

Judgment of the Lords of the Judicial Committee of the Privy Council on the consolidated Appeals of Khunni Lal v. Kunwar Gobind Krishna Narain and another; and of Kanhaiya Lal and others v. Same; and of Sarnam Singh and others v. Same, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered the 28th March 1911.

PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD ROBSON.

SIR ARTHUR WILSON.

Mr. AMEER ALI.

[DELIVERED BY MR. AMEER ALI.]

These Appeals, which have been consolidated by an Order dated 1st November 1910, arise out of three actions in ejectment, brought by the Plaintiffs in the Court of the Subordinate Judge of Bareilly, who dismissed the suits by one judgment on the 20th of May 1905. His decision, however, was reversed on appeal by the High Court of Allahabad, which decreed the Plaintiffs' claims, on the 23rd of April 1908. The Defendants have appealed to His Majesty in Council, and the point for determination is the same in each case.

The Plaintiffs claim as next reversioners to their grandfather (mother's father) Raja Daulat Sing to recover possession of certain properties held by the Defendants, on the allegation that the deed of compromise under which the latter

purport to derive title is not binding on them. The Defendants, on the other hand, are transferees from one Raja Khairati Lall, a grandson by a daughter of Raja Ratan Sing, the father of Daulat Sing, and a party to the compromise in question.

The history of Ratan Sing's family and the circumstances which led to the compromise have been twice before this Board, and will be found summarised in the earlier of the two cases. It is unnecessary, therefore, to enter into them at any length. For the purposes of the present Appeals it is sufficient to state that Raja Ratan Sing, who appears to have held a high position in the Court of the then King of Oude, owned considerable property within British territories, part of which is in suit, and that he and his son Daulat were members of a joint Hindu family and thus entitled in joint tenancy each to a moiety of the properties.

It may be taken now as established beyond dispute that in 1845 Ratan Sing abandoned Hinduism and adopted the Mahommedan faith. But although his renunciation of the Hindu religion involved, under the Hindu law, the forfeiture of civil rights to the extent of depriving him of his share in the joint estate, Daulat advanced no claim based on such forfeiture, and father and son remained joint until the latter's death in January 1851.

Daulat left him surviving a widow named Sen Kunwar, and two daughters, Chhattar Kunwar and Mewa Kunwar. On the death of Ratan Sing some months later (September 1851) the entire property which had stood all along in his name in the Collector's Register was recorded in the name of his widow, Rani Raj Kunwar.

Disputes then arose between the heirs of Daulat on the one side and Raj Kunwar on the other. Eventually, and in consequence of these

L.R. 1 I.A. 157.

L.R. 36 I.A. 138.

disputes, the Court of Wards took over, in 1852, possession of the entire estate, making Raj Kunwar, who is stated to have been a person of weak intellect, an allowance of Rs. 500 a month. The rights of Daulat's heirs do not appear to have been admitted to any part of the property, as no allowance was made to them, and, in fact, it is alleged, they were referred to the Civil Courts for the establishment of their rights. Matters remained in this condition for several years. Sen Kunwar died in 1857 and Raj Kunwar, Ratan's widow, the following year. In 1860, under the advice of Mr. John Inglis, a well-known District Officer, then Collector of Bareilly, the daughters of Daulat and the grandson of Ratan, Khairati Lall, entered into the compromise which the Plaintiffs now seek to set aside so far as it affects them.

By this compromise Daulat Sing's daughters, Chhattar Kunwar and Mewa Kunwar, obtained between them an $8\frac{1}{2}$ anna share, taking the entire estate as 16 annas; whilst Khairati Lall received a $7\frac{1}{2}$ anna share. Partition was effected in terms of the compromise, and the parties obtained possession of the respective shares allotted to them. Chhattar Kunwar died in 1866. There was litigation between Chhattar's husband and Mewa Kunwar as to the right to Chhattar's share, which was ultimately decided in Mewa Kunwar's favour who thus obtained possession of the entire $8\frac{1}{2}$ share received by the two sisters in 1860. Mewa Kunwar died in 1899, and the share held by her has devolved on the Plaintiffs, her sons.

Their case is that on the abandonment of Hinduism by Ratan Sing he forfeited his half share in the joint property which vested in Daulat Sing, that they as his heirs are entitled to the entire 16 annas, and that they are not bound by the compromise of 1860, as Chhattar Kunwar and Mewa Kunwar, being mere life

tenants, had no authority, in the absence of legal necessity, to alienate the 7½ anna share in favour of Khairati Lall.

The Defendants, who are transferees either from Khairati Lall or his heirs contend *inter alia* that the compromise entered into by the two ladies was not an alienation; that it was a family arrangement for the settlement of disputes under which they obtained more than they were legally entitled to; that in view of the British legislation (to which the Defendants refer) the forfeiture, on which the Plaintiffs rely, could not be enforced, and that, therefore, there was no divestment of the right of Ratan in respect of his half share, and that even if any such right, as the Plaintiffs allege, devolved on Daulat in consequence of Ratan's conversion in 1845 it became "extinguished" on the lapse of 12 years from the date of such devolution.

The Subordinate Judge in a well-considered judgment upheld the Defendants' pleas and dismissed the suits. The learned Judges of the High Court, on appeal by the Plaintiffs, arrived at a different conclusion. They were of opinion that on the conversion of Ratan Sing, Daulat became "sole and absolute owner of the whole estate," in as much as Regulation VII. of 1832 "did not abrogate the Hindu Law as to the consequences of apostasy," and Act XXI. of 1850 was not enacted until some five years after his adoption of the Mahommedan faith. With regard to the compromise of 1860, although they considered it to be "just and wise" and "perhaps the best arrangement that could be made," they felt pressed by authority to hold in effect that it amounted to an alienation which the ladies, in the absence of legal necessity, were not competent to make, and that consequently it was not binding on the Plaintiffs. In this view of the question they reversed, as already stated,

the decision of the Subordinate Judge, and decreed the Plaintiffs' claims in all three suits. The learned Judges did not deal with the question of limitation raised by the Defendants.

Their Lordships regret they are unable to concur in the judgment of the High Court.

In 1845, when Ratan Sing abandoned Hinduism and adopted the Mahomedan faith, the rule laid down in Section 9, Regulation VII. of 1832, for decision in civil suits where the parties ranged against each other belonged to different persuasions, was in force in the Bengal Presidency. It declared in express terms that in such cases—

“When one party shall be of the Hindoo and the other
“of the Mahomedan persuasion, or where one or other of
“the parties to the suit shall not be either of the Moham-
“medan or Hindoo persuasions, the laws of those religious
“shall not be permitted to operate to deprive such party or
“parties of any property to which, but for the operation of
“such laws, they would have been entitled.”

Act XXI. of 1850 extended the principle of Section 9, Regulation VII. of 1832, of the Bengal Code, throughout the territories subject to the government of the East India Company. After reciting the provisions of Section 9, and stating that it would be beneficial to extend its principle to the rest of British India, it enacted that—

“So much of any law or usage now in force within the
“territories subject to the Government of the East India
“Company, as inflicts on any person forfeiture of rights
“or property, or may be held in any way to impair or
“affect any right of inheritance, by reason of his or her re-
“nouncing, or having been excluded from the communion of
“any religion, or being deprived of caste, shall cease to be
“enforced as Law in the Courts of the East India Company,
“and in the Courts established by Royal Charter within
“the said territories.”

The intention in both enactments is perfectly clear; by declaring that the Hindoo or Mahomedan law shall not be permitted to deprive any party not belonging to either of those persuasions

of a right to property, or that any law or usage which inflicts forfeiture of rights or property by reason of any person renouncing his or her religion, shall not be enforced, the legislature virtually set aside the provisions of the Hindoo law which penalises renunciation of religion or exclusion from caste.

The effect of the legislation of 1832 and 1850 was that on Ratan Sing's abandonment of Hinduism, Daulat Sing did not acquire any enforceable right to his father's share in the joint family property which he could either assert himself or transmit to his heirs for enforcement in a British Court of Justice.

In the view their Lordships take of this branch of the case it is not necessary to discuss the question of limitation raised by the Defendants. But it may be observed that whatever right Daulat acquired under the Hindu law to the share of his father came into existence in 1815 on the conversion of the latter to the Mahommedan religion. No suit could be brought, even if the enactments referred to above had permitted it, to enforce the right after the lapse of 12 years "from the time the cause of action arose" (Section 12, Act XIV. of 1859). Nothing in Article 142 of Act IX. of 1874 or of Article 141 of Act XV. of 1877 could lead to the revival of a right that had already become barred. In this connection their Lordships would refer to the judgment of this Committee in the case of *Hurrinail Chatterji v. Mohunt Mohoor Mohun Goswami* (L.R. 20 L. A. 183) where it was pointed out that "the intention of the law of limitation is, not to give a right where there is not one, but to interpose a bar after a certain period to a suit to enforce an existing right."

Such was the relative position of the parties in 1830, when the compromise was entered into. The heirs of Daulat had no existing enforceable

right to the share of Ratan Sing, and the entire property was recorded in the name of his widow. Under these circumstances the parties, under the advice of the District Officer, instead of engaging in a long litigation, arrived at a mutual settlement of their claims. The real nature of the compromise is well expressed in a judgment of the High Court of the North-West Provinces in 1868 in the suit of Mewa Kunwar against her sister Chhattar Kunwar's husband. The learned Judges say as follows :—

“The true character of the transaction appears to us to have been a settlement between the several members of the family of their disputes, each one relinquishing all claim in respect of all property in dispute other than that falling to his share, and recognising the right of the others as they had previously asserted it to the portion allotted to them respectively. It was in this light, rather than as conferring a new distinct title on each other, that the parties themselves seem to have regarded the arrangement, and we think that it is the duty of the Courts to uphold and give full effect to such an arrangement.”

(Agra High Court Reports, North West Provinces, Vol. IV., p. 84.)

L.R. 1 I.A. p. 166.

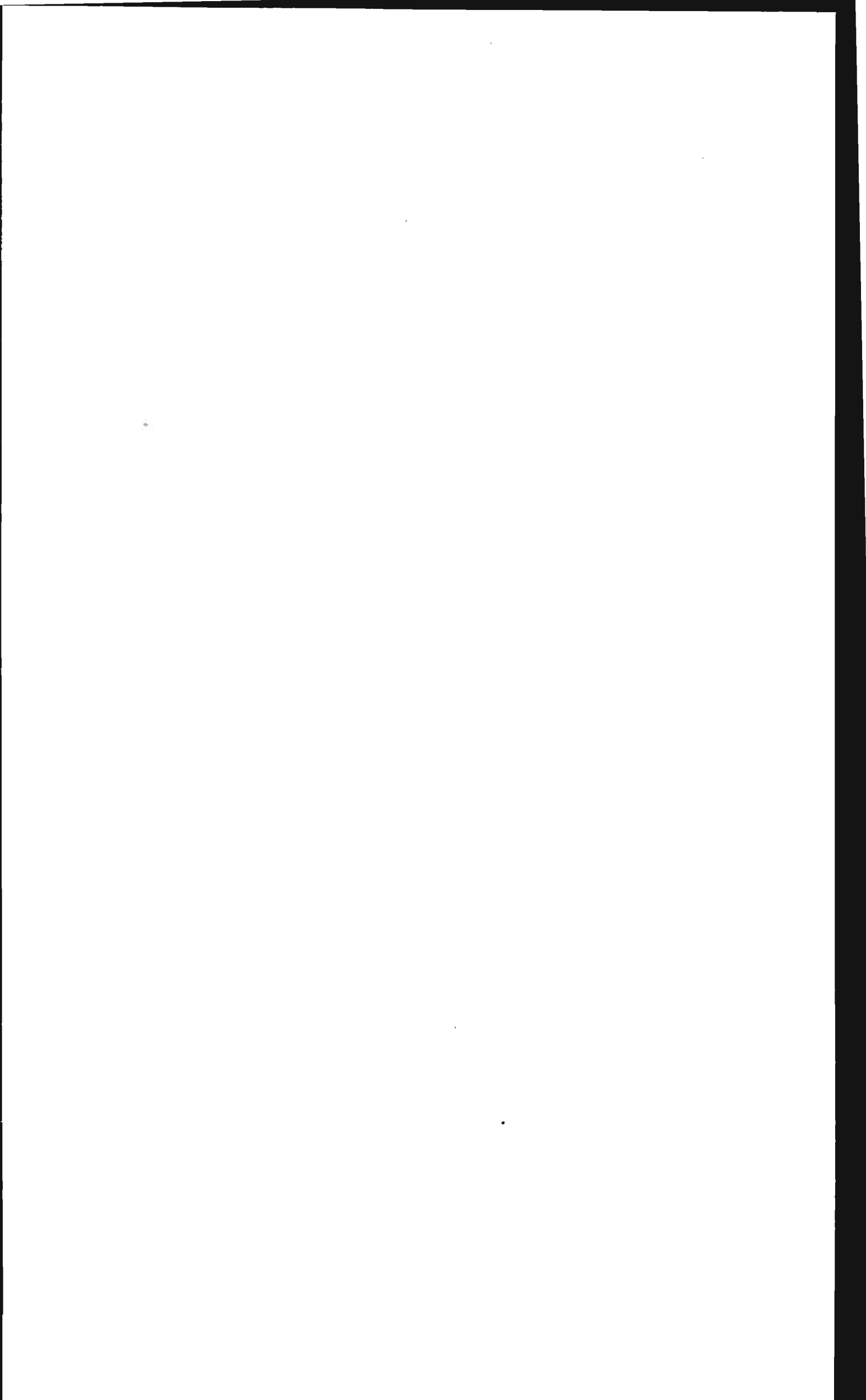
Their Lordships have no hesitation in adopting that view. The true test to apply to a transaction which is challenged by the reversioners as an alienation not binding on them is, whether the alienee derives title from the holder of the limited interest or life-tenant. In the present case Khairati Lall acquired no right from the daughters of Daulat, for “the compromise,” to use their Lordships' language in *Rani Mewa Kunwar v. Rani Hulas Kunwar*, “is based on the assumption that there was an antecedent title of some kind in the parties, and the agreement acknowledges and defines what that title is.”

In their Lordships' judgment the decisions on the authority of which the learned Judges of the High Court have held the compromise not to bind the Plaintiffs, are not applicable to the present case.

On the whole their Lordships are of opinion

that the Judgment and Decrees of the High Court of Allahabad should be reversed and those of the Subordinate Judge restored, and they will humbly advise His Majesty accordingly.

The Respondents will pay the costs of this Appeal and of the Appeal in the High Court.



In the Privy Council.

KHUNNI LAL

?.

KUNWAR GOBIND KRISHNA NARAIN
AND ANOTHER;

AND

KANHAIYA LAL AND OTHERS

?.

SAME;

AND

SARNAM SINGH AND OTHERS

?.

SAME.

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