

P. C.  
J. C.  
1889,

February 22.

## PRIVY COUNCIL.

ANAND KUAR AND ANOTHER, REPRESENTATIVES OF CHAUDHRI LACHMAN  
SINGH (DEFENDANT) v. TANSUKH (PLAINTIFF).

[On appeal from the High Court for the North-Western Provinces.]

*Question in issue—Parties—Admission.*

The plaintiff claimed to have inherited estate in the possession of the defendant, who was also related to the last owner, but who set up, independently of other title, a deed of gift from the latter in his favour. It was decided in the appellate Court that even if this deed had been executed it was inoperative, and on this point the decision of the first Court was maintained. An issue having been fixed as to the execution, and the plaint also showing that the execution was disputed, their Lordships declined to treat the execution as not having been in contest.

APPEAL from a decree (26th May, 1884,) of the High Court, affirming a decree (17th July, 1882,) of the Subordinate Judge of Meerut.

The question raised on this appeal was as to which of two collateral relations of the deceased was entitled to succeed to his heritage.

The question arose thus. Two brothers, one being Rup Singh, whose estate was now in dispute, and the other, Salig Ram, were grandsons of Guman Singh, whose only brother, Rattan Singh, was grandfather of Chaudhri Tansukh, the plaintiff, and of Madho Singh; the latter being nominally a defendant, as he waived any right in this suit. In fact, Salig Ram's son, Lachman Singh, was substantially the sole defendant in the suit which was brought by Chaudhri Tansukh against his two second cousins, Lachman Singh and Madho Singh, to prove his title to inherit to Rup Singh, deceased.

Rup Singh died in 1870; his widow died in 1872. The plaint alleged that Lachman Singh had taken possession, without real title, of Rup Singh's estate on his death, and previously, in 1875, had sued the plaintiff, Chaudhri Tansukh, for a declaration of his right, relying on an alleged deed of gift from Rup Singh, dated 1st

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March, 1853, which suit failed; the decision having been that the gift was ineffectual. The right of inheritance, resulting from the relationship of Lachman Singh as nephew's son, to the deceased, was negatived, according to the plaint, by his father, Salig Ram's having been adopted into another branch of the family, so as to lose his rights in the line of his natural parent. Madho Singh waived any right he might be held to have. But the substantial defence, that of Lachman Singh, was that the deed of 1st March, 1853, executed by the deceased Rup Singh in his favour, was in operation.

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One of the issues in the present suit raised the question of the operation of this deed; the defendant insisting at the hearing that the decision referred to in the plaint was not that the deed had never been executed, but that it had never been accepted or acted upon.

The judgment of the Court in 1875 was that even if the deed had been executed, the gift was inoperative, never having been acted upon, or followed by possession, and Macnaghten's Hindu Law, p. 217, was referred to on this point. This judgment had been upheld by the High Court on 19th November, 1880.

In the present suit the Subordinate Judge held that the right of inheritance from Rup Singh had not devolved upon Lachman Singh, because Saligram, the father of the latter, had been adopted into another family; and in regard to the deed of gift, the decision was that as Lachman Singh had never obtained possession under it of Rup Singh's estate, it could not now be enforced. With reference to the admission of Madho Singh, the Subordinate Judge decreed the plaintiff's claim to his share, as well as his own, decreeing the claim in full.

On an appeal by Lachman Singh, the High Court (OLDFIELD and MAHMOOD, JJ.) found the deed of gift not proved; and held that, even if executed, it never took effect to pass the property. The Court, however, modified the decree; holding that the plaintiff was entitled, upon what he had proved, to only a moiety of the estate claimed, inasmuch as Madho Singh's admission and disclaimer could

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not be used against the appellant, who had not set up the title of Madho Singh, to defeat the plaintiff, and had not had an opportunity of answering a title which had not been insisted on by the plaintiff. Reference was made to *Amirto Lall Bose v. Rajoneekant Mitter* (1).

Mr. C. W. Arathoon, for the appellant, argued that insufficient effect had been given to the fact that Rup Singh in his lifetime acted as Lachman Singh's guardian, treating him as his son, and living jointly with him : a state of things that rendered it unnecessary, in order to prove the fact of a gift having been made by Rup Singh to Lachman, that actual transfer of possession at any particular time should appear. The evidence of the execution of the deed of gift had not been negatived, but it had rather been the case that the question of its operation had been treated as decided. The question, therefore, of the actual execution, had been left undisposed of, or at least was still a question open to decision, never having been in actual contest.

The respondent did not appear.

Their Lordships' judgment was delivered by LORD MACNAGHTEN :—

LORD MACNAGHTEN.—Their Lordships are of opinion that there is no foundation for this appeal.

The appeal was based upon an allegation that the appellants, or the person from whom they claim to have derived title, had been in possession under a deed of gift made by Rup Singh. In order to make out their case it was incumbent on the appellants to prove the execution of that deed. Mr. Arathoon desired to proceed on the assumption that the matter had never been in contest. But that is not the case. The respondent referred to the deed in his plaint, and gave what seems to their Lordships to be distinct notice that its execution was not admitted. In the course of the suit the execution of the deed was put in issue in the ordinary way. Two Courts have tried the question, and both have held that the execution was not proved.

(1) L. R., 2 I. A., 113 ; 15 B. L. R., 10.

Under these circumstances their Lordships will humbly recommend to Her Majesty that the judgment appealed from should be affirmed and this appeal dismissed, but there will be no costs, as there is no appearance on the part of the respondent.

*Appeal dismissed.*

Solicitors for the appellants : Messrs, *T. L. Wilson & Co.*

HAR LAL (DEFENDANT) v. SARDAR (PLAINTIFF).

[On appeal from the High Court, North-Western Provinces.]

*Assent to and validity of mutation of names in the collectorate record-of-rights—Act XIX of 1873 (N.-W. P. Land Revenue Act) ss. 94, 97.*

The question was, according to the judgment of the High Court, whether a change of names in the collectorate record-of-rights represented a *bona fide* transfer, by the plaintiff, or whether there was a mere assent by her to a paper transaction, relating to the ownership of a share in a village, in giving which assent she had not acted freely, but under undue influence. Reversing the decision of the High Court, which was that the plaintiff had assented to the proceedings under intimidation, their Lordships held that, on the evidence, no intimidation had been proved, and that a suit to cancel this “*dakhil kharij*” and for a declaration of the proprietary right of the plaintiff, in whose name the village stood before the mutation, had been rightly dismissed in the first Court.

APPEAL from a decree (15th January, 1886,) of the High Court, reversing a decree (25th September, 1885,) of the Subordinate Judge of Banda.

The suit out of which this appeal arose was for a declaration of title to a mauza named Nakra in the Banda district, and sought the cancellation of an order of 27th June, 1881, for change of names in the record-of-rights, on the ground that the plaintiff's assent to such change had been obtained by intimidating her (1). The mauza Nakra was formerly owned in equal shares by Thakur

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(1) Act XIX of 1873, the N.-W. P. Land Revenue Act, in section 94, requires the Collector to keep and maintain the record-of-rights, registering “all changes that may take place;” and, in section 97, enacts that all successions to and transfers of proprietary rights shall be notified, and

if on inquiry they appear to have taken place, they shall be recorded in the register. Should a dispute arise, the entry is to be made subject to any order that may subsequently be passed by the civil court: section 101.

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March 27th :

April 8th.