

*Privy Council Appeals Nos. 102, 103 and 104 of 1929.
Oudh Appeals Nos. 38 of 1927 and 2 and 9 of 1928.*

Dulahin Jadunath Kuar	-	-	-	-	-	-	<i>Appellant</i>
						<i>v.</i>	
Raja Bisheshar Bakhsh Singh	-	-	-	-	-	-	<i>Respondent</i>
Raja Bisheshar Bakhsh Singh	-	-	-	-	-	-	<i>Appellant</i>
						<i>v.</i>	
Dulahin Jadunath Kuar	-	-	-	-	-	-	<i>Respondent</i>
Lal Harihar Pratap Bakhsh Singh	-	-	-	-	-	-	<i>Appellant</i>
						<i>v.</i>	
Raja Bisheshar Bakhsh Singh and others	-	-	-	-	-	-	<i>Respondents</i>
							<i>(Consolidated Appeals)</i>

FROM

THE CHIEF COURT OF OUDH AT LUCKNOW.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 4TH DECEMBER, 1930.

Present at the Hearing :

LORD THANKERTON.

SIR LANCELOT SANDERSON.

SIR GEORGE LOWNDES.

[*Delivered by* LORD THANKERTON.]

These are three consolidated appeals from two decrees dated the 15th December, 1927, passed by the Chief Court of Oudh, which varied a decree, dated the 4th January, 1927, of a single Judge of the same Court sitting as a Court of Original Civil Jurisdiction.

The plaintiff in the suit out of which these appeals have arisen was Raja Bisheshar Bakhsh Singh, and he is appellant in the second of these appeals (No. 103 of 1929). The defendants in the suit were (1) Dulahin Jadunath Kuar (hereinafter referred to as defendant No. 1), who is appellant in the first appeal (No. 102 of 1929), (2) Lal Pratap Harihar Bakhsh Singh (hereinafter referred to as defendant No. 2), who is appellant in the third

4 of 1929), and (3) Mahabir Singh. The last-party to the first two appeals, as, by agreement of the parties, the appeal which he had taken from the decree of the District Court was dismissed on the 15th

that the plaintiff claims possession of the Taluka consisting of sixty villages as set out in the schedule to the plaint, lying in District Bahraich and District Faizabad, the nearest male agnate according to the rule of lineal descent of Raja Suraj Pragash Singh, the last male holder, died in 1899, in terms of section 22 (10) of the Oudh Estates Act, as amended by the Oudh Estates (Amendment) Act, 1919, inasmuch as the plaintiff also claimed certain other property, the question arises in these appeals.

The questions arise in the present appeals, viz. :—(a) whether the succession is governed by the provisions of the Oudh Estates Act, which arises in the first appeal, and, if so, (b) whether “the nearest male agnate according to the rule of lineal descent” within the meaning of the Act, which arises in the second appeal.

The question is raised in the second appeal as to certain provisions of the Oudh Estates Act, which the Chief Court held defendant No. 1 entitled to inherit the estate for life, thereby varying the decree of the Trial Court.

That Bakhsh Singh was the first *Talukdar* of Gangwal, whose name was entered in Lists I and II, prepared in accordance with the provisions of section 8 of the Act of 1869. The Act was passed on the 12th January, 1869, and in terms of section 9 of the Act was approved by the Chief Commissioner of Oudh on the 12th February, 1869, and published in the “Gazette of India” on the 12th February, 1869.

On the 12th April, 1869, Raja Sitla wrote a letter to the Chief Commissioner of Bahraich, in which he said: “I beg to state that firstly, I hope to have issues, and they will, after my death. In case there be no hope of issue, the two daughters, the Rani Ranis of mine are (*malik*) proprietors (of my estate) and after my death, the Rani Saheba have power. Share shall not be divided.” It was not disputed before the Trial Court, as concurrently found by both Courts below, that the document is of a testamentary nature. It was equally not disputed that this document was not attested as required by section 19 of the Act, which incorporated section 50 of the Indian Succession Act, 1869. The application of section 19 was disputed. If this document is both valid and operative as a will, it was not disputed that its effect was to take the succession outside the provisions of the Act, with the consequent failure of the plaintiff's

defendants stand on the defensive and put the plaintiff to proof of his title to claim the estate.

The question of the validity of the will depends on construction of the original Act of 1869, apart from its amendment by the Act of 1910. Both the Courts below have held that the will was invalid on the ground that it was not attested as required by section 19 of the Act of 1869, the material part of which is as follows :—

“ 19. Sections 49, 50, 51, 54, 55, and 57 to 77 (both inclusive), and sections 82, 83, 85, and 88 to 98 (both inclusive), of the Indian Succession Act (No. X of 1865), shall apply to all wills and codicils made by any *Talukdar* or Grantee, or by his heir or legatee, under the provisions of this Act, for the purpose of bequeathing to any person his estate, or any portion thereof, or any interest therein : Provided that marriage shall not revoke any such will or codicil : Provided also that nothing herein contained shall affect wills made before the passing of this Act. . . .”

Defendant No. 1, who is appellant in this issue, maintains that the provisions of section 19 of the Act of 1869 with regard to the attestation of wills made by *talukdars* did not apply to a will made before approval and publication under section 9 of the lists prepared under section 8, even though, as in the present case, at the time of his making the will, the *talukdar's* name was included in the lists made up for the purpose of subsequent approval and publication. This contention is based on the definition of *talukdar* in section 2, which is as follows :—

“ *Talukdar* means any person whose name is entered in the first of the lists mentioned in section eight.”

The material portion of section 8 is as follows :—

“ 8. Within six months after the passing of this Act, the Chief Commissioner of Oudh, subject to such instructions as he may receive from the Governor-General of India in Council, shall cause to be prepared six lists, namely :—

“ *First*.—A list of all persons who are to be considered *Talukdars* within the meaning of this Act. . . .”

Sections 9 and 10 may also be conveniently cited here :—

“ 9. When the lists mentioned in section eight shall have been approved by the Chief Commissioner of Oudh, they shall be published in the ‘ Gazette of India.’ After such publication, the first and second of the said lists shall not, except in the manner provided by section thirty or section thirty-one, as the case may be, be liable to any alteration in respect of the names entered therein. If, at any time after the publication of the said lists, it appears to the Governor-General of India in Council that the name of any person has been wrongly omitted from or wrongly entered in any of the said lists, the said Governor in Council may order the name to be inserted in the proper list, and such name shall be published in the ‘ Gazette of India ’ in a supplementary list, and such person shall be treated in all respects as if his name had been from the first inserted in the proper list.

“ 10. No persons shall be considered *Talukdars* or Grantees within the meaning of this Act, other than the persons named in such original or supplementary lists as aforesaid. The Courts shall take judicial notice of the said lists and shall regard them as conclusive evidence that the persons named therein are such *Talukdars* or Grantees.”

No. 1 maintained that there could not be a listing of the definition until at least the approval of the Chief Commissioner had been obtained, that the reference to the definition was imperative and not merely evidentiary, and that the definition applied to section 19 as fully as to any other section. The plaintiff, on the other hand, maintained that the lists in the definition were merely evidentiary and applied, as from their passing, to every *talukdar* who came within the terms of section 3, which, apart from the definition, was merely declaratory of the rights of an existing class. The defendant maintained that, even if the definition is imperative, it does not apply to the context of section 19 and in particular to wills made before the passing of the Act. The defendant also maintained that the provisions of section 13 as applied in the present case, as he was unable to produce any evidence, were not applicable to the plaintiff, as the plaintiff was not a person excepted from the operation

of the provisions of the Act. The defendant also maintained that the provisions of the Act were not applicable to the plaintiff, as the plaintiff was not a person excepted from the operation of events from the annexation of Oudh in 1856. The defendant also maintained that the provisions of the Act were not applicable to the plaintiff, as the plaintiff was not a person excepted from the operation of the Oudh Estates Act in 1869, including the settlement, the preparation of lists of *talukdars* and of *sanads* to *talukdars* was fully dealt with before the Act, and the plaintiff founded on the two orders of the Chief Commissioner incorporated in the first schedule to the Act. The Lordships are of opinion that the Act only recognised the class of *talukdars* and that this is made clear by the provisions of section 10 that no persons should be considered as *talukdars* within the meaning of this Act, other than those named in the original and supplementary lists. Further, the Lordships are of opinion that such lists, in the case of the plaintiff, did not become operative as lists until they had been approved by the Chief Commissioner, but that they became operative from the date of such approval, the subsequent publication being merely public notification of the fact. The plaintiff founded on certain passages in the judgment of the Chief Commissioner delivered by Mr. Ameer Ali, in *Murtaza Husain v. Mohamed Yasin Ali Khan* (1916), 43 I.A. 269, at p. 276. The Lordships are of opinion that the plaintiff, as the original *talukdar*, whose name appeared in the lists, was not a *talukdar* under section 8, had died in 1865, prior to the passing of the Act, and the property in dispute was not part of the plaintiff's estate under the Act, it being undisputed that the plaintiff died under the provisions of the Act. It was held that, in the case of the plaintiff, the succession of the plaintiff in 1899 of a subsequent *talukdar*, the succession of the plaintiff, not forming part of his *talukdari* estate, was not a rebuttable presumption that there was a family descent to a single heir. In referring to the original judgment, the Lordships said (at p. 276):—

As already observed, a summary settlement of the Government had been made with Jamshed Ali Khan on January 22nd, 1859, a *sanad* was granted to him on October 17th, 1861, and his name appeared as a *talukdar* in the first of the lists. He had acquired, as

declared by section 3, 'a permanent, heritable and transferable right' in his estate, and was unquestionably a *talukdar* within the meaning of the Act. His death before the Act was passed into law makes no difference in his status or in his rights. The lists which the Chief Commissioner was directed to 'cause to be prepared' were obviously in course of preparation long before the passing of the Act; the limit of six months was clearly meant as a limit for their completion, and not for their initiation. In fact, it is beyond dispute now that Jamshed Ali and his heirs and successors to the estate are such *talukdars*."

No argument arose in that case as to whether the deceased *talukdar* became a *talukdar* within the meaning of the Act as soon as it passed or only on approval of the lists, and, in their Lordships' opinion, either view is consistent with the general expressions used in this passage.

As regards section 19, their Lordships consider that operative effect should be given, if a reasonable construction so permits, to every provision of a statute, and that to apply the definition of *talukdar* to section 19 so as to limit its operation to wills made after the approval of the lists would have the effect of rendering the proviso as to wills made before the passing of the Act purposeless; they are therefore of opinion that the definition is to that extent repugnant to the context and is inapplicable. It follows that, in their Lordships' opinion, the provisions of section 19 applied to wills made after the passing of the Act by *talukdars* of the statutory class prescribed by section 10, and that it applied to the will here in question, so that, being unattested as required by section 50 of the Indian Succession Act, 1865, it was invalid as a will.

It therefore becomes unnecessary to consider whether, on the assumption that it was a valid will, it ever became operative or was abandoned by the legatee, Raja Sitla's widow, as to which a separate argument was raised.

With regard to the plaintiff's pedigree, there are concurrent findings of fact by the Courts below to the effect that the plaintiff has proved his pedigree, and their Lordships see no reason for disturbing these findings, which establish that, in blood relationship, the plaintiff is the nearest male blood relation according to the rule of lineal primogeniture of the last male holder of the *taluk*. But this leaves open the issue in the third appeal, in which defendant No. 2 raises a point of law on the construction of section 22 (10) of the 1869 Act as amended by the Act of 1910.

In the first appeal defendant No. 1 also sought to raise a question as to whether a village called Rajapur Grant was comprised in the *taluka*, though no such point was raised in her case of appeal, but, even if it were not too late to raise the point, their Lordships were not prepared to disturb the concurrent findings of fact by the Courts below that the *taluka* consisted of the sixty villages claimed in the plaint, including the village of Rajapur Grant.

nd appeal (No. 103 of 1929) the plaintiff takes variation of the decree of the Trial Judge made urt, in that they held that defendant No. 1 was in in possession during her life of five villages of n possession under an agreement dated the 29th

the original *talukdar*, died in 1885, leaving his widow, Rani Sukhraj Kuar, and his half-Singh. Under a compromise of a suit raised by st the former, Narpat Singh was declared to be ner of the entire estate of Gangwal, and the Rani remain in possession of five villages by way of some other property, which is not in issue in Narpat remained in possession of the *taluka* of his death in 1892, when he was succeeded by his j Prakash Singh, who died in 1899, having been his only son, Mahesh Bakhsh Singh. Raja Suraj was survived by—

ukraj Kuar, Raja Sitla's widow, who died in 1922 ; raj Kuar, the senior widow of Raja Suraj Prakash h, who died in 1925, and on whose death the ent dispute arose ;

Abhiraj Kuar, the junior widow of Raja Suraj kash Singh, who died before 1925 ; and ant No. 1, the widow of Mahesh Bakhsh Singh, the ceasing son of Raja Suraj Prakash Singh.

th June, 1899, an agreement was entered into wo widows of Raja Suraj Prakash Singh and 1, the material portion of which is as follows :—

as Raja Suraj Pragash Singh, Taluqdar of Gangwal, died intestate, while we, i.e., Rani Itraj Kuar, the first widow, aj Kuar, the second widow, Dulhin Saheba, viz., Jadunath of Bachcha Mahesh Bakhsh Singh, the son of the late Raja hal Raj Kuar, the mother of the deceased Raja, are the heirs, by mutual consultation, have decided that the mutation of gwal, Districts Bahraich and Gonda, and purchased Pattis , be effected in favour of Rani Itraj Kuar and, during her life Rani Abhairaj Kuar, Musammat Dulhin Jadunath Kuar, halraj Kuar, the mother of the deceased Raja, having received Bhaiyai villages, which have always remained in the possession o the estate and also were held for a long time by Raja Narpat g the Shahi rule, should support themselves because this t now belongs to Rani Abhairaj Kuar and Musammat Dulhin uar, the heirs to the estate, who, after me, Rani Itraj Kuar, ily become the successors."

Sukraj and Rani Abhiraj Kuar died in the lifetime

Kuar, defendant No. 1 was in possession of the s at the time of Rani Itraj Kuar's death in 1925.

f Court held that the agreement was a reasonable ent, made for the purpose of settling controversies

as to the mutation of names consequent on the death of Raja Suraj Prakash Singh, and they further said :—

“*Prima facie* a provision for maintenance must be deemed to be intended to enure for the lifetime of the grantee—*Raja Rameshwar Baksh Singh v. Arjun Singh* (L.R. 18 I.A., I). In the present case the provision was to cease earlier, but only in the event of the grantee coming into the possession of the estate. We are unable to discover anything in the document to justify the interpretation that it was to cease on the death of Rani Itraj Kuar, and during the lifetime of the grantee, when the succession to the estate is withheld from her on a ground not contemplated by the settlement.”

Their Lordships find themselves unable to agree with this construction of the agreement, as, in their opinion, the words “during her (Itraj Kuar’s) lifetime” do not qualify the antecedent part of the provision, but qualify the subsequent part of the provision, under which alone defendant No. 1 has any claim to the *guzara* villages. It follows that defendant is not entitled to retain possession of these villages, and it is unnecessary to consider whether the settlement was valid and reasonable.

The third appeal involves a question of construction of the Oudh Estates Acts of general importance, which does not appear to their Lordships to have been clearly or adequately placed before either of the lower Courts, and, in view of the importance and difficulty of the question, their Lordships feel that it will be more satisfactory to have this appeal reheard before a fuller Board.

Until the advice to be humbly tendered by their Lordships to His Majesty in respect of the third appeal is determined, it will not be possible to settle the terms of the order in respect of the first two appeals.

In the Privy Council.

DULAHIN JADUNATH KUAR

RAJA BISHESHAR BAKHSH SINGH.

RAJA BISHESHAR BAKHSH SINGH

DULAHIN JADUNATH KUAR.

LAL HARIHAR PRATAP BAKHSH SINGH

RAJA BISHESHAR BAKHSH SINGH AND OTHERS

DELIVERED BY LORD THANKERTON.