

Privy Council Appeal No. 88 of 1923.

Allahabad Appeal No. 15 of 1920.

Chandar Shekhar Bakhsh Singh and another - - - - Appellants

v.

Musammat Raj Kunwar, since deceased - - - - Respondent

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL DELIVERED THE 17TH MAY, 1926.

*Present at the Hearing :*

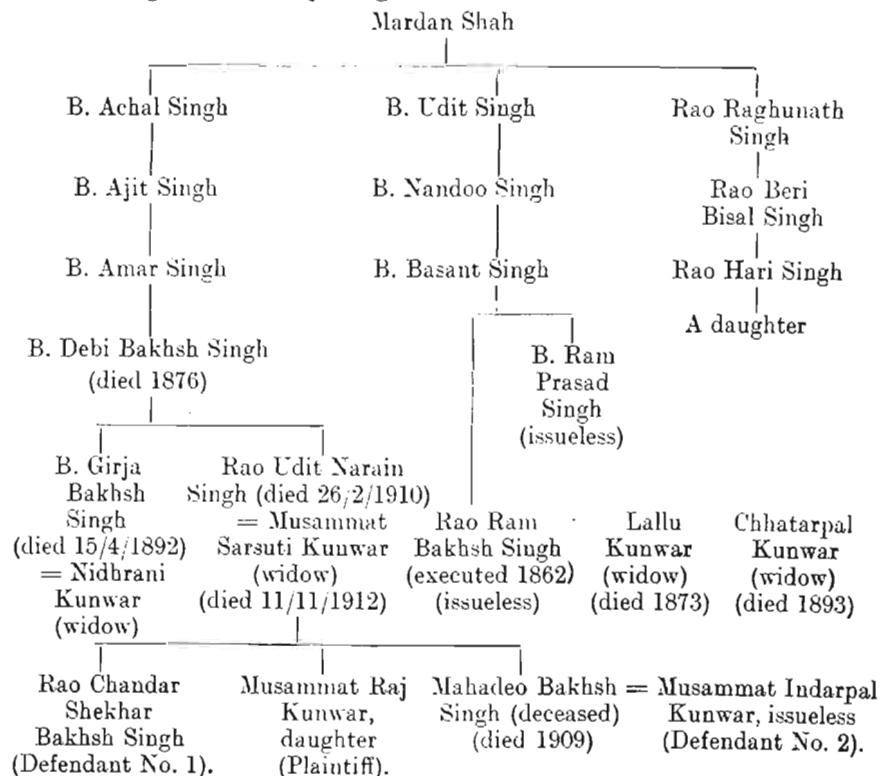
VISCOUNT DUNEDIN.

LORD BLANESBURGH.

SIR JOHN EDGE.

[*Delivered by* LORD BLANESBURGH.]

The following pedigree, taken from the pleadings, will serve to explain the position of the parties in this case. It is probably well to explain that it is printed in the reverse way from that usually obtaining in England. That is to say, the elder branch is to the right and the younger to the left.



The subject of contest ranges round certain villages situated in Fattehpur. They were in the possession of Rao Ram Bakhsh Singh, who was executed after the Mutiny and his property forfeited. The villages were given back to his senior widow, Lallu Kunwar. After her death they were possessed by his junior widow, Chhatarpal Kunwar, till her death in 1893. On her death they passed to and were enjoyed by Udit Narain Singh, who possessed them till his death in 1910. After his death his widow, Sarsuti Kunwar, had possession till her death in 1912. On her death possession was obtained by the only surviving son of Udit Narain Singh, to wit, the first defendant, Chandar Shekhar Bakhsh Singh, and by the widow of the other son deceased, as in right of maintenance, the family being, as alleged, joint with defendant No. 2. Mutation of names was obtained accordingly.

This suit was raised some years afterwards by the plaintiff (now dead), who was the only daughter of Udit Narain Singh. She alleged that she was the only heir of her father, Udit Narain Singh, her one brother having died before his father and her other brother, the defendant No. 1, having no right in respect that he had been adopted by his uncle, Girga Bakhsh Singh, and was consequently for succession purposes no longer the son of his natural father. To this Chandar Shekhar Bakhsh Singh, who will hereinafter be spoken of as the only defendant, the only right of property being in him, replied first by denying the fact of his adoption by his uncle, and second by saying that, even assuming the adoption proved, he was entitled to succeed as the nephew of his natural father, there being a custom in the family to exclude females from succession. Proof was led at great length on both sides.

The learned Trial Judge held that the adoption was not proved. It, therefore, became unnecessary for him to consider the question as to the custom and he dismissed the suit.

On appeal, the learned Judges reversed his judgment. They found the adoption proved. It then became necessary to enquire as to the custom. This they held not proved and consequently they gave a decree in favour of the plaintiff.

On appeal to the King in Council their Lordships first heard parties as to the adoption. They came to the conclusion that they would not disturb the finding of the Court of Appeal and intimated this to the parties.

They agreed with the learned Judges of the Court of Appeal that the proof rested on the reiterated declarations by Chandar Shekhar Bakhsh Singh himself, extending over a number of years, that he was the adopted son of Girga Bakhsh Singh.

The parties were subsequently heard at great length on the question of custom. Under the Mitakshara law the plaintiff would succeed. It is, therefore, for the defendants who alleged a custom to prove it, and it has been laid down again and again that the custom must be ancient and the proof conclusive.

Their Lordships feel that the general law would be weakened if this rule were not always strictly adhered to even in a case like

the present, where the custom alleged is neither unique nor unknown. Their Lordships have accordingly approached the consideration of the case in this attitude of mind, and having read the voluminous evidence adduced and duly weighed the careful and elaborate arguments of Counsel on both sides, they have reached, not without hesitation and, in the special circumstances of this case, not without some reluctance, the conclusion that they would not be justified in disturbing the finding of the Court below. The judgment is an exceedingly elaborate and careful one. The question, after all, is one of fact. The result affects this family alone. The decision of the learned Judges being what it is, no general question of law is involved.

In these circumstances, their Lordships think that no useful purpose would be served by any restatement of the position in their own words.

The conclusion reached in the Court below must remain undisturbed and their Lordships will, therefore, humbly advise His Majesty to dismiss the appeal with costs.

In the Privy Council.

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CHANDAR SHEKHAR BAKHSH AND ANOTHER

vs.

MUSAMMAT RAJ KUNWAR, SINCE DECEASED

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DELIVERED BY LORD BLANESBURGH.