

Privy Council Appeal No. 26 of 1935

Oudh Appeal No. 20 of 1931

Thakur Ganesh Bakhsh Singh and others - - *Appellants*

v.

Thakur Ajudhia Bakhsh Singh and others - - *Respondents*

FROM

THE CHIEF COURT OF OUDH AT LUCKNOW

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 28TH JULY, 1937.

Present at the Hearing :

LORD ALNESS.

SIR SHADI LAL.

SIR GEORGE RANKIN.

[*Delivered by* SIR GEORGE RANKIN.]

This is an appeal by the plaintiffs in a suit to establish their right to two taluqdari estates in Oudh against decrees dismissing the suit made in the Chief Court of Oudh by Pullan J. at first instance (23rd December, 1929), and by Wazir Hasan C.J. and Raza J. on appeal therefrom (19th May, 1931). The estates in question are called Simri and Patanti Dasi and comprise 42 villages in the districts of Rae Bareli and Unao. At the Second Summary Settlement (1859) and the Regular Settlement (1861) these estates were settled with one Jagannath Bakhsh to whom a sanad was granted on 28th November, 1861; and they were entered in Lists I and II prepared in accordance with the provisions of section 8 of the Oudh Estates Act (I of 1869). Jagannath died on 3rd November, 1869, aged about 15 years and was succeeded by his widow Sheopal Kuer who died in 1886 and thereafter by his mother Parsan Kuer who died in 1922. The appellants' case is that on her death Har Charan Singh (father of the principal appellant Ganesh Bakhsh Singh) became entitled to the taluquas as the nearest male agnate of Jagannath according to the rule of lineal primogeniture. The appellants other than Ganesh are transferees from him under a deed of 1928. The suit was brought on 17th January, 1929, after the death of Har Charan Singh.

For the proposition that on the death in 1922 of Parsan Kuer, Jagannath's mother, the estates descended to his nearest male agnate according to the rule of lineal primogeniture, the appellants rely upon the tenth clause of the section which by section 14 of the Oudh Estates (Amendment) Act, 1910, was substituted for section 22 of the original Act (I of 1869). For the first respondent, it is denied that

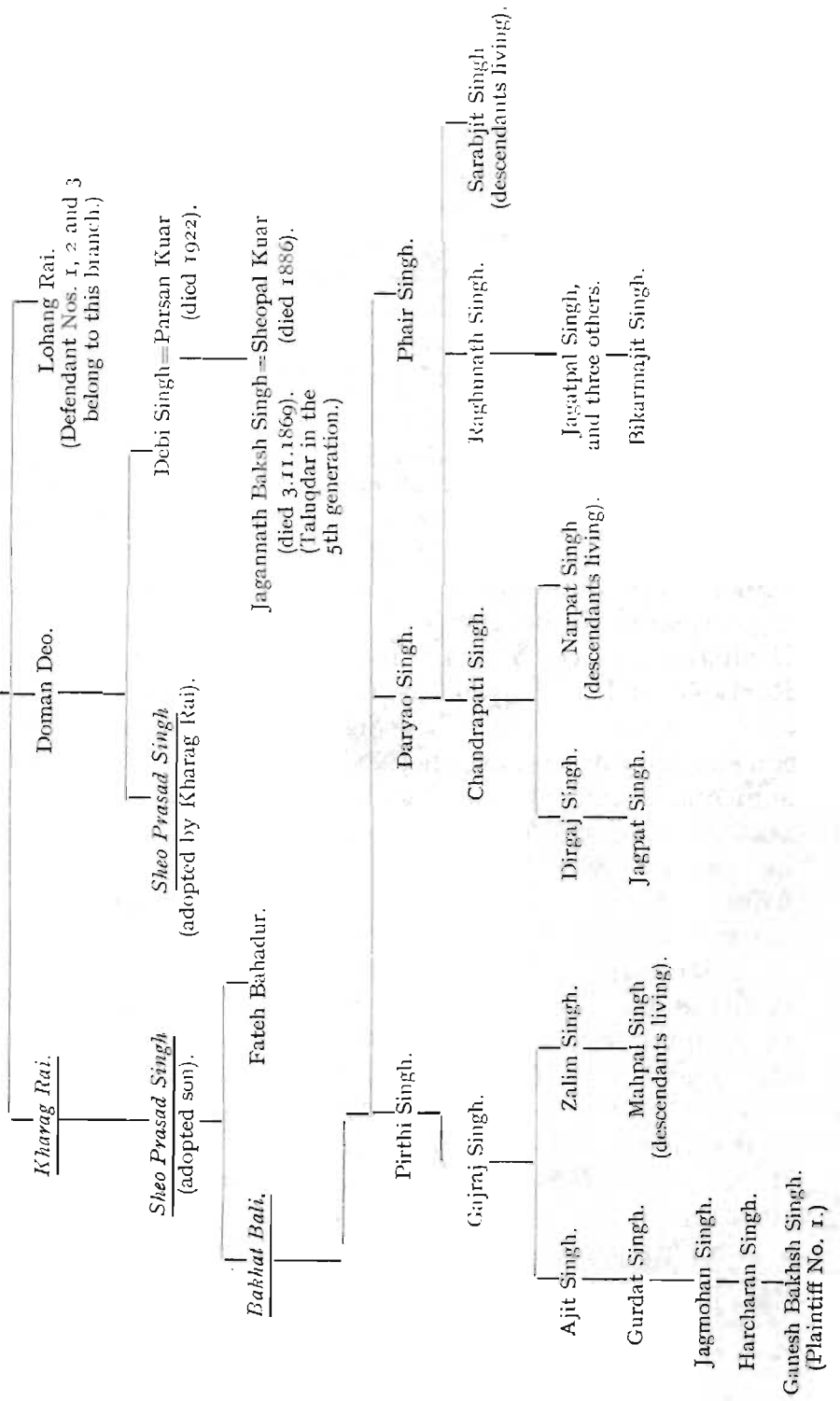
this clause is applicable to the present case, and it is further contended that the suit is barred by limitation in respect that in 1886 succession to the estate was governed by the sanad of 1861, and the possession of Parsan Kuer was accordingly without right and adverse to the title now sued on. Their Lordships do not find it necessary to enter into either of these defences, as they consider, in agreement with both Courts in India, that the plaintiff-appellants have failed to prove the pedigree of Har Charan Singh so as to establish that he was in 1922 the nearest male agnate of Jagannath according to the rule of lineal primogeniture.

In reaching this conclusion their Lordships have regarded the first respondent Raghuraj merely as a person in possession entitled as such to insist that the appellants can only eject him on the strength of their own title and by proper proof thereof. If the pedigree put forward by the appellants is worthy of any credence, the first respondent cannot claim to be the nearer agnate of Jagannath on principles of primogeniture. Parsan claimed that Sheopal had adopted him as a son to Jagannath; but, this claim having failed, he stands only as the grandson of one Shanker Bakhsh hereinafter mentioned as a descendant of Lohang Rai son of Bal Singh Rai. Again it would be unjust to regard the appellants' claim in this case as of a dishonest or fabricated character: they have given sufficient proof of a large part of the pedigree which they propound and need be subjected to no special degree of suspicion. In the third place, their Lordships have not thought it right to proceed merely by applying the rule of practice which ordinarily exempts concurrent findings of fact from being challenged before the Board. Learned counsel for the appellants went fully into all the questions of fact which he desired to raise as well as into certain questions of law which are inter-related therewith and difficult to separate therefrom. That great weight is in the present case to be attached to the findings of the Indian Courts is a conclusion which the Board have reached upon a full and untrammelled examination of the materials on the record: not as a method of procedure or as a bare presumption, but as due to the great care and acumen of the judgments, and to the nature of the evidence and subject matter which call for the most careful appreciation of Indian conditions.

The appellants' criticism of the Courts in India is not that upon inadequate evidence they have held certain things to be proved which are untrue, but that they have not been satisfied by the proof adduced of certain steps in the pedigree relied upon. Their Lordships are asked to say that they ought to have been satisfied: misconception or mistake, if shown, may well justify such a view, but otherwise it is a difficult criticism to make good in a case which calls for caution.

The pedigree table herein set forth is designed to show the case made by the plaintiff-appellants and the names which have been underlined are those as to which the

BALSINGH RAI, alias HAR MANSUKH RAI.



Courts in India have not been satisfied by the evidence adduced. It will be seen that the appellants connect Har Charan Singh (father of appellant No. 1) with Jagannath (the last full owner of the taluquas) through a common ancestor Bal Singh Rai: they have traced Har Charan's ancestry up to Pirthi Singh and Jagannath's up to Doman Deo who was a son of Bal Singh; but they have not satisfied the Courts in India that Kharag Rai was the eldest son of Bal Singh Rai, nor that he had no natural son, nor that he adopted Sheo Prasad, nor that Sheo Prasad was a son of Doman Deo or Kharag Rai, nor that Bakht Bali was the eldest son of Sheo Prasad; nor that Pirthi Singh was the eldest son of Bakht Bali. As the oral evidence given at the trial is no longer relied upon by either side for the present purpose and as the documentary evidence dates from 1860 or thereabouts, it is as well to have some notion of the dates of Kharag Rai and his alleged successors. On the view put forward by the appellants, plaintiffs' exhibit 77, a sanad dated 1167 Hijri (A.D. 1745) may be taken for this purpose. It shows Bhikam as being then the taluqdar of Simri and Bakht Bali as the chief revenue payer of mauza Bakulhia. If either be taken as born *circa* 1710, his grandfather's birth would not be much later than 1670 and might be much earlier. The *wajib-ul-arz* of Chak Gajraj (exh. 6) of 1870 gives Kharag Rai's date as "about 400 years ago," that of Deoli (exh. 7) c. 1867 as "about 125 years ago," that of Ramwanpur Dubai (exh. 117) of 1864 as "about 200 years ago." In any view unless pedigrees drawn up *circa* 1860 can be shown to have derived from earlier and more authentic documents the evidence which they afford is at best evidence of tradition: in so far as the statements are interested or contradictory or disputed they rapidly lose value. The fact that in a *wajib-ul-arz* such a pedigree is given in the course of the account of the village history does not (necessarily, at least) transmute it into something higher than tradition: and the *wajib-ul-arzes* in the present case have only to be read to demonstrate the soundness of what Mr. Ameer Ali said to that effect in *Murtaza Husain v. Mohammad Yasin Ali Khan* (1916) 43 I.A. 269 at 282, and of the view taken by the trial Judge in the present case. Where the tradition has been ascertained with reasonable certainty, a proper value must be given to it on questions of pedigree, and it may be sufficient of itself: but the fact that a case is difficult of proof does not dispense with proper proof, and in many cases there is good reason to regard tradition as poor and treacherous material.

A question of admissibility arises as to certain of the documents relied on by the appellants. In *Rai Jagatpal Singh v. Raja Jageshar Baksh Singh* (1902) 30 I.A. 27, 34, the Board rejected a document which was proved to have been made an exhibit by one Gurdatt in a suit for certain villages. Lord Robertson said: "The fatal objection to the admissibility of the document is that it is in no way brought home to Gurdatt except as being an exhibit binding on him for the purposes of that suit. His relation to the document

is therefore something entirely different from the personal knowledge and belief which must be found or presumed in any statement of a deceased person which is admissible in evidence." Upon this principle documents on both sides are in a position of considerable doubt, e.g., exh. 204 the pedigree filed on behalf of Shanker Bakhsh (1867) exh. A. 419 and exh. 2, the statement and pedigree filed by Bikarmajit (1867) and B. 1 the pedigree sent up to Government in the name of the minor taluqdar in 1860. There is room also for some dispute as to the application of the restriction imposed by the words, in section 32 of the Indian Evidence Act, "when the statement was made before the question in dispute was raised," and on the question whether opinions expressed by Settlement Officers are to be regarded as "judgments" or as entries under section 35 of the Act. Their Lordships are satisfied, however, that the result of the evidence in the present case cannot be appreciably affected by any criticism of the Chief Court's views upon the admissibility of particular documents: indeed in every case of doubt the learned Judges have given a careful estimate of the value of the document as evidence assuming it to be admissible.

The appellants' case clearly cannot stand unless the Chief Court's criticism of the documents upon which they rely can be held to be misconceived or unduly harsh. The nature of the evidence is such as to have substantial value only if the statements of tradition can be seen to be an expression of the information possessed by persons having special means of knowledge at a time when they had no interest to serve one way or another and were not taking sides as to any matter then in controversy. From this standpoint their Lordships think it wholly impossible to insist upon any court of law regarding as reliable the pedigrees put forward by Bikarmajit in the various documents which emanated from him in the sixties or the nineties of last century. That he was interested and by no means above attempting to adapt his case to suit his interests is only too clear; that he satisfied some Government officers that he belonged to a branch of the family senior to that of the taluqdar is true, but it gives small assurance of the correctness of his statements on the critical points. The appellants' case as to Sheo Prasad is an alternative case: they say first that Kharag Rai adopted him and alternatively that he was the natural son of Doman Deo Kharag's young brother. The first—not to say the only—suggestion of this alleged adoption is in a document of 1867 put forward by Shanker Bakhsh in support of a claim against the taluqdar Jagannath for maintenance: even if the endorsement "filed by the plaintiff" be taken as sufficient to make it admissible, the pedigree is shown to have been falsified in at least one other particular and is in their Lordships' view rightly regarded by the Chief Court with suspicion.

The case that Kharag died sonless and that Sheo Prasad is the eldest son of Doman Deo is an inconsistent case and is but poorly supported by the evidence taken as a whole.

The appellants are able to point to the fact that in 1890 when the first respondent was a minor Parsan Kuer as his guardian *ad litem* put forward a pedigree (exh. 257) which showed Sheo Prasad as son of Kharag Rai and Pirthi Singh as elder brother to Daryao Singh. If this pedigree is admissible at all it would seem to be so only as an admission, and by reason of the fact that the first respondent came of age before the litigation of 1890 was finally disposed of. But the pedigree is plainly untrue on several matters and goes contrary to the appellants' case. That they should select particular points from it which favour their case may be permissible, but as evidence is not impressive. These observations refer to a few only out of many documents, but they are of primary importance in the case. Their Lordships do not find it necessary that they should refer specifically to each of the documents and to the comment made thereon by either side. They were taken in detail by Mr. Dunne in an elaborate and sustained argument through six pedigrees, nine *wajib-ul-arzes*, four reports by Settlement Officers, and three judgments, together with other papers bearing on the appellants' case. While fully appreciating the injustice that might be done to the appellant if the standard of proof be raised too high, their Lordships cannot but conclude, upon a review of the documentary evidence as a whole, that the careful criticism of the learned Judges in the Chief Court is sufficient to justify their refusal to hold the appellants' case established and demonstrates the interested, uninformed and inconsistent character of the evidence in favour of the tradition upon which the appellants rely. The links in the chain of descent which the Chief Court regard as weak are in their Lordships' judgment really weak. They will humbly advise His Majesty that the appeal should be dismissed with costs.



In the Privy Council

THAKUR GANESH BAKHSH SINGH
AND OTHERS

v.

THAKUR AJUDHIA BAKHSH SINGH
AND OTHERS

DELIVERED BY SIR GEORGE RANKIN

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