

Privy Council Appeal No. 44 of 1928.

Oudh Appeal No. 15 of 1926.

Raghunath Prasad Singh and another - - - - *Appellants*

v.

The Deputy Commissioner, Partabgarh, and others - - - *Respondents*

FROM

THE CHIEF COURT OF OUDH AT LUCKNOW.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 25TH JULY, 1929.

Present at the Hearing :

LORD CARSON.

LORD DARLING.

SIR LANCELOT SANDERSON.

SIR GEORGE LOWNDES.

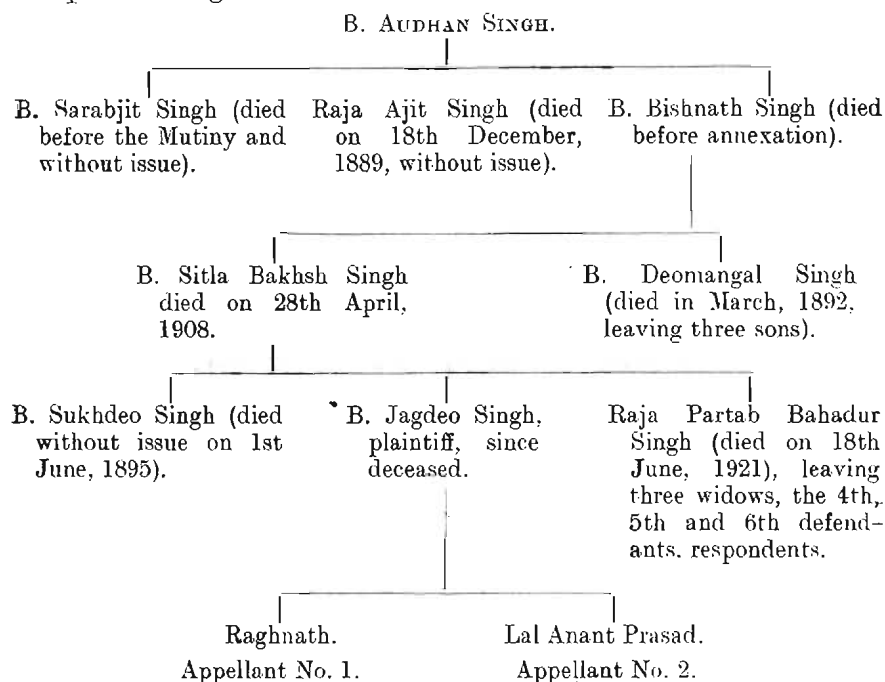
SIR BINOD MITTER.

[*Delivered by* SIR BINOD MITTER.]

This is an appeal from the decree dated 27th April, 1926, of the Chief Court of Oudh, affirming the decree of the Subordinate Judge of Partabgarh dated 22nd April, 1924. The litigation relates to properties originally owned by one Rajah Ajit Singh, who died on the 18th December, 1889, having devised and bequeathed those properties to Rajah Partab Bahadur Singh by his will dated the 6th November, 1884. Rajah Partab Bahadur Singh died on the 18th June, 1921.

The principal question for determination in the present appeal is whether on the true construction of the said will Partab took a life interest or an absolute interest in the property devised by the said will. The appellants (who are the heirs of Raja Ajit Singh) claimed to be entitled to the property in dispute in this appeal on the footing that Partab took only a life interest under the said will, and the respondents 4 to 9, who are devisees or transferees of or from Partab, contend that Partab took an absolute interest under the will.

The following pedigree shows the relationship of the parties to the present litigation :



The learned Chief Judge of the Chief Court of Oudh has given an account showing how Ajit Singh acquired the properties which he disposed of by his will. It is therefore not necessary to reiterate the same. It is sufficient to state that Raja Ajit Singh was a Talukdar of Oudh and his name was entered as such in the lists 1, 2 and 5 prepared under Section 8 of Act I of 1869.

The said will contains *inter alia* the following provisions :—

“ As I have got no self-begotten son so according to the powers given by the law of Government and under the custom prevailing in the province, I have to express my heart's desire by this will *subject to some provisions and restrictions* given below in order that, *on my death*, according to my desire this document may be acted upon without any dispute, viz., after my death my entire estate and property movable and immovable already acquired by me or acquired hereafter before my death *shall all vest* in Lal Partab Bahadur Singh, son of Sitla Bakhsh Singh, who, according to my experience, is very competent and worthy man, and I trust he shall follow all the religious principles of Hindus and shall pass his whole life in a good manner. Lal Partab Bahadur Singh *shall be my heir and successor*. The said heir *after* he has inherited me, shall be bound to abide by all the following terms.”

The italics are for the purposes of this judgment.

Then follow various terms which the testator Ajit said that the heir would be bound to follow. Clause 1 provides that the heir shall be bound to adhere strictly to the Hindu religion. Clause 2 declares that the heir shall have no power to transfer any immovable property bequeathed under the will, and further declares that the bequeathed *Taluka* entire and compact shall gradually descend to the successors of the legatee subject to the restrictions laid down as binding upon the legatee. Clause 3 directs that the legatee and his representatives shall have no power to alienate the properties. Clause 4 empowers the legatee to deal with the property acquired or purchased by him from

the income and savings of the property bequeathed. Clauses 5 and 8 are of great importance and are as follows :—

“ 5. If the legatee passes his period of life in accordance with my desire then after his death this estate and property, be it the *Ilaqa* acquired under *sanad* or obtained under a grant made by British Government, shall according to the rules of primogeniture subject to the above provisions and the terms of the *sanad* granted by Government pass to the successors of the legatee without *division and distribution* under clauses 1, 2, 3, 6 and 11 of Section 22, Act I of 1869. But the heir also, whoever he may be, shall be bound to abide by all these provisions whatever may be the law.”

“ 8. In executing this will the clauses 4, 5, 7, 8, 9 and 10 of Section 22, Act I of 1869 have been purposely avoided because the heart's desire of the testator is solely this, that the estate may remain with the *male heirs* of his *sombansi* family and the above said clauses are quite contrary and against this desire.”

Clause 7 declares that if the legatee or any of the successors of the legatee accepts any other religion, giving up the Hindu religion or contrary to the provisions of the will, transfers the property bequeathed wholly or in part, and in consequence thereof he is suspended under the orders of the Government or by suit filed by the rightful heir after it had been fully proved, then conditions of provision 5 shall at once attach to the inheritance.

On 1st May, 1922, Jagdeo Singh, who was the brother of Partab and father of the appellants, instituted the present suit in the Court of the Subordinate Judge of Partabgarh, alleging that Partab had only acquired an estate for life under the will of Ajit Singh, and that on his death the same passed to him (Jagdeo) as the heir of Ajit Singh. Jagdeo died during the pendency of this litigation, leaving his two sons, who are the present appellants. The Trial Court as well as the Chief Court of Oudh, held that Partab acquired an absolute estate of inheritance.

The appellants contended that in the earlier part of the will the words “ the properties shall vest in Partab ” and that “ Partab shall be my heir and successor,” are ambiguous and do not show any clear intention to create an absolute estate in favour of Partab. They further contended that clause 5 shows a clear intention on the part of the testator to create successive life estates in the manner provided by that clause, and this construction, they argued, is further borne out by a reference to clauses 1, 2, 3 and 7 of the will. Their contention, further, is that successive life estates are bad except in cases where such bequests are in favour of persons who are capable of taking the interest as “ purchasers ” under the will (*Tagore v. Tagore*, I.A. Supp. 47, at p. 66), and therefore that Partab only acquired an estate for life and on his death the estate vested in the original plaintiff Jagdeo Singh.

The respondents contended that the words “ property shall vest in Partab,” and that “ Partab shall be my heir and suc-

cessor," are clear dispositive words conferring an absolute estate in Partab, and that the subsequent clauses, *i.e.*, 1, 2, 3, 5 and 7 are merely conditions subsequent which are repugnant to an absolute estate and must therefore be rejected.

Attempts on the part of a testator in India to restrict devolution of properties which he bequeaths to a legatee absolutely and to prevent alienations of such properties are quite common, and wills containing such provisions have often come up for decision before the Board. The question for determination has always been whether there are dispositive words creating an estate of inheritance, in the first instance; and, if so, whether the subsequent restrictive clauses are sufficient to displace the effect of such dispositive words or whether such subsequent clauses are merely repugnant to the absolute estate. (*Bhaidas Shivdas v. Bai Gulab and another*, 49 I.A., p. 1.)

A large number of decisions were cited both by the appellants and the respondents, but they are useful only in so far as they lay down the principles of law which have to be observed in construing the present will.

Their Lordships of the Judicial Committee in *Sasiman Chowdhurain and others v. Shib Narayan Chowdhury and others*, 49 I.A., p. 25, at p. 32, said :—

“ It is always dangerous to construe words of one will by the construction of more or less similar words in a different will which was adopted by a Court in another case.”

The rule of construction embodied in Section 82 of the Succession Act of 1865, which applies to this will, is that where property is bequeathed to any person, he is entitled to the whole interest of the testator therein unless it appears from the will that only a restricted interest was intended for him.

The other rule of construction embodied in Section 74 of the Succession Act and also applicable to this will, is “ that the intention of the testator is not to be set aside because it cannot take effect to the full extent, but effect is to be given to it so far as possible.” Cases are not rare in which a Court of construction, finding that the whole plan of the donor of the property cannot be carried out, will yet uphold that part of it which gives effect to the paramount intention of the testator rather than hold that the will should fail entirely.

The question therefore is what was the paramount intention of the testator as expressed in this will. Reading the will as a whole, it appears that the testator's primary intention was to benefit Partab and his branch of the family. The testator further did not intend his immediate heir and the latter's branch of the family to have any interest in the estate. With that view he made Partab his heir and successor.

Now, a male heir when he inherits takes the estate absolutely, and it seems to their Lordships that the testator intended that Partab should have the same interest *as if Partab were his real heir*.

Their Lordships are of opinion that the words in the will "that the estate shall vest in Partab" and that he shall be the testator's "heir and successor" are clear dispositive words creating an absolute estate of inheritance in Partab, and they are further of opinion that the various clauses referred to above which were to come into operation after he had so inherited, must be regarded as an attempt to impose repugnant conditions upon the estate so created and are, therefore, void.

Their Lordships, therefore, hold that Partab acquired an absolute interest in the estate.

Their Lordships, however, are of opinion that the difficulty in the construction of this will has been caused by the language used by the testator himself, and they think that the costs incurred by all parties in this litigation in all its stages should come out of the estate. The respondents between themselves will be entitled to one set of costs.

Their Lordships will accordingly advise His Majesty that this appeal and the suit should be dismissed, but that the costs of the appellants and one set of costs for the respondents should come out of the estate.

In the Privy Council.

RAGHUNATH PRASAD SINGH AND ANOTHER

vs.

THE DEPUTY COMMISSIONER, PARTABGARH
AND OTHERS.

DELIVERED BY SIR BINOD MITTER.

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