1933

HARNAM SINGH, RAJA v. RANI BAHU RANI

Srivastava and Allsop, JJ.

should be made payable on the same principle as laid down for the case of appeals in Article 17 of Schedule II of the Court Fees Act. The office has reported that the court-fee should be paid *ad valorem* according to the value of the subject-matter in dispute under Article 1, Schedule I of the Act. Article 17, Schedule II refers in terms to plaints and memoranda of appeal. It makes no mention of cross-objections. The word "cross-objection" was added to Article 1, Schedule I, when the Court Fees Act was amended in 1908 but no such word was added to Article 17, Schedule II. It appears that this omission was due to an oversight but it is not our function to legislate; we must take the law as it stands. The court-fee must therefore be paid *ad valorem* under Article 1, Schedule I of the Act. The same view was taken by a learned Judge of the Allahabad High Court in *Lakhan Singh* v. *Ram Kishen Das* (1) and by a Bench of this Court in First Civil Appeal No. 137 of 1929 and again in First Civil Appeal No. 4 of 1931. We accordingly accept this report as correct and direct the plaintiff to make good the deficiency of Rs.307-8 within one month.

The counsel for the cross-objector may be informed of this order.

Office Report accepted.

PRIVY COUNCIL

P. C. 1934 *April*, 30

RAJA BIRENDRA BIKRAM SINGH *v.* BRIJ MOHAN PANDE AND CONNECTED APPEAL*

[ON APPEAL FROM THE CHIEF COURT OF OUDH]

Pre-emption—Sale of Taluqdari Mahal—Under-proprietor—Claim to pre-empt village—"Village community"—Oudh Laws Act (XVIII of 1876), sections 7 and 9—13.

On the sale of a taluqdari mahal consisting of several villages, an under-proprietor of one of the villages is not entitled under

*Present: Lord THANKERTON, Sir JOHN WALLIS, and Sir LANCELOT SANDERSON.

(1) (1918) I.L.R., 40 All., 98.

1933

RAJA BIRENDRA BIKRAM SINGH v. BRIJ MOHAN PANDE

the Oudh Laws Act, 1876, to pre-empt the superior rights in the village. The provisions of sections 10 to 13 of the Act are inconsistent with the existence of the right. Further, the village community mentioned in the third head of section 9, which declares who are to have the right of pre-emption, consists either wholly of proprietors or wholly of under-proprietors; that follows from section 7(*a*) which distinguishes between a proprietary and an under-proprietary village community, and a different construction would make the fourth head of section 9 redundant.

Drigbijai Singh v. *Court of Wards* (1), disapproved.

Decree of the Chief Court, I. L. R., 6 Luck., 257, reversed.

CONSOLIDATED APPEAL (No. 87 of 1931) from two decrees of the Chief Court of Oudh (21st and 28th July, 1930) which reversed two decrees of the Subordinate Judge of Gonda (15th July, 1929).

In 1927 the appellant purchased an estate in Oudh consisting of 163 villages constituting a single proprietary mahal for which the proprietor paid the land revenue although the villages were separately assessed. The plaintiff-respondent in the first appeal had under-proprietary rights in one of the villages, and the three plaintiff-respondents in the second appeal had under-proprietary rights in another of the villages. In each of the two suits under appeal the claim was made under the Oudh Laws Act, 1876, to pre-empt the superior rights in the village in which the plaintiff or plaintiffs respectively had under-proprietary rights.

The facts, and the material provisions of the above Act, appear from the judgment of the Judicial Committee.

The Chief Court (HASAN, C.J. and PULLAN J.), reversing the decision of the trial judge, held that the plaintiffs had the right to pre-emption claimed, and decrees were made accordingly. The joint judgment of the learned Judges is reported at I. L. R., 6 Luck., 257.

1934. March 8, 9, 12. *Dunne K. C.* and *Jopling* for the appellant. The Act does not provide for a right of

(1) (1901) 5 Oudh Cases 266.

1933

RAJA BIRENDRA BIKRAM SINGH v. BRIJ MOHAN PANDE

pre-emption upon the sale of a taluqdari mahal consisting of villages held under a single engagement to pay the revenue. The expression "village community" as used in the Act has nothing to do with residence; *Munnu Lal* v. *Muhammad Ismail* (1); it connotes a group of persons who as co-sharers have a common interest in the village. There cannot be a village community consisting in part of proprietors and in part of under-proprietors. Section 7(*a*) recognizes that a village community must consist wholly of proprietors or of under-proprietors. On that point the Court below was bound by the decision of the Allahabad High Court in *Drigbijai Singh* v. *Court of Wards* (2). It is submitted that that decision was wrong, and that the judgment of Spankie, A. J. C. when the case was before the Chief Court was right; he followed the judgment of Young J. C. in *Ashraf-un-nisa* v. *Parbhu Narain* (3). As was pointed out by Chamier, C. J. in *Narendra Bahadur Singh* v. *Balkaran Singh* (4) the construction of section 7 adopted by Spankie, A. J. C., is the only one which prevents the fourth head of section 9 from being redundant. But even if the plaintiffs had respectively a right of pre-emption it was a right to pre-empt not their particular villages but the whole subject of the sale. A right to pre-empt part was not recognized by the above decision of the Allahabad High Court, and has never been recognized. The view that upon the sale in question every under-proprietor in all the villages sold was entitled to notice and had a right of pre-emption is not consistent with sections 10 to 13 of the Act and would be unworkable. [Reference was made also to *Raghoindra Pratab Sahai* v. *Abu Jafar* (5); *Rai Gaya Prasad* v. *Faiyaz Husain* (6); *Nawab Khan* v. *Achhaibar Dubby* (7); Oudh Land Revenue Act, 1876, section 121 and

(1) (1904) I.L.R., 26 All., 574; L.R., 31 I.A., 212.
(2) (1901) 5 Oudh Cases, 266.
(3) (1883) Oudh Select Cases, 1874-98, No. 140.
(4) (1904) 7 Oudh Cases 275, 281.
(5) (1919) 22 Oudh Cases 353.
(6) (1929) I.L.R., 5 Luck., 12.
(7) (1929) I.L.R., 5 Luck., 539.

1933

RAJA BIRENDRA BIKRAM SINGH v. BRIJ MOHAN PANDE

other sections; Thomason's "Directions for Revenue Officers", 1858; and Bennet's "Introduction to Oudh Gazeteer", pp. 55, 58, 59].

J. E. Godfrey for the respondents Basdeo, Ram Ujagar and Ram Samujh. These respondents as under-proprietors were members of the village community of their respective villages and as such had a right of pre-emption under section 7 of the Act. The village was an under-proprietary village. Difficulties in giving effect to the respondents right cannot deprive them of the right. The introduction to Sykes' Compendium (See Behari Lal edition) shows that it was the policy of the Government at the time of the annexation to encourage and protect the actual occupants; that policy was carried out by the Oudh Rent Act, 1868, and the Oudh Laws Act, 1876. The difficulties suggested arise from a misconstruction of the latter Act. The right of pre-emption is confined by section 9 to property "within the village boundary". There was a sale of each village although the sale comprised several villages; the rights of pre-emption which arose were in each case only in respect of the particular village. In sections 10 and 11 the "property" means the property within the village boundary. There would have been no difficulty in the vendor apportioning the proposed sale price between the several villages and giving the notices required by section 10, which provides that they can be given by public announcement. Thereupon, by section 11, persons having the right of pre-emption would have had to pay or tender the price mentioned in the notice. The principle (imported from the Punjab cases) that a pre-emptor cannot exercise the right in respect of part of the property sold has therefore no application to this case. Even if the construction of section 7 adopted in *Drigbijai Singh* v. *Court of Wards* (1) was erroneous the decision that there was a right to pre-empt was right. In any case it is undesirable that the decision should be upset as it has been acted upon for thirty years: *Ex parte Willey* (2). In the present

(1) (1901) 5 Oudh Cases, 266. (2) (1883) 23 Ch.D., 118.

case, as in *Drigbijai's* case, the vendor was not a member of the village community. The Act does not confine the right of pre-emption which it gives to members of the village community to a sale by one of its members. The fourth head of section 9 is not redundant; it provides for the case where there is a single proprietor and a village community of under-proprietors. *Bindadin* v. *Raghuraj Singh* (1) was referred to.

Dunne K. C. replied.

April 30. The judgment of their Lordships was delivered by Sir Lancelot Sanderson.

These appeals (consolidated by order of the Chief Court of Oudh) are from two decrees of the said Chief Court, dated the 21st July, 1930, which reversed two decrees of the Subordinate Judge of Gonda, dated the 15th July, 1929.

There were two suits, Nos. 86 and 89 of 1928.

In suit No. 86 the plaintiffs were Basdeo, Ram Ujagar and Ram Samujh and the defendant was the appellant to His Majesty in Council viz. Raja Bikram Singh. There were two other persons joined as defendants in that suit as they also had brought suits for pre-emption. It is not necessary to refer further to the second and third defendants, who did not appear in the Chief Court or on the appeal to His Majesty in Council.

In suit 89 of 1928 the plaintiff was Brij Mohan Pande and the defendant was the abovementioned appellant, Raja Bikram Singh.

In each case a claim for pre-emption under the Oudh Laws Act of 1876 of certain property was made by the plaintiffs against Raja Bikram Singh.

The Subordinate Judge of Gonda dismissed both the suits. The plaintiffs appealed to the Chief Court of Oudh which allowed the appeals and made decrees in favour of the plaintiffs for pre-emption.

From the said decrees of the Chief Court, Raja Bikram Singh appealed to His Majesty in Council. At

(1) Select cases Oudh, 1874—98, No. 177.

1933

RAJA BIRENDRA BIKRAM SINGH v. BRIJ MOHAN PANDE

P. C.

the hearing before the Board, the plaintiffs in suit 86 of 1928, viz., Basdeo, Ram Ujagar and Ram Samujh appeared by their learned counsel: The plaintiff in suit 89 of 1928, viz., Brij Mohan Pande, did not appear.

The material facts are as follows:—The appellant, Raja Bikram Singh, by a deed, dated the 28th August, 1927, purchased from Bishan Narain Bhargava what is called a taluqdari mahal consisting of 163 villages. The purchase was carried out through the Court of Wards, which at the time of the purchase had superintendence of the person and property of Raja Bikram Singh, and the consideration for the purchase of the taluqdari mahal was five and a half lakhs of rupees (Rs.5,50,000).

According to the judgment of the Chief Court, the taluqa, which was the subject-matter of the deed of the 28th August, 1927, is known as the Bamhnipur taluqa, which was settled both in the first summary settlement of 1858 and in the subsequent regular settlement with Rani Sarfaraz Kuar, the widow of Raja Indarjet Singh. The estate seems to have received from time to time different names, but it has always been treated as a taluqdari mahal and the rights which were purchased by the Court of Wards on behalf of the appellant Raja were those of the superior proprietor in the group of villages forming the revenue paying mahal.

As already stated, the taluqa contained 163 villages, but the suit 86 of 1928 related to one village only, viz., Bakrauli, which consisted of four hamlets and the plaintiffs in that suit claimed pre-emption of that village on payment of Rs.9,703 or the amount which should be adjudged by the Court.

The suit 89 of 1928 also related to one village only, viz., Patijia Buzurg, and the plaintiff, Brij Mohan Pande, claimed pre-emption in respect thereof on payment of Rs.8,634 or the amount which should be adjudged by the Court. It is to be noted that the plaintiffs in both suits did not claim as co-sharers but as person who had what are called under-proprietary

1933

RAJA BIRENDRA BIKRAM SINGH v. BRIJ MOHA PANDE

P. C.

rights in the villages of which they claimed to obtain possession by means of pre-emption.

Both the Courts in India held that the property conveyed by the sale deed is a single proprietary mahal for which the proprietor had contracted to pay a definite sum by way of land revenue to the Government, though each of the villages in the mahal was separately assessed to land revenue.

The Chief Court held that the plaintiffs in both suits as under-proprietors had a right under the Oudh Laws Act to pre-empt in respect of the villages which they respectively claimed, and that they had such right as members of the village community within the third class mentioned in section 9 of the Act. The Chief Court accordingly made decrees of pre-emption in favour of the plaintiffs in the two suits so far as the two villages respectively were concerned on payment of certain sums, which had been assessed by the Trial Judge.

The findings of the Chief Court were challenged on behalf of the appellant on the following grounds: (1) that the law of pre-emption contained in Chapter II of Part III of the Oudh Laws Act, 1876, does not apply to the sale of such a mahal or a taluqdari mahal; (2) that if the plaintiffs had any right of pre-emption, such right extended to the whole taluqdari mahal the subject of the sale, and could not be exercised over part of the mahal; (3) that the right of a member of a village community to pre-empt extends only to the property of those proprietors (or under-proprietors) whose rights are of the same nature as his own, and therefore that the plaintiffs as underproprietors had no right of pre-emption over the superior rights.

The claims in both suits were made under the Oudh Laws Act of 1876, and the decision upon the above-mentioned points must depend upon the proper construction to be placed on the relevant sections of that Act.

1933

RAJA BIRENDRA BIKRAM SINGH v. BRIJ MOHAN PANDE

P. C.

Part III, Chapter II, of the Act relates to pre-emption, and it is necessary to refer to the following sections:

6. The right of pre-emption is a right of the persons hereinafter mentioned or referred to, to acquire, in the cases hereinafter specified, immovable property in preference to all other persons.

7 Unless the existence of any custom or contract to the contrary is proved, such right shall, whether recorded in the settlement record or not, be presumed—

(*a*) to exist in all village-communities, however constituted, and whether proprietary or under-proprietary, and in the cases referred to in section 40 of the Oudh Land Revenue Act, and

(*b*) to extend to the village site, to the houses built upon it, to all lands and shares of lands within the village boundary, and to all transferable rights affecting such lands.

9. If the property to be sold or foreclosed is a proprietary or under-proprietary tenure, or a share of such a tenure, the right to buy or redeem such property belongs in the absence of a custom to the contrary—

1*st*.—To co-sharers of the sub-division (if any) of the tenure in which the property is comprised, in order of their relationship to the vendor or mortgagor;

2*ndly*—To co-sharers of the whole mahal in the same order;

3*rdly*—To any member of the village community; and

4*thly*—If the property be an under-proprietary tenure, to the proprietor.

Where two or more persons are equally entitled to such right, the person to exercise the same shall be determined by lot.

10. When any person proposes to sell any property, or when he forecloses a mortgage upon any property, in respect of which any persons have a right of pre-emption, he shall give notice to the person concerned of the price at which he is willing to sell such property, or of the amount due in respect of such mortgage, as the case may be.

Such notice shall be given through the Court within the local limits of whose jurisdiction the property or any part thereof is situate, and shall be deemed sufficiently given if it be stuck up on the chaupal or other public place of the village or city in which the property is situate.

11. Any person having a right of pre-emption in respect of any property proposed to be sold shall lose such right, unless within three months from the date of such notice he or his agent pays or tenders the price aforesaid to the person so proposing to sell.

12. When the right of pre-emption arises in respect of the foreclosure of a mortgage, any person entitled to such right may, at any time within three months after the giving of the notice required by section 10, pay or tender to the mortgagee or his successor in title the amount specified in such notice, and shall thereupon acquire a right to purchase the property.

On completion of the purchase the person exercising the right of pre-emption shall be bound to pay to the mortgagee or his successor in title the amount specified in such notice, together with interest on the principal sum secured by the mortgage, at the rate specified by the instrument of mortgage, for any time which has elapsed since the date of the notice, and any additional costs which may have been properly incurred by the mortgagee or his successor in title.

13. Any person entitled to a right of pre-emption may bring a suit to enforce such right on any of the following grounds (namely):

(*a*) that no due notice was given as required by section 10;

(*b*) that tender was made under section 11 or section 12 and refused;

(*c*) in the case of a sale, that the price stated in the notice was not fixed in good faith;

(*d*) In the case of a mortgage, that the amount claimed by the mortgagee was not really due on the footing of the mortgage and was not claimed in good faith, and that it exceeds the fair market-value of the property mortgaged.

In their Lordships' opinion the provisions of sections 10, 11 and 12 of the abovementioned Act tend to show that the claims of the plaintiffs in the two suits are not such as were contemplated by the Legislature.

Under section 10 the person proposing to sell any property in respect of which any persons have a right of pre-emption is bound to give notice to the persons concerned of the price at which he is willing to sell such property, and section 11 provides that a person having a right of pre-emption in respect of the property proposed to be sold shall lose such right unless within three months from the date of such notice he or his agent pays or tenders "*the price aforesaid*" to the person so proposing to sell.

How could the provisions of these sections apply to the facts of this case?

1933

RAJA BIRENDRA BIKRAM SINGH v. BRIJ MOHAN PANDE

P. C.

If they do apply, the vendor of the taluqdari mahal would have to give notice to the members of the under-proprietary village communities, *if any*, in all the 163 villages of the price at which he was willing to sell the taluqdari mahal, viz., Rs.5,50,000, and in order to comply with section 11 any member of an under-proprietary village community who claimed a right of pre-emption, would be bound to tender the "*the price aforesaid*," although he desired to pre-empt one village only as in these suits, for there is no provision made in the Act for tendering part of the "price aforesaid" or for pre-empting part of the property proposed to be sold.

The position would be even more extraordinary in the case of mortgaged property.

For where the mortgagee proposes to foreclose the property in respect of which a right of pre-emption arises, the mortgagee must give notice of "*the amount due in respect of the mortgage*" to the persons concerned, and the person entitled to pre-empt may pay or tender "the amount specified in such notice."

Suppose that in this case the vendor, instead of being a vendor had been a mortgagee for Rs.5,50,000 and was proposing to foreclose the taluqdari mahal, he would be bound under section 10 to give notice to the persons concerned of "*the amount due in respect of the mortgage.*" According to the plaintiffs' contention such notice would have to be given to the members of the under-priprietary village community, if any, in each of the 163 villages. Under section 12, if any member of such community claimed a right to redeem, he would be bound to pay or tender "the amount specified in such notice, viz., Rs.5,50,000, for there is no provision in the Act for assessing the amount due under the mortgage in respect of a particular village included in the taluqdari mahal the subject of the mortgage.

Section 13, which deals with the grounds on which a suit under the Act may be brought, points to the same conclusion; for section 13(*b*) refers to a tender having been made under section 11 or section 12 and refused.

P. C.

Such tender must be of the price at which the vendor is willing to sell the property in question or of the amount due in respect of the mortgage specified in the notice.

In the cases now under consideration, the property sold by the vendor was the whole taluqdari mahal containing 163 villages.

The plaintiffs in each suit claimed to pre-empt one of the said villages only. It would be absurd to suggest that they would be bound to tender the whole of the price, viz., Rs.5,50,000, which was the price at which the vendor was willing to sell, and yet there is no provision in the Act which would enable the plaintiffs to tender the amounts at which the plaintiffs valued the two villages respectively as stated in their plaints or any amount other than the said Rs.5,50,000. These considerations, in their Lordships' opinion, are conclusive as showing that the claims of the plaintiffs as stated in their plaints are not within the abovementioned Act and are therefore not maintainable.

This conclusion is sufficient to dispose of these appeals, but the arguments addressed to their Lordships on behalf of the appellant were directed to another point, viz., that the plaintiffs were not entitled to notice under section 10, the failure to give which was the only ground on which the suits were based.

Although it is not necessary to decide the point thus raised, in view of the abovementioned conclusion, their Lordships think it desirable to state the arguments presented in respect thereof.

Their Lordships' attention was drawn to certain decisons in Oudh relating to sections 7(*a*) and 9 of the Oudh Laws Act, 1876. The first to which it is necessary to refer is *Ashraf-un-nissa* v. *Parbhu Narain*, (1). In that case the Judicial Commissioner, Mr. Young, in considering the true construction of sections 7(*a*) and 9, held as follows:—

> The Act prescribes that the right of pre-emption exists in all village communities whether proprietary or under-proprietary,

(1) (1883) Oudh Select Cases, 1874—98, No. 140.

1933

RAJA BIRENDRA BIKRAM SINGH v. BRIJ MOHAN PANDE

P. C.

section 7(*a*). Here we see that a proprietary village community is distinguished from an under-proprietary village community. Each such community is complete in itself. Section 9 continues to preserve this distinction of the two sorts of tenures, and then goes on to say, that in each of them pre-emption shall accrue to certain classes of persons which it enumerates as follows:

1*st*—To co-sharers of the patti of the tenure (that is proprietary or under-proprietary as the case may be) in which the property in dispute is compromised, etc.

2*nd*—To co-sharers of the whole mahal, etc.

3*rd*—To any member of the village community; that is, to any member of the proprietary body if the community is a proprietary body and to any member of the under-proprietary body if the village community is an under-proprietary one.

After these three classes are exhausted, the section then makes a special provision that in the event of a portion of an under-proprietary tenure being for sale, and no one of the first three classes being ready to purchase, then the superior proprietor shall have the next preference. But no such provision is made in favour of an under-proprietor where a portion of the superior tenure is for sale, and consequently no such right exists to an under-proprietor.

The abovementioned sections came up for consideration again in *Drigbijai Singh* v. *Court of Wards, Ramnagar Estate,* (1) which in the first instance was heard on appeal by Scott, J. C., and Spankie, A. J. C.

Spankie, A. J. C., held that the property sold being a proprietary tenure, the plaintiff was not, by reason that he had under-proprietary right in the mahal, a member of the village community within the meaning of clause (3), section 9, of the Oudh Laws Act, 1876, so as to entitle him to pre-emption in respect of the land in suit. He took the same view of the sections as Mr. Young in the abovementioned case.

Scott, J. C., took a contrary view and held that the plaintiff was a member of the village community within the meaning of clause 3 of section 9, and as such had a right of pre-emption in respect of the proprietary tenure, even though the plaintiff had an under-proprietary right only in the mahal.

(1) (1901) 5 Oudh Cases, 266.

On a reference being made to the High Court of Judicature, N.-W. P., Stanley, C. J. Blair and Burkitt, JJ., held that under the said class (3) of section 9 of the Oudh Laws Act, 1876, a person holding an under-proprietary interest in a portion of a mahal sold by the Court of Wards on behalf of the proprietor of the mahal was entitled to pre-emption in respect of such mahal as against the purchaser.

The abovementioned decisions of Young, J. C., and Spankie, A. J. C., as to the meaning of the said sections on the one hand, and the decisions of Scott, J. C. and the learned Judges of the High Court on the other hand, represent the contentions which have been presented to their Lordships by the learned counsel on behalf of the appellant and the plaintiffs-respondents respectively.

It is conceded that the plaintiffs can only maintain their alleged right to notice under section 10 on the ground that they are members of the village community within the meaning of clause (3) of the said section 9.

It is therefore necessary to consider what is the meaning of "the village community." There is no definition of "the village community" in the Act, and consequently the meaning of those words must depend upon the true construction of the terms of section 7(*a*), having regard to any light which may be thrown upon that section by the terms of the following sections.

In the first place, it appears clear to their Lordships that, having regard to the words "whether proprietary or under-proprietary," the village community contemplated by section 7(*a*) must refer to persons having proprietary or under-proprietary rights in the village, and that it was not intended to include anyone who happened to reside in the village and who had no proprietary interest therein.

In the next place, their Lordships are of opinion that the section contemplates a proprietary village community as distinguished from an under-proprietary village community.

1933

RAJA BIRENDRA BIKRAM SINGH v. BRIJ MOHAN PANDE

P. C.

The words "however constituted" are no doubt of wide implication, and various meanings have been given to them in India, as for instance Spankie, A. J. C., in the above cited case, considered that they were necessary in order to include a village in which there were two or more mahals; again Chamier, J. C. in *Narendra Bahadur Singh* v. *Balkaran Singh* (1), was of opinion that the words "however constituted" were sufficient to render section 9 applicable to all villages whether the tenure was "bhaiyachara" or not, but whatever may be the meaning of the abovementioned words, their Lordships are of opinion that the words which follow, viz., "and whether proprietary or under-proprietary" clearly indicate the intention of the legislature to distinguish a proprietary village community from an under-proprietary village community.

Further, if the construction of the sections on which the plaintiff-respondents rely were to be adopted, it seems clear that the provisions contained in the fourth clause of section 9, would be redundant, because if the property to be sold or foreclosed were an under-proprietary tenure, and if, as contended on behalf of the plaintiff-respondents, a proprietor would be entitled to buy or redeem the under-proprietary tenure in his capacity of a member of the village community, there would be no necessity for the provision contained in the fourth clause.

Their Lordships consequently in this respect agree with the construction placed upon the sections by Young, J. C., in the above-cited case of *Ashraf-un-nissa* v. *Parbhu Narain* (2) and are of opinion that the plaintiffs in the two suits were not entitled to notice under section 10 of the said Act.

For the abovementioned reasons, their Lordships are of opinion that the appeals must succeed, and that the decrees of the Chief Court, dated the 21st of July, 1930, should be set aside, and the decrees of the Subordinate

(1) (1904) 7 Oudh Cases, 275, 282. (2) (1883) Oudh Select Cases, 1874-98, No. 140.

1933

RAJA BIRENDRA BIKRAM SINGH v. BRIJ MOHAN PANDE

Judge, dated the 15th July, 1929, should be restored, and that they will humbly advise His Majesty accordingly. The plaintiffs in the two suits must pay the costs of the defendant in the Chief Court and of these appeals.

Solicitors for appellants: *Watkins and Hunter.*

Solicitors for respondents: *Douglas Grant and Dold.*

PRIVY COUNCIL

ABDUL LATIF AND OTHERS *v.* ABADI BEGAM AND OTHERS [AND CONNECTED APPEALS]

P. C.*
1934
June 28

[On appeal from the Chief Court of Oudh]

Oudh Taluqdari Estate—Intestate Succession—List 2—Act superseding Sanads—Will of Taluqdar—Bequest to junior widow—Validity of Bequest—Construction of Bequest—Absolute or limited Interest—Construction of Sanad—"Nearest Male Heir"—Indian Succession Act (X of 1865) s. 82—Oudh Estates Act (I of 1869; amended by U. P. Act III of 1910) ss. 3, 13, 22.

Where intestate succession to an Oudh taluqdar in list 2, made under the Oudh Estates Act, 1869, opens after the passing of the Oudh Estates Amendment Act, 1910 (U. P.), it is governed by section 22 substituted by that Act for section 22 as enacted in 1869. Under the limitation in clause 10 of the new section, i.e. "to the nearest male agnate according to the rule of lineal primogeniture" there can no longer be any question of limitations in the sanad granted to the taluqdar applying under clause 11 as part of the ordinary law of his religion or tribe; clause 11 is now restricted to other heirs, such as females and those claiming under them, who would have been entitled to succeed under their personal law but for the earlier clauses. The amendment of section 3 of the Act of 1869 by the Act of 1910 further secures that succession to impartible estates should be governed exclusively by the new section 22.

The junior widow of a taluqdar in list 2 is a person who would have succeeded to an interest in the estate upon an intestacy, and accordingly section 13 does not preclude the taluqdar from

*Present: Lord THANKERTON, Sir JOHN WALLIS, and Sir LANCELOT SANDERSON.