

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Chokhey Singh and another v. Jote Singh; and of Jote Singh v. Chokhey Singh and another, from the Court of the Judicial Commissioner of Oudh; delivered the 7th December, 1908.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD ATKINSON.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Sir Andrew Scoble.*]

The suit out of which these Appeals arise relates to the right of succession to the property of one Munnu Singh, who died childless on the 24th May 1896. The property consists of shares in some thirty villages in the District of Sitapur, in the Province of Oudh. The claimants are Jote Singh, the only surviving brother of the deceased, and Chokhey Singh and Gajraj Singh, his nephews, the sons of a brother who had predeceased him.

It is not disputed that, under the ordinary Hindu law applicable to the family, Jote Singh was the nearest heir and entitled to succeed to the whole estate. His nephews, however, sought to defeat his claim on various grounds. They alleged that they had been joint with Munnu Singh during his life-time, and that he had made an oral will in their favour. Both Courts in India found against them on these points. They set up a family custom, whereby brothers and brothers' sons are entitled to succeed together,

but they entirely failed to establish such a custom. They further asserted a compromise—and this was the only ground argued before their Lordships—under which they claimed to have acquired a half-share in the estate, by agreement with Jote Singh.

There is no doubt that by an Order of the 5th November, 1896, mutation of names in respect of Munnu Singh's property was effected in the following manner, viz., one half into the name of Jote Singh and one half into the names of Chokhey Singh and Gajraj Singh, the former, being the elder, having a slightly larger share. But this mutation of names by itself confers no proprietary title, and it was therefore sought to prove that it was the result of a valid compromise made at the time of the mutation proceedings, and that Jote Singh was thereby estopped from asserting his present claim. Both Courts in India have found as a fact that there was no such compromise, and their Lordships see no reason to dissent from the conclusion at which they arrived. It was, however, argued before their Lordships that the Courts below had not given sufficient attention to a document (Exhibit A 1) signed by the three claimants in the mutation proceedings, in which it is stated that—

“Jote Singh, own brother of the deceased, is in possession of half of the *haqqiat* of the deceased, and Chokhey Singh and Gajraj Singh in equal shares, after deducting the *jethansi* right of Chokhey Singh at the rate of 4 per cent., are in possession of the other half of his share. There is no other legal heir except the deponents. The mutation in respect of the deceased's share in all the villages should be allowed and nobody has any objection thereto.”

There is no reference in the document to any compromise, and it does not appear to their Lordships that it contains any words that can be construed as amounting to an abandonment by Jote Singh of his legal rights. It is merely

a statement of the facts as they existed in regard to the possession of the property—the main point considered by the Revenue authorities upon applications for mutation of names—and, by its silence as to a compromise, tends to support the conclusion that no compromise was ever made.

The Courts in India concurred in holding that, as regards twenty-nine of the villages in which Munnu Singh was a sharer, Jote Singh was entitled to succeed him as his heir according to Hindu law, but as regards one village, Bihat Biram, they differed. That village had been the subject of partition proceedings under the Oudh Land Revenue Act (Act XVII. of 1876), and the Judicial Commissioner held that, as a portion of Munnu Singh's share in Bihat Biram was allotted to Chokhey Singh and Gajraj Singh at the partition, Jote Singh was estopped from now claiming it. The Subordinate Judge had held that there was no such estoppel.

The Judgment of the learned Judicial Commissioner upon the point is in these terms :—

In 1900, one Jote Singh (not the Plaintiff) applied for partition of one of the Thokes in the village, whereupon the Plaintiff presented a petition (*see* Exhibit A 17) praying that his entire interest in the village should be separated from that of the Applicant Jote Singh as well as from the shares of the present Defendants, and this was done with the result that the Defendants were allotted a separate patti, which includes the share now in dispute, and their father, Bhikam Singh's, share in the village as one of the sons of Mitau Singh.

The effect of the decree of the Court below is to give the Plaintiff a portion of the patti allotted to the Defendants at the partition. The Defendants, no doubt, conducted their case at the partition on the assumption that they were entitled to half the share of Munnu Singh, junior, and it seems impossible now to put them back into the position which they occupied before the partition, for the partition dealt with the

shares of other persons besides those of the parties to the present suit.

Moreover, in the partition the Plaintiff had an opportunity of which he should have availed himself, of objecting to the Defendants' title (*see* Section 74 of Act XVII. of 1876, the Revenue Act which was then in force). Had he raised the question then, it would have been disposed of before the partition. In my opinion, it is too late now for the Plaintiff to claim that portion of Munnu Singh's share in Bihat Biram, which was allotted to the Defendants at the partition. It appears to me that as to this the Plaintiff is estopped.

The learned Judicial Commissioner appears to their Lordships to have been under a misconception on two points of fact. If the order of the Revenue Court in the partition proceedings be looked at, it will be found that it divides the village into two Thokes, the first of which, Thoke Hathi Singh, is partitioned among five families, none of whom are parties to this suit; while the second Thoke, Bhawani Singh, is divided between the parties to this suit, in almost equal proportions. The shares of no other persons are therefore affected by the partition order. In the second place, it appears from Exhibit No. 58, an application filed by Jote Singh in reply to the objections taken by Chokhey Singh and Gajraj Singh in the partition proceedings, and dated 20th December 1902, that Jote Singh asked that "the share of Munnu Singh should be divided at present according to possession, and a separate suit will be filed in a competent court as regards the title in respect of the property of Munnu Singh." The Revenue Court appears to have given effect to this application, for no inquiry under section 74 of Act XVII. of 1876 was made, and the question of title was left to be decided by the Civil Court in Jote Singh's present suit, which was filed on the 24th November 1904. In the opinion of their Lordships the grounds of estoppel relied on by the learned Judicial Commissioner both fail.

Their Lordships will humbly advise His Majesty that the Appeal of Chokhey Singh and Gajraj Singh should be dismissed and the Cross-Appeal of Jote Singh allowed ; that the Decree of the Judicial Commissioner should be discharged, and the Decree of the Subordinate Judge restored except as to costs, Chokhey Singh and Gajraj Singh paying Jote Singh's costs in both courts.

The Appellants Chokhey Singh and Gajraj Singh will pay the costs of Jote Singh in both the Appeal and the Cross-Appeal.

