mosque, she cannot be the *sajjadanashin*, who has charge of its spiritual affairs, and whose duties are purely of a spiritual nature, requiring peculiar personal qualifications. See the note at page 343, Macnaghten's Precedents, and the cases *Hussain Beebee* v. *Hussain Sherif*[1] and *Mujavar Ibrámbibi* v. *Mujavar Hussain Sheriff*[2], in which the plaintiff's claim to share in the endowment was rejected on the ground that she could not perform the duties for which it was intended to provide.

But, although these decisions would exclude female descendants from participating in the endowment, the ground upon which they proceeded, does not require that males, who establish their descent from the *propositus* through females, should be excluded. Had the intention been to limit the class of descendants exclusively to persons claiming through males, it is difficult to suppose that the general expression "*aulad va ahfad*" would have been used, and not "*aulad dar aulad*," which admittedly would exclude them. We agree, therefore, with the District Judge that the plaintiff was entitled to share both in the offices of the mosque and the endowment.

As to the question whether the claim is barred by the Statute of Limitations, the District Judge has held that time would not run against plaintiff, because defendant has in any case received the profits only as a trustee. But defendant did not in any sense receive them as a trustee for the plaintiff, although he did so doubtless with an obligation to provide for the maintenance and services of the mosque.

We must, therefore, send down the case for the District Judge to record a fresh finding on the issue whether the plaintiff's claim is barred by the Statute of Limitations. The finding to be transmitted to this Court within two months.

Case sent back.

(1) 4 Mad. H. C. Rep., 23. I. L. R., 3 Mad., 95.