Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rajah Rameshar Bakhsh Singh and Another v. *Arjun Singh, from the Court of the Judicial Commissioner, Oudh; delivered 8th December* 1900.

Present at the Hearing:

LORD HOBHOUSE.
LORD DAVEY.
LORD ROBERTSON.
SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

Raja Diljit Singh a Taluqdar of Oudh who died in 1857 had four sons Jagmohan, Arjun, Shankar, and Sheo Narain. Jagmohan died in 1879 leaving a son Bisheshar Bux who died in December 1887 leaving a son Rameshur Bux. Shanker died in 1888 leaving two sons and Sheo Narain died on the 23rd July 1884 leaving a widow Jai Ratan Kuer and a daughter Mangal Kuer. The widow died on the 9th December 1886. At the time of the annexation of Oudh in 1856 Diljit Singh was the Taluqdar of Taluqa Bansinghpur in the District of Rai Bareli. After the death of Diljit, Arjun and Shankar made a claim against Jagmohan of half of the Taluqa to be settled with them the whole having been forfeited under Lord Canning's Proclamation. In the proceedings of the Financial Commissioner's Court at Lucknow on the 9th February 1869 with reference to the settlement of the forfeited estate it is stated by the Commissioner

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that these two brothers refused to accept anything but a complete share of the estate and had been several times on the point of creating disturbances, that he had had the parties before him several times, the Plaintiffs then appeared more reasonable and were willing to withdraw their claim if the Raja (Jagmohan) would make them some further allowance, that Jagmohan Singh was unwilling to alienate any of the property to the detriment of his own son and maintained that the Plaintiffs' share was settled as younger sons by their father, that the Talukdar Defendant (Jagmohan) after some discussion in which Maharaja Man Singh took part and advised him consented to give up lands paying Rs. 1,000 more in perpetuity to the two Plaintiffs and had signed an agreement to this effect. Thereupon Colonel Barrow the Financial Commissioner ordered the settlement to be recorded. This was done by the Assistant Settlement Officer who on the 22nd June 1869 decreed the proprietary right in the village Bankagarh to Arjun and his heirs. On the 28th June 1869 the same officer decreed the proprietary right in the village Davingarh to Shankar and *his heirs*.

The facts as regards Sheo Narain are these: On the 2nd May 1879 Jagmohan having died on the 15th February previous he executed a deed by which after stating that his father Diljit had during his lifetime given him the village of Nidhan Kuer Khera Pergana Kumhrawan District Rae Bareli valued at Rs. 2,000 for his maintenance that he lived jointly with the Raja and did not take possession of the village and on Diljit Singh's death, the village continued under the possession and enjoyment of Jagmohan and it was not possible for him to maintain himself from the profits thereof, that for this reason Bisheshar Bux had granted to him " out of his

"own pleasure" village Sikandarpur rental "Rs. 1,050 valued Rs. 13,500 and village Sam- "napur rental Rs. 420 valued at Rs. 4,400" as an exchange for the village Nidhan Kuer Khera under an oral agreement and made an application for *Dakhil kharij* and had them duly registered he relinquished all claim to that village and to any property left by the late Raja. Accordingly on the 2nd May 1879 Bisheshar petitioned the Assistant Commissioner of Lucknow that when his name was substituted in place of Jagmohan's the name of Sheo Narain might be substituted and entered in Records in place of his name in respect of the zemindari *Hakkiat* and Lambardari of the entire village Sikandarpur. On the same day he made a similar application for the village Samnapur. There is a difference in the words of these applications as stated in the Record in this Appeal. In the first it is said that Jagmohan had given the villages to Sheo Narain for his maintenance and at the end after the description of the village as in the District of Lucknow are the words "as "its proprietor in perpetuity." In the second these words are omitted after "Lucknow" but in the middle of the document after the words "Sheo Narain for his maintenance" are the words "in perpetuity." The difference is not material, the meaning is the same. On the death of Sheo Narain the Tahsildar having reported it and that his widow was the proprietress and was in possession, mutation of names as to both villages was made in her favour and she was in possession of them until her death on the 9th December 1886.

Bisheshar Bux having died the suit in this Appeal was brought by Arjun on the 10th October 1889 against his son Rameshar a minor and Rani Sukraj Kunwar his guardian the present Appellants for proprietary possession of

the two villages of which they were alleged to be in possession and being heard by the Additional Civil Judge of Lucknow on the 13th December 1893 it was dismissed. Arjun thereupon appealed to the Court of the Judicial Commissioner of Oudh which reversed the decree of the Lower Court and decreed to the Plaintiff possession of the villages.

The case of Arjun was that according to the custom prevailing in the family a daughter is excluded from inheritance and that he was the heir to Sheo Narain. The Defendants denied the alleged custom and asserted that Bisheshar granted to Sheo Narain a maintenance right only in the villages. The material issues of those laid down were whether daughters were excluded from inheritance by the family custom and whether the right of maintenance was heritable. It may here be noticed that Shankar as well as Arjun having survived Sheo Narain Arjun if right in his contention would be entitled to only a half share of the property. The First Court found that the custom to exclude daughters was proved and with reference to an argument for the Plaintiff that Nidhan Kuer Khera was held by Sheo Narain as absolute owner and it must therefore be presumed that he obtained similar rights in the two villages, held that there was nothing to prove that it was given to him by Diljit Singh absolutely and it was unlikely that two villages of large value were given to him absolutely in lieu of an insignificant village like Nidhan Kuer Khera. On the evidence in the petitions the Court held that there was nothing in them from which it could be gathered that it was the intention of Bisheshar Bux to create an estate of inheritance and referred to the case of *Abdul Majid* v. *Fatima Bibi* L.R. 12 I. A. 159 as reported, I. L. R. 8 Allahabad 39, and to three cases in the

Judicial Commissioner's Court similar to the present in which it had been held that heritable estates had not been created and dismissed the suit. On appeal to the Judicial Commissioner's Court that Court referred to the decision or award of the British Indian Association in a dispute between Arjun and Shankar and Jagmohan in which the former two claimed that the ancestral property was held in common and was divisible and each claimed one quarter of it. The opinion or award was against their claim. But the Court quotes from the award which is a lengthy document occupying ten pages of the printed Record two passages. One of them is "it is clear that Raja Diljit Singh "himself during his lifetime separated the "Plaintiffs, after giving them a suitable main- "tenance" and the other is "that it has been "proved by trustworthy witnesses that Raja "Diljit Singh by this action" namely the gift by him of a village to each of his three younger sons intended to avoid future disputes. It is then said by the Court "It is clear from the "award that the Talukdars who made it regarded "the grants to the Plaintiff and Shankar Bukhsh "Singh as absolute." Their Lordships cannot agree to this conclusion from the award. Apparently the question whether the grants were absolute was not the matter in dispute. The question referred was whether the ancestral property though styled a Raj was held in common and was divisible. That appears in the statement in the so-called award (Record p. 70) of the points in issue and the opinion (p. 78). There is no finding that the grants were absolute. The Court then says that the grants to Arjun and Shankar (which were made upon a compromise of the claim of ¼ share) being absolute it seems to follow that the grant to Narain was one of the same nature, that the circumstance that Nidhan Kuer Khera although

granted to Sheo Narain for maintenance was granted to him absolutely (which is erroneously taken as proved) goes to show that Sheo Narain whenhe stated in the *baz-dawa* that that village had been granted to him as maintenance was referring not to a grant for life but an absolute grant, that there was therefore a strong presumption when he stated in the same document that the disputed villages were granted to him in lieu of Nidhan Kuar Khera he referred to an absolute grant of those villages and that Bisheshar Bux when he stated in the application for mutation of names that he had granted those villages to Sheo Narain for maintenance was referring to an absolute grant of them, that this presumption is strengthened by "proprietor" and "for ever," and was not weakened by the fact that the disputed villages were of considerably greater value than Nidhan Kuar Kher which was accounted for by Sheo Narain relinquishing all claims on the Taluqa property movable and immovable and that there was no reason to suppose that Bisheshar Bux would grant to his uncle who had lived jointly with his father up to the latter's death, the least he could well do. The construction is thus made by the Court to depend upon a fact as to Nidhan Kuer Kheri, which was not proved and the supposition by the Court of what Bisheshar Bux would do. It does not seem to have been in the mind of the Court, that a statement of Sheo Narain in his own favour was not admissible evidence. But the Court had just before said "There seems to be "no doubt that where the purpose of the grant is "the '*Guzara*' or maintenance of the grantee "such purpose goes to show that the grant is "intended to be for the life of the grantee, this "was so held in Select Case No. 291 on the "authority of *Woodoyaditto Deb* v. *Mukoond* "*Narainaditto* (22 W. R. 225). There seems

"also to be no doubt that in the case of a "grant for maintenance the words 'proprietor' "and 'for ever' will not *per se* create an inherit- "able estate." Their Lordships may observe that in the case in L.R. 12 I. A. 159 where this was held the gift by a will was of the management of property but it also applicable in the construction of the gift in this case. The Court should have stopped here and dismissed the Appeal and not proceeded to give so insufficient a reason as followed for allowing it and reversing the decree of the First Court. This Court had found on the issue whether daughters were excluded from inheritance by the family custom in favour of the Plaintiff Arjun. The Judicial Commissioner's Court has taken no notice of this issue and in the view which their Lordships take of the case it is not necessary to decide it. That Court also seems not to have been aware that Shankar survived Sheo Narain and left a son and consequently Arjun could only inherit a half-share of the property. Their Lordships being thus of opinion that the decree of the First Court ought not to have been reversed will humbly advise Her Majesty to affirm it and reverse the decree now appealed from with the costs of the Appeal in which it was made. The Respondent will bear the costs of this Appeal.