

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Ram
Anugra Narain Singh v. Chowdhry Hanuman
Sahai, from the High Court of Judicature at
Fort William in Bengal; delivered the 13th
December 1902.*

Present at the Hearing :

LORD MACNAGHTEN.

LORD LINDLEY.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

SIR JOHN BONSER.

[*Delivered by Sir John Bonser.*]

This is an Appeal from a Decree of the High Court of Calcutta which reversed a Decree of the Second Subordinate Judge of Gya.

The Plaintiff (the present Respondent) sued to recover certain villages which were in the possession of the Defendant (the present Appellant). He claimed under a conveyance made in his favour by the heirs of one Sheo Churn who was entitled (as he alleged) to the property under the will of one Ram Dyal, subject to the life interest of Ram Dyal's widow Birj Koer.

The principal questions argued before their Lordships and the Courts below were (1) whether Sheo Churn was entitled to the property as alleged by the Plaintiff and (2) whether the Plaintiff's vendors were Sheo Churn's heirs.

As regards the first question both Courts found that Ram Dyal did make on his deathbed an oral disposition of this property under which

his grandson Sheo Churn, then an infant of tender years, took a vested estate subject to the life interest of Birj Koer. It was urged by the Appellant's Counsel that the evidence was insufficient to establish such a gift, and they insisted on the improbability of the testator passing over his own daughter in favour of her infant son and contended that even if the testator intended to benefit Sheo Churn the gift was contingent on his surviving the tenant for life which he did not do; but their Lordships are of opinion that the finding of the Lower Courts is fully justified by the evidence and ought to be affirmed.

On the second question both Courts agreed in finding that the Plaintiff's vendors were proved to be the heirs of Sheo Churn; and according to the well-known rule of this Board such a finding will not be disturbed unless it can be shown to be clearly erroneous. The Appellant's Counsel however contended that this finding was not within the rule because the Courts were not quite agreed on the grounds of their decision—the Subordinate Judge relying on the oral testimony, whilst the High Court based its finding on the documentary evidence. But the rule is none the less applicable because the Courts may not have taken precisely the same view of the weight to be attached to each particular item of evidence.

A further point which does not appear to have been expressly raised in the Courts below was pressed on their Lordships. It was contended that Mahan Soonder Koer, Sheo Churn's mother, under whom the Defendant claims and who entered into possession of the property upon her son's death and enjoyed it until her own death which happened shortly before the institution of this suit, acquired an absolute title by adverse possession against the heirs of Sheo Churn.

Their Lordships are of opinion that the possession of Mahan Soonder Koer must be referred to her title as heiress of her son in which capacity she would take a life interest and that no case of adverse possession has been established.

For these reasons their Lordships will humbly advise His Majesty that the Appeal ought to be dismissed. The Appellant will pay the Respondent's costs.

