Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rajah Rup Singh v. *Rani Baisni and the Collector of Etáwah from the High Court of Judicature for the North-Western Provinces of Bengal, delivered 22nd March* 1884.

Present :

LORD BLACKBURN.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

This is an appeal from a decision of the High Court of Judicature for the North-Western Provinces by which a decree of the Judge of Mainpuri in favour of the Defendants, the present Respondents, dismissing the Plaintiff's suit was affirmed. The Appellant, who was the Plaintiff, sued for possession of the estate called Raj Bhara, comprising the villages and other moveable and immoveable properties specified in the schedules annexed to the plaint by right of succession to the deceased Raja Mahander Singh, according, as stated in the plaint, " to the custom prevalent " in other estates and the usage of the family of " the Raja of Bhara."

The Plaintiff in his plaint stated that—

" The ancient usage of the Raj of Bhara, in common with the other families of the Rajas, is that, after the decease of a Raja, his nearest and eldest male heir succeeds him, to the exclusion of the other male heirs and the total exclusion of women. That when Raja Mahander Singh died on the 22nd September 1871, the revenue authorities caused the name of his widow to be recorded, notwithstanding the presence of the Plaintiff, the nearest heir; that they subsequently placed the

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estate under the management of the Court of Wards, who fixed an allowance of Rs. 50 for the Plaintiff, which he still receives."

The Rani Defendant in her written statement stated, amongst other things, that the custom alleged by the Plaintiff had no existence; that there was nothing in the history of the family of the Raja of Bhara to prove that a widow was ever deprived of the possession of the estate of her husband in the presence of the male relatives of her deceased husband; that as the property of her deceased husband was separate she was, under the general rules of the Hindu law, entitled to enjoy it during her lifetime; that the Plaintiff bore a very bad character; that he had taken arms against the Government during the mutiny, and was guilty of many atrocities; and that his property was confiscated and made over to Lala Laig Singh.

The Collector, as Manager under the Court of Wards, also appeared and defended the suit. He in his written statement stated that the family custom alleged by the Plaintiff did not exist; that the Plaintiff and his nephew, the late Maharajah, were separate in estate, and that, therefore, according to the ordinary rules of Hindu law, the Rani Defendant was entitled to succeed to the property of her deceased husband in preference to the Plaintiff.

The Raj, although it was not proved ever to have been a principality in the strict sense of the word, or endowed with sovereign rights, was an ancient ancestral impartible estate which had always been held by a single member of the family at a time, and had passed for several generations in lineal succession according to the law of primogeniture.

Pertab Singh, the father of the late Raja, Mahander Singh, was the elder brother of the Plaintiff, who, as a younger brother, became

entitled, according to the usage of the family, to maintenance, and for some time after the death of his father received an annuity of Rs. 1,000 out of the estates of the Raj. The family was joint and undivided down to the time of the Indian mutiny; but it appeared that, in consequence of the Plaintiff's misconduct during the disturbances, payment of his annuity was withheld with the sanction and under the direction of Government, and that in a suit against the Manager of the Court of Wards to enforce payment during the minority of the late Raja, it was held that there had been that which, adverting to the nature of the property, was equivalent to an attachment thereof, and the suit was dismissed. There had not, however, been any adjudication of forfeiture under Act 25 of 1857, nor had any proceeding ever been taken under that Act, with reference to the estate itself.

It was contended on the part of the Defendants that, in consequence of the proceedings with reference to the maintenance annuity, the legal status of the Plaintiff was altered, and that he ceased to be a member of the joint family.

Their Lordships are clearly of opinion that there is no foundation for contending that the stoppage of the annuity, and the proceedings in respect thereof, amounted to a confiscation of the estate, or in any manner altered the status of the Plaintiff as a member of the joint family.

The Mitácshará is the Hindu law of inheritance in the district in which the estate is situate, and it is clear that according to that law, in the absence of any special custom to the contrary, the Plaintiff, as the uncle of the deceased Raja, and the surviving member of the joint family, was entitled to succeed to the ancestral estate upon the death of his

nephew. According to the Mitácshará a widow is not entitled to succeed to her husband's estate in preference to collateral male heirs, unless he is separate, or, as in the Shivagunga case, his estate was separate or self-acquired (*see* Mitácshará, cap. 2, sect. 1, paras. 8—19, and 30 and 31, note).

The cases were all reviewed by the late Chief Justice of Bengal, Sir Richard Couch, in the case of Maharani Hironath Koer *v.* Baboo Ram Narayan Singh, 9 Bengal Reports, 274, in which, in a careful and well considered judgement, it was held that a female cannot inherit an impartible ancestral estate belonging to a joint Hindu family, governed by the Mitácshará, when there are any male members of the family who are qualified to succeed as heirs; that this is a rule of law not dependent on custom, and that a custom modifying the law must be a custom to admit females, not a custom to exclude them. That case was upheld by the Judicial Committee in the case of Chintamun Singh *v.* Mussumut Nowlukho Kowari, 2 Law Reports, Indian Appeals, 263, 270, and their Lordships are of opinion that it was correctly decided and is a binding authority.

In the last-mentioned case following the decision in 13 Moore's Indian Appeals, 333 and 339, it was held that an ancestral estate, even though impartible, is not the separate or self-acquired estate of the single member upon whom it devolves, so long as the family continues joint.

In the argument before their Lordships some importance was attached by the learned Counsel for the Respondents to the manner in which the Plaintiff's case was stated in the plaint, but their Lordships are of opinion that in dealing with the case they must look not to the mere wording of

the plaint, but to the issue which was settled for trial, and to the manner in which the case was treated by the Lower Courts.

The following is the issue upon which the parties went to trial, viz., "Whether, according "to the custom relied upon by the Plaintiff, and "under the Hindu law, the Plaintiff has a right "to succeed to the guddi, and whether the "Plaintiff's character can in any way affect the "suit or not." The plaint stated that "the "ancient usage of the Raj of Bhara, in common "with other families of the Rajas," was "that "upon the decease of a Raja his nearest and "eldest male heir succeeds him to the exclusion "of the other male heirs, and the total exclusion "of women," that is to say, that females were excluded by a male heir.

The Zillah Judge in dealing with the case says (p. 148):—

"Plaintiff alleges that the property in question is ancestral property belonging to a joint and undivided Hindu family governed by the law of the Mitákshará, of which he and the deceased Raja Mahander Singh were members; that by virtue of a custom prevailing in the family, the estate of the Raj of Bhara was impartible; that it was enjoyed by a single member of the family at a time, and devolved, on the death of the holder, on the eldest male heir; that Mahander Singh, the last holder, having died without male issue, he, the Plaintiff, being the eldest collateral male heir, was entitled to succeed to the estate, to the exclusion of the widow of Mahander Singh. The Defendant pleads,

"(1.) That the custom alleged by Plaintiff, whereby females are excluded from the succession, has no existence.

"(2.) That the Plaintiff and his nephew, the late Raja Mahander Singh, were *separate in estate*, and were not members of a joint undivided Hindu family, and that, therefore, according to the ordinary rules of Hindu law, the Rani, Defendant, was entitled to succeed to the property of her deceased childless husband in preference to the Plaintiff."

He further says (p. 149):—

"It is admitted on both sides that the estate is impartible, and is enjoyed by a single holder at a time. It is admitted that the mode of succession is governed by special custom. The dispute is as to what that special custom is."

Ultimately he arrived at the conclusion, first, that the Defendant had clearly made out that the Plaintiff's contention that widows never succeed to a Raj is untrue; and secondly, that there was good evidence that in the family to which the possessors of the estate belonged, the custom was that the widow is not excluded by collaterals, and he therefore dismissed the suit with costs.

Upon appeal, the High Court affirmed the decision. The Chief Justice held that there was sufficient evidence of a custom, by which the widow, failing direct descendants, was not excluded by collaterals. Mr. Justice Pearson agreed with the District Judge, and held, first, that the Plaintiff's contention that widows never succeed to a Raj in that part of the country is untrue; and secondly, that there was good evidence that, in the family to which the possessors of the estate in question belonged, the custom was that the widow is not excluded by collaterals.

With reference to the findings of the Zillah Judge, and of Mr. Justice Pearson, that the contention of the Plaintiff that widows never succeed to a Raj in that part of the country is untrue, their Lordships fail to find that the Plaintiff ever made an allegation to that effect. His allegation was that, according to the ancient usage of the Raj of Bhara, male heirs succeeded to the exclusion of females. He, no doubt, in his plaint, used the words "according to the custom pre-"valent in respect of other estates," and also the words "in common with the other families of "the Rajas." The main allegation had reference to the usage of the Raj of Bhara, and was "that, after the decease of a Raja, his "nearest and eldest male heir succeeds him, to "the exclusion of other male heirs and the total "exclusion of women," and that allegation was

true; for the Raj of Bhara, from its earliest creation, had always descended to a male heir, and no female ever succeeded to it. The allegation made no distinction between lineal and collateral heirs, or between widows and other females.

It is not certain to what other estates or to what other Rajas the Plaintiff referred when he added the words, "in common with the "other families of the Rajas;" whether he meant the Rajas of the other estates which were formerly united with Bhara or not is not very important, he evidently referred to other estates and Rajas similarly circumstanced, or in some way connected with the Raj of Bhara, and not to every raj in that part of the country, whether the Raja was separate or a member of a joint family, or whether the Raj was ancestral or self-acquired. But, however this may be, it is clear that the issue did not impose upon the Plaintiff the necessity of proving that widows never, under any circumstances, succeeded to a Raj in that part of the country.

The first part of the finding, therefore, is irrelevant, and the case must be decided with reference to the question whether the Mitácshará law of succession had been so far modified by custom, with respect to the ancestral Raj of Bhara, as that, failing lineal descendants of a deceased Raja, his widow was entitled to succeed to the Raj in preference to the Plaintiff, who was a collateral male heir, and the eldest male member of the joint family. No such case ever occurred in respect of the Raj of Bhara, and their Lordships are of opinion that there is no evidence to prove such a custom.

It was contended that a case had occurred in respect of the Raj of Ruh Ruh, in which a widow had succeeded in preference to a male collateral.

The District Judge stated that the estate of Bhara was—

"One of five, all of which came from a common stock and had a common ancestor, the Raja Singandeo, who lived 650 years ago."

He proceeded,—

"The five were,—

"(1.) Bhara (the property in suit).

"(2.) Jaggamanpur.

"(3.) Ruh Ruh.

"(4.) Kakhouto.

"(5.) Nakkatpatti.

"The last family, Nakkatpatti, is extinct, and the second family, Jaggamanpur, has split up into the families of Tarsor, Sorawan, Bhaddek, Hardoe.

"It appears that no instance, as far as is known, has occurred in Raj Bhara, where the Raja has died sonless, until the present time.

"But instances of this have occurred in other branches of the common family which descended from Raja Singandeo, and are adduced by Defendant in support of her allegation that the kul-rit, or family custom, and raj-rit, or custom of the Raj, is as she alleges it to be.

"Thus, in the allied family termed Raj Ruh Ruh, it is shown that Raja Kussul Singh died, and was succeeded by his widows, Rani Chandelin and Rani Bhadaurni, although his younger brother, Sambar Singh, and the sons of Sambar Singh, were alive."

A similar statement is made by Mr. Justice Pearson as to the origin of the five estates. He says:—"The estate in question is one of five "which originally constituted a single property, "and belonged to Raja Singandeo, the common "ancestor of the families which have since held "them separately, a partition of them having "been made between his five sons."

The fact of the formation of the five separate estates by the partition of one entire estate is not disputed, and it may be assumed, although not necessary to be decided, that there was such a connection between Ruh Ruh and Bhara that evidence of a custom of descent in one of them would be admissible in support of a similar custom in the others. There is, however, no evidence except in one single instance in

Ruh Ruh that a female ever held any one of the other four principal estates.

With respect to that exceptional case in Ruh Ruh, the District Judge held it to have been shown that when Raja Kussul Singh died he was succeeded by his widows Rani Chandelin and Rani Bhadaurni although his younger brother Sambar Singh and the sons of Sambar Sing were living. (Record 151, *l.* 40.)

Mr. Justice Pearson also treated the case as an instance of widows succeeding in preference to a niece's son, meaning probably the son of a nephew. (Record 162, *l.* 11.)

It appears, however, to their Lordships that it was not a case of succession by inheritance at all.

Rajah Raghanath Singh, a member of the Ruh Ruh family, and a great great grandson of the deceased Raja Kussul Singh, was examined as a witness, and stated that in his family women never sat on the guddi; that upon the death of his great grandfather Kussul Singh, Hammanchal Singh, his nephew's son, sat on the guddi, and after him Khushul Singh, who appears from the pedigree to have been the son of a nephew of the deceased Raja.

Mr. Justice Pearson, in dealing with the evidence of this witness, says:—

"The Plaintiff's witness, Raja Raghunath Singh, the representative seemingly of the Ruhru branch, avers generally that females are altogether excluded from suceeeding to their husbands' estates by the custom of his Raj. The only instance mentioned by him in support of his assertion is that his great grandfather Kursal Singh was succeeded by his niece's son Himmanchal."

He should rather have said the son of his great nephew Ram Khaman Singh.

He proceeds:—

"His statement on this point is opposed to the evidence of Rao Jodha Singh of Kakhouto, of Kuar Roshan Singh, and of Kalandar Singh, witnesses on the other side, which is corroborated by two exhibits on the record, one being a copy of a proceeding of the Provincial Court at Bareilly, dated 12th

April 1813, and the other being a copy of a proceeding of the Civil Court of Mainpuri, dated 12th December 1849. From the evidence indicated it appears that Himmanchal's claim to succeed to his grandfather was based on the allegation of his having been adopted by one or both of Raja Kursal Singh's widows and was disallowed. The instance cited by Raja Rughunath Singh, so far from proving the custom alleged by him, is really an instance of widows succeeding in preference to a niece's son."

It appears from the record of the Provincial Court, referred to by the learned Judge, that Rani Bhadaurin, the widow of the deceased Raja Kusal, who is supposed to have succeeded on his death, and who was one of the Defendants in an action at the suit of Himmanchal, was the junior widow, and that she in her answer admitted that, after the demise of Kusal Singh (he died 1774), his estate fell under the management of the agents (karpadazan) therein named, and that a nankar allowance was assigned by the Government (which must have been the Native Government) to her and Rani Chunder Bans, the elder widow of the deceased Rajah; that in the year 1195 = A.D. 1787, she caused the settlement of the estate to be made with Himmanchal, who kept the accounts, and became the proprietor; that in that year losses amounting to Rs. 7,300 occurred, which she paid to the Government, that her name, with that of Sudun Singh, having been entered in the decennial register, she in 1210 Fusli = about A.D. 1802 (which was shortly after the cession of Etawah to the East India Company) caused the settlement to be made with Himmanchal Singh, under the suretyship of Sudun Singh. She contended, in her answer, that under that settlement Himmanchal Singh was one of her karindas, and that he having become insubordinate, she subsequently procured the second and third revenue settlements to be made with herself. Himmanchal, on the other hand, contended that he had been adopted by the elder widow as the son of the deceased Raja,

that the Defendant, Bhadaurin, the junior widow, had obtained the second and third revenue settlements by fraud, in his absence, and he sued to recover possession. The litigation commenced in 1810, and it seems that the only issue raised between the parties was as to the validity of the alleged adoption. That issue was decided against Himmanchal by the Provincial Court upon the ground that Rani Chunder Bans had no authority from her husband to adopt, and on the 12th April 1813 it was ordered and decreed by that Court that Himmanchal's suit should be dismissed. The decision of the Provincial Court was, on appeal to the Sudder Court, affirmed on the 11th of August 1817, and it was decreed that the property in dispute should, in right of succession, descend to Koer Ghunshiam Singh as the proprietor thereof. Subsequently, on the 10th of August 1818, it was ordered that possession be given to Kuer Ghunshiam Singh, if he should enter into sufficient security for subscribing to the appeal to Her Majesty in Council. This he appears to have done, and the appeal was heard, and in 1834 the decree of the Sudder Court was affirmed by Her Majesty in Council, so far as it affirmed the decree of the Provincial Court of the 13th April 1813, and reversed so far as it decreed that the landed property should, in right of succession, descend to Ghunshiam Singh as proprietor thereof, and had the effect of declaring him entitled to be put into possession.

It is clear from the above statement that the widows did not succeed to the Raj by inheritance, or to an impartible estate according to the rule of primogeniture, even if such a rule could be applicable to the case of two widows; on the contrary, it appears that upon the death of Kusal, the estate was put under management of Karpardazan by the Native Government, and an allowance assigned not to the elder widow, but to the two widows

jointly, probably as the guardians of Himmanchal, and that subsequently the revenue settlement was made with Himanchal, and afterwards with the younger widow, Bhadhaurin.

It is not clearly shown who obtained possession of the estate after the decree of Her Majesty in Council. Raja Raganath Sing stated that Kushal Singh sat on the guddi after Himanchal. This, however, is not very material, as it is clear that both the widows died before 1834, and that no other female ever obtained possession of the estate. Raja Raghanath must have been under a mistake when he stated that his grandfather's widow was living at the time when he gave his evidence.

It is rather remarkable that the District Judge, having found that the two widows succeeded upon the death of their husband (a finding in which Mr. Justice Pearson concurred), should have considered that a descent to the two widows jointly was evidence of a custom as to descent in Bhara, which he admitted to be an impartible Raj held by only one member of the family at a time, and that one the eldest.

It was stated by Koer Roshun Singh (p. 41) that the elder widow succeeded to Ruh Ruh on the death of her husband, and the younger widow on the death of the elder, but that is quite contrary to the evidence, and to the findings of the District Judge and of Mr. Justice Pearson.

In the case of Ramalakshim Ammal *v.* Sivanantha, 14, Moore's Ind. Appeal, 370, it was said :—

"Their Lordships are fully sensible of the importance and justice of giving effect to long established usage in particular districts and families in India, but it is of the essence of special usages, modifying the ordinary law of succession, that they should be ancient and invariable; and it is further necessary that they should be established to be so by clear and unambiguous evidence. It is only by means of such evidence that the Courts can be assured of their existence, and that they

possess the conditions of antiquity and certainty on which alone their legal title to recognition depends."

Their Lordships entirely concur in that doctrine, and they are clearly of opinion that there is no sufficient evidence that, even in the Raj of Ruh Ruh, a custom existed by which a widow succeeded by inheritance to the estate of her husband in preference to collateral heirs on his dying without issue.

The contention of the Defendants was, that the Plaintiff and the late Raja were separate, not that there was a custom for widows to inherit in preference to collaterals in the case of an undivided ancestral estate in a joint family; yet inferences were drawn in favour of such a custom by the District Judge and Mr. Justice Pearson, from descents to widows in the case of certain minor estates carved out of some of the five principal estates, such, for example, as Tarsore, Sarawan, Sahbad, and Mulhousie. These estates it was said (*see* Record, p. 121), descended to widows, though collaterals must have been living. Three of these estates were granted for maintenance (Record, 53, 54, 69). Neither Tarsore nor Sarawan was a Raj (Record 55). Mulhousie was not impartible. No clear or satisfactory evidence was given that the estates were not separate estates of the last holders; whereas, if they were separate or self-acquired (which estates granted for maintenance probably would be), the widows would succeed, in due course of law, as in the Shevagunga case and the case of Pariasami *v.* Pariasami, 5, Law Reports, Indian Appeals, 61. In the only instance, as regards Sarawan, in which a widow succeeded to a minor estate created out of the Raj estate, her husband left a son, and upon a mutation the name of the son as well as that of the widow was entered. The case shows how easily witnesses may create a false impression when speaking

generally of the succession of widows without showing, and probably without knowing, the circumstances under which such successions took place. Other cases, such as one in Mirzapore and another in Cawnpore, were relied on, in respect of which no connection between them and Bhara was shown to exist. Such cases, even if they could have any weight, were not admissible as evidence to prove a family custom in Bhara. (The Marquis of Anglesey *v.* Lord Hatherton, 10 Mees and Welsby, 218.)

Upon the whole their Lordships are of opinion that the Plaintiff made out his case satisfactorily, viz., that the Raj of Bhara was an ancient Raj, and an ancestral estate, and that by virtue of an ancient custom in the family it was impartible, and tobe h eld and enjoyed by only a single member at a time. His title then depended upon his legal right under the Mitácshará, and according to that law, the estate being ancestral, and the family undivided, he, as the nearest male heir of the deceased Rajah, and the surviving member of the undivided family, was entitled to succeed to the Raj in preference to the widow. The Defendants did not prove their allegation that the Plaintiff and the deceased Raja were separate, as alleged by them, and it was for them to prove, by clear and unambiguous evidence, that the law of succession, according to the Mitácshará, was modified by an ancient uniform custom in favour of a widow. This, in their Lordships' opinion, they failed to do. The result is that their Lordships will humbly advise Her Majesty to reverse the decrees of both the Lower Courts, and to order and decree that the Plantiff do recover possession of the estate called Raj Bhara, together with his costs in both the Lower Courts.

The Respondents must pay the costs of this appeal.