Privy Council Appeal No. 58 *of* 1945

Raj Shatranjai - - - - - - - - - - *Appellant*

v.

Raj Raj Bahadur Singh (since deceased) and another - *Respondents*

FROM

THE CHIEF COURT OF OUDH

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 12TH DECEMBER, 1949

Present at the Hearing:

LORD SIMONDS
SIR JOHN BEAUMONT
SIR LIONEL LEACH

[*Delivered by* LORD SIMONDS]

This appeal, which is brought against a decree of the Judicial Commissioners of Oudh dated the 4th June, 1918, as varied by an order of the Chief Court of Oudh dated the 18th November, 1941, modifying a decree of the Subordinate Judge of Mohanlalganj of the 18th March, 1916, raises the question what upon the true construction of the will of Raj Gobardhan Singh is the interest of the appellant thereunder in certain villages in the Kheri District in Oudh and whether it was proper for the Court to make a declaration in regard thereto.

Raj Gobardhan Singh who will be called "the testator" was a taluqdar owning large estates in Oudh including ten villages with which the present appeal is concerned and which will be referred to as "the ten villages". He executed his last will on the 13th November, 1903. At that time he had 3 Ranis and one child only, a daughter named Musammat Raj Kunwar who was then childless. His nearest male collateral was his nephew Raj Bachan Singh.

On the 24th June, 1904, the testators' daughter gave birth to a son Raj Shatranjai, the appellant, and on the 26th July, 1904, she died. The testator died on the 8th March, 1905. He was survived by his three widows, and by the appellant and Raj Bachan Singh.

In his will the testator states that he is the taluqdar of Mohals Bijwa Bhira Ramnagar Kalan and Nighasan and Daulatapur, and that he executes his will to avoid disputes about his estate. He then provides life interests for his three Ranis and proceeds: "after the death of all three ranis the male issue of my daughter Musammat Raj Koer . . . shall be the owner in possession of the estate and if there be no such male issue then my aforesaid daughter shall be owner in possession of the estate." The result of the will up to this point is that the whole of the estate, including the said ten villages, is given to the appellant, after the death of the three Ranis.

The will then proceeds: "All the afore-mentioned terms of this will shall be subject to this condition that if by the grace of God a son is born to me, then he shall after my death be the owner in possession of the entire taluqa. Out of the entire taluqa the villages" (the testator

then named the ten villages) "are bequeathed by me in favour of my nephew Bhaiya Raj Bachan Singh for his life after the death of all three Ranis. If there be any male issue to Bhaiya Raj Bachan Singh he shall be the owner of the afore-mentioned villages after the death of Bhaiya Raj Bachan Singh : otherwise the afore-mentioned villages shall be included in the taluqa after the death of Bhaiya Raj Bachan Singh and my daughter shall be the owner of the afore-mentioned villages also."

Raj Bachan Singh having in certain proceedings questioned the validity of this will the appellant on the 17th November, 1914, commenced against him in the Court of the Subordinate Judge, Mohanlalganj, the suit out of which this appeal arises, claiming a declaration as to the validity of the will and that under it he was the absolute proprietor of the estates and entitled to possession after the death of the Ranis and (by amendment) that he was entitled to absolute ownership of the ten villages after the death of Raj Bachan Singh if he did not beget male children.

In this suit a number of issues were raised with which their Lordships are not concerned. Upon the question of construction it was urged by the defendant Raj Bachan Singh that in the event of his not having a son the ten villages were undisposed of after the death of the three Ranis and his own death, and on behalf of the appellant that they would be included in the estate of which he was to be the owner in possession. Upon this issue the learned Subordinate Judge found in favour of the appellant, holding that he acquired a contingent remainder at least in the ten villages. He further decided that the case was one in which it was proper for him in the exercise of his discretion to make a declaration of the appellant's title. Accordingly the learned Judge made a decree the relevant terms of which it is necessary in view of what afterwards happened to set out fully. They were as follows:—

> "(2) that under the said will the plaintiff acquired a vested remainder in all the items of the list annexed except in the ten villages; (3) that he had a contingent remainder in the ten villages; (4) that the plaintiff would enjoy all the items save the ten villages after the death of the Ranis of the Testator, that he would have the right of an absolute owner in the ten villages (in which the defendant had a life estate under the provisions of the will) after the death of the defendant if the latter had no son or when there was no possibility of the defendant getting a son."

Against this decree Raj Bachan Singh appealed to the Court of the Judicial Commissioners of Oudh and that Court by order dated the 4th June, 1918, modified the decree of the Subordinate Judge. Upon the construction of the will, so far as it related to the appellant's interest in the ten villages, they expressed no decided opinion, having come to the conclusion that in view of the contingencies which might happen the interest of the present appellant in the ten villages was "so remote and uncertain that it would be premature and futile to give any declaration regarding it in the present case". But in the result the decree as drawn up did not give full effect to this decision, for, while the declaration numbered (3) in the decree of the Subordinate Judge was struck out, that numbered (4) was still left. The appellant therefore still held a decree which gave him all that he wanted.

On the 15th May, 1925, the survivor of the testator's three widows died, and the appellant entered into possession of the estate except the ten villages and Raj Bachan Singh into possession of those villages. Raj Bachan Singh died on the 8th July, 1935, without having had male issue, leaving a widow the respondent Musammat Tej Kumari Devi. Thereupon the appellant entered into possession of the ten villages.

It was shortly after this that Raj Raj Bahadur Singh, the original respondent, entered on the scene. On the 12th July, 1937, he instituted in the Chief Court of Oudh against the appellant a suit in which he claimed possession of all the property bequeathed by the testator on the

grounds, amongst others, that the will of the testator was invalid and that he was the nearest reversioner, and in that suit he further raised the contention that, even if the will was valid, upon its true construction in the events which had happened the testator died intestate as to the ten villages and that he, as his only heir, was then entitled to them. The appellant met this contention by pleading that the decree of the 4th June, 1918, operated as res judicata between the parties on the question of the title to the ten villages and this view was upheld by Hamilton, J., in a judgment given on the 18th January, 1940. Accordingly on the 25th July, 1941, the original respondent presented a petition to the Chief Court of Oudh under sections 151, 152, 153 of the Civil Procedure Code alleging that there was an accidental error in the decree of the 4th June, 1918, and praying in effect that it might be corrected by striking out the declaration numbered (4) therein, so far as it referred to the ten villages. Upon this petition, in which the original respondent claimed to be " the reversioner to Raj Bachan Singh," the learned Judges of the Chief Court made the order as prayed and the decree of the 4th June, 1918, was amended accordingly. This left the appellant without the protection of the decree, on which he had (however fortuitously) been able for so long to rely, and he accordingly sought and obtained leave to appeal to His Majesty in Council from the decree as so amended. The respondents to the appeal are Musammat Tej Kumari Devi the widow and representative of Raj Bachan Singh and the representatives of the original respondent Raj Raj Bahadur Singh who has since died.

It is thus after a very long interval that their Lordships have to determine the matters under appeal. Upon the question of construction they entertain no doubt as to the correctness of the views of the learned Subordinate Judge and in their opinion they are fortified by the conclusion reached by the Chief Court of Oudh at Lucknow in First Civil Appeal No. 53 of 1940. In that suit too the construction of this will was considered by the Court and in a careful and elaborate judgment Mr. Justice Kaul and Mr. Justice Hagan determined that the effect of the testator's will read as a whole was that his daughter's son should take the whole estate subject only to a life interest in ten villages being given to Raj Bachan Singh and a further defeasance provision in the event of his having male issue. The gift in favour of the testator's daughter, which by reason of her predeceasing him could not take effect, did not operate to displace his dominant intention that, except in a certain event, the whole estate should revert to his daughter's son. In this view, which their Lordships understand to be that entertained by the learned Judges of the Chief Court, they wholly concur.

It remains to consider whether a declaration to that effect was properly made by the learned Subordinate Judge. It is clear that it was competent for him to do so under section 42 of the Specific Relief Act, and it appears to their Lordships that the learned Judges of the Chief Court give no sufficient reason for reversing his decision upon this point. He exercised and, as their Lordships think, properly exercised a discretion vested in him. The parties were vitally and immediately interested on the question which of them in an event, not necessarily remote, would be entitled to substantial property. Nor was anyone else interested. Their Lordships therefore conclude that the learned Subordinate Judge rightly made the appropriate declarations, that the decree of the Court of the Judicial Commissioners as corrected by the Chief Court in 1941 should be set aside, and the decree of the Subordinate Judge restored and they will humbly advise His Majesty accordingly. The respondents must pay the costs of this appeal and of the proceedings in the Courts of Oudh except so far as they relate to the correction of the decree of the 4th June, 1918.

Their Lordships add at the request of the respondents, though it appears superfluous to do so, that they express no opinion upon any of the other matters in dispute between the parties and that the order to be made herein will be without prejudice to the rights of the respondents upon any other issue.

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DELIVERED BY LORD SIMONDS

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