# PRIVY COUNCIL.

P. C.*
*May*, 23, 26,
*June*, 26.

SATGUR PRASAD (DEFENDANT) *v.* RAJ KISHORE LAL AND ANOTHER (PLAINTIFFS).

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

*Limitation Act (XV of 1877), schedule II, article 144—Possession of Hindu widow—Assertion, in public documents, of ownership—Questions decided on inferences from documents—Nature of possession of widow whether in lieu of maintenance or adverse.*

Where a question as to the nature and effect of the possession of property by a Hindu widow, i.e. whether the possession is only in lieu of her maintenance, and not adverse possession, is one decided by legal inferences drawn from documents, opinions of the courts, though concurrent, are not findings of fact: and where wrong conclusions from such inferences have been formed they are open to be reversed by the Judicial Committee on appeal.

When the widow asserted that she was entitled as full heir to the separate share held by her husband; when in a written statement in a suit brought against her she asserted that she and her co-widow were the heirs of their husband and had all along been in possession, and it was only as an alternative pleading that she set up a title to possession as a right to maintenance; when in an application to the court she made an assertion publicly that she and her co-widow were the heirs and only heirs to the property, from which assertion mutation of it to her name followed, and when the widow made an absolute gift of part of the property—when she made such public assertions of a right to exclusive possession from 1859 to her death in 1895—the true inference was that her possession was adverse and the plaintiffs' (respondents') title was barred by limitation under article 144 of schedule II of the Limitation Act (XV of 1877).

APPEAL 64 of 1917 from a judgment and decree of the High Court at Allahabad, which affirmed a judgment and decree of the Subordinate Judge of Gorakhpur.

For the purpose of this report the facts and the evidence are sufficiently stated in the judgment of the Judicial Committee.

Sir *W. Garth* for the appellant.

*De Gruyther, K. C.*, and *Abdul Majid* for the respondents.

The following cases were cited during the arguments: *Lachhan Kunwar* v. *Manorath Ram* (1), *Sham Koer* v. *Dah Koer* (2) and *Srinath Gangopadhya* v. *Mahes Chandra Roy* (3).

* *Present*:—Viscount HALDANE, Lord BUCKMASTER, and Lord DUNEDIN.

(1) (1894) I. L. R., 22 Calc., 445: L. R., 22 I. A., 25.

(2) (1902) I. L. R., 29 Calc., 664: L. R., 29 I. A., 132.

(3) (1869) 4 B. L. R., (F.B.), 3.

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1919, *June 26th.*—The judgment of their Lordships was delivered by VISCOUNT HALDANE:—

This is an appeal from a judgment of the High Court of Allahabad, affirming the conclusion come to by the Subordinate Judge of Gorakhpur. The only question of substance is when time began to run under the Indian Limitation Act against a claim to recover possession made by the first respondent. The property in dispute was held by a Hindu lady called Dilla Kunwari. She died in 1895, and the controversy turns on whether her possession was that of one claiming adversely as against any other title, or whether, as the Courts below have held, that possession was not adverse but under licence from or by permission of the predecessors in title of the first respondent, a licence or permission granted during the lady's life-time, in order to afford her the maintenance which she claimed as a widow. In that case time did not begin to run against his claim until she died in 1895, and the Limitation Act has not operated so as to defeat this action.

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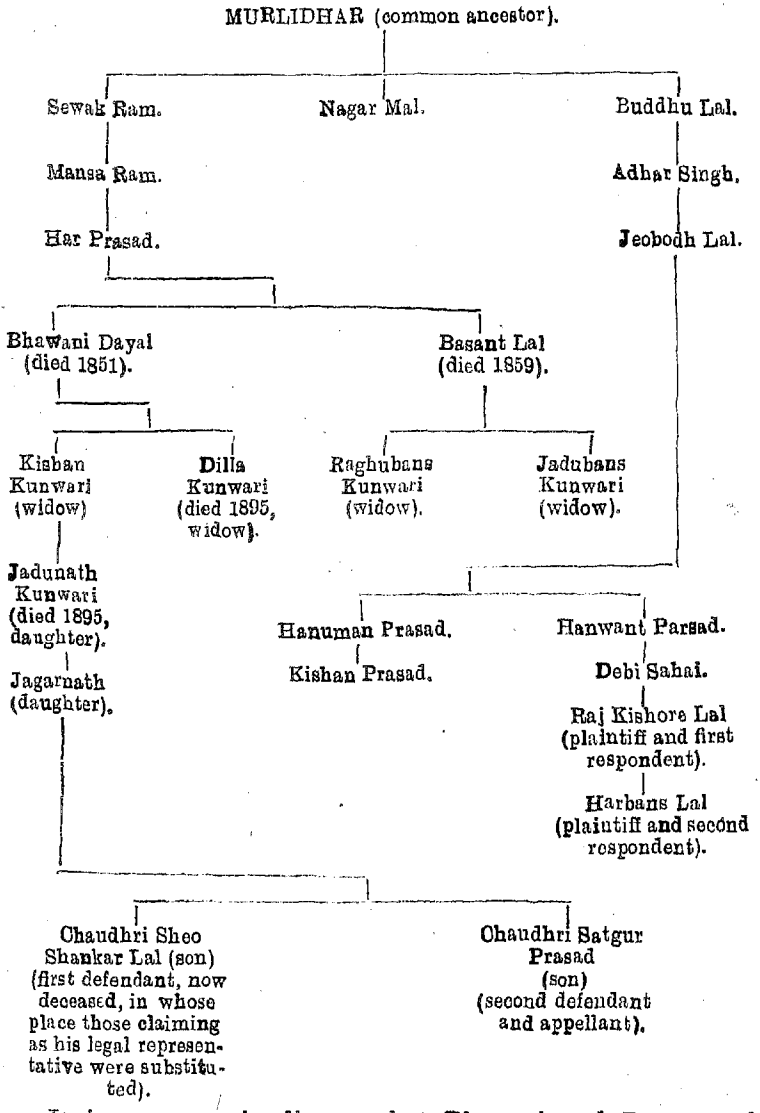
It will be convenient, in order to make the situation of the parties intelligible, to set out the pedigree in a table:—




It is not now in dispute that Bhawani and Basant, who appear in the pedigree, were at the time of the death of the former in 1851 joint, and that Basant became entitled to the entire family property, subject to such rights as Kishan and Dilla, Bhawani's widows, possessed. When Basant died in 1859, his widows, Raghubans and Jadubans, had similar rights, and

subject to these, his sapindas, the male cousins and his reversioners, Hanuman and Hanwant, took the property. In 1861 Raghubans and Jadubans, the widows of Basant, both died, and it is of importance to see what happened then. The learned Subordinate Judge held that the two widows of Bhawani got possession of the estate in equal moieties. As will appear, the controversy is confined to the share held by Dilla, for as to the other half taken possession of by the other widow, Kishan, an independent title, under a deed of gift, as to which title there is no dispute in this appeal, became vested in her daughter, Jadunath, and was transmitted to the defendants. Jadunath took possession of this half in 1879 under the deed of gift. It is immaterial whether the deed was valid or not, so far as concerns what she took possession of in that year, for any claim of the respondent plaintiff against her has, as is not in dispute, become barred by limitation. The only question is as to what was held by her aunt, Dilla.

The period prescribed by the Indian Limitation Act, 1877, section 144 of schedule II, as that within which a suit for possession has to be brought, is twelve years from the time when the possession of the defendant became adverse to the plaintiff. It is therefore obvious that if the possession of Dilla, after Basant's death, was really adverse, the respondent's claim fails. It is important to see what was the position of the lady after the death of her husband, Bhawani, in 1851. In November of that year, she and the other widow, Kishan, entered into a written agreement with Bhawani's brother, Basant, the terms of which were that the name of Basant as inheriting should be entered in the Government register in place of that of Bhawani, and that he should "pay the Government revenue, manage the *ilaka* (or property), and make collections and give expenses and clothes (and money) when required for charitable purposes," to Kishan and Dilla, that the messing should continue to be joint, and that both widows should exercise control over the servants and *ilaka* as heretofore. Their Lordships are of opinion that if this were all, it left the possession as a provisional arrangement undisturbed in Basant. All that the ladies were to do was to live as before on the property and be maintained there, without any

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occupation of an exclusive or adverse kind. But did the non-exclusive character of this occupation change after Basant's death in 1859? The answer to this question turns on what Bhawani's widows, Kishan and Dilla, did in the way of publicly asserting a claim to exclusive possession and ownership. The learned Subordinate Judge thought that it had been proved, as regards the share of Dilla, that in controversy in this suit, by (1) her statements and the manner in which she entered into possession; (2) the admissions of the defendants, and (3) certain earlier judgments of the High Court in other suits, that Dilla was in possession only in lieu of her maintenance for life, and not in adverse possession. The High Court expressed the same view, but without giving detailed reasons for it.

It is with reluctance that their Lordships differ from the concurrent opinions of the two Courts below on this point; but it is one in reality of legal inference from documents and not of finding of fact, and their Lordships are unable to draw the inferences made by the Subordinate Judge and followed by the High Court. To begin with, the so-called "compromise" with Basant was not a compromise at all. It was a mere arrangement that, according to the alleged family custom, his name should be entered in place of that of his deceased brother, Bhawani, so that he might pay the Government revenue and manage the estate, the ladies messing jointly with him and controlling the servants and the property. Such an arrangement was probably a convenient one under the circumstances, as is further explained in an application of the ladies to the Tahsildar, dated the 8th of December, 1851, on the ground that the step was customary when ladies were *pardanashin*, and, as the document says, was an arrangement designed to obviate disputes. But it does not appear to settle any questions of title, or to show, as the learned Judge thought, that Basant was made the owner to the exclusion of the ladies from every title excepting one to maintenance. It renders natural the subsequent conduct of Dilla in what appears to their Lordships to have been a succession of assertions of ownership after Basant's death. Even from the written statement of the 19th of June, 1867, relied on by the learned Subordinate Judge as showing that Dilla claimed possession in mere enforcement of a

right to maintenance, it is clear that she claimed much more; for she asserts that she was the "patni" or wedded wife of Bhawani, and as such entitled as full heir to a share of the separate property which she alleges was what he possessed. In another written statement, which she put in in a suit brought against her by Jadunath in 1870, she asserts that she and Kishan were their husband's heirs, and had all along been in possession as such. It is only as an alternative plea that in this document she sets up a title to possess on the footing of a right to maintenance. The application of Dilla, dated the 6th September, 1861, made for a record of title after the deaths of Basant's two widows, contains an assertion, thus publicly made, that she and Kishan had become by these deaths the heirs and the only heirs to the property. It appears that mutation into Dilla's name duly followed on this application. Again in 1880 Dilla made an absolute gift for religious purposes of a part of the property. Their Lordships think that it is impossible in the face of these open assertions of full title, to draw the inference that Dilla claimed no more than such a possession as would yield her maintenance during her life; nor does it appear to them that certain admissions suggested as having been made by the defendants in the various proceedings referred to by the learned Judge who tried the case are such as to preclude them from setting up the real nature of Dilla's possession. Further, they do not think that anything decided in the previous suits referred to by the Subordinate Judge, to which neither the respondents nor any person through whom they claim were parties, precludes the appellant from now setting up in the present suit that Dilla's possession was adverse as against the respondents.

If the true inference be that the lady was in possession and asserting a title to full ownership of her share, at all events from the death of Basant in 1859 down to her own death in 1895, it is clear that the title of the plaintiffs was barred by limitation. This makes it unnecessary to consider the other questions raised in the suit. There is a concurrent finding as to the age of the first plaintiff, Raj Kishore, according to which he was born before a deed of gift, dated the 8th September, 1866,

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by which Hanuman Prasad and Debi Sahai purported to transfer the whole estate to Jadunath. This finding, which is binding on their Lordships, disposes of a defence which might otherwise have been open to the defendants, for it shows that the deed of gift, which was of ancestral property, was wholly void. The plaintiffs were therefore neither hampered by this deed nor affected by admissions based on it.

But for the reasons given earlier their Lordships are of opinion that they must humbly advise His Majesty that this appeal should be allowed, and that a decree should be made in favour of the appellant dismissing the suit. The first and second respondents, who were plaintiffs in the suit, will pay the costs here and in the courts below.

*Appeal allowed.*

J. V. W.

Solicitor for the appellant: *Douglas Grant.*

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

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RAJ RAGHUBAR SINGH AND ANOTHER (DEFENDANTS) v. JAI INDRA BAHADUR SINGH (PLAINTIFF).

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

*Execution of decree—Decree for possession of land—Appeal from decree—Security bond—Liability of sureties, duration of—No obligee named in bond—Application for enforcement of bond—Sureties made parties—Civil Procedure Code* (1882), *sections* 545, 546—*Civil Procedure Code*, (1908), *sections* 47, 144.

The widow of the taluqdar of Mahewa brought a suit in a Subordinate Judge's court and on 6th August, 1902, obtained a decree for possession of it, and on her applying for execution of the decree the Subordinate Judge made, on the 21st August, 1902, an order under section 545 of the Code of Civil Procedure 1882, giving her possession on her providing security to restore the mesne profits to the extent of one lakh of rupees in case his decree should be reversed by the Court of the Judicial Commissioner to which the defendant had appealed. The security was in the form of a hypothecation bond executed by the predecessors in title of the present appellants, secured on certain villages of their estate. The bond recited the order and stated it was given "so that any order that might be passed by the Appellate Court be made binding on the sureties for the above sum." No obligee was named in the bond. The defendant failed in his appeal to the Judicial Commissioner, but on his father's death an appeal to

*Present:*—Lord ATKINSON, Lord PHILLIMORE, Sir JOHN EDGE, and Mr. AMEER ALI.