

1908

PACHKAURE
RAM
v.
NAND RAI.

BY THE COURT.—The order of the Court is that the appeal be dismissed with costs.

Appeal dismissed.

1908

August 4.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.
RAM KALI (DEFENDANT) v. JAMMA AND ANOTHER (PLAINTIFFS). *
Act (Local) No. II of 1901 (Agra Tenancy Act), section 22—Occupancy holding—Succession—"Male lineal descendant"—Illegitimate son—Hindu law.

Held that the illegitimate son of a man belonging to one of the Sudra caste by a kept woman, or continuous concubine, was capable of succeeding to the occupancy holding of his father as a "male lineal descendant" within the meaning of section 22 of the Agra Tenancy Act, 1901. *Inderun Valungyooly Taver v. Ramssawmy Pandia Talaver* (1), *Sarasuti v. Mannu* (2) and *Hargobind Kuari v. Dharam Singh* (3) referred to.

ONE Mahtab Singh, an occupancy tenant, had a son Ghansham Singh, by a concubine with whom he had lived for a considerable period, Musammam Jamuna. Mahtab Singh died, and on his death Jamuna and Ghansham Singh applied in the revenue court for the entry of their names in respect of Mahtab Singh's occupancy holding. Their application was refused, and they accordingly brought the present suit, in which they asked for a declaration that Jamuna was the wife and Ghansham Singh the son of Mahtab Singh and that as such they were entitled to succeed to Mahtab Singh's occupancy holding. The court of first instance (Munsif of Chandausi) decreed the claim and this decree was in appeal upheld by the Additional Judge of Moradabad. The defendant appealed to the High Court.

The Hon'ble Pandit *Madam Mohan Malaviya* and *Munshi Iswar Saran* for the appellant.

Babu Durga Charan Singh (for whom *Babu Beni Madho Ghosh*), for the respondents.

STANLEY, C.J., and BANERJI, J.—The question in this second appeal is whether the plaintiff respondent, Ghansham Singh, who is the illegitimate and only son of one Mahtab Singh, deceased, by a concubine who had lived continuously with Mahtab Singh, is entitled to the occupancy holding of his father as

* Second Appeal No. 355 of 1907, from a decree of W. F. Kirton, Additional Judge of Moradabad, dated the 19th December 1906, confirming a decree of Kunwar Sen, Munsif of Chandausi, dated the 6th of June 1906.

(1) (1869) 13 Moo., I. A., 141. (2) (1879) I. L. R., 2 All., 134.

(3) (1884) I. L. R., 6 All., 329.

a male lineal descendant within the meaning of that expression as used in section 22 of the Agra Tenancy Act. The Courts below have rightly held that Mahtab Singh belonged to the Sudra caste.

Both the lower Courts held that the plaintiff was so entitled. We think that their decision is right. In *Inderun Valungyypooly Taver v. Rāmasāwmy Pandia Talaver* (1) their Lordships of the Privy Council held that the illegitimate children of the Sudra caste, in default of legitimate children inherit their putative father's estate. In *Sarasuti v. Mannu* (2) Pearson and Oldfield, JJ., held that the illegitimate offspring of a kept woman, or continuous concubine, amongst Sudras, are on the same level as to inheritance as the issue of a female slave by a Sudra, and that the illegitimate son of an *ahir* by a continuous concubine of the same caste took his father's estate in preference to the daughter of a legitimate son of his father who died in the father's life-time. In *Hargobind Kuari v. Dharam Singh* (3) Straight, O. C. J. and Duthoit, J., held that, according to Hindu law and usage, illegitimate sons are entitled to maintenance from their father, and his estate is liable for such payment. Hindu law differs from the English law in so far that it does not treat an illegitimate son as *filius nullius*. His status as a son in the family is recognised and his right to maintenance secured to him.

On the foregoing authorities, therefore, we think that it was rightly held in the Courts below that the plaintiff Ghansham Singh is entitled, in the absence of a legitimate son, to the occupancy holding of his father as a male lineal descendant. We therefore dismiss the appeal with costs.

Appeal dismissed.

- (1) (1869) 13 Moo., I. A., 141. (2) (1879) I. L. R., 2 All., 134.
 (3) (1884) I. L. R., 6 All., 329.

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