*Privy Council Appeals Nos. 72 and 73 of 1916.*

*Allahabad Appeals Nos. 25 and 26 of 1913.*

**Mewa Singh and Others** - - - - *Appellants,*

*v.*

**Basant Singh and Others** - - - - *Respondents.*

**Mewa Singh and Others** - - - - *Appellants.*

*v.*

**Uttam Singh and Others** - - - - *Respondents.*

*Consolidated Appeals*

FROM

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

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED 18TH THE APRIL, 1918.

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*Present at the Hearing:*

VISCOUNT HALDANE.
LORD DUNEDIN.
LORD SUMNER.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* LORD SUMNER.]

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The sole question in this appeal is whether the High Court of Judicature for the North-Western Provinces were wrong in holding that the plaintiffs had not proved their case. They reversed the decree of the Subordinate Judge; but, as he appears to have failed to deal with the real question, his conclusion need not be pursued. The plaintiffs sought declarations of their right to inherit certain properties in the districts of Amritsar and Saharanpur, which were in the defendants' possession. They claimed to be the reversionary heirs of one Tika Nihal Singh, who owned these properties till his death in 1864. The life interests of his surviving widows did not determine till 1907. The question was one of fact and the burden of proof

was on the plaintiffs. Their counsel frankly admitted that their case must rest on certain family pedigrees—the other evidence, which had been put in, being inadmissible or inconclusive.

There were fifty-nine plaintiffs, and nearly twenty other parties in addition to the persons in possession were joined *pro formâ*, as being members of the family, though they advanced no claims. The case was not one of the joint property of a Hindu family. If the case were proved, some one person or some few, standing in the same degree of genealogical propinquity, would alone succeed, but the scheme of the action has been to bring into Court a large number of persons, more or less remotely akin in blood, in the hope of ousting the defendants by a mass attack, and afterwards to assign the fruits of victory to the parties entitled by further litigation *inter se*. Such a plan is inconvenient and is much to be condemned. It is not a mere question of swollen expenses, which might be cured by an order to pay costs thrown away. The Court, as well as the opposite party, is embarrassed and the issues are obscured. The case can be disposed of on other grounds, but their Lordships do not think it right that this objectionable feature of the case should be passed over in silence.

Among the properties held by this very extensive family there were two, called, respectively, Wuin Puin and Raja Sansi; the former is one of the subjects of the present litigation, the latter is not. In 1865, when Raja Sansi was dealt with under the Revenue Settlement then proceeding in the Punjab, a wajib-ul-arz was drawn up, which in the regular course embodied a shajra, or pedigree, of its proprietors. This was put in by the defendants. About the same time and under similar circumstances a pedigree was no doubt enrolled, when Wuin Puin was dealt with, but this was not forthcoming. It must, however, have been the basis of the pedigree, which was embodied in the wajib-ul-arz, drawn up when Wuin Puin was dealt with in the next Revenue Settlement in 1891, and the official, who produced this pedigree out of the proper custody, deposed that it consisted "of two parts, viz. (1) the genealogical table prepared in 1865, and (2) the addition made to it after 1865. The genealogical table was prepared for the first time in 1865." This pedigree of 1891 was put in by the plaintiffs. No objection was taken to the admissibility of either pedigree.

With the assistance of counsel, their Lordships have carefully examined these two pedigrees. They do not agree with one another. Not merely does one contain matter which the other omits. This may be accounted for by the fact that one branch of the family was at the date of the pedigree interested in one mouzah and another in the other. Not merely are names, which from their position in the tree might be supposed to represent the same person, nevertheless very differently spelt: this may be due to want of uniformity in the system of transliteration adopted, or of want of skill in applying it. There are

further inconsistencies so serious that, without explanationsf rom other sources, which are not forthcoming, they shake the credit of the whole family tree.

Though, as it happens, the defendants are members of this family themselves, they do not stand or fall by any pedigree, nor does the evidence of it bind them any further than it would bind a stranger. Their case is possession. They put in the pedigree of 1865, not for the purpose of proving that it was accurate, but for the purpose of contesting the plaintiffs' case, by showing that pedigrees of this family, drawn up in similar circumstances and from similar sources and possessing equal authority, are so discrepant that no trustworthy inference can be drawn from either for the purposes of the present case. On the other hand, the plaintiffs may resort to the 1865 pedigree if it supports them, and are not bound to that of 1891 alone, if a legitimate conclusion can be got out of a combination of the two. What the plaintiffs cannot do is to eke out the defects of either by mere conjecture as to both, and this, in the opinion of the High Court, was all that in substance they were able to do.

It is not suggested that there were any records of any kind which were or could have been made use of in the preparation of these pedigrees. They appear to have been simply handed down by tradition and to have been preserved by memory and by oral communication *inter vivos*. As is well known, in social conditions where a people has not yet learnt to place exclusive reliance on written and printed records, and where family pride or family rights encourage the maintenance of a body of oral family history, memory, unaided by permanent materials, is often a very sufficient medium of record, and oral communication often preserves the record with singular uniformity. Nor does a pedigree necessarily lose its value in proportion to its remoteness from the present time, at least as far as names and kinship are concerned. The oldest names in a pedigree are naturally the first to be learnt and the first to be recited, and the names of the earliest generations may well survive in their proper order long after all trustworthy memory of their lives has passed away. Their Lordships approach these pedigrees with every disposition to give them such evidentiary value as can be justly claimed for them. It is, however, right to observe that the best preparation for such a critical task is familiarity with the customs and thoughts of the communities among whom these materials have been handed down—an advantage which not all of their Lordships have enjoyed, and one, furthermore, which they recognise as more fully possessed by the High Court, whose judgment is under appeal. Accordingly though they have subjected this evidence to an entirely independent scrutiny, they are loth, and as they think rightly loth to review the conclusion so arrived at, unless some error can be plainly established.

The family in question is governed by the law of the

Mitakshara. Those who claim to be the reversionary heirs must bring themselves within the necessary number of degrees, viz., fourteen. They must show that they are both next heirs and near enough. The common ancester is one Khokar, or Kharku; of him nothing is known, not even his date, but, according to the pedigree of 1891, his fourteenth descendant in a direct line was then traceable, so he must have lived long ago. According to the plaintiffs, he begat three sons: Tehraj the first, and a second Tehraj, and Mahraj. From Mahraj, they say, descended Nihal Singh, whose death in 1864 extinguished the whole of the Mahraj stock, and thus entitled some of the plaintiffs, most of whom descend from Tehraj the first, though about five descend from Tehraj the second. The first observation, which arises on the face of this pedigree is that the house of Mahraj appears not to be exhausted. It shows one Sarup Singh, who is not described as childless and is not even stated to be dead. It is true that, if he left male issue, whose line continued, Nihal Singh ought not to have been proprietor in 1864, as he was, since Sarup Singh was the elder brother of Nihal Singh's great-great-grandfather; but the circumstance illustrates the imperfect way in which these pedigrees are made out.

Let it, however, be taken, as the Judges in the High Court took it, that with Nihal Singh his house came to an end. Tehraj the second is said by the plaintiffs to have had a grandson, Ghazi, the direct ancestor of the smaller group of the claimants. Who was Ghazi? According to them he was first cousin once removed of Lal, son of Mahraj, and he had a second cousin named Saidu, grandson of Tehraj the first, through whom, as their direct ancestor, the larger group of the plaintiffs come in to claim. Now, according to the pedigree of 1865, Ghazi was the grandson of Hathraj, one of Khokar's sons. Under this pedigree Khokar had only two sons: Hathraj and Bhiraj. If Hathraj is Mahraj the whole descent is at once in confusion; if Hathraj is Tehraj, which Tehraj is he? If Ghazi, Lal, and Saidu were brothers, as they are in the older pedigree, the house of Saidu must stand aside, and only some member of the house of Ghazi can claim. If Hathraj be Tehraj, or rather be both the Tehrajs, then either there was no Mahraj, or Mahraj is Bhiraj. But Bhiraj had no issue. Hence, he is not Mahraj, or at any rate is not the plaintiffs' Mahraj, and the plaintiffs are no relations at all of Nihal Singh, who came of other stock. It was argued that the two Lals are one and the same person, that the one Lal was really Ghazi's younger brother, and that so far the defendants' pedigree is an improvement on the plaintiffs'. One effect of this contention is that there is no necessity to go back to Khokar as the common ancestor, or to reach him through Mahraj and to trace down from him through Tehraj, whether Tehraj be one person or two. Wega or Bela then becomes the common ancestor, for he was the father both of Ghazi and Lal, which upsets the plaintiffs' whole claim. As a conjectural emendation this may be right, but it is guesswork. It may do for those

who pronounce the verdict of history, but an action of ejectment is a serious matter.

Tracing down through Ghazi we come in the direct line at the eighth remove to one Mahtaba, who is described in the pedigree of 1865 as being then alive. He had a first cousin, the son of his father's younger brother, also described as then being alive. These persons or their children (for they are not entered as childless) would be nearer to Nihal Singh than the Ghazi plaintiffs. On the plaintiffs' pedigree, however, they do not appear at all. Moreover, after Bhara or Behara, Ghazi's grandson according to the earlier and his great-grandson according to the later pedigree, the two pedigrees become hopelessly irreconcilable.

On the other hand, if the consanguinity has to be traced through a common ancestor further back than Wega, alias Bela, namely, through Khokar, which is the plaintiffs' case, then the Saidu branch is the elder, and according to the pedigree of 1891, which alone records this branch and by no means clearly, one person at least—Partab Singh—not then marked as childless and not accounted for, would be senior to all others of that branch in the same degree of consanguinity. Now Partab Singh is not a party to these proceedings.

It may be that these puzzles and others, which need not be detailed, were capable of solution. Unfortunately the explanations were not forthcoming. The plaintiffs themselves were sensible of their difficulties, for they incorporated in their pleadings a pedigree of their own, which does not agree with either of those proved. It was argued that the pedigree of 1891 should be preferred to that of 1865, since the former refers to Wuin Puin, while the latter refers to Raja Sansi, with which the branches now claiming were not closely connected, if at all. This explanation seems insufficient. If the family tradition was correctly preserved, then since both pedigrees and all the branches went back to Khokar and his immediate descendants, they should have given the same account of the part, which was common to both, and was for both the beginning of all things. In fact they differ. Either may be right or both may be wrong, but there is nothing to show what the link really is, which is needed to make good the plaintiffs' claim, and it is the weakness of this link which is the weakness of that claim.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed with costs.

# In the Privy Council.

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MEWA SINGH AND OTHERS

*v*

BASANT SINGH AND OTHERS.

MEWA SINGH AND OTHERS

*v.*

UTTAM SINGH AND OTHERS.

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DELIVERED BY

LORD SUMNER.

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