

1881

HANIZ-UN-  
NISSA  
v.  
MAHADEO  
PRASAD.

treated by the Collector under the Notification. The second rule proceeds to provide that "when a Civil Court *has ordered* any immoveable property of an ancestral character to be sold," it shall transmit to the Collector certain documents, &c., &c. From these two rules it seem to me that the question of the operation or operativeness of the Notification No. 671 of 1880 comes for the first time before a Civil Court executing a decree when it has passed an order for selling immoveable estate. The Notification would therefore be properly applied to all cases of execution of decrees by such Courts wherein the order for sale comes into existence on or after the 1st October, 1880. But when orders for sale had been passed prior to that date, it seems to me that rules and procedure which are to be applied *pari passu* with and in immediate sequence to such orders for sale, but which had not come into existence, or rather were not operative, till a date subsequent to the date of the order for sale, could not rightly be applied retrospectively to such orders.

---

### PRIVY COUNCIL.

---

P. C.  
1881  
June 16 & 17.

UJAGAR SINGH (PLAINTIFF) v. PITAM SINGH AND OTHERS (DEFENDANTS).

[On appeal from the High Court of the North-Western Provinces at Allahabad.]

*Mitakshara law—Inheritance of share in village—Interest of son acquired on birth.*

A mauza, of which the proprietary right formerly belonged to one zamindar, the ancestor of the plaintiff, was sold, whilst in the possession of the generation succeeding him, for arrears of revenue, and became the property of the Government by purchase. The Government, before the birth of the plaintiff, restored it in four equal shares to the family of the old proprietors, then consisting of four members, one being the plaintiff's father, who thus obtained possession of a five biswas share. *Held* that, whatever interest the plaintiff, as son, might have under the Mitakshara law, in ancestral property, it could not be said that, at the time of his birth, there was any proportionate share in the mauza in which he could, by birth, acquire an interest, except this five biswas share.

In this suit the plaintiff sought to have set aside, so far as it affected him, a decree, to which his father had consented, declaring his father's right to a five biswas share only. *Held* that, even supposing that the father (who was living) might have some right in him to procure an alteration of the grant, such a right was not one in which a son would by his birth acquire an interest.

---

\* Present: SIR B. PEACOCK, SIR R. P. COLLIER, SIR R. COUCH, and SIR A. HOBHOUSE.

APPEAL from a decree of the High Court of the North-Western Provinces (30th April, 1878), reversing a decree of the Subordinate Judge of Mainpuri (29th September, 1877).

1881

UJAGAR  
SINGH  
v.  
RITAM SINGH.

The question raised by this appeal related to the proportionate shares to which the parties were entitled in mauza Takha, pargana Bharthana, a village in the Etáwah district. The plaintiff-appellant alleged that the shares in the village, being ancestral and ascertainable by hereditary right, had been, during his minority, adjusted in such a way as to prevent his sharing to the full extent to which he was entitled. This had been done by his father, who was living, and the other heirs of the original zamindar, to whom, three generations back, mauza Takha had belonged. The father had, it was admitted, accepted a five biswas, or one quarter, share in the village, under a decree, made in a suit for the rectification of his share; to which decree he had consented in March, 1867. This it was alleged was the result of misrepresentation made to the father; and in so far as it diminished the son's share by hereditary right, the latter claimed to dispute it.

The defence was that the existing shares were correct, according to the revenue records relating to mauza Takha; the allotment having proceeded upon a grant by the Government, in the year 1853, made in the shares agreed to by the plaintiff's father and the other co-proprietors of the village. The Court of first instance, holding that "in no case had the father power to deprive his son of his right in hereditary property," decreed in favor of the plaintiff. This decree was reversed by a Divisional Bench of the High Court (PEARSON and TURNER, JJ.) in the following judgment (1):

"The common ancestor to the parties to this suit was Anand Singh, who had five sons—Chatar Singh, who died without issue; Darjan Singh, who died in 1823, leaving a son, Chakarpan; Sundar Singh, who died in 1826, leaving a widow, Gulab Kuar; Desraj, who died in 1852, leaving a son, Gandharap Singh; and Chatarpat, who died in 1829, leaving a widow, Sahib Kuar. Chakarpan had three sons, who are the appellants; and Gandharap

(1) The judgment is reported at p. 651, 1 All., I. L. R.

1881

UJAGAR  
SINGH  
v.  
PITAM SINGH.

Singh had two sons—Ujagar Singh, the respondent, and Madho Singh, who is still a minor. The estate in suit was, after Chatar Singh's death, originally recorded as held in four shares of five biswas each, held respectively by Darjan Singh, Sundar Singh, Desraj, and Chatarpat. On the death of Darjan Singh, Chakarpan was entered as the holder of his share, and, after the deaths of Sundar Singh and Chatarpat, Desraj was at first recorded as the owner of their shares, but shortly afterwards the names of the widows Gulab Kuar and Sahib Kuar were entered as the holders of their husbands' shares. Again, at a later period, the names of Ajudhia Prasad and Budhu Singh, who were then aged four and two years old respectively, were substituted for those of the widows. The estate fell into arrears, and was eventually sold at auction for a balance of Government revenue, but a farm was given to Chakarpan, Ajudhia Prasad, Budhu Singh, and Desraj. In 1853 the Government, having purchased the estate at the auction-sale, proposed to re-grant it to the old zamindars and farmers, and a report regarding the ownership of the estate was called for. The tahsildar reported that it appeared from the statements of Chakarpan and Gandharap Singh, son of Desraj, that the widows of Sundar Singh and Chatarpat had made a gift of their shares to Ajudhia Prasad and Budhu Singh by deeds attested by the kanungo, and the kanungo confirmed this statement. On the 2nd May, 1853, the Collector of Farukhabad inquired of Chakarpan, Gandharap, Budhu Singh, and Ajudhia Prasad in what manner they proposed to divide the estate among them if it was granted to them by the Government, and they replied that all four would hold five biswas each. The Government eventually agreed to grant the estate on condition that the arrears of revenue which had accrued when the estate was sold should be discharged. This offer was accepted, and each of the four persons above mentioned contributed his quota. On the 3rd April, 1855, the same persons appeared before the revenue officer and requested that each of them might be recorded as the owner of five biswas, and that Chakarpan and Gandharap Singh should be entered as lambardars, and Ajudhia Prasad and Budhu Singh as pattidars. It was ordered that a village administration-paper should be prepared, and in that document, which is dated the 5th April, 1855, they were entered as in possession each

of five biswas. So matters continued until 1864, when on the 15th November they agreed to the appointment of arbitrators and an umpire to divide their shares. The arbitration proceedings lasted for upwards of two years, when Gandharap Singh advanced a claim to a ten biswas share, and the arbitrators refused to proceed with their award. On the 29th March, 1867, Gandharap Singh brought a suit to obtain possession of a two and a half biswas share out of the five biswas originally held by Galab Kuar (then deceased), and for a declaration of his right to two and half a biswas share out of the five biswas originally held by Sahib Kuar. He alleged that each of the four sons of Anand Singh had on the death of Chatar Singh obtained a five biswas share; that the widows of Sundar Singh and Chatarpat had been recorded as the holders of their respective husbands' shares to ensure their maintenance; that these ladies had in 1855 appointed Ajndhia Prasad and Budhu Singh their agents to take the account of the profit and loss on these shares, and that in the lifetime of the ladies Chakarpan wrongfully procured the substitution of his sons' names for the names of the widows. He claimed that the estate of Sundar descended on the death of his widow to Chakarpan and Desraj, and that on the death of Sahib Kuar he would become entitled to possession of one moiety of her share. On the 26th June, 1867, the parties to the suit effected a compromise, agreeing to divide the estate in four lots on the conditions set out into their petition to the Court. A decree was accordingly passed in the terms of the compromise. The respondent now sues to obtain the same relief as was sought by his father in 1867, and a declaration that the arrangement effected by the compromise and the decree are ineffectual. The respondent's father is still alive. There is this difference between the claims asserted by the respondent and his father, that the latter treated the estate as held in separate shares, the former asserts the estate remained joint until 1867. If by "joint" he means undivided there is no difference in the claim.

"The Subordinate Judge has decreed the claim. It appears to us impossible to support the decree. Assuming (which is certainly not proved) that the family remained joint until 1867, the respondent's father for all intents and purposes represented the

1861

---

 UNGAR  
 SINGH  
 v.  
 PITAM SINGH.

1881

USAGAR  
SINGH  
v.  
PITAM SINGH.

interest in the estate which devolved on, and would on partition fall to, the separate share of himself and his children; and the respondent must be bound by his acts, unless he can show such fraud and collusion as would entitle him to relief on those grounds. Of this there is no evidence; on the contrary, Gandharap Singh asserted his claim, and if he forebore to press it in view of the circumstances to which we have adverted, it can hardly be doubted he prudently put an end to litigation which must have resulted in failure. There can hardly be a question that the shares of Sundar Singh and Chatarpat were entered in the names of Ajudhia Prasad and Budhu Singh, then mere children, with the consent of Desraj. Gandharap had by his declarations in 1853 and 1855 provided cogent evidence of his own acquiescence, and had this been absent, there was the difficulty in his way, that the property had been granted to Ajudhia and Budhu Singh by the Government. If, as there is strong evidence to show, the property was held in separate shares, the shares of the great uncles of the respondent descended as inheritance liable to obstruction, and he could not question his father's acts. For the reason that there is no proof of any fraud or collusion on the part of Gandharap Singh in entering into the compromise of 1867, the suit cannot be maintained. The appeal is decreed, and the suit dismissed with costs."

On this appeal,

Mr. J. F. Leith, Q.C., and Mr. R. V. Doyne, appeared for the appellants.

Mr. T. H. Cowie, Q.C., and Mr. H. Cowell, for the respondents.

For the appellants it was argued that there was no sufficient evidence to show that the Government intended to grant the village in such a way that Ajudhia Prasad and Budhu Singh should be sharers. The introduction of their names into the revenue records had been brought about by Chakarpan. The latter was in a fiduciary relation to the family as manager. The shares allotted to the above-named should of right have devolved on the line to which the plaintiff belonged. To show, by analogy, that, on the restoration by the Government of an estate, joint until forfeiture, it remained

joint, when restored, reference was made to *Bahoo Beer Pertab Sahee v. Maharajah Rnjender Pertab Sahee* (1); and in regard to the rights of a son in ancestral estate under the Mitakshara law, *Suraj Bunsî Koer v. Sheo Persad Singh* (2) was cited.

1881

---

UJAGAR  
SINGH  
v.  
PITAM SINGH.

Counsel for the respondents were not called upon.

Their Lordships' judgment was delivered by

SIR R. COUCH.—This suit was brought to obtain possession of two and a half biswas of a mauza called Takha, pargana Bharthana, out of the five biswas which were said to have belonged to Gulab Kuar, deceased, the wife of Sundar Singh, and for a declaration of right in respect of two and a half biswas out of five biswas of the defendant Sahib Kuar. After the plaint was filed Sahib Kuar died, and it was amended by making it a claim for the possession of those two and a half biswas also. The property was originally that of Anand Singh, who had five sons—Chatar Singh, Darjan Singh, Sundar Singh, Desraj, and Chatarpat. Chatar Singh died without issue, and the surviving four brothers then became entitled to it in four equal shares. Each became entitled to five biswas. Darjan died in 1823, leaving a son, Chakarpan; Sundar Singh died in 1826, leaving a widow, Gulab Kuar, who died in 1860; Desraj, the third son, died in 1852, leaving a son, Gandharap Singh; and Chatarpat, the fourth surviving son, died in 1829, leaving a widow, Sahib Kuar. Chakarpan, the son of Darjan, had three sons, who are the respondents. Gandharap Singh had two sons, one being the present appellant, and the other, Madho Singh, being a minor, was not joined in the suit.

It appears that after the death of Chatar Singh the estate was recorded as being held by the four survivors, Darjan Singh, Sundar Singh, Desraj, and Chatarpat. On the death of Darjan, Chakarpan was entered as the holder of the estate, and after the death of Sundar Singh and Chatarpat, the name of Desraj appears to have been recorded. Subsequently to this the names of the widows were entered as the holders of the shares of their deceased husbands. It is said, on the part of the present appellant, the plaintiff in the suit, that this was done for the purpose only of giving them main-

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

(1) I. L. R., 5 Calc. 148; S. C., L. R. 6  
\* Ind. App. 83.

1881

UJAGAR  
SINGH  
v.  
PITAM SINGH.

tenance ; but whether it was so or not does not appear to their Lordships to be material. The fact is that they were entered for a time as the holders of the shares ; but subsequently, in 1842, the widows being still alive, the names of Ajudhia Prasad and Budhu Singh, two of the sons of Chakarpan, appear to have been substituted for the names of the widows. It is said that in the document in which this appears there has been an interpolation, and that at the time when that document was authenticated by the acknowledgment of the parties those names were not in it. However, whether that be so or not, the estate fell into arrears, and it was sold by the Government at auction for arrears of revenue. After the sale a lease for twelve years was made of the property to Chakarpan, Desraj, Ajudhia Prasad, and Budhu Singh. Before that lease, which was made in 1844, expired, the Government appear to have come to the conclusion that it would be better to make a re-grant of the property, and certain proceedings were taken which are very material in the consideration of the case. They appear to have been begun by a proceeding of the Collector of the 14th April, 1853, in which it is stated that a letter had been received from the Commissioner of Revenue, dated the 2nd April, in reply to a previous letter of the Collector, together with a letter of the Secretary of the Board of Revenue, dated 22nd March, 1853, containing a direction that "The Collector should submit a special report of this village,"—therein called Takha, pargana Sakatpur Ayrwa,—“stating full particulars in regard thereof, in order that Government orders may be obtained in behalf of the former zamindar. A full report should be submitted. It should contain other accounts of the settlement, such as what sum has fallen due as arrears, and in what years. It should likewise state whether the zamindars agree to take the property on the condition of paying the sum of Rs. 3,810 or more—whatever sum might be considered proper to be taken from them, and nothing should be left out.” The Collector made an order that a parwana should be issued to the tahsildar, directing him to furnish a report “stating what persons are heirs of Desraj, the deceased farmer and former zamindar, and how are Ajudhia Prasad and other farmers related to Chakarpan and Desraj, former zamindars.” The parwana was issued, and is dated the 21st April, 1853, and upon that the tahsildar made his report, dated the 27th April,

1351

---

 CHAGAR  
 SINGH  
 P.  
 PITAM SINGH.

1853, in which he says: "In reply to the parwana, dated 21st April, 1853, No. 271, I beg to say that, from an inspection of the khewat for 1249 fasli, it appears that, in respect of the zamindari of this village; the names of Chakarpan and Desraj are entered as lambardars, and those of the wives of Sundar Singh and Chatarpat are entered as pattidars. It appeared from the statement of the kanungo of the mahál that Sundar Singh and Chatarpat were real brothers of Desraj and the real paternal uncles of Chakarpan. After the death of Sundar Singh and Chatarpat the names of their wives were entered in the khewat; and afterwards this village was, on account of revenue arrears, sold by auction, and purchased by the Government." This their Lordships find was correct. "No one had any proprietary right left therein excepting the Government. But, at the time of the revised settlement, the settlement officer, in consideration of the rights of the former zamindars, farmed out the village to them, and the names of the said Desraj and Chakarpan, and those of Ajudhia Prasad and Budhu Singh, sons of Chakarpan, were entered." Then comes what is most material: "The reason of the names of Ajudhia Prasad and Budhu Singh being entered,"—showing that at that time the names were actually entered, because he says he had inspected the khewat,—"appeared from the statements of Chakarpan and Gandharap Singh, son of Desraj, to be this, that the wives of Sundar Singh and Chatarpat made a gift of their shares to Ajudhia-Prasad and Budhu Singh, and, having executed the deeds of gift, got them witnessed by the kanungo of the mahál. This was also corroborated by the statement of the kanungo. Chakarpan stated that the deeds of gift, &c., were filed in the Revenue Court. Desraj has no other son but Gandharap Singh, nor any other heir; nay, ere this, after the death of Desraj, the name of Gandharap Singh, has been entered in place of Desraj, deceased. Ajudhia Prasad and Budhu Singh are the sons of Chakarpan, and are grandsons to Desraj in point of relationship. I have sent Chakarpan, Ajudhia Prasad, Budhu Singh, and Gandharap Singh, the four farmers under a separate chalan, to you, with Jalab-ud-din"—a peon; showing that he did not, as was suggested in the argument, make this report merely upon an inspection of records, but that he had the parties before him,—including Gandharap, the plaintiff's



1881

UJAGAR  
SINGH  
v.  
PITAM SINGH.

father,—and that he also gave to the person to whom he made the report the means of examining them himself. Upon this report proceedings appear to have been taken by the Government. On the 8th July, 1853, a letter was sent by the Secretary to the Board of Revenue, by whose direction these proceedings were taken, to the Secretary to the Government, saying: "I am directed by the Sudder Board of Revenue to request that you will submit for the consideration and orders of the Hon'ble the Lieutenant-Governor the accompanying file of correspondence regarding mauza Takha, the property of Government." It is to be observed that the Government treats it as at that time absolutely its property, and which it could deal with as it thought fit. The letter states the reasons why the Government thinks that the re-grant should be made;—that the village broke down in consequence of the famine, and the revenue was not properly paid. It continues: "Chakarpan, the farmer who has continued till the present time in occupation, is the ex-zamindar, and, in consideration of his having failed only on account of the assets being inadequate to the demand, it is proposed to restore the proprietary right to him on condition that he pay up Rs. 3,810-2-6, the amount of balances which accrued under his own management, and not under kham tahsil. These are detailed in the margin. The Board of Revenue are of opinion that a good case is made out for the old proprietors, and they recommend that the proposed measure may receive His Honor's sanction, subject to the conditions that, preliminary to reinstatement, a full and complete compact for future management be executed and recorded." Upon that there is a letter from the Officiating Assistant Secretary to Government, dated the 22nd July, 1853, in which he says: "I have the honor to acknowledge the receipt of your letter No. 353, dated the 7th instant, with its enclosures, and am directed by the Hon'ble the Lieutenant-Governor to inform you in reply that he has been pleased to confer the proprietary right in mauza Takha, a Government estate in pargana Sakatpur, zila Farukhabad, on Chakarpan, the farmer and ex-zamindar, on the conditions proposed by the Board."

It is clear that Chakarpan, where he is spoken of as the ex-zamindar, was not intended by the Government to be the only person

who was to have the benefit of the grant. This, indeed, has not been suggested. He was to have it for the persons who are spoken of as the old proprietors. Then who were the persons that the Government considered to be the old proprietors? They had in the report which was before them, and upon which they acted, a statement that the old proprietors and the persons who had been in possession under the lease were Chakarpan, Gandharap Singh, Ajudhia Prasad, and Budhu Singh; and the only construction that can be put upon these letters, which are in fact the grant by the Government, is that the intention was that the Government, being, by reason of the sale for arrears of revenue, the absolute owner of the property, and so considering itself, resolved to make a grant to them in four shares.

What took place subsequently is this : On the 5th April, 1855, two years afterwards, Chakarpan and Gandharap Singh, the father of the plaintiff, and Ajudhia Prasad and Budhu Singh, appeared, and caused to be recorded what is called a village administration paper, in which it is stated that they were entitled to this property in the shares of five biswas each. It appears that on the 3rd April, two days previously, an inquiry was made, in which Chakarpan and Gandharap Singh stated that, at the time of the settlement, they were the two lambardars, and that it was arranged that they should continue to be appointed lambardars, and that Ajudhia Prasad and Budhu Singh should remain pattidars. The patwari was examined, and he stated that the shares which they had stated were correct,—the shares of five biswas each,—and he went on to say : “ All the four persons are in possession as usual, and, besides these four shares, there is no other co-partner and co-sharer.” There is evidence, therefore, that the possession followed the grant by the Government, and was in accordance with the view which their Lordships take of it. That possession appears to have continued without any dispute, as far as their Lordships can see, down to November, 1864, when the parties made an agreement for an arbitration for making a partition. After that had been proceeded with some little way, Gandharap Singh set up a claim to five biswas, in addition to the five of which he had been in possession. His claim was that the property was the family property, and that upon the death of the widows he became entitled to half of the share of

1881

---

 UJAGAR  
SINGH  
v.  
PITAM SINGH.

1881

UJAGAR  
SINGH  
" "  
PITAM SINGH.

each of them. In consequence of this, the arbitrators refused to proceed. They considered, and properly, that they had no authority to try such a question, and the arbitration came to an end. Then, in 1867, Gandharap brought a suit claiming the five biswas, which was compromised, and the present plaintiff has brought a similar suit, claiming to be entitled not only to the share of the five biswas which clearly belonged to his father Gandharap, but to the other five biswas, and to set aside the compromise. The suit by Gandharap did not proceed to trial, but he agreed to a decree by which he acknowledged that he was entitled only to the five biswas. He did, however, obtain by the compromise a decree for partition, but their Lordships consider that it is not necessary for them to give any opinion as to the effect of the compromise upon the right of the present plaintiff. He, at the time of the grant by the Government, was not living; he was not born until the 24th February, 1855, and, whatever rights he may have under the Mitakshara law to ancestral property, it cannot be said that at the time of his birth there was any ancestral property of which he could acquire a share except the five biswas. The grant being, in their Lordships' opinion, a grant by the Government—which, as has been said, had the absolute power to dispose of the property in any way it thought fit—only of five biswas, that was all the interest which Gandharap Singh had, and his son could not acquire a share in any other. It has been said that Gandharap was imposed upon; that he was led by the false representations of Chakarpan to assent to the entry of the names of the two sons of Chakarpan, and to allow it to appear to the Government that they were proprietors. Supposing that he was so imposed upon, and that there was some right in him to procure an alteration of the grant, that is not such an interest as a son would by his birth acquire a share in. Whatever the nature of the right might be,—whether it could be enforced by a suit or by a representation to the Government,—it does not come within the rules of the Mitakshara law which gives a son, upon his birth, a share in the ancestral estate of his father.

Their Lordships, therefore, will humbly advise Her Majesty to dismiss the appeal, and to affirm the judgment of the High Court, and the appellant will pay the costs of the appeal.

Solicitor for the appellant: Mr. T. L. Wilson.

Solicitors for the respondents: Messrs W. M. and A. Ranken  
Ford.

1881

---

 USAGAR  
SINGH  
v.  
PITAM SINGH.
 

---



---

 APPELLATE CIVIL.
 

---

*Before Mr. Justice Straight and Mr. Justice Duthoit.*

1881  
July 23.

BENI PRASAD (DEFENDANT) v. LACHMAN PRASAD (PLAINTIFF).<sup>1</sup>

*Obstruction to execution of decree for land—Act VIII of 1859 (Civil Procedure Code), ss. 226, 229, 231—Fresh suit.*

The holder of a decree for land, having been resisted in obtaining possession thereof by a person other than the defendant, claiming to be in possession of such land on his own account, complained under Act VIII of 1859 of such resistance to the Court executing the decree. The Court rejected such application on the ground that it had been made after the time limited by law. Held that the order rejecting such application could not be regarded as one under s. 229 of Act VIII of 1859, which would under s. 231 preclude such decree-holder from instituting a suit against such person for such land.

THE plaintiff in this suit, Lachman Prasad, and one Mohesh Prasad obtained a decree against one Sheoambar Singh for possession of a certain share of a certain village on the 28th July, 1868. The decree-holders applied in execution of this decree for possession of the sir-land appertaining to such share. Sheoambar Singh objected to the quantity of land claimed by the decree-holders, but his objections were disallowed, and the decree-holders were declared by the Court executing the decree entitled to 61 bighas 4 biswas of sir-land. They obtained possession of 10 bighas of such land, and in 1871 applied for delivery of possession of the remainder. The amin deputed to deliver possession was resisted by Raghobar Singh and Sitla Bakhsh, defendants in this suit, who claimed a two-thirds share of such sir-land. This resistance took place on the 13th December, 1871. The decree-holders thereupon, on the 29th January, 1872, applied to the Court executing the decree under s. 226 of Act VIII of 1859. On that same day the Court executing the decree made an order directing

---

\* Second Appeal, No 5 of 1881, from a decree of W. Tyrrell, Esq., Judge of Allahabad, dated the 27th September, 1880, affirming a decree of Babu Pramoda Charan Bamarji, Munsif of Allahabad, dated the 30th June, 1880.