

*Privy Council Appeal No. 83 of 1912.*

*Allahabad Appeal No 13 of 1911.*

**Ganga Sahai** - - - - - *Appellant,*  
v.  
**Kesri and others** - - - - - *Respondents.*

*Privy Council Appeal No. 84 of 1912.*

*Allahabad Appeals Nos. 26, 27, 28 and 29 of 1910.*

**Munshi Lal and others** - - - - - *Appellants,*  
v.  
**Ganga Sahai and others** - - - - - *Respondents.*

**Munshi Lal and others** - - - - - *Appellants,*  
v.  
**Ganga Sahai and others** - - - - - *Respondents.*

**Munshi Lal and others** - - - - - *Appellants,*  
v.  
**Ganga Sahai** - - - - - *Respondent.*

**Munshi Lal and others** - - - - - *Appellants,*  
c.  
**Chunni Lal** - - - - - *Respondent.*

*(Consolidated Appeals)*

FROM

THE HIGH COURT OF JUDICATURE FOR THE NORTH-WESTERN  
PROVINCES, ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 13TH JULY 1915.

*Present at the Hearing.*

LORD SHAW.

SIR JOHN EDGE.

SIR GEORGE FARWELL.

MR. AMEER ALI.

*[Delivered by MR. AMEER ALI.]*

These several consolidated appeals from certain decrees and judgments of the High Court of Allahabad arise out of three suits brought in the Court of the Subordinate Judge of Farrukhabad. The plaintiffs in two of these suits, claiming adversely to each other to be the heirs of one Bahadur Singh, deceased, sought to recover from the appellant Ganga Sahai a one-third share of the properties specified in their respective plaints which he had purchased at a sale held in execution of a decree upon a mortgage to which reference will be made presently. The third suit was brought by Kalka Pershad, one of the plaintiffs in the above suits, to recover from the respondent Chunni Lal certain shares in Mouzah Malkapur belonging to the estate of Bahadur Singh which had been conveyed to him by one Gulab Koer, Bahadur's stepmother.

Their Lordships propose to deal first with the two suits in which Ganga Sahai was the defendant.

The mortgage bond referred to above was executed so long ago as the year 1869 by one Jai Chand Chowdhry, in favour of Bahadur Singh and Debi Din, the ancestor of Ganga Sahai, hypothecating two villages named respectively Tahsipur and Bilaspur. One-third of the amount advanced on this transaction admittedly belonged to Bahadur Singh, and the other two-thirds to Debi Din. On default of payment by Jai Chand, a suit was brought in 1891 by Bahadur Singh in conjunction with Bhima Singh and Ganga Sahai, the heirs and representatives of Debi Din (who had died in the meantime). Bahadur Singh died during the pendency of the suit, and his widow, Lachman Koer, was brought on the record in his place. On the 21st November 1891, the usual mort-

gage decree under section 88 of the Transfer of Property Act (IV. of 1882) was made by the Court. This was followed on the 27th of April 1893 by the final decree under section 89 of the Act.

It appears from the record that Lachman Koer died somewhere in 1894. On the 20th December 1897, Ganga Sahai applied for execution of the mortgage decree against the heir and representative of the mortgagor. In his application he expressly reserves the rights of Lachman Koer's heirs. The passage in question is important in view of the contention now raised by him. He states :—

“ Bhaman Singh, another decree-holder, has died a natural death. His sons, Mauji Ram and Raj Kunwar, are his heirs; but they do not join in the application, hence, under (section) 231 of the Code of Civil Procedure, this decree-holder alone makes this application, and prays that the decree may be executed subject to the rights of the heirs of Musammat Lachhman Kunwar and Bhaman Singh.”

Bhaman Singh is evidently the same person as Bhima Singh.

The mortgaged properties were accordingly put up to sale on the 20th of February 1899, and purchased by Ganga Sahai. The sale appears to have been duly confirmed and two sale certificates were issued to him in respect of Tahsipur and Bilaspur respectively, and he is admittedly now in possession of the properties.

The two sets of plaintiffs, as already stated, claim to be the heirs of Bahadur Singh adversely to each other; but as against the appellant Ganga Sahai, they seek identical relief. They say that the purchase by Ganga Sahai of the properties in question was not exclusively for himself, but for the benefit of the heirs and representatives of both mortgagees. The courts in India have upheld their contention. Ganga

Sahai has appealed to this Board and takes his stand on the first clause of section 317 of the Civil Procedure Code of 1882, which was in force when the sale took place. That clause provides as follows:—

“No suit shall be maintained against the certified purchaser on the ground that the purchase was made on behalf of any other person, or on behalf of some one through whom such other person claims.

In their Lordships' opinion the provisions of that section have no application to the present case. They were designed to create some check on the practice of making what are called *benami* purchases at execution sales for the benefit of judgment debtors, and in no way affect the title of persons otherwise beneficially interested in the purchase. An example of this will be found in the case of *Boodh Singh Doodhuria v. Gunesh Chundar Sen*,\* decided by this Board in 1873.

The Courts in India were perfectly right in refusing to allow Ganga Sahai to perpetrate a fraud against his co-decree-holders under cover of this section. His application for execution was under section 231 of the Code, and it was made subject to their rights. Had he not even embodied this reservation in his petition, the Court executing the decree would have of its own motion protected the interests of the other decree-holders. Their Lordships agree with the Courts in India that the heirs and representatives of Bahadur Singh are entitled to recover from Ganga Sahai a one-third of the properties purchased by him in execution of the joint mortgage decree.

The question then arises who among the two sets of plaintiffs are entitled to the inheritance of Bahadur Singh. At the time of

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\* 12 Bengal Law Reports, p. 317.

his widow's death in 1894, when the succession passed to the collaterals, Rajaram, his uncle by the half blood, was alive; and he claimed the properties in preference to Kalka Pershad and Jian Lall, the sons of a full paternal uncle named Gunga Pershad. Rajaram has since died and is now represented by his sons and grandsons who are plaintiffs in one of the suits and respondents before this Board. Jian Lall has also died, and his son, Munshi Lall, now stands in his place. Kalka Pershad and Munshi Lall were the plaintiffs in the second suit, and they claimed in opposition to Rajaram to be the heirs of Bahadur Singh by virtue of their relationship to him being of the whole blood.

As the question of heirship was involved in all the three suits they appear to have been tried together; and the Court of first instance held in favour of Jian Lall and Kalka Pershad mainly on the authority of a decision of the Allahabad High Court, which it considered had settled the rule of succession in favour of the heirs related by the whole blood. The District Judge affirmed this decree. On appeal, however, to the High Court, the learned Judges explained that in their judgment in *Suba Singh v. Sarfaraz Kunwar*,\* on which the lower Courts had relied, they had laid down no such principle as had been inferred; what they meant to decide was simply this, that under the *Mitakshara* the distinction of whole blood was not confined to the brother and his sons but extends further. And on an examination of the doctrines of the *Mitakshara*, they held in effect that this preference of the whole blood to the half blood applied to *sapindas* of the same degree of descent from the common ancestor,

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\* I.L.R., 19 All. 215.

and did not apply to persons of different degrees. They were accordingly of opinion that Rajaram being paternal uncle of the half blood was entitled preferentially to the inheritance of Bahadur Singh to the exclusion of his cousins, although they were the sons of an uncle of the whole blood. They accordingly dismissed the claim of Munshi Lall and Kalka Pershad in their suit against Ganga Sahai and others, as also the claim of Kalka Pershad in his suit against Chunni Lall. They at the same time decreed the claim of Rajaram's representatives against Ganga Sahai. Munshi Lall and the representatives of Kalka Pershad, who died during the pendency of the suit, have appealed to His Majesty in Council from these decrees of the High Court dismissing their claim; and the main contention advanced on their behalf is that, although the *Mitakshara* expressly provides for the succession of the half brother in preference to nephews of the whole blood, there is no such provision in respect of uncles; and further that as it provides for the succession of the grandmother on failure of the father and his descendants, it must follow that by the words "The uncles and their sons" Vijnaneswara meant that uncles of the whole blood and their sons should succeed in preference to the issue of another wife of the paternal grandfather. This argument, in their Lordships' opinion, would apply with equal force to the case of half brothers and the sons of brothers of the whole blood. But it is conceded that the author of the *Mitakshara* has expressly declared that brothers of the half blood come before nephews of the whole blood, and in principle they see no reason to differentiate between the brothers of the *propositus* and the brothers of his father. Having regard to the general scheme

of the *Mitakshara*, their Lordships think that the preference of the whole blood to the half blood is confined to members of the same class, or to use the language of the Judges of the High Court in *Suba Singh v. Sarfaraz Kunwar* to "sapindas of the same degrees of descent from the common ancestor," and that therefore on the death of Lachman Koer, Rajaram as uncle of the half blood became entitled to the inheritance of Bahadur Singh to the exclusion of his cousins.

In the result all the appeals will be dismissed. Kesri and the other respondents in Appeal 83 of 1912 will have all their costs from the appellant Ganga Sahai. There will be no order as to costs with regard to the other parties.

And their Lordships will humbly advise His Majesty accordingly.

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In the Privy Council.

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GANGA SAHAI

v.

KESRI AND OTHERS  
AND CONNECTED APPEALS.

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DELIVERED BY MR. AMEER ALI.

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