

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of (1) Deoki Singh and others v. Musammat Anupa ; and (2) Deoki Singh and others v. Madho Singh and others, from the High Court of Judicature for the North-Western Provinces, Allahabad ; delivered the 8th December 1905.*

Present at the Hearing :

LORD MACNAGHTEN.

SIR FORD NORTH.

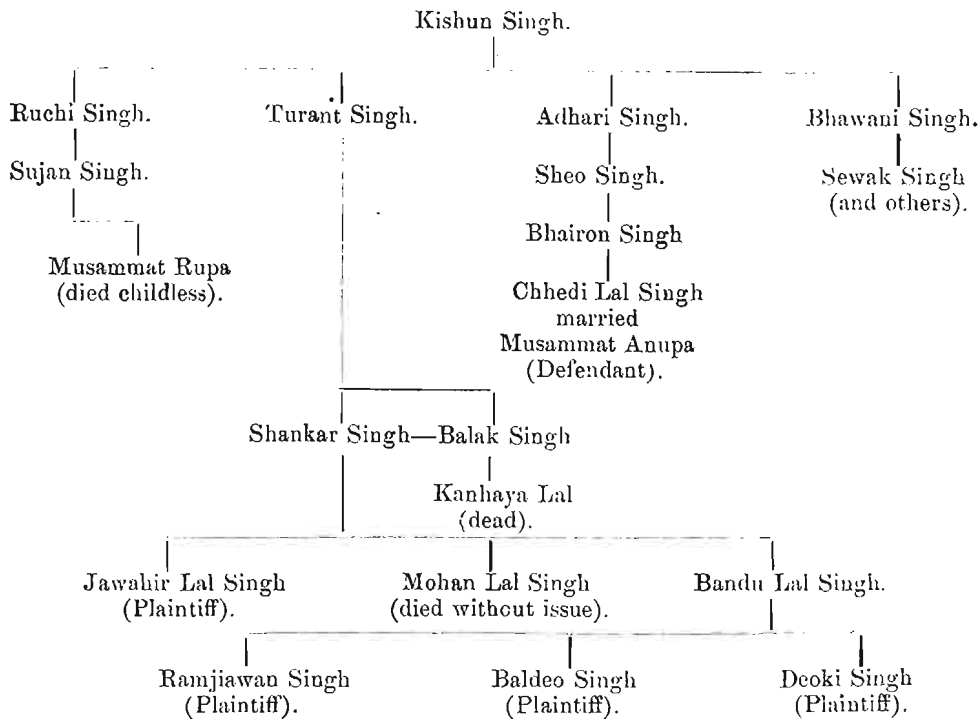
SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Sir Andrew Scoble.*]

The question for decision in these Appeals is whether Chhedi Lal Singh, the husband of the Respondent Musammat Anupa, was, at the time of his death, a member of an undivided Hindu family, or whether the property of which he died possessed was his separate property. The Appellants claim to be his reversionary heirs ; the Respondents are his widow and mortgagees claiming under her. The District Judge of Mirzapur decided in favour of the Appellants, but the High Court at Allahabad found the separation proved, and varied the decree of the District Judge accordingly.

The subjoined pedigree explains the relationship of the parties to Chhedi Lal Singh, and to each other :—



From the above pedigree it will be seen that Kishun Singh, the common ancestor, had four sons—Bhawani Singh, Adhari Singh, Turant Singh, and Ruchi Singh. Bhawani Singh, the eldest son, seems to have had the management of the family property after his father's death until his own death in or about A.D. 1837. The estate inherited from Kishun Singh consisted in a four annas share in the village of Dohari Jagdispur. Another estate, named Zafarpura, appears to have been purchased during Bhawani's management in the name of Balak Singh, the eldest son of Turant Singh, some time previously to 1825. These two estates constituted the family property when Bhawani Singh died.

It is the case of both parties to the present suit, that, after the death of Bhawani Singh, in or about 1837, his branch separated from the other branches of the family, taking as their

share a one-anna share of Dohari Jagdispur; but his representatives have not been made parties to this suit.

There is no direct evidence of any re-union of the other three branches of the family after the separation of Bhawani Singh's branch; but from proceedings taken in the Revenue Courts in 1839, to which Balak Singh and Sheo Singh, the son of Adhari Singh, were parties, the question appears to have been raised upon evidence so unsatisfactory that these Courts successively came to opposite conclusions, and finally pronounced no definite Judgment. In 1842, however, upon the death of Balak Singh, a settlement appears to have been arrived at. Shankar Singh, the brother of Balak Singh, filed a petition for mutation of names in regard to Dohari Jagdispur dated 18th October 1842, in which he states that "by private arrangement with the other lambardars" Balak in his lifetime gave up his share in Dohari Jagdispur, and took possession of the share belonging to the family in Zafarpura. He therefore prayed that Balak's name might be struck off from the official papers in regard to Dohari Jagdispur, and the names of Sheo Singh and Sujan Singh (the then representatives of the two remaining branches of the original joint family) might be entered. After the usual enquiries, mutation of names was made accordingly, by an order dated 31st January 1845.

Sheo Singh died in 1850, and the name of his son Bhairon Singh was entered in the revenue records in his place, without objection on the part of Shankar Singh's family, in respect of the three annas share in Dohari Jagdispur, which thereafter stood in the names of Bhairon Singh and Sujan Singh.

Before Sheo Singh's death Sujan Singh purchased jointly with Bhairon Singh, at a sale in

execution of a decree against Bhawani Prasad and others a share in the village of Zafarpura, on the 22nd March 1848. It is to be noted that the share thus purchased had been assigned to the execution debtors at the time of the acquisition of the village in 1825, and that it does not form part of the share taken over by Balak Singh, when, it is alleged, he separated from the family.

Sujan Singh died, without issue, in 1858, and his widow Musammat Rupa, on the 25th of August in that year, executed a deed whereby she made a gift of her deceased husband's share in the property in suit, both in Dohari Jagdispur and Zafarpura, to Bhairon Singh. The validity of this deed of gift was challenged by the descendants of both Turant Singh and Bhawani Singh; but the dispute was settled by a deed of compromise, executed by all the claimants (among whom was the father of the present Appellants), bearing date the 10th September 1858. The material portion of the compromise is in these terms :—

“ The deed of gift executed by Musammat Sarupa, widow  
 “ of Sujan Singh in favour of Bhairo Dayal Singh is true  
 “ and correct. We accept it and in accordance with it the  
 “ name of Sujan Singh deceased may be struck off and in its  
 “ place the name of Bhairo Dayal Singh may be recorded.  
 “ We agree to this proceeding being taken and shall raise no  
 “ objection to it. Bhairo Dayal Singh is our malik. He will  
 “ maintain all of us in the same manner as he maintains  
 “ Mohan Lal, Jawahir Singh and Bandhu Lal Singh, heirs of  
 “ Shankar deceased. The petition of objection filed by us  
 “ may be struck off under this compromise.”

Bhairon Singh remained in undisputed possession of the estate in suit until his death in 1873. After him his son Chhedi Lal Singh's name was entered in the Government Records; and he in his turn remained in possession until his death in February 1889. He died childless, and after some litigation, the name of his widow the Respondent Musammat Anupa, was entered

in his place, under an order of the 22nd May 1890.

On the 16th April 1895, the Respondent Musammat Anupa executed a usufructuary mortgage of part of her late husband's property in favour of the Respondents Madho Singh and Rachpal Singh, and of their deceased co-Defendant Raghunandan Singh. Thereafter these suits were brought.

Both Courts in India based their Judgment on the documentary, rather than on the oral, evidence in the case. The District Judge held that there was no real separation of the ancestors of the Plaintiffs from the predecessors in title of the Respondent Musammat Anupa; that the family was a joint one after Balak Singh's death, in spite of a pretended division; that one person after another was accepted as its head for purposes of business, but that the family continued joint and undivided until Chhedi Lal Singh's death. He further held that "Chhedi Lal Singh and the Plaintiffs lived jointly as the members of a joint Hindu family in succession to Sheo Singh, Balak Singh and Sujan Singh"; and in support of the last finding he relied on certain letters written by Chhedi Lal Singh to his uncle Jawahir Singh, and his cousin Baldeo Singh; on entries in account books; and on an admission made by Musammat Anupa, in a deposition made by her on 28th April 1889, in connection with an application for mutation of names after her husband's death, that "even in the lifetime of Chhedi Singh Baldeo Singh, Deoki Singh, Jawahir Singh and Ramjiawan Singh . . . were in possession, and all persons have always been living jointly and together, and the business and monetary dealings are all joint."

The learned Judges of the High Court—one of them a Hindoo—came to an opposite conclusion. They held that a division of the family property in Balak's lifetime was proved, and that

there was no ground for treating the allegation of partition as falsely made, either on account of inequality of shares or to evade payment of heavy debts. They considered that the fact of Sujan Singh's widow, Musammat Rupa, executing a deed of gift in respect of her husband's property was a strong piece of evidence to show that her husband held separate property; and that had the property not been separated the descendants of Bhawani Singh would not have joined with the descendants of Balak Singh in assenting to the gift, as they did by the compromise of 10th September 1858. At that time, the evidence shows that Jawahir Singh, Baldeo Singh, and Mohan Singh were living with Bhairon Singh, "but that circumstance alone would not show that they were joint owners with Bhairon. . . . Had they been joint owners . . . they would not have joined in the compromise." As regards the entries in the account books, on which the Plaintiffs relied, of expenditure incurred in the marriages and other ceremonies of the Plaintiffs and their families, the learned Judges say:—

"The payment of such expenses is not in itself any proof of joint ownership. It is usual in native families, and the fact is well known, that where dependants are living with a relation in affluent circumstances, and are being supported by him, he defrays all necessary expenses of marriage, etc. of the persons so dependent upon him."

And with regard to the admission made by the Respondent Musammat Anupa in the mutation proceedings they say:—

"Having regard to the fact that on the death of Chhedi Singh, the Plaintiffs were the only male relatives of Chhedi Singh to whom his widow had to look for help, that during Chhedi Singh's lifetime they were assisting him in the management of his affairs, and that she was a young woman . . . . we do not think that much weight should be placed upon the statements contained in the applications and the deposition. It is clear that it was never explained to her what effect those statements would have upon her interests."

Upon a careful consideration of the whole case, their Lordships think that the opinion

formed by the learned Judges of the High Court is the correct one.

There seems no good reason to doubt that Balak Singh separated from the rest of the family before his death. The fact is vouched for by his brother Shankar Singh, whose interest it certainly was not to assert it, and this statement is corroborated by the contemporaneous application made by his son Kanhaya Lal to have his name entered in the Government records in regard to Zafarpura only. If it was a pretended division for the purpose of defrauding his creditors, it is extraordinary that his creditors should have left Dohari Jagdispur untouched while they attached and sold Zafarpura. That the gift by Musammat Rupa was acquiesced in by the whole family is unquestioned, and it is hard to believe that they would have done so had there been no previous separation of the branches of Bhawani Singh and Turant Singh. The letters from Chhedi Lal to his uncle and cousin, and the entries in the accounts are more consistent with the theory of his separate ownership than with that of joint family ownership, as Chhedi Lal, though younger than either Jawahir Lal or Baldeo Singh, wrote to them in a tone of authority. That he availed himself of their services in the administration of his property at the same time that he gave them maintenance, and paid the expenses of their marriage and other ceremonies, does not suggest any difficulty to the learned Hindoo Judge who heard the case on appeal, and seems to their Lordships both natural and probable.

Their Lordships will humbly advise His Majesty that the decrees of the High Court ought to be confirmed and these Appeals dismissed. The Appellants must pay the costs of the Respondent Musammat Anupa who alone defended the Appeals.

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