lifetime, or which may come to me by inheritance or to which I may become entitled."

Madho Singh's object in putting on record the statement contained in paragraph 6 probably was to make the position of Lachhman Singh secure against the interference of certain relatives with whom, it is said, he had a blood feud, one of whom might possibly claim under Sarabjit Singh. Paragraph 8 carries the matter no further. In styling Lachhman Singh "donee," the document refers simply to what was given to him by the will and codicil.

Looking at the matter broadly their Lordships agree with the learned Judges in the Court of the Judicial Commissioner in holding that the instrument of the 5th of May, 1887, was testamentary and cannot be construed as a deed of gift *inter vivos*.

Their Lordships will therefore humbly advise His Majesty that the appeal must be dismissed.

The appellants will pay the costs of the appeal.

Appeal dismissed.

Solicitors for the appellants : *Barrow, Rogers and Nevill.*

Solicitors for the respondents :—*Ranken Ford, Ford, and Chester.*

J. V. W.

IMDAD AHMAD AND OTHERS (DEFENDANTS) *v.* PATESHRI PARTAP NARAIN SINGH (PLAINTIFF).

P. C.
1909
December 8, 9.
1910
February 5.

[On appeal from the High Court of Judicature at Allahabad.]

Evidence—Reversal by appellate court of decision as to genuineness of documents—Evidence taken on commission so that first court had not the usual advantage of seeing and hearing witnesses—Suit by head of family and owner of impartible raj to recover immovable property reverting to raj on failure of objects for which it was given as maintenance.

In this appeal from the decision of the High Court in *Pateshri Partab Narain Singh* v. *Rudra Narain*, I. L. R., 26 All., 528, their Lordships of the Judicial Committee agreed with the view of the High Court that the plaintiff (respondent) was entitled to succeed so far as his claim was based on the *sipurdnama* which, if genuine, was decisive of the case; and without dissenting from their opinion on the point of law as to the competency of the appellate court under the circumstances to add a party after the period of limitation

Present :—Lord MACNAGHTEN, Lord COLLINS, Sir ARTHUR WILSON, and Mr. AMEER ALI.

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for the suit had expired, affirmed the finding as to the genuineness of the *sipurdnama* and *warasatnama*, and dismissed the appeal.

SIX consolidated appeals from six decrees (21st March 1904) of the High Court at Allahabad, which reversed six decrees (14th May 1900) of the District Judge of Gorakhpur.

The suits out of which these appeals arose were brought on 14th January 1899 by the Raja of Basti, the first respondent, to recover possession of a number of villages or shares in villages situate in the district of Basti, on the allegations that the property in dispute belonged to the Basti raj, an impartible raj of which the plaintiff was the owner; that a custom prevailed in the raj whereby the property belonging to it descended to the eldest son according to the rules of primogeniture; that on the death of a Raja and the succession of his son to the raj, a portion of the property is given to the brothers of the ruling Raja, who were called Babus, as *haq babuai* or maintenance, and on failure of male issue of such brothers the property so given reverted to the raj after the death of the Babus and their widows. The plaintiff alleged that under this custom the property in suit reverted to the raj on the death, in 1887, of the surviving widow of Babu Chet Singh, who was nephew of Raja Pirthipal Singh, a former Raja of Basti. The plaintiff also claimed to be entitled to the property by virtue of a deed of assignment (*sipurdnama*) executed on 21st March 1848, by Babu Chet Singh in favour of Raja Indar Dawan Singh, the then ruling Raja, and he also relied upon a *warasatnama*, or will, executed by Dulahin Rup Kunwari, the surviving widow of Chet Singh, on 6th January, 1858, in favour of his father the late Raja Mahesh Sitla Bakhsh Singh.

The facts are sufficiently stated in the judgment of their Lordships of the judicial committee, and also in the report of the appeals before the High Court, which will be found in I. L. R., 26 All., 528. All the suits were tried together, the evidence produced in one of them being, by consent of parties, admitted as evidence in the others.

The District Judge, so far as the issues now material are concerned, held that the plaintiff had "failed to prove that the Raj is an impartible raj or that limited estates are granted for maintenance to the younger members of the family

as alleged;" and that the *sipurdnama* and *warasatnama* were not proved to have been duly executed. He therefore dismissed the suits.

On appeal by the defendants, the High Court (SIR JOHN STANLEY, C.J., and MR. JUSTICE BURKITT) said on the above points:—

"There has been, it will be observed, a great deal of litigation over the property which had devolved upon Kishan Singh, in the course of which the custom relied upon by the plaintiff was put forward as a prevailing custom in the family, but the question was never finally decided. It is clear and it is admitted on all sides, that Chet Singh acquired a good title to the property now in dispute by adverse possession, and it is unnecessary therefore for us to determine whether or not that custom has been established. If it existed, Chet Singh acquired the property contrary to and in spite of it and nothing occurred subsequently to reimpress it with the character of impartibility. The real question therefore for determination in these appeals is whether or not the *sipurdnama* of the 21st of March, 1848, is a genuine document."

After discussing the evidence as to that document and the *warasatnama* at considerable length, the High Court continued:—

"There is to our minds undoubtedly a strong body of oral evidence in support of the genuineness of the two documents in question. We have examined with care the *sipurdnama* and find it to have all the appearance of age and genuineness. An uncoloured stamp is impressed on it such as was in use many years ago, and there is nothing which we have been able to discover which raises any suspicion of forgery. It was undoubtedly, we think, produced immediately after the death of Rup Kunwari by the then Raja, and a claim based by him upon it. * * * * After a careful inspection of the document and close attention to everything which has been said in support of the contention of the respondents, we find ourselves wholly unable to agree in the view of the learned District Judge that this document is not genuine. It has, as we have said, the appearance of age; it bears an old impressed stamp; it has come from proper custody, and its genuineness is attested by several witnesses of respectability and position. We are unable to reject this large body of proof and uphold the findings of the lower court. The evidence establishes to our satisfaction the genuineness of the *sipurdnama*. We think it unnecessary, having regard to the view expressed above, to have recourse to the presumption which section 90 of the Evidence Act allows a court to make in such a case.

"We also see no reason for doubting the genuineness of the *warasatnama* executed by Rup Kunwari. There was no object to be gained by Raja Mahesh Sitla Bakhsh Singh in fabricating this document, as Rup Kunwari had only a life estate in the property and could not dispose of it by will. She may have imagined that by reason of the death of Raja Indar Dawan Singh in her lifetime, a will by her, constituting Raja Mahesh Sitla Bakhsh Singh her heir, would be effectual. The evidence moreover satisfies us that, on the death of

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Rup Kunwari in 1887, both these documents were set up by Raja Mahesh Sitla Bakhsh Singh in support of his claim to the property. Rudra Narain Singh admits that on the day after the death of Rup Kunwari notice of the *sipurdnama* was given to him. Every circumstance in fact points to the genuineness of these documents. No suit, it is true, was brought by Raja Mahesh Sitla Bakhsh Singh in his life-time for recovery of the property. It appears that he was heavily involved in debt, and possibly, as is suggested, he had not the means of providing for the expenses of litigation. He died on the 4th of May 1890, and was succeeded in the raj by the plaintiff. He also was involved in litigation at the suit of the creditors of his father. 'Hundreds of civil suits were instituted against him,' he says in the plaint, 'and he was thus involved in difficulties and being a minor was not even fully acquainted with the state of things.' It was not until the period of limitation was about to expire that the present suit was instituted."

The High Court therefore reversed the decision of the District Judge and decreed the suit. On this appeal.

Cohen, K. C., G. E. A. Ross, and *B. Dube,* for the appellants contended that the High Court was in error in holding that the *sipurdnama* and the *warasatnama* were genuine documents, and that, with reference to the terms of the former document, the plaintiff was entitled to the relief claimed in his plaints. The suits were barred by the law of limitation, as the brother of the plaintiff whom the Court considered a necessary party, could not be added, as he was, after the period of limitation for the suits had expired. Reference was made to the Limitation Act (XV of 1877), section 22, and *Guruvaya Gouda* v. *Dattatraya Anant* (1). The District Judge had rightly held that the plaintiff had failed to prove the material allegations in his plaints and that decision had been wrongly reversed by the High Court.

DeGruyther, K. C., and *H. Cowell,* for the first respondent contended that on the evidence as to their execution, and on a consideration of the circumstances and probabilities of the cases, the High Court was right in holding that the *sipurdnama* and *warasatnama* were genuine documents: moreover being more than 30 years old, and coming from the proper custody they ought to be presumed to be genuine under section 90 of the Evidence Act (I of 1872). As to the custom, where property is transferred for maintenance for the junior members of the family, it reverted to the raj on failure of the objects of its

(1) (1903) I. L. R., 28 Bom., 11.

transfer. *Durgadut Singh* v. *Rameshwar Singh* (1). The point as to the non-joinder of parties was not taken by any one of the present appellants. It was taken by the High Court at a late stage of the hearing of the appeals. Such an objection should be taken at once, and, if not so taken, must be considered as having been waived. *Phoolbas Koonwur* v. *Lala Jogeshur Sahoy* (2). Section 34 of the Civil Procedure Code was also referred to.

Ross replied.

1910, *February 15th.*—The judgement of their Lordships was delivered by LORD COLLINS:—

The question on this appeal is whether the plaintiff, who is the Raja of Basti, is entitled to recover possession of a number of villages or parts of villages situate in the district of Basti. Seven connected suits brought by the same plaintiff were tried at the same time, and were all dismissed by the Judge of first instance. On appeal to the High Court of Judicature for the North-Western Provinces, these decisions were in all cases but two reversed and judgement entered for the plaintiff. The defendants having obtained the necessary certificate now appeal to this Board in the six cases decided against them. At the trial before the District Judge the oral evidence seems to have been taken on commission, and consequently the Judge of first instance had no advantage over the High Court in hearing and seeing the witnesses, and this Board must deal with the appeal under the like conditions.

The case for the plaintiff was rested on two grounds—first, that the property in question was part of the raj of Basti, which, it was alleged, was an impartible raj, descending to the eldest son according to the rules of strict primogeniture; and it was further alleged that on the death of the Raja and the succession of his son to the raj, a portion of the property was given to the brothers of the ruling Raja, who are called Babus, as "Haq Babuai" or maintenance, and on failure of male issue of such brothers the property so given reverts to the raj after the death of the Babus and their widows, if any. Under this custom the plaintiff alleges that the property in dispute reverted to the raj on the death, in the year 1887, of the surviving widow of Babu

(1) (1909) I. L. R., 36 Calc., 943; L. R., 36 I. A., 176.

(2) (1876) I. L. R., 1 Calc., 226 (244, 245) L. R., 3 I. A., 7 (26).

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Chet Singh, who was nephew of a former Raja—Raja Pirthipal Singh. The plaintiff also claimed to be entitled to the properties by virtue of a deed of assignment (*sipurdnama*) executed 21st March 1848, by Babu Chet Singh, in favour of the then ruling Raja Indar Dawan Singh, and he relied also upon a "warasatnama" or will executed by Dulahin Rup Kunwari, the surviving widow of Chet Singh, on the 6th January 1858, in favour of his father, the late Raja Mahesh Sitla Bakhsh Singh.

The trial Judge held that the custom of the raj set up by the plaintiff was not proved. He also held that it was not proved that either the *sipurdnama* or the *warasatnama* was duly executed. The High Court, without formally differing from his finding as to the custom, considered it unnecessary to decide the point, since it was common ground that the *sipurdnama*, if a genuine document, was decisive of the case. The property in dispute had undoubtedly been acquired by Chet Singh in his lifetime. He was said, and, as the High Court held, proved to have sold some of it to his wife, Rup Kunwari.

The *warasatnama* was therefore important, not only as throwing confirmatory light on the *sipurdnama*, but as embracing the property said to have been thus disposed of by Chet Singh, so that the whole of the property in question, if both documents were genuine, passed *quâcunque viâ* to the plaintiff. The High Court, after a very minute and elaborate examination of both the documents themselves, which they seem to have scrutinised much more closely than did the Court below, as well as the evidence in support of them, arrived at a clear conclusion that they were genuine documents and decisive of the case. They therefore reversed the decision of the Court below in six cases.

Their Lordships agree with the conclusions and reasoning of the High Court, and will humbly advise His Majesty that these appeals be dismissed with costs.

Appeals dismissed.

Solicitors for the appellants:—*Barrow, Rogers and Nevill.*

Solicitors for the respondents:—*Ranken Ford, Ford and Chester.*

[J. V. W.