

LUCHMAN SINGH (DEFENDANT) v. PUNA AND ANOTHER (PLAINTIFFS).

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

P.C.\*  
1889  
February  
21 & 22.

*Second Appeal—Code of Civil Procedure (Act XIV of 1882), ss. 584, 585—Jurisdiction to hear a second appeal, on what matters—Admission of secondary evidence—Evidence Act (I of 1872), ss. 65, 66.*

Under ss. 584 and 585 of the Code of Civil Procedure 1882, a second appeal is confined to matters of law, usage having the force of law, or substantial defect in procedure.

On an appeal to the Judicial Commissioner from a decree given on first appeal by an Appellate Court, and maintaining a finding of fact by the original Court, the only questions were (1), whether secondary evidence had been properly admitted on a case that had arisen for its admission; and (2), whether the evidence offered constituted secondary evidence of the matter in dispute, which was the making of a document.

*Held*, that (no special leave to appeal from the judgment of the Commissioner, the first Appellate Court, having been applied for) the facts were not open to decision on this appeal; this Committee could only do what the Judicial Commissioner on second appeal, under the above sections, could have done; and that, as the case stood, they were bound by the findings of fact of the first Appellate Court.

Both the above questions were decided in the affirmative by their Lordships: the *first*, on the ground that whether the evidence offered would itself prove the making of the document or not, it formed good ground for holding that there was a document capable of being proved by secondary evidence, admissible with reference to the Indian Evidence Act (I of 1872), ss. 65, 66: the *second* also in the affirmative, because, the evidence consisting of a copy which was made of a document, and filed (in another suit) among the records of the Court, and still there, endorsed, "copy in accordance with the original," signed by the Judge who presided in the Court, who alone was authorized to compare and accept such copy, there were grounds for considering it genuine.

APPEAL from a decree (13th February 1886) of the Judicial Commissioner, modifying a decree (12th May 1885) of the Commissioner of the Jubbulpore Division, which varied a decree (9th March 1885) of the Deputy Commissioner of the Jubbulpore District.

The suit giving rise to this appeal related to a question of title, and the main question of fact between the parties was decided

\* *Present*: LORD HOBHOUSE, LORD MACNAGHTEN, and SIR R. COOKE.

1889

LUGHMAN  
SINGH  
v.  
PUNA.

by the Courts in succession (1) in favour of the plaintiffs, respondents. They alleged that Ramchandra their father, by gift from one Kali Baboo, was the proprietor of village Natwara, and upon their father's death his widow Massammat Munna, who succeeded, allowed the defendant appellant to manage for her; with the result that he purchased in his own name other villages out of the profits of Natwara. Such villages they claimed as the heirs of their father on the death of their mother in 1884. They claimed also buildings and moveables.

The defendant's case was that Natwara descended from Kali to his daughter Munna, who made a gift of it on 23rd August 1870 to the defendant, with other property. He had other matters of defence; but this much is all that is necessary to explain what was the deed of gift alleged to have been made by Kali.

Both the original Court, the Deputy Commissioner, and the Court of First Appeal, the Commissioner, found the alleged gift to Ramchandra to have been made. But the original deed of gift was not forthcoming, and a copy was admitted in evidence.

As to this, the Judicial Commissioner, in his judgment on appeal preferred to him under ss. 584 and 585 of the Code of Civil Procedure 1882, expressed the opinion stated in their Lordships' judgment; and refused to hold that the Courts below had been wrong in admitting it in evidence.

On this appeal Mr. R. V. Doyme and Mr. C. W. Arathoon appeared for the appellant for whom the argument mainly was that there was no legal proof that Kali had made the gift in question.

The respondents did not appear.

Their Lordships' judgment was delivered by

**LORD HOBHOUSE.**—The sole question raised in this appeal is a question of fact, whether Kali Baboo made a gift of his estate to Ramchandra, under whom the respondents claim. If there

(1) When the suit was filed, 23rd July 1884, the Act giving the series of the Courts was XIV of 1865, then in force. On the 1st January 1886, when the suit was pending in the Judicial Commissioner's Court, Act XVI of 1885, the Central Provinces Civil Courts Act came into operation, repealing the former, and again stating the Courts in their order.

was no such deed of gift, the title of the appellant is a good one, but if there was, then the respondents, being the heirs of Ramchandra, are entitled to the decree which they have got.

The question has been before three Courts, and they have all decided in favour of the gift. They have held that it is proved by a deed of which secondary evidence was given.

The case is not only within the general rule which this Committee observe, that they will not, unless under very exceptional circumstances, disturb a finding of fact in which the Courts below have concurred, but it is within the more stringent rule laid down by the Code of Civil Procedure. The third Court was the Judicial Commissioner, and to him the appeal was what is called in the Code a second appeal. Section 585 of the Code of 1882 says :—"No second appeal shall lie except on the grounds mentioned in s. 584." Those grounds are : "The decision being contrary to some specified law or usage having the force of law, or the decision having failed to determine some material issue of law or usage having the force of law," or for substantial defect in procedure. It is not alleged here that there is any defect of procedure. Therefore, in order that this appeal may succeed, there must be some violation of law.

This Committee is sitting on appeal from the order of the Judicial Commissioner, and it can only do what the Judicial Commissioner himself could have done. No special leave to appeal from the decree of the Commissioner has been applied for, and their Lordships find that they are bound by his findings of the facts. Therefore the only questions here are, *first*, whether a case arose for admitting secondary evidence, which was a proper question of law ; and, *secondly*, whether the evidence that was admitted was really and truly secondary evidence.

With regard to the case for admitting secondary evidence their Lordships refer to the Evidence Act of 1872. It says :—"Secondary evidence may be given of the existence, condition, or contents of a document in the following cases." Two of the cases are : "When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, and when the original has been destroyed or lost, or when the party offering evidence of its

1889

---

 LUCHMAN  
SINGH  
v.  
PUNA.

1889

LUCHMAN  
SINGH  
v.  
PUNA.

contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time."

In this case there is evidence of two witnesses, of whom certainly one, and probably both, assisted at what they call a ceremony, in which Kali Baboo made over the property to Ramchandra, and told the people present, the villagers, the ryots or cultivators, that Ramchandra was the malik. There is the evidence of one witness that he was present at the signing of a deed, which he says was stated to be a deed of gift from Kali Baboo to Ramchandra, and there is the evidence of another witness that Kali Baboo told him that there had been such a deed of gift. Whether that evidence would of itself prove the deed of gift need not now be discussed, but that it formed good ground for holding that there was a deed capable of being proved by secondary evidence, cannot be doubted. The Courts below have found that all the documents belonging to the estate passed into the hands of the appellant, and therefore that the deed in question is in his power, or has been destroyed or lost,

Then what is the secondary evidence which is let in? It is a copy of a deed which was filed in another suit, and is still on the records of the Court. That deed is endorsed: "Copy in accordance with the original," and it is signed by the Judge presiding in the Court. Their Lordships accept the opinion of the Judicial Commissioner upon the value of that copy. His words are these: "There can be no doubt that the Judge, in the course of the suit in 1864, did accept and file, with the proceedings, a copy of a deed of gift by Kali Baboo, and the only question is whether that copy had been compared with the original, when the copy is en faced, in accordance with practice, 'copy according to the original,' and the Judge's order to file is also found on it. I cannot doubt that the copy was duly compared. Except the Judge, there was no person who was authorized to compare and accept a copy, and his signature to the order must, it seems to me, guarantee the genuineness of the copy." Their Lordships entirely concur with that opinion. When the copy is looked at it establishes the deed of gift on which the respondents rely.

There was another question raised with respect to some goods and chattels—some moveable property. It was said that the

appellant, having been in possession of the estate rightfully under a deed of gift from Ramchandra's widow, was entitled to the income during that time, and the Judicial Commissioner has, to a certain extent, given effect to that contention by adjudicating to the appellant the ownership of some villages which it appears that, during that period, he purchased out of the surplus or savings from the income. But besides the land, he received a certain quantity of chattels, which we may call stock and plant, and it is now contended that, as the original stock and plant must have worn out, and the appellant was not under any obligation to replace it, therefore that which he has in fact brought in to replace it belongs to him, and not to the estate. So far as there is stock and plant belonging to the three villages, which the Judicial Commissioner has adjudicated to the appellant, that he takes. But with regard to the other property which forms part of the estate which is adjudicated to the respondents, their Lordships think that the appellant is in the position of an ordinary tenant for life who enjoys furniture and plant which wears out from time to time, and which he replaces, and that that which is found attached to the property which the respondents receive must follow the title to that property, and that the decree of the Judicial Commissioner is right in not giving to the appellant any more stock or plant than belongs to the three villages which he has given to him.

The result is that the appeal fails in every respect, and their Lordships, therefore, must humbly recommend Her Majesty to dismiss it. There will be no costs, as the respondents do not appear.

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

C. B.

*Appeal dismissed.*

1889

LUHMÁN  
SINGH  
v.  
PONA.