

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mohammad Abdussamad and others v. Kurban Husain and others, from the Court of the Judicial Commissioner of Oudh; delivered the 25th November 1903.

Present at the Hearing :

LORD MACNAGHTEN.

LORD LINDLEY.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

SIR JOHN BONSER.

[*Delivered by Lord Lindley.*]

The Appellants in this case claim one half of certain estates in Oudh as the statutory heirs of one Murtaza Bakhsh who was a Mahomedan Taluqdar and who died on the 18th January 1865. The Respondents claim the same half as his heirs by Mahomedan Law, and it is conceded that they are entitled to it unless the succession was altered by the Oudh Estates Act of 1869 and what was done after his death.

Murtaza Bakhsh in his lifetime was a Taluqdar, and in May 1858 a Summary Settlement of the estates in question was made with him.

The Oudh Estates Act 1869 was founded on, and was passed to give effect to, certain Orders of the Governor-General of India made in October 1859 and set out in the first Schedule to the Act. Under those Orders lists were to be prepared of the Taluqdars with whom Summary Settlements had been made, and sanads, *i.e.* grants, were to be issued to them. Forms of

these sanads were prepared and many were granted.

In January 1862 Murtaza Bakhsh applied for a sanad from the English authorities and his application was refused. He never in fact obtained any sanad in his lifetime; and his name was never in his lifetime entered on any list of officially recognised Taluqdars.

Under these circumstances it seems plain that when Murtaza Bakhsh died, he had acquired a permanent hereditary and proprietary right recognised by the Indian Government in the estates in question; but the succession to them not having been altered by any sanad was governed by the ordinary Mahomedan law which was the only law applicable to the case.

The Appellants, however, rely on what happened after his death, and it is necessary to consider what this was. When he died, he left his mother and some cousins and two widows; and in March 1865 his mother's name was entered in the Collector's books in substitution for his own, and she was recorded as sole owner. This appears to have been done with the consent of his two widows and the cousins under whom the Respondents claim. The Estates Act 1869 came into operation in January of that year, and in July 1869 the name of the deceased appears in two of the lists directed to be made by the Act. How it got there is not known. But there it is. In November 1870 the mother died. She appointed the two widows her successors, and in April 1871 the names of the two widows who were in possession were substituted for hers in the Collector's books. Their right, however, to be so recorded was disputed by the cousins and litigation ensued; but both widows died before it ended, and it is unnecessary to refer further to this matter.

The present suit was instituted in March 1895. The Plaintiffs (now represented by the Respondents) were the heirs, viz., brother and sister of the last surviving widow, *i.e.* the second wife of Murtaza Bakhsh. They claimed under the ordinary Mahomedan law. The Defendants (*i.e.* the Appellants) claim under his first wife and under the Act of 1869. The Subordinate Judge held that the entry of Murtaza Bakhsh's name in the lists was *ultra vires* and of no effect; that the mother held the estate as absolute owner; that after her death the two widows held as absolute owners in equal shares; that on the death of the first wife one-half of the estate descended on the Defendants in accordance with ordinary Mahomedan law, and that on the death of the second wife her half descended on the Plaintiffs by the same law. The Plaintiffs were content with this decision, but the Defendants appealed from it. The decision was, however, affirmed by the Judicial Commissioner and the Defendants have appealed from his decision.

Their Lordships have no hesitation in affirming it. The whole case turns on the entry of Murtaza Bakhsh's name in two of the lists ordered to be made by the Act of 1869. Section 10 of the Act compels the Courts to regard such lists as conclusive evidence that the persons named therein are Taluqdars or grantees within the meaning of the Act. When the lists referred to are looked at, it will be found that there are six lists (*see* Section 8). Murtaza Bakhsh's name is in the first and third. The entries therefore by Sections 8 and 10 are conclusive evidence (1) that he is to be considered as having been a Taluqdar within the meaning of the Act (*see* Section 2 and Section 8, list 1); and (2) that he was a Taluqdar to whom a sanad had been made declaring that the succession to the

estates comprised in it should be regulated by the rule of primogeniture (*see* Section 2 and Section 8, list 3).

These enactments are clear and peremptory, and would be decisive if they applied to this case.

It is not, however, in accordance with sound principles of interpreting statutes to give them a retrospective effect. The Court cannot construe Sections 8 and 10 so as to deprive the successors of the estates of a person who had died before those Sections came into operation of rights which they acquired on his death. Entries of the names of deceased persons in the lists mentioned in Section 8 do not appear to have been contemplated by the Act, but such entries have no doubt been made, and they are practically harmless if the names were already in former lists made under the Orders in Council, or if the entries do not alter the previously acquired rights of anyone. This was the case in *Achal Ram v. Udai Partab Addiya Dat Singh*, 11 Ind. App. 51. But no decision has been referred to which supports the contention that the entry of the name of a person who died before the Act came into force can divest rights previously acquired on his death. In this case the death occurred in 1865, and the successors then acquired their rights under the ordinary Mahomedan law. The Oudh Estates Act did not come into operation until 1869; and to construe its provisions as altering the succession would be not only unjust but plainly contrary to well-settled legal principles.

The able Counsel for the Appellants endeavoured to surmount this difficulty by suggesting that there must have been some family arrangement to the effect that the entries in question should have been made, and that the succession should be changed. But there is no

evidence from which any such conclusion can be drawn. The only evidence bearing on the subject is the consent of the heirs to the entry of the mother of **Murtaza Bakhsh** in the Collector's books shortly after his death. But when she died, the entry of the names of her two daughters-in-law was objected to and litigation followed. The issues settled in the action do not raise the question whether any such arrangement was in fact come to, and their Lordships cannot adopt the suggestion of the learned Counsel as a basis for their decision.

Their Lordships therefore will humbly advise **His Majesty** to dismiss this Appeal and the Appellants must pay the costs.

