

has informed the accused, before taking any evidence, that he is entitled to have his case tried by another Court. If it is thought desirable to take any further proceedings against the accused, they must be taken in accordance with the law. I set aside the order of the Sessions Judge, dated the 12th August 1905, and also the order of the Joint Magistrate, dated the 27th July, 1905.

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SANWAL SINGH v. SATRUPA KUNWAR.

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

Privy Council—Practice of—Concurrent decisions on fact—Disagreement of lower Courts as to circumstances leading up to conclusions—Appellate Court not affirming decision of first Court on all issues in the case.

Where both Courts below had come to the same conclusion on the two main questions of fact in the case, which were sufficient to dispose of it, but had not agreed on all the circumstances which led up to such conclusion, and the appellate Court had either differed from the first Court on other questions or had not decided them, the Judicial Committee, referring to the case of *Umrao Begam v. Irshad Husain* (1) declined to depart from the general rule as to concurrent findings of fact by the lower Courts.

APPEAL from a judgment and decree (March 2nd, 1900) of the Court of the Judicial Commissioners of Oudh, which affirmed a decree (July 3rd, 1897) of the Additional Civil Judge of Lucknow, dismissing the appellant's suit with costs.

The property in dispute was the taluqdari estate of Katyari in the district of Hardoi in Oudh, and the main question for determination in this appeal was the succession to that estate, and certain non-taluqdari property which had been added to it, on the death of one Hardeo Bakhsh Singh, the recorded taluqdar, whose name had been entered in lists 2 and 5 of the lists prepared in accordance with section 8 of the Oudh Estates Act (I of 1869).

Hardeo Bakhsh Singh died on 6th September 1877 leaving him surviving his daughter, Hulas Kunwar, her son the present appellant, a younger brother Tilak Singh, Sumer Singh the only

Present :—Lord MACNAGHTEN, SIR FORD NORTH, SIR ANDREW SCOBLE, and SIR ARTHUR WILSON.

(1) (1894) L. R., 21 I. A., 163 (166); I. L. R., 21 Calc., 997 (1002).

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surviving son of his uncle Madho Singh, and Kalka Singh the son of another uncle Raghunath Singh. On the death of Hardeo Bakhsh Singh his brother, Tilak Singh, obtained possession of the estate (his daughter's son the appellant being then a minor). Tilak Singh remained in possession until 26th January, 1886, when he died without issue leaving a widow, Mahtab Kunwar, who retained possession of the estate as his heiress until her death on 7th January 1891. On her death Kalka Singh succeeded to the estate as proprietor, Sumer Singh having predeceased Mahtab Kunwar. Kalka Singh died on 21st May 1894 without issue and was succeeded by the respondent his widow and sole heiress.

In the suit brought by the appellant to recover the estate three main points were dealt with by the Courts in India, namely (a) whether the suit was barred by limitation; (b) whether the appellant was entitled to all the estate under clause (4) of section 22 of the Oudh Estates Act (I of 1869) as having been treated by Hardeo Bakhsh Singh in all respects as his own son; and (c) whether he was excluded by custom from inheriting the non-taluqdari portion of the estate if it did not follow the devolution of the taluqdari portion.

As to these points the Additional Civil Judge held as to point (a) that the appellant was born on 14th June, 1873, and not as he stated in his plaint on 3rd July, 1874, and that he had therefore not shown that his suit was instituted within three years after he attained majority, and consequently the suit was barred by the law of limitation. As to point (b) he decided that the appellant was not entitled to the estate as claimed by reason of his having been treated as a son, such treatment not being satisfactorily proved, and there being proof that one Dharam Singh who afterwards died had been adopted by Hardeo Bakhsh Singh. As to point (c) he held that the non-taluqdari property followed the same course of succession as the taluqdari portion, and that if the Hindu law governed the succession to any portion of the property the appellant was excluded by the custom that daughters and their issue could not inherit, such a custom being proved.

On appeal the Court of the Judicial Commissioner of Oudh reversed the finding of the Civil Judge on point (a) being of

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opinion that the appellant was born, as alleged by him, on 3rd July, 1874, and that the suit was therefore not barred by lapse of time. On point (b) the Judicial Commissioners, though they differed from the judgment of the Civil Judge in regard to many of the specific acts and circumstances alleged by the appellant to constitute treatment as a son, and held such acts and circumstances to be proved, yet were of opinion that the adoption of Dharam Singh was quite inconsistent with such treatment, and came to the final conclusion that it was not satisfactorily proved that Hardeo Bakhsh Singh treated the appellant in all respects as his own son. On point (c) the Judicial Commissioners held that the custom excluding the appellant from inheriting was proved. They did not find whether the non-taluqdari property devolved in the same way as the taluqdari estates.

On an application by the appellant for a certificate to enable him to appeal to His Majesty in Council the Judicial Commissioners said :—

“The plaintiff prays for a certificate that, as regards value and nature, the case fulfils the requirements of section 596, Civil Procedure Code. There is no dispute that, as regards value, the case fulfils the requirements of section 596. The question is, whether, as regards nature, the case fulfils the requirements of that section, that is to say, whether the decree appealed from affirms the decision of the Court below, and whether, if it does, the appeal involves substantial questions of law.

“I think that the decree appealed against does not affirm the decision of the Court below. The judgment of this Court either differs from the decision of the Court below, as regards some of the issues or does not decide them. The words in section 596, ‘where the decree appealed against affirms the decision of the Court immediately below the Court passing the decree’ are very wide, the word, ‘decree’ including judgment, and I can see nothing in Chapter XLV of the Code of Civil Procedure, which will justify us in interpreting them as meaning merely such an affirmation of the decision of the Court below, as regards issues which it has disposed of, as results in the affirmation of the decree of that Court. The words are so wide, that I think that, when the Court below has dismissed or decreed a suit on all of certain issues, its decision cannot be deemed to have been affirmed by the judgment of the appellate Court, unless its decision as regards all those issues has been affirmed, as well as its decree.” (1).

On this appeal.

(1) See *Tasadduq Rasul Khan v. Kashi Ram* (1902) L. R., 30 I. A. 35; I. L. R., 25 All., 109.

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L. DeGruyther for the appellant contended that the suit was not barred by limitation; that the custom excluding the appellant from inheriting had not been satisfactorily proved; and that the appellant had established a title under clause (4) of section 22 of Act I of 1869, the circumstances of the case and the evidence produced for the appellant sufficiently showing that Hardeo Bakhsh Singh had "treated him in all respects as his own son." Reference was made to *Maharajah Pertab Narain Singh v. Subhao Koer* (1) and *Umrao Begam v. Irshad Husain* (2).

Haldane, K. C., and *W. C. Bonnerjee* for the respondent were not heard.

1905, November 22nd.—The judgment of their Lordships was delivered by LORD MACNAGHTEN:—

IN their Lordships' opinion this case is concluded by the concurrent findings of the Additional Civil Judge of Lucknow and the Judicial Commissioners. Both Courts have gone into the case with minute care, and their Lordships consider that the issues of fact have been disposed of in a very satisfactory manner. Both Courts have found that the appellant, who was the plaintiff in the Court below, was not treated in all respects by Hardeo Bakhsh as his own son, and therefore was not entitled to the statutory right of succession under clause 4 of section 22 of Act I of 1869. It has also been found that, according to the custom of the family, a daughter's son does not succeed to the property of his maternal grandfather.

Those findings are sufficient to dispose of the appeal; but it may not be out of place to repeat what was laid down in the case of *Umrao Begam v. Irshad Husain* (2) to which Mr. DeGruyther has called their Lordships' attention. "The question," said Lord Hobhouse in delivering the judgment of the Board in that case, "is not only a question of fact, but it is one which embraces a great number of facts whose significance is best appreciated by those who are most familiar with Indian manners and customs. Their Lordships would be specially unwilling in such a case to depart from the general

(1) (1877) L. R., 4 I. A., 228; I. L. R., 3 Calc., 626.

(2) (1894) L. R., 21 I. A., 163; I. L. R., 21 Calc., 997.

rule, which forbids a fresh examination of facts for the purpose of disturbing concurrent findings by the lower Courts.”

Their Lordships will, therefore, humbly advise His Majesty that this appeal should be dismissed. The appellant will pay the costs of the appeal.

Appeal dismissed.

Solicitors for the appellant—*Watkins and Lempriere.*

Solicitors for the respondent—*T. L. Wilson & Co.*

J. V. W.

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CHITPAL SINGH (PLAINTIFF) v. BHAIKON BAKHSH SINGH
(DEFENDANT).

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

Privy Council, Practice of—Concurrent decisions on fact—Disagreement of lower Courts as to circumstances leading up to conclusions—Appellate Court not affirming decision of first Court on all issues in the case.

Where there are concurrent conclusions by both the lower Courts on questions of fact sufficient for the disposal of the case, the mere fact that the two Courts do not agree on all the steps which lead to one and the same conclusion is no reason for disregarding the rule as to concurrent findings of fact. But the fact that the Courts have differed on some important, though subordinate, questions is a matter to be taken into consideration in determining whether the evidence before the lower Courts should be reviewed in detail.

APPEAL from a judgment and decree (October 17th, 1898) of the Court of the Judicial Commissioner of Oudh which affirmed a decree (October 1st, 1895) of the Subordinate Judge of Partabgarh dismissing the appellant's suit with costs.

The subject-matter of the suit was the taluqa of Behlolpur in the district of Partabgarh in Oudh. After the annexation of Oudh the second summary settlement of Behlolpur was made with Raja Bijai Bahadur Singh to whom a sanad was granted, and whose name was entered in lists 1 and 2 of the lists prepared under section 8 of the Oudh Estates Act (I of 1869). On 1st November, 1879, Bijai Bahadur Singh executed a deed of gift of the taluqa in favour of his wife, Rani Janki Kunwar, who was in possession until her death in 1888.

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