

*Privy Council Appeal No. 128 of 1931.*

Thakur Birendranath Singh and another - - - - - *Appellants*

v.

Mirtunjai Singh and others - - - - - *Respondents*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF THE CENTRAL  
PROVINCES.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 26TH JANUARY, 1934.

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*Present at the Hearing :*

LORD BLANESBURGH.

SIR JOHN WALLIS.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD BLANESBURGH.]

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This is an appeal from a decree of the Court of the Judicial Commissioner of the Central Provinces, made on the 14th July, 1928, whereby a decree of the Additional District Judge of Bilaspur, made on the 19th March, 1926, was reversed. The question upon which the two Courts in India differed and which remains for determination upon this appeal is whether the Chandrapur-Padampur *zamindari*, consisting of about 225 villages, with an estate of seven villages in Bargarh Tahsil, is impartible, descending to a single heir, according to the rule of primogeniture. It is the view of the appellants, who are the legal representatives of the plaintiff in the suit, now deceased, that this question should be answered in the affirmative. If it be so answered, they would be entitled to make good their claim to the *zamindari* and estate in suit. The plaintiff in his plaint made an alternative claim to the properties in question. He set up a prescriptive title thereto of his father, R. B. Harihar Singh, a former owner

of the estate. This title he alleged devolved by inheritance upon R. B. Harihar Singh's two sons, the plaintiff and defendant No. 1. This alternative claim, however, has not been pressed in any way by the appellants' Counsel before the Board, and it is unnecessary for their Lordships further to consider it.

With regard to the main claim, namely, that the properties are impartible, and descend to a single heir according to the rule of primogeniture, it is both as to the *zamindari* and the seven villages supported by an alleged family custom to that effect. So far as these villages are concerned no other case is made or suggested. With regard, however, to the *zamindari* it has been contended that that property was in fact granted upon the terms that it was to be held by the grantee as an impartible estate.

Now, with reference to the custom governing the claim to both properties, the learned District Judge held that it had been established. As to the *zamindari*, he was also of opinion that it must be taken to have been granted as an impartible estate. He supported these conclusions in an elaborate and lengthy judgment. On appeal therefrom by the present respondents, the Court of the Judicial Commissioner of the Central Provinces, after an examination of the judgment of the learned Judge, came to the conclusion that no evidence had been adduced sufficient to establish the custom thereby found to exist. As to the *zamindari* grant—the *zamindari* being situate in Bengal—it appears to have been admitted in the Court of the Judicial Commissioner that there was no evidence at all that the estate had been granted as an impartible estate. Before the Board, however, and without objection by the respondents, this case has again been put forward by the appellants.

But their Lordships do not in the result find it necessary to go in detail into either of the questions thus at issue. With the assistance of Counsel, they have considered the grounds upon which the learned District Judge arrived at his conclusions, and they agree with the Court of the Judicial Commissioner in the view that these conclusions so far as the existence of the custom alleged is concerned cannot be supported.

As to the terms of the *zamindari* grant—not in fact produced—they are of opinion that no case has been made for the conclusion of the learned Judge that the grant thereby made was one of an impartible estate.

Accordingly their Lordships will humbly advise His Majesty that this appeal be dismissed, and with costs.

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In the Privy Council.

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THAKUR BIRENDRANATH SINGH AND  
ANOTHER

v.

MIRTUNJAI SINGH AND OTHERS.

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DELIVERED BY LORD BLANESBURGH.

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