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Property Act, 1882, had not been passed and the procedure prescribed by that Act for suits for sales under that Act did not exist; that case was decided on the law as it then stood.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs, and that the decree of the High Court under the circumstances be confirmed.

Appeal dismissed.

J. V. W.

Solicitors for the appellants: *Ranken Ford and Chester.*

Solicitor for the respondent: *Edward Dalgado.*

P. C.* 1919 *November,* 6, 11, 13, *December,* 19.

NAGESHAR BAKHSH SINGH (DEFENDANT) v. GANESHA (PLAINTIFF).

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

Hindu law—Joint ancestral property—Partition, evidence of—Revenue and village records—Decree made at Regular Settlement—Decree for widows of "superior proprietary rights"—Rights subject to those of the other share-holders.

In this case the plaintiffs (respondents) sued for possession of a village by cancellation of a sale deed of it executed on the 30th of December, 1871, in favour of the predecessor in title of the defendant appellant, by three Hindu pardanashin ladies whose husbands had been lineal descendants of the proprietor. The main question raised by the defendant was whether the property (joint ancestral and undivided property) was or was not joint and undivided at the date of the sale. The appellant alleged that a partition of it had been made; there was no evidence of any deed for the purpose, but he founded his contention chiefly on the terms of the khewat and wajib-ul-arz and of a settlement decree of the 6th of December, 1869, which was for superior rights in favour of the widows, "subject to the rights of the other share-holders."

Held that "a definition of shares in revenue and village papers affords by itself but a very slight indication of an actual separation in a Hindu family, and certainly in no case that has come before us could we have regarded such a definition of shares standing alone, as sufficient evidence on which to find contrary to the presumption of Hindu law that the family to which such definition referred had separated."

Their Lordships adopted with approval the above citation from the decision of EDGE, C. J., in *Gajendar Singh* v. *Sardar Singh* (1) as being a correct decision of the law.

Held as to the decree when on the one hand it declared for superior proprietary rights in favour of the widows, and on the other that these are to be given subject to the rights of the other share-holders, it completely conserved such reversioners' and other ownership rights as are inherent in the succession

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*Present:—Lord SHAW, Lord PHILLIMORE, Mr. AMEER ALI, and Sir LAWRENCE JENKINS.

(1) (1896) I. L. R., 18 All., 176.

to a joint family property, and negatived the idea that partition or separation had been effectuated by law in such a manner as to extinguish other proprietary rights. The decree was not equivalent to an affirmation of a partition or separation having taken place, but was entirely consistent with the existence of the property as joint and undivided, and therefore with no prejudice being effected to the right of the reversioner therein, in this case represented by the respondent (plaintiff).

The presumption, therefore, against partition of this joint ancestral property had not been overcome, and the property remained joint.

APPEAL 88 of 1918 from a decree (8th August, 1916,) of the Court of the Judicial Commissioner of Oudh, which reversed a decree (23rd December, 1913,) of the Court of the Subordinate Judge of Gonda.

The main question for decision on this appeal is as to the validity of a deed of sale of a village named Sonahra executed on the 30th of December, 1871, in favour of Mirtunjai Bakhsh Singh (now represented by the appellant) by three Hindu ladies Musammats Basanta, Rani, and Maharani.

The pedigree which is given in the judgment of the Judicial Committee starts with one Bishan Prasad who was the owner of Sonahra, and of another village Harsinghpur (not now in question) and of 45 bighas, 17 biswas of land in the village of Saraiyan, and who died a very long time ago. The first summary settlement was made on the 17th of November, 1856, with Gokaran. He died in November, 1857, and Sheo Dayal died in March, 1865, before the Regular Settlement was made. At the time of the Regular Settlement various claims were made, among others, by Musammat Basanta, widow of Gokaran, and by Musammats Rani and Maharani, the widows of Sheo Dayal. These claims were disposed of by judgments of the Settlement Assistant Commissioner, dated the 6th of December, 1869, who decreed the superior proprietary rights to the three widows named above.

In pursuance of these decrees khewats or registers of owners were prepared and recorded Musammat Basanta as owner of an 8 anna share in her own right, and Musammats Rani and Maharani as joint owners of the other 8 anna share. This is in entire accord, it was contended by the appellant, with Musammat Basanta having succeeded as heir to her husband Gokaran and to the two other widows having succeeded to their husband Sheo Dayal.

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On the 23rd of November, 1870, the wajib-ul-arz was verified, which recorded that "every share-holder has a right to transfer his share by mortgage or sale."

On the 30th of December, 1871, the three ladies sold the village of Sonahra to Mirtunjai Bakhsh Singh, the predecessor in tittle of the appellant, and on the 22nd of December, 187[illegible], all the persons then living who had any possible claim to the village, including the present respondent Musammat Ganesha, executed a deed of agreement in affirmance of the sale. Musammat Basanta died in 1885, Musammat Maharani died in 1888, and Musammat Rani in 1908.

The suit which gave rise to this appeal was instituted on the 24th of January, 1913, by the respondent, to recover possession of Sonahra from the appellant. She alleged that Gokaran and Sheo Dayal were joint in estate; that on the death of Gokaran the whole estate passed by survivorship to Sheo Dayal; that on Sheo Dayal's death his widow succeeded; and that on the death of the survivor of the widows she, as daughter of Sheo Dayal, was the next heir. She further alleged that the widows of Sheo Dayal had no power to transfer for a period beyond their own lives.

The appellant filed a written statement in defence and pleaded (*a*) that Musammat Basanta, as widow of Gokaran, was entitled to an 8 anna share, and that the respondent was not and did not claim in her plaint to be heir to Gokaran; (*b*) that the vendors to his father had an absolute interest by custom and by virtue of the decree made at Regular Settlement; (*c*) that in any event the sale was warranted by necessity; and (*d*) estoppel.

Issues were raised, on the chief of which the Subordinate Judge found that Sheo Dayal was not owner of the entire village; that Sheo Dayal survived Gokaran; that the three ladies were in possession as full owners; that the plaintiffs had no right to sue; that by custom the widows took an absolute estate; that the sale deed was genuine; that no finding as to necessity was required: and that the plaintiffs were precluded from questioning the validity and legality of the deed of sale.

The Subordinate Judge made a decree dimissing the suit. From that decision the plaintiffs appealed to the Court of the

Judicial Commissioner. That Court (L. STUART, 1st Additional Judicial Commissioner, and KANHAIYA LAL, 2nd Additional Judicial Commissioner) held that Gokaran and Sheo Dayal were joint in estate, with the result that Sheo Dayal took by survivorship on the death of Gokaran to the exclusion of Musammat Basanta; that the Regular Settlement decree conferred no title on her, nor did she acquire title by adverse possession; that the widows had only a life estate which was not enlarged either by custom or decree at Settlement, and that there was no estoppel. The Judicial Commissioner's court made an order remitting a further issue to the Court of the Subordinate Judge "whether the sale had been effected for consideration and legal necessity?" on which the Subordinate Judge found against the appellant, which finding was affirmed by the Court of the Judicial Commissioners, a decree was, therefore, made that no necessity had been proved, and the second party plaintiff's appeal was dismissed, and possession of the village in dispute was decreed to the respondent (Ganesha)

On this appeal by the defendant—

De Gruyther, K. C., and *G. S. Saunders* for the appellant, contended that the three widows Musammats Basanta, Rani, and Maharani had an absolute estate in the village of Sonahra by virtue of the decree made at the Regular Settlement, and by custom. Musammat Basanta, if not otherwise entitled, acquired a title to an 8 anna share by virtue of the Settlement decree, and by adverse possession. The inclusion of Musammat Basanta in the decree was only consistent with the view that an absolute estate was conferred on the widows. Reference was made to *Nawab Malka Jahan Sahiba* v. *Deputy Commissioner of Lucknow* (1); *Mirza Jehan Kadr* v. *Afsar Bahu Begum* (2); Oudh Settlement Act (XXVI of 1866); and Sykes' Compendium, paragraphs 286, 386. Gokaran and Sheo Dayal were not joint in estate at the time of Gokaran's death, on which event occurring an 8 anna share passed to Musammat Basanta; and the respondent, it was submitted, cannot and does not claim any interest except on the allegation that Sheo Dayal took that share by survivorship. That is supported

(1) (1879) L.R., 6 I.A., 63, 76. (2) (1885) I.L.R., 12 Calc., 1: L.R., 12 I.A., 124.

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by the documentary evidence of the khewat, and the wajib-ul-arz. As to the khewat reference was made to the definition in Act XVII of 1876, and to Circulars 20 of 1863 and 24 of 1864. The respondent is precluded by her own acts from denying the validity and legality of the sale in dispute. In any event, having regard to the circumstances of the case, the legal necessity for the sale and the payment of the consideration had been sufficiently proved.

Dunne, K.C., and *B. Dube*, for the respondent, contended that there were concurrent findings of the courts below, that there was no legal necessity to justify the sale; the findings that Sheo Dayal and Gokaran were joint in estate; and that Sheo Dayal took by survivorship, and the respondent succeeded him, the decree made at the settlement reserved the shareholders' rights, and correctly interpreted, did not confer an absolute estate. Reference was made to *Munnalal Chaodri* v. *Gajraj Singh* (1). The documentary evidence carried the case no further, and the wajib-ul-arz was unreliable.

De Gruyther, K. C., replied referring to *Muhammad Mumtaz Ali Khan* v. *Partab Singh* (2), as to the effect of a settlement decree in Oudh as determining proprietary rights. Sheo Dayal's widows were not recognized by the settlement decree as owning the whole property, and the Musammat was rightly included, which could not have been unless she had been a co-sharer. Reference was made to Act XVII of 1876, sections 17 and 56 (*c*): Parliamentary papers relating to Oudh 1865, which referred to Circular 1123 C. of 1862; and Currie's Land Revenue Manual, pages 107, 235.

1919, *December*, 19 :—The judgment of their Lordships was delivered by Lord SHAW :—

This is an appeal from a judgment and decree, dated the 8th of August, 1916, of the Court of the Judicial Commissioner of Oudh, which reversed a judgment and decree, dated the 23rd of December, 1913, of the Subordinate Judge of Gonda.

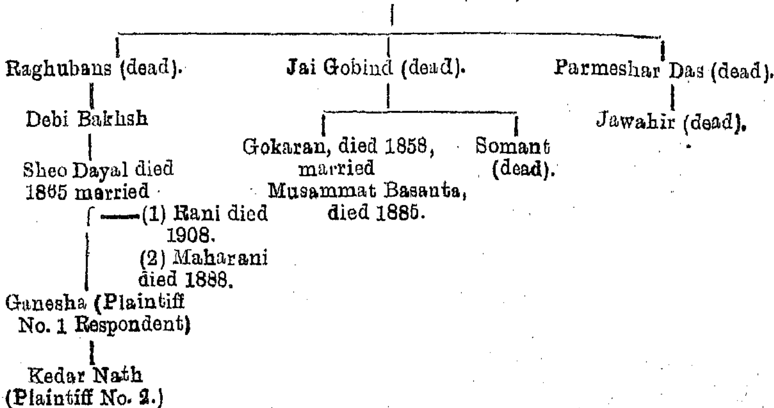
In the suit which is brought the plaintiffs pray for a decree for possession of the village of Sonahra, pargana Paharapur,

(1) (1889) I.L.R., 17 Calc., 246. (2) Oudh Select Cases, 1893, No. 233.

tahsil and district Gonda, by cancellation of a certain sale deed thereof executed on the 30th of December, 1871, in favour of Thakur Mirtunjai Bakhsh Singh, now represented by the appellant. The grantors of the deed were three Hindu *pardanashin* ladies Musammats Basanta, Rani and Maharani.

A pedigree is given in the papers, which gives the family descent from one Bishan Prasad. Bishan was the owner of, *inter alia*, two villages, Harsinghpur and Sonahra. No question arises with regard to Harsinghpur in this appeal. It appears, however, that a question analogous to that now raised was settled relative to that village over thirty years ago, and was answered in a sense adverse to the present appellant. It was held in that suit that the sale deed had not been granted for consideration or with legal necessity, and that Harsinghpur was part of a joint undivided family property with reference to which the deed was ineffective. Their Lordships have, however, considered the present appeal, which is confined to the case of Sonahra, on its own merits.

Bishan Prasad owned, as already mentioned, these two villages. The pedigree as flowing from him is as follows :—



The facts of the case and relative dates are stated in a judgment passed by the Court of the Judicial Commissioner dated the 17th of December, 1915 :—

"The village in question originally belonged to Santokhi, to whom it was granted under a Birt *patta* by Raja Dat Singh, the Taluqdar of the village, in 1128 Fasli. From Santokhi the property passed to his lineal male decendants, the last of whom were Gokaran . . . representing one branch

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of his line, and Sheo Dayal, ... representing another branch of his line. The summary settlement was made with Gokaran. Gokaran died some time in 1858, leaving a widow Musammat Basanta. Sheo Dayal died in 1865, leaving two widows, Musammat Rani and Musammat Maharani, and a daughter by the former, named Musammat Ganesha. On the 30th of December, 1871, Musammat Basanta, Musammat Rani and Musammat Maharani sold the village in dispute to the father of the defendant respondent. Musammat Basanta died in 1885, Musammat Maharani in 1888, and Musammat Rani in 1903. Musammat Ganesha, the daughter of Sheo Dayal, is alive and one of the plantiffs to the suit."

It is manifest that if the three ladies, grantors of the deed under challenge, were fully vested owners, the one of an 8 anna share and the other two of a 4 anna share each, of the village, they were in a position to grant a proper title. But of course, on the accepted facts, such ownership in the ladies would be impossible.

Even although, however, they had possessed the village, not as complete owners, but as enjoying the same in shares as widows of former proprietors, and also enjoying, it may be, all the powers attaching to that status, it might also be that a valid sale could have been effected under the deed in question. The condition of such validity would, of course, be that the deed was for consideration and was granted by reason of legal necessity.

It is possible at once to disburden the case of much of the material which entered into the procedure of the Courts below on this last mentioned issue. For it has been found, after a special remit by the Court of the Judicial Commissioner to the Court of the Subordinate Judge on that topic, that the deed challenged was granted without consideration and without legal necessity. There are concurrent findings to that effect. Were the deed, accordingly, a deed of the widows of deceased owners, with no further rights in or over the village than such widows would have, the challenge must prevail. To this the retort was made that the plaintiffs had not proved that they were reversioners to Gokaran, and as there had been a separation of shares they must fail as to Gokaran's moiety. They alleged such separation. This raises a question fundamental to the case and anterior to the issues just mentioned. That question is one upon which very careful and exhaustive argument was presented to the Board. Was the village or was it not joint undivided family

property at the date of the sale? The appellant strongly contends that it was not. It must stand admitted that the village was ancestral property since the early portion of the eighteenth century. But it was maintained that a partition of this joint undivided family property was made. No deed expressly to that effect was executed. The argument, however, is that the facts of the case are sufficient to show that a definite separation of family interests took place, the shares being correctly stated in the Government Returns and papers to be afterwards mentioned as an 8 anna share to Musammat Basanta, widow of Gokaran, who died in 1885, and a 4 anna share to each of Musammats Rani and Maharani, widows of Sheo Dayal, who died in 1865.

Upon this issue, whether it be named "partition," or whether it be named "separation of interests," it is important to ascertain at what date it is alleged that the transaction took place. Upon this subject the Board, notwithstanding repeated inquiries, has found itself unable to ascertain what is the attitude definitely adopted by the appellant. The difficulties are, of course, considerable. Apart from separation, the descent of the property would in ordinary course be, up till the year 1858, to Gokaran, Basanta's husband. When Gokaran died in 1858, the property in its entirety would then pass to Sheo Dayal, his nephew, the only other male representative, and Sheo Dayal died in 1865. There is nothing in the case to suggest that there was any transaction of the nature of partition between Gokaran and Sheo Dayal. If, however, there was no such partition, the ancestral property of this village became that of Sheo Dayal in ordinary course, and the whole right of Musammat Basanta therein was a right as Gokaran's widow to maintenance therefrom.

During this period, that is to say, when Sheo Dayal was proprietor, it would be impossible to maintain that he executed any deeds of partition of this property; such partition would in short have been in the nature of the conveyance from himself, as owner in entirety, of a certain part of the property to another not in the line of his succession. There is no such evidence. If there had been, serious questions with regard to it might have been raised. Therefore the whole question is still

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further postponed to that period of time subsequent to Sheo Dayal's death.

Sheo Dayal left two widows, and the fact cannot be disputed that in so far as light can be thrown upon the subject by the village records, Basanta did have in her enjoyment an 8 anna share, and Sheo Dayal's two widows did each have a 4 anna share of the enjoyment of this village. The real facts appear to be that the three ladies lived together, the dominating personality, if any, among them being naturally the much senior widow Basanta. From these facts and specially from the records the appellant has stoutly argued that separation as a fact is proved. He forcibly founds upon the Settlement decree obtained by the three widows, passed by the Settlement Assistant Commissioner of Gonda, and dated the 6th of December, 1869. In this judgment that officer ordered that "a decree for superior proprietary rights in favour of Rani and Maharani, wives of Sheo Dayal, and Musammat Basanta, wife of Gokaran, be passed."

To this it is instantly answered, first, that to found upon that decree as either a root of a title or as conclusively settling it, is to mistake the true nature of the decree itself; and secondly, that the decree not only does not deal with other rights in the property, but expressly reserves these other rights.

On this latter point of reservation there can be no question. It is contained *in gremio* of the decree. It is no doubt true that, as already mentioned, the decree is in name for superior proprietary rights in favour of the widows, but it is expressly declared that that decree should "be passed subject to the rights of the other share-holders." If it be correct, as alleged by the appellant, that the property had at that time been *de facto* separated into one 8 anna and two 4 anna shares, and that this decree of December, 1869, was a *de jure* recognition of that fact, then the entirety of the property was disposed of, and language of reservation, or the mention of other share-holders, was hardly appropriate, but might be contended to be repugnant to the transaction which is pleaded.

In the opinion of their Lordships, the terms of this decree must be looked upon as a whole. When on the one hand it declares for superior proprietary rights in favour of the widows,

and on the other that these are to be given subject to the rights of the other share-holders, it completely conserves such reversionary and other ownership rights as are inherent in the succession to a joint family property and it negatives the idea that partition or separation had been effectuated by law in such a manner as to extinguish other proprietary rights. In short, in the view of the Board this decree is not equivalent to an affirmation of a partition or separation having taken place, but is entirely consistent with the existence of the property as joint and undivided, and therefore with no prejudice being effected to the right of the reversioner therein, who is represented by the respondent.

But the decree of December, 1869, has a much more solid value by the testimony which it itself affords of what was the true nature of the property and what was the exact point in dispute in the competition for it. There were three separate claims to the property. One was by Partab Bali and others. Their claim was got rid of (the Commissioner remarking that it would certainly have failed) by a small payment. The second claimant was Rai Sadhan Lal, and after inquiry it was found that his interference with the village was regarded as unlawful, and his claim completely failed. He had been *muafi* holder and his right expired with the settlement. The third party to the proceeding was the three widows, and their right without any question is dealt with as a right in ancestral property. "To the satisfaction of the Court" they "have been proved to be the old zamindars." Then an examination of the title is made, and it is solemnly affirmed:—

"Let it be known that on their behalf a *Birt Part* Sanad bearing the seal of Raja Dat Singh, dated Jeth Sudi 2nd, 1128 Fasli, has been produced, which shows that the villages Sonahra and Harsingpur were given by way of *Birt*, to their common ancestor, Santokhi Avasthi, on Rs. 3,562. Its genuineness is proved . . . And fourthly, it appears from the evidence on record that their ancestors always remained in possession within and beyond limitation; and lastly, that both the Summary Settlements were made with them."

It thus appears that the property was treated as a *unum quid*, as ancestral, and as property to which, as an ancestral undivided property, the three widows vindicated their right. Upon the whole, this would have been sound evidence in any Court in favour of the continuance as and from that date of the property

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as joint and undivided. Their Lordships are of opinion that the Court of the Judicial Commissioner was right in so treating it.

The use of the term "superior proprietary rights" in the decree is, in their Lordships, opinion, to distinguish these from any under-proprietary tenure and from any other inferior rights. In short, the possession by these ladies of the whole of the village among them was a broad fact which permitted the Government to make the entry in such a way as to have the full representation of the entirety of the village, with all the responsibilities attached to that representation, on the record. It is and has for many years, under the decisions, been acknowledged that even one or two names may be inserted as representatives of a community of ownership, the details of which need not be minutely recorded.

But, furthermore, it must be remembered that the policy set forth in Lord Canning's Circular of the 28th of January, 1859, in which it was stated that the rights conferred "on each holder of land are the free and incontestable grant from the paramount power and cannot be called into question by subordinate officers," and that the decision approved by the Chief Commissioner "is considered to be final and lasting," was greatly modified as regards zamindars and others not being taluqdars. In a letter issued on the 10th of October, 1859, which was afterwards appended to Act I of 1860, it was directed :—

"As regards zamindars and others, not being taluqdars, with whom a summary settlement has been made, the orders conveyed in the Limitation Circular no. 31 of the 28th of January, 1859, must not be strictly observed. Opportunity must be allowed at the next settlement to all disappointed claimants to bring forward their claims, and all such claims must be heard and disposed of in the usual manner."

The authoritative exposition of this subject was made in *Mirza Jehan Kadr* v. *Afsar Bahu Begum* (1), and the passage rightly founded upon in the Court below from the judgment of the Privy Council as delivered by Sir ARTHUR HOBHOUSE, is here repeated :—

"The first observation on these proceedings is that the settlement courts were clearly inquiring into the old titles, as they existed prior to the confiscation. It is true that the confiscation swept away all prior titles, though it may be doubted, as Mr. *Lincoln* suggests whether in 1868, that effect was realized to the minds of the Government Officers as it has become since the

(1) (1885) I. L. R., 13 Calc., 1 : L. R., 12 I. A., 124.

legal decisions, which establish it. At all events, when engaged in the work of pacifying and settling the country, the Government did not make an arbitrary, or wholly new, redistribution of property, or proceed upon the notion that prior rights were to go for nothing. In very many cases, probably in the great bulk of properties, they inquired who would be entitled if no confiscation had taken place, and effected settlements with those persons. Certainly that was the operation in which the three lower settlement courts were engaged with regard to Sohrawan when the case came before Sir Charles Wingfield as the highest Court of Appeal."

The Board does not think it necessary to enter upon much detail with reference to the enjoyment of the property in the time of Sheo Dayal, but they simply note that one document not without importance is printed applicable to the year 1861, that is to say, to the period after the death of Gokaran in 1858. It is dated the 31st of December, 1861, and is a copy of a Rubkar of the Collectorate of Gonda issued by Captain Ross. The plaintiff in the proceedings was Sheo Dayal himself; the defendant was Rai Sadhan Lal, already mentioned; and the judgment discloses as follows: that "on a perusal of the file it appears that Sheo Dayal Avasthi claims the lease (patta) of villages Sonahra and Harsingpur on the basis of the zamindari right set up by him, and by right of inheritance from Gokaran, deceased, with whom the villages were settled in 1857." The language used is not strictly accurate. Sheo Dayal could not claim by right of inheritance, but solely by right of survivorship. But otherwise the proceeding is instructive. It contains a warning to the *muafidar* to respect Sheo Dayal's rights, and there is not a trace of question that the property was treated as having been succeeded to in its entirety by Sheo Dayal as successor to Gokaran.

There are further elements in the case which need not be dwelt upon, as, for instance, a transaction by way of mortgage of the whole subject by the three widows themselves, in the year 1865. In this mortgage, dated the 9th of November of that year, the property is referred to simply as the village Sonahra, and it is mortgaged as "our ancestral zamindari under a *Brit Patra* which has been in our possession and occupation without the co-partnership of anybody else from the time of our ancestors."

But the Board is unwilling to enter into further detail, and contents itself with expressing the view that no partition or separation of this joint ancestral property has been proved. It

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should be said, however, that in December, 1871, when the sale deed now under challenge was executed, the very form of the deed is somewhat inconsistent with the transaction of shares of divided property. The village is sold as "the entire village." No reference is made to shares of 8 annas or 4 annas. There are circumstances of considerable suspicion attached to the deed, and it seems somewhat surprising that Mathura Nath, their general agent, should not have incorporated in the deed some reference to this transaction of partition (if true) of which so much has been made in the subsequent proceedings.

The state of the records was much pressed upon the Board by the Counsel for the appellant; that is to say, the entries which were contained in the wajib-ul-arz and in the *khewat* of the village. Of the two the claim made with regard to the *khewat* is the stronger. Under the wajib-ul-arz entries it is pretty clear that the village was treated as a *unum quid*, even although the shares in the possession were stated as so many annas respectively.

The Court of the Judicial Commissioner, which is no doubt acquainted with entries in such records, does not attach to them the importance which the appellant seeks, and the Board is of opinion that in this it was right. The broad question of partition of rights or separation of interests is not, of course, dealt with in such entries, and the inference of such a transaction from such records may be weak or may be strong according to circumstances.

Records of that character take their place as part of the evidence in the case. They do no more. Their importance may vary with circumstances, and it is not any part of the Law of India that they are by themselves conclusive evidence of the facts which they purport to record. It may turn out that they are in accord with the general bulk of the evidence in the case; they may supply gaps in it; and they may, in short, form a not unimportant part of the testimony as to fact which is available. But to give them any higher weight than that might open the way for much injustice and afford temptation to the manipulation of records or even of the materials for the first entry. BIRDWOOD, J., in the Bombay case *Bhagoji* v. *Bapuji* (1) said as follows:—

"At the rehearing the lower appellate Court should have its attention directed to the ruling in *Fatma* v. *Darya Saheb* (2), in which it was held that

(1) (1888) I. L. R., 13 Bom., 75. (2) (1873) 10 Bom. H. C. R., 187.

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the Collector's book is kept for purposes of revenue, not for purposes of title. The fact of a person's name being entered in the Collector's book as occupant of land does not necessarily of itself establish that person's title or defeat the title of any other person."

And the Board refer in particular to the judgment of Sir JOHN EDGE in *Gajendar Singh* v. *Sardar Singh* (1). In their opinion the statements of principle now to be quoted are of significance and are sound as applied not only to Allahabad but to other provinces in India as a whole. The main proposition is, of course, widely familiar, namely, that "given a joint Hindu family, the presumption is, until the contrary is proved, that the family continues joint. The presumption is peculiarly strong in the case of the sons of one father." The learned Judge further refers to "experience of the manner in which names of Hindus are entered not uncommonly in revenue and village papers in respect of shares"; and the Board sees no reason to differ from, but approves of, his pronouncement to the following effect:—

"A definition of shares in revenue and village papers affords, by itself, but a very slight indication of an actual separation in a Hindu family, and certainly in no case that has ever come before us could we have regarded such a definition of shares standing alone as sufficient evidence upon which to find, contrary to the presumption in law as to jointure, that the family to which such definition referred had separated."

The Board is, on a review of the whole of this case, of opinion that the presumption against partition of this ancestral property has not been overcome and that the property accordingly remains joint, with the consequence that the appeal fails. As to the attempted case of adverse possession by Basanta, it is, in their Lordships' opinion, wholly without foundation. On the facts disclosed as to the actual enjoyment of the property and the conduct of all parties, including Basanta, with regard to it, no plea of adverse possession could be successfully put forward.

Their Lordships will humbly advise His Majesty that the appeal stand dismissed with costs.

Appeal dismissed.

J. V. W.

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

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

(1) (1896) I. L. R., 18 All., 176.