

Privy Council Appeals Nos. 200 and 201 of 1919.
Oudh Appeals Nos. 26 and 27 of 1915.

Ghulam Abbas Khan and another - - - - - *Appellants*

v.

Musammat Amatul Fatima and others - - - - - *Respondents.*

Mohammad Jafar and another - - - - - *Appellants*

v.

Bibi Amatul Fatima and others - - - - - *Respondents.*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 1ST MARCH, 1921.

Present at the Hearing :

LORD BUCKMASTER.

LORD SHAW.

SIR JOHN EDGE.

[*Delivered by* LORD BUCKMASTER.]

These are two consolidated appeals (Nos. 200 and 201 of 1919), arising out of two suits, brought by different plaintiffs for the purpose of determining the rights of succession to a property known as the Maniapur Taluka.

Several subordinate questions arise upon these appeals, but they are dependent upon the success of the appellants in their contention that, according to the true construction of a sanad granted in 1861 to a lady called Sughra Bibi, the rules relating to primogeniture which that sanad established apply to all persons who come into possession of the estate, whether by gift, devise, purchase or descent.

The facts which give rise to this dispute can be shortly stated. Sughra Bibi died on the 11th November, 1865, having by will given the whole talukdari estate to one Akbar Ali Khan, who was the youngest of her four half-brothers. Akbar Ali Khan had no male

issue, and partly by a deed of gift and partly by bequest he disposed of the whole of the property in favour of his wife Ilahi Khanam. She died on the 20th April, 1899, leaving six daughters, who are six respondents, and a number of grandsons by such daughters, of whom Agha Mohammad Jafar, the appellant in appeal 201 of 1919, is the son of the eldest daughter; Babu Ghulam Abbas Khan, the appellant in the other appeal, being the eldest of the grandsons by a younger daughter. If, according to the true construction of the document, the successors on whom the right of primogeniture is imposed do not include those who being outside the line of descent succeeded by the operation of a devise, the appellants fail; this has been the decision of one of the Judicial Commissioners and of the Subordinate Judge, the other Judicial Commissioner deciding for other reasons that the appellants were not entitled.

The relevant terms of the document are as follows:—

“ Know all men that whereas by the Proclamation of March, 1858, by His Excellency the Right Hon'ble the Viceroy and Governor-General of India, all proprietary rights in the soil of Oudh, with a few special exceptions, were confiscated and passed to the British Government, which became free to dispose of them as it pleased, I, George Udney Yule, Officiating Chief Commissioner of Oudh, under the authority of His Excellency the Governor-General of India in Council, do hereby confer on you the full proprietary right, title and possession of the estate of Maniarpur. . . . Therefore this sanad is given you in order that it may be known to all whom it may concern that the above estate has been conferred upon you and your heirs for ever, subject to the payment of such annual revenue as may from time to time be imposed, and to the conditions . . . It is another condition of this grant that in the event of your dying intestate or of any of your successors dying intestate, the estate shall descend to the nearest male heir according to the rule of primogeniture, but you and all your successors shall have full power to alienate the estate, either in whole or in part, by sale, mortgage, gift, bequest, or adoption to whomsoever you please. It is also a condition of this grant that you will, so far as is in your power, promote the agricultural prosperity of your estate, and that all holding under you shall be secured in the possession of all the subordinate rights they formerly enjoyed. As long as the above obligations are observed by you and your heirs in good faith, so long will the British Government maintain you and your heirs as proprietors of the above-mentioned estate, in confirmation of which I herewith attach my seal and signature.”

From this it will be seen that the estate was granted in a form intended to secure the succession of the nearest male heir according to the rule of primogeniture, but that at the same time free power of disposition was reserved to all who became possessed of the estate. The construction of the document is rendered difficult by the use of words that have, according to English law, a well-known meaning and implication which in the circumstances of the grant it would not be right to apply without qualification to the document in question. The circumstances in which the grant was made are relevant considerations, and they are fully set out in Sykes' Compendium of Oudh Taluqdari Law, referred to in the judgments of the Subordinate Judge. From this it is apparent that it was the object of the Government

to associate possession of the Taluqdari estate in its entirety in the hands of the Taluqdars, with the honour and dignity of the family whose title should be transmitted to the nearest male heir. It was something remotely akin to an estate in tail male according to English law, but the kinship was not close because a power of alienation, unknown to an English estate tail, unless the entail is destroyed, was an essential part of the document. The conditions imposed as to loyalty and obedience to the British Government were obviously intended to have reference to those who took under the grant, and this is a relevant consideration in determining what the true meaning of the word "successors" may be. For if it bore the meaning which it is obviously capable of supporting, of any form of succession, it would follow that whoever bought the estate under any circumstances would be subject to the same restrictions. If, however, the estate were at any time alienated into the hands of people living in a totally different district and under totally different conditions, the reason for these provisions would at once disappear. Again, "successors," without some limitation, would include all those who succeeded to any part of the estate, and as the power of disposition clearly and in express language contemplates the power of breaking the estate up by the act of any holder for the time being, such an event might easily arise and the object of securing an undivided holding in a family whose loyalty was rewarded by security of possession would be defeated. It would, therefore, be unreasonable to assume that the estate if sold should be subject in the hands of any purchaser to the conditions which as to descent and loyalty had their origin in circumstances which would no longer apply.

Their Lordships, therefore, reject the view that the word "successors" can in this sanad be subject to the liberal construction for which the appellants contend. But if this view be rejected, the document does not permit any other interpretation of the word except that of succession according to the terms of the sanad itself. The estate is in the first instance given to Sughra Bibi and her heirs for ever. The heirs there cannot mean any person outside the line of defined succession, for to such people no such grant was made nor, so far as the grant is concerned, were they contemplated in any way as succeeding. That phrase, therefore, must be taken to mean that the estate was an absolute estate conferred upon the grantee, and it is upon her and her nearest male heir and his nearest male heir and so on in unending succession that the conditions are imposed. The last words of the sanad make this clear:—"As long as the obligations are observed by you and your heirs in good faith, so long will the British Government maintain you and your heirs as proprietors of the above-mentioned estate." That must mean "maintain" the heirs who succeed according to the terms of the grant because no other heirs as heirs can take the estate. "Successors," therefore, is in their Lord-

ships' opinion an inartistic phrase used for the purpose of expressing that, in the event of there being no alienation, those who succeed to the estate by virtue of the grant will succeed subject to the conditions and with the same provision as to succession as the person to whom the grant was originally made.

It is argued that this might enable the whole purpose of the grant to be defeated by any owner for the time being by gift, sale or devise to the person who on his death would be the nearest male heir. This argument is open to the objection that until the moment of death occurs it is impossible to say who the nearest male heir will be, so that the selection of the person might be almost impossible. But apart from that, their Lordships think that due effect can be given to the words of the sanad by construing it as meaning that "successors" includes the designated parties who would succeed in the event of intestacy, and that those designated parties cannot escape the obligations of the grant by having acquired the property through other means than succession.

Their Lordships are, therefore, unable to agree with the appellants' contention on the first point which this appeal raises, and in these circumstances the other questions do not arise for determination. They will, therefore, humbly advise His Majesty that these appeals should be dismissed. The 3rd, 4th, 5th and 6th respondents will have one set of costs only. There will be no other order as to costs.

In the Privy Council.

GHULAM ABBAS KHAN AND ANOTHER

vs.

MUSAMMAT AMATUL FATIMA AND OTHERS.

MOHAMMAD JAFAR AND ANOTHER

vs.

BIBI AMATUL FATIMA AND OTHERS.

DELIVERED BY LORD BUCKMASTER.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C. 2
1921.