

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Balbhaddar Singh v. Sheo Narain Singh, from the Court of the Judicial Commissioner of Oudh; delivered 22nd July 1899.*

Present at the Hearing :

LORD WATSON.

LORD HOBHOUSE.

SIR RICHARD COUCH.

SIR EDWARD FRY.

[*Delivered by Lord Hobhouse.*]

The property in dispute is the talook of Gaura, to which the Courts in Oudh have held the Respondent to be entitled. The last holder was a lady named Achal Kunwar, widow of Bhopal Singh who died in December 1858. She was recognised by the Government and her title was established by Sunnud granted in July 1862. The talook was entered in Lists I. and II. as devolving on a single heir, and not in List III. She died in November 1887. The Collector placed the Respondent in possession as being either heir or devisee; upon which the present suit was brought. It lies therefore upon the Plaintiff, now Appellant, to show that he has the better title.

He has attempted to do that in more than one way. He alleges that Achal Kunwar adopted his father Sheopal Singh; and from a document which will be examined presently it may be conjectured that she did at one time contemplate such an adoption; but no sufficient evidence was brought by the Plaintiff to show that it was effected, and both Courts have held that it was

not. He further claimed to be the heir-at-law of Achal Kunwar, tracing his title through her husband Bhopal by lineal primogeniture; but as the talook was entered in List II. and not in List III. the single heir is, in the absence of any family custom to the contrary, to be ascertained by the rules of the Hindoo Common Law; and the Appellant is more remote in blood than the Respondent. The only serious question raised at the Bar relates to the meaning of a document marked as Exhibit A 2 which the Appellant contends to have been a gift of the estate to his father Sheopal.

Before the issue of the Sunnud, enquiries such as other cases have made familiar to us, were made by executive officers to ascertain the views of the Thakurain concerning the succession to her estate. After some uncertainties and vacillations which the officers evidently attributed to intrigues in her household, but which are not now material to detail, the Thakurain's views were finally stated in a petition dated 20th April 1862, marked A 13. It runs as follows:—

“ Your Petitioner was much honoured by service on her of  
 “ your order, dated 26th March 1862, inquiring as to the  
 “ heir-apparent to the estate. Having been thus informed of  
 “ the order, your petitioner begs to submit that since the  
 “ petitioner is issueless, she appoints Sheopal Singh to be her  
 “ heir. She shall be the proprietor during her lifetime, and  
 “ shall (herself) manage the estate affairs, and after her  
 “ death, Sheopal Singh shall become the proprietor (*malik*)  
 “ of the estate. Therefore during her lifetime she declares  
 “ Sheopal Singh to be her heir, and this application having  
 “ been clearly worded is submitted by way of a deed of  
 “ inheritance in order that it may be a *sanad*, and be of use  
 “ when required.

“ (Sd.)      ACHAL KUNWAR,  
 “ Talukdar of Gaura.”

Exhibit A2 is a document dated 21st April 1862, and purporting to be a letter from the Thakurain to Kamta the father of Sheopal.

“ From Thakurain Achal Kunwar, to Sarish Sri Maharaj  
 “ Koer Kamta Parshad.

“ May you live long !

“ I (Thakurain Achal Kunwar) offer my blessings to you,  
 “ and pray for the welfare of both sides. I request you to

“ give Sheopal Singh (may he live long !) to me, please give  
 “ him to me, be obedient to me, and carry out my orders till  
 “ I live ; during my lifetime I will be the proprietor (Thakur).  
 “ I make Sheopal Singh my heir and proprietor of this estate,  
 “ land, debts, and wealth, after me. I invoke the Government,  
 “ brotherhood, all good men, and spiritual guide. These shall  
 “ punish me, if I act otherwise than in the manner described.  
 “ I make Sheopal Singh (may he live long !) proprietor and  
 “ landlord (Thakur) of this *Raj*, the Gaura (estate) after  
 “ me. The witnesses hereof are Binda Parshad, Kanungo;  
 “ 2nd witness, Majlis Rae, Kanungo; 3rd witness, Thakur  
 “ Bakhsh Singh of Sotha. Dated Baisakh Badi 7th, 1269  
 “ Fasli, 1919 Sambat.

“ (Sd.) THAKURAIN ACHAL KUNWAR.

“ The *sanad* executed by me is correct.

“ (Seal of Thakurain  
 “ Achal Kunwar.)”

It was put in by the Plaintiff and admitted in evidence by the District Judge. The Court of the Judicial Commissioner thought it not proved. Without discussing that point, the argument has proceeded here on the footing that the document is genuine.

What then is its effect? It would not suffice for the Plaintiff to show that it is a testamentary instrument, because Sheopal died in 1867 and it could not take effect in his favour. The Plaintiff therefore contends that it operated to transfer the estate, and that by it the Thakurain's absolute interest became an estate for life with remainder to Sheopal, or became burdened with a trust having the same effect.

This is not one of the cases in which a sunnud has been obtained in consequence of some promise by the grantee. For all that appears the Government were quite indifferent as between Sheopal and other members of the family. The Thakurain's petition (A 13) was not founded on any valuable consideration moving to her. In answer to an enquiry who was heir apparent to the estate, she says she appoints Sheopal to be her heir. Though she speaks of her petition as a sunnud and a deed of

inheritance, it is highly improbable that she had in her mind any idea so novel to her people as the idea of turning her inheritance into an estate for life with remainder to a collateral relative. Doubtless her idea was that she was simply pointing out who should take through her by inheritance; and if she had then died her nominee would have been quietly installed. These official inquiries as to successors had reference to the critical state of the country, and it was not their object to derogate from the hereditary transferable right which had been promised to the Talookdars, and which was expressed in the sunnud soon afterwards granted to this lady.

It seems to [their Lordships that, apart from the idea of adoption which never bore fruit, the letter A 2 is to the same effect with the declaration of the day before. In effect the Thakurain informs Kamta of her inclinations towards his son, a very natural thing for her to do, when after some inconsistent expressions of view and some family controversy, she had finally made known her intentions to the Government. But there was no contract with Kamta and no consideration moving from him. The Officiating Judicial Commissioner expresses himself thus (Rec. p. 259):—

“ When it is said, ‘I make Sheopal Singh the owner (or  
 “ ‘the owner and heir’) of this estate after my death,’ the  
 “ only reasonable interpretation to be put on the words is that  
 “ the writer was appointing Sheopal Singh to be heir in  
 “ succession to herself. To find in this plain language any  
 “ intention on the writer’s part to declare herself a mere  
 “ trustee for her lifetime of the estate on behalf of Sheopal  
 “ Singh, would be impossible without putting on the words  
 “ used an interpretation which would not only be unnatural  
 “ and forced but would certainly never have suggested itself  
 “ to Mussammat Achal Kunwar. There can be no doubt that  
 “ if it had been suggested to any one in Mussammat Achal  
 “ Kunwar’s position that such an interpretation could be put  
 “ on the document, she would have repudiated it without  
 “ hesitation. The necessity of dealing very cautiously with  
 “ documents executed by ladies in this country and the danger  
 “ of ascribing to their language any other meaning than that  
 “ which they themselves would attach to them is obvious

“ enough. Now, in this instance, we have undisputed evidence  
“ of Mussammat Achal Kunwar's wishes on this point only some  
“ 24 hours before this document is said to have been executed ;  
“ and that too in a document which she placed in the hands of  
“ public officials as a final declaration of her wishes with  
“ regard to Sheopal Singh.”

These remarks express also the view taken by the other Judges below, and as their Lordships concur in them they must hold that the Appeal is groundless and should be dismissed. They will humbly advise Her Majesty in accordance with this opinion, and the Appellant must pay the costs of this Appeal.

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