

*Privy Council Appeal No. 25 of 1918.*

*Oudh Appeal No. 23 of 1915.*

Rani Indar Kuar - - - - - *Appellant*

*v.*

Thakur Baldeo Bakhsh Singh - - - - - *Respondent*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

---

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 8TH JUNE, 1926.

---

*Present at the Hearing :*

LORD BUCKMASTER.

LORD DUNEDIN.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by MR. AMEER ALI.*]

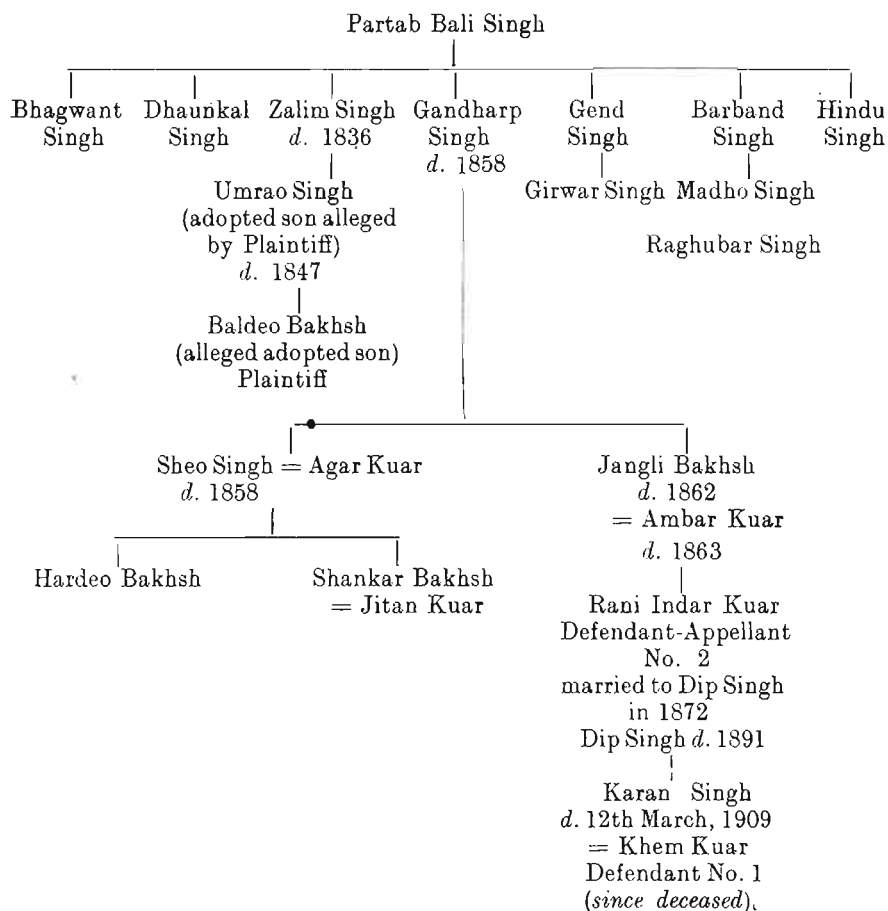
---

The suit which has given rise to this appeal forms the sequel to a dispute which began nearly sixty years ago. The history of the case is set out at considerable length in the judgment of the Judicial Commissioners; their Lordships will therefore confine their attention to the salient facts.

The suit relates to the estate of Sakran in the Sitapur District of the United Provinces. The last male holder of this property was one Jangli Bakhsh Singh, who died in 1862. Jangli was the grandson of one Partab Bali Singh. This Partab Bali, a Bais Rajpoot by caste, held in his lifetime two estates, Rehar and Sakran. He left several sons; the names of three only are material to this judgment, viz., Zalim Singh, Gandharp Singh and Barband Singh. On the death of their father, Gandharp separated from his brothers, taking Ilaka Sakran for his share in the ancestral estate. Gandharp died somewhere in 1858, leaving him surviving two sons, Jangli Bakhsh and Sheo Singh, who formed a joint undivided family. This Sheo Singh died soon after his father, leaving a widow named Agar Kuar and two sons, one of whom, Shankar Bakhsh, had a wife named Jitan Kuar. On the death of Sheo Singh, Jangli became the sole owner of Sakran. He died, as already stated, in 1862, leaving him surviving his widow Ambar Kuar and an infant daughter Indar Kuar, the present appellant before the Board.

Zalim Singh, who appears to have held the Ilaka called Rehar, died somewhere in 1836. In the proceedings which took place in the Settlement Courts, the plaintiff, Baldeo Bakhsh, alleged that as Zalim Singh had no natural-born son, he adopted Umrao Singh; that Umrao died in 1847, and that he, Baldeo, was the son and successor of Umrao. Barband Singh, the other son of Partab Bali, left him surviving a natural-born son named Madho Singh, whose name also occurs constantly in the earlier proceedings.

The following genealogical table will show clearly the relative position of the parties at the time when the disputes commenced :—



On the death of Jangli Bakhsh, the name of Ambar Kuar was entered in the Revenue Register, though not without a struggle on the part of Agar Kuar, who claimed a half-share by virtue of the right of her husband Sheo Singh. Ambar Kuar died in 1863, and Indar Kuar, who was then a minor, came into the possession of the Sakran estate.

The Regular Settlement, as it is called, of the annexed Province of Oudh, which began about that time, was set on foot in the Sitapur District about 1867; and all parties claiming title to or interest in lands and estates in that district were invited to prefer their respective claims before the Settlement Officer. Besides Indar Kuar, who was in actual possession of the Sakran estate, half a dozen claimants came forward alleging that they were either jointly with Indar Kuar or in exclusion of her entitled to the settlement. The claims of four only, for the purposes of this judgment, need attention :—

- (1) Agar Kuar claimed a half-share by virtue of the right of inheritance to her husband Sheo Singh.

- (2) Jitan Kuar claimed a half-share by the same right to her husband Shankar.
- (3) Baldeo Bakhsh based his right to the whole estate as an agnate to Jangli Bakhsh, the daughter not being entitled under an alleged custom of the family to any share beyond maintenance until her marriage.
- (4) Madho Singh urged the same right in preference to Baldeo, as one degree nearer to Jangli in the line of *sapinda* relationship.

These conflicting claims were tried before the Settlement Officer, Mr. Henry Boys, and decided by him on the 2nd and 18th of April, 1868. He summarily rejected the claim of Jitan Kuar, and declared that Agar Kuar was only entitled to maintenance. As regards Indar Kuar (whose property and person were by that time taken charge of by the Court of Wards) he held that by the custom in the large Rajpoot families as a daughter she was entitled only to maintenance and marriage expenses. He accordingly decreed the claims of Baldeo and Madho in the following terms:—

“ The Court therefore decrees to Baldeo Bakhsh and Madho Singh the proprietary right in the villages of Sakran, etc., subject to the maintenance decreed to Agar Kuar and Indar Kuar until marriage and the marriage expenses, of the girl Indar Kuar.”

There were five appeals from the order of the Settlement Officer to Mr. Tucker, the Commissioner of the Sitapur Division. One was by the Court of Wards on behalf of Indar Kuar, two by Baldeo and Madho claiming the whole estate against each other and against Indar Kuar, the other two by Agar Kuar and Jitan Kuar, each claiming half. Mr. Tucker's judgment is remarkably lucid and sets out clearly the material facts. He begins by stating the history of the Sakran Ilaka from the time of Partab Bali. He concurred with Mr. Boys that on the death of Sheo Singh in 1858, Jangli Bakhsh, his undivided brother, became rightfully entitled to the whole estate, and that no interest devolved on his widow, Agar Kuar, beyond the right of maintenance. Dealing with the respective claims of Baldeo and Madho against the daughter of Jangli Bakhsh he said as follows:—

“ Mr. Boys has decided this question by decreeing, on the 18th April, one-half of the Sakran estate to Jangli Bakhsh's first cousin Mahdo Singh and the other half to Jangli Bakhsh's first cousin once removed (by adoption), Baldeo Bakhsh Singh.

“ Mr. Boys has decided not in accordance with the strict Hindu Law of any school, but he rests his judgment on the evidence regarding the custom of the family. I entered into this question of custom very fully in my memo. of the 3rd July and expressed my concurrence with Mr. Boys that the evidence regarding custom was against the claim of the daughter, Indar Kuar.

“ But I am of opinion that this case should be decided by the strict Hindu Law, according to the Benares School, which is in force in Oudh, and not according to what witnesses have declared as the custom. It has been the custom in his family to kill daughters, at least this was openly declared in Court and not disavowed by anyone. Such a custom must be discountenanced by our Courts. No custom in my opinion which is opposed to Hindu Law and which has been caused by the dislike of Rajput chieftains to their own daughters should be countenanced by our Courts.”

Then after referring to several authorities, he proceeded as follows :—

“ But I think that I am right in holding that by the Hindu Law according to the Benares School, a daughter inherits a life interest in preference to male cousins whose shares were separated from that of her father sixty years ago.

“ There is one point more requiring notice. It is said that Jangli Bakhsh had a son who succeeded his father and that a sister has no right of inheritance. (This Court refuses to admit the correctness of the assertion that Jangli Bakhsh was succeeded by a son.)

“ A perusal of Major Barrow's investigation of the 13th August, 1862, shows that there is reason for believing that his son was . . . (a changeling).”

The decretal part of his judgment is in these terms :—

“ With reference to Mr. Boys' decree of the 2nd April, I dismiss the appeals of Agar Kuar, but I so far amend the decree as to declare that Indar Kuar, daughter of Jangli Bakhsh, has only a life interest in the Sakran estate and that she has no power to transfer it by gift, sale or will.

“ I cancel Mr. Boys' decree of the 18th April and dismiss the claims of Baldeo Bakhsh Singh and Madho Singh to the Sakran estate during the lifetime of Indar Kuar, daughter of Jangli Bakhsh.

“ This Court does not feel itself called upon to give a declaratory order with reference to the heirs in reversion. It is not desirable to do so, as Indar Kuar will probably soon be married and may have children.”

Mr. Tucker's decree was made on the 4th September, 1868, and was affirmed on appeal. Since then matters seem to have remained fairly quiescent until 1909.

Indar Kuar married in 1872 one Dip Singh, who managed her estate until his death in 1891. Thereupon her son Karan Singh assumed charge of the Ilaka. Karan Singh also died, on the 12th March, 1909, leaving a young widow named Khem Kuar. Disputes then arose between Indar Kuar and Khem Kuar as to the right to the property, which resulted in a compromise, the terms of which were embodied in a “ deed of agreement ” executed by both the ladies on the 7th May, 1909. By this document it was agreed in effect that Indar Kuar should hold the Ilaka for her maintenance during her lifetime, and that on her death, Khem Kuar would be the owner and possessor.

It was also agreed that the mutation of names in the Government records “ in respect of the proprietary right of the Sakran estate ” should be in favour of Khem Kuar, and “ in favour of Indar Kuar as *guzaradar* (maintenance holder).”

A few months after the execution of this deed, Baldeo launched his suit. He claimed, as the then nearest male agnate and reversioner to the last male holder, Jangli Bakhsh, to have it set aside as prejudicial to his reversionary interests. The principal reliefs he claimed were as follows :—

“ (a) That a decree be passed declaring that the deed of agreement, dated 7th May, 1909, is invalid, fictitious and void as against the plaintiff, and the plaintiff is not bound thereby ;

“ (b) That it be declared that Musammat Khem Kuar has no right to the Sakran estate, and that Musammat Indar Kuar has got only life interest without power of transfer.”

Both Indar Kuar and Khem Kuar were joined as defendants, and both denied the reversionary right of the plaintiff. They questioned the adoption of Umrao Singh, and Indar Kuar alleged in addition that the plaintiff was an adopted son of Umrao and that his adoption was invalid, as his natural father was by caste a Bania, quite a different caste from the Rajpoot. The ladies also claimed that Indar Kuar had acquired title by adverse possession, inasmuch as she held the property not as the daughter of Jangli Bakhsh. The first defendant further contended that :—

“ The proceedings and the decisions of the Settlement (Court), so far as they are detrimental to the (interests) of the undersigned defendant, are not binding on her for this reason also that the answering defendant was a minor at the time, and the Court of Wards was acting on her behalf who was not informed of all the facts and whose officials did not, as a matter of fact, care to gain information.”

On these respective allegations the Subordinate Judge (Mr. T. K. Johnstone) framed a number of issues which covered the whole ground of controversy. But in order to simplify the production of evidence, which threatened to be voluminous, he thought it expedient to determine first the following points :—

- “ (a) That the plaintiff is the reversioner of Jangli Bakhsh.
- “ (b) That Indar Kuar held a woman’s estate in the property only.
- “ (c) That Jangli Bakhsh had no son surviving him or posthumous son.
- “ (d) That by custom daughters are not debarred from inheritance ; and are such decisions binding on the parties to his suit ? ”

In his first judgment he held, *inter alia*, that the question as to the status of Baldeo was not the subject of decision in the Settlement proceedings ; but that the order declaring that Indar Kuar “ held a woman’s estate amounted to a decision that she held by inheritance as a daughter and not in virtue of any will,” was *res judicata*. Upon a review of judgment, however, he modified his opinion as regards the first point and held that the reversionary right of Baldeo was also *res judicata*. His conclusion is embodied in the following sentence :—

“ I therefore hold that it is not necessary for the plaintiff to prove his relationship to Jangli Bakhsh unless or until Indar Kuar by proving growing negligence or otherwise shows that she is not bound by the proceedings in the Settlement Court.”

This order was made on the 16th May, 1910. The case came on subsequently for trial before another Subordinate Judge, Mr. Badhwar. He dismissed the suit mainly on the ground that the plaintiff had failed to prove the validity either of his own adoption or of Umrao’s, and consequently his right as a reversioner to Jangli Bakhsh. Their Lordships cannot help observing that the proceedings before Mr. Badhwar were somewhat peculiar. He decided against the defendants the issue relating to the negligence of the Court of Wards in conducting Indar Kuar’s case in the Settlement Courts : but he held, in the teeth of his predecessor’s judgment, not only that the question of the plaintiff’s status was not *res judicata* but also that Musammatt Indar Kuar did not

succeed Jangli Bakhsh as his daughter; that she succeeded Musammat Ambar Kuar by virtue of the latter's will in her favour as *malik*. He also thought that under section 42 of the Indian Specific Relief Act a declaratory decree is a matter of discretion for the Court, and in view of the circumstances to which he referred he did not consider this a fit case for the exercise of that discretion.

The plaintiff thereupon appealed to the Court of the Judicial Commissioner of Oudh against the dismissal of his suit. The learned Judges examined at great length the previous proceedings, the material parts of which they have embodied in their elaborate judgment. In the result they found that it was not open to Musammat Indar Kuar :—

“ to deny that the plaintiff is the reversioner of Jangli Bakhsh or to assert that she has any more than what was awarded by Mr. Tucker, viz., a life interest in the Sakran estate with no power to transfer it by gift, sale or will.”

They held also that the question whether Indar Kuar held the estate under a will or as the inheritance of a Hindu daughter was *res judicata*. They held further that the circumstances justified the exercise of the discretion vested in the Courts to make a declaratory decree. They accordingly allowed the appeal and reversing the order of the Subordinate Judge decreed the plaintiff's claim in the following terms :—

“ We accordingly set aside the decree of the Court below and direct that a decree be passed declaring that the deed of agreement dated 7th May, 1909, is of no effect as against the plaintiff, and that the plaintiff is not bound thereby, and that Musammat Indar Kuar has a life interest in the Sakran estate without power of transfer.”

Khem Kuar died during the pendency of the appeal in the Court of the Judicial Commissioner, and the present appeal to the Board is by Indar Kuar alone. Two main points have been urged on her behalf, viz., that the Judicial Commissioners were in error in holding the reversionary right of the plaintiff was *res judicata* by virtue of the decisions in the Settlement Courts; and that in any event the discretion to grant a declaratory decree has been wrongly exercised.

After the fullest consideration of the arguments urged on behalf of the appellant, their Lordships desire to express their entire concurrence with the views expressed by the Judicial Commissioners on both points. In the Settlement Courts, the several claims were in fact tried together; Agar Kuar had impugned the validity of the adoptions of both Umrao and the plaintiff; Madho also contested Baldeo's right as reversioner; no express objection seems to have been taken on behalf of Indar Kuar. But although Agar Kuar claimed a half-share of Sakran and Indar Kuar claimed the whole, so far as the reversioners were concerned the two ladies stood on the same footing. Indar Kuar was no doubt a minor, and she and her estate were in the charge

of the Court of Wards. There is no evidence, however, to show that her interests were neglected or that her right was not properly prosecuted in the Settlement Courts.

The case of Agar Kuar and Jitan Kuar against Indar Kuar was transferred to the Settlement Courts in June, 1867, and on 28th of September following Mr. Boys records the following order :—

“ This case has been transferred to the regular Settlement Courts, *vide* the voluminous former proceedings ending with the Commissioner's order dated 17th of June, 1867. Numerous male relatives have put in claims to the reversionary interest in this estate, and it will be clearly understood that these proceedings will in no way affect the right of such third parties. These proceedings are merely *inter se* ‘ between Agar Kuar and Indar Kuar.’ It appears that no one has yet been appointed by Agar Kuar to false (*sic*) up her case against Indar Kuar. Agar Kuar's party having been under the idea that Indar Kuar (minor) was contest (*sic*) to give up half of the estate. The Deputy Commissioner, however, in his capacity of manager of Court of Wards, has determined to continue the defence of the suit. It therefore becomes necessary to decide first Agar Kuar's rights as against Indar Kuar's, and the case is adjourned until 23rd October in order that the respective parties may make their arrangements for the prosecution and defence of the suit.”

The Settlement Officer then proceeded to take the evidence on both sides. On 11th February, 1868, he recorded the following Order :—

“ It appears that after all this estate has not yet been taken under the Court of Wards. The case can therefore proceed, the defendant Indar Kuar being represented by the manager authorised to act for the minor, viz., Kundan Lal. Case for 20th March.”

On 1st April, 1868, the case of Agar Kuar against Indar Kuar was again taken up, when Mr. Hollingberry and a pleader, Abdul Ghani, represented the plaintiff (Agar) and Kundan Lal represented Indar Kuar.

On 2nd April, Mr. Boys dismissed the claim of Agar Kuar and Jitan Kuar in the following terms :—

“ The Court accordingly dismisses the claims of Musammat Jitan Kuar and Musammat Agar Kuar to share in this estate of Sakran and declares that the estate rests (*sic*) in Musammat Indar Kuar, subject to a maintenance charge in favour of Musammat Agar Kuar. The plaintiff, Agar Kuar, to get as maintenance for her lifetime 1,200 bighas kachcha of land rent-free in the village of Sakran and Rs. 32 cash per annum.”

So far as the proceedings in the Settlement Officers' Court were concerned, the dispute between the widow of Sheo Singh and the daughter of Jangli Bakhsh came to an end. On the same date, 2nd April, 1868, he records the following order :—

“ *Vide* Order of this date in the claim of Agar Kuar *versus* Indar Kuar, Jitan Kuar *versus* Indar Kuar. By that Order the property in dispute is made to rest (*sic*) in Indar Kuar, subject to the charge of maintenance of Agar Kuar. It now remains to be seen what interest the plaintiffs, Baldeo Bakhsh, Madho Singh, Debi Singh and Beni Singh, can claim in the estate.”

The two issues relevant to their Lordships' judgment were as follows :—

“ 1. Are Baldeo Bakhsh and Madho Singh as male collaterals of Jangli Bakhsh entitled to the reversionary interest in the estate ; if so, when ? On the marriage or on the death of the girl, Indar Kuar ?

“ 2. Is Baldeo Bakhsh the legal heir-at-law of Zalim Singh, *i.e.*, was the adoption of Umrao Singh by Zalim Singh valid or not ? ”

Before Mr. Boys, Indar Kuar appears to have been represented by Aga Abdul Ghani, who on the 18th April, 1868, asserted in specific terms his client's right to hold the estate to the exclusion of the reversioners.

On the 18th April, 1868, Mr. Boys expressly affirmed the reversionary right of Baldeo in conjunction with Madho. Mr. Tucker on appeal dealt with the case on the basis that the plaintiff's and Madho's right of reversion was clearly established and unimpugned. The reservation in the last part of his decree was fully warranted by the Hindu Law, for if Indar Kuar were to leave her surviving male children the agnates would have no right of succession. Neither in the Court of the Commissioner nor before the Financial Commissioner, to whom a second appeal was preferred from the decree of Mr. Tucker, does any objection appear to have been taken to the right of Baldeo, as the circumstances then stood, to be one of the reversioners to Jangli Bakhsh.

Upon these facts their Lordships are clearly of opinion that Indar Kuar is precluded from questioning in the present proceedings the plaintiff's status.

As already stated Indar Kuar is a sonless widow. The dispute between the parties has lasted over half a century, any further delay in making a final pronouncement would only lead to more costs and harassment. Their Lordships are of opinion that the decree of the Judicial Commissioners should be affirmed and that this appeal should be dismissed with costs.

And they will humbly advise His Majesty accordingly.

---





**In the Privy Council.**

---

RANI INDAR KUAR

o.

THAKUR BALDEO BAKHSH SINGH.

---

DELIVERED BY MR. AMEER ALI.