Privy Council Appeal No. 43 *of* 1932.

Allahabad Appeal No. 19 *of* 1930.

Rawat Mangal Singh and others - - - - - *Appellants*

v.

Musammat Sidhan Kunwar and others - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 24TH JANUARY, 1935.

Present at the Hearing:

LORD TOMLIN.
LORD RUSSELL OF KILLOWEN.
SIR LANCELOT SANDERSON.

[*Delivered by* LORD TOMLIN.]

Their Lordships do not desire to hear Counsel for the respondents.

This is an appeal from a decree of the High Court of Allahabad dated the 7th May, 1930. That decree affirmed the decree of the Subordinate Judge of Cawnpore dated the 29th March, 1927. By the decree of the Subordinate Judge the suit was dismissed. The nature of the suit is this: The original plaintiff, the first of the present appellants, and two persons who are appellants here with him, and are the purchasers or assignees of his interests, claimed against the respondents an estate called the Aunha estate which is not actually in Oudh, but near its borders. The respondents are three ladies and a minor who represent the limited interest and reversioner's interest in the estate on that view of the title which the appellants are disputing. The point is this: It is alleged by the appellants that the estate is impartible, and that by custom women are excluded from the inheritance. Upon that basis the first appellant claims to be entitled to the property. The respondents, on the other hand,

say that the estate is not impartible, and that there is no custom by which women are excluded, and upon that basis they are entitled to the possession of the estate, they being in fact in possession.

The matter has been dealt with by the Courts in India in this way : The plaintiffs said, first of all, that the estate was a gaddi or raj and, therefore, by its nature was impartible. Both these Courts have held that the estate was not a gaddi or raj. So far as that is concerned, therefore, there are concurrent findings, and that is not a matter which the appellants can pursue here.

It was next said that it was impartible by custom. On that point there has been a difference of opinion between the Subordinate Judge and the High Court, the Subordinate Judge holding that it was impartible by custom, and the High Court holding that it was not.

Thirdly, the question was, even if it was impartible by custom, whether women were excluded by custom. On that point both Courts below have held that there is no evidence of a custom to exclude women, so that there is really a concurrent finding on this point, and it is a little difficult to see upon what basis the appellants here are able to suggest that their Lordships ought to reconsider the matter when the Courts in India have concurred on what is a question of fact.

Now the matter may be stated quite shortly. So far as impartibility by custom is concerned, the Subordinate Judge has relied, first of all, on a book written by a vakil, in 1875. That book obviously was not evidence, and even if it was evidence, in the view of the High Court, it told against the appellants because it contained a reference to a sanad, which was in the respondents' favour.

The only other thing that the learned Judge relied upon was an extract from what has been called the " Book of Settlement," relating to the history of an estate, of which the Aunha estate now consisting of six villages is all that remains. This book was dated 1874, and the relevant extract from it which is printed at pages 288 and 289 of the record, shows a list of the owners of the estate, and in every case shows a single owner. If, however, it is to be understood as indicating that the estate was impartible, it is wholly inconsistent with a number of documents which have been executed from time to time by persons interested in the estate and by certain entries in the mutation register.

Now the facts with regard to the pedigree so far as they are material are these, that the estate at one time prior, at any rate, to 1848, was owned by Gaj Singh ; he had two sons, Achal and Sarnet. In 1848 Sarnet appears to have been dead. Sarnet had four sons, the eldest of whom was Rawat Sheoraj, the second son was adopted out of the family, and two other sons both died without issue. In 1848, a sale deed was executed by Achal —that is one of the sons of Gaj Singh—and by Sheoraj—that is a

grandson of Gaj Singh and son of Sarnet—by which they purported to sell part of the property treating themselves as joint owners. There are documents in 1854 and 1857 signed by these two people indicating that they were treating themselves as joint owners. In the mutation register of 1862, Achal and Sheoraj appear as each entitled to an eight annas share in the property. In 1868, Achel died childless, and there is in evidence a mutation notice given in May, 1866, in respect of one of the six villages, as the result of which on the 1st August, 1868, Sheoraj was entered as the sole owner. It is not disputed that the same course was followed with regard to the other five villages.

The High Court have said, and their Lordships agree with them, that in the face of those entries and those transactions, it is impossible to reach the conclusion upon the entry in the Book of Settlement of 1874 that the estate was impartible. The conduct of the parties as indicated in the entries in question is only consistent with the estate having been partible.

The only point that is made against that view of the matter really is the suggestion that perhaps some other sons of Sarnet besides Sheoraj may have been alive, and that they ought, if it was a partible estate, to have shared with Sheoraj in respect of Sarnet's share. There is, however, no satisfactory evidence that they were alive. There is a reference to a bond in 1869 in which the name of one son is mentioned, but there is no evidence that the person there named was identical with the son in question. The High Court took the view with which their Lordships see no reason to differ, that the evidence was not adequate to establish that any of the brothers were alive at any material date so as to render the recorded dealings with the property inconsistent with it being a partible estate.

Now the other point in connection with this matter is the wajib-ul-arzes, extracts from which are printed in the record. They are relied upon by the appellants, because there is in them an entry on the occasion of the settlement in 1874 to the effect that Sheoraj was in sole possession, and also other entries as follows, namely, in the chapter relating to the rights of co-sharers, *inter se* based on custom or special contract, under paragraph 1 " Of distribution of profits " the entry " A single person is (the owner)," and under paragraph 2 " Of the appointment of lambardar," the entry " A single person is (the owner)." It is suggested that these entries should be read as meaning that the estate is impartible, and not merely as being a statement of what was the fact, namely, that at that date a single person was the owner. Then another passage in the same document, in the same chapter, under paragraph 5, " Particular caste and particular customs regarding adoption, remarriage or inheritance " is : " No particular custom is in vogue." The appellants say that there is no entry under paragraph 5 that the estate is impartible, because the effect of the entries under paragraphs 1 and 2 is that the estate is

impartible. Of course, if the appellants are wrong, as their Lordships think they are, in so reading paragraphs 1 and 2, then paragraph 5 is against them in regard to impartibility. It is certainly against them in any case in regard to the exclusion of women, because the exclusion of women must rest upon a particular custom, and it is incredible that, whether the estate was partible or impartible, the entry under paragraph 5 could have been " No particular custom is in vogue," if there was custom to exclude women.

For these reasons, their Lordships are of the opinion that the High Court was right in all respects, and that the appeal must fail, and their Lordships will humbly advise His Majesty accordingly. The appellants must pay the costs of the appeal to the respondents who have appeared at their Lordships' bar.

In the Privy Council.

RAWAT MANGAL SINGH AND OTHERS

v.

MUSAMMAT SIDHAN KUNWAR AND OTHERS.

DELIVERED BY LORD TOMLIN.

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