

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rewa Prasad Sukal v. Deo Dutt Ram Sukal, now deceased, and represented by Harihar Ganesh Dutt and Ganesh Dutt (minors by their Guardian Mussummat Hironda), from the Court of the Judicial Commissioner, Central Provinces, India ; delivered 9th December 1899.*

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Present at the Hearing :

LORD HOBHOUSE.

LORD MORRIS.

LORD DAVEY.

LORD ROBERTSON.

SIR RICHARD COUCH.

[*Delivered by Lord Robertson.*]

This Appeal was heard *ex parte* ; but the disputed questions are not complicated and are ultimately confined to a narrow issue by findings in fact which bind this Board. On that issue the grounds of the judgments appealed against are explained with sufficient fulness to allow of their validity being tested with some certainty.

The dispute arose on the death of Nanhi Bahu, widow of Sitaram, in 1889. From 1863 her name had stood, and it stood at her death, recorded in the Settlement Record as owner, for her lifetime, of eight anna shares of the zemindari of certain villages, which had been possessed by her husband Sitaram. The present dispute relates to those shares. The primary theory of the case of the Plaintiff (the original Respondent in this Appeal) was that Sitaram's estate was divided estate ; and, if this had been the fact, the Plaintiff, as his nearest heir, would admittedly prevail. The Defendant (now the

Appellant) on the other hand, maintained, and he has proved, that the estate of Sitaram was undivided estate, enjoyed by Sitaram jointly with those from whom the Appellant derives. There had, it is true, been a partition, in 1824, but this was only between the branch of the family now represented by the Plaintiff on the one hand and the rest of the family on the other; the Plaintiff's branch dropped out of the community, but the community remained. The findings of the Judicial Assistant Commissioner, Jubalpur, which are conclusive of the facts in the case, expressly assert that Sitaram was at his death in shamat with Partab Singh, who is now represented by the Appellant; and, carrying the matter a step further and to the latest date with which this suit is concerned, he finds that Nanhi Bahu was at her death in shamat with the Appellant.

Dislodged by these findings from his original position, the Plaintiff relied on the terms of the award of the Deputy Collector in 1863, by which Nanhi Bahu's name was put on the Record; and the Judges in the Courts below have held that that award had the effect of making the shares enjoyed by Nanhi Bahu separate estate to which her husband's heir must succeed. This result is supposed to be brought about by the 87th Section of the Central Provinces Land Revenue Act, XVIII. of 1881.

Before examining the statute and the award itself, it is well to realise the antecedent facts which are held to be thus affected by them. In 1863 when the proceedings were taken which resulted in the award, the parties to them belonged to an undivided family and the estate was undivided estate. The death of Sitaram necessitated some mutation of names for the purposes of revenue; it did not necessitate a partition. His widow's right was to maintenance, but the satisfaction of that right by the assigning to her the enjoyment for her lifetime of a shar

of the estate is not an unnatural or unaccustomed mode of dealing with property that is undivided and is intended to remain undivided. This is pointed out with clearness and emphasis by the Judicial Assistant Commissioner. "This circumstance," he says, speaking of the mutation of names, "does not seem to me to be of the slightest importance in deciding this question, in view of the well known practice of members of an undivided family in this part of the country of recording proprietary rights in villages in the shares to which each member of the family would be entitled if he separated and at the death of each member continuing to enter his share in the name of that member's heirs although they still continued shamlat." This view of the matter does not require modification even where, as in the present case, the right recorded is one of zemindari, while the original interest was stated to be a patti right.

The next question is, what is the effect of the 87th Section of the Land Revenue Act? What the section says is this,—it declares, in regard to awards granted before its date, (such as that before their Lordships,) that every claim shall be barred which, after consideration, has been expressly decided to be invalid or inferior to the claims of the person in whose favour the award is made. This provision is clear and needs no explanation. In order to be barred, a claim must have been considered,—that is, made, or tabled as, the subject of consideration, and expressly decided.

It has now to be seen what was proposed to the Collector for his consideration and what was done by him, in relation to the estate now in dispute. The mover in the application to the Collector was Partab Singh, whose rights are now in the Appellant and whose acts are therefore binding on the Appellant. Partab Singh proposed and the Collector ordered *inter alia*

that 8-anna shares should be awarded to Nanhi Bahu "for her lifetime." He did not propose, and therefore the Collector had no occasion to consider, anything as to the reversion of those shares, after the death of Nanhi Bahu. In particular, the Collector did not consider, because he had no occasion to consider, the Appellant's right to possession after Nanhi Bahu's death. Accordingly, viewing the question for the moment apart from the statute, the award does not touch the present dispute.

When the 87th Section is fairly examined, it is apparent that while it gives to such awards the effect of judicial decrees it ascribes to them no adventitious force which would not belong to a decree pronounced *in pari materie*. To be barred by such an award, a claim must have been decided by the officer making the award to be invalid or inferior to the claim of the person in whose favour it is made. The claim of Partab Singh or of any one else to the reversion did not enter the question whether Nanhi Bahu should have the estate for her lifetime; she being the person in whose favour for her lifetime the only award of those 8 annas was made, the claim of no reversioner had any relation to hers, whether of inferiority or invalidity.

The claim which is brought under consideration by the present Appellant was therefore not "expressly decided" "after consideration" and is not barred by Section 87. The result is that the law governing the question is the ordinary Hindu law, applying to undivided estates; and that law supports the Appellant's claim.

Their Lordships will therefore humbly advise Her Majesty that the judgments appealed against ought to be reversed, and that the Respondents ought to pay the costs in all three Courts and to repay costs that may already have been paid them or the original Plaintiff by the Appellant. The Respondents must also pay the costs of this Appeal.

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