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HARSARAN  
SINGH  
v.  
MUHAMMAD  
KAZA.

X of 1877. On the 24th February, 1881, Harsaran Singh applied by his pleader to the District Judge of Jaunpur for permission to appeal as a pauper against a decree of the Subordinate Judge of Jaunpur dismissing a suit brought by him for possession of certain immoveable property. The District Judge rejected this application on the 28th February, 1881, on the ground that, under ss. 404 and 592 of Act X of 1877, such an application could not be presented by a pleader but must be presented personally. Harsaran Singh applied to the High Court to revise the District Judge's order under s. 622 of Act X of 1877, on the ground that the District Judge was wrong in holding that a pauper appeal must be presented by the appellant in person; and that, assuming that he was right in so holding, he should in this case have allowed time for the personal appearance of the applicant.

Munshi Hanuman Prasad, for the applicant.

Mr. Colvin, for the opposite party.

The judgment of the Court (STRAIGHT, J., and DUTHOIT, J.,) was delivered by

STRAIGHT, J. — We are clearly of opinion that this application was inadmissible and cannot be entertained. S. 622 of the Civil Procedure Code does not in our judgment apply to a proceeding of so purely an interlocutory character as that mentioned in s. 592. The application is rejected with costs.

*Application rejected.*

## APPELLATE CIVIL

*Before Mr. Justice Tyrrell and Mr. Justice Duthoit.*

SHADAL KHAN (PLAINTIFF) v. AMIN-UL-LAH KHAN (DEFENDANT).<sup>1</sup>

*Res judicata* — "Same parties."

*M*, in 1866, brought a suit against *A*, her son *S*, *B* and *C*, who like her all claimed a right to inherit the estate of *K* deceased, for her share by inheritance in *K*'s estate, alleging that she had been lawfully married to him. She only denied *A*'s right to inherit, who claimed as *K*'s adopted son; admitting the right of *S*, who claimed as her lawful son by *K*, and that of *B* and *C*, who claimed as wife and daughter respectively of *K*. *S* supported his mother's claim. *A*, *B*,

<sup>1</sup> Second Appeal, No. 154 of 1881, from a decree of H. G. Keene, Esq., Judge of Meerut, dated the 30th November, 1880, reversing a decree of Rai Bakhtawar Singh Subordinate Judge of Meerut, dated the 21st August, 1880.

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and *C* denied that *M* had been lawfully married to *K*, and alleged that *S* was the son of *M*, not by *K*, but by another person. It was decided in that suit that *M* had been lawfully married to *K*; that *S* was the lawful son of *K* by *M*; and that *A* was not the adopted son of *K*. In 1880 *S* sued *A* for possession of *C*'s share in such estate, *C* having died, claiming as *C*'s step-brother and heir. *A* set up as a defence that *M* was not *K*'s wife, nor was *S* *K*'s son. Held that, inasmuch as, although in the former suit *A* and *S* stood together in the same array, they were in fact opposed to each other, *S* being on the side and supporting the case of his mother, and *A* being the true defendant, such suit was one between the same parties as the second, and the matter of *S*'s legitimacy having been raised and finally decided in the former suit by a competent Court, was *res judicata* and could not be again raised in the second suit.

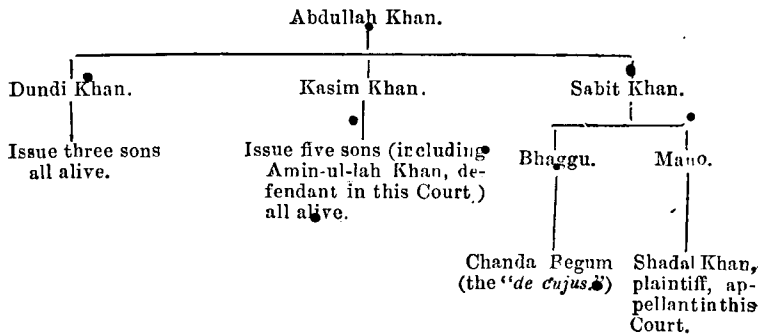
THE facts of this case are sufficiently stated in the judgment of the High Court.

Shaikh *Maula Bakhsh*, for the appellant.

Pandit *Bishambhar Nath*, for the respondent.

The judgment of the High Court (TYRRELL, J., and DUTHOIT, J.,) was delivered by

DUTHOIT, J.—This is an appeal from a decree of the Judge of Meerut, reversing a decree of Rai Bakhtawar Singh, Subordinate Judge. To make the case intelligible it is necessary to state a genealogical table:—



The suit was by Shadal Khan against Amin-ul-lah Khan in respect of the landed property of Chanda. Chanda died on the 6th August, 1879, and Amin-ul-lah has procured the entry of his own name in the Collector's book for the land. The suit was instituted on the 3rd August, 1880. The plaintiff alleged that, as Chanda's step-brother, he, and not Amin-ul-lah, was her heir. Amin-ul-lah's

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defence was (i) that Mano was not Sabit Khan's wife nor was Shadal Sabit Khan's son; and (ii) that Chanda had bestowed the property upon him shortly before her death, while she was in full possession of her faculties. The issues stated in the Court of first instance were briefly these: (i) Was Mano lawfully married to Sabit Khan, and is Shadal Khan their son or not? (ii) Has the defendant any right as donee of Chanda or not. On the former issue the Subordinate Judge held that the fact of Mano's marriage to Sabit Khan had been distinctly affirmed by the Judge of Meerut in 1866, on appeal from a decision of the Munsif of Bulandshahr, and that by other evidence adduced by Shadal Khan in the present suit the same fact, and the legitimate descent of Shadal Khan from Sabit Khan, had been fully established. On the latter issue he found that the story of the alleged gift by Chanda to Amin-ul-lah was fictitious, and unsupported by any trustworthy evidence. Accordingly he decreed the plaintiff's claim. Amin-ul-lah appealed, taking the same ground as he had taken in the Court of first instance. The Judge confined himself chiefly to the consideration of the former of the two issues as above; and came upon it to an altogether different conclusion from that of the Subordinate Judge. He found that the judgment of this Court dated the 9th October, 1866, was not receivable in evidence, and that the other evidence in support of the averment that Shadal Khan was Sabit Khan's son and Mano, his wife, was unsatisfactory. Upon the latter issue his finding is in these words: "I am by no means satisfied with the reasons assigned by the Subordinate Judge for not believing the evidence of an oral gift made by Chanda in favour of the appellant shortly before her death: there is no other proof." It has been urged before us on behalf of Shadal Khan in second appeal that the lower appellate Court has erred in rejecting the judgment of 1866 as not receivable in evidence; that there is ample other evidence on the record showing that the appellant is the legitimate son of Sabit Khan; that the story of the gift by Chanda to Amin-ul-lah is a fiction; and that even if true the gift, as being unaccompanied by immediate delivery of possession, was of no effect. As regards the alleged gift we are entirely of the opinion of the Subordinate Judge. We consider the evidence advanced in support of it defective and untrustworthy. And we note as a curious coincidence that in the

litigation of 1866 also Amin-ul-lah Khan had a double line of defence ; he then declared himself to be the adopted son of Sabit Khan. There is other evidence upon the record which supports the appellants' account of his family *status*, and the case appears to us to turn mainly upon the weight to be attached to the judgment of the 9th October, 1866. And to explain our views upon this point it will be necessary to state the circumstances of the litigation which resulted in the judgment under reference. Sabit Khan died in August, 1865. On the 25th October, 1865, the patwari reported that in accordance with a testamentary disposition of the property of the deceased the names of Bhaggu (widow), Chanda (daughter), Shadal Khan (son), and Amin-ul-lah Khan (nephew), should be entered in the revenue register, each for one-fourth of the deceased's landed estate. On the 28th idem Bhaggu objected to the register being so amended on the ground that Shadal Khan was not a son of the deceased, and that she herself was in sole possession of the property, and managed it through her adopted son Amin-ul-lah Khan. On the 7th November, 1865, petitions were presented by Shadal Khan, Amin-ul-lah Khan, Bhaggu, and Chanda, in which it was stated that they had come to an arrangement in the terms of the patwari's report, and it was requested that the register might be amended as proposed therein. This was accordingly done. On the 2nd August, 1866, Mano sued for her share under Muhammadan law in the inheritance of Sabit Khan, on the allegation that she had been lawfully married to him, and that she was no party to the arrangement of the 7th November, 1865. She admitted the right of her son and of Bhaggu and Chanda to share in the inheritance, but denied that Amin-ul-lah Khan had been adopted by Sabit Khan, and asked that he might be excluded from it. Amin-ul-lah Khan, Shadal Khan, Bhaggu and Chanda were made defendants to the suit. Shadal Khan, in whose house, as found by the Judge, Mano was living, supported his mother's claim. The other defendants denied the marriage of Mano with Sabit Khan, and averred that she was a "*dom*" girl on the establishment, and had been married to one Rustam, another servant, by whom, and not by Sabit Khan, Shadal Khan had been begotten upon her. Among the issues settled in the cause was the following:—"Is plaintiff widow of the deceased?"

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And in considering the plea in appeal which was concerned with this issue the Judge wrote thus :—“The question then remains to be considered, if from the evidence before me a satisfactory decision can be arrived at as to whether Mano plaintiff can be considered according to Muhammadan law to have held the position of a wife, and in doing so, the position held by Shadal Khan is necessarily involved, for if he was acknowledged by the family and by deceased as a legitimate son, his mother must be considered as a married woman.” Upon the question so before him the Judge found that the proof of the acknowledgment by Sabit Khan of Shadal Khan as his legitimate son was ample, and that, this being so, the lawful marriage of Mano to Sabit Khan must, in accordance with the ruling of the Sudder Dewanny Adawlat in *Hunsoo v. Wuhee-dool-nissa* (1) be presumed. He found that the story of the adoption of Amin-ul-lah Khan was false ; and holding that the plaintiff had established her right to a share in the inheritance along with Bhaggu, Chanda and Shadal Khan, and to the exclusion of Amin-ul-lah Khan, decreed her claim with costs.

In the suit now in appeal the lower appellate Court has held that the judgment of 1866 “can throw no light on the present case, as it gives no clue to the conduct of either the appellant (Amin-ul-lah Khan) or the respondent (Shadal Khan)” and is not relevant under s. 41 of the Indian Evidence Act, because the Judge in delivering that judgment was not a competent Court in the terms of that section. But the judgment of 1866 is pleaded as showing *res judicata* in the terms of s. 40, not 41, of the Evidence Act, and as such it is, as it seems to us, effectively pleaded. The law as regards the admissibility in evidence of former judgments has been recently discussed by the Calcutta Court in *Gujju Lall v. Fattah Lall* (2) and in the conclusions of that judgment we fully concur. That the matter now in suit as regards the legitimacy of Shadal Khan was directly and substantially in issue in the suit of 1866, that the decision in that suit has become final, and that it was the decision of a competent Court, are undeniable facts. The only question regarding it which appears to us open to discussion is whether the former suit

(1) S. D. A. N.-W. P., 1864, vol. i, p. 380.

(2) I. L. R., 6 Calc. 171.

was a suit between the same parties as the present. We think that this question must be answered in the affirmative. Both parties to the present suit were parties to the former one; and although in the former they nominally stood together in the same array,\* yet as a fact they were opposed to each other, Shadal Khan being on the side and supporting the case of his mother, the plaintiff, and Amin-ul-lah Khan being the true defendant in the cause. With reference to the above considerations and reasons we hold that the finding of the lower appellate Court is erroneous. The decree of the lower appellate Court is reversed, that of the Court of the Subordinate Judge of Meerut is restored, and this appeal is decreed with costs.

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*Appeal allowed.*

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*Before Sir Robert Stuart, Rt., Chief Justice, and Mr. Justice Oldfield.*

RAM LAL (DEFENDANT) v. TULA RAM (PLAINTIFF).\*

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*Suit by Hindu father for compensation for the loss of his daughter's services in consequence of her abduction—Compensation for costs of prosecuting abductor—Res judicata—Act X of 1877 (Civil Procedure Code), s. 13.*

A Hindu sued for compensation for the loss of his daughter's services in consequence of her abduction by the defendant, and for the costs incurred by him in prosecuting the defendant criminally for such abduction. The defendant was convicted on such prosecution. *Held* that the decision of the Criminal Court did not operate under s. 13 of Act X of 1877 to bar the determination in such suit of the question whether the defendant had or had not abducted the plaintiff's daughter. Also that the plaintiff was entitled to recover the costs of such criminal proceedings.

The daughter in this case was a married woman, who had been deserted by her husband, and at the time of her abduction was living with the plaintiff her father.

*Held* by STUART, C. J., that the suit by the father for compensation for the loss of his daughter's services in consequence of her abduction was under the circumstances maintainable.

*Held* by OLDFIELD, J., that a suit by a Hindu father for the loss of his daughter's services in consequence of her abduction is not maintainable.

The plaintiff in this suit claimed, *inter alia*, Rs. 1,000, as compensation for injury to his reputation and for the loss of his

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\* Second Appeal, No. 63 of 1880, from a decree of D. M. Gardner, Esq., Judge of Agra, dated the 6th August, 1879, modifying a decree of Maulvi Maqsood Ali Khan, Subordinate Judge of Agra, dated the 18th April, 1879.