from that point of view it is clear that the intention of the court was to maintain the attachment, for we find that when an application was made to revive the execution proceedings the court held, on the 2nd of August, 1909, that no further attachment was necessary and that the property was already under attachment. The delay which had taken place in following up the attachment is explained by the fact that an appeal was pending from the original decree in the High Court. We think the court below was wrong in holding that the property was not under attachment when the gift in favour of the judgement-debtor's mother was made. That gift having been made during the pendency of an attachment was void against the attaching creditor and the sale made by the donee falls with it. It was urged on behalf of Hayat Ali Shah that he was not a party to the original suit and that it was through an error that his name appears in the array of judgement-debtors. It is admitted that the decree for mesne profits was passed against him. We allowed him an opportunity of getting the decree amended if his statement was true, but we are informed that the application made by him has been rejected. We must hold that Hayat Ali Shah was a person against whom the decree sought to be executed was passed. We allow the appeal, set aside the decree of the court below and decree the plaintiffs' claim with costs in both courts.

Appeal allowed.

PRIVY COUNCIL.

GANGA SAHAI (DEFENDANT) *v.* KESRI AND OTHERS (PLAINTIFFS), 83 OF 1912, AND MUNSHI LAL AND OTHERS (PLAINTIFFS) *v.* GANGA SAHAI AND OTHERS (DEFENDANTS) AND MUNSHI LAL AND OTHERS (PLAINTIFFS) *v.* CHUNNI LAL (DEFENDANT) AND TWO OTHER APPEALS, FIVE APPEALS CONSOLIDATED, 84 OF 1912.

*P. C.** 1915 *June* 8, 9. *July*, 13.

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

Hindu law—Succession—Mitakshara law—Succession of sapindas of same and of different degrees—Uncle of half blood opposed as heir to son of uncle of whole blood—Civil Procedure Code, 1882, *sections* 317 *and* 231—*Execution of mortgage decree by one of several decree-holders—Suit by heirs of the other decree-holders against decree-holder who, after a sale subject to rights of heirs of the others, claimed and obtained sole possession.*

Held (affirming the decision of the High Court) that under the Mitakshara law the preference of heirs of the whole blood to those of the half blood is

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confined to "sapindas of the same degrees of descent from the common ancestor." Where, therefore, the choice of heirs lay between sapindas of different degrees, an uncle of the half blood, as being less remote from the common ancestor, is a preferential heir to the sons of an uncle of the whole blood. *Suba Singh* v. *Sarfaraz Kunwar* (1) distinguished.

The provisions of section 317 of the Code of Civil Procedure, 1882, were designed to create some check on the practice of making so-called *benami* purchases at execution sales for the benefit of judgement-debtors, and in no way affect the title of persons otherwise beneficially interested in the purchase.

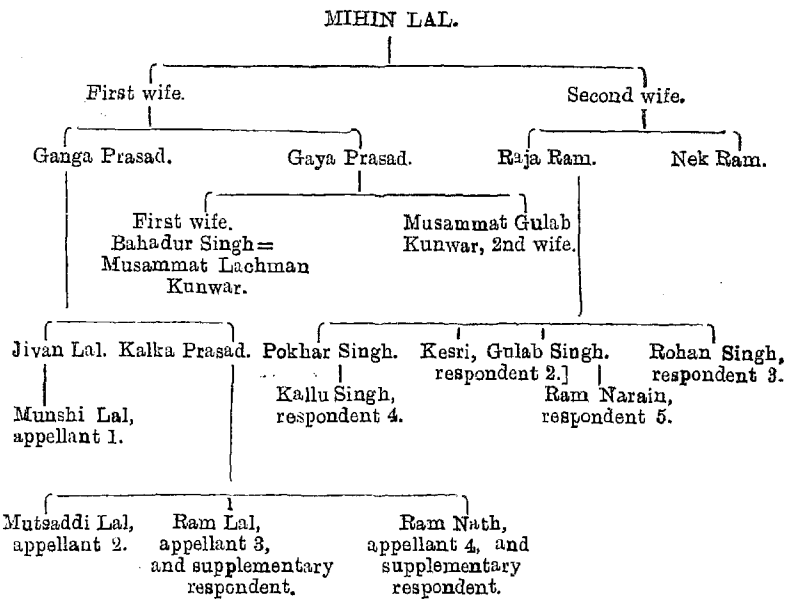
One of three joint decree-holders of a mortgage decree alone took out execution under section 231 of the Code stating that the other decree-holders had died, and praying that execution might be subject to the rights of their heirs and representatives. He obtained leave to bid at the sale, purchased the property in his own name, and furnished with a certificate of sale, got possession of the property. *Held* in a suit by the heirs of the other decree-holders for the shares they were entitled to under the decree, that section 317 of the Code was not applicable as a defence to the suit, and that the plaintiffs were entitled to recover their shares of the mortgaged property. *Bodh Singh Daodhoria* v. *Gunesh Chunder Sen* (2) followed.

CONSOLIDATED appeals, 83 and 84 of 1912, from a judgement and three decrees (9th April, 1910) and a judgement and decree (13th April, 1911) of the High Court at Allahabad, which reversed a decree (2nd January, 1906) of the District Judge of Farrukhabad, which had affirmed a decree (27th June, 1905) of the Subordinate Judge of Farrukhabad and three decrees (10th December, 1906) of the same Subordinate Judge.

The above judgements and decrees were given and passed in three suits relating to property which formed part of the estate of one Bahadur Singh, deceased, and the main issue for determination in these appeals was whether by the Mitakshara law the preferential heirs were the sons of Ganga Prasad, his father's brother of the whole blood, or his father's half brother Raja Ram.

(1) (1896) I. L. R., 19 All., 215. (2) (1873) 12 B. L. R., 317.

The relationship of the parties as to which there was no dispute is shown in the following pedigree :—



Bahadur Singh died in 1891, and Lachman Kunwar in 1894. At that date there were living Jivan Lal and Kalka Prasad, the sons of Ganga Prasad, the eldest son of Mihin Lal by his first wife who was the grandmother of Bahadur Singh, and Raja Ram, the son of Mihin Lal by his second wife. The appellants and supplementary respondents in appeal 84 are the representatives of Jivan Lal and Kalka Prasad, and the principal respondents in both appeals represent Raja Ram.

On Bahadur Singh's death his property passed to Lachman Kunwar for a widow's estate and on her death Gulab Kunwar, the step-mother of Bahadur Singh, though having no title as heir, took the property, and whilst so in possession, sold a village called Malkapur to Chunni Lal, one of the respondents in appeal 84, who entered into possession of it.

Ganga Sahai, who was one of the respondents in appeal 84 and appellant in appeal 83, was in possession of two villages Tahsipur and Bilaspur, of which on the 16th of August, 1869, one Jai Chand had executed a mortgage bond in favour of one Debi Din and Bahadur Singh for Rs. 20,000, two thirds (Rs. 13,350)

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being advanced by Debi Din, and the rest by Bahadur Singh. Debi Din died previous to 1891 leaving two sons Bhima Singh and Beni Madho. Bhima Singh had three sons, Raj Kunwar, Ganga Sahai, and Mauji Ram. In 1891 a suit on the mortgage was brought by Bahadur Singh and by Bhima and Ganga Sahai as heirs of Debi Din, in which a decree for sale was, on the 21st of November, 1891, made in favour of the heirs of Debi Din, and Lachman Kunwar, (widow of Bahadur Singh who had died during the pendency of the suit). The execution proceedings were taken out by Ganga Sahai under section 231 of the Code of Civil Procedure, 1882, and, as he stated in his application for execution "subject to the rights of the heirs of Lachman Kunwar and Bhima Singh," and in 1899 the mortgaged villages Bilaspur and Tahsipur were sold and purchased by Ganga Sahai on the 20th of February in full discharge of the amount of the decree. The sale was in due course confirmed and Ganga Sahai obtained possession of the villages on the 28th of April, 1899.

The first of the suits out of which these appeals arose was No. 3 of 1905 brought on the 5th of January of that year, in which the plaintiffs were Kalka Prasad and Munshi Lal who sued as heirs of Bahadur Singh to recover possession of the village of Malkapur from Chunni Lal. His defence was a denial that the plaintiffs were heirs of Bahadur Singh, and a claim that the title to the property was in himself as vendee from Gulab Kunwar. The Subordinate Judge decided both issues in favour of the plaintiffs, and that decision was affirmed by the District Judge on appeal. Chunni Lal preferred an appeal (second appeal 274 of 1906) to the High Court.

The second suit (44 of 1906) brought by Kalka Prasad and Munshi Lal against Ganga Sahai and the principal respondents (the descendants of Raja Ram) was to establish their title as heirs of Bahadur Singh, and to recover from Ganga Sahai one third of each of the villages (Bilaspur and Tahsipur) in his possession. And the third suit (65 of 1906) was brought on the 21st of June, 1906, by the principal respondents as the rival claimants to be the heirs of Bahadur Singh, against Ganga Sahai and Kalka Prasad and Munshi Lal to establish their claim and for a like decree for possession against Ganga Sahai.

Suits 44 and 65 of 1906 were heard together. The only issue between the rival plaintiffs was issue IV—"Who is the legal heir to Bahadur Singh, deceased?" And the only defences of Ganga Sahai material to this report were that the suit was barred by section 244 of the Code of Civil Procedure, 1882, that the villages in suit were purchased by him at the court sale exclusively for himself, and therefore the heirs of Bahadur Singh could not claim any share in them; and that even if they could, they could only sue for recovery of the money. That defence was embodied in issue VI—"Whether the plaintiffs are entitled to recover a share in the disputed property, or their remedy lay in a suit for recovery of money?"

On issue IV the Subordinate Judge held that point was concluded by the decision in *Suba Singh* v. *Sarfaraz Kunwar* (1); and that in view of the observations of their Lordships in the cited case he had no doubt that the plaintiffs in the present suit (44 of 1906) would be considered nearer sapindas of Bahadur Singh than Raja Ram, by reason of Ganga Prasad and Gaya Prasad having a common mother, while Raja Ram was born of a different woman.

On issue VI the Subordinate Judge after holding that section 244 of the Code of Civil Procedure, 1882, did not apply to the suit, said:—

"It appears to me that the present suit, which is for recovery of a share in the property purchased by Ganga Sahai in his own name alone, is maintainable at law. The parties' pleaders have not been able to produce any authorities directly bearing on this point, but the equity seems to be certainly on the plaintiff's side. The purchase was made by Ganga Sahai, defendant, in the execution of a decree which he took out for the benefit of all the decree-holders and in lieu of money which belonged to all the decree-holders. So, manifestly it was made by Ganga Sahai for the benefit of all the decree-holders, and the fact that the sale certificate stands in his name alone will not make much difference. Bahadur Singh had one third share in the decretal debt, so he must possess an equal share in the property too which was acquired in lieu of that debt. Here the decretal debt was as it were transformed into the immovable property, and, therefore, Bahadur Singh in my opinion should be deemed to have the same rights in the property which he had in the decretal debt, specially when his heirs are quite willing to ratify the act of Ganga Sahai. Had the intention of Ganga Sahai been to buy the property for himself alone, he would have in that case made a deposit of the purchase money into court

(1) (1896) I. L. R., 19 All., 215.

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and not set off the decretal debt against the purchase money in only a portion of which he was interested. I, therefore, hold that as Bahadur Singh owned one third of the decretal money, his heirs are certainly entitled to get a similar share in the property. It is true it was open to the plaintiffs to sue for their money if they had chosen to do so, for it seems to me that they had two remedies open to them, but the defendant No. 1 is nobody to say that they should confine themselves to the remedy for money decree only. In my opinion the plaintiffs can sue as well for a share in the property as they could for a money decree and the present suit is, therefore, perfectly maintainable."

The Subordinate Judge, therefore, upheld the claim of Kalka Prasad and Munshi Lal in suit 44 of 1906 and made a decree for possession in their favour against Ganga Sahai, and dismissed suit 65 of 1906.

Against the decree in suit 44 two appeals were preferred to the High Court, one (appeal 63 of 1907) by Ganga Sahai and the other (appeal 57 of 1907) by the representatives of Raja Ram, the plaintiffs in suit 65 of 1906, and the same parties also preferred an appeal (58 of 1906) from the decree dismissing their suit.

These appeals, together with the appeal of Chunni Lal (second appeal 274 of 1906), were heard together by a Division Bench, and were eventually referred to a Full Bench, of the High Court (Sir GEORGE KNOX, P. C. BANERJI and H. G. RICHARDS, JJ.) who on the 9th of April, 1910, on the question of succession to the estate of Bahadur Singh, reversed the decisions of the courts below and passed decrees dismissing the suit of Kalka Prasad and Munshi Lal (44 of 1906), and allowing the claim of the representatives of Raja Ram (65 of 1906). The arguments adduced on either side and the judgement of the Court (delivered by BANERJI, J.) will be found in the report of the case of *Kesri* v. *Ganga Sahai*, Indian Law Reports, 32 All., 541.

Ganga Sahai thereupon applied for a review of judgement, the hearing of which came before the same Bench as above on the 13th of April, 1911. The grounds advanced were those which Ganga Sahai had put forward in his defence to suits 44 and 65 of 1906 before the Subordinate Judge, and which that judge had found to be not maintainable, and the High Court upheld that decision. The report of the re-hearing will be found in Indian Law Reports, 33 All., 563, where the arguments for Ganga Sahai and the decision of the High Court are given. Kalka

Prasad (whose representatives were brought on the record as appellants on his death) and Munshi Lal preferred four of the present appeals from the decrees against them of the 9th of April, 1910, and Ganga Sahai preferred an appeal from the judgement of the 13th of April, 1911. All the appeals were consolidated under an order in Council of the 2nd of December, 1914, as appeals 83 (Ganga Sahai's appeal) and 84 (the four other appeals).

The supplementary respondents were brought on the record under Orders in Council of the 10th of November, 1914, and the 3rd of February, 1915, as being the legal representatives of Mutsaddi, one of the appellants who had died.

On these appeals—

G. R. Lowndes, for the appellant Ganga Sahai in appeal 83, contended that the suits brought against him by the heirs of Ganga Prasad and the heirs of Raja Ram, respectively, were barred by section 317 of the Code of Civil Procedure, 1882, which enacted that "no suit shall be maintained against the certified purchaser on the ground that the purchase was made on behalf of any other person or on behalf of some one through whom such person claims." Section 244 of the Code was also referred to as barring the suits, and the case of *Kalka Prasad* v. *Basant Ram* (1) was cited.

De Gruyther, K. C., and *B. Dube*, for the respondents Kesri and others, heirs of Raja Ram, were not called on.

[Lord SHAW said that their Lordships were of opinion that the appeal should be dismissed; reasons to be given later.]

Ross, K.C. and *Kenworthy Brown*, for Munshi Lal and others the appellants and supplementary respondents in appeal 84, contended that the representatives of Ganga Prasad were entitled to succeed as heirs to the estate of Bahadur Singh on the death of Lachman Kunwar in preference to Raja Ram and his representatives. It was submitted that heirs of the whole blood had the preference, and that there was nothing in the Mitakshara to show that those of the half blood are to be preferred as long as there remain any of those of the whole blood to inherit. The High Court had wrongly regarded the Madana Parijata as a commentary of authority on the Mitakshara; see Sarvadhakari's

(1) (1901) I. L. R., 23 All., 346.

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Hindu Law, pages 411, 655; Stoke's Hindu Law Books, pages 177, 441; *Lallubhai Bapubhai* v. *Cassibai* (1); *Ramchandra Martand Waikar* v. *Vinayak Venkatesh Kothekar*, (2); Mitakshara, chapter II, section 3, verses 3, 4 and 5; section 4, verses 5, 6, 7 and 8; and section 5, verse 4; *Suba Singh* v. *Sarfaraz Kunwar* (3), where whole blood is given a preference over half blood; *Nachiappa Gounden* v. *Rangasami Gounden* (4); *Sham Singh* v. *Kishun Sahai* (5); *Vithalrao Krishna* v. *Ramrao Krishna* (6), and Vyavahara Mayukha, section 8, verse 16. The claim of the half blood to inherit appears only in recent Smritis; Jolly's Hindu Law, page 194. Sarvadhikari's Hindu Law, pages 437, 440 says the Mitakshara allows the half blood to succeed as between brothers only when there is no brother of the whole blood. The rule is that half blood is excluded by whole blood, and extends to all sapindas of equal degree, not only to brothers; an uncle therefore of the whole blood should be preferred to one of the half blood. No exception other than that given by the Mitakshara should be permitted. To let in a half blood brother, or a half blood uncle is clearly an exception to the rule of propinquity and common particles (which lays stress on the nearness of the son to the mother) and is at variance with the scheme of the law which brings in a paternal grandmother before a grandfather. In the case of Raja Ram there is no community of particles through the mother between him and Bahadur Singh; Manu, chapter IX, verses 212,217; and *Vithalrao Krishna* v. *Ramrao Krishna* (6), which refers to the Bengal authorities.

De Gruyther, *K. C.*, and *B. Dube*, for the respondents (the heirs of Raja Ram) in appeal 84, contended that the High Court had rightly decided that the uncle of the half blood and his descendants (these respondents) were the preferential heirs to those who though of the whole blood were more remote; Stoke's Hindu Law Books, page 427. The use of the term "brother" includes half-brother; and no brother's son can succeed in presence of brothers. Any question of the whole or half blood succeeding only arises when those claiming are in the same degree of relationship; where

(1) (1880) I. L. R., 5 Bom., 110.
(2) (1914) I. L. R., 42 Calc., 384; L. R., 41 I. A., 290.
(3) (1896) I. L. R., 19 All., 215 (217).
(4) (1914) 28 M. L.J., 1.
(5) (1907) 6 C. L. J., 190.
(6) (1899) I. L. R., 24 Bom., 317.

one of them is further removed than the other from the common ancestor, the nearest is the preferential heir ; Manu, chapter IX, verse 187 ; Stoke's Hindu Law Books, page 427. The Mitakshara does not profess to be absolutely exhaustive ; Mayne's Hindu Law, 7th edition, page 774, paragraph 569. The nearer degree excludes the more remote. See also page 777. If the Mitakshara is to be strictly adhered to, it must be shown that a nephew can succeed. The decision of the High Court, it was submitted, is correct, and should be upheld.

Ross, K. C., replied.

13th July, 1915 :—The judgement of their Lordships was delivered by Mr. AMEER ALI.

These several consolidated appeals from certain decrees and judgements of the High Court of Allahabad arise out of three suits brought in the court of the Subordinate Judge of Farrukhabad. The plaintiffs in two of these suits, claiming adversely to each other to be the heirs of one Bahadur Singh, deceased, sought to recover from the appellant Ganga Sahai a one third share of the properties specified in their respective plaints, which he had purchased at a sale held in execution of a decree upon a mortgage to which reference will be made presently. The third suit was brought by Kalka Prasad, one of the plaintiffs in the above suits, to recover from the respondent Chunni Lal certain shares in mouza Malkapur belonging to the estate of Bahadur Singh which had been conveyed to him by one Gulab Kunwar, Bahadur's step-mother.

Their Lordships propose to deal first with the two suits in which Ganga Sahai was the defendant.

The mortgage bond referred to above was executed so long ago as the year 1869 by one Jai Chand Chaudhri, in favour of Bahadur Singh and Debi Din the ancestor of Ganga Sahai, hypothecating two villages named respectively Tahsipur and Bilaspur. One third of the amount advanced on this transaction admittedly belonged to Bahadur Singh, and the other two thirds to Debi Din. On default of payment by Jai Chand, a suit was brought in 1891 by Bahadur Singh in conjunction with Bhima Singh and Ganga Sahai, the heirs and representatives of Debi Din (who had died in the meantime). Bahadur Singh died

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during the pendency of the suit, and his widow, Lachman Kunwar, was brought on the record in his place. On the 21st of November, 1891, the usual mortgage decree under section 88 of the Transfer of Property Act (IV of 1882) was made by the court. This was followed on the 27th of April, 1893, by the final decree under section 89 of the Act.

It appears from the record that Lachman Kunwar died somewhere in 1894. On the 20th of December, 1897, Ganga Sahai applied for execution of the mortgage decree against the heir and representative of the mortgagor. In his application he expressly reserves the rights of Lachman Kunwar's heirs. The passage in question is important in view of the contention now raised by him. He states:

"Bhaman Singh, another decree-holder, has died a natural death. His sons, Mauji Ram and Raj Kunwar, are his heirs: but they do not join in the application, hence, under (section) 231 of the Code of Civil Procedure, this decree-holder alone makes this application, and prays that the decree may be executed, subject to the rights of the heirs of Musammat Lachman Kunwar and Bhaman Singh."

Bhaman Singh is evidently the same person as Bhima Singh.

The mortgaged properties were accordingly put up to sale on the 20th of February, 1899, and puchased by Ganga Sahai. The sale appears to have been duly confirmed and two sale certificates were issued to him in respect of Tahsipur and Bilaspur respectively, and he is admittedly now in possession of the properties.

The two sets of plaintiffs, as already stated, claim to be the heirs of Bahadur Singh adversely to each other; but as against the appellant Ganga Sahai, they seek identical relief. They say that the purchase by Ganga Sahai of the properties in question was not exclusively for himself, but for the benefit of the heirs and representatives of both mortgagees. The courts in India have upheld their contention. Ganga Sahai has appealed to this Board and takes his stand on the first clause of section 317 of the Code of Civil Procedure, 1882, which was in force when the sale took place. That clause provides as follows:—

"No suit shall be maintained against the certified purchaser on the ground that the purchase was made on behalf of any other person, or on behalf of some one through whom such other person claims."

In their Lordships' opinion the provisions of that section have no application to the present case. They were designed to create

some check on the practice of making what are called *benami* purchases at execution sales for the benefit of judgement-debtors, and in no way affect the title of persons otherwise beneficially interested in the purchase. An example of this will be found in the case of *Bodh Singh Dodhoria* v. *Gunesh Chunder Sen* (1) decided by this Board in 1873.

The courts in India were perfectly right in refusing to allow Ganga Sahai to perpetrate a fraud against his co-decree-holders under cover of this section. His application for execution was under section 231 of the Code, and it was made subject to their rights. Had he not even embodied this reservation in his petition, the court executing the decree would have of its own motion protected the interests of the other decree-holders. Their Lordships agree with the courts in India that the heirs and representatives of Bahadur Singh are entitled to recover from Ganga Sahai a one third of the properties purchased by him in execution of the joint mortgage decree.

The question then arises who among the two sets of plaintiffs are entitled to the inheritance of Bahadur Singh. At the time of his widow's death in 1894, when the succession passed to the collaterals, Raja Ram, his uncle by the half blood, was alive; and he claimed the properties in preference to Kalka Prasad and Jivan Lal, the sons of a full paternal uncle named Ganga Prasad. Raja Ram has since died and is now represented by his sons and grandsons, who are plaintiffs in one of the suits and respondents before this Board. Jivan Lal has also died, and his son, Munshi Lal, now stands in his place. Kalka Prasad and Munshi Lal were the plaintiffs in the second suit, and they claimed in opposition to Raja Ram to be the heirs of Bahadur Singh by virtue of their relationship to him being of the whole blood.

As the question of heirship was involved in all the three suits they appear to have been tried together; and the court of first instance held in favour of Jivan Lal and Kalka Prasad mainly on the authority of a decision of the Allahabad High Court, which, it considered, had settled the rule of succession in favour of the heirs related by the whole blood. The District Judge

(1) (1873) 12 B. L. R., 317.

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affirmed this decree. On appeal, however, to the High Court, the learned Judges explained that in their judgement in *Suba Singh* v. *Sarfaraz Kunwar* (1), on which the lower courts had relied, they had laid down no such principle as had been inferred; what they meant to decide was simply this, that under the Mitakshara the distinction of whole blood was not confined to the brother and his sons, but extends further. And on an examination of the doctrines of the Mitakshara, they held in effect that this preference of the whole blood to the half blood applied to sapindas of the same degree of descent from the common ancestor, and did not apply to persons of different degrees. They were accordingly of opinion that Raja Ram being paternal uncle of the half blood was entitled preferentially to the inheritance of Bahadur Singh to the exclusion of his cousins, although they were the sons of an uncle of the whole blood. They accordingly dismissed the claim of Munshi Lal and Kalka Prasad in their suit against Ganga Sahai and others, as also the claim of Kalka Prasad in his suit against Chunni Lal. They at the same time decreed the claim of Raja Ram's representatives against Ganga Sahai. Munshi Lal and the representatives of Kalka Prasad, who died during the pendency of the suit, have appealed to His Majesty in Council from these decrees of the High Court dismissing their claim; and the main contention advanced on their behalf is that, although the Mitakshara expressly provides for the succession of the half brother in preference to nephews of the whole blood, there is no such provision in respect of uncles; and further that as it provides for the succession of the grandmother on failure of the father and his descendants, it must follow that by the words "The uncles and their sons" Vijnaneswara meant that uncles of the whole blood and their sons should succeed in preference to the issue of another wife of the paternal grandfather. This argument, in their Lordships' opinion, would apply with equal force to the case of half brothers and the sons of brothers of the whole blood. But it is conceded that the author of the Mitakshara has expressly declared that brothers of the half blood come before nephews of the whole blood, and in principle they see no reason to differentiate between the brothers of the *propositus*

(1) (1896) I. L. R., 19 All., 215 (217).

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and the brothers of his father. Having regard to the general scheme of the Mitakshara, their Lordships think that the preference of the whole blood to the half blood is confined to members of the same class, or, to use the language of the judges of the High Court in *Suba Singh* v. *Sarfaraz Kunwar* (1), to "sapindas of the same degrees of descent from the common ancestor," and that, therefore, on the death of Lachman Kunwar, Raja Ram, as uncle of the half blood, became entitled to the inheritance of Bahadur Singh to the exclusion of his cousins.

In the result all the appeals will be dismissed. Kesri and the other respondents in appeal 83 of 1912 will have all their costs from the appellant Ganga Sahai. There will be no order as to costs with regard to the other parties.

And their Lordships will humbly advise His Majesty accordingly.

Appeals dismissed.

Solicitors for Ganga Sahai: *T. L. Wilson & Co.*

Solicitors for Munshi Lal and others: *Douglas Grant.*

Solicitors for Kesri, Rohan, Kallu and Ram Narain: *Barrow, Rogers and Nevill.*

J. V. W.

BILAS KUNWAR (PLAINTIFF) *v.* DESRAJ RANJIT SINGH AND OTHERS (DEFENDANTS.)

*P.C.** 1915, *June* 11, 14, 15, 16. *July*, 13.

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

Benami *transaction—Hindu with wives and a Muhammadan mistress—Purchase with his own funds in name of mistress and registration of deed in her name—Property treated as his own, and no possession or use of it by mistress—Landlord and tenant—Estoppel as to denial of title by tenant—Act No. I of* 1872 (*Indian Evidence Act*), *section* 116—*No inference against litigant as to contents of documents he considers irrelevant—Omission of opposing litigant to put them in evidence in proper way.*

A Hindu taluqdar who had two wives and a Muhammadan mistress and had already made substantial provision for the latter, purchased a house with his own money in the name of the mistress, and registered the deed also in her name. He treated the house, however, as his own during his life-time, living in it, paying for repairs and taxes, and receiving rent for it when let, as did his senior widow after his death; and the mistress had no possession or use

**Present*:—Viscount HALDANE, Lord SHAW, Sir GEORGE FARWELL, Sir JOHN EDGE, and Mr. AMEER ALI.

(1) (1896) I. L. R., 19 All., 215.