

*Privy Council Appeal No. 92 of 1923.*

*Patna Appeal No. 54 of 1921.*

Mahabir Prasad Tewari - - - - - *Appellant*

*v.*

Jamuna Singh and another - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 21ST JULY, 1925.

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*Present at the Hearing :*

LORD SHAW.  
LORD CARSON.  
SIR JOHN EDGE.  
MR. AMEER ALI.

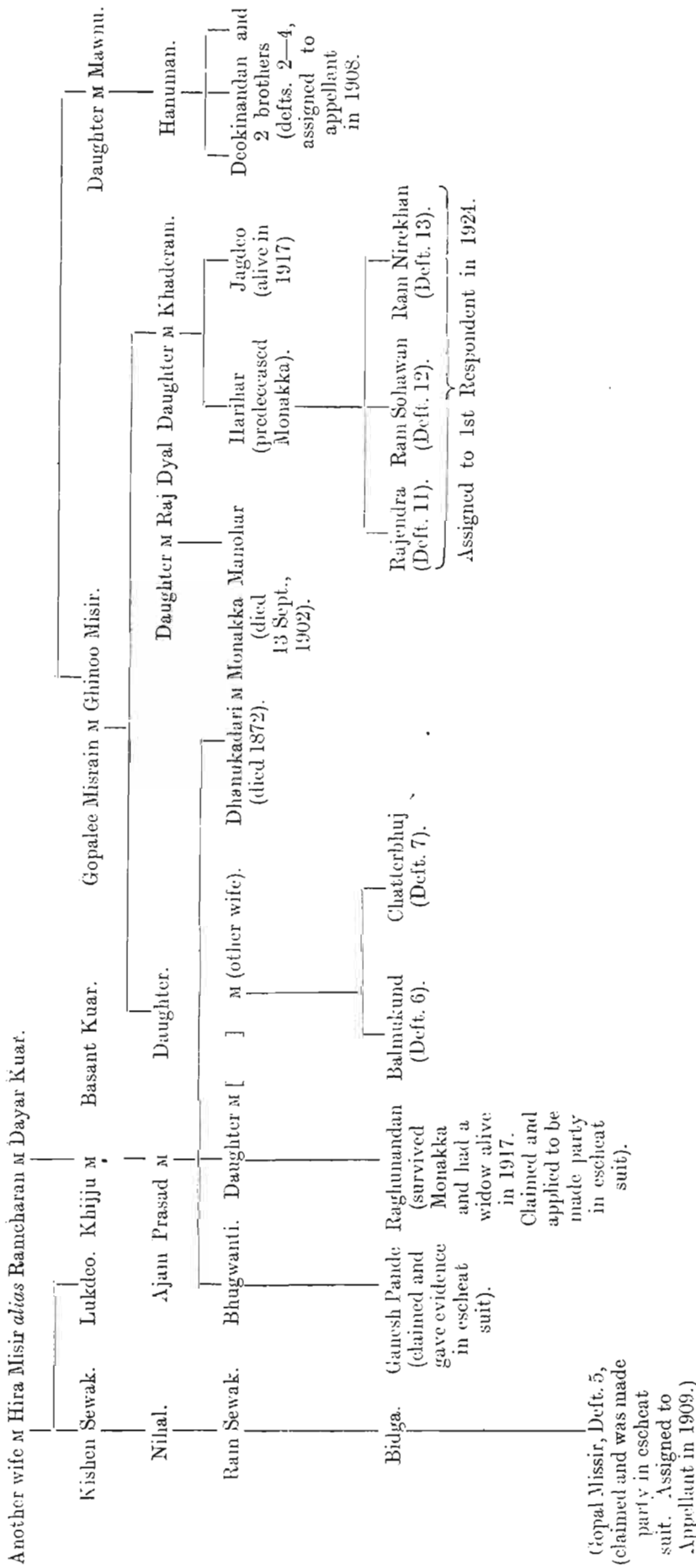
[*Delivered by MR. AMEER ALI.*]

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This appeal arises out of a suit brought by the plaintiff Jamuna Singh in the Court of one of the Subordinate Judges at Patna for possession of a property called Mauza Bariarpur in that District. He claims to have acquired his title by purchase from his assignors, defendants 11, 12 and 13.

The property in dispute, though of comparatively small value, has already been the subject of a series of litigations.

The following pedigree will give a general idea of the various parties whom the plaintiff has impleaded in the case.



N.B.—The name of Raghunandan's father does not appear in the Record. He had two wives, one of whom was the sister of Dhanukdari and mother of Raghunandan, the other wife being the mother of Balmukund and Chatterbhuj (Defts. 6 and 7).

The Mauza Bariarpur belonged originally to one Dhanukdhari Missir, who died, it is alleged, some 50 years ago, leaving him surviving a widow named Monakka Kuar. As Dhanukdhari left no issue, his widow succeeded to the estate and held possession until her death in 1902. She appears to have created in her lifetime a *Zur-i-perhgee* lease in respect of part of the property in favour of the 9th defendant.

The plaintiff alleges that on Monakka's death there were no agnatic relations of Dhanukdhari. He has, however, as he says, made all persons claiming reversionary right through females parties to the suit. His case is that among them his vendors, namely, Rajendra, Ram Sohawan and Ram Nirekhon, who have assigned to him their rights in the property in question, are preferentially entitled to the succession of Dhanukdhari.

The 1st defendant, Mahabir Prasad Tewari, the present appellant before the Board, on the other hand, alleges that Monakka before her death made a will in his favour and devised to him the property in suit, and that he obtained possession of the same, which he has retained until now. It appears that he obtained, on the 16th April, 1903, probate of the will shortly after the death of Monakka from the Court of the District Judge of Patna. It is not disputed, however, that the devise by Monakka was invalid.

The first defendant's real case is that at the time inheritance to Dhanukdhari's estate opened, on the death of Monakka, the preferential heir to his succession was his agnatic relation Gopal Missir. His place is shown in the pedigree. Gopal Missir is still alive, and the appellant has obtained from him an assignment of his rights and interests. The appellant has also purchased, it appears, the rights and interests, if any, of several of the other defendants.

In 1903 a suit was brought by the Secretary of State for the possession of Mauza Bariarpur on the allegation that Dhanukdhari had died without leaving any heir, that Mahabir, the appellant, had no title to the property and that it had accordingly escheated to the Crown. It is alleged by the appellant that this suit was really prompted by defendant 9.

A number of persons, almost all of whom have been made defendants in this action, came forward as claimants in the suit of the Secretary of State. The suit was finally dismissed by the High Court of Calcutta on the 14th May, 1908.

Soon after its dismissal the appellant brought a suit against Adit, the 9th defendant, for redemption of the usufructuary mortgage created by Monakka. The appellant based his right to redeem on the assignment to him by Hanuman (whose name will be found in the pedigree) of his rights and interests in the property, and the first Court made a decree in his favour in these terms :—

“ In accordance with my decision of the other issues I hold that the plaintiff will get a declaration that he is the proprietor of the disputed Mauza.

Bariarpur as mentioned in the plaint and that the defendant No. 1 will be declared to be a Zarpeshgidar of the Mauza, and it will also be declared that the plaintiff will get Khas possession of the disputed Mauza on payment of Rs. 200, as stipulated in the 2nd Ticca Patta (dated 1.9.02)."

The Subordinate Judge held in effect that the assignment by Hanuman, whom he considered to have a preferential reversionary right, entitled the defendant to redeem the property from Adit. This view appears to have been accepted by the High Court, and the decree of the first Court was affirmed. On an appeal to this Board it was declared that Rajendra and his two brothers were preferentially entitled. The decrees of the Courts in India were reversed and the appellant's suit for redemption was dismissed (L.R. 48, I.A. 86).

The present suit by the plaintiff was brought on the 8th September, 1914. It was dismissed by the Subordinate Judge on the 31st October, 1917, on the ground that he (the plaintiff) had failed to prove that his vendees were preferential reversioners. In the meantime, as already stated, it had been declared by the Board on the 18th January, 1921, that the plaintiff's vendees had the preferential right, and the High Court has accordingly upheld the claim, and made a decree in favour of the plaintiff.

Counsel for the appellant admits that in face of the ruling by the Board he could not impugn the reversionary right of the plaintiff's vendors, but he contends that the defendant is in possession and in order to eject him the plaintiff must show that there is no other reversionary heir in the same degree or nearer than his assignors whose title he (the defendant) can urge against the plaintiff's claim for ejectment. In other words, the action being one of ejectment the defendant is entitled to plead in defence the right of someone else equally entitled with the plaintiff's vendors. Mr. Justice Bucknill of the High Court of Patna in his careful judgment has shown that the defendant had failed to prove satisfactorily that the parties whom he had put forward were entitled to the property in preference to the plaintiff's vendors.

The evidence on which the appellant relied has been read to their Lordships, and Mr. Raikes has put before the Board every point in support of his case. Their Lordships, however, see no reason to differ from the High Court. They will humbly advise His Majesty that the appeal should be dismissed with costs.



In the Privy Council.

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MAHABIR PRASAD TEWARI

v.

JAMUNA SINGH AND ANOTHER.

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DELIVERED BY MR. AMEER ALI.

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