

Privy Council Appeal No. 6 of 1923.

Oudh Appeal No. 29 of 1919.

Mitra Sen Singh and Others - - - - - *Appellants*

v.

Musammat Janki Kuar and Others - - - - - *Respondents*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

JUDGMENT OF THE LORDS OF JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 1ST JULY, 1924.

Present at the Hearing :

LORD SHAW.

LORD PHILLIMORE.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by LORD SHAW.*]

This is an appeal from a decree dated the 10th March, 1919, of the Court of the Judicial Commissioner of Oudh, which reversed the decree dated the 25th April, 1916, of the Subordinate Judge of Fyzabad.

The appellants are the plaintiffs in a suit for possession of certain villages. They also claimed mesne profits, a claim which was rightly disallowed and of which no more need be said. What remains is the suit for possession itself. Both the Courts before whom the suit came in India held that the plaintiffs' title to the villages was proved. Their Lordships are in entire agreement with that conclusion.

The Trial Judge decreed the suit for possession. The Appellate Court dismissed it on the ground that the appellants were estopped from denying all claim of the first respondent to hold the villages for life as an under-proprietor without power

of alienation. The only question in the appeal is whether the appellants' suit fails by reason of this alleged estoppel. In the opinion of the Board it does not so fail, and the appellants are not estopped.

The villages are in the Fyzabad district and were the absolute property of one Dhup Narain Singh. He was the owner of the talukh which embraced them. On his death his wife, Rajau Kuar, claimed to be in possession of these villages as pukhtadar. Had she been so she would have been an under-proprietor with a right both heritable and transferable. In May, 1878, this question having been raised in Court, was settled by a compromise ; and it is to the terms of that compromise that both parties refer. These terms are as follows :—

“ In the case noted above I, the plaintiff, have claimed an under-proprietary right in 10-biswas share in village Mendhi Salimpur. We, the parties, have agreed to these terms, that in village Mendhi Salimpur I, the plaintiff, shall remain in possession of the defendant's share as under-proprietor during my life-time without the power of transfer and sale ; that after my (the plaintiff's death) the wife of Babu Kalka Bakhsh Singh, my son, shall also enter into possession without the power of alienation and sale and any person other shall have nothing to do with it ; that I shall continue to pay the Government land revenue and 15 per cent. the profits to the Taluqdar defendant.”

Rajau Kuar had possession of the villages under the agreement of May, 1878, till her death in 1901, when her rights of course came to an end. Musammat Sunder Kuar, the wife of Kalka Bakhsh Singh, under the terms of the agreement of compromise thereafter possessed the villages, but her rights ceased with her death in 1905.

As the Judicial Commissioner properly observes in his judgment “ Kalka Bakhsh Singh is not shown to have had any other wife then alive. The limited rights created by the compromise, therefore, came to an end on the expiry of the above life estates ; and the property, which was the subject of these rights, subsequently reverted to the heir and successor in interest of the grantee then in existence. As Kalka Bakhsh Singh, the son and successor of the grantor, had sold his entire right, title and interest in the property in dispute to the Court of Wards. . . . the vested interest he held in the reversion passed by the sale to the Court of Wards, who became entitled to that reversion on her death.”

In 1906 Kalka Bakhsh Singh married a second wife and there is no doubt of the fact that she remained in possession for a period of about eight years. Further, there is no doubt that she obtained a mutation of names, and that she paid rent with 15 per cent. for collection to the talukhdar, that is to say, to the Court of Wards. It is upon these facts that the claim of estoppel arises.

The assertion made when mutation of names was obtained was of course erroneous and must have been so to her knowledge. Musammat Janki Kuar was entitled neither to be entered in the

under-proprietary registry as a pukhtadar, nor had she under the compromise agreement, which was the sole basis of title which could be founded upon, any rights whatsoever to possession of the villages. Very possibly what happened was simply that the Collector and the officials charged with the mutation record assumed that she, another wife of Kalka Bakhsh Singh, was possessing the same villages on the same title as her predecessor. Two officials are examined (one a translator and petition writer in the Civil Court who identifies the signatures of the Zilladars, the other the Zilladar and collector of rates) and they gave evidence that the Court of Wards made no enquiries about the status of the persons to whom the receipts were issued or whether the defendant was in truth the pukhtadar.

The Court of Wards, however, has discovered the mistake which has been made and the fact that Musammat Janki Kuar had no title whatsoever to the pukhtadari rights; and the present suit has been brought.

With all respect to the Court of the Judicial Commissioner it is difficult to understand how the doctrine of estoppel applies to a case of this character. There is no peculiarity in the law of India as distinguished from that of England which would justify such an application. The law of India is compendiously set forth in Section 115 of the Indian Evidence Act, Act I of 1872. It will save a long statement by simply stating that section, which is as follows:—

“ When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any, suit or proceeding between himself and such person or his representative to deny the truth of that thing.”

There seems no place upon the facts for the suggestion that the Court of Wards has intentionally caused or permitted Janki Kuar to believe it to be true and to act upon the belief that she was a talukhdar or that she had any right of possession under the compromise agreement already alluded to. That point might be quite sufficient to dispose of the case.

But the Court of the Judicial Commissioner goes so far as to declare that what has happened is “ tantamount to a waiver for the time being of the right of reversion,” and that “ the Court of Wards has thus been committed to recognition of the right of Musammat Janki Kuar to succeed to the pukhtadari rights under the compromise as if she had been the wife of Kalka Bakhsh Singh when Musammat Sunder Kuar died.” Their Lordships fail to understand how the doctrine of estoppel could ever be founded upon for the purposes of the recognition of any such claim or the rearing up of any such right. The whole of this doctrine appears to be founded simply upon the transaction of taking rent each year, but the taking of a rent each year may, and as the Courts have properly held, did, bar by estoppel the Court of Wards from any claim for mesne profits during the particular year

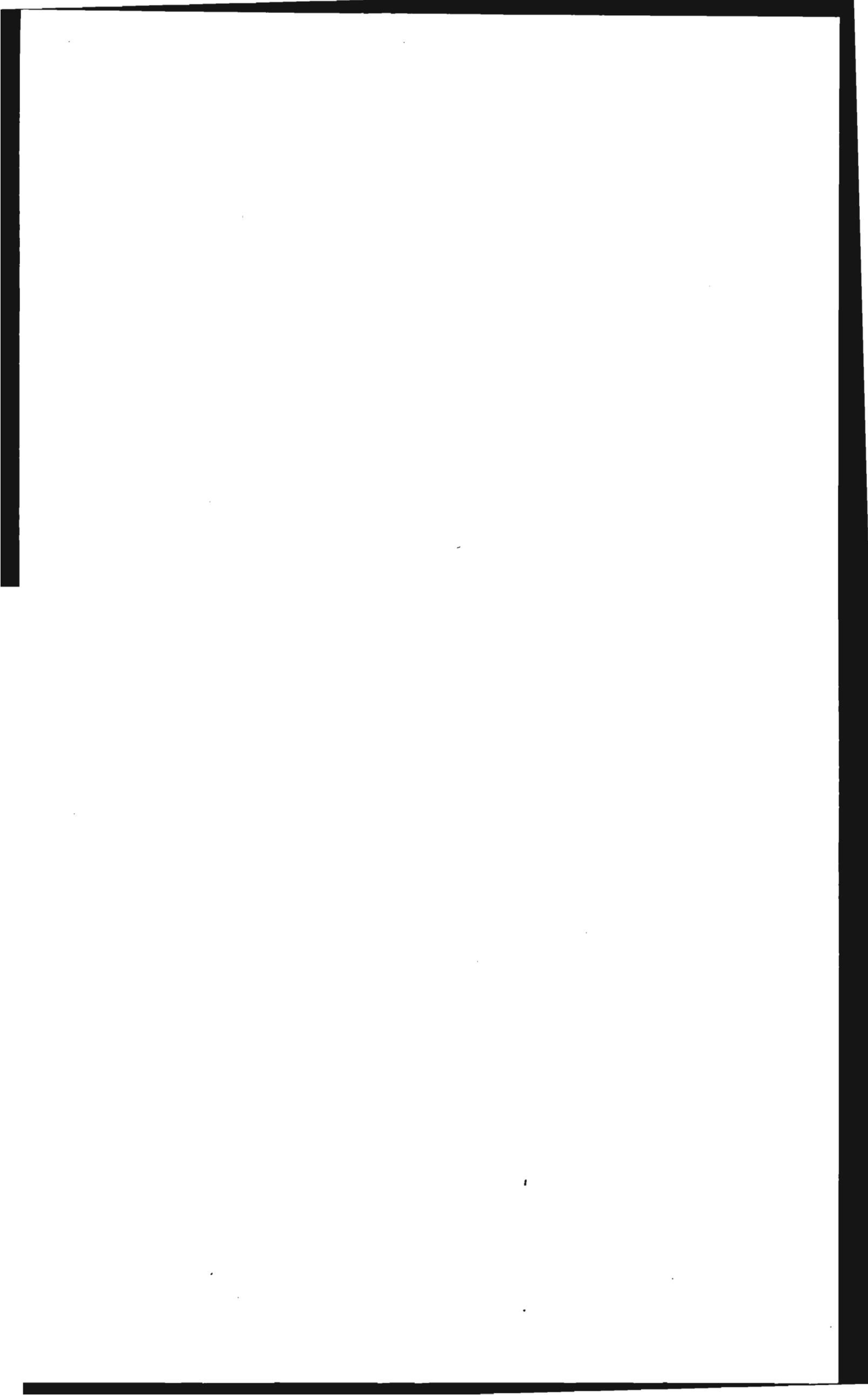
or years for which such rent was received. It estopped the Court of Wards from maintaining that the lady possessed the property with a liability to account or possess on any other or further terms than on payment of the rent made and taken.

But there estoppel stops and it can never be reared up into the creation of a pukhtadari right of a proprietary, heritable, and transferable character, nor can it ever create a right of possession of the property for life under the same terms as some other person had previously possessed it upon. Such foundations of title are unknown and they can never be created in such a manner.

At their Lordships' Bar Mr. Dubé ingeniously argued that there were, however, other circumstances which might be founded upon for the purpose of producing such rights either of permanent ownership or possession for life. Even were such a thing legally possible, it need only be remarked that in cases of estoppel the onus of establishing the facts and circumstances from which estoppel arises rests upon the person pleading it. No facts and circumstances whatsoever, apart from the occupation, appear to the Board to have been established in this case. Their Lordships must decline to accept statements made in another suit (one which was dismissed) on the subject of the payment of mortgages resting upon properties. It is nowhere established that this lady ever disbursed any payments of the kind, and it has to be remarked, in conclusion, that she herself, who knew all the facts and the circumstances of the situation, did not give evidence in the case. On examination accordingly the case for estoppel seems to be ill-founded in law, and if it were well-founded in law seems to be quite unsubstantiated in fact.

The decision in the case of *Governors of Magdalen Hospital v. Knotts*, 4 App. Cas., 324, which was referred to in discussion, afforded no help to the respondents because, as observed by Lord Selborne, a long term was "attempted to be granted by a charitable corporation at a peppercorn rent. If any rent had been reserved and received, however small, the legal relation of a tenancy *from year to year* would have been created, and the Statute of Limitations could not have run."

Their Lordships will humbly advise His Majesty that the appeal should be allowed and the decree of the Trial Judge be restored with costs since that date in the Courts below, and with the costs of this appeal.



In the Privy Council.

MITRA SEN SINGH AND OTHERS

v.

MUSAMMAT JANKI KUAR AND OTHERS.

DELIVERED BY LORD SHAW.

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

1924.