Privy Council Appeal No. 57 *of* 1930.
Patna Appeals Nos. 54, 56, 57 *and* 62 *of* 1928.

Sri 5 Rani Chhatra Kumari Devi - - - - - *Appellant*

v.

Prince Sri 5 Mohan Bikram Shah *alias* **Ram Raja and others** - *Respondents*

Prince Sri 5 Mohan Bikram Shah *alias* **Ram Raja** - - *Appellant*

v.

Sri 5 Rani Chhatra Kumari Devi and others - - - *Respondents*

Prince Sri 5 Mohan Bikram Shah *alias* **Ram Raja** - - - *Appellant*

v.

Maiya Dalip Rajeshwari Devi and others - - - - *Respondents*

Sri 5 Rani Chhatra Kumari Devi - - - - - *Appellant*

v.

Ram Raja *alias* **Mohan Bikram Shah** - - - - *Respondent*

(*Consolidated Appeals*)

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 8TH MAY, 1931.

Present at the Hearing:

LORD BLANESBURGH.
LORD ATKIN.
SIR LANCELOT SANDERSON.
SIR GEORGE LOWNDES.
SIR DINSHAH MULLA.

[*Delivered by* SIR GEORGE LOWNDES.]

The facts in this case have been stated with admirable clarity and precision in the judgment of the High Court, and their Lordships will only re-state them so far as is necessary for the understanding of the conclusions to which they are led.

Raja Mohun Bikram Shah, a scion of the royal house of Nepal, but resident at Benares, died on the 18th April, 1912. He was the owner of a valuable estate known as the Ramnagar Raj, and of other property in Benares. It was contended in the

Courts in India that this property was all " ancestral " in his hands, but both Courts have negatived the contention. The question has been raised again before the Board, but their Lordships do not think it necessary to discuss the matter at length as they are satisfied that the conclusion come to in India on this point is correct.

The Raja had married four wives, of whom the youngest, Sri 5 Rani Chhatra Kumari Devi, survived him. It will be convenient to refer to her as the appellant and to Prince Sri 5 Mohan Bikram Shah, the other person principally concerned in the present appeals, as the respondent.

The Raja's only son, born to him of the appellant, died in infancy in 1897. He made three wills, which have given rise to this litigation. The first is dated the 12th October, 1901. The material terms are as follows :—

" (2) If I adopt any boy in my lifetime and he be alive at the time of my death, such adopted son will be the proprietor of the whole of my property.

" (3) If I have no son from any of the Ranis at the time of my death or I do not adopt a son or I adopt a son, and he dies in my lifetime, then, after my death, Rani Chhatra Kumari Devi shall have the power and I permit her to adopt a boy from my family, viz., from the family of Sri 5 Maharaja of Nepal, and if the boy dies she will adopt another boy from the same family. I permit Rani Chhatra Kumari Devi to adopt up to four boys in this manner one after another, and the boy who will be adopted according to the conditions laid down in this paragraph will be the proprietor of the whole of my property.

" (5) If, at the time of my death, I do not have any son from any Rani or my adopted son be not alive, then up to the time of her adopting a son, Rani Chhatra Kumari Devi will be the proprietress of the whole of my property ; but she will have no power to transfer, mortgage, give in *Birt* or *mokerari* lease any portion of the property.

" (7) If at the time of my death there be no son of mine or I do not adopt any boy, or I adopt any boy, but he dies during my lifetime, or Rani Chhatra Kumari does not adopt a boy, then after the death of Rani Chhatra Kumari Devi such person will get my property as may be entitled to get according to the *Shastras*."

The second will was dated the 26th May, 1903. At this time the Raja was contemplating the adoption of the respondent, who was the son of his cousin, Bhupatindra Bikram Shah. The consent of the Prime Minister of Nepal was sought and obtained, and both Courts in India have found that the adoption was duly made on the 31st May, 1903. Their Lordships accept this finding of fact.

The second will was in the following terms :—

" As I am now about 38 years of age and I married four wives, of whom two of the Ranis have died childless, and now two of them are alive and neither of them has any issue who may be (my) successor after my death. Under these circumstances it is proper for everyone that he should make some arrangement in connection with his property, as no reliance can be placed upon life. So I had asked Sri 3 Maharaja Chandra Shamshere Jung Rana Bahadur Maharaja of Nepal that I might get a boy from my own family (viz., the family of) Sri 5 Maharaja Dhiraj of Nepal, whom I might

appoint my successor. So the said Maharaja Saheb of Nepal consented to give me Mohan Bikram Shah *alias* Ram Raja, son of my nephew Sri 5 Bhupatindra Bikram Shah, saying ' Make Mohan Bikram Shah *alias* Ram Raja, son of Sri 5 Bhupatindra Bikram Shah your successor.' Therefore of my own free will and accord, with full possession of my senses and consciousness, I have given (made) *baksis* of virtue of this will to the said Mohan Bikram Shah *alias* Rama, son of Sri 5 Bhupatindra Bikram Shah, the entire *Reasat* of Ramnagar in the district of Champaran and all the properties movable as well as immovable, cash, and in kind, present as well as prospective, belonging to the Ramnagar *Reasat* situated in the districts of Champaran and Saran, and also all properties movable and immovable, cash and in kind situated in the district of Benares left by my grandmother Sri 5 Raj Lachmi Devi, which I hold by right of inheritance, and the houses, together with garden and trees, etc., situated at Ratanpura *alias* Bhagwan-bazar in the town of Chapra, in the district of Saran, and other properties, movable as well as immovable, cash and in kind, situated in every district of British India and other places, which are now in my possession or which may hereafter come to my possession. During my lifetime I am myself the owner of all my property. After my death, if there be alive any male issue born to me by my Ranis, the said male issue will be the owner of the said *Reasat* properties. If I die without leaving behind me any issue from my Ranis, then the said Ram Raja will after my death take my place, will be my successor and will be the owner of my entire *Reasat* and all the properties, movable and immovable, above referred to, of which I am now in possession as proprietor or which may hereafter come into my ownership or possession. I declare that after my death the said Ram Raja and his posterity from generation to generation, both in the male and female lines, being in proprietary possession of all the properties above referred to, with power to transfer, will deal with the same as he may like.

" 2. The villages detailed below, which I have given for life to Rani Bishun Kumari Devi and Rani Chhatra Kumari Devi and my grandmother (mother's mother) Rani Nauroch Devi for maintenance, shall remain in the possession of the Rani to whom they have been given, during her life-time. Besides that I do at present pay Rs. 250 per month to Rani Chhatra Kumari Devi and Rs. 200 per month to Rani Bishun Kumari Devi. The said Ranis shall always get the same from the proprietor of the *Reasat* during their lives. After the death of a Rani the villages in her possession with household goods shall also be included in the Ramnagar *Reasat*, and also after the death of my grandmother all villages, together with her household goods, shall become part of Ramnagar *Reasat*. Except the villages detailed below under the names of each of the Ranis and the said allowances, they shall have no claim of any kind to the properties left by me, in the presence of the said Ram Raja, his male descendants, heirs and representatives.

" 3. If any female child be born from any of the Ranis, the legatee shall be bound to support her and get her married according to the custom prevailing in the family. Such female child too shall have no right of any kind in the presence of the legatee, his heir and representative to any of my said properties. She will get her maintenance from the *Reasat*.

" 4. If by the Will of God a son be born to any of my Ranis and if he be alive after my death, but die without leaving any issue, then the said legatee or his heir and representative shall be the owner of the property, movable and immovable, left by me. No one else shall have any right.

" 5. For *dharmath*, the villages detailed below are dedicated to the temples of Ramji, Shivaji and Bhagwati, etc. They shall always be considered as endowed properties. Their management and supervision will be under my successor and representative; but my successor and

representative shall have no *milkiat* right in or the power of transferring the endowed property.

6. If during my lifetime the said legatee be not alive (which God forbid) and if I too die without leaving any male issue from any of the Ranis, in that case under the above conditions a son or grandson or great-grandson, male descendant of the said Ram Raja or his male successor and representative, shall be the proprietor.

7. I do by this Will revoke the Will dated the 12th October, 1901, and the *supurdnama*, dated 14th April, 1902, executed in the name of Rani Chhatra Kumari Devi, and the permission to adopt given by me. This is my last Will. Now I shall have no power to make any other Will."

This will was registered on the 29th May, 1903, under the provisions of the Indian Registration Act, 1908, applicable to wills. The original document was handed over by the Raja, a few days after the adoption, to Maharani Kancha Maiya, the grandmother of the respondent in his natural family, and sent on by her to the Prime Minister.

On the 25th May, 1904, the Raja executed his third and last will, by which he revoked the second and revived the first will. After his death the appellant took possession of the estates and the usual mutation proceedings in the Revenue Courts resulted in her favour. On the 16th June, 1912, she applied to the District Court of Mazaffarpur for probate of the third will combined with the first will of the 12th October, 1901, which was said to be "confirmed and restored" by the third. The respondent filed a caveat contesting the genuineness of the third will, denying the testamentary capacity of the Raja, and alleging undue influence. The District Judge found in favour of the appellant and granted her probate of the two wills. The respondent appealed, but did not prosecute his appeal, and it was dismissed for default on the 2nd May, 1917.

The material provisions of the third will are as follows :—

"I am Raja Mohan Bikram Shah, proprietor of Raj Reasat Ramnagar, district Champaran, at present residing at Sham Bazar, in the City of Calcutta.

Whereas before this I had executed two Wills, one in the name of Rani Chhatra Kumari Devi and the other in the name of Mohan Bikram Shah *alias* Ram Raja, son of Shazada Bhupendra Bikram Shah, resident of Barna Bridge in Benares City, but I do not now expect that Ram Raja after my death will preserve the *Reasat* with name and fame according to my views. Therefore I retain (I keep in force) the will executed first in favour of Chhatra Kumari. According to the contents of the same, Rani Chhatra Kumari will be the *malik* after me, and if I get no son she will adopt one.

1. After me, of the whole of the Ramnagar Reasat in the district Champaran, Saran and Bettiah, etc., and of the properties of Sri 5 Raj Lachmi Devi situated in the district of Benares, which I have got by right of inheritance of all these, Rani Chhatra Kumari Devi will be the proprietress (*malik*).

2. I married four wives, out of whom two of the Ranis are dead ; now two only, Rani Bishun Kumari and Rani Chhatra Kumari Devi, are alive. But the three of them had had no issue, only Rani Chhatra Kumari Devi had a son, who died.

3. If I get a son, in that case the said son will be the *malik* of all my properties and *Reasat*. And during his minority, in case I be not alive, Rani Chatra Kumari Devi will be his guardian.

4. If I have no son left, then after my death Rani Chhatra Kumari Devi has power and I give her permission to adopt up to four boys, one after another, out of my house Sri 5, and the boy who under this condition will be adopted shall be the *malik* of the *Reasat* after the Rani.

. . . . . .

6. If instead of a son I get a daughter and she be alive after my death, she should be married in a good family, and in case she fall in any difficulty, then she must be taken care of and maintained.

7. For the maintenance of Rani Bishun Kumari Devi, Sahila (third) Rani, I have given to her for life by *mokarari* lease the villages Lachmipur, Semri, Barwa, Atraowlia, Sarhua Mahjidwa and Pekooli Harkatwa, and Bazar Phulkaul, and a monthly allowance of Rs. 200; during her lifetime this will remain in force as usual.

8. I have revoked (*mansukh kar dia*) the Will, dated 26th and registered on the 29th May, 1903. Now this Will and also the Will dated 12th October, 1901, duly registered on 15th April, 1902, shall remain in force. Therefore I have executed this Will so that it may be of use in time and prove as testimony."

On the 12th June, 1905, the Raja executed a *mokarari* lease of 31 villages forming part of his estate, in favour of the appellant, of which she took possession in his lifetime. The validity of this grant is one of the questions in the present appeals, but its decision must depend upon the larger question of title involved between the parties.

The litigation out of which the appeals have arisen commenced with Suit 4 of 1923, which was instituted by the appellant on the 27th September, 1923, against the respondent, claiming from him a sum of Rs. 17,909–14–3 as rent and other payments due under a *sadhaua-patana* lease dated the 26th November, 1903. The document sued on evidenced a usufructuary mortgage made by the Raja to Maharani Kancha Maiya; subject to the payment of the sums claimed, the balance of the profits was to be applied in payment of the mortgage debt. The Maharani was then dead and the respondent was in possession of the mortgaged property under a bequest by her.

In answer to this suit the respondent filed Suit No. 34 of 1924 against the appellant and a number of other defendants, claiming possession of the properties specified in the schedules to his plaint, which constituted in effect the whole estate left by the Raja and included the villages the subject of the *mokarari* lease above referred to. In his defence to the appellant's suit (No. 4 of 1923) he denied her title to the mortgaged property, claiming himself to be the owner, and asked that proceedings in that suit should stand over till his own suit (No. 34 of 1924) was decided.

The respondent's suit was instituted on the 15th April, 1924, within a few days of the expiry of 12 years from the Raja's death. The other defendants joined were persons, including various

banks, who were said to be in possession of funds or securities belonging to the estate. Only one of them, Maiyan Dalip Rajeshwari Devi, the second defendant, has appeared before the Board.

The two suits were tried together by the Subordinate Judge of Motihari, and on appeal by the High Court of Patna. They resulted substantially in the respondent's favour in both Courts. They are now before His Majesty in Council, there being altogether four consolidated appeals, one by the appellant in each of the two suits, and two by the respondent on subsidiary questions which have been decided against him. The main issue before their Lordships has been the respondent's title. He sued as the "proprietor" of the properties claimed, and says that his suit is within time under Art. 144 of the First Schedule to the Limitation Act of 1908. The article is in the following terms :—

For possession of immovable property or any interest therein not hereby otherwise specially provided for.	Twelve years.	When the possession of the defendant becomes adverse to the plaintiff.

Their Lordships think that this article is applicable only to a possessory suit by the owner of the property claimed against a person holding adversely to him without title.

The respondent claimed title as owner in various ways. In the first place, he said that the Raja's property was ancestral, and that therefore he could not dispose of it by will, and that on his death it passed by survivorship to the respondent as his adopted son. Their Lordships have already, in effect, disposed of this contention. They have no doubt that the property was not ancestral, and that the Raja had full disposing power over it.

In the second place, it was said that the document to which their Lordships have referred as the second will should be construed as a conveyance transferring *in praesenti* the property as it then was to the respondent subject only to the reservation of a life estate to the Raja. Both Courts in India have negatived this construction, and, as their Lordships think, rightly.

The document is, in their opinion, clearly testamentary, and all the persons concerned seem to have so regarded it. If it could be read as a conveyance there would be a further difficulty as to registration. It was registered as a will under the provisions of Sections 18 and 51 of the Registration Act, 1908, and it is not easy to see how this could be regarded as a compliance with the requirements of Section 17.

A third contention was that under the two wills which have been admitted to probate the respondent took the property by devise as the adopted son. The Subordinate Judge accepted this contention : the High Court rejected it. Their Lordships are in agreement with the conclusion of the High Court. They think that the first will, when revived by the third, must be deemed to speak as at the date of its revival, viz., the 24th January, 1904, and that clause 2 of the first will can therefore only refer to a son

adopted by the Raja after that date. They also think it is clear, reading the two documents together, that the intention expressed by the testator was that the respondent should not, and that the appellant should, take the property.

The fourth and last contention was a more serious one, and has been the subject of the greater part of the arguments addressed to their Lordships. It is said for the respondent that at the time and in consideration of the adoption the Raja entered into an agreement under which the respondent became from the date of his adoptive father's death the owner of all the properties claimed by him, and entitled to sue the appellant for possession of them.

The agreement as pleaded by the respondent was that the Raja "*would give and convey to the plaintiff all properties then owned and possessed by him . . . with full proprietary rights and the right to get full and exclusive possession thereof after his (the Raja's) death,*" and that he (the Raja) "*would execute a document to the effect that he would have no right or power to make any will or otherwise dispose of his property.*" This agreement was said to have been made in December, 1902, at Benares, in the presence of the Prime Minister of Nepal, who was on his way to the Coronation Durbar which was held in the following January.

It is not altogether clear what the findings of the Indian Courts are as to this agreement. It is deposed to by witnesses for the respondent, and their evidence is said to be confirmed by copies of letters alleged to have been received subsequently from the Prime Minister, conveying his sanction to the adoption, which he was apparently not in a position to give during his stay in Benares. However this may be, it is certain that no document was executed by the Raja conveying any property to the respondent. The second will purported to devise his estates to the respondent provided the Raja left no natural son: if he did leave such a son, the respondent would take nothing under the will. This was obviously not a fulfilment of the alleged agreement. Apart from any question of revocation of the will, the Raja remained in unfettered ownership during his life, and was free to dispose of any part of his property by transfer *inter vivos*, and in any case the devise was conditioned upon the Raja having no natural son to succeed him—a contingency which, their Lordships think, can hardly have been regarded as negligible seeing that he was still under forty, and though his constitution was no doubt greatly impaired, he in fact survived for another nine years.

The Subordinate Judge thought that the agreement pleaded had been established. He believed the evidence of the witnesses who deposed to it, and he speaks of it as being "subsequently embodied in the will of 1903." This, in their Lordships' opinion, is an impossible view: the agreement pleaded is certainly not to be found in the will.

The High Court, on the other hand, would not have placed much reliance upon the witnesses who spoke to the agreement "had it not been for the fact that their evidence tallies and agrees with what we find to have subsequently happened," and reading the correspondence above referred to along with the will, and the fact that it was sent to the Prime Minister, the learned Judges would apparently hold the alleged agreement of December, 1902, proved, though their ultimate conclusion is that the agreement "finally took the form contained in the will of 1903."

Their Lordships do not think that this is a satisfactory way of dealing with the question. It is clear that the promise alleged to have been made by the Raja in December, 1902, was materially different from the fulfilment expressed in the will and no doubt communicated, by the passing on of the will, to Kancha Maiya and the Prime Minister. If the will represented the Raja's promise as finally accepted by Bhupatindra, the agreement pleaded either was not made or was subsequently waived and a different agreement substituted for it. The difficulty in which the learned Judges in both the lower Courts found themselves was that, once they had come to the conclusion that the will could not be read as a conveyance *in praesenti*, what happened in May, 1903, was clearly not consistent with the alleged agreement of the preceding December, and there was nothing in the evidence apart from the factum of the adoption and the handing over of the will to support an agreement at any later date.

Under these circumstances their Lordships must hold that the agreement pleaded by the respondent is not proved, nor has there been any serious attempt by the respondent's counsel before the Board to support it. Their contention here has been that there must have been *some* agreement at the time of the adoption as to the devolution of the Raja's property, and that, having regard to the correspondence with the Prime Minister and the making and handing over of the second will, the only reasonable conclusion is that the adoption was made upon the Raja's agreeing that the will should not be revoked.

Their Lordships are by no means satisfied that there must have been any agreement at all. It is at least conceivable that the parties believed, as the respondent has contended throughout, that the properties were ancestral, in which case no agreement would have been required, the adoption necessarily involving co-parcenership with the Raja. The burden of proof is, of course, upon the respondent, and having regard to the pleadings and the evidence, their Lordships cannot hold that the agreement now relied on has been established. The respondent's counsel were unable to say where or when it was made: "probably at Benares some time in May, 1903," was the nearest suggestion that could be put forward. There is no evidence that the terms of the will were ever communicated to Bhupatindra. Indeed, the High Court's judgment speaks of him as being "a nonentity" in

these transactions. Yet their Lordships are asked to say that the agreement upon the terms of the will was made with him. And it is at least remarkable that throughout the probate proceedings no suggestion was made that there had been any agreement at all.

This conclusion of fact would be sufficient for the disposal of all the present appeals, as it would follow necessarily that the respondent had no right to the properties in the possession of the appellant. But in view of the very careful argument which has been addressed to their Lordships by Mr. Greene, and the importance of the principles involved, they think it desirable to consider what would be the result if the agreement now relied on for the respondent had been established.

Assuming, then, that the consideration for the giving of the respondent in adoption to the Raja was a promise by him made to Bhupatindra that the provisions in favour of the respondent contained in the will of the 26th May, 1903, should not be revoked, their Lordships have no doubt that there was a breach of this agreement on the Raja's death, when it was found that the will had been revoked and the respondent disinherited. It has been strenuously contended that on this assumption the respondent was entitled to sue for possession, and that his suit would not be barred till the expiry of 12 years from the Raja's death. This would, in their Lordships' opinion, depend upon whether he could rightfully assert that he was the owner of the properties and that the appellant's possession was that of a trespasser.

If the properties had been ancestral, the respondent would have been the owner by survivorship ; if the second will could be construed as a conveyance, he would again have been the owner ; so, too, if under the wills admitted to probate he were held to be the devisee. In any of these cases the respondent would, their Lordships think, have been entitled to sue for possession, and would have had 12 years from the Raja's death for the institution of his suit. Is he in the same position merely because there was a contract with his natural father that the estates should be devised to him and that contract was broken ? This is the question which their Lordships are asked to decide, and in their opinion the answer must be in the negative. That there would be an appropriate remedy in such a case they do not doubt, but it would not be one to which the 12 years' period of limitation would apply. Bhupatindra, or after his death his legal representative, could probably have enforced specific performance of his agreement : he could certainly have obtained compensation for the breach : see *Synge* v. *Synge* [1894], 1 Q.B. 466 ; *Robinson* v. *Ommanney*, 23 Ch. Div. 285 ; in *re Parkin* [1892], 3 Ch. 510. But the fact that he could have so sued seems to show that the respondent could not be, merely by virtue of the contract, the owner of the properties. If Bhupatindra,

his natural father, had obtained a decree against the Raja's estate, the respondent might conceivably have had some remedy against Bhupatindra, but he could hardly have claimed the properties from the appellant.

The argument for the respondent has been founded mainly on the principle enunciated in *Dufour* v. *Pereira*, Harg. Jur. Argmts. II, 304, which has been followed in more modern cases ; *Gray* v. *Perpetual Trustee Coy.* [1928], A.C. 391 ; *in re Hagger* [1930], 2 Ch. 190. On these authorities it is contended that the appellant, as the legal representative of the Raja, must be regarded as a trustee for the respondent. Their Lordships think that this might well have been the true position at the Raja's death, and so long as the contract remained enforceable, but they doubt if the respondent could have any larger rights than Bhupatindra had, and the judgment of Lord Parker in *Central Trust Coy.* v. *Snider* [1916], 1 A.C. 266, certainly suggests that in such a case the trust would only continue during such time as equity would enforce specific performance.

But even assuming that by reason of the contract the properties were impressed with a continuing trust in favour of the respondent, their Lordships are unable to hold that this would entitle him to sue for possession as " owner." The Indian law does not recognize legal and equitable estates : *Tagore* v. *Tagore*, I.A. Supp. 47 at p. 71 ; *Webb* v *Macpherson*, 30 I.A. 238 at p. 245. By that law, therefore, there can be but one " owner," and where the property is vested in a trustee, the " owner " must, their Lordships think, be the trustee. This is the view embodied in the Indian Trusts Act, 1882 : see Sections 3, 55, 56, etc. The Act was only extended to Bengal in 1913, and it has been assumed at the bar that it would accordingly have no application to the present case. Their Lordships are not satisfied that this is necessarily correct having regard to the saving clause at the end of Section 1 of the Act, but they think that the question is of no importance in the present case, as the material provisions of the Act only embody the principles upon which the law has been administered in India from very early times. The trustee is, in their Lordships' opinion, the " owner " of the trust property, the right of the beneficiary being in a proper case to call upon the trustee to convey to him. The enforcement of this right would, their Lordships think, be barred after six years under Art. 120 of the Limitation Act, and if the beneficiary has allowed this period to expire without suing, he cannot afterwards file a possessory suit, as until conveyance he is not the owner. It is clear that such a trust as is relied upon in the present case would not fall within Section 10 of the Limitation Act, as it would be impossible to hold that the properties which vested in the appellant under the terms of the wills which have been proved were so vested for the specific purpose of making them over to the respondent : see per Lord Buckmaster

in *Khaw Sim Tek* v. *Chuah Hooi*, 49 I.A. 37, at p. 43. Indeed this argument has hardly been pressed before the Board.

For the reasons given their Lordships are unable to accede to the view taken by the Indian Courts that the somewhat indeterminate contract which they held to be established between the Raja and the natural father of the respondent, gave him a title as owner of the properties which he claimed. The Subordinate Judge was of opinion that " on the strength of the oral agreement alone, which was subsequently embodied in the will of 1903," the respondent had the right to claim the estate on the Raja's death, and was entitled to get possession of it from the appellant, there being " nothing left for the will of 1904 to operate on." In the High Court the conclusion of Kalwant Sahay J. was that " under this will [of 1903] the adopted son acquired the right to take possession of the property immediately on the death of the Raja," and that " the subsequent execution of the will of 1904 . . . could not in law take away the title which was created in favour of the adopted boy under the completed contract." Their Lordships have no doubt that under the two wills which have been admitted to probate, all the estate of the Raja was legally vested in the appellant, and that on the assumption that the agreement upon which the respondent has relied before them was proved, the rights of the respondent were barred at the time when he instituted his suit.

The conclusion to which their Lordships have come make it unnecessary for them to deal with the various subsidiary matters which are involved in the four appeals now under consideration. In their opinion, the respondent's suit No. 34 of 1924 should be dismissed, and the rent suit No. 4 of 1923, instituted by the appellant, decreed in the terms of her plaint, the two appeals brought up by her succeeding, and those by the respondent failing, and they will humbly advise His Majesty accordingly. Under the peculiar circumstances of this case their Lordships think that the costs of the appellant, Rani Chhatra Kumari Devi, throughout this litigation should be paid out of the deceased Raja's estate. The costs of all other parties must be paid by the respondent and he must bear his own.

In the Privy Council.

SRI 5 RANI CHHATRA KUMARI DEVI

v.

PRINCE SRI 5 MOHAN BIKRAM SHAH *alias* RAM RAJA AND OTHERS.

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(*Consolidated Appeals.*)

DELIVERED BY SIR GEORGE LOWNDES.

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