

Privy Council Appeal No. 51 of 1928.

Oudh Appeals Nos. 24-28 of 1924.

Raja Mohammad Mumtaz Ali Khan - - - - *Appellant*

v.

Dhanna Singh, since deceased, and others - - - - *Respondents*

and four connected Appeals.

(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, 1929.

Present at the Hearing :

LORD BUCKMASTER.

VISCOUNT DUNEDIN.

LORD TOMLIN.

SIR GEORGE LOWNDES.

SIR BINOD MITTER.

[Delivered by LORD BUCKMASTER.]

These are consolidated appeals from five decrees of the Court of the Judicial Commissioner of Oudh, and their Lordships are of opinion they must be allowed. There is no need to examine the history of the litigation, for the question in dispute common to all the cases is whether there is any distinction between the present facts and those that led to the decision in the case of *Mohammad Mumtaz Ali Khan v. Mohan Singh* (50 I.A. 202), and whether there is any reason to question or to modify that decision.

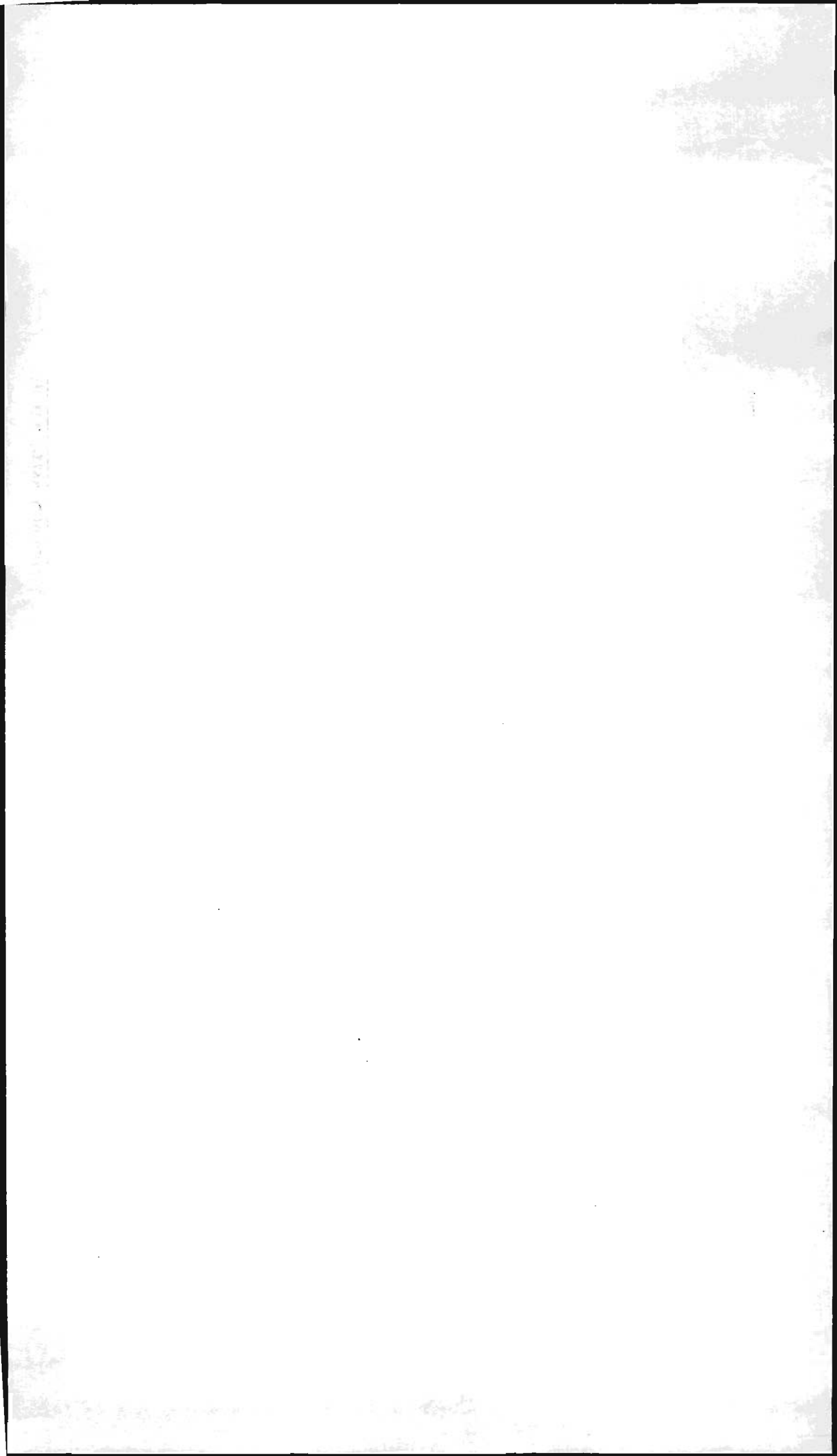
Only a few sentences are necessary in order to show the reasons on which their Lordships' opinion depends. It appears that in 1893 an attempt was made to eject the respondents from the holdings which form the subject of this dispute, and in those proceedings they set up that ejection was impossible because they were under-proprietors. Now the lands being in the Province of Oudh, a person in possession and paying rent is either an under-

proprietor, an occupancy tenant, a tenant under a special agreement, or a tenant at will. The question as to what was their exact position in 1893 was then left wholly undetermined, but it is quite plain that the respondents asserted that their right was that of an under-proprietor. It appears that they persisted in this assertion until proceedings were taken which have led to this appeal, in which the decision appealed from is based upon this, that the assertion made in 1893 of the right of the respondents to be under-proprietors, persisted in throughout the period of years that has elapsed, has given them by prescription an independent title. The judgments of the Subordinate Judge dated the 22nd December, 1916, and the 23rd March, 1917 declared that, by virtue of the facts stated, the respondents became possessed of an indefeasible under-proprietary right created by prescription long before in one case the 21st June, 1911, when the respondents therein were ejected, and, in other cases, 1916, when the respondents brought the present suits, and that consequently the orders sought for must be made. It also appears that the finding of fact also involves that originally that was not their holding, that they were not in as under-proprietors at all, and that they have completely failed to show that that was their original right. The whole of the judgments appealed from are based on the hypothesis that the right that they now seek, and which has been granted to them, is a right gained by prescription in the circumstances that their Lordships have named.

Now, the decision in 50 I.A. contains this statement, with which their Lordships agree. It is said there that the Board is "unable to affirm as a general proposition of law that a person who is in fact in possession of land under a tenancy or occupancy title can, by mere assertion in a judicial proceeding and the lapse of six or twelve years, without that assertion having been successfully challenged, obtain a title as an under-proprietor to the lands." That is precisely the circumstance that has happened here. It was in the judicial proceeding that the assertion of the under-proprietary rights was made, and from that time to this it may have been asserted, but its repeated assertion during the statutory period applicable for a Statute of Limitations cannot convert a title which was not that of under-proprietary tenant into that of under-proprietary tenant merely by lapse of time.

For these reasons their Lordships are of opinion that the appeal must be allowed and the suits dismissed, and they will humbly advise His Majesty accordingly.

The order as to costs will be in accordance with the terms on which special leave to appeal was granted—that is, that the appellant must pay them as between solicitor and client, and the orders for costs made in the lower Courts will not be interfered with.



In the Privy Council.

RAJA MOHAMMAD MUMTAZ ALI KHAN

v.

DHANNA SINGH, SINCE DECEASED, AND
OTHERS

and four connected Appeals
(*Consolidated Appeals*)

[DELIVERED BY LORD BUCKMASTER.]

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