

income was to be applied to the expenses of the temple, the entire income being only Rs. 800 per annum. It is manifest that the decision has no application to a case like the present, the circumstances of which have just been described.

Their Lordships will humbly advise His Majesty that the appeal should be disallowed with costs. *Appeal dismissed.*

Solicitor for appellants:—*E. Dalgado.*

Solicitor for surviving respondent:—*Douglas Grant.*

GHULAM ABBAS KHAN AND ANOTHER (PLAINTIFFS) v. AMAT-UL-FATIMA AND OTHERS (DEFENDANTS); AND MUHAMMAD JAFAR AND ANOTHER (PLAINTIFFS) v. BIBI AMAT-UL-FATIMA AND OTHERS (DEFENDANTS).  
[Consolidated appeals.]

\*P.C.  
1921  
March, 1.

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

*Oudh taluqdari estate—Primogeniture sanad—Construction—“Successors.”*

A *sanad* granted in 1862 to a Muhammadan lady conferred a taluqdari estate in Oudh upon her and her heirs for ever subject to the payment of revenue; it provided “in the event of your dying intestate or any of your successors dying intestate, the estate shall descend to the nearest male heir according to the rule of primogeniture, but you and all your successors shall have full power to alienate the estate.” The *sanad* further made it a condition that the grantee should promote the agricultural prosperity of the estate and maintain all subordinate rights, and concluded, “as long as the above obligations are observed by you and your heirs in good faith, so long will the British Government maintain you and your heirs as proprietors.”

*Held* that the word “successors” in the *sanad* meant those designated parties who would succeed under the *sanad* upon an intestacy, and that the estate having passed by devise out of the line of succession designated its further devolution was according to Muhammadan law.

Decision of the Court of the Judicial Commissioner affirmed.

CONSOLIDATED APPEALS (Nos. 200 and 201 of 1919) from a judgment and two decrees (July 5, 1915,) of the Court of the Judicial Commissioner of Oudh affirming a judgment and two decrees of the Subordinate Judge of Mohanlalganj, Lucknow.

The litigation related to the succession to an estate in Oudh, called Maniarpur. The estate originally belonged to Bachgoti Khanzadas, who were Rajput converts to Muhammadanism and had adopted the Shia faith. The holder at the time of the annexation of Oudh was Bibi Sughra, with whom a settlement was made. She was granted in 1862 a primogeniture sanad the

\*Present:—Lord BUCKMASTER, Lord SHAW and Sir JOHN EDGE.

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terms of which are stated in the judgment of the Judicial Committee. Bibi Sughra died on the 11th of November, 1865, without leaving either a husband or any issue. By her will she devised the whole estate to her youngest half-brother Akbar Ali Khan, who succeeded thereunder. In 1869 Akbar Ali Khan transferred part of his estate to his wife Ilahi Khanam for dower, and he afterwards devised the residue of it to her. Ilahi Khanam having succeeded her husband died intestate in 1899, leaving six daughters who obtained possession of the estate.

Sughra's name had been entered in list 1 made under the Oudh Estates Act (I of 1869) as a taluqdar, and in list 2 as one whose estate by the custom of the family ordinarily devolved upon a single heir.

The two suits giving rise to the present appeals were brought against the daughters of Ilahi Khanam for possession and mesne profits. The plaintiff in the one case (Appeal No. 200) was Ghulam Abbas, the eldest son of the second daughter, and in the other case (Appeal No. 201) Muhammed Jafar, the eldest son of the eldest daughter. Ghulam Abbas was the eldest born of the grandsons of Ilahi Khanam. The plaintiffs both contended that the succession was not governed by Shia law, but that under the *sanad* the estate devolved by primogeniture upon the nearest male heir. The defendants by their written statements relied upon their title under Shia law, and upon the provisions of section 22 of the Oudh Estates Act, 1869.

The Subordinate Judge held that the succession was not regulated by section 22 or by primogeniture according to the *sanad*. In his opinion the words "your successors" in the *sanad* included only those who took by inheritance under the *sanad*, and not those who took by gift, sale or devise. He accordingly dismissed both suits.

Upon appeals to the Court of the Judicial Commissioner, both appeals being heard together, the decrees of the Subordinate Judge were affirmed. The First Additional Judicial Commissioner was of opinion that the succession was governed by the *sanad* but that the words therein "next male heir according to the rule of primogeniture" included those male persons only who claimed through males. He consequently held that the

plaintiffs failed, adding that it was not necessary in the suits to decide who, apart from the plaintiffs, was entitled to succeed, or whether there had been an escheat to the Crown. The Second Additional Judicial Commissioner agreed with the view of the Subordinate Judge. He observed as follows: "It is obvious that the rule of primogeniture was never intended to be applied at the time when the *sanads* were granted, to persons to whom the estate might be alienated in whole or in part by sale, mortgage, gift or bequest, and the provision that it should be applied to persons of that class, if they answered a certain description, was not introduced until Act I of 1869 came into force. The Act does not, however, apply in this case to the estate held by Akbar Ali Khan or his widow, Bibi Ilahi Khanam, in whose favour alienations had been effected in pursuance of the power derived from the *sanad*. The rule of descent laid down in the *sanad* also does not apply, because the intestate succession referred to in that rule implies succession to the intestate or undisposed of residue, and the word "successors" contemplates persons who had succeeded on death to the intestate or undisposed of remainder. In the hands of Akbar Ali Khan and Bibi Ilahi Khanam the estate was therefore governed by the Muhammadan Law, and the plaintiffs, as the sons of the daughters of Bibi Ilahi Khanam, are not entitled to the estate in preference to the daughters."

On this appeal:

*De Gruyther, K. C.*, and *E. B. Raikes* for the appellants in appeal No. 200, Ghulam Abbas Khan and another:—Both Courts in India rightly held that the succession was not governed by section 22 of Act I of 1869, since Ilahi Khanam was not a taluqdar, nor was heir or legatee of a taluqdar; *Balraj Kunwar v. Rai Jagatpal Singh* (1). After the devise of the estate the succession continued to be governed by the *sanad*; *Sheo Singh v. Raghubans Kunwar* (2). Ilahi Khanam was a "successor" within the meaning of the *sanad*, consequently upon her death the estate devolved, not upon her daughters but upon the nearest male heir. "Successor" in the *sanad* includes

(1) (1504) I. L. R., 26 All., 393; L. R. (2) (1505) I. L. R., 27 All., 684; L. R.,

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those who took by inheritance or devise, at any rate where the devise is to a person who might have taken upon an intestacy, and bound by the condition as to loyalty.

As to "successor" reference was made also to *Sundar Singh v. Collector of Shahjahanpur* (1). Under the *sanad* Ghulam Abbas was entitled "as nearest male heir" in preference to Muhammad Jafar. Muhammadan law does not recognize the principle of representation in dealing with succession; Wilson's Anglo-Muhammadan Law, page 7. Consequently as between the daughters' sons the eldest son takes, not the son of the elder daughter. As the daughters themselves do not take under the *sanad* they are to be treated as not existing; *Muhammad Kamil v. Imtiaz Fatima* (2). The Courts below construed the words "nearest male heir," as if they formed part of an English devise; there is no Muhammadan law dealing with succession to an impartible estate, or recognition of lineal primogeniture.

Sir *Erle Richards, K. C.*, and *Parikh* for the appellants in Appeal No. 201, Muhammad Jafar and another adopted the above argument as to the respondents being included under the *sanad*.

[Their Lordships desired that that question should be disposed of before the arguments upon the other questions raised were further heard.]

*Olauson, K. C.*, and *Kenworthy Brown* for the respondents other than the mothers of Ghulam Abbas and Muhammad Jafar:— The title of the respondents was well founded according to Shia Law. The word "successors" in the *sanad* includes only those who succeed upon an intestacy, that is, those who take by mere force of the existence of the estate. Having regard to the conditions of the *sanad* it is unlikely that the intention was that the line of succession was to continue under it after a transfer or a devise. The power under the *sanad* to alienate the estate is not inconsistent with the argument. If the effect is that persons who take by alienation must be included as "successors," then the power to alienate must be considered limited to the line or

(1) (1911) I. L. R., 38 All., 558.

(2) (1908) I. L. R., 81 All., 557; L. R., 26 I.A., 210.

possible line of succession. The bequest to Akbar Ali Khan was well within the line of successory heirs.

*De Gruyther, K. C.*, replied.

1921, March 1.—The judgment of their Lordships was delivered by Lord BUCKMASTER:—

These are two consolidated appeals (Nos. 200 and 201 of 1919), arising out of two suits, brought by different plaintiffs for the purpose of determining the rights of succession to a property known as the Maniapur Taluqa.

Several subordinate questions arise upon these appeals, but they are dependent upon the success of the appellants in their contention that, according to the true construction of a *sanad* granted in 1861 to a lady called Sughra Bibi, the rules relating to primogeniture which that *sanad* established apply to all persons who come into possession of the estate, whether by gift, devise, purchase or descent.

The facts which give rise to this dispute can be shortly stated. Sughra Bibi died on the 11th of November, 1865, having by will given the whole taluqdari estate to one Akbar Ali Khan, who was the youngest of her four half-brothers. Akbar Ali Khan had no male issue, and partly by a deed of gift and partly by bequest he disposed of the whole of the property in favour of his wife Ilahi Khanam. She died on the 20th of April, 1899, leaving six daughters, who are six respondents, and a number of grandsons by such daughters, of whom Agha Muhammad Jafar, the appellant in appeal 201 of 1919, is the son of the eldest daughter; Babu Ghulam Abbas Khan, the appellant in the other appeal, being the eldest of the grandsons by a younger daughter. If, according to the true construction of the document the successors on whom the right of primogeniture is imposed do not include those who being outside the line of descent succeeded by the operation of a devise, the appellants fail; this has been the decision of one of the Judicial Commissioners and of the Subordinate Judge, the other Judicial Commissioner deciding for other reasons that the appellants were not entitled.

The relevant terms of the document are as follows:—

“Know all men that whereas by the Proclamation of March, 1858, by His Excellency the Right Hon'ble the Viceroy and Governor General of India,

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all proprietary rights in the soil of Oudh, with a few special exceptions, were confiscated and passed to the British Government which became free to dispose of them as it pleased, I, George Udney Yule, Officiating Chief Commissioner of Oudh, under the authority of His Excellency the Governor General of India in Council, do hereby confer on you the full proprietary right, title and possession of the estate of Maniarpur . . . Therefore this sanad is given you in order that it may be known to all whom it may concern that the above estate has been conferred upon you and your heirs for ever, subject to the payment of such annual revenue as may from time to time be imposed, and to the conditions . . . It is another condition of this grant that in the event of your dying intestate or of any of your successors dying intestate, the estate shall descend to the nearest male heir according to the rule of primogeniture, but you and all your successors shall have full power to alienate the estate, either in whole or in part, by sale, mortgage, gift, bequest, or adoption to whomsoever you please. It is also a condition of this grant that you will, so far as is in your power, promote the agricultural prosperity of your estate, and that all holding under you shall be secured in the possession of all the subordinate rights they formerly enjoyed. As long as the above obligations are observed by you and your heirs in good faith, so long will the British Government maintain you and your heirs as proprietors of the above-mentioned estate, in confirmation of which I herewith attach my seal and signature."

From this it will be seen that the estate was granted in a form intended to secure the succession of the nearest male heir according to the rule of primogeniture, but that at the same time free power of disposition was reserved to all who became possessed of the estate. The construction of the document is rendered difficult by the use of words that have, according to English law, a well-known meaning and implication which in the circumstances of the grant it would not be right to apply without qualification to the document in question. The circumstances in which the grant was made are relevant considerations, and they are fully set out in Sykes' Compendium of Oudh Taluqdari Law, referred to in the judgments of the Subordinate Judge. From this it is apparent that it was the object of the Government to associate possession of the taluqdari estate in its entirety in the hands of the taluqdars, with the honour and dignity of the family whose title should be transmitted to the nearest male heir. It was something remotely akin to an estate in tail male according to English law, but the kinship was not close because a power of alienation, unknown to an English estate tail, unless the entail is destroyed, was an essential part of the document. The

conditions imposed as to loyalty and obedience to the British Government were obviously intended to have reference to those who took under the grant, and this is a relevant consideration in determining what the true meaning of the word "successors" may be, for if it bore the meaning which it is obviously capable of supporting, of any form of succession, it would follow that whoever bought the estate under any circumstances would be subject to the same restrictions. If, however, the estate were at any time alienated into the hands of people living in a totally different district and under totally different conditions, the reason for these provisions would at once disappear. Again, "successors," without some limitation, would include all those who succeeded to any part of the estate, and as the power of disposition clearly and in express language contemplates the power of breaking the estate up by the act of any holder for the time being, such an event might easily arise and the object of securing an undivided holding in a family whose loyalty was rewarded by security of possession would be defeated. It would, therefore, be unreasonable to assume that the estate if sold should be subject in the hands of any purchaser to the conditions which as to descent and loyalty had their origin in circumstances which would no longer apply.

Their Lordships, therefore, reject the view that the word "successors" can in this *sanad* be subject to the liberal construction for which the appellants contend. But if this view be rejected, the document does not permit any other interpretation of the word except that of succession according to the terms of the *sanad* itself. The estate is in the first instance given to *Sughra Bibi* and her heirs for ever. The heirs there cannot mean any person outside the line of defined succession, for to such people no such grant was made nor, so far as the grant is concerned, were they contemplated in any way as succeeding. That phrase, therefore, must be taken to mean that the estate was an absolute estate conferred upon the grantee, and it is upon her and her nearest male heir and his nearest male heir and so on in unending succession that the conditions are imposed. The last words of the *sanad* make this clear:—"As long as the obligations are observed by you and your heirs in good faith, so

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long will the British Government maintain you and your heirs as proprietors of the above-mentioned estate." That must mean "maintain" the heirs who succeed according to the terms of the grant because no other heirs as heirs can take the estate. "Successors," therefore, is in their Lordships' opinion an inartistic phrase used for the purpose of expressing that, in the event of there being no alienation, those who succeed to the estate by virtue of the grant will succeed subject to the conditions and with the same provision as to succession as the person to whom the grant was originally made.

It is argued that this might enable the whole purpose of the grant to be defeated by any owner for the time being by gift, sale or devise to the person who on his death would be the nearest male heir. This argument is open to the objection that until the moment of death occurs it is impossible to say who the nearest male heir will be, so that the selection of the person might be almost impossible. But apart from that, their Lordships think that due effect can be given to the words of the *sanad* by construing it as meaning that "successors" includes the designated parties who would succeed in the event of intestacy, and that those designated parties cannot escape the obligations of the grant by having acquired the property through other means than succession.

Their Lordships are, therefore, unable to agree with the appellants' contention on the first point which this appeal raises, and in these circumstances the other questions do not arise for determination. They will, therefore, humbly advise His Majesty that these appeals should be dismissed. The 3rd, 4th, 5th and 6th respondents will have one set of costs only. There will be no other order as to costs.

*Appeal dismissed.*

Solicitor for appellants (*Appeal No. 200*):—*E. Dalgado.*

Solicitors for appellants (*Appeal No. 201*):—*T. L. Wilson & Co.*

Solicitors for respondents:—*Watkins and Hunter,*