

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Rao
Karan Singh v. Raja Bakar Ali Khan, from the
High Court of Judicature for the North-Western
Provinces, at Allahabad; delivered 27th April
1882.*

Present :

SIR BARNES PEACOCK.

SIR ROBERT COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

THIS is a suit brought to recover a sum of 13,745 rupees on two bonds, one dated the 7th January 1862 for 4,000 rupees, and the other dated the 6th October 1862 for 1,000 rupees. Those bonds were executed by Baharjit Singh, the father of Kharag Singh and Rudar Singh, who were infants, for money advanced by the Plaintiff to enable them to defend certain suits brought by Karan Singh. It appears that Badam Singh was entitled to certain property, and that upon his death his widow took possession. Karan Singh, who is now the Appellant, brought a suit to turn the widow out of possession upon the ground that Badam Singh had made him his heir-at-law. That suit was defended by the widow, who died during the pendency of it; and the grandchildren Kharag and Rudar Singh were made parties to the suit, Baharjit their father acting as their guardian. The suit was determined in favour of the Defendants. After the death of the widow, Karan Singh claimed the property on behalf of his grandfather Golab Singh, on the ground that

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the infants, who were sons of a daughter, were not, according to a custom of the family, entitled to inherit the estate. The father of the infants borrowed the moneys for the purpose of defending the suits, and it is now admitted that no question can be raised as to the validity of the bonds, the father having been justified under the circumstances in borrowing the money, and the Plaintiff in lending it, for the benefit of the infants. The bonds are both in the same terms:—"I therefore covenant in writing that
 " I shall pay the above-mentioned amount in
 " full, with interest at one rupee per cent. per
 " mensem, on demand, without raising any objec-
 " tion or pretext; that until the payment of the
 " amount of this bond, the share in mouzah
 " Khurd Khera, pergunnah Barouli, (which is
 " already hypothecated in satisfaction of the
 " former loan,) shall remain pledged and hypo-
 " thecated in satisfaction of this loan also; and
 " that I shall not alienate it elsewhere by means
 " of mortgage sale." That is what is usually called a mortgage bond. The Plaintiff claimed to enforce payment of the money due under the bonds by sale of mouzah Khurd Khera, the estate which was hypothecated. The only question now remaining,—the bond having been held to be a valid bond,—is whether the Plaintiff in the suit is barred by limitation.

The second suit against the infants was referred to arbitration, under which, by an award dated the 5th of August 1863, the village Khurd Khera, which was sought to be sold by auction, together with other villages and properties belonging to Badam Singh, were declared rightfully to belong to Golab Singh, the Defendant's grandfather, and not to Kharag Singh and Rudar Singh. The Defendant Karan Singh, as guardian of Golab, sued on the said award, and obtained a decree from the Principal Sudder Ameen's Court on the

31st August 1863, in execution of which he was put into possession in October of the same year.

Pending the disputes between Karan Singh and the infants, the collector, in order to secure the Government revenue, attached and took possession of the property, and retained possession from 1861 until October 1863, when, in consequence of the decree of the Principal Sudder Ameen, he delivered possession to the Defendant and paid over to him the surplus profits of the estate after deducting the Government revenue and expenses. The present suit was brought in the year 1874; and at that time 12 years had not elapsed from the time when the Defendant obtained possession from the collector. It was contended that the Plaintiff must prove that he was in possession within the period of 12 years; but when their Lordships come to consider the present law of limitations, they find that that is not correct. It would have been correct under the old law, under which the suit must have been brought within 12 years from the time of the cause of action; but under the present law it may be brought within 12 years from the time when the possession of the Defendant, or of some person through whom he claims, became adverse to the Plaintiff. His possession since 1863 was not 12 years' possession; but it is contended that he was justified in adding or tacking to his possession the possession of the collector from 1861. Their Lordships must assume that the collector properly took possession for the purpose of protecting the Government revenue. It was the duty of the collector, whilst in possession under the attachment, to collect the rents from the ryots, and having paid the Government revenue and the expenses of collection, to pay over the surplus to the real owner. If the Defendant was the real owner the surplus belonged to him; but if, on the other

hand, the infants were the right owners, then the surplus belonged to them. The Plaintiff was not bound by the decision of the arbitrators, for his bonds were prior to the submission to arbitration. The collector, by paying over the money to Karan Singh, did not give Karan Singh a title.

It appears now, as between the Plaintiff and the Defendant, that the infants were entitled to the property, because no evidence whatever has been given to show that the custom of the family set up by the Defendant, namely, that the son of a daughter could not inherit, ever existed. According to the ordinary Hindoo law the infants were entitled to inherit. Therefore, although the collector gave up possession of the estate and paid over the surplus proceeds to Karan Singh, that did not show that he was holding for Karan Singh. The Defendant does not claim through the collector, and he cannot add to his possession from the year 1863 the possession of the collector from 1861 to 1863.

Under these circumstances their Lordships think that the majority of the judges of the High Court came to a correct conclusion that this suit was not barred by limitation, and consequently that the Plaintiff is entitled to recover.

Their Lordships will therefore humbly advise Her Majesty to dismiss the Appeal, and to affirm the decision of the High Court. The Appellant must pay the costs of the Appeal.