

Privy Council Appeal No. 28 of 1918.

Allahabad Appeal No. 7 of 1916.

Musammat Hardei - - - - - *Appellant*

v.

Bhagwan Singh and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE FOR THE NORTH-WESTERN
PROVINCES, ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 27TH FEBRUARY, 1919.

Present at the Hearing :

VISCOUNT HALDANE.

VISCOUNT CAVE.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by* VISCOUNT CAVE.]

This is an appeal by the plaintiff from a judgment and decree dated the 26th January, 1916, of the High Court of Judicature for the North-Western Provinces, Allahabad, which reversed a judgment and decree dated the 11th May, 1914, of the Subordinate Judge of Moradabad and dismissed the plaintiff's suit. The plaintiff's claim was for recovery of possession of a village called Gureta in Pergunnah Hasanpur in the district of Moradabad, and the question raised in the suit is as to the title to the village in question. The material facts are as follows :—

One Nanak Chand died in the year 1856, possessed of a considerable estate and leaving him surviving a widow, Musammat Pato, and three daughters, Musammats Durgadei, Mahadei and Hardei (the appellant). On his death his estate devolved on his widow. On her death it would pass to his daughters as joint tenants with benefit of survivorship, and on the death of the surviving daughter it would pass to his grandsons.

-On the 22nd January, 1864, the widow, Musammat Pato, executed a deed of covenant by which, after declaring that she was exclusively entitled to the property described in the schedule, she covenanted that on her death it should devolve on her three daughters above named, who might either remain in joint possession of it or divide it among themselves. The schedule comprised a number of items of property which are proved by earlier documents to have belonged to Nanak Chand, and also comprised other items in respect of which no such earlier documentary evidence is produced. Among the latter properties is Mauza Gureta. In the events which happened this document did not become operative, but it is relevant as showing that at the date of its execution Pato was claiming an absolute right to dispose of the whole of the scheduled property.

In or about the year 1875 a transaction took place which was proved by the evidence of Murari Lal (son-in-law of Mahadei) in this suit, and which was also deposed to by the appellant Hardei in a former suit (No. 177 of 1897) brought by her in respect of other property. The effect of this evidence is that Pato in 1875 made a division of the whole of the property scheduled to the deed of 1864 among her three daughters and her grandsons then living. Certain parts of the property were given to the grandsons, who were sons of Durgadei and Hardei, and the remainder was divided into three groups for which the daughters drew lots. The lot which included Gureta fell to Mahadei. The daughters and grandsons entered into immediate possession of their lots; and mutation of names was effected shortly afterwards, probably in the lifetime of Pato.

Pato died in 1876, and after her death each of the daughters dealt with the property allotted to her on the division as her own absolute property. Durgadei made several mortgages of the property allotted to her, and on her death in 1888 it was registered without objection in her husband's name. Mahadei also executed mortgages of parts of the property allotted to her, in addition to the sale-deeds to be hereafter mentioned; and on the 23rd August, 1887, the plaintiff Hardei herself executed a mortgage of part of the property allotted to her in terms which showed plainly that she considered herself to be the absolute owner of the property.

The particular transaction which gave rise to the present suit occurred in 1883 and 1884, when Musammat Mahadei sold and conveyed Gureta to Roshan Singh, the predecessor in title of the respondents. The sale was carried out by two deeds dated the 9th February, 1883, and 20th May, 1884, each conveying a moiety of the property; and in each of these deeds the vendor Mahadei stated that the property having been inherited by her from her father (*tarkai pidri*) was owned by her and she was in exclusive proprietary possession thereof. The plaintiff admitted in the suit of 1897 that she knew of this sale at the time; but she made no objection to it "inasmuch as she had control over her property," that is to say, over the property allotted to her on the division.

In the year 1912 Mahadei died, and on the 4th July, 1913, the plaintiff Hardei commenced this suit against the successors of Roshan Singh for recovery of possession of Gureta, alleging that Gureta had been the property of Nanak Chand, and that in consequence of the death of her mother and sisters she had become the sole heir of Nanak Chand and was entitled to possession. Judgment in her favour was given by the Subordinate Judge but reversed by the High Court, and thereupon this appeal was brought.

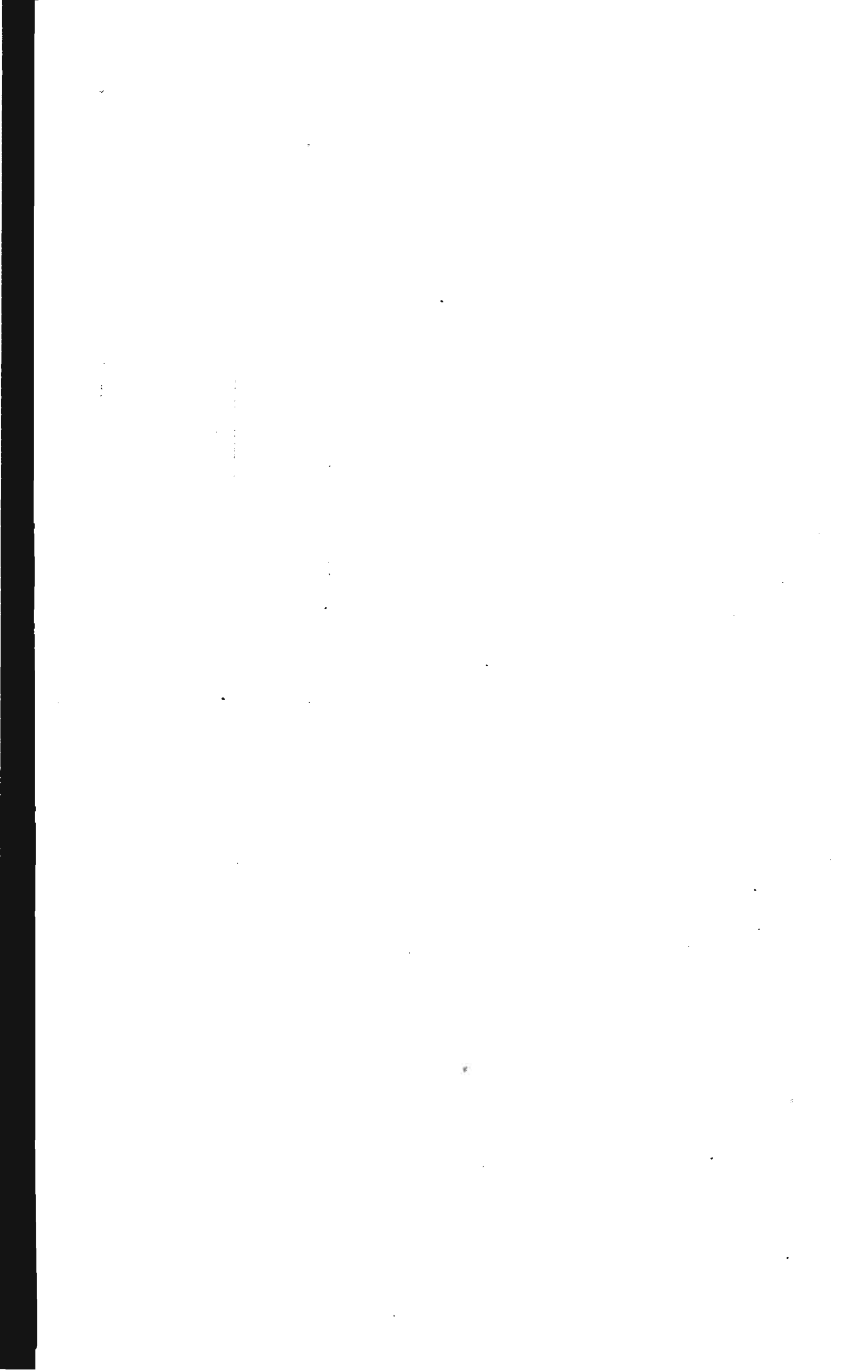
The substantial answers to the plaintiff's claim are two in number :—

First it is said that the plaintiff has not discharged the burden which is incumbent upon her of proving that Gureta was the property of Nanak Chand, and that it may well have formed part of the *stridhan* (or separate property) of Pato, in which case the plaintiff's claim must fail. Upon this point it appears to their Lordships that the balance of evidence in this suit is in favour of the plaintiff. The fact that Pato in the deed of 1864 declared Gureta to be her absolute property is discounted by the fact that her declaration applied equally to other property described in the schedule to that deed, which had undoubtedly belonged to Nanak Chand. On the other hand, the declaration by Mahadei in the sale-deeds of 1883 and 1884 (under which the respondents claim) that the property had been inherited by her from her father, has considerable weight, and is confirmed by oral evidence to which the Subordinate Judge gave credence. If therefore the appeal depended on this point, there would be much to be said for the contention of the appellant.

But secondly, it is said on behalf of the respondents that, assuming the property to have been derived from Nanak Chand, it was effectively vested in Mahadei (the vendor to the respondents' predecessor) by the arrangement of 1875; and there can be no reasonable doubt upon the plaintiff's own evidence that this was the intention of the parties to that arrangement. It is indeed suggested that the division was made for convenience of administration, and was intended to have effect only during the joint lives of the three sisters; but this view is wholly inconsistent with the account of the transaction given by the witnesses, including the plaintiff, and with the fact that shares were given to grandsons who had no present interest in the property. Further, from the time of the arrangement of 1875 until the commencement of this suit, that is to say, for a period of 38 years, all the parties to the arrangement, including the plaintiff, dealt as absolute owners with the property allotted to them; and to this, with trifling exceptions, no objection was taken by the other parties to the division. In these circumstances the true inference appears to their Lordships to be that, at a time when Pato was claiming to be absolutely entitled to the property in her possession, and when her rights and those of her daughters were in doubt, the members of the family agreed and arranged among themselves that the whole property should be at once divided

among the daughters and their sons then living, the mother surrendering her claims and each daughter accepting the property allotted to her in severalty in lieu of the undivided share in the whole estate which would have devolved upon her on her mother's death and abandoning her right of survivorship on the death of either of her sisters. Whether this arrangement is binding on the grandsons cannot be determined in this suit, and on that question their Lordships express no opinion. But the plaintiff at all events is bound by her own agreement; and in view of this fact, and of the favour shown by the Courts to family arrangements and the long period of time which has elapsed since the arrangement was made, she cannot now be allowed to repudiate the agreement and to impeach a sale which was made upon the faith of it.

For these reasons their Lordships have come to the conclusion that, having regard to the arrangement of 1875 and to the events which have happened, it is not now open to the plaintiff to dispute the respondents' title to Mauza Gureta, and they will accordingly humbly advise His Majesty that this appeal should be dismissed with costs.



In the Privy Council.

MUSAMMAT HARDEI

1.

BHAGWAN SINGH AND OTHERS.

DELIVERED BY VISCOUNTI CAVE.

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