

Privy Council Appeal No. 37 of 1936

Oudh Appeal No. 4 of 1933

Lal Harihar Pratap Bakhsh Singh and another - - *Appellants*

v.

Thakur Bajrang Bahadur Singh and another - - *Respondents*

FROM

THE CHIEF COURT OF OUDH AT LUCKNOW

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 31ST MAY, 1937.

Present at the Hearing :

LORD MACMILLAN.

LORD ALNESS.

LORD MAUGHAM.

SIR SHADI LAL.

SIR GEORGE RANKIN.

[*Delivered by* LORD MACMILLAN.]

The previous history of this litigation is set out in the judgments of the Board delivered in 1930 and 1932 and reported in 59 I.A. at pp. 173 *et seq.* The original plaintiff, Raja Bisheshar Baksh Singh, who has since died, claimed to be entitled to the taluqa of Gangwal in succession to Raja Suraj Prakash Singh, the last male holder, who died in 1899. The present respondents are the two sons of the original plaintiff and as his legal representatives have taken his place as plaintiffs in the suit.

When the case was formerly before the Board the ground was cleared of various questions which are consequently no longer in controversy. The sole remaining question, which was then formulated but not decided, was remitted to the Chief Court of Oudh and the present appeal is from the judgment of that Court pronounced in conformity with their finding on the question remitted to them.

By the previous judgments of the Board it has been decided in law that the succession to the taluqa is governed by the Oudh Estates Act of 1869 and in particular by section 22 (10), which, as amended in 1910, devolves the succession on "the nearest male agnate according to the rule of lineal primogeniture"; that the expression "male agnate," as here used, is to be construed according to "the

ordinary law which would govern the succession apart from the statute—in this case the Hindu law of succession according to the rules of the Mitakshara”; and that according to this law “‘male agnate’ denotes a ‘gotraja sapinda’,” that is, a blood relation belonging to the same gotra—a word the significance of which is explained in the judgment of the Board delivered by Sir Robert Phillimore in *Bhyah Ram Sing v. Bhyah Ugar Singh* [1870] 13 Moo. I.A. 373 at p. 390, and quoted in the previous report of the present case at pp. 189-190 of 59 I.A. Blood relations or sapindas may be related either through males or through females. *Prima facie* sapindas who are related through an unbroken line of male descent are gotraja sapindas for by virtue of such unbroken relationship they must be of the same gotra. It will thus be seen that the two conditions which it is stated in the previous judgment of the Board (at p. 190 of 59 I.A.) must be satisfied by a person claiming to be a gotraja sapinda of the propositus are not really independent but inter-related, for the first condition will ordinarily be included in the second.

According to the judgment of the Board of 4th December, 1930, the original plaintiff “must be held to have established that, in blood relationship, he is the nearest male blood relation according to the rule of lineal primogeniture of Raja Suraj, the last male holder of the taluqa.” In the ordinary case this finding in fact would have ended the case, for, unless effectively challenged in some way, the finding of such physical relationship inevitably leads to a finding in law that the claimant is entitled to succeed as the nearest gotraja sapinda of the deceased.

But the Board was confronted with an unusual state of matters. Blood relationship through the male line having been found to exist between the claimant and the propositus identity of gotra as between them was naturally to be expected. But at the trial the plaintiff stated quite definitely that his gotra was Atri while there was evidence for the defence that the gotra of the propositus was Vaiyaghra. “It was ultimately agreed by both parties,” as recorded in the judgment of the Board of 8th March, 1932, “(a) that if in fact the propositus was of the Vaiyaghra gotra and the plaintiff was of the Atri gotra this difference of gotra necessarily led to the conclusion that the plaintiff is not an agnate, i.e., gotraja sapinda, of the propositus, and (b) that such difference of gotra could only be accounted for by adoption into a different gotra of the plaintiff or one of his paternal ancestors since the common ancestor Bhaya Partap Singh.” The parties thus recognised that the claimant and the propositus having been proved to be both descended in the male line from a common male ancestor their gotras must be identical unless the line of descent could be shown to have been broken, and that the only way in which it could have been broken in the circumstances of this case was by adoption. Adoption does not sever the tie of physical blood relationship but it completely transfers the

adopted son to the adoptive family as regards legal relationship. Consequently a son who leaves his own family and enters by adoption into a different family ceases to be a sapinda of his former relations and *a fortiori* ceases to be a gotraja sapinda of any of them.

Now this apparent discrepancy between the gotra of the claimant and the gotra of the propositus which had emerged in the course of the proceedings had never been fully explored. No such question was raised in the pleadings nor was the matter clearly or adequately placed before either of the lower Courts. In these circumstances, on the advice of the Board, His Majesty in Council was pleased on 17th March, 1932, to order that the case "be remitted to the Chief Court of Oudh in order that the plaintiff may have the opportunity of establishing the identity of his gotra with that of Raja Suraj Prakash Singh, because upon this issue his success or failure in his claim to the taluqa will now depend."

The learned Judges of the Chief Court of Oudh, in addressing themselves to the question remitted to them, preface their judgment, which is now under review, with a rehearsal of the legal position as they conceived it to be. They were apparently apprehensive, in view of the arguments submitted to them, that certain expressions in the judgment of the Board might be read as effecting some change in the accepted law and they were therefore concerned to show that the judgment rightly read had no such effect. They accurately point out that "in the proof of descent from one common male stock and through males is implicit the identity of gotra or the community of family"—a proposition all the more important by reason of the difficulty of expressing the Hindu "gotra" by such words as "family," "paternal stock," or "patriarchal stock." Indeed all that had been decided by the Board was that, identity of gotra being in this case challenged by evidence inconsistent with such identity, it was necessary for the claimant to prove "that the continuity of the line of descent from the common ancestor downwards is not broken by an adoption of any person in the plaintiff's line into another gotra or family."

In the general case where it is sought to change the usual course of inheritance on the alleged ground of an adoption having been made "it is clearly upon the party setting up that title against the entrance of the legal heir to prove the adoption both as regards the power of the adoptor to adopt and also as regards the fact of the adoption if it be questioned" (*Tarini Charan Chowdhry v. Saroda Sundari Dasi* (1869) 3 B.L.R. 145 at p. 159; 11 W.R. 468 at p. 474). In the present case the situation was quite unusual. No issue had been raised as to a possible break in the line of succession by an intervening adoption; the defendants had made no allegation of any adoption but sought to negative the plaintiff's claim by establishing that one of his alleged ancestors in the male line had died childless; the matter of the respective gotras of the plaintiff and the propositus arose

quite incidentally. When the case was last before the Board the plaintiff, who was propounding his title to succeed, was found to have asserted, as already stated, that he belonged to the Atri gotra, while for the defence it was maintained that the evidence established that the gotra of the propositus was Vaiyaghra. This discrepancy obviously had to be cleared up and it was in these circumstances that the remit was made for further inquiry. It was not intended to suggest that there was a general duty to prove a subsisting title or to negative the suggestion of adoption into another gotra.

The learned Judges of the Chief Court, having before them the recorded agreement of parties that the alleged "difference of gotra could only be accounted for by adoption into a different gotra of the plaintiff or one of his paternal ancestors since the common ancestor Bhaya Partap Singh," very properly deal fully with the question whether there had been any such adoption, as the only suggested obstacle in the way of the establishment of the identity of the plaintiff's gotra with that of the propositus. The defendant was unable to give particulars of any adoption but merely asserted that, the gotras being different, there must have been an adoption. The Chief Court, however, investigated the whole matter carefully in the light of the evidence led and reached the conclusion "that neither Jugraj nor any of the ancestors of the plaintiff in the line of descent from Jugraj was ever adopted." They then proceed to state that "the result of this finding is that the plaintiff's gotra is the same as that of Raja Suraj Parkash Singh." This must obviously be so if the only possible ground of a difference of gotra is disproved.

Having decided that there was no difference of gotra the learned Judges then proceed to examine the evidence as to what was in fact the common gotra of the plaintiff and the propositus. As the result of a detailed analysis of the witnesses' statements they "reject [the defendant's] evidence altogether as partly manufactured and partly unconvincing and find that the gotra of Raja Suraj Prakash Singh was Atri," being the gotra to which the plaintiff claimed to belong. The Chief Court having thus found, on the remit from this Board, that the plaintiff had established the identity of his gotra with that of Raja Suraj Prakash Singh, the last barrier in the way of the plaintiff's success was removed and the Court gave judgment in his favour by dismissing the appeal against the judgment of King J.

At their Lordships' bar the appellants did not profess themselves able to challenge the findings in fact of the Chief Court either on the question of adoption or on the question of the gotra of Suraj Prakash Singh, but maintained that the Chief Court had misinterpreted the terms of the remit to them, that they had not been directed to try the issue whether there had or had not been an adoption in fact, and that they ought to have confined themselves to the simple question "as to the gotra which was in fact stated and recited on ceremonial occasions in the respective families

of the plaintiff and the propositus as their gotra." They further complained that the judgment of the Chief Court showed that the learned Judges, in approaching and considering the question of gotra, had been influenced by unsound views of the law applicable. Their Lordships are of opinion that the Chief Court, in their determination of the issue remitted to them, quite rightly dealt with the question of adoption which, by the recorded agreement of parties when they were before this Board, was recognised as vital, and that in dealing with the question of identity of gotra the Chief Court did not misdirect themselves in law. Their Lordships agree with the view of the Chief Court that "the reference in the judgment [of this Board] to the evidence of relatives as to the recitation of gotra at the saradh ceremony is only indicative of the nature of the evidence which may be produced in this case," and was not intended to limit the evidence to this topic.

Their Lordships will accordingly humbly advise His Majesty that the appeal be dismissed, and that the judgment of the Chief Court of Oudh dated 19th December, 1932, be affirmed. The appellants will pay the respondents' costs.

In the Privy Council

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AND ANOTHER

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DELIVERED BY LORD MACMILLAN

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