Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Dewan Ran Bijai Bahadur Singh v. *Rae Jagatpal Singh, and Rae Jagatpal Singh* v. *Dewan Ran Bijai Bahadur Singh* [*appeal and cross-appeal consolidated*], *and Rae Bisheshar Bakhsh Singh* v. *Dewan Ran Bijai Bahadur Singh and Rae Jagatpal Singh, from the Court of the Judicial Commissioner of Oudh; delivered April* 30*th*, 1890.

Present:

LORD WATSON.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

[*Delivered by Sir Barnes Peacock.*]

THESE appeals relate principally to a Talook called Dasrathpur, which was created by a sunnud by the Governor-General after Lord Canning's proclamation, and as to which it was stated that it was a condition of the grant that it should descend to the nearest male heir under the rule of primogeniture. The estate was entered in the lists No. 1 and No. 2 established by section 8 of Act 1 of 1869; and consequently, according to a former decision of this Board, it descended according to the rules pointed out in section 22 of that Act. The last male owner of the estate was Rudra Narain Singh, who died in the year 1869; and according to clause 11 of section 22 it descended to the heir according to Hindu law. He died a minor without having been married, and his mother, Kharaj Kunwar, became his heir, and took a mother's interest in the estate, which is not

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an estate for life, but a woman's estate by inheritance. A mutation of names was made in which her name was entered together with that of Saghu Nath Kunwar, who was the stepmother of the last owner of the Talook, and who had no interest as an heiress. Kharaj Kunwar, the mother, died in the year 1879, but the stepmother, Saghu Nath, remained in possession up to the time of her death on the 21st of November 1881. Upon her death Ran Bijai Singh took possession of the estate.

A question might arise upon the construction of clause 11 of section 22 whether the estate descended as an impartible estate. Their Lordships are of opinion, looking to the provisions of Act 1 of 1869, list 2, section 8 and section 22, that it was the intention of the Legislature that the estate should descend as an impartible estate.

The action out of which these appeals arise was brought by Jagmohan, who was the eldest son, and Bisheshar, who was the third son of Pirthipal against Ran Bijai for the recovery of the estate of which he had held possession. They were the nearest relatives entitled to succeed, but for Drigbijai Singh, who was the second son of Pirthipal. Drigbijai was not made a party to the suit, though he was living at the time when it was commenced. He never claimed the estate. According to the construction which their Lordships put, and which seems to have been put in the Courts below, upon section 22, the estate descended as an impartible estate, and consequently Jagmohan and Bisheshar could not take jointly. Regarding the question which of those two should take, it was rightly decided that Jagmohan was the proper heir if he was not excluded from inheritance in consequence of insanity. The question of Jagmohan's sanity or insanity appears, so far as the Talook is concerned, to be the main question now before their Lordships.

In the plaint he is described as insane, and he sued through his wife as his guardian. But the plaint, nevertheless, claimed that the estate had descended to him, and although he might be incompetent to commence the suit, or to proceed therein except by a guardian, it is no evidence nor does it lead to any inference that he was not the heir-at-law, and that he was excluded from inheritance on the ground of insanity; the plaint, in which Bisheshar joined, goes on to state that "the Plaintiffs are Sapindas, being the "sixth in descent from Hirde Sah, and under "the ordinary rules of the Hindu law the "Plaintiffs are the nearest male heirs and "collaterals." Jagmohan could not have been an heir if he was excluded from inheritance. The plaint shows that Jagmohan was considered competent to inherit, and that he was not excluded by reason of insanity at the time when the succession opened, although he might have been insane at the time of the filing of the plaint.

Upon the question of his sanity many witnesses were called, and especially two medical men, Mr. Bond and Dr. McReddie. Their evidence varied, and the judge of the first court found that Jagmohan was not so insane as to exclude him from the right of inheritance. At page 208 of the Record the learned judge states:—"I am of opinion that, "from the evidence on record, the fact of Rae "Jagmohan Singh's being insane so as to be "declared disqualified to inherit the property "in suit is not proved." Again he says, "In "this case the important evidence is that of "two respectable surgeons, one of whom has "been produced by Defendant, and the other by "Plaintiff. The evidence of Dr. McReddie is "for Defendant, and that of Dr. Bond for Plain-"tiff. Both these gentlemen are civil surgeons, "but withal their evidence is so conflicting that

" the conclusion to be arrived at therefrom can " in no way be identical. Dr. McReddie has " distinctly deposed that Rae Jagmohan Singh " is insane, while Dr. Bond's evidence clearly " indicates that Rae Jagmohan Singh is by no " means insane, he is weak and idiotic," (he gives a native word for idiotic, which probably is not accurately translated), " and does not speak, but " his body and mind are all right. In order to " decide the case one way or the other, it is " necessary to give preference to the evidence of " one party over that of the other. I have read " the evidence of both these gentlemen twice " over, and after a careful consideration I am of " opinion that preference should be given to the " evidence of Dr. Bond."

Their Lordships have carefully considered the evidence of these gentlemen, and they concur in the view expressed by the judge of first instance, that the preference ought to be given to that of Dr. Bond, and that Jagmohan was not so insane as to be incapable of inheriting.

Mr. Bond, at page 190, states that he examined Jagmohan. He says, " I have seen Rae Jagmohan " Singh three or four times within the last 18 or " 19 months. I do not remember the period of " intervals between each visit, but my visits were " not paid successively. There are no symptoms " of paralysis now. It is possible he might have " been struck with paralysis on a previous " occasion, because his tongue is clogged. It " happens in paralysis and from other causes. " I did not examine him to ascertain why he lost " his power of speech." Therefore Dr. Bond rather attributes his incapacity to speak to an attack which he may have had of paralysis than to insanity. On the other hand, Dr. McReddie, at page 186, speaks of his not replying to questions as one of the symptoms which induced him to believe that the gentleman was insane. He

says, "I went to "examine Rae Jagmohan Singh "to Birapur a second time, as requested by the "Court, on 6th June 1882, but could not see "him, as he was not at Birapur then. When I "saw Rae Jagmohan Singh on 29th April 1882 "he was quite insane; from his appearance he "had been insane probably for a long time. His "age being between 60 and 70, it was very "probable that he would never recover from his "insanity. I could not say exactly how many "years he had been insane, but probably for "many years. I could not say with any "certainty if he ever had any lucid intervals. "He could make no difference between right "and wrong, and could not manage his affairs." Their Lordships, in the course of the argument, called attention to the view of Dr. McReddie as to his not being able to distinguish between right and wrong. It appears that he gave no answers to the questions. It did not follow that he was not capable of distinguishing between right and wrong from his being incapable of answering the questions. He says, on cross-examination, "I judged his insanity from the "appearance of his face and from his not "replying to or understanding questions put to "him, and from my experience of insane people." Then, again, to Defendant's Vakil he says, "When I saw Rae Jagmohan his insanity seemed "to be congenital, but with a healthy woman a "sane child might be born." This no doubt had reference to the fact of Jagmohan's having a son then living who was sane. Looking to the evidence of those two gentlemen, their Lordships agree with the first judge that the evidence of Dr. Bond is more reliable than that of Dr. McReddie.

Many other witnesses were called, and conflicting evidence was given on the subject of this gentleman's state of mind. Some say that he

was insane; that he could not speak; that he pointed; and that if he wanted the revenue paid, he made a pointing with his hand in some way; and so he did with reference to his servants; but it did not follow from that that he was insane; he was exercising his mind upon the subject although he did not express his thought by words, he expressed them by signs. If he was incapable of speaking, this expression of his ideas by signs did not necessarily show that he was insane, if the orders which he gave by signs as to the payment of revenue, or as to other matters were not those of an insane man.

A very important matter in considering his state of mind is the manner in which he was treated by his own family. None of his family, prior to the application for a certificate of insanity, long after the right to the succession had attached, ever treated him as insane. The priests allowed him to perform all his religious duties. He performed the oblations to his father, which according to the religion of the Hindoos would have no beneficial effect, and ought not to have been performed by him, if he had been in a state of insanity One of the principal reasons why according to the Hindu law insanity excludes from the right of inheritance, is, that an insane person is incapable of performing religious duties, and because he is incapable of providing for the marriage of daughters, and other matters of that sort. But in this case this gentleman performed them all. His family never objected; the priests never objected. He is stated to have been present at the marriage of his daughter, although there is conflicting evidence upon that point. He himself was allowed to marry; he was married three times to ladies whose fathers would in all probability have refused to allow their daughters to marry an insane man, and by one of them he had a son who was not insane.

All these circumstances, with reference to the mode in which he was treated by his family, appear to their Lordships to have considerable weight and considerable importance in deciding the question of his sanity.

The first judge having found that he was not insane, the Judicial Commissioner upon considering the evidence came to a contrary conclusion. One point to which the Judicial Commissioner attached very great importance was the will of his father, Pirthipal, in which the father stated that he was insane. The mere statement by the father in his will that his son was insane was no evidence upon which the Court could properly act in determining the question as to the son's exclusion from the right of inheritance upon the ground of insanity.

Looking to the evidence on both sides, their Lordships arrive at the conclusion that there were no sufficient grounds for the Judicial Commissioner reversing the finding of the first Court. Drigbijai, who was the next heir, has never claimed the estate. Why we are not told. If he believed that Jagmohan was insane, and excluded from inheritance, the estate would have belonged to him. Bisheshar the co-Plaintiff and younger brother of Jagmohan never claimed the estate upon the ground that Jagmohan was excluded from inheritance, for he joined him in the suit, and stated that he was one of the heirs, He made a mistake at the time in considering that the estate went to two sons, whereas it was impartible; but he treated Jagmohan as a man who was competent to succeed by way of inheritance, and not as one who was excluded from inheritance by reason of the state of his mind. Ran Bijai the Defendant sets up the insanity of Jagmohan, not as showing that he himself had a title, in consequence of the insanity, but as a technical objection. His case is

" Jagmohan is insane, and not competent to " inherit, and therefore I have a right to remain " in possession until the right person sues me "— that is, until the sons of Drigbijai who was the heir if Jagmohan is excluded come forward and assert their right. But they do not come forward, nor do they claim the estate. It is therefore to be inferred that they do not consider Jagmohan to be excluded from the right to inherit.

That appears to their Lordships to dispose of the case so far as the Talook is concerned. But another question was raised with regard to some villages. It appears that some villages were purchased by Saghu Nath before her death and whilst she was in possession of the Talook, and that she had left those villages by her will to Ran Bijai, who took possession of them. Both Courts have concurred in finding that those villages were not purchased by Saghu Nath out of the profits of the estate, but that they were purchased by Ran Bijai in her name, and that he provided themoney for their purchase. But, even if this had not been so, Saghu Nath, was merely a trespasser upon the estate, and if she trespassed upon the estate and received the mesne profits it is not clear that a Court of Equity would earmark those mesne profits, and say that because the mesne profits must have been expended in the purchase of the villages they necessarily passed with the estate. It is not the case of a widow inheriting and purchasing property out of the assets of the estate which she takes as widow, for those have been considered by law as an augmentation of the estate; but this is the case of a stepmother who was not entitled to succeed to the estate, and who, if she disposed of any portion of the rents and profits, was disposing of them as profits which she had received as a trespasser.

Under these circumstances their Lordships think that Ran Bijai is entitled to the villages.

In the course of the proceedings Jagmohan died, and Jagatpal, as his eldest and, their Lordships understand, his only son, was admitted to represent him in the Appeal. But the Judicial Commissioner has awarded the estate to him as if he was the Plaintiff in the suit, whereas he ought to have awarded it to him as the heir and representative of his father, Jagmohan. In that respect their Lordships think that the Decree of the Judicial Commissioner ought to be modified.

As regards the moveable property mentioned in the Judicial Commissioner's decree, their Lordships at the commencement of the argument asked what property was the subject of Appeal, and it was stated by the learned counsel that the moveable property was not a subject matter of the Appeal. The Judicial Commissioner has awarded certain moveable property to the substituted Appellant, but it is not a subject of the appeal.

Their Lordships upon the whole will therefore humbly advise Her Majesty that the Decree of the Judicial Commissioner be varied by describing Jagatpal as the "substituted Appellant, as representative of his father, Jagmohan," instead of describing him as "the minor Plaintiff," and, subject to such variation, that the Decree be affirmed.

The Appellant, Dewan Ran Bijai, must pay the costs of his Appeal.

In the Appeal of Bisheshar their Lordships will humbly advise Her Majesty that that Appeal be dismissed. The Appellant must pay the costs of both the Respondents.