

Privy Council Appeal No. 94 of 1927.

Allahabad Appeals Nos. 3 and 4 of 1925.

Kunwar Mulayam Singh and another - - - - *Appellants*

v.

Sheoraj Singh and others - - - - *Respondents*

Kunwar Raghubar Pal Singh *alias* Chuttan Singh and another - *Appellants*

v.

Chhotey Singh and others - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 6TH JUNE, 1929.

Present at the Hearing :

LORD BLANESBURGH.

LORD TOMLIN.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD TOMLIN.]

This is a consolidated appeal from two decrees of the High Court of Judicature at Allahabad dated the 23rd December, 1924. By these decrees two decrees of the Subordinate Judge of Aligarh dated the 27th May, 1921, were reversed, with the result (1) that a suit by the appellants for recovery of possession of the major portion of the Kora Rustampur estate then in the hands of the respondents was dismissed, and (2) that in a suit by the respondents for recovery of possession of the remainder of the same estate then in the hands of the appellants, judgment for recovery of possession was decreed.

The question raised by the appeal is exclusively one of fact, and shortly stated, is whether the pedigree set up by the appellants or that set up by the respondents is the true one.

The appellants on the one hand claim the Kora Rustampur estate upon the ground that they are the cognates or *bandhus* of the deceased owner. They can only succeed as *bandhus* in the absence of agnates or *sapindas*. The pedigree set up by them purports to show that there were no *sapindas*. The respondents on the other hand claim that they are, or trace title under, *sapindas* and set up a pedigree purporting to establish this position.

The history of the matter so far as there is no dispute of fact may be stated as follows :—

One Sukram Singh, a Hindu, was the owner of the estate in 1889. He had inherited the estate from his father, Pirthi Singh, who died about 1857. Pirthi Singh had received the estate as a gift from his maternal grandfather, Dungar Singh.

On the 30th September, 1889, Sukram, who had no children and was seriously ill, executed an authority in writing which was duly registered authorising his wife, Lachmi Kunwar, to adopt anyone from among relations, brotherhood or family.

Among the witnesses to this instrument was Moti Ram, a Brahman attached to the household of Sukram.

On the 2nd October, 1889, Sukram died.

On the 5th November, 1890, Lachmi Kunwar, in order to satisfy debts of her deceased husband, executed a sale deed of part of the estate in favour of Phul Singh and Karan Singh, residents of Mauza Karauli, which was part of the estate.

The sale deed contained a recital to the effect that to the best of the knowledge and belief of Lachmi Kunwar, there was no male member of the family of her husband who might be considered as future heir to her husband's estate after her death and that she had not adopted any boy as successor to her husband and that the entire estate was free from all bars to transfer it.

On the 29th July, 1895, Lachmi Kunwar adopted as her son one Bejai Pal, an infant grandson of her brother. On the same day she executed a deed of guardianship by which she appointed three persons, including Moti Ram and one Lekraj Singh, to be guardians of the infant. The deed of guardianship stated that there was no near or remote relative in the family of Sukram Singh who might be expected to look after the minor after the death of Lachmi Kunwar.

On the 3rd August, 1895, Lachmi Kunwar died and thereupon Bejai Pal became entitled to the estate which fell to be managed by the guardians appointed by the deed of guardianship.

It appears, however, that Jai Singh, the son of a sister of Sukram, succeeded in getting possession of the estate or the major part of it.

Moti Ram and the other guardians shortly after Lachmi Kunwar's death made application to the Revenue Court for mutation of names by substituting the name of Bejai Pal for that of Lachmi Kunwar.

This application was opposed by Jai Singh on the ground that the adoption was not proved or was invalid and that he, as the son of a sister of Sukram, was entitled as *bandhu* to the estate and that he was in possession.

The application was also opposed by certain Mukhraulias descended from Dungar Singh, Pirthi Singh's maternal grandfather. These opponents alleged that Pirthi Singh had been adopted by Dungar Singh and that they were accordingly *sapindas* of Sukram Pirthi's son.

In the result, on the 6th March, 1896, the Revenue Court ordered Jai Singh's name to be entered on the Register because he was proved to be in possession, neither of the other parties having satisfactorily proved their case. There is some ground for thinking that this result was due in part at any rate to the fact that Lekraj Singh and Moti Ram, two of Bejai Pal's guardians, betrayed or were lukewarm in support of his interest as the result of pressure brought to bear on them by some persons connected with the household of the Rajah of Jaipur.

It is to be observed that at this time no claim was put forward by those through whom the respondents claim, although in point of title their claim, if well founded, would have been superior to that of Jai Singh.

In 1901 Bejai Pal began in the Court of the Subordinate Judge of Aligarh a suit (No. 107 of 1901) against Jai Singh and purchasers from him to recover possession of the estate.

About the same time and in the same Court the present appellants, who are first cousins of Jai Singh, being sons of another sister of Sukram, began a suit (No. 114 of 1901) against Jai Singh, the persons claiming under Dungar and against Bejai Pal disputing the validity of the adoption of Bejai Pal and asserting their claim to the estate as *bandhus* of Sukram.

On the 8th April, 1902, judgment in favour of Bejai Pal was given in suit No. 107 of 1901, the adoption of Bejai Pal being held proved and valid.

On the 6th May, 1902, the appellants' suit No. 114 of 1901 was dismissed, the judge holding that the adoption of Bejai Pal was proved and valid.

On the 23rd December, 1904, the decrees in both suits were affirmed by the High Court of Allahabad.

Jai Singh appealed to His Majesty in Council but abandoned the appeal on the death of Bejai Pal, which occurred on the 27th January, 1908.

Up to this point in the history of the case no one had set up the claim now put forward by the respondents.

Shortly after Bejai Pal's death one Lilawati, claiming to be the widow of Bejai Pal, began mutation proceedings against the appellants and Jai Singh to secure the entry of her name on the Register as owner of the estate.

Objection was taken not only by the appellants and Jai Singh claiming as *bandhu*, but also (1) by the Mukhraulias

claiming under Dungar; (2) by the respondent Chote Singh and his brother Nain Singh, since deceased, whose sons are respondents to this appeal; and (3) by Desraj Singh, since deceased, whose sons are also respondents to this appeal.

This is the first occasion on which, apart from the Mukhraulias claim, any claim had been put forward based on the existence of *sapindas* of Sukram. It is to be noted, however, that in the first instance the claim of Chote and Nain was disputed by Desraj.

Chote and Nain put forward a pedigree that is substantially in accord with that on which the respondents now rely, except that they did not show any place in it for Desraj. They set up that Sukram's grandfather Mohan had one brother Dungar, of whom they were the grandsons.

Desraj, on his part, alleged that there had been a second brother of Mohan named Ram from whom he traced descent as grandson, but in order to exclude Chote and Nain altogether he interposed a generation in the line of Chote and Nain, and showed them as great grandsons of the brother of Mohan, from whom they were descended.

On the 3rd March the Revenue Court ordered the names of the appellants and Jai Singh to be entered on the Register.

On the 24th April, 1908, Desraj, Chote and Nain executed a sale deed in favour of two sons of Kalyan Singh of their interests in the estate for Rs. 15,000, subject to the reservation to Desraj of 400 *bighas*, and to Chote and Nain of one-quarter out of their two-thirds shares. The estate is said to be worth 2 lakhs. There is no doubt that the purchase was made by Kalyan Singh, and that his sons were *benamidars* for him. The two sons and the heirs of Kalyan Singh, who is since deceased, are among the respondents.

On the 11th May, 1908, Desraj applied to correct his pedigree by omitting the interpolated generation so as to show himself in the same degree of relationship with Sukram as Chote and Nain, and to bring his pedigree into line with theirs.

On the 23rd May, 1908, the pargana officer passed an order confirming the order of the 3rd March, 1908.

The matter went to the Court of the Assistant Collector, and on the 27th February, 1909, the Assistant Collector gave judgment. He disallowed the claims of Lilawati and of the Mukhraulias. He accepted the pedigree put forward by Chote, Nain and Desraj, and allowed their claim as *sapindas* against that of the appellants and Jai Singh as *bandhu*, and he ordered the mutation of names in equal shares of Chote, Nain and Desraj.

On the 26th April, 1909, the Revenue Appellate Court at Aligarh restored the names of the appellants and Jai Singh, holding that the whole question of the succession to the estate would have to be decided by the Civil Court.

On the 29th September, 1909, the Commissioner of the Meerut Division on the appeal of Chote and Nain directed

mutation in the names of Chote and Nain on the ground that a *prima facie* case had been made out. This decision was affirmed by the Board of Revenue on the 16th March, 1910. Desraj had not appealed. In these proceedings the present appellants neither proposed a different genealogy, nor pointed out any error in the pedigree put forward.

In the meantime, on the 12th January, 1910, the purchasers from Chote, Nain and Desraj applied for mutation.

In these proceedings Desraj at first reverted to his original pedigree, but subsequently again came into line with Chote and Nain, and presumably mutation was directed so as to give effect to the decision of the Board of Revenue having regard to the rights of the purchasers under the sale deed of the 24th April, 1908.

As the result of these proceedings Chote, Nain and Desraj, or their purchasers, obtained possession of the major part of the estate, and have since been in possession thereof.

In 1915, Liliwati began a suit to establish her claim as widow against Chote, Nain, Desraj and their purchasers. This suit was dismissed on the 24th January, 1917, and the dismissal was affirmed by the High Court on the 3rd March, 1920.

On the 27th January, 1920, the purchasers from Chote, Nain and Desraj began a suit (No. 122 of 1920) in the Court of the Subordinate Judge at Aligarh against the appellants and the children of Jai Singh, who had died, claiming to recover a small portion of the estate which had remained throughout in the possession of the appellants and Jai Singh or his heirs.

On the same day the appellants began a suit (No. 123 of 1920) in the same Court against Chote, Nain and Desraj and Kalyan Singh and his sons, and against Lilawati for a declaration of their title as next heirs to the estate in succession to Bejai Pal, and for possession so far as they had been dispossessed and for mesne profits.

These are the suits which give rise to the present consolidated appeal.

On the 27th May, 1921, the Subordinate Judge gave judgment in both suits in favour of the appellants, accepting their pedigree. Certain books of *pandas* and *jagas* containing entries relating to pedigree were produced and relied upon by the respondents. The Subordinate Judge treated the entries in these books as forgeries. He also treated as a forgery a deposition purporting to be made by Moti Ram and put on the file of the Court in connection with certain arbitration proceedings for rent in 1911. This deposition, in which Moti Ram was expressed to give evidence of pedigree in direct contradiction of his evidence in these suits, was sought to be used to discredit Moti Ram, who was the appellants' principal witness. The Subordinate Judge stated that he believed Moti Ram in all he said.

On appeal the High Court of Judicature at Allahabad, by a judgment dated the 23rd December, 1924, reversed the Sub-

ordinate Judge. Moti Ram was recalled before the High Court, and Karan Singh, the arbitrator, and his son were also called to give evidence as to the taking of the deposition of Moti Ram, alleged to have been a forgery. The High Court held that it was not proved beyond doubt that Moti Ram did make the deposition in 1911, and consequently they should not feel justified in rejecting Moti Ram's evidence for this reason. It is plain, however, that the High Court came to the conclusion upon the consideration of the evidence as a whole, and after seeing Moti Ram in the box, that he was not to be believed. Further, after the most rigid scrutiny of the books of the *pandas* and *jugas*, the High Court came to the conclusion that the entries relied on were genuine and conclusively established the respondents' case.

The evidence in this case falls into two categories : (1) the oral, and (2) the documentary. But it is to be observed that if the documentary evidence is genuine and admissible, it is of such a character as to support strongly the respondents' case and to afford firm ground from which to test the oral evidence.

The admissibility of documents of the class in question is not doubted, although having regard to their nature it is proper that they should be received with extreme caution and with a measure of suspicion.

The critical question, therefore, is, Are the relevant entries genuine ?

The theory of the appellants is (1) that Chote, Nain and Desraj, who were living in the same neighbourhood as Sukram were not related to him, and that because they were not related to him they made no claim to his estate in any of the proceedings which took place before the death of Bejai Pal in 1908 ; (2) that after the death of Bejai Pal they were induced by Kalyan to put forward a false claim of which he affected to be the purchaser ; (3) that since the death of Bejai Pal there has been going on continuous conspiracy on the part of Kalyan and his vendors to support by forgeries and suborned evidence a pedigree in their own favour ; (4) that it was in pursuance of this conspiracy and with notable foresight that a forged deposition of Moti Ram was put on the file of the Court in 1911 in the hope that it might be of use at some future date to discredit Moti Ram if he should, as seemed probable, come forward as one of the principal witnesses of the other side in subsequent litigation ; and (5) that the entries in the books of the *pandas* and *jugas* were forgeries made for the purpose of these suits, and that their non-production in any of the earlier mutation proceedings indicates want of genuineness.

The respondents' answer is (1) that Chote, Nain and Disraj were poor, and so long as Bejai Pal was living they were not interested unless they had been, as they were not, prepared to dispute the validity of his adoption ; (2) that the sale was a genuine sale of a genuine claim ; and (3) that the entries in the

books are genuine and were produced for the first time at the trial because they had not been known before.

Now the learned Subordinate Judge has not dealt with the genuineness of the entries in the books upon any reasoned footing. He had no evidence before him directly bearing upon the topic of genuineness, except such as may have been afforded by the comparison of certain signatures. He pronounced the entries forgeries because they were inconsistent with the evidence of Moti Ram, whom he believed in all he said. For the same reason he declared that the impeached deposition was a forgery, although apparently he had not before him the original deposition or any satisfactory evidence of the circumstances in which it was alleged to have been made.

The High Court have, however, approached the matter from a different angle. The learned Judges have thought it proper to make a critical examination of the actual books and of the evidence, if any, supporting or impeaching the genuineness of the entries; and after what is described as "the most rigid scrutiny" of these books, the results of which appear in their judgment, they have come to the conclusion that the entries are undoubtedly genuine. They have also weighed the oral evidence directed to the rest of the case, and having seen Moti Ram, the principal witness for the appellants, they have rejected his evidence. Upon these findings the ultimate conclusion at which the High Court arrived was in their Lordships' opinion inevitable.

In their Lordships' judgment upon a review of the whole of the material, and after a full and critical examination of such material by counsel on either side, their Lordships see no reason to differ from the conclusion of the High Court.

Their Lordships will, therefore, humbly advise His Majesty that the appeal should be dismissed.

The costs of the appeal will be borne by the appellants.

In the Privy Council.

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v.

SHEORAJ SINGH AND OTHERS.

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DELIVERED BY LORD TOMLIN.

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