

1916

RADHIKA  
PRASAD  
BAPUDI  
S.  
SECRETARY  
OF STATE  
FOR INDIA  
IN COUNCIL.

the court below, that Makund Lal was the legal representative of Madho Sahai and the applicant is an assignee from him. Therefore the representative title of the applicant was established and in fact the learned Judge granted him a certificate as such assignee in respect of another promissory note. Under these circumstances the applicant was entitled to a certificate in respect of the promissory note No. 307. We allow the appeal and varying the order of the court below, direct that a certificate be issued under the Succession Certificate Act in respect of the promissory note in question No. 307. Having regard to the circumstances we make no order as to costs.

*Appeal allowed.*

### PRIVY COUNCIL.

CHANDRIKA BAKHSH SINGH (PLAINTIFF) v. INDAR BIKRAM SINGH  
(DEFENDANT).

P.C.\*  
1916  
May, 25, 26.  
June, 22.

31 M. L. J. 505

[On appeal from the Court of the Judicial Commissioner of Oudh.]

*Title, suit for declaration of—Transfer of estate made to plaintiff by widow of Oudh Taluqdar in possession as heir of her husband—Transfer made with consent of all the then existent next reversioners—Refusal of Revenue authorities to record name of plaintiff as proprietor—Title set up by defendant under alleged will of deceased Taluqdar which was found by first court not to have been executed—Transfer found to be valid—Appeal by defendant and admission by him during hearing of appeal of his want of title—Practice—Failure to maintain appeal.*

This appeal arose out of a suit which related to the transfer to the plaintiff of an impartible estate called Mahgawan by the widow of an Oudh Taluqdar in possession of his estate for a Hindu widow's interest under the Mitakshara law. The transfer was made with the consent of the only next reversioners in existence at the date of the execution of the deed of transfer who both attested it. The defendant set up a title under an alleged will of the deceased Taluqdar. In a suit brought for a declaration of the plaintiff's title to the estate in consequence of the refusal of the Revenue authorities to have his name recorded as proprietor, the Subordinate Judge held that the defendant had no title as the deceased husband had never executed the alleged will, and that the transfer to the plaintiff was valid. On the hearing of an appeal to the Judicial Commissioner's Court by the defendant, he admitted the correctness of the first court's decision as to his want of title.

*Held* that the Court of the Judicial Commissioner was wrong in then allowing the appeal and dismissing the suit on the ground that the widow had

\*Present:—Lord ATKINSON, Lord PARKER of WADDINGTON, Sir JOHN EDGE and Mr. AMBER ALL.

no power to transfer the estate. The defendant having no title had no interest which enabled him to support the appeal which should have been dismissed on his admission.

APPEAL No. 53 of 1913 from a judgement and decree (25th May, 1911) of the Court of the Judicial Commissioner of Oudh, which reversed a judgement and decree (3rd January, 1910) of the Subordinate Judge of Bara Banki.

The facts shortly stated were as follows :—The estate in suit was an Oudh taluqa called Mahgawan, of which the second summary settlement was made with one Pirthipal Singh to whom a sanad was granted, and on the passing of Act I of 1869 (the Oudh Estates Act), his name was entered in lists 1 and 2, prepared in accordance with section 8 of the Act. He died on the 11th of March, 1877, and was succeeded by his son Jadunath Singh on whose death on the 25th of July, 1879, his widow Sheoraj Rani succeeded to the estate which at her decease on the 5th of May, 1897, passed to the mother of Jadunath Singh, Maharaj Rani.

On the 13th of December, 1904, Maharaj Rani made an absolute transfer of the estate to Chandrika Bakhsh Singh, the appellant. At that date the only reversionary heirs were Mahabir Singh, the father of the appellant, and Bechu Singh. The deed of transfer was attested by both of them, and expressly recited that it was made with their consent. On the 9th of November, 1908, further deeds affirming the transfer were executed by them. An application made by Maharaj Rani after the transfer to the appellant to have his name recorded in the Revenue registers was opposed by the respondent Indar Bikram Singh, who alleged that Maharaj Rani had no power of transfer, and claimed title under an alleged will of Pirthipal Singh, dated the 25th of June, 1866. Mutation of names was refused by an order of the Commissioner of Fyzabad on the 5th of December, 1905, which was confirmed by the Board of Revenue on the 9th of March, 1908.

In consequence of that refusal and in order to have his title to the estate determined Chandrika Bakhsh Singh on the 11th of December, 1908, brought the present suit for a declaration that he was the absolute proprietor of the estate, making Indar Bikram Singh, Maharaj Rani, Mahabir Singh, and Bechu Singh, defendants, of which the three last named admitted the plaintiff's title. Indar Bikram Singh denied the title of the plaintiff, set up a title in

1916

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CHANDRIKA  
BAKHSH  
SINGH  
v.  
INDAR  
BIKRAM  
SINGH.

1916

CHANDRIKA  
BAKHSI  
SINGH  
v.  
INDAR  
BIKRAM  
SINGH.

himself under the will of 1866, and contested the suit on various other grounds, which appears in the judgement of the Judicial Committee.

The Subordinate Judge held that Maharaj Rani had executed the deed of transfer and had given the plaintiff possession of the estate; that Mahabir Singh and Bechu Singh were the next reversioners and had expressly consented to the transfer; and that Pirthipal Singh had not executed the alleged will under which alone Indar Bikram Singh had set up title to the estate. The Subordinate Judge was, however, of opinion that Maharaj Rani was not an absolute owner of the estate under the provisions of Act I of 1869, but that notwithstanding that the transfer was valid as having been made by the consent of the next reversioners.

The Subordinate Judge made a decree in favour of the plaintiff. Indar Bikram Singh appealed from that decision to the Court of the Judicial Commissioner, making Chandrika Bakhsh and Maharaj Rani respondents. The latter died pending the appeal, and subsequently Mahabir Singh and Bechu Singh were made respondents.

At the hearing of the appeal Indar Bikram Singh abandoned the only title under which he could claim, namely, that under the alleged will of Pirthipal Singh, and, as in the absence of the transfer, the estate, on the death of Maharaj Rani, had in fact vested in Mahabir Singh or in him and Bechu Singh, both of whom still satisfied and affirmed the transfer, it was argued that the appeal ought to abate.

That contention was however overruled. The Court of the Judicial Commissioner (Mr. L. G. EVANS, Judicial Commissioner, and Mr. B. LINDSAY, Additional Judicial Commissioner) on the question of law came to the conclusion that the consent of the next reversioners could not make valid a transfer made without consideration; and that the transfer in suit was consequently invalid.

The decree of the Subordinate Judge was accordingly reversed and the suit dismissed with costs.

On this appeal—

*De Gruyther, K. C.*, and *C. O'Gorman*, for the appellant.

*A. M. Dunne* and *B. Dube*, for the respondent.

After hearing counsel for both parties and without calling on the appellant to reply their Lordships said the appeal would be allowed, and that reasons would be given later.

*1916 June, 22nd*:—The reasons for the report of their Lordships were delivered by Sir JOHN EDGE :—

This is an appeal from a decree, dated the 25th of May, 1911, of the Court of the Judicial Commissioner of Oudh, which reversed a decree, dated the 3rd of January, 1910, of the Subordinate Judge of Bara Banki and dismissed the suit with costs.

The facts necessary for the decision of this appeal may be briefly stated. The dispute relates to the appellant's title to an Oudh taluqa, known as Mahgawan, which was an impartible estate. The parties are Hindus, subject to the law of the Mitakshara. On the 13th of December, 1904, Babuain Maharaj Rani, who held Mahgawan for a Hindu widow's interest, made, by a deed of gift, an absolute transfer of Mahgawan to the appellant, and he obtained possession. To that transfer Mahabir Singh and his younger brother, Bechu Singh, were consenting parties. At the time of the transfer Mahabir Singh was the heir to Mahgawan expectant on the death of Babuain Maharaj Rani, and the appellant is his only son. Upon the transfer to him the appellant applied to the Revenue authorities for mutation of names in his favour. On the 9th of January 1905, the respondent, who was not a member of the family which had held Mahgawan, filed objections to mutation of names being made in the appellant's favour, alleging that Babuain Maharaj Rani had no power to transfer the estate, and claiming title to it in himself under an alleged will of 1866, of Babu Pirthipal Singh, who had been the husband of Babuain Maharaj Rani. In consequence of the respondent's objection, the Revenue authorities on appeal rejected the appellant's application for mutation of names, and the appellant, in order to clear his title and obtain mutation of names, was compelled to bring his suit. He brought this suit on the 11th of December, 1908, in the Court of the Subordinate Judge of Bara Banki, for a declaration of his title as proprietor of Mahgawan.

To the suit the respondent, and Babuain Maharaj Rani, Mahabir Singh, and Bechu Singh were made defendants. By

1916

CHANDRIKA  
BAKSH  
SINGH  
v.  
INDAR  
BIKRAM  
SINGH.

1916

CHANDRIKA  
BAKSHI  
SINGH  
v.  
INDAR  
BIKRAM  
SINGH.

their written statements Babuain Maharaj Rani, Mahabir Singh, and Bechu Singh admitted the appellant's title, and Mahabir Singh and Bechu Singh expressly alleged that it was with their consent that Babuain Maharaj Rani had executed the deed of gift of the 13th of December, 1904, and that they had on the 9th of November, 1908, executed deeds of relinquishment in favour of the appellant, who was in proprietary possession of the taluqa.

The respondent in his written statement denied the appellant's title, did not admit that Babuain Maharaj Rani had executed the deed of gift of 1904; denied that she had any power to transfer the estate to the appellant; did not admit that the appellant was in proprietary possession; alleged that Mahabir Singh and Bechu Singh were not legitimate; alleged that the nearest reversioners were persons whom he described as Girdhara Singh and Kalka Singh; and asserted title in himself through the alleged will of 1866 of Babu Pirthipal Singh.

The Subordinate Judge of Bara Banki found that Babuain Maharaj Rani had executed the deed of gift of 1904, in favour of the appellant with the consent of Mahabir Singh and Bechu Singh, who were, he found, legitimate; that the taluqa passed under that deed of gift to the appellant; that the appellant was then and had been since the date of the deed of gift in proprietary possession of the taluqa; that Girdhara Singh and Kalka Singh were fictitious persons; and that Babu Pirthipal Singh had not made the alleged will of 1866; and gave to the appellant a declaration that he was the absolute proprietor of the properties detailed in Schedules A, B, and C to the plaint, and would continue to be such proprietor after the death of Babuain Maharaj Rani.

From that decree the respondent, on the 31st of March, 1910, appealed to the Court of the Judicial Commissioner of Oudh, making the appellant and Babuain Maharaj Rani respondents to his appeal. In June, 1910, Babuain Maharaj Rani died. On the 9th of February, 1911, Mahabir Singh and Bechu Singh respectively filed petitions and affidavits in the appeal in the Court of the Judicial Commissioner, in which they asserted that the deed of gift of the 13th of December, 1904, had been executed by Babuain Maharaj Rani by their advice and with

their consent; that the deed was valid, and that Babu Chandrika Bakhsh Singh had been put in proprietary possession of the taluqa at the time of the execution of the deed, and they prayed to be added as respondents to the appeal. On the 24th of March, 1911, Mahabir Singh and Bechu Singh were by order of the Court of the Judicial Commissioner added as respondents to that appeal.

When the appeal came on for hearing in the Court of the Judicial Commissioner, Raja Indar Bikram Singh, through his counsel, informed the Court that he did not contest the decision of the Subordinate Judge as to the alleged will of 1866, or as to the non-existence of the alleged reversioners, Girdhara Singh and Kalka Singh, or as to the execution of the deed of gift of the 13th of December, 1904, and his counsel confined his contention in opposition to the decree of the Subordinate Judge to an argument that the deed of gift did not represent any genuine transaction, and that Babuain Maharaj Rani had remained in possession, and had no power to confer any valid title upon Babu Chandrika Bakhsh Singh.

The suit was not a suit for the ejectment of a defendant who was in possession, in which the plaintiff would have to prove a better title in himself to the possession of the property than the title of the defendant. On the contrary, it is a suit for a declaration of title by a plaintiff who was and is in possession. The Subordinate Judge had found that Raja Indar Bikram Singh had no title, and when the correctness of that finding was not disputed in the Court of the Judicial Commissioner of Oudh, it should have been apparent to the Judges of that Court, who were hearing the appeal, that as Raja Indar Bikram Singh had failed to prove that he was, even remotely, concerned in the title to Mahgawan and in the right to the proprietary possession of that taluqa, he had no title to protect and no interest which could give him a right to contest the declaration of title which Babu Chandrika Singh had obtained, and that the appeal to that Court should be dismissed. Raja Indar Bikram Singh was a mere impertinent intervener in another person's affair. The Judges who heard the appeal, however, instead of dismissing it, went into a long and, under the

1916

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CHANDRIKA  
BAKHS  
SINGH  
v.  
INDAR  
BIKRAM  
SINGH.

1916

CHANDRIKA  
BAKSH  
SINGH  
v.  
INDAR  
BIRRAM  
SINGH.

circumstances, a purely academic discussion as to the powers of a Hindu widow to dispose of property, and finally allowed the appeal and dismissed the suit with costs.

Their Lordships, at the conclusion of the argument, humbly advised His Majesty that this appeal should be allowed; that the decree of the Court of the Judicial Commissioner of Oudh should be set aside with costs; and the decree of the Subordinate Judge of Bara Banki restored.

The respondent was ordered to pay the costs of the appeal.

*Appeal allowed.*

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

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

J. V. W.

FATEH CHAND (1ST DEFENDANT) v. RUP CHAND (PLAINTIFF).

AND ANOTHER APPEAL.

Two appeals consolidated.

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

*Hindu law—Will—Construction of will—Will of Hindu widow in possession of her husband's estate—Bequest of whole estate to one person on conditions—Condition containing exception to conveyance of entire estate—Bequest of portion of estate to a different legatee—Owner in possession—Malik-o-qabiz—Absolute or limited estate.*

A Hindu widow in possession of her husband's estate disposed of it by will as follows:—"Under the will of my husband I am the sole 'owner in possession' of his entire estate and possess all the proprietary powers . . . I bequeath the entire estate of my husband to Fateh Chand . . . subject to the following conditions . . . (1) So long as I live I shall continue to be the 'owner in possession' of the entire estate . . . and possess all the powers such as making sales, mortgages, gift, etc. (2) After my death the said person (the legatee) shall become the 'owner in possession' of the entire estate of my husband, and he, too, shall possess all the powers of alienation like myself. (4) I have bequeathed mauza Khudda with all the property to Musammam Gomi . . . After my death she shall be the 'owner in possession' of the entire property in mauza Khudda aforesaid."

*Held* (affirming the decision of the High Court) that on the construction of the will the words "owner in possession" (*malik-o-qabiz*) in clause 4, conferred on Musammam Gomi an absolute estate, and that completeness of the ownership and possession was not altered by any other expressions in the will *Surajmani v. Rabi Nath Ojha* (1) followed.

Taking all the clauses of the will together there was no repugnancy in such a construction, for, though the entire estate was conveyed in the first place

\*Present:—Lord SHAW, Lord PARMOOR and Mr. AMTEB ALL.

(1) (1907) I. L. R. 30 All., 84; L. R., 35 I.A., 17.

P.C.\*  
1916  
June, 23.