

Judgment of the Lords of the Judicial Committee of the Privy Council on the consolidated Appeals of Kunwar Raghbir Singh v. Musammât Moti Kunwar; and of Kunwar Sati Singh and another v. Musammât Moti Kunwar, from the High Court of Judicature for the North-Western Provinces, Allahabad (P.C. Appeal No. 28 of 1911; Allahabad Appeals Nos. 20 and 21 of 1908); delivered the 26th November 1912.

PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD MOULTON.

SIR JOHN EDGE.

MR. AMEER ALLI.

[DELIVERED BY LORD MACNAGHTEN.]

These are consolidated Appeals from a Judgment and two Decrees of the High Court of Allahabad pronounced in favour of the Respondent Musammât Moti Kunwar.

In the Court of the Assistant Collector of Etawah, Moti Kunwar, widow of Baldeo Singh, who died in 1895, succeeded in making good her claim to arrears in respect of a specific share of property which undoubtedly at one time formed part of the joint property of an undivided Hindu family to which her husband belonged. Thereupon the Appellants, who alleged that Baldeo Singh was not separated at the time of his death, brought a suit in the Court of the Subordinate Judge of Mainipuri

and obtained a declaration that they were the absolute owners of the property claimed by Moti Kunwar and that she had no right of ownership therein but merely a right to maintenance. There was an Appeal to the High Court by Moti Kunwar against the decree of the Subordinate Judge and an Appeal by the present Appellants against the order of the Assistant Collector. The two Appeals were consolidated. The High Court reversed the decree of the Subordinate Judge and dismissed the suit of the present Appellants, as well as their Appeal against the order of the Assistant Collector.

The whole controversy depends upon the question whether Baldeo Singh was separate in title and interest at the time of his death.

In 1871 Madan Mohan Singh, who was a member of the undivided family, separated and received his share. For the purpose of this transaction and in settlement of all disputes "relating to the Zamindari, the household articles, and the money-lending business, &c.," an agreement was executed on the 19th of December 1871 by Baldeo Singh, Lalta Parshad the adopted son of a deceased member of the undivided family, and Madan Mohan Singh. On the 10th of October 1873 another agreement was executed between and by Baldeo Singh, Lalta Parshad, and Madan Mohan Singh. After declaring that the executants along with Raghunath Singh and Sati Parshad were sharers in the villages specified below, the agreement proceeded as follows:—

"Now we have already come to terms and according to the shares given below we have been in possession and enjoyment of our respective shares. As regards it we have with our mutual consent entered into an agreement according to the terms given below.

"The same share in the property which is in the possession of a particular person as given below shall be

“ considered to be the property of that very person who is
 “ in possession thereof. If any of us brings any suit in civil
 “ or Revenue Court to the effect that his share is less or he
 “ is a loser, it shall be considered to be false in every Court.
 “ By virtue of this agreement no person shall be competent
 “ to bring any claim in any Court in respect of any portion
 “ of the property other than the property detailed below.”

Then after some provisions which it is not necessary to set out, there followed a specification of the villages belonging to the family and the shares in which those villages were thereafter to be held. The agreement was registered on the same day. From that time the property has been entered in the register in accordance with the arrangement contained in the agreement. And on the death of Baldeo Singh his share was entered in the name of his widow, the Respondent Moti Kunwar.

From the terms of the Agreement of 1873 the learned Judges of the High Court rightly, as it appears to their Lordships, “ gather that
 “ the members of the family were in separate pos-
 “ session of defined shares of the family property
 “ before the date of its execution ” and they also gather from it “ that Raghunath Singh as
 “ well as Sati Parshad,” who was then a minor,
 “ so far as the latter could assent to an arrange-
 “ ment, had agreed to the allotment of shares
 “ specified in the instrument.” The learned Judges further point out that the khewats of two of the villages specified in the Agreement of 1873 which were in evidence show that at the close of 1872 the entry of names was altered and the names of Lalta Parshad, Sati Parshad, Raghunath Singh, Baldeo Singh, and Madan Mohan Singh were entered separately in respect of their separate specific shares.

As regards the share of Raghunath who was not a party to the Agreement of 1873 the partition appears to have been accepted and acted upon by him up to the time of his death

which occurred in 1879. On his death the name of his widow was recorded in his place and she was appointed lambardar of the village which had been allotted to him. On her death the names of Baldeo Singh, Lalta Parshad, and Sati Parshad were entered in her place, not jointly, but in respect of specific shares.

Sati Parshad, as already stated, was a minor at the date of the Agreement of 1873, but it appears that on attaining majority he made no objection to it. He seems to have recognised the partition and acted upon it until Moti Kunwar applied for complete partition in the Revenue Court.

The contention on the part of the Appellants was (1) that the Agreement of 1873 was a partition only as regards the share of Madan Mohan Singh, and that the other members of the family remained joint, or (2) that the other members reunited either immediately or shortly afterwards. There seems to be no foundation for the latter contention, and indeed it was only faintly put forward. Reunion is a question of fact, and there is not a scrap of evidence to show that any members of the family reunited or even contemplated reunion.

In support of their principal contention the Appellants put in a mass of parol evidence which was contradicted by parol evidence on the other side. The learned Judges of the High Court thought the parol evidence vague, unsatisfactory, and inconclusive.

The High Court also rejected, and in their Lordships' opinion rightly rejected, a petition of Baldeo Singh himself, in which he alleged that Ragunath's widow was entered as owner solely for her consolation. This petition was in answer to an application by the widow to remove him from the office of sarbarahkar, and is irreconcilable with an earlier petition presented by him,

in which he distinctly admitted that he paid to the widow the annual profits of her share, and that the Agreement of 1873 had been acted upon.

The High Court also rejected as unworthy of consideration a document which was referred to as proving that Moti Kunwar herself admitted that the property registered in her name was joint family property. This document purports to be a certified copy of a certified copy of a deposition made by Moti Kunwar in another suit which was not even put to her in cross-examination although she averred that she had never made an admission to that effect.

The High Court also rejected as inconclusive certain accounts which purported to show that the expenses of the marriage of Baldeo Singh's daughter and his funeral expenses were paid out of joint family property.

In conclusion the learned Judges say that it was sufficient for them that an agreement was committed to writing, which was clear and definite in its terms, and they add that that agreement has been shown to have been acted upon up to the present time.

Their Lordships agree in the result at which the High Court arrived. Having regard to the Agreement of 1873 they think that the case is concluded by authority. The result is entirely in accordance with the principle laid down by this Board in the Judgment delivered by Lord Westbury in the Appovier case, 11 Moore's Ind. Ap. 75, and in the more recent cases of *Balkishen Das v. Ram Narain Sahu*, 30 I. A. 139, and *Parbati v. Naunsial Singh*, 36 I. A. 71.

Their Lordships will therefore humbly advise His Majesty that this Appeal should be dismissed.

The Appellants will pay the costs of the Appeal.

In the Privy Council.

KUNWAR RAGHUBIR SINGH

v.

MUSSAMMAT MOTI KUNWAR;

AND OF

KUNWAR SATI SINGH AND ANOTHER

v.

MUSSAMMAT MOTI KUNWAR.

DELIVERED BY LORD MACNAGHTEN.

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