

for a declaration that they are entitled (assuming always of course that they establish their case in fact) to have the improper entry in the revenue papers removed, and to be restored to the position in which they were before the entry was made. And further, if they be so entitled on the facts to a declaration that they are entitled to possession of the trees which they claim. Assuming that they succeed, armed with these declarations passed in their favour by a competent court deciding the matter upon the merits, they could go to the revenue officer, and we have no doubt that the Revenue Court, over whom of course this Court has no jurisdiction, will respect the decree of the Civil Court and act accordingly. The appeal must be dismissed with costs.

STUART, J.—I concur in the order.

Appeal dismissed.

Before Sir George Know, Acting Chief Justice, and Justice Sir Pramada Chavan Banerji.

JWALA SINGH AND OTHERS (DEFENDANTS) v. SARDAR AND OTHERS
(PLAINTIFFS).*

Act (Local) No. II of 1901 (Agra Tenancy Act), section 22—Succession to tenancy—Status of illegitimate son of Kshatriya by Sudra woman—Hindu law.

The illegitimate son of a Kshatriya by a Sudra woman is not a Sudra but of a higher caste called Ugra. *B. in Javana v. Radhamani* (1) followed.

THE facts of this case were as follows:—

One Patipal Singh, who was the natural son of a Kshatriya (Thakur) by a Kachin woman, died leaving some brothers, other natural sons of his father, the defendants appellants, and some natural sons of his own by a Chamarin woman, the plaintiffs respondents. On the death of Patipal Singh the plaintiffs respondents instituted the suit out of which the present appeals have arisen for the possession of the agricultural holdings and tenancy lands of their deceased father, Patipal. The Munsif decreed the suit in part, and both parties appealed to the District Judge, who modified the Munsif's decree and decreed the plaintiffs' claim in full. In second appeal to the High Court a single Judge of the Court confirmed the decree of the lower appellate court. The defendants appealed.

*Appeal No. 86 of 1917, under section 10 of the Letters Patent.

(1) (1888) I. L. R., 12 Mad., 72.

1919

JHUMAK RAI
v.
BINDERSHI
RAI.

1919
May, 8.

1919

JWALA
SINGH
v.
SARDAR.

Munshi *Gulzari Lal* (Babu *Saila Nath Mukerji* with him),
for the appellant :—

The only question in this case is whether Patipal Singh, who was the illegitimate son of a Kshatriya (Thakur) by a Sudra woman, was a Kshatriya or a Sudra or something midway between the two. If it be held that Patipal was not a Sudra, then the plaintiffs respondents have no right to his property. Section 22 of the Agra Tenancy Act clearly lays down a rule of succession by which an illegitimate son is excluded from inheritance. The personal law of the tenant does not apply where it conflicts with section 22. If Patipal was not a *Sudra* his illegitimate sons would, in no case succeed; *Jageshar Jati v. Bindeshri Prasad* (1). The Hindu law on the point is summarised by Trevelyan as follows:—"According to all schools the illegitimate son of a member of one of the twice-born classes has no right of inheritance to his father even if his father was himself illegitimate." Trevelyan's Hindu Law (1917 Ed.) 382. This view was taken in an old case reported in *Sri Gajapaty Hari Krishna Devi Garu v. Sri Gajapaty Radhika Patta Maha Devi Garu* (2). According to Manu "From a Kshatriya and the daughter of a *Sudra* springs a being called *Ugra* resembling both a Kshatriya and a *Sudra* . . ." Manu Chap. X, rule 9. The illegitimate son of a Kshatriya by *Sudra* woman is not a *sudra* but a higher caste called "*Ugra*"; *Brindavana v. Radhamani* (3). In this case it has been held that an illegitimate son of an "*Ugra*" does not inherit.

Munshi *Vishnu Nath*, for the respondent :—

The courts below have found in clear terms that Patipal Singh was a *Sudra* and that finding is binding on this Court. Patipal Singh was born of *Sudra* mother and will belong to a caste to which his castemen recognize him to belong; Trevelyan's Hindu Law (1917 Ed.) p. 39. There ought to be a clear finding as to whether Patipal was treated by his own castemen as a Thakur (Kshatriya) or as a *Sudra*. An issue should be remitted.

Munshi *Gulzari Lal*, for the appellant, was not heard in reply.

KNOX, A.C.J., and BANERJI, J. :—The suit out of which this appeal arises was brought by the plaintiffs respondents to recover

(1) (1911) 8 A. L. J., 731.

(2) (1865) 2 Mad. H. C. Rep., 369.

(3) (1888) I. L. R., 12 Mad., 72.

possession of two cultivatory holdings, namely, the whole of khata No. 32 and a fourth share in khata No. 50. The holding in khata No. 32 has been found to have been the non-occupancy holding of one Patipal Singh. The plaintiffs are the illegitimate sons of Patipal Singh. The defendants are his brothers. It has been found that Patipal Singh was the son of one Debi Singh who was a *Kshatriya*. Patipal Singh's mother was a *Sudra* and the question is—what was the status of Patipal Singh? If he was a *Sudra*, his illegitimate sons, the plaintiffs, would succeed to his holding. If he belonged to some higher caste, the illegitimate sons would have no right of succession. The point does not appear to have been decided by this Court, but it was considered in an elaborate judgment by the Madras High Court. In the case of *Brindavana v. Radhamani* (1) it was held that the illegitimate son of a *Kshatriya* by a *Sudra* woman is not a *Sudra* but was of a higher caste called "*Ugra*". This view is supported by the authorities cited in the judgment, and we have not been referred to any case in which a contrary view has been held. We think upon the authorities we should follow the view adopted by the Madras High Court. The result is that Patipal Singh belonged to a higher caste than that of a *Sudra*, and therefore his illegitimate sons would not succeed to the property which belonged to him. In this view the plaintiffs' claim failed and should have been dismissed. We allow the appeal, set aside the decree of this Court and of the courts below and dismiss the suit with costs in all courts.

Appeal allowed.

Before Sir George Knox, Acting Chief Justice, and Justice Sir Pramada Charan Banerji.

JAUHARI SINGH (PLAINTIFF) v. GANGA SAHAI AND ANOTHER
(DEFENDANTS).*

Act No. IV of 1882 (*Transfer of Property Act*), section 67—*Mortgage*—Suit by one mortgagee to recover his individual share in the mortgage debt—What amounts to a severance of the interest of the mortgagees.

Certain property was mortgaged by K to B and J. Then other property was mortgaged by G (K's brother) also to B and J. Subsequently K and G made a usufructuary mortgage of both properties in favour of B alone,

* Appeal No. 88 of 1917, under section 10 of the Letters Patent.

(1) (1888) I. L. R., 12 Mad. 72.

1919

JWALA
SINGH
v.
SARDAR.

1919
May, 14.