Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Sham Koer v. *Dah Koer and another, and of Rupan Singh and others* v. *Dah Koer and another, from the High Court of Judicature at Fort William in Bengal; delivered the 5th June* 1902.

Present at the Hearing:

LORD MACNAGHTEN.
LORD LINDLEY.
SIR FORD NORTH.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

The only question in this case is whether the claim of the Appellants in these consolidated Appeals is or is not barred by limitation.

Bhau Nath Singh who seems to have been a member of an undivided Hindu family governed by the Mitakshara law, died in November 1862. He was possessed of considerable property including the three villages in dispute in these suits. He left no issue living at his death but his widow Sohawan Koer and his daughter-in-law Dah Koer the widow of his only son who died in his lifetime both survived him.

On or immediately before his death these two widows obtained possession of the three villages.

Sohawan Koer died in June 1879. After her death Dah Koer remained in sole possession.

In February 1884 Dah Koer executed a hibánáma in favour of the Respondent Surju Pershad Singh by which she gave the three

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villages to him with immediate possession and authorized him to apply for mutation of names. An order for mutation of names in his favour was obtained by him in December 1890.

In 1891 these suits were instituted.

On the 29th of September 1894 the District Judge of Gya made decrees in favour of the Plaintiffs declaring that the hibánáma of February 1884 was ineffectual against any interest of the Plaintiffs or their heirs after the death of Dah Koer but he refused to grant decrees for possession during Dah Koer's life.

The High Court on appeal dismissed both suits holding them barred by limitation.

Assuming that Bhau Nath Sing was a member of an undivided Hindu family governed by the Mitakshara law as the Lower Court found and the High Court assumed neither his widow nor his son's widow would be entitled to anything more than maintenance out of his estate. Their possession therefore of the three villages in question would be adverse to the reversionary heirs unless it was the result of an arrangement with them. If the possession was adverse the rights of the reversionary heirs would of course be barred at the expiration of 12 years from the date of Bhau Nath Singh's death or the date of the widows' taking possession which seems to have been at or shortly after his death.

The only question therefore is—Have the Appellants given satisfactory proof of an arrangement with the two widows which would be an answer to the plea of limitation?

In the first place they set up an ikrá-náma dated the 18th of February 1863 and duly registered which purports to contain a declaration that in accordance with an expression of Bhau Nath Singh's wishes the three villages were made over to the two widows for maintenance during their lifetime without any power of alienation.

The Plaintiffs however failed to prove to the satisfaction of either Court that this ikrá-náma was accepted by the two widows or either of them. It is admitted that they did not execute it.

The District Judge though he felt constrained to decide that the two widows had not accepted the ikrá-náma and were not bound by the conditions of that instrument held that at a later date Dah Koer accepted the position of a beneficiary under it and that in consequence of her conduct on that occasion she was precluded from relying on the plea of limitation. It seems that on the death of Sohawan Koer the reversionary heirs brought a suit against Dah Koer setting up the ikrá-náma and claiming possession of one moiety of the three villages which as they alleged devolved upon them on the death of Sohawan Koer. Dah Koer's answer was that the ikrá-náma was a false and fictitious document but that even assuming it to be genuine and binding upon her the reversionary heirs had no title under it to any part of the three villages until her death. Both the District Judge and the High Court on appeal took that view and dismissed the suit on that ground without going into any other question. In the present suit the High Court has held and held rightly that Dah Koer is not prejudiced by the success of her argument or the argument of her pleader in the suit brought against her on Sohawan Koer's death.

The learned Counsel for the Appellants relied upon one document which is not noticed in the judgment of either of the Courts below. It appears that in July 1875 the two widows having to file road-cess returns in respect of the three villages executed a mokhta-náma for that purpose and that in this mokhta-náma there is a statement or recital that the villages were in

their possession "as life interest." This recital was relied on as an admission by Dah Koer. Their Lordships however think that having regard to the position of the widows who were Purdanashin ladies and considering that the mokhtar appointed by them was the mokhtar of the reversionary heirs it would be dangerous to rely on such an admission unless it were proved that the attention of the widows was directly called to it. It does not appear that this mokhta-náma was referred to in argument before either of the Courts below. It is more than doubtful whether Dah Koer's attention was called to it in her cross-examination though she was referred to another mokhta-náma of a different date. And it is beyond question that the widows disputed the ikrá-náma and the title of the Plaintiffs as soon as it was put forward at least as far back as 1878.

The learned Counsel for the Appellants relied very strongly on what he suggested were the probabilities of the case. He said that it was probable that there was some arrangement between the reversionary heirs and the two widows that they should take a life interest in these villages in lieu of maintenance. If one were at liberty to guess one might adopt that view. But their Lordships cannot say that there is any proof of any such arrangement and the fact that the reversionary heirs did not procure the execution of the ikrá-náma by the two widows throws a certain amount of suspicion upon it.

On a review of the whole case their Lordships are of opinion that the decision of the High Court is right and ought to be affirmed. Their Lordships will therefore humbly advise His Majesty that these Appeals ought to be dismissed.

The Appellants will pay the costs of the Respondents down to and including the lodging of their case.

Their Lordships cannot part with this case without calling attention to the inordinate length of the Record. No less than 270 printed pages are occupied with a list of documents not printed which might have been summarised in a few lines. Their Lordships could wish that the officials in India were authorized to exercise some sort of control over the length of the Record or at least to indicate the party at whose instance matter obviously irrelevant for the purpose of the argument is included in the transcript.