

registration of the document must, according to the ruling of the Privy Council, be held to be invalid. I also would dismiss the appeal.

TUDBALL, J.—I fully concur and have nothing further to add.

CHAMIER, J.—I agree with the order proposed by the learned Chief Justice. It appears to me that there was neither in fact nor in law any "presentation" of the document by any qualified person to any person authorized to receive it for registration.

BY THE COURT.—The order of the Court is that the appeal is dismissed, but without costs. The objection raised by the respondent as to costs is also dismissed with costs.

*Appeal dismissed.*

## PRIVY COUNCIL.

RAGHUBIR SINGH (DEFENDANT) v. MOTI KUNWAR (PLAINTIFF) AND SATI SINGH AND ANOTHER (PLAINTIFFS) v. MOTI KUNWAR (DEFENDANT).

Two appeals consolidated.

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

*Hindu law—Partition—Requisites for partition—Agreement to hold property in certain specific and defined shares, effect of—Re-union, failure to prove as alleged.*

The members of a joint Hindu family came to the following agreement:—  
 "Now we have already come to terms, and according to the shares given below we have been in possession and enjoyment of our respective shares. As regards it we have with our mutual consent entered into an agreement according to the terms given below. The same share in the property which is in the possession of a particular person as given below shall be considered to be the property of that very person who is in possession thereof. If any of us brings any suit in the Civil or Revenue Court to the effect that his share is less or he is a loser, it shall be considered to be false in every court. By virtue of this agreement no person shall be competent to bring any claim in any court in respect of any portion of the property other than the property detailed below." Then followed a specification of the villages belonging to the family, and the shares in which those villages were thereafter to be held. From that time the property had been entered in the Register in accordance with the arrangement contained in the agreement, and the agreement had been acted upon up to the time of suit.

*Held* by the Judicial Committee (affirming the decision of the High Court) that on the evidence and circumstances of the case, the agreement was one which operated as a partition of shares, and the family thenceforth ceased to be joint in accordance with the principle laid down in *Appovier v. Rama Subba*

\* *Present*:—Lord Macnaghten, Lord Moulton, Sir John Edge and Mr. Ameer Ali.

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*Aiyon* (1); *Balkishan Das v. Ram Narain Sahu* (2) and *Parbati v. Nauthihal Singh* (3).

There was no re-union. That was a question of fact, and there was no evidence to show that any of the members of the family re-united, or even contemplated re-union.

Two appeals consolidated from two judgements and decrees (24th November 1908) of the High Court at Allahabad, one of which reversed a judgement and decree (12th September 1907) of the Subordinate Judge of Mainpuri, and the other affirmed a judgement and decree (2nd June 1904) of the Assistant Collector of Etawah.

The facts of the case are, for the purposes of this report, stated in the judgement of their Lordships of the Judicial Committee.

The main question for determination in these appeals, was whether one Baldeo Singh, the deceased husband of the respondent Moti Kunwar, was a member of a Hindu joint family in co-partnership with the appellants at the time of his death (as contended by the appellants), or had become separated prior to his death (as contended by the respondent).

Upon this question depended the title of Moti Kunwar, the plaintiff in the suit brought in the court of the Assistant Collector of Etawah, the object of which was to recover her share of profits of a village named Kanchausi, which was recorded in her name. The defendants were the present appellants, and the main defence was that Moti Kunwar was not a co-sharer, but a Hindu widow in a joint family who was only entitled to maintenance. The Assistant Collector decided the case on the provisions of the Agra Tenancy Act (II of 1901 of the Local Council) section 201, and held that the fact that Moti Kunwar's name was recorded as proprietor in the Revenue papers was sufficient to maintain her claim in a Revenue Court. He accordingly gave her a decree, and directed the parties to go to a Civil Court with respect to the question of title.

The appellants consequently brought the other suit in the court of the Subordinate Judge of Mainpuri against Moti Kunwar, claiming a declaration that they were the owners of the property

(1) (1866) 11 Moo., I. A., 75.

(2) (1903) I. L. R., 30 Cal., 738; L. R. 30 I. A., 139.

(3) (1909) I. L. R., 31 All., 412; L. R. 36 I. A., 71.

wrongly recorded in the name of Moti Kunwar, their title being that they were the surviving members of the joint family of which Baldeo Singh (Moti Kunwar's deceased husband) had been a co-parcener. Moti Kunwar contested the suit on the same title as she had set up in her own suit.

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The Subordinate Judge deciding in favour of the appellants said :—

"The question is whether by this agreement Baldeo Singh and Lalta Singh intended a division with Madan Mohan Singh alone, or whether it was their intention to divide amongst themselves and also from Raghunath Singh and Sati Singh. There is strong oral and documentary evidence to show that Baldeo Singh, Lalta Singh, Raghunath Singh and Sati Singh remained joint after the agreement. The former consists of the evidence of (1) relatives, (2) respectable persons, big zamindars and *raises*, and (3) servants, of the family. The documentary evidence consists of the admission of Baldeo Singh contained in a statement made before the Tahsildar on the 28th of April 1894, wherein he admits that he had divided from Madan Mohan Singh 11 years ago, but lived jointly with Lalta Singh, Raghunath Singh and Sati Singh; the admission of the defendant Moti Kunwar contained in her deposition before the Tahsildar in 1896, wherein she states :—'I have got my name entered for my satisfaction. All were joint during the life-time of Thakur (her husband); they are all joint even now. Lalta Singh and Sati Singh are the owners; they will be owners after me as they are the owners now. There is no disunion amongst us.' The accounts written by Baldeo Singh showed joint collections of rent and payment of Government revenue as also that the expenses connected with the illness and the death of Raghunath Singh and those connected with the funeral of Baldeo Singh and the marriage of his daughter after his demise were made out of joint funds."

Moti Kunwar appealed to the High Court from that decision; and Raghubir Singh appealed from the decision of the Assistant Collector of Etawah. The appeals were heard together by a Divisional Bench of the High Court (SIR JOHN STANLEY, C. J. and BANERJI, J.) which reversed the decree of the Subordinate Judge, and affirmed that of the Assistant Collector, on the ground that Baldeo Singh had become separated from the joint family in his life-time.

In the suit in which he was defendant Raghubir Singh obtained special leave of His Majesty in Council to appeal. In the suit in which he and Sati Singh were plaintiffs they appealed in the ordinary course.

On these appeals.

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*De Gruyther, K. C.*, and *B. Dube* for the appellants contended that the agreement, dated the 10th of October 1873, was executed to effect a separation in estate of Madan Mohan Singh alone, and was inoperative as regarded the other members of the family. The evidence showed that after the date of the agreement the parties to it continued to live as undivided members of a Hindu joint family. But even if the agreement did technically operate as a partition of the joint family, the acts, admissions and conduct of the parties, it was submitted, established that there was a re-union between Baldeo Singh, Lalta Singh and Sati Singh, who afterwards lived together as members of a Hindu joint family. Reference was made to Mayne's Hindu law (7th ed.), page 671, section 495: *Balkishen Das v. Ram Narain Sahu* (1): Evidence Act (I of 1872), sections 18 and 45: *Rewa Prasad Sukal v. Deo Dutt Ram Sukal* (2): *Gajendar Singh v. Sardar Singh* (3); and *Hoolush Kwoer v. Kussee Proshad* (4) to show that the recording of the name of a widow, or of a member of a joint family as proprietor of a share did not operate as a separation in title: *Parbati v. Naunihal Singh* (5); Agra Tenancy Act (II of 1901 of the Local Council) section 201: and the United Provinces Land Revenue Act (III of 1901 of the Local Council) section 144. The view taken by the Subordinate Judge (who heard the witnesses and could best estimate the value of the evidence given by them) was the correct one, and his decision should not have been reversed by the High Court.

*Ross, K. C.* and *G. Considine O'Gorman* for the respondent contended that it was established by the evidence and by the agreement of 1873, that Baldeo Singh was not a member of the joint family at the time of his death, but had become separated prior to that event. As to the effect of the agreement they relied on the cases of *Balkishen Das v. Ram Narain Sahu*, and *Parbati v. Naunihal Singh* (5); and Mayne's Hindu law (7th ed.),

(1) (1903) I. L. R., 30 Calc., 738 (750); L. R., 30 I. A., 139 (150).

(2) (1899) I. L. R., 27 Calc., 515 (519); L. R., 27 I. A., 39 (41).

(3) (1896) I. L. R., 18 All., 176 (182).

(4) (1881) I. L. R., 7 Calc., 369 (371).

(5) (1909) I. L. R., 31 All., 412 (425); L. R., 36 I. A., 71 (76).

page 672. The decision of the High Court was right and should be upheld.

*De Gruyther, K. C.*, replied.

1912, *November 26:h* :—The judgement of their Lordships was delivered by LORD MACNAGHTEN :—

These are consolidated appeals from a judgement and two decrees of the High Court of Allahabad pronounced in favour of the respondent Musammat Moti Kunwar.

In the Court of the Assistant Collector of Etawah, Moti Kunwar, widow of Baldeo Singh who died in 1895, succeeded in making good her claim to arrears in respect of a specific share of property which undoubtedly at one time formed part of the joint property of an undivided Hindu family to which her husband belonged. Thereupon the appellants, who alleged that Baldeo Singh was not separated at the time of his death, brought a suit in the court of the Subordinate Judge of Mainpuri and obtained a declaration that they were the absolute owners of the property claimed by Moti Kunwar and that she had no right of ownership therein, but merely a right to maintenance. There was an appeal to the High Court by Moti Kunwar against the decree of the Subordinate Judge and an appeal by the present appellants against the order of the Assistant Collector. The two appeals were consolidated. The High Court reversed the decree of the Subordinate Judge and dismissed the suit of the present appellants, as well as their appeal against the order of the Assistant Collector.

The whole controversy depends upon the question whether Baldeo Singh was separate in title and interest at the time of his death.

In 1871, Madan Mohan Singh, who was a member of the undivided family, separated and received his share. For the purpose of this transaction and in settlement of all disputes "relating to the zamindari, the household articles, and the money-lending business, &c.," an agreement was executed on the 19th of December 1871 by Baldeo Singh, Lalta Prasad the adopted son of a deceased member of the undivided family, and Madan Mohan Singh. On the 10th of October 1873 another agreement was executed between and by Baldeo Singh, Lalta Prasad and Madan Mohan Singh. After declaring that the executants along with

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Raghunath Singh and Sati Prasad were sharers in the villages specified below, the agreement proceeded as follows :—

“Now we have already come to terms, and according to the shares given below we have been in possession and enjoyment of our respective shares. As regards it we have with our mutual consent entered into an agreement according to the terms given below.

“The same share in the property which is in the possession of a particular person as given below shall be considered to be the property of that very person who is in possession thereof. If any of us brings any suit in Civil or Revenue Court to the effect that his share is less or he is a loser, it shall be considered to be false in every Court. By virtue of this agreement no person shall be competent to bring any claim in any court in respect of any portion of the property other than the property detailed below.”

Then, after some provisions which it is not necessary to set out, there followed a specification of the villages belonging to the family and the shares in which those villages were thereafter to be held. The agreement was registered on the same day. From that time the property has been entered in the register in accordance with the arrangement contained in the agreement. And on the death of Baldeo Singh his share was entered in the name of his widow, the respondent Moti Kunwar.

From the terms of the agreement of 1873, the learned Judges of the High Court rightly, as it appears to their Lordships, “gather that the members of the family were in separate possession of defined shares of the family property before the date of its execution” and they also gather from it “that Raghunath Singh as well as Sati Prasad,” who was then a minor, so far as the latter could assent to an arrangement, had agreed to the allotment of shares specified in the instrument.” The learned Judges further point out that the khewats of two of the villages specified in the agreement of 1873, which were in evidence, show that at the close of 1872, the entry of names was altered and the names of Lalta Prasad, Sati Prasad, Raghunath Singh, Baldeo Singh and Madan Mohan Singh were entered separately in respect of their separate specific shares.

As regards the share of Raghunath, who was not a party to the agreement of 1873, the partition appears to have been accepted and acted upon by him up to the time of his death, which occurred in 1879. On his death the name of his widow was recorded in his place, and she was appointed lambardar of the village which

had been allotted to him. On her death the names of Baldeo Singh, Lalta Prasad and Sati Prasad were entered in her place, not jointly, but in respect of specific shares.

Sati Prasad, as already stated, was a minor at the date of the agreement of 1873, but it appears that on attaining majority he made no objection to it. He seems to have recognised the partition and acted upon it until Moti Kunwar applied for complete partition in the Revenue Court.

The contention on the part of the appellants was (1) that the agreement of 1873 was a partition only as regards the share of Madan Mohan Singh, and that the other members of the family remained joint, or (2) that the other members re-united either immediately or shortly afterwards. There seems to be no foundation for the latter contention, and indeed it was only faintly put forward. Re-union is a question of fact, and there is not a scrap of evidence to show that any members of the family re-united or even contemplated re-union.

In support of their principal contention the appellants put in a mass of parol evidence which was contradicted by parol evidence on the other side. The learned Judges of the High Court thought the parol evidence vague, unsatisfactory and inconclusive.

The High Court also rejected, and in their Lordships' opinion rightly rejected, a petition of Baldeo Singh himself, in which he alleged that Raghunath's widow was entered as owner solely for her consolation. This petition was in answer to an application by the widow to remove him from the office of sarbarahkar, and is irreconcilable with an earlier petition presented by him, in which he distinctly admitted that he paid to the widow the annual profits of her share and that the agreement of 1873 had been acted upon.

The High Court also rejected as unworthy of consideration a document which was referred to as proving that Moti Kunwar herself admitted that the property registered in her name was joint family property. This document purports to be a certified copy of a certified copy of a deposition made by Moti Kunwar in another suit which was not even put to her in cross-examination, although she averred that she had never made an admission to that effect.

The High Court also rejected as inconclusive certain accounts which purported to show that the expenses of the marriage of

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Baldeo Singh's daughter and his funeral expenses were paid out of joint family property.

In conclusion the learned Judges say that it was sufficient for them that an agreement was committed to writing, which was clear and definite in its terms, and they add that that agreement has been shown to have been acted upon up to the present time.

Their Lordships agree in the result at which the High Court arrived. Having regard to the agreement of 1873, they think that the case is concluded by authority. The result is entirely in accordance with the principle laid down by this Board in the judgement delivered by Lord Westbury in *Appvier v. Rama Subba Aiyar* (1) and in the more recent cases of *Balkishen Das v. Ram Narain Sahu* (2) and *Parbati v. Naunihal Singh* (3).

Their Lordships will therefore humbly advise His Majesty that these appeals should be dismissed.

The appellants will pay the costs of the appeals.

*Appeals dismissed.*

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

Solicitors for the respondent: *Runken, Ford, Ford & Chester.*

J. V. W.

\*P. C.  
1912,  
November,  
7, 29.

ABDULLAH KHAN (DEFENDANT) v. BASHARAT HUSAIN (PLAINTIFF)  
AND ANOTHER APPEAL.

Two appeals consolidated.

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

*Mortgage—Redemption—Construction of mortgage as to the terms of redemption—Mortgage and lease to mortgagor contemporaneously granted—Mortgage executed before Transfer of Property Act (IV of 1882) came into force—Mortgagee's security reduced by portion of property being withdrawn—Section 65(a) of Transfer of Property Act—Right of mortgagee to compensation.*

The plaintiff (respondent) mortgaged to the defendant (appellant) certain property by a deed, dated the 25th of August 1880, for Rs. 70,000 for eight years. On the 29th of August (and so practically contemporaneously with the mortgage) a lease of the mortgaged property was executed by the mortgagee, in favour of the mortgagor at an annual rent of Rs. 4,200, which represented interest on the mortgage debt at the rate of 6 per cent. per annum. The mortgage contained a clause that "it is agreed by mutual consent of the parties that the profits of the property

\* Present:—Lord Macnaghten, Lord Moulton, Sir John Edge and Mr. Ameer Ali.

(1) (1863) 11 Moo. I. A., 75.

(2) (1903) I. L. R., 30 Calc., 738; L. R., 30 I. A., 139.

(3) (1909) I. L. R., 31 All., 412; L. R., 36 I. A., 71.