

*Judgment of the Lords of the Judicial Committee  
of the Privy Council, on the Appeal of Chaudhri  
Ujagur Singh v. Chaudhri Pitam Singh and  
others, from the High Court of Judicature,  
North-West Provinces, Allahabad; delivered  
June 17th, 1881.*

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Present:

SIR BARNES PEACOCK.  
SIR ROBERT P. COLLIER.  
SIR RICHARD COUCH.  
SIR ARTHUR HOBHOUSE.

THIS suit was brought to obtain possession of two and a half biswas of a mouzah called Takha, pargana Barthana, out of the five biswas which were said to have belonged to Musammat Gulab Kunwar, deceased, the wife of Sundar Singh, and for a declaration of right in respect of two and a half biswas out of five biswas of the Defendant Musammat Sahib Kunwar. After the plaint was filed Musammat Sahib Kunwar died, and it was amended by making it a claim for the possession of those two and a half biswas also. The property was originally that of Anand Singh, who had five sons, Chatar Singh, Durjan Singh, Sundar Singh, Desraj, and Chatarpat. Chatar Singh died without issue, and the surviving four brothers then became entitled to it in four equal shares. Each became entitled to five biswas. Durjan died in 1823, leaving a son, Chakarpan; Sundar Singh died in 1826, leaving a widow, Musummat Gulab Kunwar, who died in 1860; Desraj, the third son, died in 1852, leaving a son, Gandharb Singh; and Chatarpat, the fourth surviving son, died in 1829, leaving a widow, Musammat Sahib Kunwar. Chakarpan,

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the son of Durjan, had three sons, who are the Respondents. Gandharb Singh had two sons, one being the present Appellant; and the other, Madho Singh, being a minor, was not joined in the suit.

It appears that after the death of Chatar Singh, the estate was recorded as being held by the four survivors, Durjan Singh, Sundar Singh, Desraj, and Chatarpat. On the death of Durjan, Chakarpan was entered as the holder of the estate, and after the death of Sundar Singh and Chatarpat, the name of Desraj appears to have been recorded. Subsequently to this the names of the widows were entered as the holders of the shares of their deceased husbands. It is said, on the part of the present Appellant, the Plaintiff in the suit, that this was done for the purpose only of giving them maintenance; but whether it was so or not does not appear to their Lordships to be material. The fact is that they were entered for a time as the holders of the shares; but subsequently, in 1842, the widows being still alive, the names of Ajudhia Pershad and Budh Singh, two of the sons of Chakarpan, appear to have been substituted for the names of the widows. It is said that in the document in which this appears there has been an interpolation, and that at the time when that document was authenticated by the acknowledgment of the parties those names were not in it. However, whether that be so or not, the estate fell into arrears, and it was sold by the Government at auction for arrears of revenue. After the sale a lease for 12 years was made of the property to Chakarpan, Desraj, Ajudhia Pershad, and Budh Singh. Before that lease, which was made in 1844, expired, the Government appear to have come to the conclusion that it would be better to make a regrant of the property, and certain proceedings

were taken which are very material in the consideration of the case. They appear to have been begun by a proceeding of the Collector of the 14th April 1853, in which it is stated that a letter had been received from the Commissioner of Revenue, dated the 2nd of April, in reply to a previous letter of the Collector, together with a letter of the Secretary of the Board of Revenue, dated 22nd March 1853, containing a direction that "The Collector should submit a special report of this village,"—therein called Takha, pargana Sakatpur Ayrwa,—“stating full particulars in regard thereof, in order that Government orders may be obtained in behalf of the former zemindar. A full report should be submitted. It should contain other accounts of the settlement, such as what sum has fallen due as arrears, and in what years. It should likewise state whether the zemindars agree to take the property on the condition of paying the sum of Rs. 3,810 or more—whatever sum might be considered proper to be taken from them, and nothing should be left out.” The Collector made an order that a parwana should be issued to the tehsildar, directing him to furnish a report “stating what persons are heirs of Daishraj, the deceased farmer and former zemindar, and how are Ajudhia Pershad and other farmers related to Chakrpan and Daishraj, former zemindars.” The parwana was issued, and is dated the 21st of April 1853, and upon that the tehsildar made his report, dated the 27th of April 1853, in which he says:—“In reply to the parwana dated 21st April 1853, No. 271, I beg to say that, from an inspection of the Khewat for 1249 Fasli, it appears that, in respect of the zemindari of this village the names of Chakrpan and Daishraj are entered as lambardars, and those of the wives of Sundar Singh and Chatarpat are entered as

" pattidars. It appeared from the statement of  
 " the kanungoe of the Muhal that Sundar Singh  
 " and Chatarpat were real brothers of Daishraj  
 " and the real paternal uncles of Chakrpan.  
 " After the death of Sundar Singh and Chatarpat  
 " the names of their wives were entered in the  
 " Khewat; and afterwards this village was, on  
 " account of revenue arrears, sold by auction,  
 " and purchased by the Government." This  
 their Lordships find was correct. "No one had  
 " any proprietary right left therein excepting  
 " the Government. But, at the time of the  
 " revised settlement, the settlement officer, in  
 " consideration of the rights of the former  
 " zemindars, farmed out the village to them,  
 " and the names of the said Daishraj and  
 " Chakrpan, and those of Ajudhia Pershad  
 " and Budh Singh, sons of Chakrpan, were  
 " entered." Then comes what is most material :  
 " The reason of the names of Ajudhia Pershad  
 " and Budh Singh being entered,"—showing  
 " that at that time the names were actually  
 entered, because he says he had inspected the  
 Khewat,—“appeared from the statements of  
 " Chakrpan and Gandharb Singh, son of Daishraj,  
 " to be this, that the wives of Sundar Singh  
 " and Chatarpat made a gift of their shares  
 " to Ajudhia Pershad and Budh Singh, and,  
 " having executed the deeds of gift, got them  
 " witnessed by the kanungoe of the Muhal.  
 " This was also corroborated by the statement  
 " of the kanungoe. Chakrpan stated that the  
 " deeds of gift, &c. were filed in the Revenue  
 " Court. Daishraj has no other son but  
 " Gandharb Singh, nor any other heir; nay,  
 " ere this, after the death of Daishraj, the  
 " name of Gandharb Singh has been entered in  
 " place of Daishraj, deceased. Ajudhia Pershad  
 " and Budh Singh are the sons of Chakrpan, and  
 " are grandsons to Daishraj in point of rela-

" tionship. I have sent Chakrpan, Ajudhia  
 " Pershad, Budh Singh, and Gandharb Singh,  
 " the four farmers under a separate chalan,  
 " to you, with Jalub-ud-din"—a peon; showing  
 that he did not, as was suggested in the  
 argument, make this report merely upon an  
 inspection of records, but that he had the parties  
 before him,—including Gandharb, the Plaintiff's  
 father,—and that he also gave to the person  
 to whom he made the report the means of  
 examining them himself. Upon this report  
 proceedings appear to have been taken by  
 the Government. On the 8th July 1853, a letter  
 was sent by the Secretary to the Board of  
 Revenue, by whose direction these proceedings  
 were taken, to the Secretary to the Government,  
 saying: "I am directed by the Sudder Board of  
 " Revenue to request that you will submit for the  
 " consideration and orders of the Honourable the  
 " Lieutenant-Governor the accompanying file of  
 " correspondence regarding mauza Takha, the  
 " property of Government." It is to be ob-  
 served that the Government treats it as at that  
 time absolutely its property, and which it could  
 deal with as it thought fit. The letter states  
 the reasons why the Government thinks that  
 the re-grant should be made:—that the village  
 broke down in consequence of the famine, and  
 the revenue was not properly paid. It continues:  
 " Chakarpan, the farmer who has continued till  
 " the present time in occupation, is the ex-  
 " zemindar, and, in consideration of his having  
 " failed only on account of the assets being  
 " inadequate to the demand, it is proposed to  
 " restore the proprietary right to him on con-  
 " dition that he pay up Rs. 3,810 : 2 : 6, the  
 " amount of balances which accrued under his  
 " own management, and not under kham tehsil.  
 " These are detailed in the margin. The  
 " Board of Revenue are of opinion that a good



“ case is made out for the old proprietors, and  
 “ they recommend that the proposed measure may  
 “ receive his Honour’s sanction, subject to the  
 “ conditions that, preliminary to reinstatement,  
 “ a full and complete compact for future  
 “ management be executed and recorded.”

Upon that there is a letter from the Officiating Assistant-Secretary to Government, dated the 22nd July 1853, in which he says:—“I have  
 “ the honour to acknowledge the receipt of  
 “ your letter No. 353, dated the 8th instant,  
 “ with its enclosures, and am directed by the  
 “ Honourable the Lieutenant-Governor to inform  
 “ you in reply that he has been pleased to confer  
 “ the proprietary right in mauza Takha, a  
 “ Government estate in pargana Sakatpur, zila  
 “ Farukhabad, on Chakrpan, the farmer and  
 “ ex-zemindar, on the conditions proposed by  
 “ the Board.”

It is clear, that Chakrpan, where he is spoken of as the ex-zemindar, was not intended by the Government to be the only person who was to have the benefit of the grant. This, indeed, has not been suggested. He was to have it for the persons who are spoken of as the old proprietors. Then who were the persons that the Government considered to be the old proprietors? They had in the report which was before them, and upon which they acted, a statement that the old proprietors and the persons who had been in possession under the lease were Chakarpan, Gandharb Singh, Ajudhia Pershad, and Budh Singh; and the only construction that can be put upon these letters, which are in fact the grant by the Government, is that the intention was that the Government, being, by reason of the sale for arrears of revenue, the absolute owner of the property, and so considering itself, resolved to make a grant to them in four shares.

What took place subsequently is this: On the 5th April 1855, two years afterwards, Chakarpan and Gandharb Singh, the father of the Plaintiff, and Ajudhia Persad and Budh Singh, appeared, and caused to be recorded what is called a village administration paper, in which it is stated that they were entitled to this property in the shares of five biswas each. It appears that on the 3rd April, two days previously, an inquiry was made, in which Chakarpan and Gandharb Singh stated that, at the time of the settlement, they were the two lambardars, and that it was arranged that they should continue to be appointed lambardars, and that Ajudhia Pershad and Budh Singh should remain pattidars. The patwari was examined, and he stated that the shares which they had stated were correct,—the shares of five biswas each,—and he went on to say: “ All the four persons are in possession as usual, and, besides these four shares, there is no other co-partner and co-sharer.” There is evidence, therefore, that the possession followed the grant by the Government, and was in accordance with the view which their Lordships take of it. That possession appears to have continued without any dispute, as far as their Lordships can see, down to November 1864, when the parties made an agreement for an arbitration for making a partition. After that had been proceeded with some little way, Gandharb Singh set up a claim to five biswas, in addition to the five of which he had been in possession. His claim was that the property was the family property, and that upon the death of the widows he became entitled to half of the share of each of them. In consequence of this, the arbitrators refused to proceed. They considered, and properly, that they had no authority to try such a question, and the arbitration came to an end. Then, in 1867,

Gandharb brought a suit claiming the five biswas, which was compromised, and the present Plaintiff has brought a similar suit, claiming to be entitled not only to the share of the five biswas which clearly belonged to his father Gandharb, but to the other five biswas, and to set aside the compromise. The suit by Gandharb did not proceed to trial, but he agreed to a decree by which he acknowledged that he was entitled only to the five biswas. He did, however, obtain by the compromise a decree for partition, but their Lordships consider that it is not necessary for them to give any opinion as to the effect of the compromise upon the right of the present Plaintiff. He, at the time of the grant by the Government, was not living; he was not born until the 24th February 1855, and, whatever rights he may have under the Mitakshara law to ancestral property, it cannot be said that at the time of his birth there was any ancestral property of which he could acquire a share except the five biswas. The grant being, in their Lordships' opinion, a grant by the Government—which, as has been said, had the absolute power to dispose of the property in any way it thought fit—only of five biswas, that was all the interest which Gandharb Singh had, and his son could not acquire a share in any other. It has been said that Gandharb was imposed upon; that he was led by the false representations of Chakarpan to assent to the entry of the names of the two sons of Chakarpan, and to allow it to appear to the Government that they were proprietors. Supposing that he was so imposed upon, and that there was some right in him to procure an alteration of the grant, that is not such an interest as a son would by his birth acquire a share in. Whatever the nature of the right might be,—whether it could be enforced by a suit or by a representation to



the Government,—it does not come within the rule of the Mitakshara law which gives a son, upon his birth, a share in the ancestral estate of his father.

Their Lordships, therefore, will humbly advise Her Majesty to dismiss the Appeal, and to affirm the Judgment of the High Court, and the Appellant will pay the costs of the Appeal.

