Privy Council Appeal No. 123 *of* 1928.
Oudh Appeal No. 7 *of* 1928.

Mitar Sen Singh - - - - - - - *Appellant*

v.

Maqbul Hasan Khan and others - - - - - *Respondents*

FROM

THE CHIEF COURT OF OUDH AT LUCKNOW.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 30TH JUNE, 1930.

Present at the Hearing.
LORD ATKIN.
LORD MACMILLAN.
SIR JOHN WALLIS.
SIR GEORGE LOWNDES.
SIR BINOD MITTER.

(*Delivered by* LORD ATKIN.)

This is a case which involves a question of the inheritance of a property in Oudh, and it involves an important question as to the position of heirs of an ancestor who renounced his original religion of Hinduism and became a Mohammedan. The ancestor in question was a man named Jagardeo Singh, who was in 1843, at the date of his conversion to Mohammedanism, a member of an undivided Hindu family tracing their descent, so far as is necessary to this case, from a common ancestor, Babu Sangram Shah. Jagardeo Singh, as stated, was converted to Mohammedanism in 1843 and he died in 1844. He left two sons and two daughters, or at any rate he had two sons and two daughters, and one of the sons, who is the grandfather of the present defendants, was Agha Hasan Khan, who married and had a daughter, who married and whose children are the three defendants, 1, 2 and 3, in this case. On the death of the widow of Agha Hasan Khan the three children came into possession of the property which had belonged to Jagardeo Singh and had descended in that way to their grand-

father. The property is claimed in this action by one Babu Mitar Sen Singh, who is a descendant in the sixth generation of Babu Sangram Shah and would be the proper heir and would succeed to this property in accordance with Hindu law, on the footing that a custom prevailed in the family, as is alleged, which excludes females from inheritance. That custom has not gone to proof in this particular case. Its existence has been assumed for the purpose of the case, and their Lordships will so deal with the matter.

The plaintiff founds his claim upon the Caste Disabilities Removal Act of 1850, Act XXI of 1850, which applied to Oudh at this time. It is important to bear in mind the words of the Act. It first of all recites Section IX of Regulation VII of 1832 of the Bengal Code. Then it says :

> " 'Wherever in any civil suit the parties to such suit may be of different persuasions, when one party shall be of the Hindu and the other of the Mohammedan persuasion : or where one or more of the parties to the suit shall not be either of the Mohammedan or the Hindu persuasions ; the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled ' ; and whereas it will be beneficial to extend the principle of that enactment throughout the Territories subject to the government of the East India Company, it is enacted as follows."

The enacting part is contained in one Clause, Clause 1 :

> " So much of any law or usage now in force within the Territories subject to the government of the East India Company as inflicts on any person forfeiture of rights or property or may be held in any way to impair or affect any right of inheritance by reason of his or her renouncing or having been excluded from the communion of any religion, or being deprived of caste, shall cease to be enforced as Law in the Courts of the East India Company and in the Courts established by Royal Charter within the said Territories."

It has to be remembered that the law of succession in the case of a Hindu or a Mohammedan depends upon their own personal law : it depends upon the law of their religion, and there can be no question but that in this case, apart from the operation of this Act, inasmuch as the father of these children was in fact a Mohammedan, these children would be the proper heirs according to Mohammedan law and, even if there was a custom which excluded the daughters, nevertheless the Mohammedan law would in itself prevent a Hindu from succeeding as heir ; and therefore, if the personal law of Agha Hasan Khan, the grandfather of these children, prevailed, then the plaintiff would have failed to establish his case. That is the only point which their Lordships have to determine, and therefore the plaintiff relies upon this Act and says that Jagardeo Singh renounced his religion but nevertheless the plaintiff was not to have his rights of inheritance impaired by reason of Jagardeo Singh having renounced the Hindu religion, and he claims therefore that, as he was a Hindu, he was entitled to establish his right of inheritance in accordance with the Hindu law.

There have been, no doubt, two conflicting lines of decisions on the construction of this Act. One has taken the wide view which is sought to be put upon this Act by the plaintiff in this case, and it cannot be better stated than in the judgment of Sir John Edge, then Chief Justice of Allahabad, in the case of *Bhagwant Singh and Others v. Kallu*, (I.L.R., II All. 100). One passage only need be referred to in order to show how the broad construction relied upon by the plaintiff is expressed. Sir John Edge says at page 104 :

> "The latter portion of the section, in my opinion, protects any person from having any right of inheritance affected by reason of any person having renounced his religion or having been excluded from caste."

The consequence of that would be that the plaintiff in this case would succeed in establishing his claim. It would have very far reaching consequences if one tried to apply that principle to ordinary cases, because it would apparently mean that, if a Hindu becomes a Mohammedan, then the descendants of that Mohammedan throughout the ensuing generations, without any limit, would always derive their succession under the Hindu law of succession and not under the Mohammedan law of succession. It is unnecessary for their Lordships to discuss the far reaching effects of that decision. On the other hand, there has been another line of decisions which is exemplified by the case of *Vaithilinga Odayar v. Ayyathorai Odayar* (I.L.R., 40 Mad. 1118) which takes the narrower view, the view which, in their Lordships' opinion is the correct view, namely, that this section in terms only applies to protect the actual person who either renounces his religion or has been excluded from the communion of any religion or has been deprived of caste. It is intended to protect such a person from losing any right of property or of succeeding as heir. It appears to their Lordships that when the Act is looked at that is the only reasonable construction that can be put upon it. The first limb of this section says "So much of any law . . . as inflicts on any person forfeiture of rights or property,"—and Sir John Edge himself took the view that that part of the clause only applied to the person who renounced :—the second limb proceeds "or may be held in any way to impair or affect any right of inheritance by reason of his or her renouncing."—Now it is perfectly true that the words "his or her" are not so easy to apply, because there is not a person expressed in the Act who is represented by "his or her," but it seems to their Lordships to be plain that the words "or may be held in any way to impair or affect any right of inheritance by reason of his or her renouncing" should be read "any right of inheritance of any person by reason of his or her renouncing." The clause is given a simple meaning by this construction and their Lordships think that that is the correct view. In other words, when once a person has changed his religion and changed his personal law, that law will govern the rights of succession of his

children. It may, of course, work hardly to some extent upon expectant heirs, especially if the expectant heirs are the children and perhaps the unconverted children of the ancestor who does in fact change his religion, but, after all, it inflicts no more hardship in their case than in any other case where the ancestor has changed the law of succession, as, for instance, by acquiring a different domicile, and their Lordships do not find it necessary to consider any questions of hardship that may arise. They will certainly, in their Lordships' view, be outweighed by the immense difficulties that would follow if the wider view were to prevail. Their Lordships are definitely of opinion that the construction which was adopted by Sir John Edge was not the right construction and that case and any cases that followed it must be overruled so far as the construction of this Act is concerned.

Their Lordships therefore think that the opinion of the Chief Court and the judgment of the Chief Judge were perfectly correct. The reasoning appears to their Lordships to be well founded and they have come to the conclusion that this appeal must be dismissed with costs, and they will humbly advise his Majesty accordingly.

In the Privy Council.

MITAR SEN SINGH

v.

MAQBUL HASAN KHAN AND OTHERS.

DELIVERED BY LORD ATKIN.

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