Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mahant Gajraj Puri v. Achaibar Puri, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered 16th December 1893.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD SHAND.
SIR RICHARD COUCH.

[*Delivered by Lord Shand.*]

This suit was instituted in the court of the Subordinate Judge of Gorakhpur in July 1886. The original Plaintiffs, now represented by the Appellant, claimed right to three villages in the Gorakhpur district, called Belwa, Anarhua, and Bhartarsota which had been in the possession of one Zalim Puri for some years prior to his death in 1884, and which after that event were registered in April 1885 by the Revenue authorities in the name of his son, the Respondent Achaibar Puri, and have since been possessed by him or on his behalf by his mother as his guardian. The Subordinate Judge gave effect to the Plaintiffs' claim, but on appeal his judgment was reversed by the High Court of Allahabad.

The question is one of succession. The Plaintiffs were not related to Zalim Puri, but have

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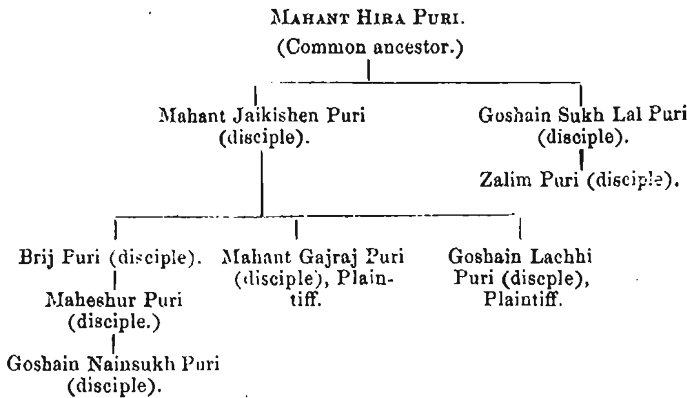
rested their claim to the villages in question on the allegation that he was a Fakir of the *Nihang* sect, and that his property consequently passed, not according to the ordinary rules of succession to his natural heirs, but according to the rules of religious succession to the Plaintiffs claiming to be his fellow disciples.

The following is the genealogical tree, which was embodied in the plaint, for the purpose of showing the alleged relationship of the parties as members of the same spiritual brotherhood :—



The Plaintiffs alleged that Sukh Lal Puri, *guru* (preceptor) of Zalim Puri, and *Mahant* Jaikishen Puri, *guru* of the Plaintiffs, were spiritual brothers, that is disciples of the same *guru;* that this *gaddi* (seat of a *Mahant*) belonged to the *Nihang* order, being ascetics who live in a state of celibacy; and that the rule of succession is that a *guru* is succeeded by his disciple, and in default of a disciple by his spiritual brother, and in his default by his spiritual cousin; and the Plaintiffs claimed right to succeed to the property of Zalim Puri as his spiritual cousins, he having died without leaving any immediate disciple.

In regard to the property in dispute the Plaintiffs alleged that it was purchased by Jaikishen Puri with seven other villages in the name of the Plaintiffs and Zalim Puri and Maheshur Puri with his own funds; that he

himself continued to be the owner during his lifetime, and that on his death the Plaintiffs and Maheshur Puri succeeded to the possession of it; that on the death of Maheshur Puri his disciple Nainsukh Puri succeeded to possession jointly with the Plaintiffs, and as he had no disciple, the Plaintiffs on his death became the owners having right to possession of his estate. The plaint further stated that on the death of Zalim Puri competing petitions for the mutation of names in regard to the three villages in dispute had been presented by the Plaintiffs and by the Defendant under the guardianship of his mother, the latter of these petitions having been given effect to by the revenue authorities; and the Plaintiffs averred that Zalim Puri had not in fact been married, and that the Defendant is not the son, nor his mother Mussammat Mona the wife of Zalim Puri. In regard to the right and possession of Zalim Puri of the villages in dispute during his lifetime the Plaintiffs stated that after the death of Jaikishen Puri they had agreed in the settlement by compromise of an application by Zalim Puri for mutation of names in respect of all the villages, to Zalim Puri's possession of the three villages in question "during his life-" time by way of management," and that Zalim Puri had acknowledged the Plaintiffs' ownership in respect of the other seven villages.

The defence consisted of a denial of the alleged religious connection between the Plaintiffs and Zalim Puri, and a denial that Zalim Puri was a member of the religious sect of *Nihangs;* and the Defendant averred that from the outset, when the ten villages were originally acquired in 1853, Zalim Puri in his own right became one of the joint owners, and did not merely succeed to a right on the death of Jaikishen Puri; that further in 1879 in the proceedings for mutation

of names his separate and independent right, not of possession only, but of independent property in the three villages in question had been recognised and settled and thereafter acted on; and that in these proceedings the Plaintiffs, in direct opposition to the view they now plead as the basis of their claim, had asserted and maintained that Zalim Puri was not a member of the sect of *Nihangs*, who do not marry, but that he was married and had a wife and children; and that the original purchase of the ten villages was a purchase such as is made by people of different castes, but did not mean that the purchasers belonged to one and the same family.

The Subordinate Judge expressly found that Zalim Puri was married to Achaibar's mother, and that the Plaintiffs in 1862 and again in 1879 had admitted that the disputed property belonged to Zalim Puri as owner; and the judgment of the High Court on appeal contains the following important findings:—"The result "of the evidence is that we find that the villages "in question were not purchased exclusively by "Jaikishen with his own money as alleged by "the plaintiffs; but, on the contrary, that Zalim "Puri did purchase a one-third share in each of "these villages with his money, and that he "enjoyed that share during his lifetime before "the date of the compromise, and subsequently "the villages in suit under the compromise. "We also find as a fact, and there is ample "evidence in support of it, that Zalim Puri "married Mussammat Mona and that the de-"fendant is his son." To which the learned Judges add with reference to the Plaintiffs' title to maintain the suit:—"It is not necessary to "consider in this case whether it was a valid "marriage unless and until the Plaintiffs have

"satisfied us that they have made out a *primâ* "*facie* title against the defendant"—an observation which is clearly well founded.

The Subordinate Judge held that it was proved that Zalim Puri was a *Nihang*, and that according to the principles of the Hindu law recognised in the case of ascetics of that order the succession to his estate devolved on the Plaintiffs as his spiritual cousins. On the question of fact he seems to have relied entirely on the oral evidence of the Plaintiffs, so far as can be gathered from the terms of his judgment.

The only question which it is necessary should be determined is whether it has been proved that Zalim Puri was a member of a religious body of *Nihangs*, in which the rules of succession in favour of disciples prevailed.

The Appellant's Counsel was constrained to admit that the evidence adduced entirely failed to establish the averments in the plaint in two important particulars which have been already noticed. The Plaintiffs not only failed to prove that the original acquisition of the whole villages was made by Jaikishen Puri as the head of a religious body or family, and that Zalim Puri had acquired by succession from him as a disciple of the family, but it has been on the contrary held to be proved that Zalim Puri's share in these villages was purchased with his own money. Again the Plaintiffs not only failed to prove that as the result of the compromise in 1879 Zalim Puri acquired a right of possession only in the three villages in dispute, but it has been conclusively proved that he obtained an independent and exclusive right which he possessed and exercised till the time of his death. The sulehnama by which the suit was compromised bears that "As a future "arrangement it has been settled that I, Zalim "Puri, shall be in possession of the entire

"mauzas Belwa, Bhartarsota and Asarhua, "together with the *sair* and other rights ap- "pertaining thereto, without the participation "and interference of any one else; and we, "Gajraj Puri and Lachhi Puri, shall remain in "possession of the entire mauzas Bhadroha, "Bajrabhari, Khera, Bewdwa, Botal and Kodai, "and of an eight-anna share in mauza Sumera, "together with the *sair* and rights appertaining "thereto. So neither party has, nor will have, "any connection or concern with the other;" and in the wajib-ul-arz of one of the mauzas, while held jointly by Gajraj Zalim and Nainsukh, and which was recorded by them in 1862, one of the conditions of the tenure was thus expressed:—

Para. 5. "Relating to the mode of alienation "of the property.—Every shareholder has a right "to transfer his own share. But at the time of "transfer it will be his duty to give notice and "offer to sell or mortgage it at a proper con- "sideration to his near sharer first, and in case "of his refusal, to his other sharer of the village. "If he does not agree or pay proper con- "sideration for the same, he will then have "power to transfer it to any one he likes. No "pre-emption plea will then be entertainable."

In these circumstances the Appellant's Counsel was able only to found upon two means of proving the averment that Zalim Puri was one of the sect of *Nihangs;* the first being two successive descents of shares of the mouzahs in question which are said to have followed in favour of disciples and members of the sect of *Nihangs* and not of natural heirs; and the second consisting of the parole testimony adduced. The Plaintiffs refer to the transfer statements taken from the Revenue books for the years 1290 and 1291 Fasli (1883-84) relating to these mauzas (pages 56 and following pages

of the Record) in which Gajraj and Lachhi were represented as disciples of Jaikishen, and Zalim was represented as a disciple of Sukh Lal, and from which it is inferred that Maheshur's share descended on his death to Nainsukh as his disciple, and that the share of Nainsukh on his death fell to Gajraj and Lachhi the Plaintiffs, also in their character as disciples. But assuming that the entries founded on do show that in these two instances the succession was as alleged, this circumstance alone falls a long way short of what would be required to prove that Zalim Puri belonged to the sect of *Nihangs*, or that as to his separate property the rule of succession by a disciple applied, controlling the ordinary law of succession. The entries seem to be inconsistent with the arrangement of the 31st May 1879, by which the entire mauzahs Belwa Bhartarsota and Anarhua were given to Zalim Puri. They were made, it may be assumed, on the requisition of Gajraj as lambardar of the villages. They are really in substance but one entry, for each of them is simply a repetition of the first, and so far is this carried that in the last of them in September 1884 Zalim Puri's name is entered for his share though he had died in June of that year.

In regard to the oral testimony there are no doubt a number of witnesses who say that Zalim Puri was a member of the spiritual body to which they depone the villages belonged. On the other hand there are many witnesses for the defence to the contrary effect. The Plaintiffs' witnesses however in many instances cannot be relied on, because though professing to have had very full means of knowledge of Zalim Puri's life and circumstances they give an untrue account of his connection with the joint property as a purchase made, so far as he was concerned, with his own means, and because

they declare that Zalim Puri was not married and had not a son. Their Lordships are unable to place reliance on such evidence as proof of the facts, the onus of establishing which lies on the Plaintiffs. On the other hand it is worthy of notice that the Plaintiff Gajraj did not himself appear as a witness, and that while all the Plaintiffs' witnesses say the *Nihangs* "do not "marry" Zalim Puri certainly openly married and became a householder many years before his death, and for these years led a domestic life with his wife and family. The regularity of his marriage was no doubt open to question with any one having a title to challenge it because of the difference of caste between the parties, but its importance and that of the family life he led are not thereby destroyed as facts bearing on the question of his having been a *Nihang*. Their Lordships are however disposed to agree with the learned Judges of the High Court that the position taken up by the Plaintiffs in the proceedings of 1879, looked at in the light of the whole evidence now before the Board, is decisive against the Appellant's present contention. In their petition of the 16th April of that year, presented as "shareholders and lambardars of "mauza Belwa," filed with reference to a petition by Zalim Puri to have their names expunged and his name entered in respect of a certain share of that village, they alleged:—

"5. The genealogical table is entirely wrong, "because the petitioners' (objectors') gaddi is "occupied by Nihangs, who do not marry. "When the petitioner has married and has got a "wife and children, and he is a householder, he "cannot belong to the family of the petitioners. "The genealogical table alleged by the petitioner "is wrong. People of different castes make "purchases in a mauza, but that does not mean "that they belong to one and the same family."

Their Lordships cannot better express the contrast between this statement and the position which the Plaintiffs now after the lapse of many years seek to assume in their present plaint, than by referring to the following passage from the judgment of the High Court, in which reference is also made to the Plaintiffs' pleading in a proceeding in March of the same year 1879 :—

"Now every single allegation contained in "para. 5 of the petition of 1879 is a direct "contradiction of the plaintiffs' case here. "They say here that Zalim Puri was a Nihang. "They said then that he was a married man. "They say here that he never was married, and "must have been without a child. In para. 5 "they said that he was a married man and had "issue. They say here that he was a Nihang, "which excludes the notion of his being a "*grihastha*. They said there that he was married "and was a householder, and thus could not "belong to the family to which they belonged. "They said in 1879 that he did not belong to "the order of religious mendicants, and they "account in their petition of 1879 for his being "recorded in these villages, not on the ground "that he was a disciple by descent from "Jaikishen Puri, but by the suggestion that "persons of other caste might be casually "associated in purchases in the same village. "On the 25th March, 1879, these persons who "now say that Zalim Puri was a member of their "religious family of *Nihangs* and a *Sanyasi*, and "who claim that he was by religious descent a "spiritual brother of theirs, denied that he was "the religious son of Jaikishen. They styled "themselves in the previous suit as zemindars. "What did they say about Zalim Puri in that "suit? They did not describe him as the son "of Jaikishen Puri. If their case here is true "he was as much a son of Jaikishen Puri in

"religion as they were through Sukhlal Puri. "This was the religious connection between "them if their case is true. But they then "described Zalim Puri as a person whose "parentage was unknown in 1879. These "persons now come and say that because Zalim "Puri was a disciple of Sukhlal Puri, who was "a disciple of Hira Puri from whom they are "descended in their religious pedigree, they are "entitled to succeed to the property left by "Zalim Puri. It is curious that in 1879, if "their present case is true, they should have "described Zalim Puri as a person whose "parentage was unknown. If their case was "true they would have described him as they "do now."

Their Lordships agree with the learned Judges of the High Court in holding that the Plaintiffs have failed to prove that Zalim Puri was a member of the sect of *Nihangs;* and they will therefore humbly advise Her Majesty that the judgment of the High Court ought to be affirmed and the appeal dismissed. The Appellant must pay the costs of the appeal.