Privy Council Appeal No. 27 *of* 1924.

Oudh Appeals Nos. 2 *and* 3 *of* 1922.

Kuar Mata Prasad and another - - - - - *Appellants*

v.

Kuar Nageshar Sahai and others - - - - - *Respondents*

Same - - - - - - - - - *Appellants*

v.

Same - - - - - - - - - *Respondents*

(*Consolidated Appeals*)

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 30TH JULY, 1925.

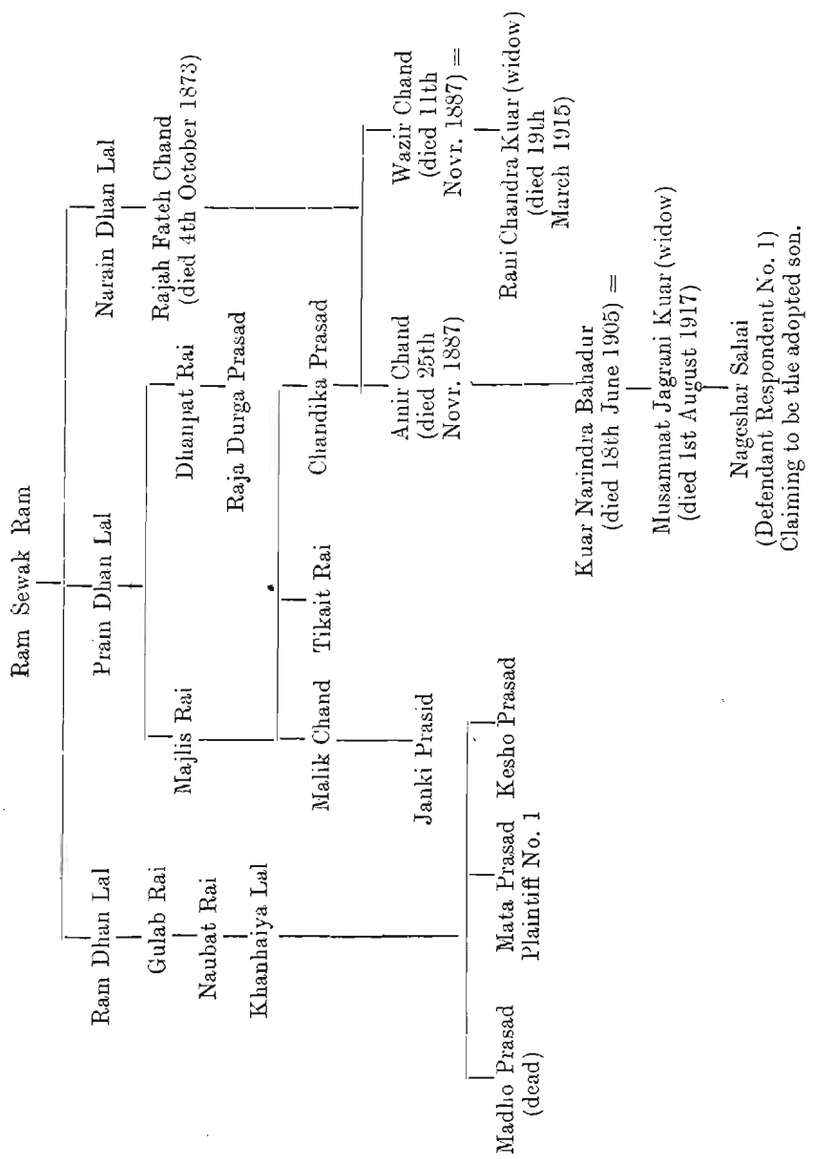
Present at the Hearing:

LORD SUMNER.
LORD BLANESBURGH.
SIR JOHN EDGE.
MR. AMEER ALI.
LORD SALVESEN.

[*Delivered by* MR. AMEER ALI.]

This litigation relates to two properties named respectively Baragawn and Wali, one situated in the district of Hardoi and the other in Kheri, in the province of Oudh. Both belonged to one Raja Fateh Chand who died in 1873. After the annexation of Oudh they were re-granted to Fateh Chand and his name was included with regard to the Hardoi property under List II and in respect of the Kheri property under List V, prepared under Act I of 1869 (the Oudh Estates Act). To these Lists reference will be made more particularly later on in this judgment.

The following genealogical table will explain the position of the parties in this case :—



Mata Prasad, the plaintiff No. 1, claims possession of the properties in question on various grounds, which will be set out later. The second plaintiff is the assignee of Mata Prasad of a share in the two estates. In this judgment wherever the plaintiff is mentioned it refers to Mata Prasad.

Act I of 1869 came into force in January of that year ; and in March following Raja Fateh Chand purported to make a will, under which he devised the Kheri property, in other words the Wali estate, to his eldest son, Amir Chand ; and the Hardoi property, the Baragawn estate, to the younger son, Wazir Chand. So far as appears on the record, Amir Chand and Wazir Chand appear to have been placed in possession of the two estates respectively. Raja Fateh Chand died as already stated in 1873 ; but the will he had made in 1869 was never registered under the provisions of Section 13 of the Act, which requires a will in favour of a younger son of the Talookdar whose name does not appear in the third or fifth of the lists mentioned in Section 8 to be registered

within a certain specified time. This section will be referred to later. Consequently, it is not disputed, that the bequest to Wazir Chand, the younger son, was invalid and inoperative. He, however, remained in possession of the Hardoi estate until his death on the 11th November, 1887.

Amir Chand, the eldest son of Fateh Chand, had died two months earlier, viz., on the 26th September, 1887; as the will in his case did not require registration the devise in his favour was valid in law and operative.

Wazir Chand left him surviving a widow named Chandra Kuar who appears, on his death, to have taken possession of the Hardoi property. Chandra Kuar died on the 19th of March, 1915.

On the death of Amir Chand, as already stated, his son and heir, named Narindra Bahadur, succeeded to the Kheri estate. In 1897 he brought a suit against the widow of Wazir Chand for a declaration of his own title as regards the Hardoi estate and for possession of the property. To the particulars of his claim their Lordships will refer more fully later on. It is sufficient at this stage to say that he based his title to the Baragawn estate on the allegation that it was subject to the provisions of Act I of 1869 and that he was entitled to it in preference to Chandra Kuar, Wazir Chand's widow. In the alternative, he alleged that, even if the estate was not governed by the provisions of the Act and was subject to the Hindu law, pure and simple, the property devolved on him on the death of Wazir Chand his uncle as they were joint and undivided at Wazir's death. The Subordinate Judge in that case held that the property was subject to the provisions of Act I of 1869 and that the plaintiff, Narindra Bahadur was entitled to it in preference to Chandra Kuar. He accordingly decreed the plaintiff's claim. On appeal to the Judicial Commissioner's Court it was held the property in dispute was not subject to Act I of 1869. The decree of the Subordinate Judge was accordingly reversed and the case was remanded for the purpose of deciding whether the claim of Narindra Bahadur was well-founded on the alternative ground, namely, that under the law of the Mitakshara, to which the parties were subject, he was entitled to the property.

Before the trial on the remand the parties compromised the dispute and a decree was made on the 20th December, 1899, in accordance with the settlement at which they had arrived. Reference will be made later to the terms of the settlement, as one of the questions raised in the present litigation relates to the power of Chandra Kuar to enter into that compromise.

Narindra Bahadur died on the 18th June, 1905, leaving him surviving his widow, Jagrani Kuar. Shortly after his death Jagrani Kuar propounded a will alleged by her to have been executed by Narindra Bahadur on the 23rd October, 1904, giving her power to adopt a son to him.

On the 30th April, 1906, one Raja Durga Prasad, claiming to be a reversioner of Narindra Bahadur, brought a suit against Jagrani Kuar in the Court of the Subordinate Judge of Kheri for a declaration that the will propounded by her as the will of Narindra Bahadur was a forgery and that he was entitled to the estate by virtue of his reversionary right. Durga Prasad's suit had a chequered career. His claim was dismissed by the Subordinate Judge on the ground that the will was genuine and had been duly executed by Narindra Bahadur. The decree of the Subordinate Judge was reversed on appeal by the Judicial Commissioners, who held, chiefly as it appears, on suspicion, that the will was not genuine. They accordingly decreed the claim of Raja Durga Prashad.

Jagrani Kuar appealed to His Majesty in Council from the decree of the Judicial Commissioners, and on the 3rd December, 1913, it was held by their Lordships on a careful examination of the evidence relating to the execution of the will that it was fully established to be the act of Narindra Bahadur. The decree of the Appellate Court was accordingly set aside and that of the Subordinate Judge dismissing the suit of Durga Prasad was restored.

Narindra Bahadur's will having been thus finally declared to be valid, Jagrani Kuar, in conformity with the power entrusted to her by her deceased husband, adopted on the 22nd May, 1914, the defendant Nageshar Sahai as the son of Narindra Bahadur.

On the 20th of April, 1918, the present suit was instituted by Mata Prasad and his assignee, plaintiff No. 2, in the Court of the Subordinate Judge of Hardoi for the possession of the two estates lying, respectively, in the Hardoi and Kheri Districts, with a declaration regarding Mata Prasad's title.

It is desirable to notice briefly the allegations on which the claim is founded and on which the long and ingenious arguments in the course of the trial mainly rest.

In para. 12 of the plaint it is stated that the Baragawn and Wali (Sarawa) Estates "are subject to Act I of 1869," and that the plaintiff, Mata Prasad, as the oldest member of the senior branch, is entitled to them with their appurtenances. In para. 13 he claims alternatively that even if Baragawn "be not deemed" subject to the Act, he is entitled to the same by virtue of the custom.

The reason of this alternative claim will be clear as the judgment proceeds.

He asked, accordingly, for a declaration that the adoption of Nageshar Sahai was invalid and that the will under which Jagrani Kuar purported to make the adoption was false.

The first defendant, Nageshar Sahai, is, as already stated, the alleged adopted son of Narindra Bahadur. The other two defendants are the sons of Narindra's sister, who acquired title to certain portions of the estate under his will. Both sets of defendants dispute the title of the plaintiff, Mata Prasad.

Nageshar Sahai further contends that the plaintiff's claim is barred by the rule of *res judicata* arising out of the decision in Raja Durga Prasad's case, and consequently in respect of the Hardoi estate, it is not maintainable. With regard to the assertion that the Baragawn estate is subject to Act I of 1869, the defendants further contend that the will of Fateh Chand, executed in March 1869, under which the testator had purported to devise the Hardoi estate to Wazir Chand was never registered and consequently it had gone out of the operation of Act I of 1869 and succession so far as that property was concerned, was governed by the general provisions of the Hindu law. They also denied the existence of any custom such as the plaintiff alleged in paras. 12 and 13 of his plaint.

In answer to the defendants' allegation that the will of Fateh Chand was not operative as it was never registered, the plaintiff averred that if the will of 1869 was invalid there was a prior will made in 1860 the terms of which were formulated or embodied in the village administration papers, called wajib-ul-arz ; and he claimed that effect should be given to that will.

He further urged that even if the estate went out of the operation of Act I of 1869 in consequence of the non-registration of the will it was brought back under the Act on the passing of the amending Act III of 1910. The arguments in support of this contention have occupied a great deal of the time of the Courts in India and of this Board.

Their Lordships, however, propose to confine their attention to the principal contentions advanced before the Board.

The Subordinate Judge of Lucknow, before whom the case came on for trial, raised a large number of issues which he has discussed at considerable length in his judgment. In dealing with the plea of *res judicata* based on the decision in Durga Prasad's suit he adopted what appears to their Lordships an unprecedented and irregular course ; he refused in fact to be bound by the decisions of the Judicial Committee. To show the mistake into which he has fallen their Lordships consider it desirable to refer to two passages in his judgment :—

> " Granting on the basis of these authorities that the widow represents the entire estate which consists of herself and the reversioners, I am unable to see how it follows that one reversioner in a suit against the widow represents the entire body of the reversioners. The commonly accepted position of the reversioners is that one does not claim through the other. Obviously, therefore, the judgment in a suit between one reversioner and any other person, widow or some other person, does not stand as a bar to the trial of the same question as between another reversioner and the same person on the other side in another suit. I do not see how this principle is changed in this particular case before me.
>
> The basis of this general principle is that the title of one reversioner is quite separate from and independent of the title of any other reversioner. It is all the more so in the present case as the first plaintiff's title has originated in a special legislation of the Act III of 1910 of the United Provinces Council, the Act amending Act I of 1869. He was not one of the reversioners at

any rate immediate reversioners of the property at the time the suit was brought by Durga Prasad. He had no title as a reversioner. His title arose on the passing of the Act in the year 1910. It passes my comprehension how a person can be said to be debarred from setting up a title in a suit, when that title had no existence at the time at which any other litigation took place concerning the property to which the title relates. To my mind the present suit could hardly be said to be barred even if the present plaintiff No. 1 had himself been the plaintiff in place of Durga Prasad. The requirements of 'litigating under the same title,' would be wanting for constituting the bar of *res judicata*."

The reference at the end of the passage quoted to Act III of 1910 appears futile, for the cause of action and the charge respecting the genuineness of Narindra Bahadurs' will are the same as in the previous case.

On this reasoning he refused to be bound by the decision of the Board in *Venkatanarayana Pillai* v. *Subbrammal*.*

Regarding the genuineness of Narindra Bahadur's will, the authenticity of which was declared by the Judicial Committee in 1913, the Subordinate Judge expressed himself as follows :—

"I have never entertained any doubt on the question and I have no hesitation in holding upon this issue that the trial of the genuineness of the will of Narindra Bahadur is not barred by the judgment in the case between Durga Prasad and Jagrani."

And again :—

"The conclusion at which the learned Subordinate Judge and their Lordships of the Privy Council arrived on the evidence in that case is not warranted by the evidence in this case which besides exposing the position of Khuda Bakhsh and Ganga Prasad, is confined to the actual execution of the will and falls far short of the evidence produced in that case of the intention."

He held accordingly that, the plaintiff's claim was not affected by the bar of *res judicata*, either as to the representative character of Durga Prasad's suit, or by the Board's decision on the issue of fact relating to the genuineness of the will of Narindra Bahadur, and that he had established his title to the Kheri estate.

He held, however, that, as the will of Fateh Chand was inoperative as regards the Hardoi estate, not having been registered under the provisions of Section 13 of Act I of 1869, and Section 13 (*a*) of Act III of 1910 was not retrospective, the estate was not brought back under the Act of 1869, as the plaintiff contended. He held therefore, that Mata Prasad failed to establish any title to the same. He accordingly decreed the plaintiff's claim in respect of the Kheri estate and dismissed his suit with regard to the Hardoi property.

Both parties appealed to the Court of the Judicial Commissioner of Oudh. The learned Judges of the Appellate Court were of opinion, as their Lordships think rightly, that the plaintiff's claim was in fact *res judicata*, and therefore liable to be dismissed

* L.R. 42, I. 125.

in respect of the Kheri property. They further held, in agreement with the Subordinate Judge that the Hardoi estate was never under Act I of 1869 and was not brought back under the Act by anything contained in the later Act. They accordingly dismissed the whole suit.

From this decree the plaintiffs have appealed to His Majesty in Council. On the arguments before the Board, the first question for determination centres on defendants' plea of *res judicata*, in other words, whether the proceedings in the suit of Raja Durga Prasad form a bar to the present action by Mata Prasad.

It has been contended before their Lordships, as it was before the Subordinate Judge who accepted and gave effect to the argument that the reversioners have each an independent cause of action, and as none of the reversioners derive title from the others, the result of a suit against the widow and her assignees brought by a reversioner, presumptive or otherwise, does not bind the others, nor can the suit be considered as brought in a representative capacity. The same argument, though clothed in other words, was presented to their Lordships in the case of *Venkatanarayana Pillai* (*since deceased*) v. *V. Subbrammal and another*,* where the governing principle applicable to a suit brought by a reversioner in the lifetime of the widow to get rid of a common apprehended danger to the interests of the general body of reversioners, was set out at length. In re-affirming the rule enunciated in that case their Lordships desire to observe that so long ago as 1868 Sir Barnes Peacock, then Chief Justice of Bengal, indicated in the Full Bench case of *Nobin Chunder Chuckerbutty* v. *Issur Chunder Chuckerbutty*,† the position of the presumptive reversioner seeking to get rid of any act of the widow during her lifetime which jeopardised the common interests of the reversioners. Act VIII of 1859 which was then in force governing procedure, contained no such provision as was embodied in Explan. 5 to s. 13, Act X of 1877, and afterwards reproduced in Expl. 6, Section 11 of Act XIV of 1882 and Act V of 1908. The words, "cause of action," therefore, needed judicial interpretation. Sir Barnes Peacock's *dicta* deserve attention. The main question in the case referred to was whether adverse possession as against the widow barred the rights of reversioners. The language of the Chief Justice in dealing with the point is important. He says first: "but reversionary heirs presumptive have a right, although they may never succeed to the estate, to prevent the widow from committing waste."

He then goes on thus:—

> "It is said that the reversionary heirs could not sue during the lifetime of the widow, and that therefore they ought not to be barred by any adverse holding against the widow at a time when they could not sue. But when we look at the widow as a representative, and see that the reversionary heirs are bound by decrees relating to her husband's estate which are obtained against her without fraud or collusion, we are of opinion that they are also

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* *Supra.* † 9, Sutherland's Weekly Reporter, p. 505, 509.

bound by limitation, by which she, without fraud or collusion, is barred. When, therefore, we construe the words 'cause of action' in the Statute of Limitation, we must consider them as referring, not to a new cause of action accruing to the reversionary heirs personally and individually, but to the cause of action which accrued to the heir or representative, for the time being, of the deceased."

The principle enunciated in *Venkatanarayana Pillai*, which was followed in *Janaki Ammal* v. *Narayanasami Aiyar*,* is logically sound and "salutary," to use Lord Blanesburgh's expression in the judgment in *Kesho Prashad Singh* v. *Sheo Pargash Ojha and another*.†

Reversioners possess individually what has been called a *spes successionis*, the bare possibility of succeeding to the estate of the last owner in case the widow dies leaving anyone of them surviving entitled to take immediate possession after her, unless, of course, the husband has left the power to her to adopt a son. But the *spes* is common to them all; so is the danger by the widow's act against the interests of the reversioners. The right to sue to set aside that common danger is given for obvious reasons of policy and convenience to the person, who, if the widow died at the moment, would take the estate. But the result, favourable or otherwise, affects the reversioners as a body.

As pointed out in the case of *V. Venkatanarayana Pillai* v. *V. Subbrammal**, Ex. 6 to s. 11 of the Civil Procedure Code covers exactly cases of the kind under consideration and bars a fresh litigation on the same cause of action.

The learned Judges of the Judicial Commissioner's Court, in their very able judgment, have set out, in clear terms, the considerations on which the principle is founded.

It has been contended on behalf of the plaintiff that the suit by Durga Prasad was incompetent in as much as he was not at the time the presumptive reversioner to Narindra Bahadur. This contention could only have been advanced on a misconception of the facts. Jagrani Kuar, the defendant in that suit, appears to have taken the same objection that Durga Prasad had no right to maintain the action. The Subordinate Judge in the suit of Durga Prasad states first the ground of the claim in these terms: "The plaintiff (Durga Prasad) is one of the reversioners to Narindra Bahadur and Wazir Chand and as such his interest to the said property will suffer if the will is allowed to stand, and so he has instituted the present suit, seeking (among others) the following declaratory relief, viz., that the will propounded is a forged document." The learned Judge then proceeds to deal with the objection, viz., Durga Prasad's incompetency. Reference to the pedigree would show that the persons standing nearest in degree to Narindra Bahadur were at the time Chandika Prasad and Durga Prasad. The learned Subordinate Judge therefore says in his judgment: "The sale

* L.R. 43, I.A. p. 207. † L.R. 51, I.A. p. 381.

deed by Chandika Prasad in favour of the plaintiff (Durga Prasad) is evidence sufficient to show that he is unable to sue for want of funds, and so the plaintiff is entitled to sue."

This finding was never, so far as their Lordships can see, impugned in the Judicial Commissioner's Court or before this Board.

Mata Prasad, the plaintiff in the present suit, is a remote sapinda of Narindra Bahadur. He was in existence at the time when Raja Durga Prasad brought his action. He was aware, as his brother Kesho Prasad swears, of the institution of the suit. There is nothing to show that the litigation between Raja Durga Prasad and Jagrani Kuar was collusive or vitiated by fraud or laches on the part of Durga Prasad in conducting the suit or in asserting his reversionary right. Nothing of the kind is proved or even alleged.

The Subordinate Judge dismissed Durga Prasad's "claim for a declaration of the forgery of the will." But he declared it to be invalid and inoperative in respect of certain bequests in favour of the defendants other than Jagrani Kuar. On appeal to the Judicial Commissioner's Court, the decree of the Subordinate Judge affirming the due execution of the will by Narindra Bahadur was reversed, but it was restored by this Board on the 3rd December, 1913, which found the will to have been duly executed by the defendant's husband with the power of adoption.

On a review of all the facts, their Lordships are of opinion, in concurrence with the learned judges of the Appellate Court, that the suit by Durga Prasad against Jagrani Kuar for a declaration that the will of Narindra Bahadur was false and fabricated, was brought by him in his capacity of the presumptive reversioner, and as such the decision in that suit binds the plaintiff, Mata Prasad. His claim as regards the Kheri estate is clearly barred.

Assuming that the claim as to the Baragawn estate in the Hardoi District is not so barred, the question of the plaintiff's title to this property has to be considered from a different point. He contends, in the first place, that, even if the will of 1869 was invalid for want of proper registration, he could fall back upon the will of 1860, to which reference is made in the document of 1869. Beyond this there is absolutely no evidence of the fact that Fateh Chand had made any bequest to Wazir Chand in 1860. Reference has been made to a number of documents called wajib-ul-arz, but they are not statements by Fateh Chand himself. They contain statements by some of his agents, all of whom speak of the mode of descent customary in the family. The Hardoi estate granted to Fateh Chand was placed in List II. This list includes the Talookdars, whose estates, according to the custom of the family, on or before the 13th February, 1856, ordinarily devolved upon *a single heir*. The purport of the statements contained in the wazib-ul-arz simply referred to the fact that the particular estate which was held by

Wazir Chand was descendable to a single heir and nothing more. Whether it was descendable to a single heir or not, the bequest being invalid owing to want of registration, left the property open and out of Act I of 1869. It was conceded in the Appellate Court that unless the plaintiff could show that the property came back under Act I of 1869 by virtue of the provisions of Act III of 1910, the plaintiff had no right to the property. Section 13 of Act I of 1869 is in these terms :—

> "No taluqdar or grantee and no heir or legatee of a taluqdar or grantee shall have power to give or bequeath his estate or any portion thereof or any interest therein to any person not being either
>
> (1) A person who under the provisions of this Act or under the ordinary Law to which persons of the donor or testator's tribe and religion are subject would have succeeded to such estate or to a portion thereof or to an interest therein, if such taluqdar or grantee, heir, or legatee had died intestate, or
>
> (2) A younger son of the taluqdar or grantee heir or legatee, in case the name of such taluqdar or grantee appears in the third or the fifth of the lists mentioned in section eight, except by an instrument of gift or a will executed and attested not less than three months before the death of the donor or testator, in manner herein provided in the case of a gift, or will, as the case may be, and registered within one month from the date of its execution."

The amendment which was made by Act III of 1910, called the Oudh Estates Amendment Act of 1910, Section 6, runs thus :—

> "6. After Section 13 of the said Act, the following section shall be inserted, namely :—
>
> 13A. No taluqdar or grantee, and no heir or legatee of a taluqdar or grantee, and no transferee referred to in Section 14, and no heir or legatee of such transferee, shall have power to bequeath his estate, or any portion thereof or any interest therein
>
> (1) (*a*) to a person who would have succeeded to such estate, portion or interest under the provisions of this Act applicable to such estate, had the person so bequeathing died intestate as to his estate, at the time when the bequest took effect,
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> (*b*) to his daughter,
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> (*c*) to a son of his daughter, or
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> (*d*) to a younger son,
>
> except by a will duly executed and attested ;
>
> (2) to a person who might, in the absence of other heirs, have succeeded to such estate, portion or interest under the provisions of this Act applicable to such estate, had the person so bequeathing died intestate as to his estate, at the time when the bequest took effect,
>
> except by a will duly executed and attested not less than three months before the death of the testator and presented for registration within one month from the date of its execution and registered ;
>
> (3) to any person other than a person mentioned in clauses (1) and (2),
>
> except by a will duly executed and attested not less than three months before the death of the testator and registered according to the law for the time being in force relating to the registration of assurances, but presented for such registration within one month from the date of its execution."

As the learned Judges of the Judicial Commissioner's Court point out, that section is not retrospective and does not validate a bequest which had already failed. It would be anomalous, to say the least, to suppose that the legislature intended by Act III of 1910 to revive rights that had disappeared in consequence of the failure of the bequest in 1869 when other rights had been created in the meantime.

Section 21 of Act III of 1910 shows clearly that nothing in that Act has the effect which is contended for by the plaintiff. Section 21 says :—

> Unless there is something repugnant in the Saving clause, subject or context
>
> (*a*) Section 2, Sub-section (1) of this Act, with the exception of
>
> (i) clause (*b*) of the definition of the word " estate " ;
>
> (ii) the words " or a mother " in the definition of the word " heir " ; and
>
> (*b*) Sections 3, 4, 7 and 8 of this Act,
>
> shall operate retrospectively ; but nothing contained in the said sections shall affect suits pending at the commencement of this Act, or shall be deemed to vest in or confer upon any person any right or title to any estate, or any portion thereof, or any interest therein, which is, at the commencement of this Act, vested in any other person who would have been entitled to retain the same if this Act had not been passed ; and the right or title of such other person shall not be affected by anything contained in the said sections.

In their Lordships' opinion the contention that on the passing of Act III of 1910 the Baragawn estate became once more subject to Act I of 1869 has no substance. With the failure of the bequest the property passed out of the Act and became subject to the Hindu law.

But it is urged that the compromise between Narindra Bahadur and Chandra Kuar was invalid, inasmuch as the widow had no right to make an assertion that the estate was subject to Act I of 1869 when it was not so. The compromise between Narindra Bahadur and Chandra Kuar bears date the 25th November, 1899. Para. 1 recites :—

> " That Chandra Kuar admits that the properties in dispute are Taluqdari properties, and succession to them will be governed by Act I of 1869 and Kuar Narindra Bahadur is entitled to hold the same as lawful heir of Raja Wazir Chand."

By para. 2 Kuar Narindra Bahadur agreed *inter alia* to Rani Chandra Kunwar remaining in possession of the properties in question.

By para. 3 he further agreed that he shall not by any deed or will alienate the said immoveable property or his rights in it as long as the said Rani Sahiba remains alive, but if he does so that alienation shall be null and void.

It is contended that Chandra Kuar had no right to enter into the compromise. Their Lordships are of opinion that the learned Judges of the Appellate Court in India are right in regarding it as a family settlement which was " prudent and reasonable "

under the circumstances, to use the language of Lord Phillimore in the case of *Ramsumran Prasad and another* v. *Shyam Kumari and others*.*

Narindra Bahadur's suit had been decided in his favour by the Subordinate Judge. On the appeal the Judicial Commissioners had reversed his judgment and remanded the case for the consideration of the second part of the claim. The matter was still open to another appeal. Under those circumstances, in order to avoid a long litigation and the creation of further burden on the family property, Chandra Kuar entered into a compromise acknowledging Narindra Bahadur's right to the inheritance after her death, he on his side binding himself not to alienate the property during her lifetime. As stated already, the settlement arrived at between the parties appears to their Lordships to have been both prudent and reasonable in the circumstances of the case, and the plaintiff has no right to question it now.

Narindra Bahadur was, in their Lordships' opinion, the nearest agnate of Wazir Chand, and if the property was subject to the provisions of the Hindu law, as their Lordships find, whether he was joint or separate from Wazir Chand, he was entitled to the property on the death of his widow. The compromise, in fact, gave effect to this rule of the Hindu law. The acknowledgment of the widow that the property was subject to Act I of 1869 would not affect the rights of the parties on the basis of the law governing the succession.

The adoption of Nageshwar by Jagrani Kuar, although it took place in 1914, takes effect from the death of the father, to whom he is adopted, and therefore there was no intervening time during which it could be said that the property was not held by anyone. It may be noted here that both the Courts in India have negatived the plaintiff's allegation of the allegation contained in paras. 12 and 13 of his plaint.

In view of the peculiar course adopted by the Subordinate Judge in dealing with this case, and in order to prevent other Courts in India from falling into the same error, their Lordships think it desirable to point out that it is not open to the Courts in India to question any principle enunciated by this Board, although they have a right of examining the facts of any case before them to see whether and how far the principle on which stress is laid applies to the facts of the particular case. Nor is it open to them, whether on account of "judicial dignity" or otherwise, to question its decision on any particular issue of fact. Any application for review of judgment on grounds permissible by law only lies to the Judicial Committee.

With these remarks their Lordships desire to express their entire concurrence with the judgment of the Judicial Commissioner's Court. They will accordingly humbly advise His Majesty that the plaintiffs' appeal should be dismissed with costs.

* 49 I.A., p. 342.

In the Privy Council.

KUAR MATA PRASAD AND ANOTHER

v.

KUAR NAGESHAR SAHAI AND OTHERS.

SAME *v.* SAME.

Consolidated Appeals.

DELIVERED BY MR. AMEER ALI.

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