

1880

SHAR NATH,
SIBDIAN OF
LACHMI
NARAIN
v.
IAKUE DAS.

ants became sureties, and the equivalent in value of the articles as damages is sought as an alternative relief. There is but one and the same cause of action in respect of the matter to which the suit relates. We reverse the order of the lower Court and allow this appeal with costs, and direct the Subordinate Judge to restore the case on the register and dispose of it on the merits.

Cause remanded.

1880
August 9.

Before Mr. Justice Oldfield and Mr. Justice Straight.

SIBTA (DEFENDANT) v. BADRI PRASAD AND OTHERS (PLAINTIFFS).*

Hindu Law—Daughter's Son—Succession.

According to Mitakshara law a daughter's son takes his maternal grandfather's estate as full proprietor, and on his death such estate devolves on his heirs and not on the heirs of his maternal grandfather. His *gotraja-sapindas*, or the persons related to him through his father, have, therefore, preferential right to succeed him to the persons related to him through his mother.

THE facts of this case are sufficiently stated for the purposes of this report in the order of the High Court remanding the case.

Munshis *Hanuman Prasad* and *Kashi Prasad*, for the appellant.

Messrs. *Conlan* and *Chatterji*, for the respondents.

The High Court (OLDFIELD, J., and STRAIGHT, J.,) made the following order remanding the case :—

OLDFIELD, J.—The property in suit belonged to one Chotey Lal : at his death it descended to his widow Chandan Kuar, and at her death to Nand Lal, the son of Chotey Lal's daughter. He was succeeded by his widow Inda ; and she died on the 29th August, 1878, having executed a deed of gift in favour of the appellant, Sibta, one of the defendants. The plaintiffs are related to Nand Lal through his mother the daughter of Chandan Kuar, and they claim the property by setting aside the deed of gift. The defence on the part of Sibta is that Nand Lal, who had absolute power over the property, made a will by which he bequeathed it absolutely to Inda, who made a gift of it to the defendant, and the plaintiffs have

* Second Appeal, No. 1182 of 1879, from a decree of W. Tyrrell, Esq., Judge of Bareilly, dated the 12th April, 1879, affirming a decree of Maulvi Abdul Qayum Khan, Subordinate Judge of Bareilly, dated the 19th December, 1878.

1880

SIBTA
P.
BADRI
PRASAD.

no right in the presence of the nearer heirs of Nand Lal. The Judge has affirmed the decree of the Court of first instance which decreed the claim on the ground that Nand Lal, as the son of Chotey Lal's daughter, did not succeed as full owner of the property, but had only a life-interest, and in the same way his widow Inda took only a life-interest, and at their death the heirs will be the plaintiffs, the *gotraja-sapindas* of Chotey Lal; and the Judge made no finding as to the *factum* of the will in favour of Inda by Nand Lal, or the genuineness of the deed of gift by Inda in favour of the appellant, it being unnecessary to do so on his finding that Nand Lal and Inda had but limited interests and no power to make such bequests.

The Courts below have, however, erred in holding that Nand Lal had only a limited interest. On the contrary, as the son of Chotey Lal's daughter, he took the inheritance as full owner; and on his death the succession would pass to his heirs and not to the heir of his maternal grandfather Chotey Lal.—*Mitakshara*, Chap. ii, s. 2, v. 6; and *Mayne's Hindu Law*. If therefore there are any heirs of Nand Lal alive among his *gotraja-sapindas*, that is, related to him through his father, as appellant asserts, they will have a preferential right of succession over plaintiff, who in that case cannot maintain the suit. We direct the Judge to try the issue indicated, and if he finds that there are no such *gotraja-sapindas* of Nand Lal alive, he will further try the issues in respect of the genuineness and validity of the alleged testamentary bequest by Nand Lal in favour of Inda and of the gift by the latter in favour of the appellant. We remand the case accordingly, and allow ten days for objections to be preferred to it.

Cause remanded.

Before Mr. Justice Pearson and Mr. Justice Oldfield.

NARAIN DAS (JUDGMENT-DEBTOR) v. LACHMAN SINGH (DECREE-HOLDER).*

1880
August 1

Pre-emption—Execution of Conditional decree.

The decree of the original Court in a suit to enforce a right of pre-emption, dated the 18th February, 1879, directed that, on the deposit of the purchase-money

* Second Appeal, No. 44 of 1880, from an order of F. E. Elliot, Esq., Judge of Mainpuri, dated the 23rd April, 1880, affirming an order of Mirza Abid Ali Beg, Subordinate Judge of Mainpuri, dated the 6th March, 1880.