Before Mr. Justice Rachhpal Singh and Mr. Justice Collister

1936
September, 15

HARGOVIND SINGH (PLAINTIFF) *v.* COLLECTOR OF ETAH AND ANOTHER (DEFENDANTS)*

Hindu law—Succession—Impartible raj—Joint ancestral estate—Incorporation of new property with parent estate—Intention—Re-grant of estate after loss of possession—Sale for arrears of revenue—Purchased by Government—Restoration by Government to former owner—Whether estate thereupon became self-acquired property—Incidents of estate not affected by such restoration.

Where the impartible estate, descendible to a single person, is joint ancestral property of a family governed by the Mitakshara, the successor to the estate falls to be designated according to the rule of survivorship, the estate passing to the eldest member of the senior branch of the family.

It is open to the holder of an impartible *raj*, by a declaration of his intention, to incorporate in the parent estate immovable property acquired by him out of the income of the parent estate. The question is one of fact and will depend upon the finding of the court as regards the intention of such holder. The mere fact of a joint account and joint employees being kept for the two estates would not be sufficient, by itself, to establish an intention to incorporate the self-acquired property with the parent estate.

The property in suit was a joint ancestral estate which was an ancient impartible *raj* descendible to a single heir. In 1815, while Raja Dat Singh was the holder of the estate, it was sold for arrears of Government revenue, and in default of other bidders Government itself purchased it. In 1818 the Government, being of opinion that the Raja had not been much to blame for the arrears, relinquished its proprietary rights and restored the estate to him; there was no formal re-grant or *sanad* but merely a relinquishment of rights. Furthermore, the Government refunded to Raja Dat Singh and his successor the surplus of the revenue which had been collected during the intervening three years:

Held that, in these circumstances, the estate reverted in 1818 to its original status as a joint ancestral, though impartible, estate and became re-impressed with all the incidents of such an estate, and did not become the self-acquired and separate estate of Raja Dat Singh.

*First Appeal No. 146 of 1932, from a decree of J. N. Dikshit, Additional Civil Judge of Etah, dated the 30th of November, 1931.

Drs. *K. N. Katju* and *N. C. Vaish*, for the appellant.

Messrs. *Muhammad Ismail* (Government Advocate), *S. K. Dar* and *Baleshwari Prasad*, for the respondents.

RACHHPAL SINGH and COLLISTER, JJ.:—This appeal arises out of a suit for possession of 52 villages known as the Rajaur *raj*. Ten of these villages have been acquired in recent times, but the parent estate is admittedly very ancient.

[Portions of the judgment which are not material for the purpose of this report have been omitted.]

There is a pedigree at page 132 of our paper book, and there is no dispute in this Court as regards its accuracy. It will be seen that one of the holders of the estate was Raja Umrao Singh, who had four sons, Dat Singh, Tej Singh, Mohan Singh and Shib Singh. Dat Singh admittedly succeeded to the *gaddi* on the death of his father and became the Raja. Raja Dat Singh entered into an engagement under Regulation No. XXV of 1803 for payment of revenue at the rate of Rs.9,160 per annum. In 1815 Raja Dat Singh defaulted in a sum of Rs.5,000 and the estate was sold. Apparently there were no bidders and so Government bought the estate itself; but in 1818, for reasons which we will deal with later on, Government restored the estate to Raja Dat Singh. There was a surplus of revenue for the intervening years which amounted to Rs.3,764-2-1, and it was directed that this should be handed over to Raja Dat Singh. Rupees 2,120-0-9 were made over to him, but he died before the balance of Rs.1,644-1-4 could be paid. This amount was accordingly paid to his successor, Raja Daulat Singh.

* * * * *

Raja Sanwal Singh died on the 7th of September, 1918, leaving two widows, Rani Bhagwan Kunwar and Rani Gulab Kunwar. The latter is defendant No. 2. After the death of her husband Rani Bhagwan Kunwar applied for mutation of her name in respect to the Raja's estate. Her application was contested by defendant No. 2 and there were also two other rival applicants for mutation,

1936

HARGOVIND SINGH v. COLLECTOR OF ETAH

Har Chand Singh and Bikram Singh. Har Chand Singh is a brother of the plaintiff and the latter supported his case; and Bikram Singh is a great-grandson of Tej Singh. The revenue court allowed the application of Rani Bhagwan Kunwar and mutation was accordingly effected in her favour. She remained in possession until 1922, but she was then declared unfit to manage the estate and it was taken over by the Court of Wards. The Court of Wards is defendant No. 1 in the suit out of which this appeal arises. There has been litigation between defendant No. 2 and defendant No. 1, the former claiming a right to joint possession; but we are not concerned with that litigation for the purpose of this appeal.

The plaintiff in the suit is Har Govind Singh, a descendant of Tej Singh, who was the brother of Raja Dat Singh. His case was that the forty-two villages specified in schedule *A* have always formed part of an ancestral and impartible *raj* and that by virtue of an immemorial custom he as the senior member of the next senior branch of the family, as set out in the pedigree, is entitled to succeed to the estate of Raja Sanwal Singh. In other words, he bases his claim on the right of lineal primogeniture. As regards the ten villages set out in schedule *B*, he pleads that these were purchased out of the income of the impartible ancestral zamindari and were incorporated into the *raj*. Finally he contended that by virtue of a custom prevailing in the family widows are excluded from inheritance. He accordingly prayed for possession of the whole estate, with *pendente lite* and future mesne profits up to the date of possession.

Defendant No. 1's defence was, *inter alia*, as follows: The estate is certainly impartible and descendible to a single heir, but there is no custom of lineal primogeniture. The plaintiff and his ancestors were separate from Raja Sanwal Singh and his ancestors, and the plaintiff has no right to succeed. Raja Daulat Singh succeeded to the estate as the adopted son of Raja Dat Singh and not as his nephew, and Raja Khushal Singh

succeeded as the adopted son of Raja Diragpal Singh. The ten villages acquired by Raja Sanwal Singh were not incorporated into the parent estate. There is no custom whereby widows are excluded from succession. Under a testamentary disposition in a deed of authority to adopt, executed by Raja Sanwal Singh on the 3rd of November, 1909, defendant No. 1 is the owner of the estate until such time as she may adopt a son in pursuance of the authority granted to her under the aforesaid document.

Some of these pleas were adopted by defendant No. 2 but she also put forward certain contentions which are in conflict with the defence of defendant No. 1. She not only denied that the estate was descendible by lineal primogeniture, but she also denied its impartibility; she claims that it is ordinary partible zamindari. She goes on to plead that even if it was originally an impartible estate, it ceased to be such when the Government re-granted it to Raja Dat Singh in 1818 after having put it to sale and purchased it in 1815. She further alleges that Raja Khushal Singh succeeded to the *raj* not as the adopted son of Raja Diragpal Singh but by virtue of a will. By reason of this will the estate, assuming that it had hitherto been joint family property, became the self-acquired estate of Raja Khushal Singh. She also pleads that the conduct of the plaintiff was tantamount to a renunciation. Among other pleas of defendant No. 1 with which she associates herself, she relies upon the "will" of Raja Sanwal Singh, dated the 3rd of November, 1909.

The principal findings of the learned Judge of the court below are as under:

(*a*) The 42 villages in schedule *A*, i.e., the parent estate, are an impartible *raj*. The 10 villages in schedule *B* have not accrued to the parent estate and are, therefore, partible.

(*b*) The plaintiff is the senior member of the next senior branch of the joint family of which Raja Sanwal Singh was a member.

1936

HARGOVIND SINGH v. COLLECTOR OF ETAH

(*c*) The plaintiff did not renounce his claim; he remained joint in status with Raja Sanwal Singh.

(*d*) Though the *raj* is an impartible estate, it became the self-acquired property of Raja Dat Singh in 1818.

(*e*) Khushal Singh was adopted by Raja Diragpal Singh, but succeeded to the estate under a will, and therefore, even if the estate were joint up to then, it became the self-acquired property of Raja Khushal Singh.

(*f*) By reason of the testamentary disposition in the deed of authority to adopt, dated the 3rd of November, 1909, the widow was entitled to succeed to Raja Sanwal Singh.

(*g*) There is no custom excluding females.

(*h*) No custom in the family has been proved whereby the senior member of the senior branch is entitled to succeed to the exclusion of other heirs. The learned Judge goes on to find, however, that in fact the plaintiff, as the senior member of the next senior branch of the family, would have been entitled to succeed by survivorship to the villages specified in schedule *A* if it were a joint ancestral estate of the descendants of Raja Umrao Singh; but in view of the finding that it was a separately acquired estate in the hands of Raja Sanwal Singh and his predecessors and also in view of Raja Sanwal Singh's testamentary disposition in favour of his widow, the plaintiff's suit must fail.

The learned Judge accordingly dismissed the suit with costs. The plaintiff has appealed to this Court.

It is common ground before us that the Rajaur *raj* is very ancient and that it is an impartible estate and descendible to a single heir. We will now proceed to deal with the pleas which have been urged before us by learned counsel for the plaintiff appellant.

The first point which we will consider is whether the ten villages which were acquired by Raja Sanwal Singh out of the income of the parent estate were incorporated in the impartible *raj* and so became subject to all its

incidents. In the case of *Shiba Prasad Singh* v. *Prayag Kumari Debee* (1) their Lordships of the Privy Council held that unless the power is excluded by statute or custom, the holder of a customary impartible estate can, by a declaration of his intention, incorporate with the estate self-acquired immovable property, and thereupon the property so acquired accretes to the estate and is impressed with all its incidents, including a custom of descent by primogeniture. It is thus clear that it is open to the holder of an impartible *raj* to incorporate self-acquired immovable property in the parent estate; and this proposition has not been disputed by learned counsel for the defendants respondents. The question is one of fact and will depend upon the finding of the court as regards the intention of the person who held the *raj* and acquired the additional property. In this case there was no express intention on the part of Raja Sanwal Singh; but learned counsel for the plaintiff appellant contends that there was an implied intention to incorporate the acquired property. He founds this plea upon the fact that in 1909, when the question of succession to the *raj* after Raja Sanwal Singh's death was in issue between the Raja and his brother, no distinction was made in any of the three documents, which were then drawn up, between the parent and the acquired estate, the two being apparently treated as an indivisible whole. We are not impressed with this argument, for there was no occasion at that time for the Raja to give any indication of his intention one way or the other as regards the acquired property, and therefore the absence of any indication of intention to treat the acquired property as separate can lead to no inference of an intention on his part to incorporate it in the *raj*. Learned counsel for the plaintiff appellant admits that the mere fact of a joint account and joint employees being kept for the two estates is not sufficient to establish any intention to incorporate the self-acquired property with the parent estate. We have no hesitation in agree-

(1) (1932) I.L.R., 59 Cal., 1399.

1936

HARGOVIND SINGH *v.* COLLECTOR OF ETAH

ing with the view of the court below on this point and we find that the 10 villages acquired by Raja Sanwal Singh are a separate and self-acquired property.

The next point to consider in this appeal is whether, assuming for the moment that this impartible *raj* is a joint ancestral estate, succession will go by lineal primogeniture. At page 614 of Mulla's Principles of Hindu Law, 8th edition, paragraph 591(1), the learned author states the law as follows: "Where the impartible estate is ancestral, the successor to the estate in a joint family governed by the Mitakshara is designated by survivorship. The estate passes by survivorship from one line to another according to primogeniture, and devolves, not on the member nearest in blood, but on the eldest member of the senior branch."

The above observation is based on various authorities, including the case of *Baijnath Prasad Singh* v. *Tej Bali Singh* (1) and the affirming judgment of the Privy Council in the same case. In this case the plaintiff claimed a right to succeed to an impartible *raj* by survivorship on the ground of lineal primogeniture and it was held that if the estate was joint and there had been no separation up to the time of the last holder succession would go to the senior coparcener of the senior line. This view was affirmed by their Lordships of the Privy Council in *Baijnath Prasad Singh* v. *Tej Bali Singh* (2): at page 245 we find the following observation: "Their Lordships are therefore of opinion that, this zamindari being the ancestral property of the joint family, though impartible, the successor falls to be designated according to the ordinary rule of the Mitakshara law, and that the respondent, being the person who in a joint family would, being the eldest of the senior branch, be the head of the family, is the person designated in this impartible *raj* to occupy the *gaddi*." This authority appears to us to be conclusive. We accordingly find in favour of the plaintiff appellant on this point.

(1) (1916) I.L.R., 38 All., 590. (2) (1921) I.L.R., 43 All., 228.

The next contention which has been put forward by learned counsel for the plaintiff appellant is that the court below has erred in finding that the original *raj*, which was a joint ancestral estate, became the self-acquired property of Raja Dat Singh in 1818.

We have already shown that in 1815 the Government put the estate to sale for arrears of revenue amounting to Rs.5,000 and itself purchased it for want of other bidders. On the 6th of November, 1818, the Board of Commissioners wrote to the Governor-General in Council recommending that the estate be restored to Raja Dat Singh. The letter reads as follows:

"We do ourselves the honour to lay before your Lordship the annexed copies of a correspondence with the Collector of Etawah, relative to the *talooka* of Rajore, the property of Raja Dat Singh.

"2. The estate was held at an assessment of Rs.8,592 until the year 1220 when the Raja was induced to accede at the quinquennial settlement to an increased assessment of Rs.9,160, on which a balance accrued to the year 1223 of Rs.5,000, for which the estate was brought to sale and for want of other bidders was purchased on account of Government.

"3. A village settlement was subsequently formed for three years from 1223 to 1225 at a progressive assessment of Rs.9,712, Rs.11,120 and Rs.11,283, and in consequence of its appearing to us from the result of these arrangements, which were understood to exhibit the utmost of the village assets, that the default, considering the very unfavourable circumstances of the year 1223, was not attributable to any mismanagement or misappropriation of the Raja, we were induced to authorise his readmission at the expiration of the village settlement and to direct that in the meantime he should have credit for the surplus receipts on such settlement beyond the fixed assessment.

"4. The actual receipts during the three years have amounted to Rs.31,442-2-1 and the surplus, after crediting Government for a total demand of Rs.27,480 at the annual assessment of Rs.9,160, amounts to Rs.3,764-2-1 for which we take the liberty of soliciting your Lordship's sanction to its being credited to the Raja.

"5. The Raja has been readmitted to engage from the commencement of the present year 1226, at the same assessment

1936

HARGOVIND SINGH v. COLLECTOR OF ETAH

of Rs.9,160 and in consideration of the respectability and antiquity of his family and his own general good character we beg leave to recommend to your Lordship the relinquishment to him of the proprietary right acquired by Government."

This letter is printed at page 383 of the paper book. On the 29th of December, 1818, the recommendation of the Board of Commissioners was accepted. The proprietary rights in the estate were relinquished in favour of Raja Dat Singh and it was directed that he should be given credit for the surplus receipts of revenue for the three past years, amounting to Rs.3,764-2-1. Of this sum, as we have already shown, Rs.2,120-0-9 were refunded to Raja Dat Singh and the balance of Rs.1,644-1-4 were handed over to Raja Daulat Singh, who in the meanwhile had succeeded to the estate. Learned counsel for the plaintiff appellant argues that by this act of relinquishment in 1818 the estate reverted to its *status quo* with all its original incidents as a joint ancestral *raj*. On the other hand, learned counsel for the defendants respondents contends that in 1818 the estate ceased to be a joint ancestral *raj* and became the self-acquired property—though admittedly re-impressed with the character of impartibility—of Raja Dat Singh. It is pointed out that there was an out and out transfer in 1815 and ownership vested in the Government, that no *malikana* or exproprietary allowance was granted to the Raja, that the restoration of the estate was for personal grounds and was an act of grace on the part of Government and it is contended that by this act of restoration Raja Dat Singh became the sole and exclusive owner of the estate as his self-acquired property.

We will first discuss the authorities upon which learned counsel for the defendants respondents relies. The earliest case to which he has referred us is that of *Katama Natchier* v. *Rajah of Shivagunga* (1), which is known as the first *Shivagunga case*. It appears that the estate which was the subject of that litigation was granted in 1730 by the Nawab of the Carnatic in favour of a certain

(1) (1863) 9 Moo. I.A., 543.

person, but on the extinction of his lineal descendants in 1801 it was treated as an escheat by the East India Company, which had then become possessed of the sovereign rights of the Nawab, and it was granted by the Government of Madras to a person named Gowery Vallabha Taver. He had an elder brother named Oya Taver, who died in 1815. He himself died in 1829. He had seven wives, of whom three survived him. By his various wives he had a certain number of daughters, but no son. One of the questions before their Lordships of the Privy Council was whether, even if the late zamindar continued to be joint and undivided in estate with his brother's family, the estate was to be treated as a separate and self-acquired property of Gowery Vallabha Taver and as such was descendible to his widows and daughters and their issue or whether it was to be treated as part of the common family stock, in which case one of the sons of Oya Taver would be entitled to succeed. At page 610 their Lordships observed:

"Every court that has dealt with the question has treated the zamindari as the self-acquired property of Gowery Vallabha Taver. Their Lordships conceive that this is the necessary conclusion from the terms of the grant, and the circumstances in which it was made. The mere fact that the grantee selected by Government was a remote kinsman of the zamindars of the former line does not, their Lordships apprehend, bring this case within the rule cited from Strange's Hindu Law by Sir Hugh Cairns."

It will be observed that the facts of that case were different from those with which we are now dealing. The re-grant was made to a remote kinsman of the original holder and the conclusion at which their Lordships arrived was based on the terms of the grant and the particular circumstances in which it was made.

The next case is that of *Beer Pertab Sahee* v. *Rajender Pertab Sahee* (1). This is known as the *Hunsapore case*. There was an impartible *raj* which had been originally held by one Futteh Sahee. In 1767 he rebelled, and the

(1) (1867) 12 Moo. I.A., 1.

1936

HARGOVIND SINGH v. COLLECTOR OF ETAH

East India Company took over the estate. It retained it until 1790, sometimes letting it to farmers and sometimes making collections through its own officers. In 1790 Lord Cornwallis granted the property to one Chutterdharee Sahee, a representative of a younger branch of the family. Chutterdharee Sahee died in 1858, and a dispute arose as regards succession. The question was whether the estate should descend to the four grandsons of Chutterdharee Sahee in equal shares or should go to the eldest of them. The latter relinquished his claim in favour of his son, the respondent in the appeal, who rested his claim partly on a will and partly on the ground that the *raj* being impartible and descendible by custom according to the rule of primogeniture, he, by reason of his father's abdication in his favour, was entitled to it to the exclusion of the other members of the family. At pages 33-34 their Lordships of the Privy Council observed:

"In this suit, however, both parties claim under Chutterdharee Sahee; and as between them and for the purposes of this suit, it must be taken for granted that he derived his title (whatever may have been the nature of his estate or the incidents to it) by grant from the East India Company, which had full dominion over the estate, and, therefore, the power to grant it.

"One consequence from this conclusion is that the estate must be taken to have been the separate and self-acquired property of Chutterdharee Sahee. The fact that he was the member of the family which had so long held the estate, next in succession to the line of Raja Futteh Sahee, and the son and grandson of persons who had established claims on the gratitude of the Company, may have been a motive determining the selection of him as grantee; but it does not affect the nature of his estate or give to it the character of ancestral property. The legal foundation of his title is still the grant to him from those who had power to make or to withhold it. This point was ruled in the *Shivagunga* case (1)."

It is true that, as in the case which is now before us, there was no *sanad* or formal grant in favour of Chutter-

(1) (1863) 9 Moo. I.A., 543(610).

dharee Sahee; but it seems to us that the facts are nevertheless distinguishable. The East India Company kept the estate for 23 years, appropriating the whole surplus revenue to its own use. Ultimately it re-granted the estate to a person who would have had no claim to it at law, inasmuch as the sons of Futteh Sahee were still living. Chutterdharee Sahee had had no concern with the estate before its grant to him and had no immediate right of succession to Futteh Sahee, and therefore under the grant which was made to him in 1790 the estate became his self-acquired property.

The next case to which we have been referred is that of *Ram Nundun Singh* v. *Janki Koer* (1), which is known as the *Bettia Raj* case. It appears that there had been an old impartible *raj* known as Raj Riyasat Sirkar Champarun. One of the holders of this *raj* was Raja Guj Singh, who died in 1694, leaving three sons, Dalip Singh, Prithvi Singh and Satrajit Singh. Dalip Singh succeeded to the estate on the death of Raja Guj Singh, and after his death the estate passed by successive stages to Raja Jugul Kishore Singh. Raja Jugul Kishore resisted the authority of the East India Company and fled from his estate. In his absence Sri Kishen, a son of Prithvi Singh, was put in possession of the estate, but in 1771 two parganas, which came to be known as the Bettia *raj*, were restored to Raja Jugul Kishore Singh and the other two parganas were left with Sri Kishen and his cousin, Abdhut Singh, son of Satrajit Singh. For certain reasons which we need not discuss Raja Jugul Kishore Singh, Sri Kishen and Abdhut Singh were subsequently dispossessed and the whole estate passed to Government until 1790. In that year the heirs of the aforementioned persons were restored to the respective parganas which had been held by Raja Jugul Kishore Singh on the one hand and Sri Kishen and Abdhut Singh on the other. The heir of Raja Jugul Kishore Singh was Bir Kishore Singh. The last holder of the Bettia

(1) (1902) I.L.R., 29 Cal., 828.

1936

HARGOVIND SINGH v. COLLECTOR OF ETAH

raj was Maharaja Sir Harendra Kishore Singh. On his death disputes arose between his widows and a descendant of Prithvi Singh. At page 851 their Lordships of the Privy Council observe as follows:

"The Government held itself at liberty to divide the *sirkar* into two portions and to grant one portion away from the heir of the former owner of the estate, and it was equally at liberty to grant the whole away from him, though from reasons of policy it preferred to extend its favour to him in a certain measure. It cannot be doubted that the grant of Maihsi and Babra to Sri Kishen and Abdhut was a direct exercise of sovereign authority and proceeded from grace and favour alone, and, if so, it is difficult to avoid the conclusion that the reinstatement of the heir of Raja Jugul Kishore in a portion of his father's former estate also bore that character. Following the judgment of this Board in the Hunsapore case, *Beer Pertab Sahee* v. *Rajender Pertab Sahee* (1), their Lordships think that the present Bettia *raj* must be taken to have been the separate and self-acquired property of Bir Kishore Singh, though with all the incidents of the family tenure of the old estate as an impartible *raj*."

It will be observed that in that case Government held the *raj* for a considerable number of years and then partitioned it into two distinct estates, to be held by the grantees at a revenue separately allotted to each. Thus there was a partition of the original estate effected by Government, the legal consequence of which would be that the descendants of Prithvi Singh and Satrajit Singh on the one hand and the descendant of Raja Jugul Kishore Singh on the other would separately hold their respective estates as self-acquired property under the grant from Government.

The last case to which we have been referred is that of *Sri Rajah Venkata Appa Row* v. *Sri Rajah Rangayya Appa Row* (2). The litigation in that case was concerned with a property known as the Nidadavole estate; but the judgment gives us little information as to the history of that estate except that there was a forfeiture and a regrant. The learned Judges of the Madras High Court

(1) (1867) 12 Moo. I.A., 1. (2) (1905) I.L.R., 29 Mad., 437.

1936

HARGOVIND SINGH v. COLLECTOR OF ETAH

had to decide *inter alia* whether the estate was partible or impartible and whether or not it was descendible to a single heir. At page 442 they observed:

"It has been argued that there was no forfeiture in this case, but only the removal of one member of the family for misconduct and the substitution of another; and in support of this view reliance is placed upon the *Ramnad case*. It is clear, however, from exhibits 214 and 20 that it was a complete forfeiture, and that Government considered itself free to convert the estate into Havelly, that is, ordinary Government lands, and that it was re-granted to the son purely as an act of grace. In the previous litigation the courts (including the Privy Council) have always referred to this transaction as a forfeiture for rebellion, and we see no reason to take any other view of its character. In making the re-grant, however, to his son the Government did not express any intention to interfere with the quality of the estate in regard to its descendibility to heirs. We take it that, in accordance with the principle laid down in the *Hunsapore case* (1), and affirmed in the (second) *Shivagunga* case, *Muttu Vaduganatha Tevar* v. *Dora Singha Tevar* (2), the re-grant would not operate to render it partible if it was previously impartible and descendible to a single heir. It no doubt rendered the estate the self-acquisition of the new grantee, but that would not destroy its character of impartibility if it possessed that character before the forfeiture."

As we have already said the judgment does not disclose very much about the history of that estate. Moreover, we do not know what were exhibits 20 and 214 and what were the terms of the re-grant.

This concludes the authorities on behalf of the defendants respondents.

Learned counsel for the plaintiff appellant relies upon the case of *Martand Rao* v. *Malhar Rao* (3) and upon two other cases to which we have already made reference in another part of this judgment,—*Baijnath Prasad Singh* v. *Tej Bali Singh* (4) and *Baijnath Prasad Singh* v. *Tej Bali Singh* (5).

In the case of *Martand Rao* v. *Malhar Rao* (3) an elder brother instituted a suit against his younger

(1) (1867) 12 Moo. I.A., 1. (2) (1881) I.L.R., 3 Mad., 290.
(3) (1927) I.L.R., 55 Cal., 403. (4) (1916) I.L.R., 38 All., 590.
(5) (1921) I.L.R., 43 All., 228

1936

HARGOVIND SINGH v. COLLECTOR OF ETAH

brother claiming that on the death of their father he alone was entitled to succeed to the family estate on the allegation that by the terms of the grant under which the estate was held and by a family custom and also by a territorial custom the said estate was impartible and succession thereto was governed by the rule of lineal primogeniture and that the younger brother was entitled to suitable maintenance only and not to any specific share in the estate. At page 407 their Lordships laid down certain propositions of law by reference to which the case had to be decided. These propositions are enumerated as (*a*), (*b*) and (*c*). We are concerned with proposition (*c*) only, which runs as follows:

"That if an impartible estate existed as such from before the advent of British rule, any settlement or re-grant thereof by the British Government must, in the absence of evidence to the contrary, and unless inconsistent with the express terms of the new settlement, be presumed to continue the estate with its previous incidents of impartibility and succession by special custom."

The case in *Baijnath Prasad Singh* v. *Tej Bali Singh* (1) was concerned with an estate known as the Aghori-Barhar estate, which was an ancient impartible *raj*. It appears that in 1744 Raja Shambhoo Shah was dispossessed by Raja Balwant Singh. During the insurrection of Chet Singh, Warren Hastings restored the estate to Adil Shah, the grandson of Raja Shambhoo Shah. It was held by this Court that the estate resumed its joint character. Learned counsel for the defendants respondents challenges the applicability of this case on the ground that the original holder was dispossessed by a neighbouring Raja and therefore never lost his legal rights. This criticism is not without some force; but at page 608 RICHARDS, C.J., made the following observation:

"No doubt the Government in making a grant of an estate can determine the nature of the grant, but I do not think, in the absence of specific terms in the grant, surrounding circumstances

(1) (1916) I.L.R., 38 All., 590.

1936

HARGOVIND SINGH v. COLLECTOR OF ETAH

can or ought to be ignored. I will give an example. Suppose Government confiscated what was admittedly joint family property and suppose (in consequence of representations made by a member of the family to the effect that the confiscation had been made by mistake or for insufficient reasons) the Government restored the property by making a fresh grant to the member without any special terms or conditions in the grant. I think that the property so restored would be joint Hindu family property in the hands of the member of the family to whom the grant was made just as it would have been if there had been no confiscation."

That hypothetical case is exactly similar to the case now before us. The view taken by this Court was affirmed by their Lordships of the Privy Council in *Baijnath Prasad Singh* v. *Tej Bali Singh* (1). At page 233 their Lordships remarked:

"The family in question was an ancient family, holding sway as independent Rajas. They were dispossessed by a neighbouring Raja in the eighteenth century, but, having helped the English, they were re-instated by Warren Hastings. Their Lordships are satisfied that the re-instatement, which was finally carried out at a subsequent period, restored the family possessions to what they had always been in ancient times, viz., an impartible *raj* or zamindari, and that the zamindari now is ancestral property and not self-acquired."

As we have already shown, it is common ground before us that the Rajaur *raj* is an impartible estate and is descendible to a single heir. It is also not denied that it was a joint ancestral estate up to 1815. In that year Government put the estate to sale for arrears of revenue and itself purchased it. Three years later, i.e., in 1818, Government began to reconsider the matter, apparently thinking that Raja Dat Singh had perhaps been treated with undue severity. It accordingly relinquished its proprietary rights and restored the estate to Raja Dat Singh. There was no formal re-grant or *sanad;* merely a relinquishment of rights. Furthermore, Government refunded to Raja Dat Singh and his successor

(1) (1921) I.L.R., 43 All., 228.

1936

HARGOVIND SINGH v. COLLECTOR OF ETAH

the surplus of the revenue which had been collected during the intervening three years. It seems to us that the intention of Government was to undo, so to speak, the act of confiscation and treat it as a nullity; to treat it, in fact, as though it had never occurred. In the circumstances above mentioned and after giving full consideration to the various authorities which have been cited before us by learned counsel on both sides, we disagree with the finding of the court below and we hold that the Rajaur *raj* reverted in 1818 to its original status as a joint ancestral estate and became re-impressed with all the incidents of such an estate.

* * * * *

In view of our finding that Raja Sanwal Singh devised the estate to his widow, the plaintiff's suit must fail. This appeal is accordingly dismissed with costs.

REVISIONAL CRIMINAL

Before Mr. Justice Niamat-ullah and Mr. Justice Ganga Nath

1936 *September* 16

EMPEROR *v.* BISHWANATH*

Criminal Procedure Code, section 423(2), 439(6)—Enhancement of sentence—Right of accused to show cause against the conviction—Extent of such right in cases of trial by jury—Questions of misdirection, or misunderstanding of law, only.

When an accused person, who has been convicted on the verdict of a jury, is called upon, under section 439 of the Criminal Procedure Code, to show cause why his sentence should not be enhanced, he is entitled by sub-section (6) to show cause against his conviction itself, but only so far as section 423(2) of the Code allows, and has not an unlimited right of impugning the conviction on the evidence. The combined effect of sections 439(6) and 423(2) is to entitle the accused to question the conviction by showing only that the Judge misdirected the jury or that the jury misunderstood the law laid down by the Judge in his charge.

*Criminal Revision No. 490 of 1936, by the Local Government, from an order of T. N. Mulla, Sessions Judge of Allahabad, dated the 21st of March, 1936.