

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Rani Mewa Kuwar v. Rana Hulas Kuwar,
from the Court of the Judicial Commissioner,
Oudh; delivered 3rd February 1874.*

Present:

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS is a suit brought by Rani Mewa Kuwar, the granddaughter of Rajah Ruttun Singh, against Rani Hulas Kuwar, the widow of Khyratee Lall, who was a grandson of the Rajah, to recover $8\frac{1}{2}$ annas share of three houses and an Imambara situate in the City of Lucknow. The Appellant claims $4\frac{1}{4}$ annas in her own right, and $4\frac{1}{4}$ as the representative of her deceased sister, Chattar Kuwar.

The claim arises in this way:—The property in dispute, which is in Oudh, belonged, with other considerable property in Rohilcund, to Rajah Ruttun Singh, who died in 1851. It is said that he became a Mahomedan, and that, according to Hindu Law, his ancestral property thereupon vested in his son, Dowlut Singh, the father of the Appellant and her sister. Dowlut Singh died before his father, and in consequence of his having so pre-deceased him, and having no male issue, the property of the Rajah Ruttun Singh would have descended to the grandson, Khyratee Lall, whose widow, Hulas Kuwar, is the Defendant and present Respondent, unless the conversion of the Rajah and the consequent vesting of the estate in Dowlut Singh was established. The Defendant

raised a further question, namely, that the property of Rajah Ruttun Singh had been confiscated by the King of Oudh, and had, after the Rajah's death, been granted by the King as an act of grace to his widow, Rani Raj Kuwar, and that on her death it descended to Khyratee Lall as her legal heir. It appears that questions arising out of this alleged conversion to Mahomedanism of the Rajah, and respecting the confiscation, were contested between the widows of the deceased Rajah Ruttun Singh and of his son, Dowlut Singh; and after their deaths the controversies were renewed between Khyratee Lall and the Respondent and her sister. After these controversies, and avowedly to put an end to the disputes, a compromise was effected between the parties, the terms of which are found in what is described as a deed of agreement of the 21st July 1860. It is essential to the determination of the questions in this appeal to consider what is the effect of this agreement and of a subsequent one which was entered into at a later period of the same year, namely, on the 12th of November.

The first agreement is made between the contending parties, Khyratee Lall, and his cousins, Rani Chatur Kuwar and the present Appellant, Rani Mewa Kuwar, the daughters of Dowlut Singh. It is this: "We," describing the parties, "do hereby declare that, regarding
 " the dispute which existed for all the houses,
 " lands, and property left by Rajah Ruttun
 " Singh, deceased, whether moveable or im-
 " moveable, ancestral, or self acquired, in the
 " custody of the Court of Wards situated in
 " the district of Bareilly, Pilibhit, Shahjehanpore,
 " Badaon, &c., and in the province of Oudh, we
 " have, whilst in the perfect enjoyment of our
 " senses, and without being under any kind of
 " compulsion or coercion, come to amicable

" terms in the presence of Mr. John Inglis,
 " Collector of Bareilly, and agreed to regard the
 " whole property as if it were one rupee, and
 " to divide it into the following shares: $7\frac{1}{2}$
 " annas as the share of Khyratee Lall, $4\frac{1}{2}$ annas
 " as the share of Rani Chattur Kuwar, and
 " $4\frac{1}{2}$ annas as the share of Rani Mewa Kuwar."

That is an agreement that the whole property left by the Rajah Ruttun Singh, as well that in Rohilcund as that in the province of Oudh, shall be divided in those shares. Then comes a provision for a division of the property, according to those shares, by a partition by metes and bounds. That part of the agreement is this: "According to these rates the whole
 " of the property shall be divided amongst the
 " above, agreeably to a punchait to be convened
 " for the purpose. That we shall not retract from
 " this proposed division;" and then declaring that it should be a final agreement between them. It is undisputed that this agreement relates to the whole of the property of Rajah Ruttun Singh, as well that in Oudh as in Rohileund. In fact that is the case on the part of the Respondent as well as that on the part of the Appellant. Both agree that this agreement was intended to settle the disputes relating to the whole of the property left by the Rajah. Now there is no evidence to be found in the record of an actual partition of the property, either in Rohilcund or in Oudh, pursuant to the terms of this agreement; but it is said on the part of the Respondent, the Defendant, that by the subsequent agreement, to which I have alluded, of the 12th November 1860, there is an acknowledgment on the part of the present Appellant and her sister whom she represents, that a partition had taken place of the whole property, as well the property in Oudh as in Rohileund, an acknowledgment which binds

them by way of estoppel ; and that, under those circumstances, the present claim of the Appellant to a share of the houses in Lucknow must be defeated. This document is in ambiguous language, and some care is required in considering what is the effect of the language used in it. It may here be said that those who rely upon the document as an estoppel,—the nature of an estoppel being to exclude an enquiry by evidence into the truth,—must clearly establish that it does amount to that which they assert. Now the document is this: “We Khyratee “Lall in person,” and the Appellant and her sister by their attornies,—“the principals, being “heirs of Rajah Ruttun Singh, deceased, do “hereby declare that: Whereas our case regard- “ing rendition of accounts and division of the “property left by Rajah Ruttun Singh, now in “charge of the Court of Wards, was pending “before Moulvi Mahomed Khyrooddeen,”—and other persons, naming them, and describing them “as members,” and their Lordships understand that they were a committee of persons, or a punchait, appointed to make a partition. The document goes on, “the same has now “been amicably adjusted and divided amongst “ourselves, according to our specific shares,”—that is, the shares mentioned in the first agreement,—“under the auspices of Mr. John “Inglis, Collector of Bareilly, and the division, “under the blessings of Providence, having “been made accordingly regarding the whole “property, viz., cash, furniture, villages, (mort- “gaged and free from mortgage), houses and “shops, cash deposited in banks and treasury, “other property moveable of every description, “and books, we have received our respective “shares. Now there is not the slightest dispute “amongst us left unadjusted and unsettled, and “there is not a fraction of such property which

“ has not been divided amongst us. We have
 “ therefore filed this razeenamah acknowledging
 “ division of property and settlement of accounts
 “ in the court of the above-mentioned deputy
 “ collector that it may prove of use hereafter.”
 There are undoubtedly words in this agree-
 ment which, taken by themselves, are sufficient
 to comprehend the whole of the property which
 was the subject of the first agreement; but the
 words which occur in the commencement of the
 agreement appear to their Lordships to be the
 governing words of the instrument, as far as
 the property included in it is concerned, and
 those words are: “Whereas our case regarding
 “ rendition of accounts and division of the pro-
 “ perty left by Rajah Ruttun Singh, *now in*
 “ *charge of the Court of Wards.*” Now the
 only property which could have been in charge
 of the Court of Wards was the property in
 Rohileund. Notwithstanding therefore the large
 words to which I have referred, viz., “Now
 “ there is not the slightest dispute amongst us
 “ left unadjusted and unsettled, and there is not
 “ a fraction of *such* property which has not been
 “ divided amongst us,” their Lordships think
 that the reference made in that wide clause
 by the words “such property” limits its appli-
 cation to the property described in the commence-
 ment of the agreement, namely, the property “now
 “ in charge of the Court of Wards.” Undoubtedly
 there is some room for the contention that the
 words “now in charge of the Court of Wards”
 were not intended to limit the agreement to pro-
 perty which was really in the Court of Wards, but
 were inserted by mistake and by misapprehension
 of the parties who might have thought that the
 property in Oudh was in charge of the Court of
 Wards of the district of Bareilly. Their Lordships
 do not fail to notice that property was described as
 being in the custody of the Court of Wards in

the first agreement, but there the description is not confined to property in the Court of Wards, but the words "and in the province of Oudh" are inserted, apparently for the purpose of showing that the agreement was intended to comprehend lands in that province as well as those in Rohilcund. There are no such words in the agreement of November, and upon the whole their Lordships think that that agreement may properly be confined to the lands in Rohilcund which were really in charge of the Court of Wards.

It will be observed from what has been already said that their Lordships have felt that this document is ambiguous, and this being so, the construction of it may be aided by looking at the surrounding circumstances. If it had appeared that the Appellant had had possession for a long number of years of some property which had belonged to Rajah Ruttun Singh in Oudh, and the Respondent and those she represents had been in possession of other property which had belonged to the Rajah, it might have been inferred that a partition had been made by agreement, and that the parties were content to hold what they had so agreed to take without any formal partition by a punchait. But upon looking at the circumstances which were relied upon by the Respondent's counsel, Mr. Cave, to support that presumption, it appears to their Lordships that they fail to do so. The first circumstance relied on was that in addition to the four houses which are the present subjects of dispute, there was a fifth house which, it was said, had belonged to Rajah Ruttun Singh, and had been in the possession of the Appellant and her sister and her sister's husband. But the evidence when examined really fails to make out that that house was a part of the property of Rajah Ruttun Singh. On the con-

trary, there is a great deal of evidence to show that it was the separately acquired property of Dowlut Singh, the father of the Appellant, and was no part of the estate of the Rajah. The title to that house is, at least, left in doubt, and it was for the Respondent, if she relied upon the circumstance of the Appellant's having the ownership and possession of the house as presumptive proof of the partition, to have shown clearly that it formed part of the property of the Rajah.

The other circumstance strongly relied on was that there had been an acquiescence of nine years, from the date of the agreement in 1860 to the commencement of this suit, in the possession of the four houses now claimed remaining with the Respondent. But again upon investigation their Lordships think that there was no acquiescence from which they could safely presume there had been a partition. It seems that upon the death of the Appellant's sister, Rani Chattur Kuwar, the Appellant brought a suit against her husband, Oudh Beharee Lall, to recover from him her sister's $4\frac{1}{2}$ share in the houses now in dispute. That suit was commenced apparently in the year 1866. The defence to it was that Beharee Lall was entitled to the property in another right,—it is not necessary to say what right he set up. The present Appellant succeeded in that suit in the lower Court and also upon appeal in the High Court of the North-West Provinces. Now in that suit she claimed, as against her deceased sister's husband, her sister's share in this very property. It seems incredible if she was aware she and her sister had no right to this property, and that it had gone under a partition to Khyratee Lall, that she should have instituted that which would have been, so far as regards this property, an entirely useless suit. It is perfectly true that nothing which occurred in the progress of that

suit can be evidence against the present Respondent, who was no party to it; but the suit is so far material and relevant that the present Appellant, having obtained a decree against the sister's husband, Oudh Beharee Lall, endeavoured to execute that decree by obtaining possession in due course of law of the houses and was resisted by the present Respondent who was then in possession of them. These facts seem to negative anything like acquiescence on the part of the Appellant in a supposed partition by which these houses were allotted and assigned to be held in severalty by the Respondent or by Khyratee Lall whom she represents.

Under these circumstances the case simply comes to the question of the right of the Appellant under the agreement of July 1860. That agreement assumes that the parties were severally claiming, by virtue of some right of inheritance, the property of the Rajah Ruttun Singh; that there were questions between them which might disturb the rights which each claimed, and it was better instead of a long litigation to settle these rights, and they do settle them by arriving at this agreement, which provides that the property shall be held in certain shares, and shall be divided according to those shares. A partition according to those shares has never taken place, and the Respondent is in possession of the entirety of the houses in Oudh and the Imambara. Unless therefore the title of the present Appellant is barred by limitation she has, in their Lordships' opinion, a right to a decree for the shares of those houses assigned to her and her sister whom she now represents by the agreement.

Their Lordships in coming to this conclusion have arrived at an opinion in accordance with that of the Judicial Commissioner from where this appeal comes to Her Majesty. The Judicial

Commissioner states that he has no doubt that the agreement of November 1860 did not include the property in Oudh. He says, "I shall have to refer again to the agreement effected by the disputants in July 1860. I deem it necessary to record my concurrence in the ruling of my predecessor in regard to the deed of November 1860. It is clear from the terms of that document that it referred solely to that portion of the property of the late Rajah Ruttun Singh that was situated within the jurisdiction of the Collector of Bareilly. It sets forth that 'Whereas our case regarding rendition of accounts and division of the property left by Rajah Ruttun Singh, now in charge of the Court of Wards, was pending before certain arbitrators, an amicable adjustment has been made and the whole property divided.' The property situated in the province of Oudh and claimed in the present suit was not under the charge of the Court of Wards of the Bareilly District, and could not therefore have been included in the division referred to in this document." So far, therefore, their Lordships entirely agree with the judgment of the Judicial Commissioner. The way the case came before him ultimately was this,—the Civil Judge of Lucknow having at first decided, contrary to the above view of the Judicial Commissioner, that the agreement of November 1860 did include the Oudh property, and was an estoppel, was overruled by a former Judicial Commissioner, Sir George Cowper, who remanded the case for an enquiry as to the possession of the houses. The Civil Judge on this remand seems to have thought he must enquire who had had possession during the last 12 years, and finding that the Respondent and her predecessors had been in possession for more than 12 years, he held

that the suit was barred by the Statute of Limitations.

The Judicial Commissioner, when the case came before him on final appeal, held that the claim of the Appellant was based on the agreement of July 1860, and that limitation only ran from that date; but he thought the limitation of six years was applicable to the suit. The judgment of the Judicial Commissioner was that the case of the Appellant rested upon the agreement of July 1860, and that so resting upon a contract the case was within the 10th clause of section 1 of Act 14 of 1859, and barred by it, inasmuch as the action was not brought within six years from the date of that agreement. Now their Lordships are of opinion that the 10th is not the clause which is applicable to the present claim, but that the suit is really brought for the recovery of immoveable property, and that the clause which properly applies to it is clause 12 of section 1. The compromise is based on the assumption that there was an antecedent title of some kind in the parties, and the agreement acknowledges and defines what that title is. The claim does not rest on contract only, but upon a title to the land acknowledged and defined by the contract, which is part only of the evidence of the Appellant to prove her title, and not all her case. It therefore seems to their Lordships that the suit is not founded on contract or for a breach of it, but that it is a suit for the recovery of immoveable property "to which no other provision of the Act applies," and so within clause 12; consequently, in their opinion, the proper limitation of the suit is 12 years, and it has not been contended at the Bar that if that

be the period of limitation the present suit is barred.

For these reasons their Lordships, agreeing in the view of the merits of the case taken by the Judicial Commissioner, but differing from him as to the effect of the Statute of Limitations, must humbly advise Her Majesty that his judgment ought to be reversed, and that a decree ought to be made that the Appellant is entitled to the possession of the $8\frac{1}{2}$ annas share of the properties in Oudh, the subject in dispute in the suit. The Appellant to have the costs in India, and of this appeal.

