*Privy Council Appeal No.* 159 *of* 1924.

*Allahabad Appeal No.* 3 *of* 1921.

**Gokul Prasad and another** - - - - - - *Appellants*

*v.*

**Lachhman Prasad and others** - - - - - *Respondents*

FROM

## THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 29TH APRIL, 1926.

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*Present at the Hearing:*
VISCOUNT DUNEDIN.
LORD BLANESBURGH.
SIR JOHN EDGE.

[*Delivered by* LORD BLANESBURGH.]

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This is a suit brought by the plaintiffs as reversioners of one Budhi Lal to recover possession of zemindari properties in the hands of the defendants. The suit was not instituted until the 26th June, 1916. By that date the defendants or their predecessors in interest had been in possession of the properties claimed for 30 years; some of them held, as purchasers under Court and other sales, and a mortgage on a parcel had, in 1885, been taken by the widow of the deceased uncle of the plaintiffs, who thereby accepted a title the plaintiffs now seek to displace. By them no kind of adverse claim had been set up prior to the suit. The plaintiffs' belated claim was accordingly, as might be expected, stubbornly resisted, and very numerous were the pleas set up in answer. But the Trial Judge, the Additional Subordinate Judge of Cawnpore, repelled them all, and, by his judgment of the 20th September, 1917, decreed the suit. By some of the defendants, but by some only, there was an appeal to the High Court at Allahabad. That

appeal succeeded. The High Court by its judgment and decree dated the 20th December, 1920, dismissed the suit with costs as against those defendants who had sought its aid. The plaintiffs now appeal to His Majesty in Council. The judgment against the non-appealing defendants remains undisturbed.

In the High Court one only of the many issues raised was dealt with; the issue, namely, of limitation. That issue, on one view, was decisive of the whole suit, for if the then appellants were successful upon it, all their other defences became otiose. And the High Court was of opinion that upon the issue the plaintiffs did fail to make good their case. Hence its decree.

When the appeal to the Board was opened, it seemed convenient to their Lordships, as it had to the High Court, to hear argument, in the first instance, on that same issue of limitation. Having done so, they, like the High Court, find themselves in a position, without going farther, to dispose of the case.

The question whether the suit is barred by time is resolved by the answer to another question, viz., whether or not the appellants have proved that their father's mother, to whom they give the name of Musammat Sona, died on the 4th September, 1904. The critical importance to them of that date for her death is due to the fact that if Musammat Sona lived so long, she survived her own mother, Musammat Sukhrani, the widow of Budhi Lal, already mentioned. From this it follows that the title in possession of the plaintiffs' father and uncle, under whom they claim, accrued only on her death, and that the present suit, although instituted on the eve of the expiration of twelve years therefrom, is still within time so far as the statute is concerned. If, however, the plaintiffs have failed to prove Musammat Sona's death on the 4th September, 1904, it results—and this was the case of the defendants—that the plaintiffs' grandmother, whose name the defendants suggested was Musammat Sundaria and not Musammat Sona at all, died in the lifetime of her mother, Musammat Sukhrani, perhaps, indeed, in the lifetime of both her parents. In either case, the accrual in possession of the title on which the plaintiffs rely took place on the death of Musammat Sukhrani, and as she died as long ago as 1883, their suit commenced in 1916 is, of course, hopelessly barred.

Such, then, is the issue of limitation between the parties. Did the plaintiffs' paternal grandmother, whatever may have been her name, die on the 4th September, 1904?—a short question, indeed. But the conflict of evidence upon it is as complete and fundamental as is the conflict of conclusion with regard to it expressed by the learned Trial Judge on the one hand, and by the learned Judges of the High Court on the other.

It is their Lordships' task to decide between these divergent views. Needless to say, they do not, in essaying it, forget the advantage on any issue of disputed fact enjoyed by a Judge who himself saw the witnesses. Making, however, the fullest allowance for that advantage of the Trial Judge here, their Lordships, on a

careful consideration of the evidence and the documents, are satisfied that the conclusion reached and expressed by the learned Judges of the High Court is the only conclusion which in this case was properly open to them.

The circumstances to which attention has to be given are many and complicated. They have been set forth with much elaboration by the learned Judges in both Courts below, and it would be tedious to detail them again. Nor would such a recital serve any useful purpose, because those to whom their Lordships' observations are mainly of interest are already familiar with the judgments delivered in the suit. Further, so little have their Lordships to say by way of supplement to the elaborate and careful reasoning of the High Court that, with an expression of their general concurrence in its views, they might well leave the case where that Court left it. They think it fitting, however, out of deference to the care expended upon the case by the learned Subordinate Judge, to indicate, if only in compendious form, the main reasons which have led them so to concur.

The divergence between the two Courts is plainly traceable to the impression produced upon the learned Trial Judge as contrasted with that produced upon the learned Judges of the High Court by the documentary evidence put in on both sides. On the plaintiffs' side an extract from a register of births and deaths, containing an entry under date the 4th September, 1904, of the death of one Musammat Sona appeared to the Trial Judge to be well-nigh conclusive in the plaintiffs' favour. The book of a Panda of Muttra, with entries of the names of his clients, and containing an entry that Musammat Sona had visited Muttra in the year 1903 favourably impressed the learned Judge also, although he attached to it a lesser degree of importance. The criticism, however, of these documents by the learned Judges of the High Court demonstrates that no reliance of any kind can judicially be placed on either of them.

The auspices under which the register appeared were peculiarly unfortunate for the plaintiffs. The register is compiled at the police station, and the plaintiffs called to prove it one Mohammed Shafi, who at the date of the entry was posted as a head constable at the police station of Khajna. He asserted that an assistant of his had made the entry under his supervision: that the name of that assistant was Amir-ud-din-Khan, whose writing he could and did identify. Amir-ud-din-Khan had since died. The entry however was made by the deceased in his presence.

The defendants, suspecting the genuineness of the entry summoned one Preo Nath Das, the principal clerk of the head police office of the district. From an order book produced by him, it appeared that Amir-ud-din-Khan had been transferred from the station at Khajna to another station in the April preceding the September of the entry. In cross-examination by the plaintiffs, Preo Nath Das was shown the entry itself, and he stated that, while he was not positive about it, the handwriting appeared to

him to be that of one Babu Singh, a constable at the time attached to the Khajna station. The plaintiffs, professedly acting on this statement, at a later date produced Babu Singh as a witness, and he swore sure enough, first, that the entry was his, and, secondly, that it was true that Amir-ud-din-Khan was not at the time on the staff at Khajna and could not himself have made it. Mohammed Shafi's evidence was thereby at once jettisoned by the plaintiffs. Unfortunately, however, Babu Singh's was not above criticism. It appeared that for some years before the date of the entry, and perhaps for some time after it, he was employed at the Khajna police station as an illiterate constable. His own evidence was that he did not then write a set hand, and that his handwriting at that time compared unfavourably with his handwriting of later years. Thereupon he was required to write before the Court on a piece of paper, and the learned Judges of the High Court, with both writings before them, have recorded their conclusion that the entry in the book is made in a set hand, while the writing made in Court is that of one whose writing is not yet set and that it could certainly not be the handwriting of the same person who made the entry in the book. As to that entry itself, they note that it was apparently made in a hurry, in a totally different hand from all other entries except the one preceding and the one following it ; that no attempt was made to find the person on whose information the entry was made ; and that there was no evidence of identity of the person named in the entry with the plaintiffs' grandmother. Accordingly, the evidential value of the register so far as concerned the death of that lady was nil.

The criticism of the High Court of the second document produced by the plaintiffs, the Priest's book, is even more devastating. Their Lordships have seen and examined that book. The fact that it was seriously put forward as evidence of anything goes far to cover with ridicule the case it was designed to support.

In fine, the conclusion of the High Court with reference to these two documents, accepted without hesitation as they were by the Trial Judge, seems hardly too strong. " From the above it will appear," said Gokul Prasad, J., " that the plaintiffs have had no hesitation in producing suborned evidence to prove the entry in the death register, and have gone even to the length of having got fake entries made in the Panda's book."

But not only was the learned Trial Judge mistaken in attaching any credence to these documents of the plaintiffs ; he failed also to appreciate the damaging effect upon their case of a series of documents put in by the defendants. Their Lordships are at one with the High Court on this subject also. These documents show that not until the present suit, thirty-three years after the death of Musammat Sukhrani, has it been suggested that her daughter survived her ; that documents of title dating from 1867 are framed apparently on the footing that the daughter was even then dead ; that there is in an agreement of the 27th December, 1886, shortly after Musammat Sukhrani's death, a recital by the father

and uncle of the plaintiffs, the sons of the daughter of Budhi Lal, indicating that their mother was then dead and that the right to settle questions with reference to Musammat Sukhrani's property was in them and not in her; and, lastly, that an allegation, not explained, was made by the appellant, Gokul Prasad himself, in a suit of his in 1913, to the effect that Musammat Sukhrani had died twenty-eight or twenty-nine years before, and that at the time of her death no persons other than Salig Ram and Lalman, the father and uncle of the appellant, were heirs to the property left by Budhi Lal and Musammat Sukhrani. In addition to all this, it is a notable fact that the appellants are men of substance, as was their father before them; that no claim to recover these properties was made by their father in his lifetime nor by them until so long after their grandmother's death, even if their own statement as to the date of that event be correct. The learned Judges, not without reason, find the explanation of the suit in two deeds of the 23rd September, 1916, under which certain speculators came forward to finance the litigation.

All these considerations are passed over by the learned Trial Judge, and viewing the documentary evidence from such opposite angles, it is not surprising that the oral evidence adduced by the plaintiffs presented itself to the two Courts in very different lights. Their Lordships have examined with care the analysis of that evidence by the High Court, and they are in agreement with the learned Judges there that it is quite insufficient to maintain a case already so greatly weakened by the documentary evidence adduced. To their Lordships the evidence with reference to the death and place of performance of the funeral rites of Musammat Sona is especially unconvincing.

The High Court deal with the evidence of the witnesses in detail. They do, however, omit any reference to the evidence of one Hazari Lal, whose truthfulness impressed the Trial Judge. The appellants fix upon this omission and give it as a separate reason for their appeal, that the High Court could not properly disturb the finding of the Trial Judge without considering the evidence of that witness. The appellants would not, their Lordships think, have formulated that complaint if they had themselves correctly appreciated the effect of Hazari Lal's evidence.

Hazari Lal was a son-in-law of the appellants' maternal grandmother. At the age of thirteen he married her daughter. She died a year later. Hazari Lal married again. By the time he gave evidence both of his mothers-in-law were dead. He dated everything from the death of his second mother-in-law, an event which had evidently made an impression upon him. Giving his evidence in June, 1917, he said in cross-examination :—

> "My mother-in-law by the second marriage is not alive. She was alive at the time of marriage. I do not remember in which Sambat year this mother-in-law of mine died. But she died fifteen years ago. I am quite sure about the period. *My second mother-in-law died two and a half or three years after the death of the first.*"

The appellants should be grateful to the High Court for not commenting upon this evidence. If it is accepted, their case on limitation is at an end.

Their Lordships need say no more. On the whole case they see no reason for interfering with the decree of the High Court. Their only regret is that on such evidence as was adduced in this suit the appellants should be left in possession of a judgment against any of the defendants. They can, however, do no more than express it to be their opinion that this appeal should be dismissed with costs.

Their Lordships will humbly advise His Majesty in accordance with that opinion.

**In the Privy Council.**

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GOKUL PRASAD AND ANOTHER

*v.*

LACHHMAN PRASAD AND OTHERS.

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DELIVERED BY LORD BLANESBURGH.

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