PRIVY COUNCIL.

RAGHUNATH BALI (PLAINTIFF) *v.* MAHARAJ BALI (DEFENDANT.)

P. C.* 1885 *March* 12.

[On appeal from the Court of the Judicial Commissioner of Oudh.]

Limitation Act (XV of 1877,) Sch. II, Art. 127—Exclusion from joint property.

A collateral member of a Hindu family, alleging it to be joint, claimed his share of ancestral property in Oudh, part of which formed a taluk inherited, for a considerable time past, by the eldest son, who taking the whole of it had given maintenance to the other members. This taking was entered in the first and second of the lists made under the provisions of the Oudh Estates Act I of 1869, and as to it there was no ground of claim. But with respect to the savings, accumulations, and investments made from the income and proceeds of the taluk before the confiscation and restoration of Oudh lands in 1858, the contention was that each member was entitled to his share, and that, by the presumption in respect of a joint family, the burden was on the talukdar to prove that there were no savings, or accumulations, made otherwise than out of the taluk, and before the confiscation.

Held, that, if it were assumed that the family was for some purposes undivided, still this was not the case of an ordinary undivided Hindu family, and that, in such a case as this, the presumption must depend on somewhat special circumstances.

However, this case must be decided on the distinct ground that, as the claimant had been excluded from his share, if he had one, for more than twelve years, he knowing of this exclusion, the law of limitation enacted in Act XV of 1877, Sch. II, Act 127, was applicable, and the claim was barred by time.

APPEAL from a decree (25th April 1882) of the Judicial Commissioner of Oudh, affirming a decree (18th August 1881) of the District Judge of Lucknow.

The suit out of which this appeal arose was to obtain a declaration of the plaintiff's right as cousin of the defendant, the son of his paternal uncle, to a share in village lands, *pattis*, and groves, mainly included in taluk Rampur in pergunnah Dariabad, in the Barabanki district of Oudh; to a share in *maafi* villages and houses; and to a share also in personal effects,

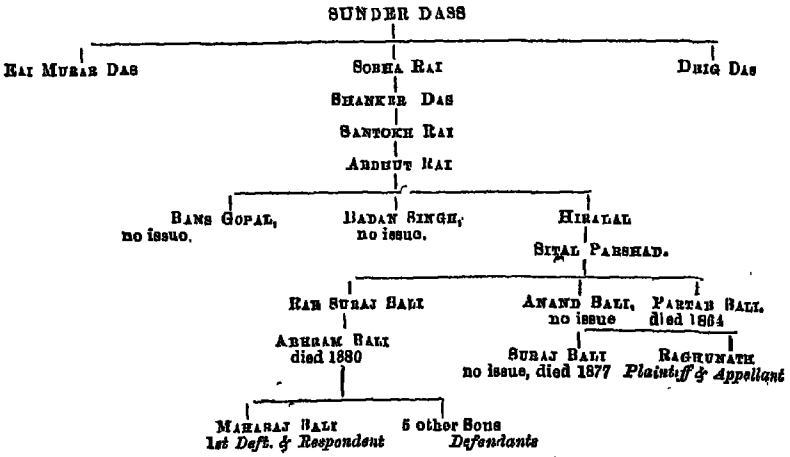
* *Present*: LORD BLACKBURN, SIR R. P. COLLIER, SIR R. COUCH, and SIR A. HOBHOUSE.

1885

RAGHUNATH BALI v. MAHARAJ BALI.

bonds, cash, &c., the whole being alleged to have been the ancestral joint property of the family to which both parties belonged; and to be of the value of more than eight lakhs of rupees.

The following pedigree was given in the District Judge's judgment, and the family was said to be traced back to one Pirthi Rai in the thirteenth century:—



The defence was that the ancestral property was all comprised in the *sanadi* taluk, entered in the first and second of the lists prepared in conformity with s. 8 of the Oudh Estates Act, I of 1869. The law of limitation under Act XV of 1877, Sch. II, Art. 127 was also relied on.

The District Judge of Lucknow, distinguishing the taluk from the "non-talukdari" property, fixed issues raising questions whether the family was joint or divided, and whether the property was ancestral or not, also whether the talukdar was in the position of a trustee for the family or not. He was of opinion that, though nothing but the taluk came under Act I of 1869, the two kinds of property distinguished above, were not subject to two sets of customs, but both to one set, and that there was evidence that the eldest son obtained all the property, not the taluk only. He concluded that there was no proof of joint possession of the property, movable and immovable, either within the period of limitation or at any previous time. As to the *maafi*, or assigned revenue in the *maafi* villages, it had been assigned for two lives only, both having now terminated, while

as to the grant of the zemindari or ownership of these villages, no proprietary title or right to possession was shown by the plaintiff. As the defendant had not these villages in the list attached to his summary settlement kabuliyat, and showed no acquisition of them subsequent to confiscation, it might be that the proprietary right was still vested in the Government by the confiscation, but it was not vested in the plaintiff. No relation of trust was established or had been alleged, but such as would arise from the position of the plaintiff as a member of a joint family; and his claim in that character was disposed of by the above findings. The above decision was affirmed by the Judicial Commissioner in the following judgment:

"Abhram Bali, the father of the defendant-respondent, and first cousin of the plaintiff-appellant, was a talukdar. He was engaged with at the summary settlement, and again at the regular settlement. A *sanad* was granted to him, and his name is entered in the second list of talukdars (s. 8, Act I of 1869). On his death defendant-respondent succeeded him, and plaintiff-appellant now claims his share of the estate. *Primâ facie* the defendant-respondent is the owner of an estate which descends according to the rule of primogeniture, and it was for plaintiff to prove that he had a right to any portion of it. All that he has proved is that the talukdar had not disowned his relations. They lived with him and enjoyed favors from him, they assisted in the management of the estate, but there is no proof that they enjoyed any right of property in the estate. I can find nothing in the record to show that the plaintiff enjoyed anything except by the favour of the head of the family.

"In the 12th ground of appeal it is alleged that the head of the family held as trustee. This was not asserted in the plaint, and I find no evidence in support of the trust.

"A portion of the property claimed consists of villages which were held revenue-free for certain lives. The revenue of certain lands was remitted for the lives of Abhram Bali, Partab Bali and their eldest sons. Partab Bali was plaintiff's father. On his death his eldest son Sheoraj Bali succeeded to the share of the *maafi*. Sheoraj Bali died in 1878. Thus the two lives on plaintiff's side of the family have expired, and he has no claim to anything under

1885

RAGHUNATH BALI v. MAHARAJ BALI.

the *maafi* grant. And there is nothing to show that he has any share in the zemindari right.

"Plaintiff-appellant has entirely failed to prove his claim and his appeal must be dismissed with costs."

On this appeal—

Mr. *J. D. Mayne*, for the appellant, argued that, although it was admitted that where property, having been confiscated, had been regranted by the Government, the foundation of title was the grant from the authority having power to make or withhold it, so that the grantee took the estate granted to him as his separate acquisition; yet circumstances might exist requiring a Court to find that a person so obtaining an estate, previously the property of his family, was a trustee for the joint members of that family—*Hardeo Buksh* v. *Jowahir Sing* (1); *Harparsad* v. *Sheodial* (2).

That in this family there had ever been a partition had not been made out; and, on the facts proved, the District Judge should have held that there was, on the part of the head of the family, a relation of trust existing, if not as to the taluk itself, at all events in regard to family property outside it. It was submitted also that certain further evidence should have been received. All savings and accumulations, down to the time of the confiscation in March 1858, should have been held divisible among the members of the family as joint property, as well as property purchased before that date. The plaintiff had lived, and had been maintained in the family house. He was entitled to his share from all sources other than the taluk itself, even if that belonged to the head of the family. This would appear from the application of general rules of Hindu law; and it had also been expressly decided in *G. N. D. Maharaj Ulungaru* v. *Raja Rao Puntulu*, &c. (3) that the rule of impartibility applicable to zemindaries did not extend to the personal property of a zemindar left at his death; and that such property was divisible among his sons after his death. The appellant's position was that he was a member of a joint

(1) L. R. 4 Ind. Ap., 178. (2) L. R. 3 Ind. Ap., 259.
(3) 5 Mad. H. C. 31.

1885

RAGHUNATH BALI v. MAHARAJ BALI.

family, of which the talukdar was the head or managing member. Accordingly, on the latter, if he alleged any part of the joint family property to be a separate acquisition by him, or to be his separate estate, was the burden of proving it to be so. This resulted from the general presumptions applicable to Hindu families; and it followed that where, as here, there was a nucleus of joint family property out of which acquisitions in the possession of the managing member might have been made, the law threw on him the burden of proving them to be his separate property, if he claimed them to be so. As regards the property other than the taluk, the District Judge had wrongly laid upon the plaintiff the burden of proving union, joint property, and partibility, all of which attached by presumption to family estate. In supporting that judgment the Judicial Commissioner had erred.

Reference was made to portions of the judgments in the following cases: *Lekraj Kuar* v. *Mahpal Singh* (1); *Rewan Pershad* v. *Radha Bibi* (2); *Neelkisto Deb Burmono* v. *Beerchunder Thakoor* (3). Reference was made to the decisions in *Chhabila Manchand* v. *Jadavbhai* (4); *Krisnappa Chetti* v. *Ramasawmi Iyer* (5); *Luximon Rao Sadasew* v. *Mulhar Rao Baji* (6); *Paulliem Vallu Chetti* v. *Paulliem Surriah Chetti* (7); *Prankristo Mozumdar* v. *Bhagirati Guptia* (8); *Umrithnath Chowdhry* v. *Goureenath Chowdhry* (9); *Gobindchunder Mukerji* v. *Doorgapersad* (10); *Vedavelli* v. *Narayana* (11); *Dharam Das Pandey* v. *Shamasoondri Debi* (12); *Hari* v. *Maruti* (13); *Hansji Chhiba* v. *Valabh Chhiba* (14).

Mr. *J. Graham, Q.C.*, and Mr. *J. H. A. Branson*, for the respondent, were not called upon.

(1) I. L. R., 5 Calc., 744; L. R., 7 Ind. Ap., 63.
(2) 4 Moore's I. A., 168.
(3) 12 Moore's I. A., 540.
(4) 3 Bom. H. C. (O. C. J.,) 87.
(5) 8 Mad. H. C., 25.
(6) 2 Knapp P. C. Ca., 60.
(7) L. R., 4 Ind. Ap., 109.
(8) 20 W. R., 158.
(9) 13 Moore's I. A., 549.
(10) 14 B. L. R., 337.
(11) I. L. R., 2 Mad., 19.
(12) 3 Moore's I. A., 229.
(13) I. L. R., 6 Bom., 741.
(14) I. L. R., 7 Bom., 297.

1885

RAGHUNATH BALI v. MAHARAJ BALI.

Their Lordships' judgment, after Mr. Mayne had been heard, was delivered by

SIR R. P. COLLIER.—In this case Rai Raghunath Bali sued Rai Maharaj Bali for the purpose of recovering the half of a taluk in Oudh, together with other property which is specified in the plaint, of various descriptions, some real property, some personal property, and some *maafi* villages. The relationship of the parties is sufficiently stated in a short pedigree to be found at the beginning of the judgment of the District Judge. It appears that Sital Parshad had three sons, Suraj Bali, Anand Bali, and Partab Bali. Anand Bali died without issue. Partab Bali had two sons, Sheoraj and the plaintiff, Sheoraj having died some years before the suit was instituted. The other son of Sital, Suraj Bali, had a son, Abhram Bali, who died in 1880, leaving the defendant his heir and successor.

The taluk in question is one which for a very considerable time has descended to the eldest son, who has taken the whole of it, and has given maintenance to other members of the family. In 1858 a summary settlement of this taluk was made with Abhram Bali, the father of the defendant, and in 1860 Abhram received a *sanad* in pursuance of that summary settlement, whereby the taluk was granted to him and to his heirs on the principle of primogeniture, and his name was subsequently inserted in the first and second list of talukdars in the Oudh Estates Act of 1869. This being so, no question has been raised on the part of the appellant as to the right to the taluk except on the suggestion of a trust—the proof of which has entirely failed.

The other descriptions of property remain to be dealt with. First, with respect to the *maafi* villages, it appears that there was a grant of them to Partab, the father of the plaintiff, and Sheoraj, his eldest brother, for their lives. Those lives having determined, the property reverted to the Government, and was granted to the defendant. With respect to them, also, no question arises.

We have only, therefore, to deal with accumulations which have been made by the defendant, or his father, or his ancestors. With respect to them it is admitted that any savings made

from the proceeds of the taluk since the summary settlement of 1858 would belong to the defendant. The question, therefore, is still further reduced to savings and investments which have been made at an earlier time, or from proceeds other than those of the taluk. As to them the plaintiff contends that the family being joint he is entitled to his share. A very able and ingenious argument has been addressed to their Lordships on the part of Mr. Mayne for the purpose of showing that the family was joint. The Subordinate Judge has found that they were not joint; but in the view which their Lordships take of the case it is not necessary to decide this question.

It has been further contended by Mr. Mayne that the burden is thrown upon the defendant to prove that there were no savings or accumulations other than out of the proceeds of the taluk or before 1858. But it appears to their Lordships also unnecessary to determine this question They observe, however, this is not the case of an ordinary undivided Hindu family, if it be assumed that the family was for some purposes undivided, and that the presumptions must here depend upon somewhat special circumstances.

Their Lordships are of opinion that there is a ground, and a very distinct one, upon which the cause must be decided. It has been distinctly found by the District Judge (and that finding has been adopted, though not in express terms, by the Judicial Commissioner of Oudh, who has affirmed the judgment, though without giving any lengthened reasons for his decision): "With respect to all the rest of the property other than the *maafi* villages, I am of opinion that it is not only not proved that plaintiff's branch had joint possession, but that the exclusive possession by Abhram Bali and defendant on their own behalf alone is established." If this finding is right, the Limitation Act of 1877, XV of 1877, Art. 127, Sch. II. applies, the term of twelve years, according to that Act, running from the time when the exclusion of the plaintiff was known to him. It appears to their Lordships that this finding of the Judge is altogether supported by the evidence, and that the plaintiff's exclusion must have been known to him at latest in 1858 or 1860. It has indeed been contended that there was

1885

RAGHUNATH BALI v. MAHARAJ BALI.

some joint possession on behalf of the plaintiff, on the grounds, 1st, that he lived in the family house, though not in the same apartments with his cousin; 2ndly, that he obtained an allowance of some Rs. 90 either per mensem or per annum,—it does not clearly appear which. The first of these grounds does not appear to their Lordships to establish joint possession; the second goes some way to negative it.

The plaintiff has been excluded from his share, if he had one, of the family property, for more than twelve years, and he must have known of this exclusion. If so, the Statute of Limitations has run against him.

Their Lordships will humbly advise Her Majesty that the appeal should be dismissed, and the appellant must pay the costs.

Appeal dismissed.

Solicitors for the appellant: Messrs. *Young, Jackson, & Beard.*

Solicitors for the respondent: Messrs. *Watkins & Lattey.*

APPELLATE CIVIL.

Before Mr. Justice Wilson and Mr. Justice Beverley.

1885 *August* 4.

SARAT SUNDARI DABI AND OTHERS (PLAINTIFFS) *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT.)*

Assessment of accreted lands—Act IX of 1847, *ss.* 6, 9—*Order of Board of Revenue when final under s.* 6 *of Act IX of* 1847.

The effect of the words "whose order thereupon shall be final" in s. 6 of Act IX of 1847, is, that where an assessment has been made under s. 6, which has been approved by the Board of Revenue, such assessment is final and cannot be called in question in a civil suit; but the fact of an assessment having been made is no bar to a suit raising the question, whether the Board of Revenue had jurisdiction under s. 6 of the Act to assess.

Act IX of 1847 applies to land re-formed on the site of a permanently settled estate.

THIS was a suit for a declaration that certain lands were a re-formation on the original site of the plaintiff's permanently-settled village of mouzah Boyrampore, and as such, not subject to Government assessment.

* Appeal from Original Decree No. 106 of 1884, against the decree of Baboo Pramatha Nath Mukerji, Rai Bahadur, Subordinate Judge of Rajshahye, dated the 18th of February 1884.