Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Seth Jaidial v. *Seth Sita Ram, and Seth Sita Ram* v. *Seth Jaidial (two Appeals consolidated) from the Court of the Judicial Commissioner, Oude; delivered 9th July* 1881.

Present:

SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

In this case the Appellant Seth Jydial, the Plaintiff below, is the nephew by birth and the son by adoption of the cross-Appellant Seth Seetaram, the Defendant below. The suit was instituted for the purpose of ascertaining and enforcing the rights and interests of Jydial as against Seetaram in certain moveable and immoveable property which has been the subject of a number of family transactions from the year 1864 onwards. The history of the case prior to the year 1864 may be briefly stated.

Seth Lalljee a landowner of Oudh had two sons, the elder of whom was Moorli Monohur, and the younger Seetaram. Moorli again had two sons, of whom the elder was Rughobardial, and the younger Jydial. Seetaram has never had a natural son. Up to and after the annexation of Oudh in the year 1856 the family was undivided, and it possessed ancestral estate which included the talooks of Moizuddeenpur and Chandpur. At the time when the mutiny was

suppressed Lalljee was dead, and Moorli was the head of the family. He then took steps to procure a settlement with himself or his two infant sons, and a sunnud to himself, so as to constitute himself the sole owner of the ancestral estate. These proceedings on Moorli's part led to counter proceedings on the part of Seetaram, which came before the Revenue officers on several occasions. The dispute was also referred to arbitration, and in the month of May 1863 the arbitrator made an award substantially in favour of Seetaram's contention that the lands in dispute were joint ancestral property.

A large portion of the evidence and of the discussion in the Courts below and here has been addressed to the question which of the two disputants had the stronger case. For the present purpose that question, which is an intricate and puzzling one, is not very material. It is sufficient to say that the award does not appear to have settled the matter, and that in the month of September 1864 Moorli was still asserting his sole ownership and Seetaram claiming to share the property. In that state of things an arrangement was come to, the true interpretation of which is the substantial question in this suit.

On the 25th September 1864 Moorli was on his death-bed. It would seem that his son Rughobardial had attained majority, and that Jydial was about 11 years old. On that day the family met together, when four documents were framed which are now to be construed.

The first (Exhibit C 6) is called Moorli's will, and is as follows:—

"I Seth Murli Manohur son of Lalji caste Khattri, talukdar of Moizuddinpur Chandpur Sandah Sarangan Kathgara &c. in the district of Sitapur, declare that whereas I have been suffering from ill health for a long time, I have with a view to prevent a dispute between Raghubar Dyal and Jaidyal in future come to the following determination: Raghabur Dyal my eldest son will after death succeed to the whole of my

property, consisting of cash goods &c. and my debt and credit account.

Moizuddinpur, comprising principal villages and those included therein.
Sanda ditto, ditto, ditto.
Sarayan ditto, ditto, ditto.
Chandpur, comprising principal hamlets and those included therein.
Dari Nagra ditto, ditto, ditto.
Jungle grant.

"With regard to the talukas mentioned in the margin, Raghubar Dyal, who is elder of the two, will (after the village and talukdari expenses and Government demand have been paid) get $\frac{9}{16}$, and Jaidyal $\frac{7}{16}$, of the net profits, and the kabuliyatdars as they are at present, and in this proportion the net profits of those talukas will be divided in which their names have not been registered.

"After this determination had been come to, Seth Sita Ram with my consent adopted my younger son Jaidyal and executed a deed of adoption under the rules in force. Sita Ram will therefore be his protector and guardian like me, but in case of a dispute arising between Raghubar Dyal Jaidyal and Sita Ram a partition will be made in the above proportion. When a partition is made the villages of Katra will go the share of Raghubar Dyal.

"By this will every deed affecting the proprietary right in land existing up to date is cancelled. The parties above named are required to conform to the provisions of this will without quarrelling. After the partition is made each will pay for his own expenses.

"I have therefore executed this will that it may serve as a document, and prove of use when required.

"Out of the Government promissory notes Jaidyal will get his share to the value of 18,000, the remainder will go to Raghubar Dyal.

"I make over Jaidyal with his share above specified to Sitaram.

"Raghubar Dyal and Jaidyal have been joint owners of the elephant horses bullocks cows appurtenances of the kitchen clothes and other necessaries of life, and they are the owners of these things in the proportion of $\frac{9}{16}$ and $\frac{7}{16}$.

"Signature of Murli Manohar Seth, in Hindi.
"Signature of Sita Ram Seth, in Hindi.
"Signature of Raghubar Dyal, in Hindi."

The second (Exhibit C 7) called an acquittance Roll is as follows :—

"I Seth Sitaram son of Lalji caste Khatri, talukdar Moizuddinpur in the district of Sitapur do herein declare that whereas Seth Murli Manohar my brother has this day executed a will regarding moveable and immoveable property about which there existed a dispute between me and him, and I having approved of the same have no more claim against him or against his son Raghubar Dyal with regard to goods cash zemindari or accounts of debt or credit.

"I have therefore executed this deed of acquitance that it may serve as a document and prove of use when required.

"The above written in Persian character is genuine.

"(Signed) Sita Ram Seth."

The third (Exhibit C 8) being a deed of adoption is as follows:—

"I Seth Sitaram son of Lalji caste Khattri, talukdar of Moizuddiupur Alahna Mahooa Kola &c. do herein declare that whereas I have no male issue I have adopted Jaidyal, son of my brother Murli Manohur, as my son, with a view that he may perform the ceremonies prescribed by the Hindu law; I have conferred on him all the legal and proper powers. I hereby declare that Jaidyal my adopted son will inherit the whole of my estate both moveable and immoveable and no one else will interfere or have a claim to the same.

"Should I be blessed with a son hereafter, Jaidyal will get half, and the other half will go to my son.

"I have therefore voluntarily executed this deed of adoption that it may serve as a document and prove of use when required.

"This is a genuine document.

"(Signed) SITARAM."

The fourth (Exhibit C 9) is called Seetaram's will, and is as follows:—

"I Seth Sitaram talukdar of Alahna Mahoo Kola tahsil Misrik in the Sitapur district do herein declare that whereas I have received the aforesaid estate from Government for faithful services rendered by me, it has been determined with a view to prevent future disputes that Raghubar Dyal should get $\frac{9}{16}$ and Jaidyal $\frac{7}{16}$ of the estate. Should a dispute arise between Raghubar Dyal and Jaidyal, they will divide the estate between themselves in the same proportion, and as long as they are on amicable terms they will divide the profits under the terms of the will executed by Seth Murli Manohar.

"I have therefore executed this will that it may serve as a document and prove of use.

"This is a genuine will.

"(Signed) SITARAM."

Before attempting to construe these documents, it is necessary to state the outcome of the disputes which have ensued upon them.

Moorli died the day after the arrangement was effected, and quarrels broke out again very soon after his death. On the 14th of September 1865 Seetaram filed a plaint against his two nephews and others, in which he sought to set up the award of August 1863, and to cancel Exhibits C 6 and C 7. But he very quickly abandoned his attack, and in November 1865

came to an agreement with Rughobardial to divide Moorli's estate in the proportions of nine annas to Rughobardial and seven to Seetaram. This compromise was affirmed by a declaratory decree passed in the suit on the 10th of February 1866. The interests of Jydial were protected by the following directions:—

"That no part of the property the subject of partition shall be alienated to any third party pending decision of a suit to be instituted on behalf of Jaydial the minor and adopted son of Seetaram Plaintiff to determine whether he is or is not entitled by the will of his natural father or otherwise to the property specified therein as his share, so that the same may be held for him as a proprietor till he shall have come of age, leaving the parties to be fully bound thereby or by this consequent decree as between themselves, so that whatever more than Jaidyal's rights is now decreed to pass between them shall not be affected by any decree he may secure, and what is included in his rights shall stand as transferred to him instead of as by this decree to his adopting father the Plaintiff Seetaram and that a curator be immediately appointed by the Civil Court to lay suit on behalf of the minor Jaydial, unless Sitaram Plaintiff file a satisfactory admission of the rights that may be claimed for the said minor Jaydial."

The next step was that in June 1867 Seetaram instituted a suit against Rughobardial alone, to enforce the declaratory decree of February 1866. Rughobardial resisted on the ground that Seetaram was only a trustee for Jydial, but a decree was made against him on the 30th of July 1867.

Rughobardial then applied for review of the decree of February 1866, mainly on the ground that in November 1865 when the compromise was arranged he was the infant ward of Seetaram. Seetaram was the sole Respondent to this application. The point was decided against Rughobardial, and his application was dismissed by the Civil Judge of Lucknow in the month of August 1868. He then appealed to the Court of the Judicial Commissioner; the case was heard by that officer Sir George Couper, sitting with Colonel Barrow the Financial

Commissioner, and under their advice a fresh compromise was arrived at.

In pursuance of this compromise a decree was passed on the 30th March 1869, to the following effect :—

"We declare Jydial to be the adopted son of Sitaram. We declare that the whole of the property directed in Murli Munohur's will dated 25th September 1864 to be divided in the proportion of $\frac{9}{16}$ to Rughuberdial and $\frac{7}{16}$ to Seetaram, shall be so divided, the village Kootrah to form part of Rughuberdial's nine-anna share.

"And in accordance with the express wish of the parties recorded before us this day we declare that the remainder of the property, whether mentioned in the will or not, after deducting all legitimate costs including the fees of one pleader on each side, shall be divided into three shares, of which Rughuberdial shall take two shares and Seetaram shall take one share.

"The jewels which have not been given to the ladies of the family shall be subject to division in the same proportion, viz. two thirds to Rughuberdial and one third to Seetaram."

The decree is headed, In the case of Seth Rughobardial (Defendant), Appellant, *v.* Seth Seetaram (Plaintiff), Respondent, and is signed by Sir George Couper and Colonel Barrow. By a subsequent minute, dated the 18th of April 1870, these two officers declared that their intention was to divide the estate of Mahooa Kola which is the subject of Exhibit C 9, in the same way as the property which by Exhibit C 6 is divided between Rughobardial and Seetaram in the proportions of nine and seven annas.

The partition directed by the decree of the 30th March 1869 has been carried into effect. On the 1st of June 1870 the Deputy Commissioner ordered that Rughobardial should be put into possession of a nine-anna share of Mahooa Kola, and that Seetaram and Jydial should retain a seven-anna share. And the sum of Rs. 48,000 has been awarded to Seetaram as his share of Moorli's moveable property.

In September 1871 Jydial attained his majority. In the year 1875 disputes arose between him and Seetaram, and in 1876 he filed a plaint in the Court of the Deputy Commissioner against Seetaram, asking for a declaratory decree to the effect that Seetaram was a trustee for him of seven annas of both Moorli's land and Mahooa Kola and had no power to alienate or encumber the estate. On the 22nd of May 1876 the Deputy Commissioner dismissed the suit, his principal reason apparently being that, whereas the case made by the plaint was that Seetaram was a mere trustee, the case made at the bar was that he had a life interest in the property.

On the 2nd of October 1876 Jydial filed his plaint in the present suit. In it he lays claim to seven annas of Moorli's immoveable and moveable property, and also of Mahooa Kola. He mentions the decree of the 30th March 1869, and without expressly saying that he repudiates the compromise effected by it, remarks that he was not a party to the suit; a remark which is not quite accurate, though it is true that he was not made a party to Rughobardial's application for review. He prays for a declaration of his proprietory right, for recovery of possession, and for an injunction prohibiting transfer.

By his written statement Seetaram claims to be absolute owner of the property in question, and among numerous other pleas states that he is entered as talookdar of Moizuddeenpur and Mahooa Kola in the Talookdar's list prepared in accordance with Act I. of 1869, which under Section 10 of the Act is a bar to the Plaintiff's claim. He also maintains that Exhibit C 9 is a will, states that it has been revoked, and contends that the addition made on the 18th April 1870 to the decree of the 30th March 1869 was *ultra vires* and void.

On the 4th June 1877 Mr. Anderson the

Deputy Commissioner made a decree as follows :—

"The whole property decreed to Sitaram by Judicial Commissioner's decree of 30th March 1869, including $\frac{7}{16}$ share in estate of Mohowa Kola, is vested in Jaidial. But Sitaram will during his lifetime remain trustee and manager for Jaidial. Sitaram has no power of alienation. Jaidial is entitled to maintenance out of the estate. Dismisses the claim of Jaidial to cash and personal property. Plaintiff will get his costs out of the estate. Interest at 6 per cent."

Both parties appealed to the Commissioner Mr. Macandrew who on the 20th September 1877 decreed as follows :—

"That the claim of the Plaintiff to possession of the estate and to the moveable property be dismissed. The Defendant is to be put into possession of a seven-anna share in the whole estate. He is to have a life interest, but is to be restrained from either alienating or wasting it. The Plaintiff be declared to be the heir and successor of the Defendant, and to have all the rights of a reversionary. He is declared to have a right to a suitable maintenance from the Defendant, and considering the state of feeling between them the Court is of opinion that this maintenance should be fixed and the case be remitted to the Lower Court to fix and declare it and the order so declared shall become part of this decree ; and as regards costs the Court orders that the costs of both parties be paid from the estate."

By a subsequent order of the Commissioner, dated the 13th December 1877, the maintenance was fixed at Rs. 4,000 per annum.

Jydial appealed to the Judicial Commissioner Mr. Capper, who considered that Jydial took no interest in the immoveable property beyond that which he acquired by his status as the adopted son of Seetaram. With respect to the moveable property he held that Seetaram was a trustee for Jydial, and that though Seetaram was competent to make a compromise with Raghobardial, yet Jydial might challenge it as being prejudicial to his interests. He therefore remanded the suit to the Deputy Commissioner for inquiry whether the compromise of March 1869 was prejudicial to the interests of Jydial, and

whether Sitaram had reduced into possession any of Moorli's property of which he was trustee for Jydial.

On the 6th of June 1878 the Deputy Commisioner found that the compromise of March 1869 was as to personal property prejudicial to the interests of Jydial and void as against him. He further found that Seetaram had received the sums of Rs. 18,000 and Rs. 30,000 on account of Moorli's Government promissory notes and his other moveables. He gave Jydial a decree for Rs. 30,947. 3. His finding as to the compromise appears to be founded, not on any calculation of the amount which without such compromise might have been got for Seetaram and Jydial as against Raghobardial, but solely on the ground that Seetaram having got the money claimed to hold it as his own.

From this decree both parties appealed to Mr. Capper who varied it. The final decree made on the 23rd of July 1878 is to the effect that Seetaram shall pay to Jydial by instalments the sum of Rs. 44,947. 3, being the exact amount claimed by his plaint, and that the rest of Jydial's claim shall be dismissed. It directs that the parties shall have their costs in all courts in proportion to this decree, and interest from date of decree.

Again both parties have appealed, each contending that Mr. Capper's decree is wrong in making a distinction between moveable and immoveable property. Jydial contends that the principle applied to the moveable property, and Seetaram that the principle applied to the immoveable property, is the true one.

It appears to their Lordships that the four Exhibits C 6, 7, 8, and 9 must be taken together as expressing a family arrangement for the purpose of settling the disputes between the brothers Moorli and Seetaram. Besides their desire of peace

each would by such an arrangement avoid considerable risk of loss. Moorli had got a legal advantage with respect to Moizuddeenpur and Chandpur which it was quite possible he might retain and so exclude Seetaram from those properties entirely. Seetaram had at least a very arguable claim, it seems that in the ultimate opinion of the executive officers he had a sound claim, to one half of those properties. If he succeeded his nephews would only get one fourth for each of them. Moorli was dying, and he wished his eldest son to take the larger share of his estate. Seetaram was childless, and his nephew Jydial was a little boy. In these circumstances it was a very reasonable arrangement that the two brothers should bring the disputed properties and other properties into a common fund and divide them, Seetaram assenting to the gift of the larger share to Rughobardial, and himself taking the smaller share with the obligation to provide for Jydial as his son.

This is exactly what they did. By Exhibit C. 6 Moorli recites his intentions towards his sons independently of any arrangement with Seetaram. Then he says that after those intentions had been formed the adoption of Jydial by Seetaram was effected. Accordingly he now treats Seetaram as the effective owner of Jydial's share, saying "I make over Jydial with his share above specified to Seetaram." Seetaram on his part signs an acquittance (Exhibit C 7) of all claims against Moorli or Rughobardial, on the ground that Moorli "has this day executed a "will regarding moveable and immoveable pro- "perty about which there existed a dispute "between me and him." In the deed of adoption, Exhibit C 8, he goes on to declare "that "Jydial my adopted son will inherit the whole "of my estate both moveable and immoveable," subject only to the one contingency of a son

being born to Seetaram, in which case Jydial is to get half. And by Exhibit C 9 he brings his own talook Mahooa Kola into the scheme of division between Moorli's sons.

It is impossible not to admit that there are some difficulties in the way of this construction, as there must be in the way of every construction of such hurried and informal documents. But this construction appears to their Lordships to satisfy better than others the wording of the documents, while it brings out of them the most reasonable results. On Jydial's construction which is applied by Mr. Capper to the moveable property, we are asked to believe that Seetaram, having a substantial claim which he was vigorously prosecuting against Moorli, not only gave up the whole of it, but also parted gratuitously with nine annas of his own separate property to Moorli's eldest son. On Seetaram's construction which is applied by Mr. Capper to the immoveable property, we must suppose that Jydial took nothing certain under the arrangement except a son's rights in so much of Seetaram's share of Moorli's estate as may be held to have an ancestral character. In their Lordships' view the two leading features of the arrangement are these:—First that the share of Moorli's property designed by him for Jydial should pass to Seetaram and Jydial as Father and Son; and secondly that Jydial should be secured in his inheritance of the property coming to Seetaram under the arrangement.

It appears to them therefore that Mr. Capper's decrees err in drawing a distinction between the moveable and immoveable property, and in treating Seetaram as a mere trustee of the former. On the other hand, in wholly dismissing Jydial's suit as to the immoveable property, the decrees fail to give him the amount of security contemplated by the arrangement of 1864.

There is another objection to these decrees,

which is that by giving to Jydial the sums claimed by him, which are the seven-anna shares mentioned in Exhibit C 6, they upset the compromise of 1869 which divides the moveables on a different principle. Their Lordships are clear that, whether they regard the terms of the declaratory decree of February 1866, or ordinary principles of justice, if Jydial could have challenged the terms of the compromise at all, he could only do it in the presence of Raghobardial; and though it is competent to him to contend that Seetaram is only a trustee for himself, he cannot, in a suit against Seetaram alone, obtain anything more than an adjustment of the interests of Seetaram and himself in the property actually taken by Seetaram under the compromise. For the purpose of this suit therefore Seetaram's interest under the compromise of 1869 must be substituted for his interest under the family arrangement of 1864.

Turning to the decrees of Mr. Anderson and Mr. Macandrew, their Lordships think that those decrees proceed on a right principle in placing both classes of property on the same footing, and in recognizing the right of Jydial to security of succession; but that in giving him that security by dividing the property into a life interest and remainder, they give it in a way which is not the simplest nor the most in accordance with the notions of property entertained by those who live under the Law of the Mitakshara. Moreover those decrees do not, and by the method adopted could not without elaborate provision, allow for the contingency of Seetaram having another son. Their Lordships conceive that in declaring that Jydial should inherit Seetaram intended to place him in the position which under the Mitakshara law a son occupies with reference to his father's ancestral immoveable estate.

Their Lordships are further of opinion that,

though Seetaram has no right to alienate the property whether moveable or immoveable so as to defeat Jydial's succession, no case has been made for an injunction to restrain him from such alienation. On this point the plaint alleges no more than that Seetaram became extravagant and contracted large debts.

With respect to costs, their Lordships think that the two Lower Courts did right in ordering them to be paid out of the estate. The litigation has been lamentable, but each party has raised unjustifiable issues, and so far as the record tells the story it is impossible to blame one more than the other.

The decree should take the following form: —Discharge the decrees and orders of the 4th of June 1877, the 20th September 1877, the 13th December 1877, the 21st of March 1878, the 6th of June 1878, and the 23rd of July 1878. Declare that, according to the true construction of Exhibits C 6, 7, 8, and 9, all the share and interest in the moveable and immoveable property of Moorli Manohur and in the talook of Mahooa Kola, which is thereby stated to be given to Seetaram or to Jydial, is given to Seetaram for such interest and with such right of succession to Jydial as by virtue of the law of the Mitakshara attaches to ancestral immoveable property as between Father and Son.

Declare that all property whether moveable or immoveable taken by Seetaram under the decree of the 30th of March 1869, as explained by the Minute of the 18th April 1870, is taken by him for such interest and with such right of succession to Jydial as by virtue of the same law attaches to ancestral immoveable property as between Father and Son.

Declare that the entry of Seetaram's name on the Talookdar's list is no bar to the assertion by Jydial of the interest herein-before declared to be vested in him. Dismiss the plaint so far

as it seeks recovery of possession and an injunction. Order the whole costs of the litigation, including the costs of these appeals, to be paid by Seetaram out of the property taken by him under the decree of the 30th March 1869 explained as aforesaid. Costs to be taxed as between solicitor and client.

Their Lordships will humbly report to Her Majesty accordingly, except as regards the costs of these appeals, which they will themselves order to be paid by Seetaram out of the estate.