

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Musammat Parbati Kunwar v. Rani Chan-
darpal Kunwar and others, from the Court
of the Judicial Commissioner of Oudh ;
delivered the 13th May, 1909.*

Present at the Hearing :

LORD ATKINSON.

LORD COLLINS.

LORD GORELL.

SIR ARTHUR WILSON.

[*Delivered by Lord Collins.*]

The question on this Appeal relates to the right to succession to a Taluka known as the Majhgain Estate, or the Majhgain Shahpur Estate, to which the Appellant (the Plaintiff) claims to be entitled. The Plaintiff is the daughter of Milap Singh, who died in possession of the estate in 1882, leaving two daughters (the Plaintiff and another since deceased) and a widow, Rani Dhan Kunwar, but no male issue. Rani Dhan Kunwar died on the 16th August, 1891. On her death Raj Dillipat Singh, brother of Milap Singh, got possession and died without leaving issue, but leaving a widow, who succeeded him and died on the 28th January, 1899. On the 17th April following mutation of names in respect of the Taluka in question, and also of another of Dillipat's own, was effected by the Revenue Court in favour of the first, second and third Defendants.

It is not disputed that, if there were no

binding custom to the contrary, the Appellant (the Plaintiff) would be entitled to succeed to the Taluka in question. It has, however, been found by the Subordinate Judge, and confirmed by the Court of the Judicial Commissioner on appeal, that there is a custom in the family of the Plaintiff and the Defendants "that a daughter "is excluded by the collaterals of the deceased "from inheritance." If and so far as this is a conclusion of fact, it is a concurrent finding of two Courts, and, though not absolutely binding on this Committee, is entitled to the greatest weight. Accepting this view, the Appellant has boldly contended that there was, in effect, no reasonable evidence legally admissible which could justify such a finding. The evidence, however, was most elaborately and minutely criticised in all its bearings both by the Subordinate Judge, himself a Hindu, and by the Court of the Judicial Commissioner, and both Courts were fully satisfied both as to its relevancy and its cogency, and also as to the complete absence of any rebutting evidence on the part of the Plaintiff. Though, in their Lordships' opinion, it is not desirable to attempt again what has been so completely carried out by the Courts below—a minute examination of the evidence in detail—it is, perhaps, desirable to sketch it in outline so as to make intelligible the objections urged against it by the Appellant.

The Taluka in question comprised one-fourth part of a larger area called the Bhira Estate, which, under the provisions of Act I. of 1869, had been granted by the British Government to four Talukdars—viz., Raj Ganga Singh, Raj Sadho Singh, Raj Baryar Singh, and Raj Ahlad Singh—whose names were accordingly entered in respect of it in Lists I. and IV., prepared under the provisions of the Statute. In 1878 there

was a partition of the Bhira Estate, upon which the villages allotted to Milap Singh, who had then succeeded to Raj Ganga Singh's estate, were, together with some other villages already held by him separately, formed into an estate called the Majhgain or Majhgain Shapur Estate, which is the subject-matter of the present suit. Under Act I. of 1869 the succession to estates in List IV. is regulated by "the ordinary law to which members of the intestate's tribe and religion are subject" (Act I. of 1869, s. 23), which has been held to embrace any "family custom" (*Narindar Bahadur Singh v. Achal Ram*, 20 Ind. Ap. at p. 79). The evidence adduced by the Defendants in support of the custom was partly documentary and partly oral. It has been analysed and carefully dealt with under different heads in the Courts below. Various technical objections to declarations, such as those of the Kanungos, to entries made in the village records by the officer charged by Government with that duty, and to answers given to official inquiries made under Government direction as to the rules of succession prevailing in particular families were urged by the Plaintiff. Speaking broadly, these objections seem to their Lordships to have been material rather to the weight than to the admissibility of the particular evidence, which was *prima facie* admissible as purporting to be made by the proper officer in performance of a special duty and, presumably, with due regard to the rules laid down for his guidance. The learned Judges in both Courts below in particular regarded the evidence furnished by the *wajib-ul-arzes* as most important, and treated their admissibility and relevance as indisputable. In the Court of first instance the learned Subordinate Judge, in dealing with the objection to this class of evidence,

quotes s. 17 of the Oudh Land Revenue Act, 1876, as follows :—

Every entry in such Settlement Record duly made and attested shall, until the contrary is proved, be presumed to be a correct record of the fact entered,

but adds a quotation from a ruling of this Board in 2 Calcutta W. Notes, at p. 741 :—

Its weight may be very slight or may be considerable according to circumstances.

Passing from these special objections, their Lordships now come to the broader ground on which this Appeal was mainly argued—viz., that evidence of a custom regulating the succession to impartible estates, such as Rajhes where the rule of *gaddi-nashin* prevailed, was altogether inadmissible on a question as to the custom of succession to a partible estate governed by the ordinary Hindu Law applicable to estates in List IV. In their Lordships' opinion this objection is met by the authorities cited in the judgment of the Court of the Judicial Commissioner (p. 1239 of the Record). In a judgment of the Appellate Civil Court of Madras (17 Ind. L. R. Madras Series, 316, at p. 325) there is the following passage :—

*Subramanya
Pandya
Chokka
Talavar
v.
Siva Subra-
manya Pillai*

The first of them [*i.e.*, the first principle] is that a rule of decision in regard to succession to impartible property is to be found in the Mitakshara law applicable to partible property, subject to such modifications as naturally flow from the character of the property as an impartible estate. The second principle is that the only modification which impartibility suggests in regard to the right of succession is the existence of a special rule for the selection of a single heir when there are several heirs of the same class who would be entitled to succeed to the property if it were partible under the general Hindu Law . . . We have first to ascertain the class . . . and we have next to select the single heir applying the special rule.

In laying down these propositions the learned Judges relied, among others, on the *Shivagunga Case*, 9 Moore's I. A. 539. That case was referred to in these terms by Sir R. Couch in delivering the judgment of this Board in *Raja Jogendra v. Nityanund Mansingh* (17 Ind. Ap. at p. 131) :—

According to the decision in the *Shivagunga Case*, which, as their Lordships understand, is not now disputed, the fact of the Raj being impartible does not affect the rule of succession. In considering who is to succeed on the death of the Raja, the rules which govern the succession to a partible estate are to be looked at, and therefore the question in this case is, what would be the right of succession, supposing instead of being an impartible estate it were a partible one ?

There is nothing, therefore, in the mere fact of partibility to make evidence of a family custom excluding or postponing daughters to collaterals in impartible estates necessarily inapplicable to partible estates. This objection falling to the ground, the concurrent finding remains, after due allowance for all limitations and qualifications, abundantly justified by overwhelming evidence.

Their Lordships will, therefore, humbly advise His Majesty that this Appeal be dismissed and the decree of the Court of the Judicial Commissioner, dated the 2nd March, 1905, affirmed.

The Appellant will pay the costs of the Appeal.

