

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Raja Rampal Singh v. Ram Ghulam Singh and others, representatives of Ram Parshad Singh, deceased, from the Court of the Judicial Commissioner of Oudh; delivered the 11th November 1904.*

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Present at the Hearing :

LORD DAVEY.

LORD ROBERTSON.

SIR ARTHUR WILSON.

[*Delivered by Sir Arthur Wilson.*]

The suit out of which this Appeal arises relates to lands forming part of the estate Rampur Kaithoula, a taluqa governed by the Oudh Estates Act, I. of 1869.

The taluqdar of Rampur Kaithoula was formerly Raja Hanwant Singh, with whom the Second Summary Settlement was made, and to whom a taluqdari Sanad was granted in October 1859. His name was entered in the first and second lists under Section 8 of the Oudh Estates Act.

Raja Hanwant Singh had two sons, Pertab Singh, the elder, and Lachman Singh, the younger. Pertab died before April 1859, leaving a widow, Dirgaj Kunwar, and a son, Raja Rampal Singh. Lachman, the younger son of Raja Hanwant survived his father.

On the 2nd April 1859 Raja Hanwant Singh, after the death of his elder son Pertab Singh, executed a deed of gift, registered in due course, by which he purported to convey to Pertab's son, Raja Rampal Singh, the whole estate of Rampur

Kaithoula, with the exception of six villages, which were to go to Raja Hanwant Singh's younger son Lachman.

Differences afterwards arose between Raja Hanwant Singh and his grandson Raja Rampal, and the former brought a suit against the latter in 1871, in which Raja Hanwant sought a declaration that, notwithstanding the deed of gift of 1859, the proprietary right in Rampur Kaithoula, and the power to dispose of it by will, were vested in him. That suit was settled by a compromise expressed in a petition of the parties; and on the 7th September 1871 a decree was passed accordingly which embodied the terms of the compromise. As to those terms it is enough to say that, according to them, various portions of the estate were to be held for a series of life estates by Raja Hanwant Singh, Raja Rampal Singh, and the mother of the latter, Rani Dirgaj Kunwar, and that after the expiration of those three lives Lachman Singh, the second son of Raja Hanwant Singh, was to succeed to the whole taluqa. The compromise further contained a clause empowering Raja Rampal by will or deed to give lands absolutely amongst his widows or children, with a limit of value, and subject to other restrictions. It should be observed that to these proceedings Lachman Singh was not a party.

In 1873 Raja Rampal Singh executed and registered a deed in favour of his wife Subhao Kunwar conveying to her certain villages forming part of the taluqa Rampur Kaithoula. In 1876 Raja Hanwant Singh and his son Lachman Singh filed a suit in the Court of the Deputy Commissioner of Partabgarh against Raja Rampal Singh and his wife, asking for cancellation of the last-mentioned deed, and to displace the possession of the second Defendant under it.

That suit was defended on various grounds, amongst which it is enough to notice that the then Defendants asserted the complete validity of the gifts impugned, and explicitly alleged that Lachman Singh had no such interest in the property as to entitle him to sue. And issues were raised upon these points. The Deputy Commissioner by his Judgment in that suit held, with regard to Lachman Singh, that he was "a certain remainder-man, under the terms of the agreement," that he "or his representatives will certainly inherit the estate some time or other," and that "if cause of action be found to have accrued to Plaintiff Raja Hanwant Singh, it will also have accrued to Babu Lachman Singh." And as to Raja Hanwant Singh it was held that the alienation impugned was void as against him, on the ground that it was in excess of the power reserved to Raja Rampal Singh in the compromise of 1871. On the other hand it was held that Raja Rampal Singh could alienate for his own life. The decree that followed declared the gift in question to be "null, void, and of no effect whatsoever, either as authorising the Rani's present possession or as regards the devolution of the villages specified in it after her death"; while it went on to say that no right had yet accrued to Plaintiffs to disturb her possession.

Raja Hanwant Singh died in 1881, Rani Dirgaj Kunwar, the mother of Raja Rampal, in 1882, and Lachman Singh in 1888.

In 1889 a fresh controversy arose. Messrs. Eyre and Spottiswoode having obtained a decree against Raja Rampal Singh proceeded to execute it by attachment and sale of Mouza Purbara, a village included in the taluqa Rampur Kaithoula, and the Mouza was sold, without limitation of

title, to Basant Singh. Thereupon Ram Parshad Singh, the son and heir of Lachman Singh, brought the present suit, on the 24th March 1896, in the Court of the Subordinate Judge of Partabgarh, against Raja Rampal Singh, Basant Singh, and Messrs. Eyre and Spottiswoode. The Plaintiff relied upon the settlement under the compromise and decree of 1871, and asked for a decree declaring that he was entitled, as immediate reversioner, to the absolute estate in Mouza Purbara after the death of Raja Rampal Singh; and that the sale in execution of that Mouza would be inoperative against him after the death of the Raja. The principal Defendant Raja Rampal Singh (whom alone it is necessary to consider) set up in answer to the suit a case to the effect that he had an absolute title by virtue of the deed of gift of 1859, and that for various reasons the compromise of 1871 and the decree embodying it were not effective to displace that title as between him and the Plaintiff in this suit.

At the hearing the Plaintiff relied upon the decree of 1876 as having established, as between the Defendant Raja Rampal Singh and Lachman Singh (the father and predecessor in title of the Plaintiff), that the Raja had only a life interest in the estate, and that Lachman Singh (and therefore also the Plaintiff as his heir) had a vested estate in remainder.

The Subordinate Judge held that the decree of 1876 did not operate as *res judicata* in respect of the matters in question in this suit, and finding in favour of the Defendants on other points dismissed the suit.

On appeal to the Court of the Judicial Commissioner the learned Judges of that Court differed from the first Court on the question of *res judicata*, holding that the decision of the

Court in 1876 was conclusive of the present case. Their reasons for so holding are thus stated :—

“ There can be no doubt that Plaintiff is claiming under Babu Lachman Singh within the meaning of Section 13 of the Code of Civil Procedure. Babu Lachman Singh was a party to the litigation of 1876, the question directly and substantially in issue was whether he had a contingent or vested interest under the compromise and decree of 1871. The Court substantially held that he had a vested remainder and could therefore sue to set aside an alienation;” and “ the Judgment of the Civil Court in 1876 is conclusive between the parties to the present suit and establishes the fact that Raja Rampal Singh has a life interest only in Mauza Purbara with remainder to the Plaintiff. It is unnecessary to decide whether irrespective of the plea of *res judicata* the Plaintiff has established his case. The question involves only matters of law.” The learned Judges accordingly set aside the decree appealed against and made a decree in favour of the Plaintiff. Against that decision the present Appeal has been brought by the Defendant Raja Rampal Singh, the Respondents being the representatives of the Plaintiff.

Their Lordships agree with the learned Judicial Commissioners as to the effect of the decree of 1876; and they think it unnecessary to add anything to the reasons so clearly stated by those learned Judges.

Their Lordships will humbly advise His Majesty that this Appeal should be dismissed. The Appellant will pay the costs.

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