

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Bejai Bahadur Singh v. Bhupindar Bahadur Singh and Bejai Bahadur Singh v. Kounsai Kishore Parshad Mal Bahadur (Consolidated Appeals), from the High Court of Judicature for the North-Western Provinces of Bengal, Allahabad; delivered 30th March 1895.

Present :

LORD HOBHOUSE.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

The Appellant in this case brought a suit in the Court of the Subordinate Judge of Mirzapur against the Respondents and others to recover possession of a Raj and large estates, the greater part of which are situate in Pargana Bejaigarh Zillah Mirzapur. The suit was tried by the District Judge who decided it in the Appellant's favour and gave him a decree for possession of the property claimed, except six mauzas, against the Respondents. They separately appealed to the High Court at Allahabad, which Court on the 19th July 1889 reversed the decree of the District Judge and dismissed the suit. The Appellant's case is that Rajah Ram Saran Sahai, who was possessed of the property, was the lineal descendant of Rajah Harhar, or Harihar, Sahai, the son of Rajah Daljit Sahai who died between 1781 and 1790; that Rajah Ram Saran Sahai who died on the 5th December 1853 left a widow,

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Rani Pirthiraj Kuar, and a daughter, Radhepershad Kuar; that the Appellant is the eldest of the three sons of Babu Lachman Saran Singh, the lineal descendant of Babu Sheo Baksh Singh, the younger son of Rajah Daljit Sahai; and that Rani Pirthiraj Kuar died on the 19th April 1886. The Appellant filed his plaint on the 23rd September 1886. The Respondents who were in possession appear to have obtained it in the following manner. Rani Pirthiraj Kuar having taken possession of the property after the death of her husband on the 28th April 1857, made deeds of gift of parts of it in favour of her daughter Radhepershad Kuar. She died on the 13th April 1859, and her husband Babu Brigendar Bahadur was with the consent of Rani Pirthiraj Kuar recorded as zemindar and proprietor of the property, which was the subject of the deed of gift of the 28th April 1857. On the 15th January 1872 Rani Pirthiraj Kuar executed a deed of gift of the whole of her property, with the exception of Taluka Silhat, in favour of Babu Brijendar Bahadur. He died on the 4th August 1879 leaving no issue, and the name of Mussummat Dharamraj his widow was recorded in the revenue papers. On the 21st November 1879 she, and Rani Pirthiraj Kuar, by a deed of gift and agreement gave and assigned to the first Respondent, the nephew of Brijendar, all their interests in the estates belonging to the Raj of Bejaigarh, and he was put into possession and recorded as proprietor of them with the assent of Rani Pirthiraj Kuar.

In his written statement the first Respondent denied that the Appellant belonged to the family of Rajah Ram Saran Singh. He also alleged that Lachman Singh had been convicted of offences under Act XXV. of 1857 (a mistake for Act XI. of 1857), that his whole property and rights were forfeited to the Government, and

therefore that the Appellant had no right to sue. He also relied upon the law of limitation. The defence of the second Respondent was in substance the same.

The Appellant's evidence was both documentary and oral. It will be seen hereafter that the latter is of little value. In a proceeding recorded by the Settlement Officer and Deputy Collector of the Mirzapur District on the 9th May 1851, the question being who should be recorded in the Collectorate as proprietor of two mauzas, Bamangaon, Sindwari and Soli, tappa Silhat pargana Bejaigarh, it appears that Lachman Singh the Appellant's father presented a petition to the effect that the mauzas had been "from the time of Raja Gobind Saran Sahai" (the father of Raja Ram Saran Sahai) "in the possession of the applicant's ancestors and the applicant himself, without payment of revenue, in this manner, that Raja Daljit Sahai had two sons (1) Raja Harhar Sahai and (2) Babu Sheo Baksh Singh. Again Raja Harhar Sahai had four sons viz. (1) Raja Pirthipat (2) Babu Dunya Singh (3) Babu Gurdatt Singh and (4) Zalim Singh. Babu Sheo Bakhsh Singh had two sons (1) Babu Darb Singh and (2) Babu Dhurah Singh. Babu Dhurah Singh had a son Babu Deonath Singh, and Babu Darb Singh had Babu Aman Singh the father of the applicant. Babu Deonath Singh died childless. His widow, Bahoria Jawahir Kuar, is his heir. She is alive. Raja Gobind Saran Sahai in his lifetime granted the aforesaid villages revenue-free to Babu Darb Singh and Babu Dhurah Singh, the applicant's ancestors, for their maintenance. From that time the applicant's ancestors, and after them the applicant, have as usual been in zemindari possession of the said villages together with all the mal and

“sair items without paying any Government revenue. But in the public record the name of Raja Ram Saran Sahai is entered in the column of lambardar.” It was ordered that the applicant should produce his evidence, and that the Raja’s muktar should file his reply and adduce his evidence, and that the kanungo be called upon to submit a report. On the 2nd January 1851 the Raja by his mukhtar filed his reply. It is as follows (Rec. p. 256) :—

“The said applicant, who has no complete title-deed, calls himself a zemindar, and says that he never paid the revenue of the villages Bamangaon and Soli, and that he has been long in possession. But the fact is that the said villages constitute the ancestral zemindari of the petitioner under a decree of the Civil Court, and that he has been paying the Government revenue from year to year to the Collector, obtaining receipts and discharges from him. Formerly, Babu Darb Singh and Babu Dhurab Singh were the door-keepers of the petitioner’s ancestors, and that they therefore having built a house at mauza Bamangaon, took up their residence in it, and made an application for the lease of those villages. Accordingly Raja Gobind Saran Sahai, the petitioner’s ancestor, made over the village Bamangaon to Babu Darb Singh, at a jama of Rs. 55, and mauza Soli to Babu Dhurab Singh, at a jama of Rs. 35, without executing any deed. These persons continued to pay the above-mentioned jamas into the petitioner’s office during their lifetime. Babu Darb Singh used to be paid a maintenance allowance of Rs. 40 per annum, and Babu Dhurab Singh of Rs. 30 per annum, from the petitioner’s office, and both these persons served the Raj and the gaddi throughout their lives. But since 1250 Fasli the applicant, at the instigation of the mischief makers in the pargana, would neither pay the revenue nor perform the services rendered by his ancestor. Under these circumstances the villages should be resumed by reason of the revenue remaining unpaid. The applicant’s allegation of maintenance allowance is wholly false. If the applicant’s ancestor was an own brother of Raja Harihar Sahai, he should produce a grant made by that Raja, but he had no connection with the petitioner’s ancestor. If the ancestor of the applicant considered himself to be an equal or brother, he should have asserted his claim in the Court when a suit was brought by the petitioner’s ancestor. Babu Dhurab Singh died childless, and the applicant has nothing to do with mauza Soli. As regards the arrears of revenue relief will be sought from the Court. The revenue not having been remitted by the Government to the petitioner,

“ he could not absolve others from payment thereof. This is “ a matter which is to be taken into consideration by the “ Court.”

This is the official translation of the document. The District Judge in his judgment has given his own translation in which instead of “ were “ the door-keepers of the petitioner’s ancestors ” it is “ used to live at the threshold of petitioner’s “ ancestors.” The latter translation seems rather to show that “ doorkeeper ” should not be taken to mean merely a servant. This proceeding appears to their Lordships to be important evidence. There is a clear statement by Lachman of the pedigree now relied upon when there was no question as to the succession to the raj. The reply of the Raja is not such as might be expected if Darb Singh and Dhurab Singh were not relations, but were only servants. The denial of the Appellant’s ancestor being a brother of Raja Harihar Sahai is argumentative rather than direct. There was no occasion to produce a grant to prove it or to have asserted the claim before in Court. The Order of the Settlement Officer is not material to the present question. It was that the petitioner’s ancestors held the villages revenue-free.

On the 7th April 1854 a proceeding relating to mutation of names by inheritance was recorded by the Collector of Mirzapur (Rec. p. 257). It states that a petition of the Tehsildar of Shahganj dated the 10th December 1853 was received, containing information of the death of Raja Ram Saran Sahai the Raja of Pargana Bejaigarh ; that the kanungo of the pargana also submitted a report on the 14th of that month stating that the Raja died on the 8th December 1853, leaving Rani Aprup Kuar his mother aged 60 years, Rani Pirthiraj Kuar widow aged 40 years, and Babui Radhe Parshad Kuar, daughter aged 11 years, as his heirs; and that besides these persons Babu

Lachhman Saran Singh was also a near heir. He (Lachhman), the report says, writes " that Raja Daljit Singh had two sons, Raja Harihar Sahai and Babu Sheo Bakhsh Singh; that Raja Harihar Sahai had four sons, Raja Pirthipat, Babu Duniapat, Babu Gurdatt Singh, and Babu Zalim Singh; that Raja Pirthipat, Babu Duniapat, and Babu Zalim Singh had no children; that Babu Gurdatt Singh's son was Raja Gobind Saran Sahai whose son was Raja Ram Saran Sahai; and Babu Sheo Bakhsh Singh's sons were Babu Darb Singh and Dhurab Singh; that the last-named person died childless; and that Babu Darb Singh's son was Babu Aman Singh whose son is Babu Lachhman Saran Singh."

It is then stated in the record of the proceeding that the kanungo was ordered to furnish a report as to whether the ancestor of Babu Lachhman Saran Singh used to get any maintenance allowance as brother of the Raja from this estate, and also to state who then managed the estate of the deceased Raja and paid the Government revenue; that afterwards Rani Pirthiraj Kuar, zemindar, filed a petition, to the effect that she had succeeded as heiress to all the property left by her deceased husband, and she prayed that her name should be entered in the official papers by expungement of that of the deceased.

It is to be observed here that the widow could only be the heiress of her husband if he was separate in estate from the other branch of the family. Her claim to be the heiress may reasonably be taken to mean that he was separate in estate. It would be evidence against her, and is also evidence against the first Respondent who came into possession by virtue of her gift.

The record states that the report of the kanungo was to the effect that the ancestors of Babu Lachhman Saran Singh received only mauza Bamangaon and Soli as a provision for their maintenance from the Raja as bila-den (or rent free bhuwad) allowance to a brother, and that these villages were still held in lieu of maintenance; and that the estate of the deceased Raja was entirely managed by Rani Pirthiraj Kuar and the revenue paid by her. The record then sets forth a petition of Lachhman to the effect that he and the raja "were cousins, the "descendants of a common grandfather"; that Raja Ram Saran Sahai had granted the villages Bamangaon and Soli "as a provision called "bhuwad for his necessary expenses"; and that under Regulation X. of 1793 a woman was prohibited from engaging for payment of the Government revenue, "and being a sarbarakar " (manager)," and therefore it was but just that the management of the official matters should be entrusted to him. He seems not to have disputed that the widow was the immediate heir for her life. Rani Pirthiraj Kuar filed a reply to this petition to the effect that "Raja Gobind "Saran Sahai was the only son of his father, "and he had neither a brother nor a first cousin; "then how can the objector be a cousin (brother "amzad) of the deceased Raja, and how can he "have right or title to the estate?" This is evasive. It gives the literal meaning to "grand- "father" which could not have been intended as in the pedigree the common ancestor was more remote. The Order was that the name of Rani Pirthiraj Kuar should be entered as lam-bardar, the Collector saying:—"The objection "of Babu Lachhman Saran Sahai who urges his "own right cannot be admitted. He is 3 or 4 "degrees removed from the deceased Raja."

The proceeding for mutation of names was

immediately followed by an application by Pirthiraj Kuar for a certificate of heirship under Act XX. of 1841 to the Judge of Mirzapur. The proceeding recorded by him on the 5th May 1854 states that Pirthiraj Kuar applied as the only heir to the deceased Raja, which would be true if he and Lachhman were separate in estate; that Lachhman filed his objections to the effect that the certificate of heirship was to recover debts and not to get possession of the zemindari estate and to secure the gaddi of the Raj, but that it was known to all that the objector and Raja Ram Saran Sahai " were cousins, being the descendants " of a common grandfather, and that the zemindari " and the Raj (estate) of Bejaigarh is a hereditary property which has not up to this day " been ever partitioned (divided) according to the " customs and usage of the Raj. It is thus clear " that after the death of Raja Ram Saran Sahai " the objector and the Rani Saheba were the " only heirs to the Raj and the estate, and that " the Rani Saheba being a *pardah-nashin* lady he " was the only person entitled to manage the raj " and the estate." The decision of the Judge was that the objections of Lachhman could not be allowed " because according to *Macnaghten* it " is the general rule of the Benares School of " Hindu law, which also applies to these parts, " that when there is a separation and no son the " widow as against other heirs has a preferential " right. It appears that the objector and the " deceased Raja were separate, because irrespec- " tive of the deposition of the witnesses of the " Rani-applicant, who spoke of the separation, it " appears from the proceeding of the Revenue " Court dated 9th May 1851, the contents of " which are not only admitted by the objector's " witnesses but by the objector himself, that " they were separate, that is, it shows that the " objector and his ancestors were in separate

“ possession for a long time of the villages
 “ of Bamangaon, Sayedwari and Sani Balami
 “ for their maintenance.” It was accordingly
 ordered that the objections of Lachhman Singh
 be rejected and a certificate be given to Rani
 Pirthiraj Kuar.

It thus appears that Rani Pirthiraj Kuar
 relied on the separation as entitling her to the
 certificate and that on that ground the decision
 was in her favour. This is strong evidence
 against the Respondents of the separation.
 Their Lordships are of opinion that there was
 a separation, and this disposes of the objections
 of the forfeiture by Lachhman and the law of
 limitation. Lachhman when he was convicted
 had no property or right in the estates that could
 be forfeited. He could only be entitled as heir
 to the Raja upon the death of the widow if he
 survived her. It is also to be observed that
 Pirthiraj Kuar appears in this proceeding not to
 have denied the relationship as she did in the
 previous proceeding, but only evasively.

The only question then is whether the evidence
 is sufficient to prove that the Appellant was the
 heir of Raja Ram Saran Singh on the death of
 Pirthiraj Kuar. Of the Appellant's witnesses the
 District Judge was of opinion that only four had
 “ some claim to special means of knowledge”; that
 the rest had not, and therefore that their opinions
 were “ worthless.” As no written pedigree was
 produced he held that their evidence, so far as
 it was derived from such a pedigree, was clearly
 inadmissible under Section 59 of the Evidence
 Act. As to their being members of the same
 family he said they were so remotely connected
 with the last Raja's family that their opinion as
 to the Appellant's connection step by step with
 the last Raja was of little weight. He considered
 that the witnesses of the Defendant (the

Respondent Bhupindar Singh), who spoke as to the Raja's pedigree and asserted that Raja Daljit had but one son, Harhar, had "no special means of knowledge whatever, and their evidence on the point is worthless." The High Court agreed with the District Judge as to the oral evidence, except that of the four witnesses. The learned Judges appear to have thought that the evidence derived from a pedigree not produced was admissible, because the questions-in-chief put by the Plaintiff's pleader to the witnesses were not objected to. But after stating the evidence rather fully they said they were of opinion that as no effort was made to produce a pedigree, or account for its non-production, the evidence was worthless. Their Lordships think little, if any, weight should be given to this evidence. Their opinion on the case is founded upon the documentary evidence. That appears to show that Lachhman as far back as 1851 asserted his relationship, and set out the pedigree upon which the Appellant now relies. On the death of the Raja in 1854, according to the report of the kanungo, Lachhman again set out his pedigree and claimed to be a near heir (Rec. p. 257). This was met by the Rani by the allegation that she was the heiress, and in the certificate proceedings she appears to have examined witnesses to prove separation, which would show that she was the heiress, but is consistent with the claim of Lachhman according to his pedigree. She does not appear in this proceeding to have denied his relationship, and her conduct not long before her death agrees with this; though it may perhaps be explained by her having quarrelled with the Respondents.

Their Lordships have come to the conclusion that the evidence is sufficient to prove that the Appellant was, on the death of Rani Pirthiraj

Kuar, the heir of her husband the Raja, and was entitled to the estates of which possession was decreed to him by the District Judge; and they will humbly advise Her Majesty to affirm that decree and to reverse the decrees of the High Court, and to order the appeals to it to be dismissed with costs. The Respondents will pay the costs of these appeals.
