

Solicitors for the respondent Ram Autar Pande :—*Barrow, Rogers and Nevill.*
J. V. W.

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JAYNA DAS
v.
RAM AUTAR
PANDE.

LEKHRAJ KUNWAR (PLAINTIFF) v. HARPAL SINGH AND OTHERS
(DEFENDANTS).

[On appeal from the High Court at Allahabad.]

Hindu law—Inheritance—Impartible estate governed by rule of primogeniture—Estate devised to widow of owner—Suit by reversioner—Compromise of suit by widow and reversioner—Descent of estate governed by the compromise and not by will.

The owner of an impartible estate governed by the rule of primogeniture died leaving a will by which he gave an absolute estate to his widow, against whom S, the next reversioner, brought a suit on the ground that the will was invalid and that he was entitled to possession of the estate. In that suit the parties came to a compromise, by the terms of which it was agreed that the widow should hold for her life the position of "gaddi-nashin," paying S a monthly allowance, and that after her death S or "any representative of his who may be living at that time will be the absolute owner of all the movable and immovable properties and will occupy the gaddi." S predeceased the widow leaving no male issue and without having made any disposition by will or otherwise of his interest in the estate. On the death of the widow in possession, the widow of S sued to recover the estate from members of her husband's family who had possession of it.

Held by the judicial Committee (affirming the decision of the High Court) that the rights of the parties depended not on the will but on the compromise, the terms of which gave S a vested interest in the estate, which retained its character of impartibility, and on the death of S descended not to his widow (the appellant) but to the respondent, his heir, according to the rule of primogeniture.

APPEAL from a judgement and decree (29th May 1908) of the High Court at Allahabad, which reversed a judgement and decree (24th February 1906) of the District Judge of Jaunpur and dismissed the appellant's suit.

The main question for determination in this appeal was as to the effect of a document, dated the 25th of April, 1896, called a compromise, as to the interpretation and legal effect of which the courts in India differed, the District Judge construing it in favour of the appellant and the High Court in favour of the respondents.

The facts of the case are fully stated in the judgement of the High Court, and in the judgement of their Lordships of the

Present :—Lord MACNAGHTEN, Lord ROBSON, Sir JOHN EDGE and Mr. AMERL ALL.

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Judicial Committee. The report of the case before the High Court (SIR JOHN STANLEY, C. J. and BANERJI, J.) will be found in I. L. R., 30 All., 406.

On this appeal—

Sir Erle Richards, K. C., and *B. Dube* for the appellant contended that the will of Randhir Singh in favour of his wife Sonao Kunwar conferred on her an absolute proprietary estate, and that the effect of such transfer was to destroy the original character of impartibility of the estate and the special custom of primogeniture regulating its descent. Reference was made to *Suraj Mani v. Rabi Nath Ojha* (1) *Bhoobun Mohini Debi v. Hurrish Chander Chowdhry* (2) and *Abdul Wahid Khan v. Nuran Bibi* (3). The estate therefore came to Sonao Kunwar as an absolute estate governed by the ordinary rules of Hindu law. Under the compromise, dated the 25th of April, 1896, made between Sheopal Singh and Sonao Kunwar, the former took, subject to the life interest of the latter, an absolute vested estate in the property which became self-acquired, and was governed by the Mitakshara law. The High Court had therefore erred in holding that by the terms of the compromise it was the intention of the parties that the estate should on the death of Sonao Kunwar descend by the rule of the primogeniture [*DeGruyther K. C.* referred to *Khunni Lal v. Gobind Krishna Narain* (4) as supporting the decision of the High Court in the present case.]

DeGruyther, K. C., and *Ross* for the respondents were not called upon.

The judgement of their Lordships was delivered by Sir JOHN EDGE :—

This is an appeal by Thakurain Lekhraj Kunwar (the plaintiff) from the decree of the High Court of Judicature for the North-Western Provinces of India, dated the 29th of May, 1908, which set aside the decree in the plaintiff's favour of the District Judge of Jaunpur, and dismissed the plaintiff's suit and certain objections which had been filed by her.

- (1) (1907) I. L. R., 30 All., 84 ; L. R., 35 I. A., 17. (3) (1885) I. L. R., 11 Calc., 597 ; L. R., 12 I. A., 91.
(2) (1878) I. L. R., 4 Calc., 28 ; (4) (1911) I. L. R., 33 All., 356,
L. R., 5 I. A., 138.

In the suit in which the decree now under appeal was made the plaintiff, who was the widow of Sheopal Singh, claimed proprietary possession of the riasat of Singra Mau in the district of Jaunpur, and mesne profits. The defendants to the suit, who are respondents to this appeal, are Thakur Harpal Singh, a distant cousin in the male line of Sheopal Singh, Shamsher Bahadur Singh, a younger brother of the father of Thakur Harpal Singh, Raghuraj Bahadur Singh and Rampal Singh, minors, sons of Shamsher Bahadur Singh, and Thakurain Janki Kunwar, the widow of Rudarpal Singh, who was a brother of Sheopal Singh and had died without male issue. The last common ancestor of Sheopal Singh and Thakur Harpal Singh was Dammar Singh.

The District Judge of Jaunpur gave the plaintiff Thakurain Lekhraj Kunwar a decree for possession as a Hindu widow, and decreed mesne profits. From that decree the defendants, Thakur Harpal Singh and Shamsher Bahadur Singh, on his own behalf and as guardian of his sons Raghuraj Bahadur Singh and Rampal Singh, appealed to the High Court, and in that appeal the plaintiff filed objections to the decree of the District Judge, claiming that she was entitled to a decree for possession of the Singra Mau estate as an absolute owner, and not merely for the estate of a Hindu widow. The defendant, Thakurain Janki Kunwar, did not defend the suit; she claimed no interests.

The question upon which this appeal depends is a short one. The estate of Singra Mau descended in the male line from Dammar Singh as an impartible estate to one Randhir Singh, who died without male issue in January 1895. In the family to which Randhir Singh, Sheopal Singh and Thakur Harpal Singh belonged the rule of primogeniture applied so far as this estate of Singra Mau was concerned. The pedigree of the family will be found in the judgement of the High Court; it is sufficient now to say that Sheopal Singh, who was the plaintiff's husband, was the son of Jagarnath Singh, a younger brother of Randhir Singh, and that on the death of Sheopal Singh without a son in July, 1899, the defendant Thakur Harpal Singh was, subject to the life interest of Thakurain Sonao Kunwar under a compromise, the next member of the family who was entitled to the possession of Singra Mau, if the estate was then impartible. The question as to whether the

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estate had ceased to be impartible or had continued to be and was impartible on the death of Sheopal Singh depends upon the construction of an agreement of compromise of the 25th of April, 1896, to which Sheopal Singh and Thakurain Sonao Kunwar, who was the junior widow of Randhir Singh, were the parties.

Randhir Singh, who was then 74 years of age, and in possession of the impartible estate of Singra Mau, made a will on the 15th of December, 1894, by which he left his entire estate and every kind of movable and immovable property of which he was then in possession to Thakurain Sonao Kunwar, his junior wife. It is admitted that if Randhir Singh was then of testamentary capacity he had power as the owner in possession of the impartible estate of Singra Mau to make that will, and by it to put an end to the impartibility of the estate, and to exclude his nephew Sheopal Singh from the succession, which was the effect of the will as it was executed. After the death of Randhir Singh his widow Thakurain Sonao Kunwar applied for a grant to her of probate of the will. Sheopal Singh and others filed objections to probate being granted; thereupon in March, 1896, Sheopal Singh brought a suit in the Court of the Subordinate Judge of Jaunpur against Thakurain Sonao Kunwar and Thakurain Shankar Kunwar, the senior widow of Randhir Singh, a *pro forma* defendant, and Babu Soridat, also a *pro forma* defendant, in which Sheopal Singh alleged that when Randhir Singh was seriously ill and on the point of death, and quite incapable of entering into any contract or of understanding any transaction, the well-wishers of Sonao Kunwar and Shankar Kunwar, having colluded together, caused the will to be executed. Sheopal Singh further alleged in that suit that according to the old custom and nature of the property, and also on the strength of right of survivorship, the right to occupy the *gaddi* and to enter into possession of the entire estate devolved upon him on the death of Randhir Singh, and he prayed for a declaration that the will of the 15th of December, 1894, was null and void as against him and the estate, and for a decree dispossessing Thakurain Sonao Kunwar and Thakurain Shankar Kunwar and awarding absolute possession to him, Sheopal Singh, over the entire estate of Singra Mau, together with

imlaks, movable and immovable property appertaining to the said estate.

On the 25th of April, 1896, Sheopal Singh and Thakurain Sonao Kunwar entered into an agreement of compromise which was executed by them and was in the form of a petition to the court of the Subordinate Judge of Jaunpur in the suit which had been brought by Sheopal Singh against Sonao Kunwar, Shankar Kunwar and Babu Soridat. That petition was presented to the court of the Subordinate Judge, and on the 27th of April, 1896, the Subordinate Judge made a decree in the suit in accordance with the petition giving possession of the estate to Sonao Kunwar for her life subject to the terms of the compromise.

The petition of compromise was as follows :—

“ 1. The name of Musammat Thakurain Sonao Kunwar will continue to be recorded in the revenue papers in the same way in which it stands recorded, and she will remain in possession during her lifetime of all the movable and immovable properties of which Rai Randhir Singh was in possession, exercising the powers of *gaddinashin* (occupier of *gaddi*) without the power to transfer or charge the estate in any way.

“ 2. I, Thakur Sheopal Singh, will take the sum of Rs. 12,000 a year at the rate of Rs. 1,000 per month from Musammat Thakurain Sonao Kunwar for all my expenses, and I, Musammat Thakurain Sonao Kunwar, will pay the same. I, Thakur Sheopal Singh, will not interfere with the estate in any way in the lifetime of Musammat Sonao Kunwar. After the death of Musammat Thakurain Sonao Kunwar, I, Thakur Sheopal Singh, or any representative of mine who may be living at that time, will be the absolute owner of all the movable and immovable properties possessed by Rai Randhir Singh, and will occupy the *gaddi*. In case of non-payment of the fixed annual allowance, I, Thakur Sheopal Singh, will have power to recover the same by instituting a suit and attaching the profits and movable property belonging to Thakurain Sonao Kunwar.

“ 3. If I, Thakur Sheopal Singh, have to go to any member of the brotherhood, or any *rais* on the occasion of any ceremony or otherwise, I will have authority to take as much equipage belonging to the estate as I require, and when I go out for recreations, &c., I will take any conveyance I like for my use. Thakurain Sonao Kunwar will have no power to forbid me.

“ 4. If, on any particular occasion, any indispensable necessity arise in the estate, and it be necessary to take a loan, we, Thakur Sheopal Singh and Musammat Thakurain Sonao Kunwar will, in concurrence with each other, borrow five or ten thousand rupees, and repay the same gradually from the profits of the estate.

“ 5. I, Thakurain Sonao Kunwar, also accept all the aforesaid conditions, it is therefore prayed that the case may be struck off as a contested one on the basis of this compromise, and the costs incurred by the parties be charged against themselves. This compromise may be embodied in the decree.

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Musammât Thakurain Shankar Kunwar and Soridat, *pro forma* defendants, have been exempted."

Sheopal Singh died on the 27th of July 1899 without issue male, and without having made any disposition by will or otherwise of his interest in the Singra Mau estate. Thakurain Sonao Kunwar, who had been in possession of the estate under the compromise of the 25th of April, 1896, died on the 20th of June, 1904, and thereupon Thakurain Lekhraj Kunwar and Thakur Harpal Singh respectively claimed possession of the estate. On the 6th of July, 1904, the Collector of Jaunpur ordered mutation of names in favour of Thakur Harpal Singh; from that order Thakurain Lekhraj Kunwar appealed to the Commissioner of Benares, who on the 2nd of September, 1904, dismissed the appeal.

The District Judge of Jaunpur in his judgement in this suit held that the estate had descended to Thakurain Sonao Kunwar under the will of Randhir Singh by an entirely new title, and had thereby lost its character of impartibility, and was no longer subject to the special custom of descent. The District Judge further held that the estate which Sheopal Singh would have taken had he survived Thakurain Sonao Kunwar, would be self-acquired by Sheopal Singh as arising out of the contract of compromise with Thakurain Sonao Kunwar. As the learned Judges in the High Court rightly observed, the District Judge went behind the compromise and held that the will was a valid will binding on Sheopal Singh, and determined what in his opinion were the rights of the parties before the compromise, the very thing the avoidance of which led to the compromise. The learned Judges in the appeal in the High Court held that the rights of the parties to this suit depended upon the construction of the compromise, but not upon the will of Randhir Singh. With that conclusion their Lordships in this appeal agree. They also held that—

"upon the language of the compromise it is not possible to hold that the character of the estate, as it had been handed down from father to son for generations was changed. As an impartible estate Sheopal Singh laid claim to it, and the compromise provided that as an impartible estate it should devolve upon him."

And they accordingly dismissed the suit.

Their Lordships consider that the High Court put the only possible construction upon the agreement of compromise. Sheo-

pal Singh never admitted the validity of the will as against him, and never admitted that Thakurain Sonao Kunwar had obtained any title under the will. It is obvious from the terms of the compromise that Sheopal Singh consistently maintained that the will was invalid and consequently that Thakurain Sonao Kunwar had taken no title under it, and that the estate as an impartible estate had vested in him on the death of Randhir Singh. By the compromise Sheopal Singh, reserving to himself an income of Rs. 12,000 a year out of the estate, gave to Thakurain Sonao Kunwar a bare interest for her life in his impartible estate. Sheopal Singh in the agreement of compromise carefully provided that on the death of Thakurain Sonao Kunwar, he or his successor should be the absolute owner of the estate and should occupy the *gaddi*; that on the occasion of any ceremony, or when he should go out for recreation, he should have the right to take as much equipage and any conveyance belonging to the estate for his use as he should require, and that Thakurain Sonao Kunwar should have no power to forbid him; and that should it be indispensably necessary to raise any money on the estate by way of loan, he and Thakurain Sonao Kunwar should in concurrence with each other borrow Rs. 5,000 or Rs. 10,000 and repay the same gradually from the profits of the estate. Under the compromise Thakurain Sonao Kunwar had no power to encumber the estate for any purpose, except in conjunction with Sheopal Singh. The terms to which their Lordships have referred are consistent only with the construction placed upon the compromise by the High Court, and there are no terms in the compromise which suggest any other construction. To these terms Thakurain Sonao Kunwar submitted. It may be mentioned that the Subordinate Judge of Jaunpur before making his decree of the 27th of April, 1896, took the precaution of ascertaining that Thakurain Sonao Kunwar understood the terms of the compromise. The High Court rightly dismissed the suit of Thakurain Lekhraj Kunwar.

The fact that after the compromise the will of Randhir Singh was admitted to probate did not affect the rights of Sheopal Singh.

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Their Lordships will humbly advise His Majesty that the judgement and decree appealed against should be affirmed and the appeal dismissed with costs.

Appeal dismissed.

Solicitors for the appellant:—*T. C. Summerhays and Son.*

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

J. V. W.

APPELLATE CIVIL.

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July, 19.

Before Mr. Justice Sir George Knox and Mr. Justice Piggott.

GANGA SINGH AND ANOTHER (DEPENDANTS) v. BANWARI LAL AND OTHERS, (PLAINTIFFS).*

Act No. IV of 1882 (Transfer of Property Act), sections 88, 89—Joint decree for sale—Application for order absolute made by some of the decree-holders after the coming into force of the Civil Procedure Code, 1908, Civil Procedure Code (1908), order XXXIV—Act No. X of 1897 (General Clauses Act), section 6.

A decree for sale under the provisions of section 88 of the Transfer of Property Act, 1882, was passed jointly in favour of B and K. B died before any order absolute for sale was passed. On the 30th of April, 1909, the sons of B made an application for an order absolute for sale under section 89 of the Transfer of Property Act. K was not made a party to it.

Held, that the application would lie, inasmuch as the sons of B being joint decree-holders with K were entitled to apply for an order for sale (whether or not such order be in fact a final decree), their right to do so being inherent in the decree under section 88 of the Transfer of Property Act. The subsequent repeal of the section could not affect any right acquired or liability incurred thereunder.

THE facts of this case were briefly as follows:—On the 30th of April, 1906, Bhagwan Das and Musammat Kaunsilla jointly obtained, under section 88 of the Transfer of Property Act, a decree for sale upon a mortgage. After the decree Bhagwan Das died. His heirs applied in the execution department on the 30th of April, 1909, for a decree absolute under section 89 of the Transfer of Property Act. It was stated in the application that as Musammat Kaunsilla did not join in it the decree absolute might be prepared in such manner as to safeguard her interests in accordance with order XXI, rule 15. The judgement-

* Second Appeal No. 69 of 1910 from a decree of Austin Kendall, District Judge of Cawnpore, dated the 27th of September, 1909, confirming a decree of Mohan Lal Hakku, Subordinate Judge of Cawnpore, dated the 21st of July,