Privy Council Appeal No. 6 *of* 1916.
Bengal Appeal No. 21 *of* 1913.

Baikuntha Nath Bera, since deceased (now represented by Beni Lal Bera), and others - - - - - - *Appellants*

v.

Chandra Mohan Bera, since deceased, and others - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 20TH JANUARY, 1919.

Present at the Hearing:

VISCOUNT HALDANE.
LORD PHILLIMORE.
MR. AMEER ALI.

[*Delivered by* VISCOUNT HALDANE.]

In this appeal the plaintiffs, who were respondents, established a claim as reversionary heirs to two-thirds of a half, that is to say to a third, of certain properties, and the appellants, who were defendants in the action, raised a point of pedigree. They said that certain persons called Dwarka and Chandra, whose presence in the pedigree would have created a difficulty, were the sons of one Madhu by Narayani, who was a daughter of Madhab, who was a son of Jaganath Bera, who was head of the family.

The whole question is one of pedigree and two Courts below have found that Dwarka and Chandra were sons of Madhu by

Narayani; she was a sister of another member of the family through whom the title could have been made. Two Courts below have found the pedigree so and it is a concurrent finding of fact which their Lordships are not disposed to disturb and not the less so because there appears to be no really substantive evidence to rebut it. But there are just two points which may be mentioned in this connection. A member of the family called Haramohun, who has been some time dead, made a statement in a previous suit, which probably was admissible in this suit as a pedigree declaration, and which to some extent supported the appellants' case. But, under the circumstances it is a statement which has little weight and it certainly cannot prevail against the evidence which was before the Courts below and upon which the Courts below found.

Then there is another point as to Madan Mohan, who was a third son of Jaganath Bera, having survived and having a title to a third of the property. It was assumed, apparently right through, that Madan Mohan did not survive his father. Whether he did or did not, the point was not raised in the Courts below and it cannot be raised now, and it would, after all, only go to part of the relief claimed.

Under the circumstances their Lordships are of opinion that the case is one in which they ought not to disturb the findings come to in the Courts below on a question of fact and they will humbly advise His Majesty that the appeal should be dismissed with costs.

In the Privy Council.

BAIKUNTHA NATH BERA, SINCE DECEASED (NOW REPRESENTED BY BENI LAL BERA), AND OTHERS

v.

CHANDRA MOHAN BERA, SINCE DECEASED, AND OTHERS.

[DELIVERED BY VISCOUNT HALDANE.]

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