

Diwan Ramsaran Singh - - - - - Appellant

v.

Thakur Mahabir Sewak Singh and others - - - - Respondents

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF THE CENTRAL PROVINCES.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 7TH DECEMBER, 1933.

Present at the Hearing :

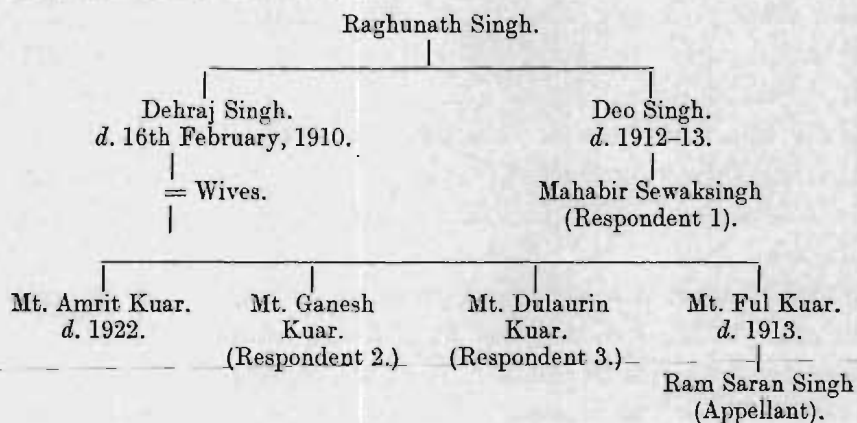
LORD THANKERTON.

LORD ALNESS.

SIR LANCELOT SANDERSON.

[Delivered by LORD THANKERTON.]

The appellant brought the present suit in the Court of the Additional District Judge at Bilaspur for a declaration that he is entitled to succeed to the Lafa Zemindari estate as the son of the late Zemindar Diwan Dehraj Singh. The family tree, so far as material, is as follows :—



It is not disputed that the appellant is the son of Dehraj Singh by Musammat Ful Kuar, and the only question in the appeal is as to the legitimacy of the appellant, that is to say, whether there was a valid marriage between Dehraj Singh and Ful Kuar. The appellant no longer maintains that he is entitled to succeed even if he is illegitimate. It is also clear that, failing the appellant, the first respondent is entitled to succeed to the Zemindari.

The District Judge decreed the suit in the appellant's favour on the 23rd December, 1927, but, on an appeal by the first respondent, the Court of the Judicial Commissioner, on the 16th December, 1929, set aside the decree of the District Judge and dismissed the suit, which has led to the present appeal. The second and third respondents support the appellant's case and are only *pro forma* respondents.

The Lafa Zemindari is impartible and inalienable and is subject to the rule of primogeniture. There are seven such zemindaris in the Bilaspur District ; at the time of the Settlement in or about 1867 the zemindars of all of them recorded themselves as Kanwars, an aboriginal tribe. But since that date it appears that they have come to call themselves Tanwars and have been adopting some of the customs of, and have been claiming to be, Kshatriyas. In the present suit an attempt by the respondent to establish that Kanwars and Tanwars could not legally intermarry has been rejected by both Courts below, and it has been held that Tanwars and Kanwars are both Sudra sects and that they can legally intermarry. Accordingly, it must be taken that Dehraj Singh, a Tanwar, and Ful Kuar, a Kanwar, could legally marry.

In 1900 Dehraj Singh, who had married three wives, but had no children by any of them, was anxious to have a son to succeed him in the zemindari, and took the advice of the Brahmins, who advised him to marry a fourth wife by a different form of marriage, vizt., the *katar* form, so as to keep off the evil effects of stars. Mst. Ful Kuar, who was the girl selected, was staying with her grandfather at Bijaybhawan, a hamlet of Mouza Bagdara, but, instead of marrying her there, Dehraj Singh sent a palki with a *katar*, or dagger, inside it, to bring her to Lafa. The palki was accompanied by his brother, Deo Singh, and others, and brought her to Lafa.

The appellant's case is that, after the arrival of Ful Kuar at Lafa, where she was received by the three wives of Dehraj Singh, the usual ceremonies of a Hindu marriage were performed, the bride being given away by her uncle. Evidence to this effect was given by the two surviving wives of Dehraj Singh, Ganesh Kuar and Dulaurin Kuar, and four other witnesses. The Trial Judge accepted this evidence, but it was rejected by the Court of the Judicial Commissioner for the reasons set out in the judgment, and the acceptance or rejection of this evidence will

determine the question in this appeal. Its rejection rests on its inconsistency with the documentary evidence and the conduct of the parties. The evidence as to who performed the obsequies of Dehraj Singh and Amrit Kuar is conflicting, and is not of material assistance. Their Lordships, after a careful consideration of the whole evidence, have reached the conclusion that this evidence does not satisfactorily prove that Dehraj Singh was married to Ful Kuar by the ordinary ceremonies of a Hindu marriage. It is a remarkable fact that this assertion was made for the first time in the oral pleadings in the present suit on the 9th April, 1924, by the appellant's pleader, when he stated :—

“ Musst. Ful Kuar was a virgin and married to Dehraj Singh by ordinary form of marriage and not by *katyar* form. A *katyar* wife even is a legally-wedded wife in the caste of the parties. It is denied that Musst. Ful Kuar is mistress of Dehraj Singh.”

Prior to the above statement Ful Kuar had invariably been referred to as a *katar* or *katyar* wife and her marriage had been described as a *katar* or *katyar* marriage. Counsel for the appellant contended that the use of a *katar*, presumably as representing the bridegroom, for the unusual incident of bringing the bride to be married in the bridegroom's house, was only a prelude to the ordinary ceremonies of marriage, but that it gave rise to the description of the marriage as a *katar* marriage. On the other hand, the oral pleading above referred to clearly regarded the *katar* marriage as a form of marriage distinct from the ordinary form of marriage. It is therefore important to ascertain in what sense these expressions were used in the documents and by the witnesses, as the latter were agreed that, except in the case of Fual Kuar, a *katar* marriage is unknown among the Tanwars or Kanwars, or, indeed, the Sudras. It appears to have been accepted throughout the case that the *katar* form of marriage was peculiar to Kshatriyas, and the appellant so states in his case in this appeal, though he maintains that the form merely consists in the bridegroom sending a palki for the bride, instead of going for her himself, the ordinary ceremonies not being dispensed with.

There is no evidence in the present case as to the exact form of the *katar* marriage among Kshatriyas, but reference was made in the case of *Maharaja of Kolhapur v. Sandaram Ayar* (1924), I.L.R. 48 Mad. 1, from which it may be gathered that among the Tanjore Rajas there was a practice of sword marriages, in which the wife was married to the sword in place of being married to the Raja, while there is also mention of the sword or dagger being used in course of an ordinary marriage to denote the inferior caste of the bride.

Counsel for the appellant also referred to the case of *Ramasami Kamaya Naik v. Sundaralingusami Kamaya Naik* (1893), I.L.R. 17 Madras 422, in which two or three instances were proved of the use of a dagger in course of an ordinary marriage to denote

inferiority of caste of the bride among the Zaptur Zemindars, who are Sudras, but no one in the present case appears to have been aware of this exceptional case.

Not a single witness in the present case suggest that the *katar* was used to denote the bride's inferiority of caste. On the contrary, Dulaurin Kuar's evidence is that the *katar* wife was first sought for among Tanwar Kshatriyas, and Kanhaisingh, who was one of those sent out in search of a bride, states that Ful Kuar was a Tanwar. Although Ganesh Kuar denies that any girl of Tanwar caste besides Ful Kuar was searched for, she does not suggest that the *katar* was used to denote inferiority of caste.

A perusal of the oral evidence and the documents satisfies their Lordships that the expression *katar* marriage is used therein as denoting a form of marriage distinct from the ordinary form of marriage, the distinction being that the bride is given to the bridegroom's sword or dagger in place of to the bridegroom, and it seems reasonably clear that this view has been taken by both the lower Courts and by the pleaders in those Courts. It is perhaps sufficient to refer to the evidence of the two surviving widows of Dehraj Singh. Ganesh Kuar, after stating in detail the performance of the ordinary ceremonies at Ful Kuar's marriage, said "the marriage was performed in the same manner as our marriages. The same customs and rites were gone through in this and our marriages," and, in cross-examination, she stated: "Mt. Ful Kuar was not married under *katar* form of marriage." It is true that she adds: "I do not know what is meant by *katar* form of marriage," but that can hardly be accepted from one who had used the phrase so often, as will be seen from the documents. Dulaurin Kuar states:—

"At the time of my *bhanwar* my husband had a *katar* in his hand; *katar* is indispensable in marriage ceremonies. My marriage will not be called *katar* marriage. Musst. Ful Kuar's marriage would not be called *katar* marriage. It would be called an ordinary marriage, just as mine, because it was performed in the same manner. The *katar* which was sent in the palki was subsequently held by Dehraj Singh at the time of the seven rounds of marriage."

In their Lordships' opinion, most important documentary evidence is to be found in the letter of Dehraj Singh to the Deputy Commissioner, Bilaspur, dated the 16th February, 1910, a few hours before his death. The Trial Judge held that the signature of Dehraj Singh was genuine, but found that the document was signed at a time when Dehraj Singh was not in full possession of his mental faculties. The Court of the Judicial Commissioner disagreed with this finding, as they were unable to find any evidence to support it, and the appellant does not challenge that view, but maintains that it was signed under the influence of Deo Singh, his brother. Their Lordships are unable to find sufficient evidence to support that contention, and they accept the document as

expressing the mind of Dehraj Singh. The letter is in the following terms :—

“ I have made a report about my illness on 15th February, 1910. Now I have no hope that I shall survive. So I make the following disposition of my Lafa *zamindari*. The same be sanctioned.

“ (1) After me my real nephew, Babu Mahabir Sewak Singh, minor son of my brother, Thakur Deosingh, be held owner of this *zamindari* belonging to me. As he is minor, mutation of this *zamindari* be made in the name of Amrit Kuwar first, and after her in that of Musst. Ganesh Kuwar, and after her, in that of Dularin Kuwar. Musst. Fulakuwar is my wife by *katar* marriage. She has a son by name Babu Ramsharan Singh aged about 10 years. They and their family should be maintained from, the *zamindari*. Thakur Deosingh shall manage this *zamindari* now also as he did before and be appointed *sar barahkar*.”

It will be noted that Dehraj Singh distinguishes Ful Kuar from his other three wives as being his wife by *katar* marriage, and that he makes provision for maintenance of her and the appellant, who, if legitimate, would be entitled to succeed to the *zemindari* under the rule of primogeniture.

On the death of Dehraj Singh, in accordance with his wishes and with the consent of everyone, including Ful Kuar, mutation was made in favour of Amrit Kuar. All three widows agreed in describing Ful Kuar as a wife by *katar* marriage, and Ful Kuar states : “ I was married by *katar*,” and added that she did not aim at succeeding to the *gadi*, either on her own behalf or on behalf of her son.

On the death of Amrit Kuar in February, 1922, mutation was made by consent into the name of Ganesh Kuar. Deo Singh had died in 1912 or 1913 and Ful Kuar had died in 1913. In the statements taken by the Sub-Divisional Officer, both the surviving widows refer to the deceased Ful Kuar as a *katar* widow, and the appellant stated :

“ I am the son of Must. Ful Kuar, the fourth widow of Diwan Dehraj Singh. I am the son of Ful Kuar married under the *katar* system by my father. The *katar* system was recognized as the legal marriage among the Tawars and in consequence I am the legal heir to the estate. My step-mother Must. Ganesh Kuar is willing to carry on the *zemindari* business in person to which I have no objection.”

About a year later, Ganesh Kuar and Dulaurin Kuar agreed to hand over the estate to the appellant, and Ganesh Kuar seated him on her lap and applied Tilak to his forehead, and made over to him the estate and the keys of the treasury. On the 6th March, 1923, Ganesh Kuar applied for mutation of names in favour of the appellant ; this application was opposed by the respondent, and the application was rejected, leaving the appellant to bring the present suit. But it is noteworthy that in her statement Ganesh Kuar stated :—

“ Must. Ful Kuar was married by *katar* ceremony allowable in our caste. . . . He (the *zemindar*) married three wives in order to have an issue from them, but when he became disappointed he had recourse to this sort of marriage.”

Despite the challenge of the validity of the *katar* marriage by the present respondent in his written statement in the mutation proceedings, there is no suggestion by Ganesh Kuar of her present assertion that the ordinary ceremony of a Hindu marriage was performed.

It will thus be seen that throughout the documentary evidence above referred to the marriage of Ful Kuar is treated as a *katar* marriage and as a form of marriage different from the ordinary form of marriage; and, further, that it is only subsequent to the death of Amrit Kuar that it is maintained to be a valid marriage, entitling the appellant to succeed to the zemindari and that, until the oral pleading in the present case, the validity of the *katar* marriage is the sole ground on which the appellant's claim is based. Finally, when the performance of the ordinary ceremonies is first suggested, it is in order to distinguish them from a *katar* marriage.

In these circumstances, their Lordships find themselves unable to differ from the conclusion of the Court of the Judicial Commissioner that the evidence as to the performance of the ordinary ceremonies is not satisfactory and that the appellant has failed to prove his case. The learned Trial Judge failed to give due effect to Dehraj Singh's letter of the 16th February, 1910, the effect of which is reinforced by the later documentary evidence.

Their Lordships will therefore humbly advise His Majesty that the judgment of the Court of the Judicial Commissioner of the 16th December, 1929, should be affirmed and the appeal should be dismissed. As the respondents have not appeared, there will be no order as to costs.

In the Privy Council.

DIWAN RAMSARAN SINGH

v.

THAKUR MAHABIR SEWAK SINGH
AND OTHERS.

DELIVERED BY LORD THANKERTON.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1933.