

Privy Council Appeal No. 91 of 1934

Oudh Appeal No. 3 of 1933

Lal Durg a Bakhsh Singh - - - - - *Appellant*

v.

Rani Brij Raj Kuar - - - - - *Respondent*

FROM

THE CHIEF COURT OF OUDH AT LUCKNOW

REASONS FOR JUDGMENT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE
19TH MARCH, 1937.

Present at the Hearing :

LORD BLANESBURGH.

SIR JOHN WALLIS.

SIR GEORGE RANKIN.

[*Delivered by* LORD BLANESBURGH.]

This is an appeal from a decree dated the 11th January, 1933, of the Chief Court of Oudh at Lucknow in appearance modifying, but in principle, reversing a decree dated the 5th January, 1931, of the Court of the Subordinate Judge, Sultanpur.

The suit in which these decrees were pronounced was commenced on the 11th April, 1929, by the present respondent, the widow of the Raja Partab Bahadur Singh of Kutari, against the present appellant to recover payment of Rs.15,243 and accrued interest alleged to be due to the respondent for maintenance under a deed of gift of the 23rd May, 1926, made in favour of the appellant by his uncle, Baghwan Baksh Singh. By that deed amongst other provisions made for the appellant, and together also with benefits for the infant son of the donor, and for the respondent, the appellant, taking title thereto from the donor, was constituted in effect tenant for life of the Kutari estate, with the exception of two villages otherwise donated, but he was in return laid under an obligation to provide maintenance for the respondent at the rate of Rs.5,000 a year. It was in respect of his liability in this regard that the respondent's suit was brought.

The appellant's answer to the suit was that the deed of gift in question, with a deed of relinquishment of the Kutari estate of even date made by the respondent in favour of Baghwan Baksh Singh, was part of a fraudulent arrangement designed by the respondent and Bhagwan in the interest of the infant son of Bhagwan to deprive the appellant of the inheritance of that estate, to which as both well knew, he was entitled as the adopted son of the late Raja and as devisee under his will. To these allegations the reply of the respondent, confining that reply at present to the matters with which their Lordships must primarily concern themselves, was that the appellant, the nephew of the Raja, had never been taken in adoption by him: that the will of the Raja propounded by the appellant was a forgery: that the deeds of relinquishment and gift in question constituted a valid family arrangement, conceived in the interest of the appellant himself: that he had accepted the benefit of the arrangement: that except under the deed of gift he had no interest whatever in the Katuri estate and that as he had accepted title under that deed and was in actual possession under that title the maintenance claimed was indisputably due and payable.

The trial was a protracted one: and at the close of the evidence the two questions for decision and to which all else was subordinate were seen to be these.

1. Had the appellant proved his adoption by Partab Bahadur Singh, Raja of Kutari unregistered as that adoption was?

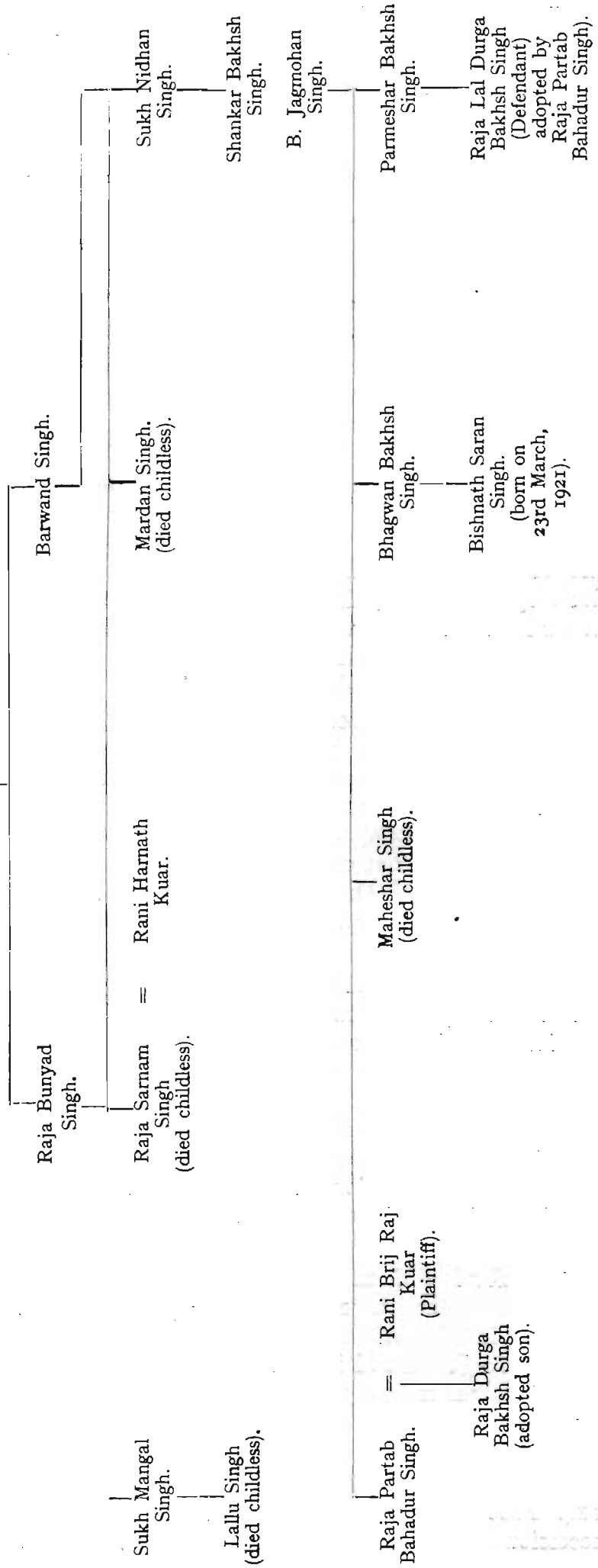
2. Had the will also unregistered of date the 28th June, 1918, propounded by the appellant been proved by him to be the will of the Raja?

Both of these questions the learned Subordinate Judge answered in the affirmative. The deed of relinquishment and the deed of gift also, he held to be a fraud upon the appellant and worthless as against him. But the respondent was by general law entitled to maintenance out of the estate and he accordingly decreed Rs.6,000 in respect of arrears and a sum of Rs.200 a month as the proper maintenance for the widow of a Raja to be paid by the appellant now that his succession to the Raj had been established as against the respondent.

On appeal from that decree the Chief Court, disagreeing with the learned Subordinate Judge, answered both questions in the negative, and, for reasons which the learned Judges gave, held the appellant bound, *in hoc statu*, by the terms of the deed of gift. The Court accordingly on the 11th January, 1933, decreed the respondent's claim in full. Hence this appeal.

The narrative of relevant facts upon which the Board must now embark is necessarily somewhat involved even when confined, as it will be, to those facts which have a bearing upon the two main questions at issue. The narrative, however, will be simplified by reference to the family pedigree which, as the most convenient in point of arrangement, their Lordships transcribe, as it appears in the appellant's printed case.

First Wife = RANMAST SINGH = Second Wife



The parties are Hindus, subject to the Mitakshara law as interpreted by the Benares School. It was with the Raja Surnam Singh named in the pedigree that the summary settlement of the Kutari estate was made. A sanad in respect of it was granted to the Raja on the 25th October, 1860.

One of the conditions of the sanad was that "the estate shall descend to the nearest male heir according to the rule of primogeniture, but you and all your successors shall have full power to alienate the estate either in whole or in part by sale, mortgage, gift, bequest or adoption to whomsoever you please." The wide generality of these words may not be without its significance in the present discussion.

On the 12th January, 1869, the Oudh Estates Act, No. 1 of 1869 came into force and the Kutari estate was made subject thereto. The name of the Raja Surnam Singh was entered as a Talukhdar in List 1 (No. 238) and also in List 2 (No. 105) prepared under section 8 of the Act. Little more than a month later, namely, on the 27th February, 1869, the Raja died without issue, predeceased by his two brothers each of whom had died without issue then living, but survived by his widow, the Rani Harnath Kuar, in whose favour he had made a will dated the 17th December, 1868, under which the Rani succeeded to the estate. She remained in possession until her death.

The true construction of the Raja's will, with special reference to the nature of the interest in the estate taken under it by the Rani was in both Courts in India the subject of prolonged discussion—the appellant's contention broadly being that the Rani's interest in the estate was an absolute interest: that of the respondent being that it was a life interest only. The decision of both Courts was that the Rani under the will took in the estate an absolute interest.

Their Lordships were not invited to review that finding. Its relevance upon the two questions now at issue, not perhaps immediately obvious, will emerge, presently. For the moment it is enough to say that no finding as to its meaning can deprive of their effect the final and very significant words of the will, in which the Raja declared that the Rani "shall be competent to appoint a successor for this Raj from amongst the near relations of my family". In these words may lurk the explanation of much that subsequently happened.

The Rani died on the 5th May, 1885, and notwithstanding a contention to the contrary put forward by the appellant in his written statement, it was held by the Subordinate Judge and it is now common ground that she was a Talukhdar and that the estate throughout her life was, and at her death remained subject to the Act.

She was succeeded in the Raj by the Raja Partab Bahadur Singh—later the respondent's husband—then a boy of 14. *Pace* the appellant, there is no mystery about Partab's succession or the circumstances which led to it. The story

is told in the mutation proceedings which followed upon the Rani's death and in official documents which then passed and remain on record.

It was to an act imputed to the Rani herself that the succession of Partab Bahadur Singh and not of another was due. She, acting presumably under the power conferred upon her by the last words of the Raja's will, is definitely represented to have declared Partab Bahadur Singh to be her heir—although no record is so far forthcoming of when or how she did so. The respondent in her replication alleges that the declaration was made in a deed dated the 18th April, 1886, but the learned Subordinate Judge records that no proof of such a deed was adduced before him and no print of it appears in the record. As is seen in the pedigree, Partab Bahadur Singh was himself, according to the rule of primogeniture, fourth only in the order of succession in Raja Surnam's family. His great grandfather—Sukh Nidan Singh—then still alive was the next heir: his grandfather Shankar Bakhsh Singh was second: his father B. Jagmohan Singh was third: he himself, the eldest son of his father came next. These facts were brought to the notice of the Deputy Commissioner by a report of the Tahsildar of the 18th May, 1886, and that officer was as a result directed to inquire of the three heirs prior in estate to Partab Bahadur Singh whether they were willing to relinquish any rights of theirs in favour of the nominee of the Rani. And they did relinquish all their rights. By a registered deed of the 8th June, 1886, these three forebears of Partab Bahadur Singh thereby after reciting that the Rani had before her death appointed him "and expressed a wish that he should become her successor and heir", relinquished in the amplest terms, "owing to the aforesaid wish of the Rani" in favour of Partab all right and claim which each of them had in the estate and they gave to him all the land and movable and immovable property of every sort to which each of them respectively became entitled at the death of the Rani. Next, following still the course of Partab's accession to the Raj, there came an application for mutation put forward by another member of Raja Surnam's family, Har Duth Singh, who claimed the estate against Partab. But this claim was rejected on the 21st July, 1886 (Record p. 259) on the ground that the claimant was not under the Act of 1869, a person so entitled.

Finally on the 8th June, 1886, an order was made by the Deputy Commissioner of Sultanpur declaring Partab Bahadur Singh to be *prima facie* entitled to the property and ordering that he be put in possession and that all necessary entries in the Revenue records be made. And on the 8th November, 1886, an appeal from that order was dismissed by the Commissioner.

The order of the 8th June so finally confirmed was followed on the 21st September, 1886, by a communication from the Secretary to Government, N.W.P. and Oudh, intimating to the Commissioner, Bareilly Division, that as the

father and grandfather and great-grandfather of the minor, Partab Bahadur Singh were understood to have waived their claims to the title of Raja, the minor might be officially addressed as Raja and so styled in public documents.

And thus, a possession avowedly under the Act—the fact which is for present purposes all important—was given to Partab Bahadur Singh and his possession of the Kutari estate with the title of Talukhdar recognised by Government continued, unbroken and undisturbed until his death on the 28th September, 1918, more than 33 years later. Their Lordships do not find in the judgments either of the learned Subordinate Judge or of the Chief Court any reference to this most striking and important fact. The complete neglect of it makes difficult of acceptance the conclusion reached by both courts that Partab Bahadur Singh's possession of the Raj commenced—at the age of 14 be it observed—in a conscious trespass which ripened into ownership only by limitation. Their Lordships, will refer later to the major significance of the above, in its relation to the issue of adoption now in debate.

The appellant, claiming in the suit to have been adopted by Partab, was the natural and only son of his youngest brother—Parmeshar Baksh Singh. There has been some question as to the appellant's exact age. It seems to be agreed now, however, that at the date of the deed of gift he was 18 years and 3 months old, that is to say, he was then major. Until the birth of a son to Bhagwan years after the Raja Partab's death, he was, in the family, the only male of the next generation. He was throughout the Raja's life in that generation his heir presumptive. His mother died when he was very young and he came to live with the Raja and the respondent. The evidence shows that they were both attached to him: they were at pains as to his education in schools suitable for a boy of good family and the respondent after the Raja's death interested herself very actively in his marriage. In her evidence the respondent was perhaps over-anxious to show that the attentions of the Raja and herself to the appellant were not more pronounced than were their attentions to other collateral members of the family. But the respondent, the Rani, has become embittered by the appellant's quarrel with her. Their Lordships on this subject of their relations to each other prefer the general evidence to the effect stated.

Parmeshar Baksh Singh, father of the appellant died six months before the Raja. The Raja at his own death was no more than 47—an early age which made an adoption two years earlier at the least unlikely. Baghwan Baksh Singh was the only brother to survive him. In the absence of any will—the will propounded by the appellant was first produced on the 29th October, 1929—more than 11 years after the testator's death—and ignoring for the moment the possibility of the existence of an adopted son, Baghwan was the Raja's next heir. Baghwan had still no son of his own, and

he seems to have waived all his claims in favour of the Raja's widow—the respondent. The proceedings as a result of which mutation was effected in her name are interesting from this point of view. The claim was made by the respondent “on the ground of inheritance”. As the matter related to the Taluka—this statement is not unimportant as showing that the estate was regarded as being then under the Act—the claim was transferred to the Sub-Divisional Officer (Record, p. 290). The heirs in succession to the respondent were stated to be (1) Babu Burgwan Baksh Singh: (2) the appellant “real nephew of the deceased [the Raja]” born on 31st January, 1907. In the course of the proceedings a question arose as to the devolution from the deceased Partab Bahadur Singh of the hereditary title of Raja—his own right to the title was on all hands taken for granted—and in an official report to the Deputy Commissioner, dated the 5th of March, 1929, it was stated that under the Act of 1869, Baghwan had a superior claim to succession over his Rani, the respondent, but that according to the custom of the family, Bhagwan had waived his right in favour of the respondent. As he had no property in his name he could not inherit the title of Raja without getting the Taluka. Moreover the appellant—he is described, be it again observed, as the nephew of the deceased Raja and the son of his third brother—was left by the late Raja and the respondent “as an heir”. “It seems to me”, the reporter proceeds, “that when this boy grows up the present Rani will declare him as her husband's heir and she will then apply with the consent of Babu Bhagwan Baksh Singh that the title of Raja may be given to him”—a consummation which, strangely enough, has resulted from the deeds of renunciation and of gift now repudiated in the respondent's suit by the appellant.

Mutation in favour of the respondent accordingly was made on the footing alleged. Her name was shown in the last column of the Durbar list “like other lady Talukhdars. On her death the late Raja's brother or the latter's son” [a slight error this, but there is no doubt that the appellant is referred to] “will succeed to the estate as the nearest heirs.” See plaintiff's exhibit 227, 19th December, 1918, an interesting contemporary official record of the position, the accuracy of which their Lordships find in the record nothing effective to displace.

And so things went on: the appellant after the Raja's death remained in the care of the respondent, the Rani, just as he had been in the care of the Raja in his lifetime, the estate being managed by the respondent assisted by Bhagwan. And then on the 23rd of March, 1921, two and a half years later, a son—Bishnath Saran Singh—was born to Bhagwan. The Rani's case as from this event is,—and if her denial of any knowledge that the appellant had been adopted by Partab is true, their Lordships see no reason for doubting its correctness—that following the birth of his own son Bhagwan's attitude towards the estate gradually

changed, and that in the interests of his son, he finally set up his own claim to the Raj which for himself he had been willing to waive in favour of the respondent at the time of his brother the Raja's death. It was his insistence upon this claim, such is the respondent's case, which brought about mainly at her instance and as a settlement of all questions, the deed of renunciation and the deed of gift of the 23rd May, 1926, already mentioned, the foundation of the respondent's claim in her suit.

Their Lordships find it convenient to refer in passing to some striking features of the arrangement effected by these deeds. It is made clear by the evidence that they were prepared with much care and under eminent and responsible legal advice taken by the respondent. One feature of them is specially notable. Bhagwan, characteristically it may almost now be said, retains under them for himself no personal interest in the estate. More than adequate maintenance is provided for the respondent: Bhagwan's infant son and his issue become the ultimate owners of the entire Raj, and one village is made immediately available for that son's maintenance: the appellant remains for his life Talukdhar of the estate other than two villages and provision is made out of one of these for his issue after his own death. For Bhagwan himself there is nothing.

It is said by the appellant that the handsome provision made for him by the deed of gift is conclusive evidence that he was and was known to be the adopted son of the Raja. "Why otherwise," he asks, "should any provision at all have been made for me?" Their Lordships after a consideration of all the evidence, and in particular the evidence of the respondent, think it only right to say that they do not accept that reasoning as, in any degree, convincing or even plausible. Whether the appellant's success in his main contentions—the establishment, that is to say, of his claim to be the adopted son of Raja Partab and the devisee under his will—would enable him to have these deeds set aside as against himself is another matter on which at the moment their Lordships say nothing. But, how does the arrangement, apart from these contentions stand? In fairness to the respondent and Bhagwan now dead their Lordships desire to place on record their views on that subject. The result of the arrangement as will have been seen was that Bhagwan, retaining for himself no interest in the estate, had made a second renunciation as complete as his first, but this time not in favour of the Rani alone but in favour of his own infant son and of the appellant as well. Nor in the circumstances were the concessions in favour either of the Rani or the appellant—made as they were mainly at the expense of Bhagwan himself, quixotic either in relation to the one or the other. Let it be remembered that Bhagwan's claim to the whole Raj, apart altogether from any adoption of the appellant or any will by Partab in his favour, was not undisputed. There was a suggested custom in the family which favoured the Rani. Again, the provision now made for the Rani to whom, when he was sonless

Bhagwan had relinquished everything, was made without any injury, so long as he himself lived, to any interest of his son. And the same was true of the provision made for the appellant, which at the worst postponed in enjoyment but in no way destroyed that son's interest in the estate as a whole. When all these things are considered, there seems to be, in their Lordships' view, nothing unreasonable, or improbable or even imprudent in Bhagwan's action in agreeing to the qualified provision out of the estate of substantial compensation for the Rani, the then Talukhdar, and for the appellant with whom he had been so long associated as heir presumptive to the Raj. What more natural than a desire on his part to provide compensation for the disappointment of both, if such provision could be made, as it was, without undue injury to any immediate interests of the new heir, his son?

The respondent testified to the complete honesty of the whole transaction. Bhagwan, latterly it appears, of feeble mind, died in the course of the trial and could not be called as a witness. It is unfortunate perhaps that one or other of the distinguished lawyers on whose advice the transaction was carried through were not called to explain it. Everything on the record, however—their Lordships cannot of course go beyond that—leads them to the conclusion that—the appellant's adoption apart—the ultimate claim of Bhagwan's infant son to the Raj was, if he survived his father, such that it was nothing less than a counsel of prudence for the respondent, with the consent of Bhagwan obtained, to effect for herself and for the appellant a settlement so highly beneficial as, *rebus sic stantibus*, this was. For the allegations of fraud, undue influence, collusion and the like charged against the respondent and Bhagwan in connection with these deeds, their Lordships can find in the record no justification whatever, and they deplore, in relation to these charges, what they will have to animadvert upon at a later stage in relation to other matters that the appellant should persist in them when he neglected or refused to tender himself as a witness to support them on oath.

The appellant took full benefit of the deed of gift. Mutation of names was effected in his favour: to give the deed full effect he retransferred to Lal Bishunath Saran Singh the infant child of Bhagwan the village by the deed assigned for his maintenance describing himself in his deposition as "son of Parmeshur Baksh Singh," then being resident at and Talukhdar of Kutari, all in strange contradiction, as will presently be seen, to the assertions which in this suit he has made, with reference to his adoption by Raja Partab and that the estate had been outside the Act of 1869 ever since the year 1885 on the succession of the Raja Partab following the death of the Rani Harnath Kuar.

The appellant paid to the respondent maintenance under the deed of gift to the extent of Rs.700 for the year 1926 but he made no further payments for that year nor any at all for the years 1927 or 1928. There was a quarrel

between him and the respondent and he separated himself from her in 1928. On the 2nd April, 1929, as already stated, her suit was commenced against him claiming these arrears.

Their Lordships now approach the two main answers already mentioned made by the appellant to that claim. They are thus set forth in para. 21 of his written statement :

“ Raja Partab Bahadur Singh in his lifetime, after performing religious ceremonies installed the defendant on the *gaddi* and under the deed of will, dated 28th June, 1918, declared the defendant as his heir.”

The Chief Court in its judgment, and with good reason, points out that in this paragraph the appellant does not particularise any definite date or even any definite year for the alleged adoption. Nor was it until the 15th of July, 1930, some 15 months later that any specification of its date was made: and even then, nothing more definite than that the appellant was adopted 14 or 15 years before. This reticence is of real significance when the divergent character of the oral evidence supporting the adoption, particularly in relation to the date of the event, falls to be considered.

The form of the plea, however, indicates clearly enough, and it turned out to be the fact, that there was neither deed nor registration of the alleged adoption forthcoming. It followed that if the Kutari estate had at its date been subject to the Act of 1869, its non-registration would have been fatal to its validity even if the ceremony of adoption had in fact been sufficiently proved. Nor in the same event even if its execution had been sufficiently proved, would the alleged will of the Raja have stood the appellant in better case, for it, too, had not been registered. Hence arose, as already indicated, the disputation with reference to the title of the Rani Harnath Kuar to the estate under the will of Raja Sarnam. If it could be shown that the Rani's interest thereunder was absolute the appellant as will presently be seen would have taken one step towards establishing the fact essential to his case, that at the date of the unregistered adoption which he was setting up the estate had ceased to be under the Act. And herein lies the significance of the decision of both Courts already recorded, that the Rani Harnath Kuar under the Raja Sarnam's will took in the estate an absolute interest. As they have said their Lordships were not asked to review that finding. In accepting it, as they must, they remember also the will's concluding words already cited, which formed in their belief, as they have stated, the foundation of Raja Partab Bahadur Singh's accession to the Raj.

Based however on the finding that the interest of the Rani Harnath Kuar in the estate was absolute, the further case of the appellant may be paraphrased as follows:

The Rani had died intestate entitled to an absolute interest in the Raj. The estate at her death still remained subject to the Act—so much had now to be conceded—but thereunder it devolved on her own heirs in accordance with section 22. She was in fact survived by two brothers, Beni

Singh and Fateh Singh. The elder of these was her rightful heir. Both brothers had left descendants. So long as any one of their line survived the collaterals of the Raja Sarnam Singh were excluded from succession. Partab's claim to the estate was only as a collateral of Raja Sarnam Singh. Accordingly he did not inherit the estate. He was no better than a trespasser. By getting possession he broke the fetters imposed by the Act and the estate thereupon went out of the Act. His possession was *ab initio* adverse to the rightful heir the brother of the Rani and his descendants and had ripened into ownership merely by limitation.

Both Courts took that view. Partab Bahadur Singh, the learned Judges of the Chief Court, say "acquired a title by adverse possession extending over a total period of 32 years. It follows from our view that the estate in the hands of Partab Bahadur Singh was not governed by the provisions of the Oudh Estates Act."

Upon the question how far that conclusion calls for modification by reason of the last clause in the Raja's will, and by reason of the assumption on all hands at the time, that a declaration by the Rani Harnath Kuar in favour of Partab Bahadur Singh had been really made, the learned Subordinate Judge, treating the deed of 16th April, 1886, mentioned in the replication as being the only place where as alleged the declaration was to be found, thought it enough to say that the existence of that deed had not been proved. As to the Chief Court its answer is found in a passage in the judgment in which, after describing the statement of the Rani's action contained in the application of the 6th June, 1886, and in the deed of relinquishment of the 8th June, 1886, as amounting to "some suggestion that she nominated Partab Bahadur Singh as her heir," the learned Judges continue:

"There is nothing, however, outside the contents of those two documents to show that Rani Harnath Kuar ever nominated Partab Bahadur Singh as her successor and the learned Subordinate Judge found it not proved that she did so. In any case she could not as a Talukhdar orally appoint Partab Bahadur Singh as her heir having regard to the provisions of section 13 of the Oudh Estates Act (1 of 1869). No oral appointment by Rani Hari Harnath Kuar of Partab Bahadur Singh as her heir is therefore proved, nor if it were proved would it have been valid."

To their Lordships this treatment by the learned Judges of a very difficult point is inadequate. No reference is made, it will be noticed, to the express words with which the will of the Raja concludes—it almost seems that these words were not brought to the learned Judges' attention—nor is any regard had to the presumption, justifiable perhaps at this distance of time, that the action attributed to the Rani, and accepted and acted upon at every hand, was based upon fact. No question is raised as to any invalidity in the power conferred by the will: nor is any reference made to the possibility, it may be no more, that it was owing to this action of the Rani that no claim to the estate was either then or since made by her brothers or either of them, or their respective

descendants. If the statement that Partab Bahadur Singh—a boy of 14—took possession as a trespasser, is intended to be a finding that he consciously did so, and that with his title of Raja recognised by Government and with constant official recognition of his position as Talukhdar for 33 years he did not believe himself in relation to his estate to be subject to the Act throughout—then in their Lordships' judgment there is no justification in the evidence for such a finding. And even if it be true that the possession of Partab Bahadur Singh was in law originally, albeit unconsciously, possession without title, no consideration has been given to the further question whether the estate, throughout treated both by Government and by the Raja as being under the Act, was not, if ever outside the Act, brought back within it when after 12 years possession a complete title to the estate had by limitation been acquired. It was assumed on all sides that the estate was under the Act when many years later mutation was effected in favour of the respondent: it is apparently so assumed now when the appellant is styled Raja. It then may fairly be asked, if the estate was ever beyond the Act—when did it again become subject to it? This change must have taken place, if at all, long before the alleged adoption. Their Lordships feel that these are very pertinent questions which demand an answer before it can be decided that the alleged adoption of the appellant, unregistered as it is, could, even if otherwise proved, be held to have any effect, and no regard to any such questions has been paid by either Court in India.

But their Lordships do not find it necessary to answer them. They will not treat the adoption as void merely because of non-registration. But they will regard the fact that the alleged adoption was not registered as a fact entitled to great weight in the consideration of the question whether the adoption ever took place at all. Raja Partab Bahadur Singh must in their judgment have at least believed that no adoption by him, unregistered, could have any validity whatever. To impose upon him an unregistered adoption, except on the clearest evidence of the fact that it took place might work a grave injustice.

This leads their Lordships now to consider whether the appellant has proved as a fact that he was ever adopted by the Raja Partab Bahadur Singh. Very many witnesses were called: very many documents are in evidence: their Lordships have re-investigated the whole question with care, and in the result approaching the question as they feel it should be approached they are satisfied that no other conclusion is open to them than in agreement with the Chief Court, to say that the adoption has not been proved. The learned judges of the Court have tabulated the facts with infinite care and their conclusions based upon them are in their Lordships' judgment irresistible. No useful purpose would be served by their Lordships going over the same ground again. Very particularly are they impressed by the fact that an adoption now alleged to have been so conspicuous was never known to nor suspected

by Government and by the acts on the appellant's part almost without number which, on the face of them entirely negative any idea that he had become or believed that he had become the adopted son of the Raja. The respondent for instance swore that she and not he performed the sapinda for the Raja: and that he the appellant performed the sapinda for his natural father who died, it will be remembered, in the life-time of the Raja Partab, and a year after the date now fixed for the alleged adoption of the appellant by him. Very striking also is it that so far as the evidence goes the books of the Raj contain no entry of the expenses of the alleged adoption although witnesses for the appellant made the existence of these alleged entries the strong point in their evidence.

If the appellant had confidence in this part of his case it is difficult to understand why when proof of that fact had entirely failed he did not insist upon production of all the Raj books for more careful inspection.

But this method of conducting the appellant's case is characteristic. Their Lordships have already alluded to the failure on his own part to support by his own evidence his allegations of fraud and undue influence in relation to the deed of gift. Equally notable is his absence from the witness box—quite deliberate as is shown by the record—in relation both to his alleged adoption and to the will of Partab Bahadur Singh which he propounded in the circumstances presently to be referred to. The case against adoption, judged merely by his own conduct at every stage, is almost overwhelming. He has elected to leave that conduct of his entirely without explanation. If his failure to give evidence was attributable to a reluctance to testify shared with many Indians of high caste, that is unfortunate, because in the present case his failure to testify has strained judicial credulity to breaking point.

The absence of the appellant from the witness box in this suit leads to inferences as to the honesty of his case which, of themselves, are well nigh fatal to the possibility of its success. So manifold are the facts which required explanation, that the judicial inference is almost irresistible that his case is not, and, in any of its three parts—the fraud of the respondent in relation to the deed of gift, the alleged adoption, and the alleged will of Partab—has never been an honest case.

The only answer of substance to this view is that it involves so it is said a finding of deliberate perjury on the part of some witnesses of high position, who amongst a cloud of unconvincing testimony deposed to the ceremony of adoption, with apparently no interested purpose of their own to serve.

Their Lordships might have taken a different view of this aspect of the case, had the evidence against adoption been less overwhelming than it is. They do not forget the ruling of this Board in *Ramamani Ammal v. Kulanthai*

Nauchear (14 Moore's I. A. p. 346). But with that opposing evidence standing they are led to discount the affirmative evidence of the witnesses referred to without thereby imputing to them deliberate perjury. They remember a fact not alluded to in the judgments below, that the appellant who seems always to have been treated by the Raja Partab, as his heir, might easily be supposed by them, after a lapse of many years and with a little suggestion, to have been the subject on some occasion of a ceremony of adoption. But however this may be, their Lordships are clear in their conclusion that no adoption has, in fact, been proved.

Nor has the will of Partab Bahadur Singh propounded by the appellant been proved as their Lordships think, to be the will of the Raja.

The will itself is a strange document. Beginning with a statement by the testator—then only 47—that he had no son nor was there then any hope that he would have one, it proceeds:

“ I have adopted out of my own will Lal Durga Bakhsh Singh, son of Babu Parmeshur Bakhsh Singh who is my own nephew and do hereby make a will in writing in favour of the said Lal Durga Bakhsh Singh in respect of the whole property movable and immovable and the entire Kutari Estate” [The testator goes on somewhat inconsequentially], “ and I further agree that if perchance a son is born to me then he shall be the owner of the estate and shall get all rights, that if no son be born to me then after my death as long as Lal Durga Bakhsh Singh remains minor, Rani Brij Raj Kuar shall be the manager of the estate, that when Lal Durga Bakhsh Singh attains majority the said Rani Brij Raj Kuar shall get mutation of names effected in his favour, that Lal Durga Bakhsh Singh himself shall have the power to get mutation of names effected in his name in respect of the entire Taluka and other property and that Lal Durga Bakhsh Singh shall pay maintenance allowance to Rani Brij Raj Kuar till her life according to her status.”

By the respondent it is pointed out with reference to this will, that almost, if not entirely otiose, had there been an adoption, it might be useful to prove even an undated adoption under the testator's own hand and be useful also to explain, had there been an adoption, the action of the respondent in obtaining mutation in her own name and in assuming management of the estate after the Raja's death, a course of procedure on her part which was taken, their Lordships are on the evidence satisfied, in the circumstances already described and with no reference whatever to the appellant or to this will of which the respondent, as she swore in evidence, had never heard. In these circumstances the clearest evidence of the genuineness of the will was called for from the appellant and on that issue, his case was, at best a poor one. The evidence that the signature of the testator is genuine is, their Lordships think, as good or as bad as is the evidence that it is a forgery. More serious is it that although two out of the four attesting witnesses to the will are still alive, one only, and he a person whose association herewith with the will was strangely fortuitous, was put into the box. The other upon whose integrity doubt was cast by the

respondent was not called, although subpoenaed by the appellant. The answer that he was also subpoenaed by the respondent and not called by her is surely no answer. The burden of proof was on the appellant. But, most serious of all, this will, of which the respondent, as she swore, had never heard was not produced until the 29th October, 1929. The witness D.W. 36 who testified to its discovery said that in February, 1927, he was told by the appellant to find the will and the horoscope in the muniment room of the Raj and that on searching he did find them there. On that it was essential for the appellant to explain how he knew of the existence of a will of which, so far as the record goes, (if the general evidence on this point of the appellant's father-in-law is discounted, as it may well be,) no one else had ever previously even heard.

It was recognised by learned Counsel for the appellant that if his appeal failed on the two questions dealt with in this judgment it was not to his interest further to contest the decree of the Chief Court. In other words it is better for him on that footing that the deed of gift should remain binding upon him.

On the whole case therefore their Lordships are of opinion that the appeal entirely fails and that it should be dismissed with costs.

And their Lordships have so humbly advised His Majesty.

In the Privy Council.

LAL DURGA BAKHSH SINGH

v.

RANI BRIJ RAJ KUAR

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