

Judgment of the Lords of the Judicial Committee of the Privy Council on the consolidated Appeals of Raja Balwant Singh, since deceased (now represented by The Collector of Etah) v. (1) The Reverend Rockwell Clancy; (2) Rao Maharaj Singh, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered the 28th February 1912.

PRESENT AT THE HEARING :

LORD SHAW.

LORD ROBSON.

SIR JOHN EDGE.

MR. AMEER ALI.

[DELIVERED BY SIR JOHN EDGE.]

These are two consolidated Appeals from decrees of the High Court of Judicature for the North-Western Provinces at Allahabad, dated the 27th March 1906. which varied a decree of the Subordinate Judge of Aligarh, dated the 14th April 1903.

The suit in which these Appeals have arisen was brought on the 26th September 1901, by the assignee of a mortgage to recover Rs. 5,67,978. 8. 0 principal and interest, claimed under the deed of mortgage. The mortgage deed, which is dated the 28th October 1892, purports to have been made between Raja Sheoraj Singh Bahadur, mortgagor, of the first part, Maharaj Singh, the only brother of the said Raja Sheoraj Singh, of the second part, and the Bank of Upper India, Limited, of the third part. Sheoraj Singh and Maharaj Singh were, with others, made Defendants to the suit.

Sheoraj Singh was the sole mortgagor, and, by the deed of mortgage, Sheoraj Singh, declaring that he was the absolute owner in possession of the several villages, lands, hereditaments, and premises in the deed mentioned, and that there was no sharer in the said property, purported to mortgage the property to the Bank of Upper India, Limited, as security for the repayment with interest of Rs. 3,00,000 lent to him by the Bank. Maharaj Singh was not a mortgagor, nor did it appear by the mortgage deed that he had any proprietary interest in the mortgaged property or was obtaining any benefit from the loan to his brother Sheoraj Singh; Maharaj Singh was made a party to the deed of mortgage in order that the fact of his having signed the deed might afford evidence that he had assented to the taking of the loan by Sheoraj Singh and the granting of the mortgage. The suit is one for sale of the property mentioned in the mortgage deed, and by the suit the Plaintiff sought to make Maharaj Singh personally liable for the mortgage debt and interest, and to bring to sale Maharaj Singh's share in the mortgaged property, which in fact, was the ancestral property of the joint Hindu family which at the date of the mortgage consisted of Sheoraj Singh and Maharaj Singh. The mortgage was assigned on the 2nd August 1897 by the Bank of Upper India, Limited, to Raja Balwant Singh, who was the Plaintiff in the suit. Raja Balwant Singh is now dead, and his minor son Raja Surajpal Singh is represented in this litigation by the Collector of Etah, who is in charge of his estate.

Sheoraj Singh, the mortgagor, is the elder of the two sons of Raja Shankar Singh, now dead. The younger of the two sons of Raja Shankar Singh is Maharaj Singh, a Defendant in the suit, and the Respondent in one of these two Appeals. Raja Shankar Singh was the only son of Raja Dilsukh Rai, long since dead. At the time of

the Indian Mutiny of 1857-58, Dilsukh Rai, who was then a patwari, did good and meritorious service for the Government. In recognition of those services the Government granted to Dilsukh Rai a considerable estate, now said to produce annually some Rs. 50,000 gross income. The lands granted to Dilsukh Rai were not granted as an impartible estate. They are the lands which were mortgaged by Sheoraj Singh to the Bank of Upper India, Limited. In further recognition of his services the Government conferred upon Dilsukh Rai the title of Raja as a personal distinction. Raja Dilsukh Rai was a saving and apparently a penurious man. On his death the estate was unencumbered, and he left a large sum of money which he had accumulated. The Government also conferred upon Shankar Singh the title of Raja as a personal distinction. The title was never made hereditary, and although Sheoraj Singh was described in the mortgage deed as a Raja he was not entitled to be so described. Raja Shankar Singh borrowed considerable sums of money, and died on the 24th August 1891 leaving debts which he had contracted undischarged. It was to discharge those debts of Raja Shankar Singh, and also some debts which had been contracted by Sheoraj Singh, that the mortgage on which this suit has been brought was made by Sheoraj Singh.

Several issues were raised and tried in the Court of the Subordinate Judge. One of those issues arose on a defence of Maharaj Singh that at the date of the mortgage he was under the age of 18 years, and being at that date a minor was legally incapable of entering into any contract or of binding himself or his interest in the estate by his execution of the deed of mortgage as an assenting party to the taking of the loan and the granting of the mortgage by Sheoraj

Singh. Another issue which was tried by the Subordinate Judge related to an alternative case which the Plaintiff put forward, by which he sought to make Maharaj Singh and his interest in the estate liable for the payment of the money due under the mortgage, on the alleged ground that it was his duty as a Hindu son to pay with interest the money advanced by the Bank of Upper India, Limited, to Sheoraj Singh, as that money had been lent by the Bank to Sheoraj Singh to discharge the debts which had been contracted by Raja Shankar Singh and had been applied by Sheoraj Singh to the discharge of those debts. On behalf of Maharaj Singh it was alleged in answer to the Plaintiff's alternative case that Raja Shankar Singh had contracted those debts for the purposes of immorality, and it was consequently contended that there was no duty on his sons to discharge them by payment, and that the payment of those debts by Sheoraj Singh out of money lent to him by the Bank of Upper India, Limited, for that purpose, created no liability on Maharaj Singh or his interest in the family estate.

The Subordinate Judge found as a fact that at the date of the mortgage, the 28th October 1892, Maharaj Singh was of full age, and being apparently under the impression that in obtaining the loan from the Bank of Upper India, Limited, and in making the mortgage, Sheoraj Singh might be regarded as having acted as the manager of the joint Hindu family, the Subordinate Judge dealt with the Plaintiff's alternative case and found that it was not proved that the debts which had been contracted by Raja Shankar Singh had been contracted for the purposes of immorality, and exempting certain portions of the property which were held by persons who are not parties to either of these Appeals, made a decree for sale of the rest of the property mentioned in the deed

of mortgage. With the portions of the property which were exempted from sale these Appeals are not concerned.

From that decree of the Subordinate Judge Maharaj Singh and another Defendant, the Reverend J. B. Thomas, who is now represented by the Reverend Rockwell Clancy, filed separate appeals in the High Court. The High Court on a careful and exhaustive review of the evidence found as a fact that Maharaj Singh was a minor on the 28th October 1892, and consequently that the mortgage deed as against him and his interest in the estate was void. Although the High Court obviously considered that an inquiry into the origin and nature of the debts which had been contracted by Raja Shankar Singh was irrelevant in this suit, the High Court reluctantly, and only in view of the question possibly becoming material in an appeal from their decree, carefully considered the evidence bearing on that question, and found as a fact that the debts which Raja Shankar Singh had contracted had been contracted by him for the purposes of immorality. The High Court allowed the appeal of Maharaj Singh, dismissed the suit so far as Maharaj Singh and his interests in the estate were concerned, and, by a separate decree allowed the appeal of the Reverend J. B. Thomas to the extent of a moiety of the property claimed by him. From those decrees of the High Court these consolidated appeals have been brought. In support of the appeal in which the Reverend Rockwell Clancy is a Respondent no argument has been addressed to their Lordships to show that the appeal against the decree of the High Court which was passed in the appeal of the Reverend J. B. Thomas could be supported if the appeal against the decree obtained by Maharaj Singh in the High Court should fail.

Some of the questions which had been considered in the Courts below were on behalf of the Appellant argued at considerable length before this Board, and it was also contended on his behalf that in borrowing the Rs. 3,00,000 from the Bank of Upper India, Limited, and in making the mortgage of the 28th October 1892, Sheoraj Singh had acted as the manager of the family, and for the benefit and protection of the estate, and consequently, as it was urged, that it was immaterial whether Maharaj Singh was or was not of full age at the date of the mortgage. It will be convenient to deal with that contention at once. The contention that Sheoraj Singh had acted as the manager of the family in borrowing the Rs. 3,00,000, and in making the mortgage, is unfounded. Evidence, oral and documentary, which their Lordships accept as reliable, proves that Sheoraj Singh, after the death of his father Raja Shankar Singh, assumed without authority the title of Raja, and asserted that the family estate was impartible, and as an impartible estate had descended to him as the elder son of Raja Shankar Singh, and that his brother Maharaj Singh was entitled only to an allowance for maintenance. It was in that assumed position as the absolute owner of an impartible estate, and not as manager of a joint Hindu family, that he obtained the loan from the Bank of Upper India, Limited, and made the mortgage in favour of the Bank. The mortgage deed was drawn up by an official of the Bank, and in that deed Sheoraj Singh is described as Raja Sheoraj Singh Bahadur, mortgagor, and it is recited that—

“ the said mortgagor is the absolute owner or proprietor
 “ of the several villages, lands, hereditaments, and premises
 “ hereinafter mentioned, and more particularly described in
 “ the schedule hereto attached and intended to be hereby mort-
 “ gaged in possession free from all incumbrances save and
 “ except being mortgaged and under attachment of decrees as

“ mentioned herein-after . . . and the said Maharaj Singh,
 “ brother of the said mortgagor has been made a party to this
 “ Indenture in order to make known his consent and approval
 “ to this loan being taken, and the said villages, lands, here-
 “ ditaments, and premises, being mortgaged as security for
 “ the same, and the said mortgagor doth hereby declare that
 “ the said property is absolutely his own and he has full
 “ power to alienate the same by a mortgage sale or otherwise,
 “ and that he has only one brother, the said Maharaj Singh,
 “ and no sons or any sharer in the said property.”

In face of that deed it cannot be contended that the Bank of Upper India, Limited, lent the money to Sheoraj Singh, or that Sheoraj Singh made the mortgage in favour of the Bank as manager of the joint Hindu family, which consisted of himself and Maharaj Singh. The Bank of Upper India, Limited, made some inefficient enquiries, and lent the Rs. 3,00,000 to Sheoraj Singh, not as the manager or even as a member of a joint Hindu family, but in his assumed position as the absolute owner of an impartible estate. Sheoraj Singh, on his own behalf and in his own interests, and not as representing Maharaj Singh, discharged the debts which Raja Shankar Singh had contracted. It need hardly be observed that Sheoraj Singh was not an ancestor or a predecessor of Maharaj Singh; he was at the date of the mortgage merely a co-sharer with his brother Maharaj Singh in the property of the joint Hindu family of which they were members.

The evidence on the question of Maharaj Singh's age on the 28th October 1892 is partly oral and partly documentary. According to the evidence, oral and documentary, which the High Court considered to be entirely reliable, Maharaj Singh was born on the 20th December 1874, and consequently was under the age of 18 years on the 28th October 1892. The Subordinate Judge had treated the oral evidence that Maharaj Singh had been born on the 28th October 1874, as the

false evidence of perjured witnesses, and had treated the documentary evidence as fabricated on behalf of Maharaj Singh for the purposes of his defence to the suit. Before coming to the conclusion that Maharaj Singh was born on the 20th December 1874, the High Court, bearing in mind the adverse comments of the Subordinate Judge on that oral and documentary evidence, and with the object of ascertaining how far, if at all, the comments and findings of the Subordinate Judge were justified, had carefully considered the oral evidence of the witnesses, and had examined the documents and papers which had been put in evidence. There was some other documentary evidence which standing alone and unexplained would suggest that Maharaj Singh had probably arrived at the full age of 18 years before the 28th October 1892.

The oral and documentary evidence upon which the High Court relied for their finding that Maharaj Singh was a minor when he signed the mortgage deed on the 28th October 1892, has been criticised minutely and at length by the learned Counsel who argued these appeals on behalf of the Appellant, but their Lordships are unable to see any reason for doubting, on the question of the date of birth of Maharaj Singh, the evidence of Pandit Ganesh Ram, Pancham Ram, Jhamman Lah, Ram Prasad, Ganesh Ram the barber, and the Defendant-Respondent Maharaj Singh. If the evidence of those witnesses is believed, Maharaj Singh, was born on the 20th December 1874. The documentary evidence as to the date of birth of Maharaj Singh is in their Lordships' opinion not open to suspicion. Pandit Ganesh Ram proved that he prepared the *tewa* or abstract horoscope on the day when Maharaj Singh was born, and from it prepared the horoscope which was presented to

Raja Dilsukh Rai on the day of the *Daston* ceremony. The *tewa* and the horoscope were put in evidence. The horoscope bears upon it in the writing of Raja Dilsukh Rai the name Maharaj Singh which Raja Dilsukh Rai gave to his grandson at the *Daston*. That horoscope was produced and examined on the occasion of the marriage of Maharaj Singh, and it has been clearly and amply identified as the original horoscope relating to the birth of Maharaj Singh. Ram Prasad, who with other pandits was called in on the birth of Maharaj Singh to prepare a horoscope, produced the almanac in which at the time he had entered the birth of a son in the house of Kunwar Shankar Singh under the date 12th Aghan Sudi, Sambat 1931, which was the 20th December 1874. Ganesha, who was the family barber, took the news of the birth of a son of Shankar Singh from Bilram to Raja Dilsukh Rai at Etah, and received from him a present of Rs. 2. Ganesha also said in his evidence that on that occasion Raja Dilsukh Rai gave Rs. 50 to Balwant Singh for household expenses. The original accounts of the expenditure of Raja Dilsukh Rai, which according to the evidence bear his signature, on the occasions when he examined them, show that in December 1874 Rs. 2 were given to Ganesha, barber, who brought the news of the birth of a son in the house of Kunwar Sahib, who was Raja Shankar Singh, and which show that Rs. 50 was sent to Bilram on account of the birth of a son in the house of Kunwar Singh, who was Raja Shankar Singh. Ganesha, the barber, proved that that son was Maharaj Singh, and there is no evidence to show that Raja Shankar Singh ever had more than two sons. Their Lordships cannot regard that oral and documentary evidence as false or even as open to suspicion. In their opinion it conclusively proves that Maharaj Singh was a minor when he

signed the mortgage deed on the 28th October 1892. There is, however, documentary evidence that prior to the 28th October 1892 Maharaj Singh had acted as if he was of full age. For instance, on the 26th May 1892 Maharaj Singh signed a vakalatnama appointing Muhammad Tahir Husain, a pleader, as his attorney in a suit in which he and Sheoraj Singh were Defendants, and authorising Muhammad Tahir Husain to appear for him, to file documentary evidence, and to refer the matter to arbitrators or to enter into a compromise. In that suit Sheoraj Singh, in his written statement of the 26th May 1892, made an allegation in reference to Section 444 of the Code of Civil Procedure which can be construed only as meaning that Maharaj Singh was at that date a minor. For another instance, in a suit in which Sheoraj Singh and Maharaj Singh were Plaintiffs, they, on the 13th August 1892, signed a vakalatnama appointing Muhammad Tahir Husain, pleader, their attorney, and authorising him to act for them in the suit. On the other hand, on the 19th August 1892 a decree was made in a suit which had been instituted on the 14th July 1892, and in which Maharaj Singh had been treated throughout as a minor under the guardianship of his brother Sheoraj Singh. It is probable that until it became necessary in this suit to ascertain the actual date of the birth of Maharaj Singh, neither he nor Sheoraj Singh knew his precise age. However that may have been, their Lordships find as a fact on the clear and reliable evidence to which they have referred, that Maharaj Singh was a minor under the age of 18 years when he signed the mortgage deed of the 28th October 1892.

Having found as a fact that Maharaj Singh was a minor on the 28th October 1892, it is not necessary for their Lordships to consider any other issue. This suit has been brought on the

mortgage deed of the 28th October 1892 by the assignee of that mortgage, and as their Lordships have held, that the mortgage was not made by Sheoraj Singh as the manager of the family, or in any respect as representing Maharaj Singh, and as Maharaj Singh was then a minor, the mortgage deed as against him and his interest in the estate was not merely voidable, it was void and of no effect, and must be regarded as a mortgage deed to which he was not even an assenting party and as a mortgage deed which did not affect him or his interest in the estate.

Their Lordships will humbly advise His Majesty that the decrees of the High Court be affirmed and these Appeals be dismissed with costs.

In the Privy Council.

RAJA BALWANT SINGH, since deceased
(now represented by The Collector of Etah)

vs.

1. THE REVEREND ROCKWELL
CLANCY;
 2. RAO MAHARAJ SINGH.
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DELIVERED BY SIR JOHN EDGE.

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