

*Privy Council Appeal No. 58 of 1929.*  
*Oudh Appeals Nos. 21 of 1928 and 4, 5 and 6 of 1927.*

Kamakhya Dat Ram	-	-	-	-	-	-	-	-	<i>Appellant</i>
									<i>v.</i>
Kushal Chand	-	-	-	-	-	-	-	-	<i>Respondent</i>
Same	-	-	-	-	-	-	-	-	<i>Appellant</i>
									<i>v.</i>
Jagjiwan Das and another	-	-	-	-	-	-	-	-	<i>Respondents</i>
Same	-	-	-	-	-	-	-	-	<i>Appellant</i>
									<i>v.</i>
Narendra Deo and others	-	-	-	-	-	-	-	-	<i>Respondents</i>
Same	-	-	-	-	-	-	-	-	<i>Appellant</i>
									<i>v.</i>
Beni Madho and another	-	-	-	-	-	-	-	-	<i>Respondents</i>

*(Consolidated Appeals)*

FROM

THE CHIEF COURT OF OUDH AT LUCKNOW.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 12TH DECEMBER, 1933.

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*Present at the Hearing :*

LORD MACMILLAN.

LORD WRIGHT.

SIR GEORGE LOWNDES.

[*Delivered by* LORD MACMILLAN.]

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Their Lordships do not think it necessary to call upon Counsel for the appearing respondent.

In these consolidated appeals from the Chief Court of Oudh at Lucknow the sole question for decision arises with regard to the terms of a paragraph in the will of Rai Bahadur Sri Ram. The will is dated 22nd May, 1911, and the paragraph to be interpreted reads as follows :—

“ Besides the villages comprised in Taluqa Rasulpur entered in List III other villages and shares in villages entered in List IV given at the foot of this deed, shall pass to the said Sitapat Ram and after him to his eldest son under the rules of succession laid down in Act I of 1869.”

The question is whether by this provision the testator conferred on his son, Sitapat Ram, an absolute right of property in the villages and shares in villages comprised in List IV or only a life interest. The question has become of material importance because during his lifetime Sitapat Ram apparently incurred debts to a large amount and his creditors have sought to do execution against the properties, or some of them. If the interest of Sitapat Ram in the villages was limited to a mere life interest, then, of course, the creditors could only attach such life interest. He also, apparently, granted a mortgage purporting to affect one or more of these villages, and in this instance also it is obviously of importance to decide whether he was entitled to grant such a mortgage as owner.

The matter comes before their Lordships in the form of appeals from four decrees of the Chief Court of Oudh. Three of these relate to judgment debts and execution decrees. In these instances the appeals are *ex parte*; in the fourth instance, which is the decree relating to the mortgage, there is an appearance for the respondent, Kushal Chand, the mortgagee. The Courts below have unanimously held that Sitapat Ram took an absolute right of property under his father's will in the villages entered in List IV.

Their Lordships get little assistance from decisions with regard to other wills in construing the language and arriving at the intention of this particular testator. Certain cases in which other testators have used other language have been referred to, but from these the only guidance to be obtained is that what must be sought in every instance is the dominant intention of the testator. It is, of course, always legitimate, and frequently helpful, to look to other provisions of settlement, in order to see what is the vocabulary of the testator and how he expresses himself with regard to other matters.

In the present instance their Lordships receive considerable assistance from the contrast between the language used in Para. 4 and that used in the neighbouring Para. 6. In the latter paragraph the testator, after directing that "Sitapat Ram shall get the villages detailed in List VI," adds the words "but he shall have no power to make transfer or create any incumbrance with regard to those villages, and the said Sitapat Ram shall remain in possession during his lifetime and after him his sons, Adyadat Ram, Bidyadat Ram and Shantadat Ram or of them any person or persons who may be alive after Sitapat Ram, shall get equal shares." In this instance the testator makes it abundantly clear that Sitapat Ram's interest in the villages detailed in List VI is to be limited to a life interest, thus showing that when he wanted to restrict his beneficiary to a life interest he knew the appropriate language in which to express his intention. But the contrast between Para. 4 and Para. 6 becomes even more conspicuous when reference is made to the Lists themselves, which are appended to the will; for List IV is headed: "Villages

which Sitapat Ram and after his death his eldest son shall get ” ; while List VI is headed : “ List VI of villages which Sitapat Ram shall get for his lifetime without the power of transfer, and after him, his sons mentioned in Para. 6 shall get it.” The titles of these Lists thus bring into striking contrast the villages which Sitapat Ram is to get for his lifetime without power of transfer, and the villages which he is to get without any such qualification.

On the words of Para. 4 itself, the direction that after Sitapat Ram the villages in List IV are to pass to his eldest son under the rules of succession laid down in Act I of 1869, imports no more than that after Sitapat Ram’s death his eldest son is to take these villages, for by Section 22 of the Act I of 1869 it is provided that in the event of intestacy the eldest son shall succeed. The bequest, therefore, is really much the same as if it had been expressed in favour of Sitapat Ram and after him his heir-at-law, according to the statutory law of intestate succession.

Mr. Wallach, however, sought to assimilate Para. 4 rather to Para. 3, and in so doing had, no doubt, the countenance of the Judges of the Chief Court of Oudh, though with a different intention. It is true that in Para. 3 the testator, in disposing of Taluqa Rasulpur, used language practically identical with the language used in Para. 4, but Taluqa Rasulpur had been made the subject of a declaration under U.P. Act No. II of 1900, and, consequently, the succession to it was thenceforward governed by the scheme provided by that Act, under which a life interest only was taken by Sitapat Ram. But that was by operation of Section 15 of the Act of 1900. In the case of the villages under Para. 4, on the other hand, there was no such declaration ; they were not subject to Section 15 in any way, and that being so, they passed under the operation of the rules of intestate succession laid down in Section 22 of Act No. 1 of 1869.

The Judges of the Chief Court of Oudh, who state that it was agreed that the devise of Taluqa Rasulpur in favour of Sitapat Ram conferred on him an absolute estate, were thus under a misapprehension as to the effect of that devise and were misled in seeking to derive assistance from the assimilation of Para. 4 to Para. 3.

Their Lordships, as they have said, find in the contrast between Para. 4 and Para. 6 a safer guide to the testator’s intention, and reading Para. 4 with the assistance of this contrast they are satisfied that the Judges of the Court below arrived at a correct interpretation of the testator’s will, an interpretation which their Lordships would, in any event, be slow to disturb unless they were very clearly satisfied that some wrong principle of interpretation had been applied or some manifest error of interpretation committed.

In the result their Lordships will humbly advise His Majesty that the appeals should be dismissed, and as there is an appearance only in one of the appeals, there will be costs only to the respondent appearing in that case.

In the Privy Council.

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KAMAKHYA DAT RAM

*v.*

KUSHAL CHAND

SAME

*v.*

JAGJIWAN DAS AND ANOTHER

SAME

*v.*

NARENDRA DEO AND OTHERS

SAME

*v.*

BENI MADHO AND ANOTHER

*(Consolidated Appeals)*

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