

Privy Council Appeal No. 46 of 1925.

Musammat Nand Rani Kunwar - - - - - *Appellant*

v.

Musammat Indar Kunwar and others - - - - - *Respondents*

Same - - - - - *Appellant*

v.

Same - - - - - *Respondents*

(Consolidated Appeals)

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 1ST NOVEMBER, 1926.

Present at the Hearing :

LORD PHILLIMORE.

LORD CARSON.

MR. AMEER ALI.

SIR JOHN WALLIS.

[Delivered by MR. AMEER ALI.]

This appeal arises out of a suit brought by the plaintiff Nand Rani Kunwar in the Court of the Subordinate Judge of Lucknow on the 1st April, 1921, to establish her title to an estate partly situated in the district of Lucknow and partly in Barabanki in the Province of Oudh.

The plaintiff is the daughter of one Bhagwant Singh, who died on the 9th of December, 1871 ; and she claims the property in suit as devolving on her on the death in 1913 of her mother Musammat Maharani, the widow of Bhagwant Singh. Bhagwant left him surviving a younger brother named Girdhari Singh, Maharani Kunwar, his widow, and two daughters, namely, Birjrani and the plaintiff. Birjrani died childless in or about 1885.

The plaintiff claims the estate as the sole heiress, on the death of her mother, of her father, Bhagwant Singh, to whom, she alleges, the property belonged at the time of his death.

The first and principal defendant in the action is Indar Kunwar, the widow of Bhagwant Singh's brother, Girdhari Singh, who died on the 6th August, 1919. The other defendants are the daughters of Girdhari Singh by his first wife Raj Kunwar. She died on the 16th June, 1920.

The properties in Lists A and B attached to the plaint belonged originally to one Bahadur Singh, who died in or about 1849, leaving two sons, Bhagwant and Girdhari. The latter was an infant of tender years at the time of his father's death, and accordingly Bhagwant became the head of the family and remained in possession of the joint ancestral estate. The properties mentioned in List C are said to have been acquired after Bahadur Singh's death, but no separate argument has been addressed to the Board with regard to them.

The parties are admittedly subject to the law of the Mitakshara, and the two brothers Bhagwant and Girdhari became on the death of their father jointly entitled to the ancestral estate. Matters stood thus with this family when Lord Dalhousie in 1856 "annexed" the kingdom of Oudh, which was followed by a furious revolt. To punish the people, Lord Canning, who had in the meantime succeeded Lord Dalhousie as Governor-General, proclaimed in 1858 a general confiscation of the landed estates in the province. Later, under the Governor-General's Proclamation of March, 1858, the confiscated estates were restored to the proprietors, save and except in cases where they happened to be implicated in the murder of English men and English women; and Bhagwant Singh, as the head of the joint family, received back the properties which form principally the subject matter of the present suit, and what is called the "Second Summary Settlement" was made with him.

The plaintiff's case, as made in her plaint, is that Kunwar Bahadur Singh and his two sons Bhagwant and Girdhari, constituted, from long before the annexation of Oudh, a joint Hindu family governed by the Mitakshara Law, and that when the Summary Settlement was made with Bhagwant Singh, both he and Girdhari became equally entitled to the property for which Bhagwant Singh entered into the agreement with the British Government; that the settlement was made in Bhagwant Singh's name in his capacity as the head and "trustee" of the joint family; that he obtained in respect of the estate a *sanad* or grant in his own name in the same capacity; and in 1864 the first Regular Settlement was made with him as such head and "trustee." The plaintiff also sets out in her plaint that in 1867 Girdhari Singh applied to the Court of the Financial Commissioner of Oudh for the partition of his half-share in the joint estate, but instead of an actual separation a settlement was arrived at between the two brothers. The plaintiff, however, does not set out in the plaint the nature of the compromise.

As already stated, Bhagwant died in 1871, and the plaintiff's allegation is that after his death his widow Maharani became entitled to the estate, and that she entrusted its management to Girdhari, and that subsequently, in 1879, she (Maharani Kunwar) relinquished all her claim and title in respect of the said property in favour of Girdhari Singh in consideration of a fixed allowance. The plaintiff's case is that she is not bound under the Hindu Law by the acts of her mother, who was a *pardanashin* woman.

Her main contentions are based on the following allegations : namely, that Bhagwant Singh by his acts and declarations evinced clearly his intention that he took the estate for the joint family, consisting of himself and his brother Girdhari Singh, and that in 1867, by the arrangement with his brother Girdhari Singh, he became vested with the entire estate in consideration of the annuity fixed for the latter ; and, secondly, that the grant by the Government made by the *sanad* under the Oudh Estates Act (I of 1869), he, Bhagwant Singh, became possessed of the whole property. Her further contention was that by a mistake Bhagwant Singh's name was included in List 3 prepared under the Act, whereas it should have been entered in List 4, and that he never obtained a primogeniture *sanad* ; the *sanad* that was given to him was in " ordinary " terms.

The contesting defendant, Indar Kunwar, averred, in her written statement, that neither the Summary nor the Regular Settlement was made with Bhagwant Singh in his capacity of the head or trustee of the family : in fact, she strongly repudiated the idea of a trust. She also denied that in 1867 there was a separation between Bhagwant and Girdhari ; and further averred that if there was a separation there was subsequent " re-union." She substantially contended that the estate remained undivided in the possession of Bhagwant Singh, and was governed by the *sanad* granted to him under Act I of 1869, and that in view of the circumstances set out in the written statement, Girdhari Singh, on the death of Bhagwant Singh, became the heir under Section 22, Clause 6, of the Act, and that on Girdhari's death the defendant, as his widow, became entitled to the same. On these pleadings, which were considerably amplified in the course of the trial by the replication of the plaintiff and additional written statements filed on behalf of the defendants, the case went to trial before the Subordinate Judge of Lucknow, who framed a considerable number of issues.

His conclusions are thus summarised by the learned Judge in his judgment :—

" I hold as it is clear from the above discussion that Kunwar Bahadur Singh never transferred the disputed property to Bhagwant Singh, that it remained in the ownership of the entire coparcenery body up to the time of confiscation, that soon after his being made a proprietor by letter of 10th October, 1859, he began to treat the property as belonging to the joint family (Issue 1 (b)), that Bhagwant Singh admitted Girdhari Singh's right as a co-parcener at the Second Summary Settlement (Issue 2) ; that no

primogeniture *sanad* was ever granted to Bhagwant Singh, who only received an ordinary *sanad* about the property of which he had become owner some time before, that he had received the *sanad* as a representative of the joint Hindu family (Issues 3 (a), (b)); that Bhagwant Singh admitted the equal rights of Girdhari Singh in reply to Circular Order of Government declaring in favour of succession according to the laws of his tribe and religion as against the rule of impartibility (Issue 5); that Bhagwant Singh admitted the equal rights of Girdhari Singh during the proceedings connected with the first Regular Settlement, that the decrees were obtained by him as head and trustee of the joint Hindu family (Issues 6 (a), (b)); that up to July, 1867, Bhagwant Singh declared and treated the property included in Lists A and B as joint family property subject to Mitakshara Law, that Bhagwant Singh by his words and deed transferred the entire property to the coparcenary body of which he was a member (Issues 7 and 8); that the property in Lists A and B annexed to the plaint was the joint family property of Bhagwant Singh and Girdhari Singh (Issue 1 (a)); that plaintiff was in no way estopped from pleading the subsistence of the joint Hindu family during the lifetime of her father and taking advantage of the legal consequences of this plea (10 (a) and (b)).”

He further held that the proceedings initiated by Girdhari Singh in 1867 effected a separation of the joint family, and transferred Girdhari's share to Bhagwant Singh “in lieu of a monetary payment.” He overruled the plea of re-union put forward by the defendant.

He held further that the *sanad* granted to Bhagwant Singh was not a *primogeniture sanad*, that his name was, by mistake, entered in List 3, which deals with primogeniture grants, and consequently the succession to the estate was governed by Section 23 of Act I of 1869 (to which reference will be made later in the course of this judgment). He was of opinion that on Bhagwant's death his widow became entitled to the estate, and that her renunciation in 1879 in favour of Girdhari did not affect the rights of the plaintiff, who claims as the reversioner. He accordingly decreed the suit.

From this decree the defendant appealed to the Court of the Judicial Commissioner of Oudh. The learned Judges of the appellate Court came to a totally different conclusion. They held, in substance, that the *sanad* obtained by Bhagwant Singh was a *primogeniture* grant; they overruled the allegation of the plaintiff that Bhagwant's name was entered by mistake in List 3, whereas it should have been entered in List 4. They held that the succession to the estate came under the provisions of Section 22, Clause 6, of the Act; and that Girdhari Singh became, on the death of his brother, Bhagwant, lawfully entitled to the estate which vested in him as the *taluqdar*. They held also that although the settlement that had been effected with Bhagwant Singh created a “trust” in favour of his brother Girdhari Singh, that trust was “discharged” by the agreement entered into between them in 1867, and that thereupon Bhagwant Singh took the whole estate as the *taluqdar* “discharged” of the trust in favour of his brother. They held further, in agreement with the Trial Judge, that in 1867 there was a separation between the two brothers, and as

a consequence the arrangement effected between Bhagwant and Girdhari in that year gave a complete title to the elder brother in the estate. They accordingly came to the conclusion that the defendant was rightfully entitled to the *taluqa* as the widow of Girdhari Singh, and that the suit should be dismissed with costs.

The plaintiff has now appealed to His Majesty in Council.

Their Lordships consider it desirable at this stage to recapitulate briefly the main contentions of the parties.

Having regard to the application of Girdhari in July, 1867, both the Courts below have rightly overruled the plea of the defendant that the two brothers remained joint until Bhagwant's death in 1871. Had that issue been decided against the plaintiff the legal result would have been that the whole estate under the personal law of the parties would have vested in Girdhari by survivorship. It was for this reason that the defendant denied that there had been any partition between the brothers in 1867.

The plaintiff's case, on the other hand, is that there was a partition in 1867, and that by the compromise of the 8th of September in that year the share to which Girdhari was entitled was, as the Subordinate Judge puts it, "transferred to Bhagwant Singh," and the whole property thereupon vested in the oldest brother. Her case is that the *taluqa* never came under Act I of 1869, and if it did the succession to it fell under Section 23 of the Act and not under Section 22.

Regarding the inclusion of Bhagwant's name in List 3, as already mentioned, the plaintiff's allegation was that it was entered by mistake in that List; that it should have, in fact, been entered in List 4.

Thus two facts become of crucial importance. First: what was the nature of the transaction between Bhagwant Singh and Girdhari in September, 1867, and whether the *sanad* granted by Government to Bhagwant Singh was a *primogeniture* grant the succession under which is governed by Section 22.

Section 22 relates to estates held by *taluqdars* included in List 3 prepared under Section 8 of the Act. In the case of other estates where the descent is governed by the personal law Section 23 applies.

Section 22, Clause 6, under which the defendant contends the *taluqa* came to her husband Girdhari on the death of his eldest brother, runs as follows:—

"If any Taluqdar or grantee whose name shall be inserted in the second third or fifth of the lists mentioned in Section 8, or his heir or legatee, shall die intestate as to his estate, such estate shall descend as follows, viz:—

After providing for the succession of lineal descendants and adopted sons, it declares:—

". . . then to the eldest and every other brother of such Taluqdar or grantee, heir or legatee, successively, according to their respective seniorities, and their respective male lineal descendants, subject as aforesaid."

Section 23, on which the plaintiff rests her case, is as follows :—

“ Except in the cases provided for by Section 22, the succession to all property left by Taluqdars and grantees, and their heirs and legatees, dying intestate, shall be regulated by the ordinary law to which members of the intestate’s tribe and religion are subject.”

The settlement with Bhagwant Singh was effected in July, 1858, By the letter of the Governor-General in Council of the 10th October, 1859, the settlement thus made conferred full proprietary title on every *taluqdar* with whom it was made, and he acquired thereunder a permanent heritable and transferable right in the estate.

In 1860 a *sanad* was granted to Bhagwant Singh with regard to the nature of which there is great dispute between the parties. The Subordinate Judge has accepted the allegation of the plaintiff that it was an *ordinary sanad*. The Judicial Commissioners have held, supporting the defendant’s contention, that it was a *primogeniture* grant. The Act became law in January, 1869. During this period between the “ Second Summary Settlement ” and the passing of the Act the Government was engaged in interrogating the *taluqdars* with whom the settlement had been made, in what class (included subsequently in the Lists framed under Section 8) they desired to be included. Throughout these proceedings Bhagwant denied that there was any custom of *gaddinashini* in his family or that the estate descended to a single heir by the custom of the family. In the *khewats* prepared after the settlement, the names of both Bhagwant and Girdhari were entered as joint proprietors. There can be little doubt that from the Second Summary Settlement up to the Regular Settlement in 1864, Bhagwant Singh, by his acts and declaration, obtained the estate for himself and his brother Girdhari Singh as members of the joint Mitakshara family. In 1867, however, a complete change took place in the relations of the two brothers. On the 15th July of that year, Girdhari Singh applied to the Court of the Financial Commissioner of Oudh for the partition of his share in the estate. His application is in the following terms :—

“ In the Lambardari column Bhagwant Singh is entered as *sadar malguzar* (chief revenue payer) and in the *khewat* (the proprietary register) and other papers the names of us both are recorded in the Remarks column as possessing half and half [share] under each other’s verification. It was for this reason that a *sanad* containing the words *gaddinashini* (succession to *gaddi*) was not conferred on us. Nor did we try to obtain it. No custom of *gaddinashini* by a single person or of *taluqdari* exists amongst us. The *karindas* (agents), servants and expenditure have continued to be in common and on equal terms on behalf of both the parties from an ancient time prior to that of our father on account of harmony, jointness and commensality amongst us. Till now, owing to the minority of both of us under the guardianship of our mother, and the prevalence of mutual good-feeling, jointness in making collections and expenses private and public, none applied for perfect partition of land but remained joint of their own accord. But now I pray this honourable Court that after perusal of the *sanads* hereto annexed, wherein my brother Bhagwant Singh, *sadar malguzar*, has been

admitted as holding a moiety share as shown above, a partition of the villages be effected by metes and bounds."

Subsequently, on the 8th September, 1867, the following compromise was entered into between the two brothers :—

" Since I [Girdhari Singh], the plaintiff, have applied in the Courts of the Financial Commissioner and the British Indian Association for partition of the Taluqa containing the villages Gokulpur, Aseni and others, situate in District Lucknow to the extent of a moiety share, now a compromise has been entered into between me, the plaintiff, and my brother, the defendant, to this effect. At present there is a good deal of indebtedness, so he (my elder brother) will be paying me Rs. 1,200 a year for daily expenses from 1275 Fasli and full amount of Rs. 2,600 annually after discharge of the debt. If the aforesaid amount remains unpaid then a property, that is, the villages reserving the profit of Rs. 2,600, after deducting the Government revenue and the collection charges and so forth, be set apart from the Taluqa. Therefore there is left no dispute on my part as regards partition of the aforesaid Taluqa. Nor shall I ever raise any objection. Hence I, by filing this application in the shape of a compromise arrived at between us and verified by my brother, namely, Kuar Bhagwant Singh, in token of approbation pray that this case be excluded from the arrears and consigned to the records."

This document is signed both by Girdhari Singh and Bhagwant Singh. Bhagwant Singh's signature deserves notice. He signs himself not as a *lambardar* nor as a *malguzar*, but as *taluqdar*. To the significance of this particular designation their Lordships will call further attention later in the course of this judgment.

The primary matter for consideration, therefore, is what was the effect of this arrangement in regard to the estate. In this connection it is to be noted that on the 10th June, 1871, some months before his death, Bhagwant Singh applied to the Court of Wards to take charge of the *estate*. To this application Girdhari Singh does not appear to have been a party, and, so far as the records show, he took no part in respect thereto. The property was taken charge of by the Court of Wards and remained in its charge until Girdhari took possession of the property on the decease of his brother in December, 1871. There were disputes between Girdhari Singh and Bhagwant Singh's widow Maharani in 1872, and on the 10th January of that year an agreement was entered into between the widow of Bhagwant and his brother Girdhari Singh in counterparts. The first, executed by Girdhari, is in the following terms :—

" Whereas the estate Taluqa Gokulpur, Aseni, etc., in District of Lucknow and Bara Banki is in the proprietary possession of Kuar Bhagwant Singh my real brother by hereditary right and by virtue of the *sanad* granted by Government, and the aforesaid Taluqa has on the application of my brother been placed under the superintendence of the Court of Wards since the 10th June, 1871. Since my brother died on the 9th December, 1871, and my name has been entered as proprietor of the aforesaid estate, and at present as well as after release from superintendence of the Court of Wards, I, the declarant, am to be in charge of making collections of the income of the Ilaqa and management of the estate, therefore I with consent do covenant and place on record that after payment of Government revenue, the

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Ilaqa charges with the exception of the household expenses, whatever shall be left as surplus and profit from the income of Ilaqa, I shall be paying to Musammat Maharani, widow of Kuar Bhagwant Singh, as a moiety share according to rendition of accounts without any excuse and dispute.”

Maharani, in the document executed by her, states as follows :—

“Whereas the estate comprising Taluqa Gokulpur, Aseni and other villages situate in Lucknow and Nawabganj Bara Banki Districts is the ancestral property of my husband, and was, by virtue of the *sanad* granted by the Government, in the proprietary possession of my husband Kuar Bhagwant Singh, Taluqdar ; whereas, the said Taluqa, on an application of my husband, was taken under the management of the Court of Wards from the 10th June, 1871 ; and whereas my husband died a natural death on 9th December, 1871, I (and the other person) having agreed together, I agree and accept and hereby declare and commit to writing that in respect of the Taluqa the name of Kuar Girdhari Singh, real brother of my husband, be entered as against the Number, and Kuar Girdhari Singh to collect income from the Ilaqa, to look after and manage the Ilaqa now and after the termination of the management by the Court of Wards, that after paying the Government revenue and incurring expenses relating to the Taluqa, excepting the domestic expenses, he (Kuar Girdhari Singh) from such profits of the Ilaqa as might be left surplus, shall divide to me one half according to the amount as might be found due on rendition of account, and the same is agreeable and acceptable to me, and to this I have no sort of objection or dispute.”

Disputes again broke out between Maharani and Girdhari in 1879 which were settled by deeds executed on the 4th September, 1879, in which Maharani on her part states as follows :—

“Therefore I, the executant, too, while in a sound state of body and mind, without reluctance and coercion, do hereby covenant, and reduce it to writing, that I, the declarant, relinquish all my claims and rights to the Taluqa ; and now there remains no claim or concern or right to me in respect of the said Taluqa as well as the *sir* land decreed on 3rd November, 1873, by the Court of the Judicial Commissioner of Oudh. I shall not make any sort of interference in the Taluqa, and put forward no claim with the exception of one for receipt of the life maintenance amounting to Rs. 2,400, if not paid at the stipulated periods of instalments. If anything contrary to this agreement occurs, it will be simply illegal. If the said Kuar Saheb fails to pay the aforesaid amount in the undermentioned instalments, then I shall be at liberty to realize the same from the hypothecated property, as well as from moveable and immoveable property of the Kuar Saheb, myself or through Court, and no objection of the Kuar Saheb will be entertained. The said Kuar Saheb has given me 100 bighas *kham* out of the numbers of *sir* land in villages Aseni and Gokulpur, numbered below, entered in this deed of agreement, executed by Kuar Girdhari Singh, rental Rs. [paper torn], for cultivation, without the powers of alienation by sale, gift and mortgage, for my life. The rental [paper torn] shall be paid by me annually and at each instalment, without any objection, which if I raise or do not pay the rental hereof, the Kuar Saheb may deduct the same from the maintenance allowance fixed and I shall have no objection thereto.”

Their Lordships accept the contention that the renunciation by the widow of Bhagwant Singh of her rights and her claims to the estate does not bind the reversioner, the daughter of Bhagwant Singh. But they cannot be omitted altogether

from consideration as they form part of the *res gestæ* and help in explaining the contentions of the parties.

The Judicial Commissioners have in appeal reviewed at length the authorities on which reliance has been placed by the parties, and have marshalled the facts with great ability. Their Lordships desire to observe that they entirely concur with the Court below in the view that there is absolutely no evidence to show that Bhagwant Singh's name was entered in List 3 by mistake.

Section 3 of Act I of 1869 declares :—

“ 3. Every Taluqdar with whom a summary settlement of the Government revenue was made between the first day of April, 1858, and the tenth day of October, 1859, or to whom, before the passing of this Act, and subsequently to the first day of April, 1858, a taluqdari sanad has been granted,

“ shall be deemed to have thereby acquired a permanent heritable and transferable right in the estate comprising the villages and lands named in the list attached to the agreement or kabuliyat executed by such Taluqdar when such settlement was made,

“ or which may have been or may be decreed to him by the Court of an officer engaged in making the first regular settlement of the province of Oudh, such decree not having been appealed from within the time limited for appealing against it, or, if appealed from, having been affirmed,

“ subject to all the conditions affecting the Taluqdar contained in the orders passed by the Governor-General of India on the tenth and nineteenth days of October, 1859, and re-published in the first schedule hereto annexed, and subject also to all the conditions contained in the sanad under which the estate is held.”

Section 8 provides for the preparation by the Chief Commissioner of Oudh within six months of the passing of the Act of six lists. “ First : A list of all persons who are to be considered *taluqdars* within the meaning of this Act ; Second : A list of the *taluqdars* whose estates according to the custom of the family on and before the thirteenth day of February, 1856, ordinarily devolved upon a single heir ; Third : A list of the *taluqdars*, not included in the second of such lists, to whom *sanads* or grants have been or may be given or made by the British Government up to the date fixed for the closing of such lists, declaring that the succession to the estates comprised in such *sanads* or grants shall thereafter be regulated by the rule of primogeniture ; Fourth : A list of the *taluqdars* to whom the provisions of Section twenty-three are applicable.”

The fifth and sixth are immaterial for the purposes of this case.

On the 20th July, 1869, after the Act was passed into law, the following notification was issued under the authority of the Viceroy and the Governor-General in Council :—

“ Under the provisions of Section 9, Act I of 1869, His Excellency the Viceroy and Governor-General in Council is pleased to direct the publication of the

following List, prepared by the Chief Commissioner of Oudh, under Section 8 of the aforesaid Act.

“ General List of persons who are declared to be Taluqdars in the Province of Oudh under Act I of 1869, being List No. 1, referred to in Section 8 of the said Act.”

Number.	Subordinate list.	Number in subordinate list.	Name of Taluqdar.	Name of Estate.	District.	Remarks.
1	III	1	LUCKNOW DISTRICT. Kuar Bhagwant Singh	Aseni, Dalu Khera	Lucknow	—

As already stated, the Government made every endeavour to make the Lists conform with the wishes of the *taluqdars*. Bhagwant Singh was unquestionably a *taluqdar* and his name was included in List 3. There is absolutely no evidence in proof of the allegation that Bhagwant's name was included by mistake in that list, as alleged by the plaintiff.

Section 10 of the Act provides as follows :—

“ No persons shall be considered Taluqdars or grantees within the meaning of this Act, other than the persons named in such original or supplementary lists as aforesaid. The Courts shall take judicial notice of the said lists and shall regard them as a conclusive evidence that the persons named therein are such Taluqdars or grantees.”

In the case of *Murtaza Husain Khan v. Mahomed Yasin Ali Khan* (43 I.A., p. 269) their Lordships have held as to the effect of Section 10, as follows :—

“ That section provides that the Court shall take judicial notice of the Lists and shall regard them as conclusive evidence of the facts they record.”

In the absence of any evidence to show that Bhagwant's name was wrongly inserted in List 3, his inclusion in that list is, in their Lordships' opinion, conclusive that the *sanad* he obtained was a *primogeniture* grant. In other words, that he was a *taluqdar* taking an estate under a *primogeniture sanad* under the provisions of the Act. Their Lordships are also satisfied that on the evidence to which the Judicial Commissioners refer, the defendant has established that a *primogeniture sanad* was issued to Bhagwant Singh.

In the view they take of the case they do not think it necessary to refer in detail to the authorities on which the plaintiff rests her claim. In the case of *Mussamat Thukrain Sookraj Koowar v. The Government* (14 Moore's Indian App. 112), Lord Justice James, delivering the judgment of the Board, pointed out that the grant of an estate under the Act to a specific individual

did not operate as an absolute conferment of an exclusive title on the *taluqdar*, independent of the equitable rights of other parties possessing rights thereto before the confiscation of the estate by the Crown.

In *Hurpurshad v. Sheo Dyal* (3 I.A. 259) the *taluqdar* was held to have transferred, by an *inter vivos* act, the estate to the joint family under Section 15 of the Act. After quoting the finding of the Financial Commissioner regarding the character and meaning of the document under consideration in that case the judgment proceeded thus :—

“ Their Lordships concur in this view. They go further, however, and are of opinion that the declaration in those documents of the wish of *Gouree Shunkur*, acted upon as it was by him and by the other members of the family in his lifetime, and coupled with the tabular statement, was evidence sufficient to prove an alienation *inter vivos*, which in *Gouree Shunkur's* lifetime transferred the property to the family, to be held by them as joint family property. No evidence was given to show that the rents and profits of the estate did not continue, even during the life of *Gouree Shunkur*, to be brought, like the other assets of the family, to the family treasury, for the use of the undivided family. In the *Cawnpore* case *Mohun Lall*, one of the sons of *Chotay*, said : ‘ Every one used to take out of the profits as much as he required.’ In the tabular statement sent in in May, 1860, *Rajah Gouree Shunkur* entered his own name not alone, but with the other members of the family, as the persons fit to succeed ; he could not have intended to devise to himself by a will or codicil—he clearly meant, by entering his own name as one of the sharers, to express his wish and intention that the estates should be held jointly during his own life as well as after his death.”

In *Thakoor Hardeo Bux v. Thakoor Jawahir Singh* (L.R. 4 I.A. 178) the Board re-enunciated the principle that a person who has been registered as a *taluqdar* under Act I of 1869, and has thereby acquired a *talukdari* right to the whole property, may nevertheless have made himself a trustee for another of a portion of the beneficial interest in the lands comprised within the estate.

These principles have been maintained in all the decisions on the subject.

The present case appears to their Lordships to stand on a different footing. Here Girdhari Singh was clearly entitled to a share of the estate, and it would not be necessary to refer his right to an implied trust in his favour in respect of a moiety of the estate. Up to 1864 Bhagwant Singh explicitly admitted his right. But what happened in 1867 completely altered the position of the two brothers in relation to the estate. Although there is no direct evidence, the circumstances leave no room for doubt as to what happened. Bhagwant was getting old. Early in 1871 he applied to the Court of Wards to take charge of the *taluqa*, and in December of that year he died. He had no male issue, and under the Act his brother would be the heir. So he would be if the family had remained joint. It is not surprising, therefore, that Girdhari Singh consented to the *taluqa* vesting in his elder brother under the *sanad* he had received, and his being included in List 3.

The Government's dealings subsequent thereto with Bhagwant Singh are consistent only with the hypothesis that Bhagwant took the estate as included in a primogeniture grant. Reference has been already made to the document of the 8th September, 1867, in which Bhagwant Singh describes his status as that of a *taluqdar*. On the 27th January, 1869, there is an enquiry by the Government to the following effect:—

“ With reference to the concluding portion of paragraph 7 of the Chief Commissioner's letter, every *sanad* Taluqdar should be required to state in writing whether he desires to enter List 3 or 4, and every grantee must similarly declare whether he elects for List 5 or 6.

“ The portion of the enquiry that may entail some labour will be the investigation of claims to be considered Taluqdars by those who have no *sanads*, and in every such case the Deputy Commissioner will record in writing the particulars of the claim, with his opinion, to which that of Commissioner should be added. No claims will be rejected without a reference, but it will be convenient if the Deputy Commissioner will show those he accepts and rejects separately.”

On the 11th February, 1869, Bhagwant Singh, “ Taluqdar of Aseni,” is requested by the Deputy Commissioner of Lucknow as follows:—

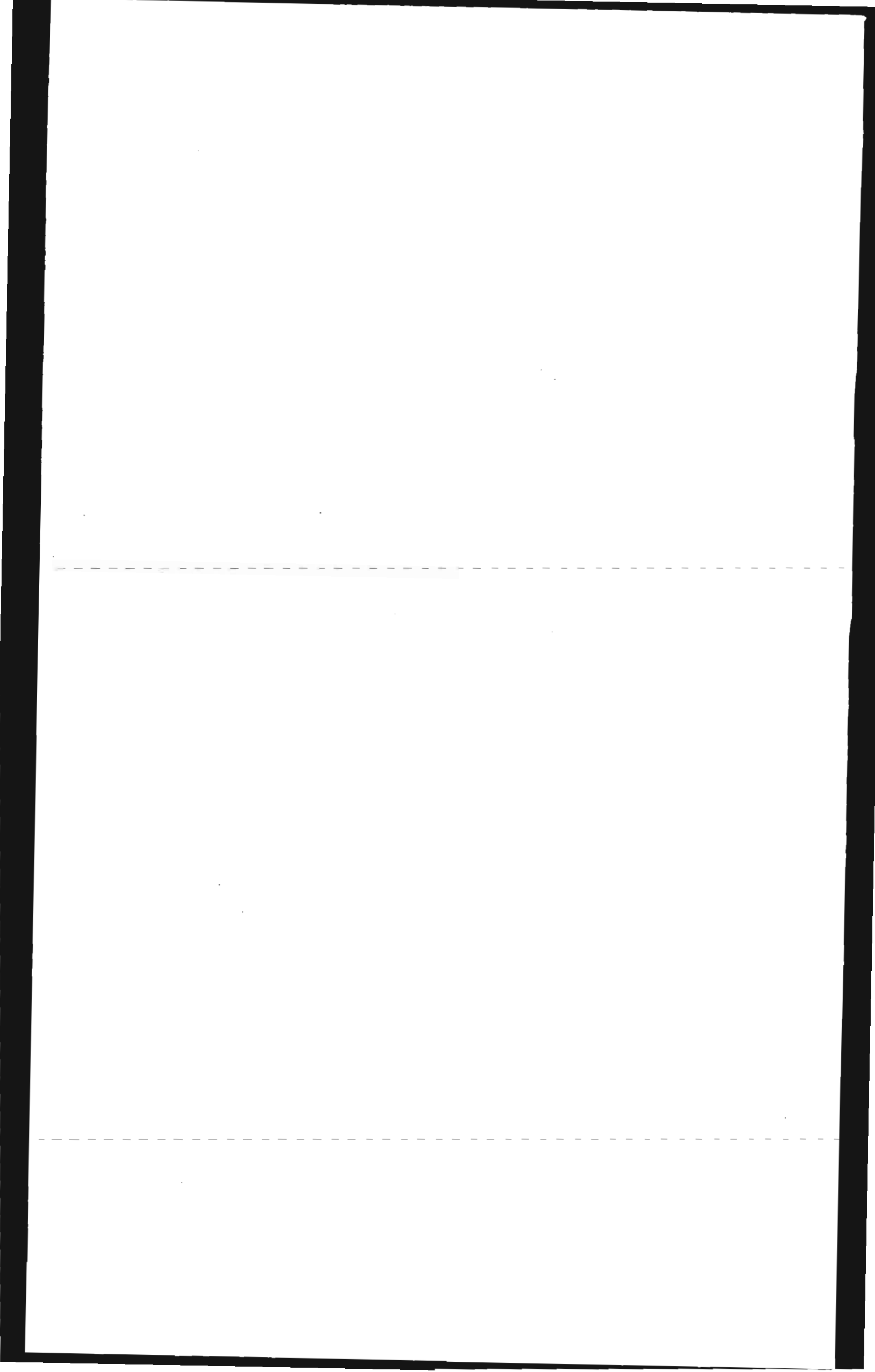
“ As it is necessary for me to inspect the *taluqdari sanad* in Persian as well as in English, relating to your *taluqa*, you are hereby requested to send the required *sanad* at once for perusal.”

So far as appears from the record the *sanad* was sent in and duly inspected, and returned to Bhagwant. A list of *sanads* issued by the Chief Commissioner to the *taluqdars* in Oudh, together with an extract from the list, has been made an exhibit in the case. There is an endorsement to the effect in answer to the query whether the English *sanad* had or had not the primogeniture clause, the answer embodied in the extract is, “ It has.”

In view of these considerations their Lordships entertain no doubt that (1) a primogeniture *sanad* was granted to, and eventually accepted by, Bhagwant Singh ; (2) that he was the *taluqdar* under the grant ; (3) that on his death without male issue or adopted son, the *taluqa* devolved under Clause 6 of Section 22, on his sole surviving brother, Girdhari Singh ; (4) and that on Girdhari Singh's decease in 1919 it devolved, under Clause 7, on his surviving widow, the defendant, Indar Kunwar.

Their Lordships, on the whole, are of opinion that the conclusion at which the Judicial Commissioners arrived is right and should be affirmed. They will accordingly humbly advise His Majesty that this appeal should be dismissed with costs.

Their Lordships desire, however, to observe that in their judgment they have confined their attention exclusively to the plaintiff's claim to the *taluqa*.



In the Privy Council.

MUSAMMAT NAND RANI KUNWAR

vs.

MUSAMMAT INDAR KUNWAR AND OTHERS.

SAME

vs.

SAME.

(*Consolidated Appeals.*)

DELIVERED BY MR. AMERR ALL.

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