Judgment of the Lords of the Judicial Committee of the Privy Council on the consolidated Appeals of Bhaiya Janki Pershad Singh, since deceased (now represented by Bhaiya Dharaband Singh) v. *Bhaiya Dwarka Pershad Singh; and of Bhaiya Dwarka Pershad Singh* v. *Bhaiya Janki Pershad Singh, since deceased (now represented by Bhaiya Dharaband Singh), from the Court of the Judicial Commissioner of Oudh (P.C. Appeals Nos.* 116 *and* 117 *of* 1911; *Oudh Appeals Nos.* 3 *and* 4 *of* 1910); *delivered the* 10*th June* 1913.

PRESENT AT THE HEARING:

LORD SHAW.
LORD MOULTON.
SIR JOHN EDGE.
MR. AMEER ALI.

[DELIVERED BY MR. AMEER ALI.]

These are two consolidated Appeals from a Judgment and Decree of the Court of the Judicial Commissioner of Oudh, dated the 8th of September 1909, and arise out of a suit brought by the Plaintiff Dwarka Pershad in the Court of the Subordinate Judge of Barabanki, for partition of certain properties known as Taluqa Ranimau, in which he claimed a share as a member of a joint Hindu family governed by the Mitakshara Law.

The two Defendants to this action were the Plaintiff's elder brother Janki Pershad and their mother Marjad Kuar, and as the mother,

under the Mitakshara Law, is entitled on the partition of ancestral property to an equal share with the sons for her life, the Plaintiff asked for a decree in respect of a third share in the entire property included in the list attached to the Plaint.

The Defendant Janki Pershad alone contested the suit, the ground of his defence being that the Taluqa sued for was, under the provisions of Act I. of 1869, as also by custom governing the family, an impartible estate descendible to a single heir, to which the ordinary rules of the Hindu Law of inheritance did not apply. The parties thus went to trial on two distinct issues, viz., whether the properties in suit belonged to a joint Hindu family and were subject to the incidents ordinarily attached to such properties, or whether they formed in whole or in part, under Act I. of 1869 or by custom, an impartible estate.

A short history of the family will explain the reasons on which the Courts in India have proceeded in arriving at their conclusions. The nucleus of the Taluqa in dispute is said to have been formed by one Suk Shah. He owned nine villages, but the number increased to sixteen in the hands of his son and successor, Sakat Singh, who lived about the close of the 18th century. In 1856, when the British first occupied the kingdom of Oudh, the Taluqa included 21 villages, and was held by Autar Singh, eighth in descent from Gulal Shah, the original ancestor of the parties and the grandfather of Suk Shah. On the outbreak of the Mutiny Autar is said to have disappeared. Nor did he make his appearance on Lord Canning's famous Proclamation issued in March 1858. The British authorities accordingly proceeded to make a settlement of his confiscated villages with third parties. But some time in July

1859 Autar appeared before the authorities, explained the reason of his non-appearance before, and applied for a settlement of his villages. They were apparently satisfied with his explanation, and on the 5th of October 1859, an order was passed on his application, sanctioning the summary settlement with him of the remaining nine villages which had not been finally settled with others. The *Kabuliat*, however, was not signed by him until the 13th of that month.

In the course of the Regular Settlement which followed shortly after, Autar recovered decrees for possession of six more villages. He was thus in possession of some 15 villages when Act I. of 1869 was passed into law. Later on he acquired by purchase several other properties.

Autar died in 1879 without issue and was succeeded in the possession of the properties by his nephew Jang Bahadoor, the eldest son of his brother Bisheshur. Jang Bahadoor died in 1889, leaving him surviving two sons, viz., the Plaintiff and the Defendant, Janki Pershad, the latter being the eldest. On Jang Bahadoors' death, Janki Pershad came into the possession of the entire property.

The Subordinate Judge has held that the properties which were settled with Autar in 1859, together with those decreed to him in the course of the Regular Settlement, form an "Estate" within the meaning of Act I. of 1869 and are descendible to a single heir and are consequently impartible. But as regards the several properties Autar Singh acquired by purchase subsequent to the Regular Settlement the Trial Judge was of opinion that in the absence of evidence establishing an intention on his part to incorporate the subsequent

acquisitions with the "Estate," they must be held to be governed by the ordinary Hindu law of inheritance. He accordingly decreed the Plaintiff's claim in respect of a one-third share in what he calls the "acquired" properties and dismissed the Suit as regards the rest.

Both parties appealed to the Court of the Judicial Commissioner of Oudh which affirmed the decree of the Subordinate Judge with a modification in respect of the parties' shares necessitated by the death of their mother Marjad Kuar, which became one-half each instead of one-third.

The Plaintiff and the Defendant have both appealed to His Majesty in Council against the Judgment and Decree of the Appellate Court. The Plaintiff contends that the Lower Courts are wrong in holding that the properties in respect of which his suit has been dismissed, form an "Estate" within the meaning of the Act, and are, consequently, impartible; whilst the Defendant urges that the properties, a half share of which has been decreed to the Plaintiff, being accretions to the "Estate" or Taluqa, are equally impartible.

As regards the contention of the Plaintiff, the first point to determine is the meaning which the Legislature has attached to the word "Estate" with reference to properties coming within the purview of Act I. of 1869, and that meaning must be gathered so far as possible from the enactment itself.

The term "Estate" is defined in Section 2 to mean "the taluqa or immoveable property "acquired or held by a Taluqdár or grantee "in the manner mentioned in section 3, section 4 "or section 5 or the immoveable property "conferred by a special grant of the "British Government upon a grantee." And

"Taluqdar" is declared to mean a person whose name is entered in the first of the lists mentioned in section 8.

Section 3 declares that :—

"Every Taluqdár with whom a summary settlement of the Government revenue was made between the first day of April 1858 and the tenth day of October 1859, or to whom, before the passing of this Act and subsequently to the first day of April 1858, a taluqdárí sanad has been granted, shall be deemed to have thereby acquired a permanent, heritable and transferable right in the estate comprising the villages and lands named in the list attached to the agreement or kabúliyat executed by such Taluqdár when such settlement was made, or which may have been or may be decreed to him by the Court of an officer engaged in making the first regular settlement of the province of Oudh, such decree not having been appealed from within the time limited for appealing against it, or, if appealed from, having been affirmed."

Section 8 provides that :—

"Within six months after the passing of this Act, the Chief Commissioner of Oudh . . . shall cause to be prepared six lists, namely :—

"*First.*—A list of all persons who are to be considered Taluqdárs within the meaning of this Act.

"*Second.*—A list of the Taluqdárs whose estates, according to the custom of the family on and before the thirteenth day of February 1856, ordinarily devolved upon a single heir."

The rest of the section is immaterial for the purposes of this case. Section 22 lays down the rules relating to intestate succession to the estates of Taluqdárs whose names have been entered in the second, third or fifth of the lists mentioned in section 8. In the first instance it declares that if any Taluqdár whose name is so entered were to die intestate as to his estate, such estate shall descend "to the eldest son "of such Taluqdár or Grantee, heir or legatee, "and his male lineal descendants, subject to "the same conditions and in the same manner "as the estate was held by the deceased."

It is common ground that "a summary settlement of the Goverment revenue" was made with

Autar Singh in respect of nine villages "between the 1st day of April 1858 and the 10th day of October 1859." Their Lordships are not omitting from consideration the fact that the *Kabuliat* was not executed until the 13th of October. To this they will advert later. It is also admitted that he obtained decrees in respect of six other villages in the first Regular Settlement of the Province, and that his name was entered in the Lists prepared under the statutory provisions of section 8. It is clear, therefore, that Autar was not only a Taluqdár, but that his taluqa acquired by virtue of the above-recited proceedings, was an "Estate" within the meaning of the Act.

One of the learned Judges in the Court below has considered that the execution of the *Kabuliat* after the time-limit mentioned in section 3, deprived Autar Singh's taluqa of the character of an estate defined in the statute, although in his conclusion he agreed with the Subordinate Judge in holding that it was impartible property. His view may shortly be summarised as follows: as the principal villages included in the Taluqa were not acquired either under a grant or a summary settlement made between the two dates mentioned in section 3, the property did not constitute an "Estate" defined in section 2; but as it appeared in the evidence that the Taluqa had ordinarily devolved upon a single heir on and before the 13th of February 1856, it must be treated as an impartible estate descendible under the rules of devolution provided in section 22.

The other learned Judge held in substance that under the circumstances of the case it may fairly be assumed that the summary settlement with Autar was made before the 10th of October 1859.

In their Lordships' judgment the less technical construction seems more in accord with the true intent of the enactment. It is easily conceivable that a settlement might be made within the time-limit, and yet the formal documents connected therewith might not, owing to causes beyond the control of the person with whom the settlement is made, be executed until later. The law must be absolutely explicit that non-execution within the time is fatal to the right which it expressly gives before it can be so construed. Clause 3, which declares the right a Taluqdár acquires in villages and lands settled with him, states that "he shall be deemed "to have acquired thereby," (that is by the summary settlement), "a permanent heritable and "transferable right in the estate comprising the "villages and lands named in the list attached "to the agreement or Kabuliat executed by such "Taluqdár when such settlement was made." The right the Taluqdár is declared to have acquired comes into existence with the settlement, the rest of the clause merely describes the properties with respect to which it takes effect. If the settlement was directed, on the 5th of October, to be made with Autar Singh, the delay in the signing of the formal documents would not affect the right he acquired thereby, as the execution of the agreement would relate back to the time when the settlement was in fact made. The authorities charged with the execution of the duties imposed by section 8 of the Act do not appear to have considered that the delay which had occurred in the signing of the *Kabuliat* affected Autar Singh's rights in the properties settled with him in 1859, or differentiated him from the other Taluqdárs; and although the settlement had been made with

him as *Malguzar*, he was, in fact, included as a Taluqdar in the General Lists prepared under the section, and the property of Ranimau was entered against his name as the estate in his possession. Section 10 of the Act provides that "the Courts shall take judicial notice of "the said lists and shall regard them as con- "clusive evidence that the persons named "therein are such Taluqdars or Grantees."

Their Lordships have no hesitation in holding that the properties settled with Autar Singh in 1859, together with those of which he obtained possession under decrees passed in his favour in the course of the regular settlement, constitute an "Estate" within the meaning of the Act, and are consequently impartible.

The Defendant's Appeal relates to that portion of the Lower Court's decree which, affirming the order of the Subordinate Judge, awarded to the Plaintiff a half share in the properties subsequently acquired by Autar Singh. Janki Pershad has died since the institution of this Appeal, and he is now represented by his minor son Dharaband Singh. It is contended on his behalf that by the custom of the family these acquisitions became part of the original estate, and are, therefore, not subject to the ordinary rules of inheritance.

Both the Courts in India have come to the conclusion that the evidence is insufficient to establish the alleged custom. And no adequate reason has been shown to induce their Lordships to take a different view. The only other point that remains to be considered is whether the lands subsequently acquired were as a matter of fact incorporated with the *Taluqa*. As has been pointed out by this Board in the case of *Parbati Kumari Debi* v. *Jagadis Chunder Dhabal* (L.R. 29, I.A. 82), the question whether

properties acquired by an owner become part of "the ancestral estate for the purpose of his succession," depends on his intention to incorporate the acquisitions with the original estate.

The Courts in India have concurrently found against the Defendant on this point, and their Lordships see no reason to differ from their conclusion. Both Courts appear, however, to have fallen into an error in respect of one property, Kamrauli, for a half share of which they have made a decree in favour of the Plaintiff. It is admitted on his behalf that Kamrauli is one of the villages for which Autar Singh obtained a decree in the regular settlement proceedings. The decree of the Lower Court must, therefore, be varied by the elimination of Kamrauli.

Subject to this variation both Appeals will be dismissed, each party bearing his own costs.

And their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

BHAIYA JANKI PERSHAD SINGH

v.

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DELIVERED BY MR. AMEER ALI.

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