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stronger rights than in the original document, whatever it was, which was granted to Babu Paltan Singh, we are confirmed in our view that it would not be safe to hold that Babu Paltan Singh had any heritable or transferable right. We find that the plaintiffs have established none such. The appeal therefore succeeds, and the claim brought by the respondents (who claim through him) must be dismissed with costs in both Courts.

Appeal decreed.

PRIVY COUNCIL.

P. C.
J. C.
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June 22 *and* 26.
July 21.

SURJAN SINGH AND OTHERS (PLAINTIFFS) *v.* SARDAR SINGH AND OTHERS (DEFENDANTS).*

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

Evidence—Pedigree table—Act No. I of 1872 *(Indian Evidence Act), section* 32, *sub-section* (6).

In a suit for an inheritance claimed by the plaintiffs, alleging themselves to be collateral relations and heirs of the last male owner, through an ancestor common to him and to them, a pedigree table was received in evidence by the Court of first instance. The persons from whose statements at no distant date the pedigree had been drawn up were absent, and it had not been shown in that Court that this had been for any one or other of the reasons contained in section 32 of Indian Evidence Act, 1872.

Held, that the appellate Court had rightly rejected the document as inadmissible under that section. The alleged relationship not having been proved, the claim failed.

APPEAL from a decree (15th May 1897) of the Judicial Commissioner, reversing a decree (12th November 1894) of the Subordinate Judge of Kheri.

The plaintiffs-appellants brought their suit on the 29th November 1892, claiming as collateral relations to be heirs in default of male issue of Munnu Singh, deceased in 1858, the last male inheritor of the ancestral estate, Piparya Andu, a village in the Kheri district of Oudh. As reversionary heirs of male descent they claimed to be entitled to dispossess the defendants Sardar Singh and Baldeo Singh, the two sons of a daughter, now deceased, of the said Munnu, and a third defendant Durga Singh, their father and husband of that daughter. On the death of Munnu

* *Present*: LORDS HOBHOUSE, MACNAGHTEN AND LINDLEY, SIR RICHARD COUCH, AND SIR HENRY DE VILLIERS.

Singh his widow Gulab Singh succeeded to his estate, and with her was made the second summary settlement of 1858-59. She died in 1881, having bequeathed, by her will of the 7th January in that year, part of Piparya to her grandsons, and the rest of it to her son-in-law Durga. The defendants denied that the plaintiffs were descended, as they alleged themselves to be, from an ancestor common to them and to Munnu; and denied the existence of an ancient custom, alleged by the plaintiffs to be applicable to the inheritance, excluding females from taking, except the widow for her life. The defendants also alleged that Gulab had the full proprietary right in the village in virtue of the settlement having been made with her after the confiscation of 1858.

Of the issues recorded those alone which raised the question of the heirship of the plaintiffs were material to this appeal, the appellate Court below not having found it necessary to refer to other questions. The plaintiffs' case was that their pedigree was traced in a table showing three descending lines to them from the sons of Jagraj Sah, the great-great-grandfather of Munnu Singh. The facts attending the preparation of the pedigree table are stated in their Lordship's judgment.

The Subordinate Judge admitted the pedigree table as documentary evidence. He considered it to be an original document well proved, and upon its contents, supported by oral evidence as he found it to be, he relied, decreeing the claim.

The appellate Court reversed that decree.

The Judicial Commissioners dealt exclusively with the evidence as to the plaintiffs' reversionary title. They found that this had not been proved.

They rejected the genealogical table as inadmissible. They considered the testimony of two witnesses, who stated some of the steps in the alleged pedigree to be unsatisfactory, and to be such that they could not rely upon it. Further, that there was nothing else from which the pedigree could be made out. Their reason at the conclusion of their judgment was stated as follows, for dismissing the suit:—

"The plaintiffs have failed to prove not only their alloged "relationship to Munnu Singh, but also their allegations that "Raja Jagraj Sah was the common ancestor, from whom they

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"and Munnu Singh were descended, and that they are the next "heirs of the latter."

"It was incumbent upon them, claiming as they do by right of "inheritance as collateral heirs, to prove their descent and that "of Munnu Singh from the alleged common ancestor, Raja Jagraj "Sah, in all the stages of these descents (that is to say, their "alleged relationship to Munnu Singh). This they have failed to "do. It was also incumbent upon them to adduce some evidence "that there was no intermediate heir in existence between "themselves and the deceased Munnu Singh. Such evidence is "wanting: for the statements of Sheo Singh and Sumer Singh "that the plaintiffs are the 'heirs' and the 'near relatives' of "the deceased Munnu Singh cannot in themselves be accepted "as furnishing the requisite evidence."

On this appeal

Mr. *C. W. Arathoon*, for the appellant, argued that the judgment of the appellate Court erred in having reversed the judgment of the first Court on insufficient grounds. The pedigree table which the Judicial Commissioners had rejected as inadmissible within section 32, sub-section (6), of the Evidence Act, 1872, should have been admitted. It was an original document recognised and accepted by the family as representing the actual genealogy of the plaintiffs and Munnu Singh, and evidence of the correctness of every step was not required. A settlement order of August 1869, and a wajib-ul-arz of village Aurangabad, were referred to as supporting the finding of the first Court that the alleged relationship of the plaintiffs to the last male proprietor had been sufficiently proved. In regard to the evidence afforded by the wajib-ul-arz and that of similar records, referred to in connection with the alleged exclusion of females, reference was made to *Rani Lekraj Kuar* v. *Babu Mahpal Singh* (1).

Mr. *J. D. Mayne*, for the respondents, argued that the appellants had failed to make out their reversionary title. The alleged pedigree table consisted of statements in fact made by certain persons who, for all that appeared, might have been called as witnesses. It was therefore inadmissible within section 32 of the Indian Evidence Act, 1872; and the other evidence in the case

(1) (1879) L. R., 7 Ind. Ap. 63; I. L. R., 5 Calc., 743.

had not established the descent of the plaintiffs from the allged common ancestor, Jagraj. In regard to entries in the wajib-ul-arz it was not any entry that would be received, and on this point he referred to *Uman Parshad* v. *Gandharp Singh* (1).

Mr. *C. W. Arathoon* replied. On the 21st July their Lordships' judgment was delivered by *Sir Richard Couch* :—

The appellants in this case sued for possession of the village of Piparya Andu on the ground that on the death of Musammat Gulab Kuar the property devolved on them as the reversionary heirs of her deceased husband Munnu Singh. He was the proprietor of the village, and the first summary settlement was made with him on the annexation of the Province of Oudh. After that he died and the second summary settlement of the village after the Mutiny was made with Gulab Kuar. The judgment of the Assistant Commissioner given on the 3rd August 1869, on a claim by her against the Government, stated that Munnu Singh being hereditary proprietor who held up to annexation, the summary settlement of 1857 was made with him ; he died without leaving male issue and the settlement was therefore made with his widow. And the Court decreed the proprietary right in the entire village in favour of Gulab Kuar and also in favour of a co-sharer. On the 7th January 1881 Gulab Kuar made a will by which she devised the village to her deceased daughter's three sons Sardar Singh and Baldeo Singh, the respondents, and Bahadur Singh, who died before her. On the 8th July 1881 she made a gift of some land in the village to Durga Singh, the other respondent, their father. Gulab Kuar died on the 12th July 1881, whereupon on the 10th August 1881 an order for mutation of names of Munnu Singh was made in favour of Sardar Singh and Baldeo Singh, the other claimants, the appellants, being referred to the Civil Court. Their suit was not instituted till the 30th November 1892, more than eleven years after the dismissal of their claim.

The case stated in their plaint is that they and Munnu Singh are the descendants of Raja Jagraj Sah by his second wife, that they are entitled to inherit the estate of Munnu Singh as his next heirs, that Gulab Kuar was in possession of the village only with

(1) (1887) L. R., 14 Ind. Ap. 127 ; I. L. R., 15 Calc., 20.

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the rights of a Hindu widow, and as such was not competent to alienate the property beyond her life-time, that the will and deed of gift are consequently invalid and that according to a well-established family custom daughters and their issue are excluded from inheritance. The respondents denied the alleged relationship of the plaintiffs with Munnu Singh and their reversionary title and the existence of any custom by which daughters and their issue are excluded from inheritance. They alleged that the will and deed of gift were valid, as Gulab Kuar was in possession of the village and had the rights of an absolute proprietor, and that, apart from the will, Sardar Singh and Baldeo Singh being sons of Munnu Singh's daughters were entitled under the Hindu law to inherit his property on the death of his widow in preference to collateral heirs.

The Subordinate Judge who tried the suit found that the appellants' relationship to Munnu Singh and their reversionary title were proved, that Gulab Kuar's possession was only that of a Hindu widow, and that the will and deed of gift were invalid, and made a decree in the plaintiffs' favour. The defendants appealed to the Court of the Judicial Commissioner of Oudh, which has decided only one of the questions that were raised, *viz.* whether the appellants are the reversionary heirs of Munnu Singh.

To prove this the appellants produced a pedigree of the family of Raja Partab Singh, which shows that the plaintiffs are the collateral heirs of Munnu Singh. This pedigree was objected to as not being admissible in evidence. It was admitted by the appellants' counsel that it was prepared under the following circumstances as deposed to by one of their witnesses. He was examined in 1894 and his evidence is that the pedigree was prepared in his family 13 years ago. The bards were called to dictate it. It was prepared from the history given by them. It was copied from certain papers in the possession of the bards. In the year when the Raja's marriage was settled in Surajpur a dispute about it arose. Then they sent for the bards and got the pedigree prepared. The dispute was said to have been about the class of Thakurs to which the Raja referred to belonged, and arose about the time of the death of Gulab Kuar. In their

Lordships' opinion the appellate Court has rightly held that the pedigree was not admissible, or, as the Indian Evidence Act says, relevant. Section 32 of the Act, which would make the statements in the pedigree relevant, only applies when the statements are made by a person who is dead or cannot be found or 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. Neither any of the bards nor Raja Balbhadar Singh, who assembled the bards of the family and with their assistance had the pedigree drawn up, was called as a witness, and no proof was given that they were within any of these descriptions which made it unnecessary to call them. A wajib-ul-arz of the village Aurangabad, dated 26th October 1894, was relied upon for the appellants. It contained a statement purporting to have been made by Pitam Singh, deceased, but it is too vague to be of any value in proof of the appellants' claim. The oral evidence produced by the plaintiffs was that of six witnesses, three of whom appear to have derived their information from family pedigrees which were not produced, and the others did not state the source of their information. The appellate Court was of opinion that this evidence was not sufficient to prove the relationship with Munnu, in which view their Lordships agree. Apparently the Subordinate Judge who decided in the plaintiffs' favour was of this opinion as in his judgment he says it was "shown by the "genealogical table," and did not rely upon other evidence. The pedigree not being admissible, the appellants failed to prove that they were the collateral heirs of Munnu Singh, and the appellate Court, without giving any finding on the alleged custom to exclude daughters and their issue, set aside the decree of the lower Court and dismissed the suit. Their Lordships being of opinion that it was rightly dismissed they will humbly advise Her Majesty to affirm that decree and to dismiss this appeal. The appellants will pay the costs.

Solicitors for the Appellants—Messrs. *Barrow, Rogers,* and *Nevill.*

Solicitors for the Respondents—Messrs. *T. L. Wilson and Co.*