

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Babu
Ram Singh and Another v. The Deputy Com-
missioner of Bara Banki, from the Court of
the Judicial Commissioner of Oudh, Lucknow ;
delivered November 6th, 1889.*

Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

THE villages which are the subject of this suit are part of the Defendant's Taluk, and are included in the Sanad under which he holds that Taluk. The Plaintiffs claim to be proprietors of the villages by virtue of a deed of gift, which was dated in the year 1850, and of possession taken under that deed, and continued up to the present time. The deed of gift was made by the son of the then Rajah, or Talukdar, who was the manager of the estate, and made to the brother of the then Talukdar, who is the father of the Plaintiffs. The genuineness of the deed is disputed ; but it has been held to be genuine by the Judicial Commissioner ; and for the purposes of the present appeal the correctness of that holding may be assumed. But there is no doubt that the deed of gift (whether it is an absolute gift, or one for maintenance only, is a matter of dispute) was displaced by Lord Canning's proclamation ; and that the Sanad of the Taluk conferred an absolute title upon the grantee *primâ facie*.

The Plaintiffs base their claim upon the principle of those decisions of this Committee,

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in which it has been held that the conduct of the holder of a Sanad has been sufficient to establish against him a liability to make good, out of his Sanad, interests in the property which he has by that conduct either granted to other people, or given them ground to claim. But the Plaintiffs do not show that there has been any such conduct beyond the fact that they have been left in possession of the property during the whole time of the troubles in Oudh, and down to the present time.

The Talukdar has paid to the Government the revenue for the whole Taluk, and the Plaintiffs have paid the Talukdar that share of the revenue which would be payable for the villages that they hold.

They are now desirous of selling or mortgaging the property. They have attempted to do so, and they have failed because they cannot get a mutation of names; and the present suit is a declaratory suit, in which they seek a declaration that they are the proprietors of the property in order that they may obtain a mutation of names.

Their Lordships are of opinion that the mere fact of possession, which is consistent with an intention to give maintenance as well as proprietorship, does not establish any case against the Talukdar obliging him to make the Plaintiffs proprietors of that portion of his Taluk.

Other cases are now set up. One is that the Plaintiffs have a good title by adverse possession. Possession may be adverse or not, according to circumstances; and the question of adverse or non-adverse possession is mainly a question of fact. But there has been no allegation of adverse possession in the plaint, and no issue raised as to it before the Courts below. Their Lordships think that it is impossible now to suggest a case of adverse possession.

Then the Plaintiffs claim that, if they are not proprietors, they have at all events a sub-

proprietary right; and there are cases in which it would be quite just and proper to allow one who comes to claim recovery of villages, or the right to a settlement in villages, on the ground of a proprietary right, to maintain upon the same facts that he is in effect a sub-proprietor; but this is not such a case. The question of sub-proprietary right is entirely irrelevant to the relief claimed in this suit, which is for a declaration of right on which to found a mutation of names in order that effect may be given to the dealings with the estate by the Plaintiffs.

Their Lordships, thinking that the suit fails upon the main point, hold that it also fails upon the other points; and the result will be that they will humbly advise Her Majesty that the Appeal should be dismissed with costs.

