Judgment of the Lords of the Judicial Committee of the Privy Council, on the Appeal of Juggarnath Bhramarbar Roy v. *Ram Gobind Juggodeb, from the High Court of Judicature, at Fort William, in Bengal; delivered June 29th*, 1880.

PRESENT:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THE Plaintiff in this case, who sues by his guardian, claims to be entitled to certain sevas described in the plaint "as the sevas of the "idol Buldeb Jeo, situate in mouzah Sam- "goodia, pergunnah Tikun." He claims them as his ancestral property, and says that his father, Doorga Persad Norendro, "died on the 4th of "Jeyt, 1278, leaving him, according to the custom "of the family, as his successor to the guddi "and rajgi, and his lawful heir to and owner "of all his movable and immovable property, "inclusive of that under claim. Accordingly, "the minor was the owner, and held possession "of the estate under claim, along with all other "property, through his mother and step-mother, "who are Defendants in the present suit."

Certain issues were fixed for trial: one was, whether the Plaintiff was the legitimate son of Doorga Persad Norendro. He claimed to be the legitimate son upon the ground that his father was married to his mother; but both the Lower Courts have found that no marriage took place, and that he was a son by a maid servant to whom his father was never married,

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and consequently that he was not legitimate. The next issue was, of what caste was the minor? The first Court found as to that, that he was clearly of the Ugra caste. Then another issue was, "Can he claim to inherit the offices "held, and privileges enjoyed, by his father in "connection with the worship of the idols Sri "Buldeb and Gopal Jeo?" The Judge, having found that he was illegitimate, says:—"I am of "opinion that he cannot; because, under the "Hindu law, illegitimate children do not inherit "except where the father has been a sudra; and "that, Doorga Persad admittedly was not. The "Puchis Sowal"—that is, the answers which were given by certain Rajas to questions which had been put to them by the superintendent of the tributary mehals—"I consider to be no "authority in the matter; for the temple, I re-"mark, was no appurtenant to the rajgi of Chhe-"dra, and, as such, the succession to any office "connected therewith would not be governed "by the special rules laid down in that compila-"tion, but by the ordinary law of inheritance; "and that I find is altogether against the claim." Now did the answers which were given to the superintendant of tributary mehals prove that, according to the custom of the family, the minor was the successor of the father "to the guddi "and rajgi, and his lawful heir to and owner of "all his movable and immovable property, "inclusive of that under claim"? It appears to their Lordships that the questions put by the superintendent of the tributary mehals were for the purpose of ascertaining who were to be recognised by the Government as the successors to the different killas which are described in the questions, and not with reference to the right to all the other property belonging to the owners of them. Under the first column of the questions is the name of the killa; then the

name of the raja; and then the question. The learned Judge of the High Court, after referring to other questions, says: "A much more difficult "question is as to the rule of inheritance "applicable to this particular family." In this passage he considers the question as a rule of inheritance, applicable to the family, not merely as applicable to the raj or killa. Then he proceeds: "I understand it to be admitted that "the Plaintiff's father's ancestors had been "titular Rajas of Chhedra, and there is un-"doubted evidence that in the absence of certain "other male relatives the illegitimate son by a "maid servant, and even of a concubine, may "claim the succession to what is called the raj. "The compilation which goes by the name of "the Puchis Sowal, and which has always been "received as an authority on these matters, "shows this." There the learned Judge treats the rule of inheritance as applicable to the raj, not to the family. But assuming that the compilation shows that an illegitimate son may succeed to the raj in the absence of other relatives, it is not found in this case that there was that absence of other relatives which would entitle an illegitimate son to succeed; indeed, it was proved that a male relative of the father of the Plaintiff had performed his sradh, thus raising a presumption that there was a relative who was entitled in preference to the Plaintiff to perform it. Their Lordships think that, even if this had been a question of succession to the raj, the Plaintiff has failed to give sufficient evidence to prove that he was the heir.

The First Judge, treating the compilation as evidence with reference only to the raj, says it is not proved that the sevas in question were appurtenant to the raj. If they were not, then the rule of succession applicable to the raj would not necessarily apply to them, and the Plaintiff

would have further to establish that the rule was the rule of succession, not only to the raj, but to all the other property of the Plaintiff's father.

Mr. Justice Markby having held that the compilation proved that an illegitimate son may, in the absence of certain other relatives, succeed to the raj, says, with reference to the question whether it proved his right to succeed to the sevas: "The Subordinate Judge gets rid of "this question by the observation that the "temple is not appurtenant to the raj, and that "therefore the succession to any office therein is "not governed by the special rules of the Purchis "Sowal, which relate only to the succession to "rajas. I do not think this view to be quite "correct. It may be that the temple is not "appurtenant to the raj, but the right to "perform the sevas is certainly claimed to be so. "That appears to be the view taken by "other rajas of the district enjoying similar "privileges, and, as it appears to me, ordinarily "the person entitled to succeed as raja would "be entitled to perform these sevas, both rights "being hereditary in the same line." It does not follow, as of course, that the sevas were appurtenant to the raj because they were claimed to be so, and the reasons of the learned Judge are based rather on assumption than on evidence of facts.

The sevas and the raj in this case were acquired by the ancestors of the Plaintiff at different times, and there is no evidence to show that the sevas were ever appurtenant to the raj. The raj was sold in 1840 by Srinibash, the father of Doorgapersad Narendro, the Plaintiff's father; but the sevas did not pass with it. These facts lead to the conclusion that the sevas were not appurtenant to the raj.

For these reasons it appears to their Lordships that there is not sufficient evidence to prove that

the Plaintiff was the heir to the sevas; and, consequently, that the Judge of the First Court was right in dismissing his claim.

They will therefore humbly recommend Her Majesty to reverse the judgment of the High Court, and to affirm the judgment of the Subordinate Judge. The Respondents will pay the costs of this Appeal. There were no costs given in the High Court; and their Lordships do not think it right to give the costs in that Court. They only give the costs of this Appeal.