PRIVY COUNCIL.

SANGRAM SINGH (PLAINTIFF) *v.* RAJAN BAHI AND ANOTHER (DEFENDANTS.)

P. C.*
1885
July 2.

[On appeal from the Court of the Judicial Commissioner, Central Provinces.]

Evidence Act, I of 1872, *s.* 32, *sub-s.* 5—*Statement as to the existence of relationship—Special means of knowledge.*

The judgment of an Appellate Court, reversing that of a Court of first instance, on a question as to the existence of relationship, rested mainly on a statement recorded in prior settlement proceedings as made by a person, since deceased, who was employed therein as *mukhtar* by certain members of the family. This judgment was reversed on a second appeal by the Court above on the ground that the statement was inadmissible, not coming within the meaning of Act I of 1872, s. 32, sub-s. 5, as that of a person having special means of knowledge on the question.

Held, that the statement was inadmissible, as it appeared that his only means of knowledge were from his being instructed as such *mukhtar*, he not having been a member of the family, nor intimately connected with it, nor having had any special means of knowing its concerns.

Held, also, that the Court of second appeal had rightly declined to send the case back for evidence to be taken as to whether he had, or had not, other means of knowledge.

APPEAL from a decree (19th September 1882) of the Judicial Commissioner, reversing a decree (30th March 1882) of the Additional Commissioner, Jabalpur, and restoring a decree (14th March 1882) of the Deputy Commissioner, Jabalpur district.

The question on this appeal was whether a statement made by a person, since deceased, relating to the existence of relationship, was admissible in evidence under Act I of 1872, s. 32, sub-s. 5, such statement having been recorded in settlement proceedings as that of a *mukhtar* of certain members of the family who were parties thereto.

The appellant claiming to succeed to the ancestral taluk Bargaon in the Jabalpur district sued the respondents, mother and son, who were niece, *i.e.*, brother's daughter, and grand-

* *Present:* LORD WATSON, SIR B. PEACOCK, SIR R. P. COLLIER, SIR R. COUCH, and SIR A. HOBHOUSE.

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nephew, respectively, of Parmode Singh, the last male owner who died in 1852. Rajan Bahi had obtained *dakhil kharij* in her name, her son being recorded as her *karinda*.

Sangram Singh, the plaintiff, alleged title as sixth in descent from Sadu Rai, the common ancestor, Parmode Singh having been fifth; and he relied on a *pushtnama*, or pedigree table, filed at *settlement*, as *coming* from certain members of the family, by Harbilas their *mukhtar*, whose statement in regard to it was recorded by the settlement officer on 4th December 1862. Harbilas died before the present suit. The Deputy Commissioner, in the first instance, dismissed the suit which was, however, on appeal decreed by the Additional Commissioner, who accepted the statement of Harbilas, and found that there was sufficient proof of the plaintiff's being the nearest male heir.

On a second appeal the Judicial Commissioner (Mr. R. J. Crosthwaite) was of opinion that the statement of Harbilas, not having been accompanied by anything to show that he had means of knowledge other than his instructions as *mukhtar*, was inadmissible under the Indian Evidence Act, 1872, s. 32, sub-s. 5; also that the other evidence as to the relationship of Sangram Singh was worthless. He, therefore, reversed the decree of the Additional Commissioner, restoring that of the first Court.

Mr. *J. Graham, Q.C.*, and Mr. *Robert Hornell*, for the appellant, argued that his title had been established. The statement of Harbilas was admissible under s. 32, sub-s. 5. The Judicial Commissioner at all events should not have disposed of the case adversely to the appellant, without giving him an opportunity to show that Harbilas, even supposing that his testimony had been accepted without having sufficient foundation laid for it, had, in fact, had special means of knowledge.

Reference was made to Act I of 1872, s. 32, sub-s. 5; Act XVIII of 1872, s. 2, adding after the word "relationship," in the above Act, the words "by blood, marriage, or adoption." They also contended that the statement of Harbilas, as to the *pushtnama*, was an entry in a public record stating a fact, such entry having been made in the performance of a duty enjoined

upon settlement officers by Regulation VII of 1822, in the preparation of the Record of Rights, in this case relating to mouzah Bargaon. It followed that the entry was admissible by the 35th section of the Indian Evidence Act, 1872, in another way than had been suggested; and that it could be taken for what weight it possessed. Reference was made to *Lekraj Kuar* v. *Mahpal Singh* (1).

Mr. *C. W. Arathoon*, for the respondent, was not called upon.

Their Lordships' judgment was delivered by

SIR R. P. COLLIER.—In this case an action was brought by Sangram Singh to recover possession of a mouzah called Bargaon against a lady of the name of Rajan Bahi and her son, Rajan Bahi being a niece of Parmode Singh, who was its last possessor; and the plaintiff sought to recover this mouzah by proving his descent through six generations from one Sadu Rai, from whom Parmode had been descended through some five generations.

Without determining whether or not if the plaintiff had proved his pedigree he would be entitled to succeed, their Lordships address themselves to the question whether he has proved it. He endeavoured to prove it in this way. Some oral evidence was called which may be dismissed with the observation that it went to the effect that he had performed the funeral rites of burning the body of Parmode, but would be very far from establishing such a title as he seeks to set up. His main evidence consisted of certain depositions of deceased persons which he contended were admissible in evidence. Those depositions had been taken in a proceeding which had been instituted in 1863 between the two widows of Parmode Singh on the one side, and one Deo Singh, a claimant, on the other, with reference to the settlement of this mouzah Bargaon, and they seem to have been taken with a view to the making up of what are called the *wajib-ul-arz* or village papers. The first of these is a deposition of one Harbilas, who was a *mukhtar* of these ladies.

The first question which arises is whether the evidence of the *mukhtar* was admissible for the purpose for which it was put in. It is said to have been admissible under Act I of 1872, s. 32. "Statements, written or verbal, of relevant facts made by

(1) I. L. R., 5 Calc., 745; L. R., 7 Ind. Ap., 63.

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a person who is dead or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases." And one of the cases put in sub-s. 5 is: "When the statement relates to the existence of any relationship between persons as to whose relationship the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised."

It has been objected that this *mukhtar* had no special means of knowledge, and therefore that he does not come within the description of persons mentioned in this section. It nowhere appears that he had any other knowledge than as *mukhtar* acting for these ladies. He is not shown to have been a member of the family, to have been intimately connected with it, or to have any special means of knowledge of the family concerns. Therefore in their Lordships' opinion he does not come within the description of a person having special means of knowledge. But further it appears from his deposition that he is making a statement of the case on the part of his clients rather than professing to speak from his own knowledge of facts. He begins his deposition in this way: "They (his clients) mean to show that the taluka of mouzah Bargaon was acquired by their ancestor Sadu Rai, and has now devolved on Mussamut Ladli Thakurani and Sawai Thakurani by reason of descent according to the genealogical tree," and so on. It appears to their Lordships, therefore, on the two grounds, first, that he was not shown to have special knowledge, and, secondly, that he did not pretend to speak from his knowledge at all, that this deposition was not admissible.

There remain the depositions of the ladies, which are very short and which perhaps it may be convenient to read. First, there is that of Mussamut Sawai Thakurani, who was the younger widow of Parmode. She says: "Mussamut Ladli and Mussamut Latto are the proper heirs to the property after my death. Delan Shah comes after them on their death." Mussamut Ladli was the eldest widow, and it would seem that at this time she

was not able to give evidence by reason of failure of her faculties. Mussamut Latto, with whom a settlement had been made by the Government (it does not clearly appear why), was the widow of a nephew of Parmode Singh, called Abhman Singh. Mussamut Sawai is asked, "who are Delan Shah and Beni Singh?" and she says: "The genealogical tree given by Mussamut Ladli will show their lineage. Delan Shah is the legitimate son, and Beni Singh the offspring of a concubine." It would also appear that Mussamut Ladli had at one time made some statement, which is not put in. Then the lady is asked: "Mussamut. Ladli in her statement declares Deo Singh as the heir to the property, and the genealogical tree also shows that he bears a close relation to you; how is it then that you do not like to declare him so?" She answers: "The reason of this is, that when my husband, Parmode Singh, died, this Deo Singh put me to a great trouble. He tried to have the *dakhil kharij* made in his own mane, but it was justly and rightly made in the name of Mussamut Ladli. Similarly at the time when an inquiry of proprietary rights was going on, he skilfully induced Mussamut Ladli to quarrel with me. Again, he does not like me, and so as a matter of course I do not like him. I am pleased with Delan Shah, because he is of my family and is always ready to obey me. (Question) Beni Singh also appears from the genealogical tree to be closely related to you: what do you say about him? (Answer) "I do not like even to hear his name." This lady appears to think that Deo Singh had a better title than the plaintiff, but she made no mention of Deo Singh, because she did not like him, and she mentioned the son of the plaintiff because she did like him.

The deposition of the next lady is as follows: She is asked:—"The proprietary rights of the Bargaon taluka, pergunnah Bilshei, have been conferred on you by the Government for life. Now it is asked of you who will succeed to your property after your death?" She answers: "Mussamut Sawai Thakurani, my mother-in-law, is the heir of the estate after my death. When she dies Delan Shah, whom she has declared to be her heir, may succeed her. I quite agree with her in the statement she has made. I have no objection to make against it."

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Their Lordships agree with the Judicial Commissioner, that the evidence of these two ladies is worthless. Therefore, if the evidence of Harbilas is struck out, the plaintiff has made no case.

The case came in the first instance before the Deputy Commissioner, who dismissed the plaintiff's claim, thinking the evidence of Harbilas was inadmissible, and if admissible not proving the plaintiff's case. It subsequently went before the Additional Commissioner, who found in favour of the plaintiff, he being of opinion that the evidence of Harbilas was admissible on the ground that he had special knowledge, and he undoubtedly seems to have acted mainly on that evidence. Indeed there is no other evidence on which he could be presumed to act. The case came thirdly before the Judicial Commissioner, and the Acting Judicial Commissioner reversed the judgment of the Additional Commissioner mainly upon the ground that the Additional Commissioner was wrong in accepting the evidence of Harbilas, it not having been shown that Harbilas had any special means of knowledge. The Acting Judicial Commissioner, their Lordships think rightly, assumed the judgment of the Additional Commissioner to have been given mainly, if not entirely, upon the ground of his believing the evidence of Harbilas, and treating it as admissible. The Judicial Commissioner being of opinion that that evidence was not admissible, reversed the judgment, and accordingly the judgment of the original Court stands confirmed. It may be observed that a question was raised before the Judicial Commissioner as to whether directions should be given for the case to be sent back and evidence to be taken on the subject of the special knowledge of Harbilas, but the Judicial Commissioner, in their Lordships' opinion, rightly declined to give any such directions.

For these reasons their Lordships are of opinion that the judgment of the Judicial Commissioner was correct, and that this appeal should be dismissed. They will accordingly humbly advise Her Majesty to that effect. The appellant should pay the costs of this appeal.

C. B. *Appeal dismissed with costs.*

Solicitors for the appellant: Messrs. *Merriman Pike & Merriman.*

Solicitor for the respondents: Mr. *T. L. Wilson.*