

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sheo Buksh Singh and another v. Kalka Buksh and others, from the Court of the Financial Commissioner of Oudh; delivered 27th November 1872.*

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Present:

SIR JAMES W. COLVILLE.  
SIR BARNES PEACOCK.  
SIR MONTAGUE E. SMITH.  
SIR ROBERT P. COLLIER.

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SIR LAWRENCE PEEL.

THE Appellants in this case sued to establish their right, as representatives of one branch of a joint and undivided Hindu family, to their share in the family estate. Their right was disputed on the ground that they were not in fact members of the family at all; and the parties went to trial upon these issues (1.) "Were the Plaintiff  
" Sheo Buksh, or his father Mihordan Singh,  
" and the Defendant Kalka Buksh, or his  
" father Oomrao Singh, members of an un-  
" divided Hindu family within the period of  
" limitation? (2.) If so, what was the Plaintiff  
" Sheo Buksh Singh's share? (3.) If not, has  
" the Plaintiff held possession of any share in  
" the estate within the period of limitation?" These issues are drawn as if the contest were only between Sheo Buksh on the one side, and Kalka Buksh on the other. But the subsequent proceedings show that the suit was really the suit of Sheo Buksh and his brother Babootee Singh who is joined with him in this Appeal; and that though Kalka Buksh may have been at one time

the sole lumberdar, he was in possession of the property jointly with his two brothers, and was defending that joint possession. The settlement of the 31st of October 1867, (p. 22) is made with all three.

The issues are all issues more or less of fact; they were all found by the Court of first instance in favour of the Appellants; and that decision was afterwards confirmed without qualification by the Commissioner.

The case was then taken by special Appeal before the Financial Commissioner, who, of course, was bound by the findings of fact, and had only jurisdiction to disturb the judgment of the Court below upon some ground which could be lawfully made a ground of special Appeal.

Colonel Barrow, who was then the Financial Commissioner, reversed the decision of the lower Court, and dismissed the claim of the Plaintiffs; but declared that the Plaintiffs were entitled to maintenance in addition to the seer allowance which they were found to have received out of the estate.

Their Lordships are of opinion that this order of the Financial Commissioner—against which the present Appeal is brought—cannot be maintained.

They can find in the case no ground on which it can properly be held that the ordinary consequences which under the Hindu law would result to the Appellants from the findings on the issues of fact, ought not to follow upon those findings.

Colonel Barrow says, "The estate as a fact has " never been divided for generations." If by "division" he means "partition" it is to be observed that the suit is not one for partition, and that the decrees of the Court below simply declared the Appellants right to an undivided share in the family estate. It may be, however, and probably is the case, that the Financial Commissioner, when he spoke of division, meant a division of the profits of the estate; a point which will be subsequently

dealt with. He afterwards says: "There appears to me to be many grounds for "holding that the issue is on a point of law "and custom." Upon that their Lordships would observe that there was really no issue in the cause of any special custom which would take the enjoyment of this estate out of the ordinary Hindu law; and if any such custom had been alleged it would require to be supported by clear evidence of a custom in abrogation of the general law. It has, however, been expressly found that the estate is not one of the large taluquas held by sunnud, regarding which a special rule prevails in Oudh; and, as has been already observed, there is proof on the record that it was and is enjoyed by the Respondents' branch of the family, as a joint family estate in the ordinary way.

It is clear, therefore, that if that were the ground on which the Commissioner decided the case his judgment cannot be supported.

But the real ground possibly of the judgment was that, in the opinion of the Financial Commissioner, the Appellants had failed to prove such a division of profits as was required by law to establish their alleged right as co-sharers in the estate, and therefore that on the authority of the former decisions to which he referred, the suit ought to be dismissed.

Their Lordships, however, think that even on that ground the judgment cannot be supported. The decisions of Mr. Davies relied upon are, we presume, those which are set forth in the record. The last at least of these really affords no support to the judgment under Appeal. And it is further to be observed that in the case which has been quoted at the bar, viz., that of *Hyder Hossain v. Mahoméd Hossain and others*, which was decided at this Board on the 15th of January 1872, it appeared that there is a more recent judgment of Mr. Davies in Oudh, [upon which two Judicial Commissioners had acted in that case, and, as their Lordships here held,

had acted rightly], which seems to be an authority in favour of the Appellant. In that case Mr. Davies used these words:—" Under the  
 " custom of the country one shareholder represents the family before the Government, and  
 " manages the estate. It is by no means a  
 " general practice to give each sharer an account  
 " of his share of the profits at the close of the  
 " year. No safe inference against a shareholder  
 " can be made from the omission. It was very  
 " frequently the case for acknowledged sharers  
 " to take only a sufficient sum for their own  
 " expenses; but this involved no relinquishment  
 " of their rights, nor did any cause of action  
 " arise until some quarrel took place between  
 " the parties." And after quoting this passage, the judgment of this Board goes on to say: " From these propositions he  
 " inferred, first, that there was a legal presumption in favour of a grandson claiming against  
 " another grandson, and that the *onus* of proof  
 " should properly be placed on the one claiming  
 " to be sole possessor contrary to law and  
 " custom." The case just cited was one between Mahomedans, but the legal presumption cannot be less strong, (it is in fact even stronger) in favour of the members of an undivided Hindu family.

It seems to their Lordships, therefore, that in this case there was nothing before the Financial Commissioner which could justify him in interfering with the operation of the Hindu law upon the facts conclusively found in the Courts below; and it is difficult to see by what arbitrary rule he could lay down that the parties in the suit were not entitled to their full rights under the Hindu law, and yet were entitled to some, and that a liberal, allowance for maintenance beyond that which was involved in the continued possession of their seer land.

For these reasons their Lordships will humbly submit to Her Majesty that the decision under Appeal ought to be reversed, and that in lieu

thereof an order should be made dismissing the Appeal to the Financial Commissioner, and affirming the decrees of the Courts below. The Respondents, though they have not appeared, must pay the Appellants costs here, and also their costs incurred before the Financial Commissioner.

