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NAWAB SHAHANSHAH BEGAM v. CHAUDHRI AKBAR HUSAIN

ZIAUL HASAN, J.—Although the argument of the learned counsel for the appellant seemed to me to logically lead to the proposition that a dead person is capable of owning property, yet in view of the consensus of authority on the question and especially of the decision of their Lordships of the Privy Council in *Oolagappa Chetty* v. *Hon. D. Arbuthnot* (1), I agree with my learned brother SMITH, J. that the present appeal should be decreed and the case sent back to the court below for a decision of the other points raised in the respondent's objection.

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BY THE COURT (ZIAUL HASAN and SMITH, JJ.):—The appeal is decreed with costs, and the case sent back to the court below for decision of the other question raised by the respondent in his objection. Costs other than those of this Court will be borne by the parties according to the result of the objection.

Appeal allowed.

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APPELLATE CIVIL

Before Mr. Justice G. H. Thomas and Mr. Justice Ziaul Hasan

RAM BHAROSE AND OTHERS (DEFENDANTS-APPELLANTS) *v.* DEWAN RAMESHWAR PRASAD SINGH (PLAINTIFF-RESPONDENT)*

Oudh Estates Act (I of 1869) (before its repeal in 1910), sections 11, 17 and 22(11)—Widow of taluqdar—Power of widow of taluqdar to transfer the estate—Gift by taluqdar to his son—Death of son—Widow of son relinquishing taluqa in favour of her father-in-law—Relinquishment, validity of—Gift by taluqdar before repeal of Oudh Estates Act in 1910, requisites of—Acceptance by donee, if necessary—Words "ordinary law" in section 22(11) Oudh Estates Act, meaning of—Gift in favour of minor—Acceptance how made—Adverse possession against Hindu female, whether binding on reversioners—Evidence Act (I of 1872), sections 11 and 92—Statement in deeds regarding fictitious nature of a document, admissibility of, in evidence.

From paragraph 1 of section 11 of the Oudh Estates Act and the definition of the term "Heir" in section 2 of the Act, it is

*First Civil Appeal No. 64 of 1935, against the decree of Saiyed Abid Raza, Civil Judge of Partabgarh, dated the 25th of March, 1935.

(1) (1874) L.R., 1 I.A., 268.

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quite clear that the legislature did not intend to give the power of transfer in respect of an estate to a widow. Further, the Oudh Estates Act provides special rules for succession to the estates of taluqdars and grantees and no taluqdar has power to change the prescribed line of succession. Therefore a widow to whose husband a *taluqa* had been gifted by his father had no power to relinquish the taluqa in favour of her father-in-law so as to make him a fresh stock of descent when under the law somebody else would be entitled to succeed to the taluqa on her death and the relinquishment, the effect of which is to contravene the provisions of the Oudh Estates Act, must be held to be invalid and void even though when the deed of relinquishment was executed by the widow in favour of the father-in-law he was a person entitled to the estate under section 22(11) of the Oudh Estates Act if the widow had died. *Rangasami Gounden* v. *Nachiappa Gounden* (1), *Raghuraj Chandra* v. *Subhadra Kunwar* (2), *Harnath Kuar* v. *Indar Bahadur Singh* (3), and *Jadunath Kuar* v. *Bisheshar Bakhsh Singh* (4), distinguished.

It is settled law that the expression "ordinary law" in section 22(11) of the Oudh Estates Act includes custom and the terms of a taluqdar's *sanad*. *Badri Narain Singh* v. *Harnam Kuar* (5), *Abadi Begam* v. *Mohammad Khalil Khan* (6), *Dal Bahadur Singh* v. *Har Bakhsh Singh* (7), *Ganesh Bakhsh Singh* v. *Ajudhiya Bakhsh Singh* (8), *Mata Bakhsh Singh* v. *Ajodhiya Bakhsh Singh* (9) and *Dal Bahadur Singh* v. *Har Bakhsh Singh* (10), followed.

Under section 17 of the Oudh Estates Act before it was repealed in 1910, it was necessary not only that the deed of gift should be registered within one month from the date of its execution but also that delivery of possession should have been made within six months after the execution of the deed. That section did not render it necessary for the validity of a gift that it should be accepted by the donee. *Ram Lal* v. *Jani Begam*, (11), dissented from and *Krishnapal Singh* v. *Sriraj Kuar* (12), relied on.

(1) (1918) L.R., 46 I.A., 72.
(2) (1928) I.L.R., 3 Luck., 76.
(3) (1922) L.R., 50 I.A., 69.
(4) (1932) 9 O.W.N., 478.
(5) (1922) L.R., 49 I.A., 276.
(6) (1930) I.L.R., 6 Luck., 282.
(7) (1930) I.L.R., 6 Luck., 790.
(8) (1931) 11 O.W.N., 1641.
(9) (1936) Oudh, 340.
(10) (1934) 11 O.W.N., 1641.
(11) (1899) 2 O.C., 244.
(12) (1927) 1 Luck., Cas., 97.

In the case of a donee being incapable of signifying his acceptance by reason of age or of his being an impersonal being such as a deity, the acceptance required can be made on his behalf by somebody else competent to act as an agent and accetpance is presumed after his possession, actual or constructive, by the donee. Where, therefore, the donee is a minor and his father, the natural guardian and the donor himself applied for mutation of names in favour of the donee and continued to act in dealing with the property on behalf of the minor as his guardian it is sufficient acceptance on behalf of the minor donee. *Deo Saran Bharthi* v. *Deoki Bharthi* (1), and *Anandi Devi* v. *Mohan Lal* (2). relied on.

It is well settled that adverse possession against a Hindu female heir will not be effective against and binding on the reversioners.

A statement in certain deeds with regard to the fictitious nature of a document is not inadmissible in evidence owing to the provisions of section 92 of the Evidence Act. Section 92 deals with the contradiction, or variation of, or addition to or subtraction from the terms of a document and not with an allegation regarding the nature of the document itself. 'Fact' in section 11, Evidence Act includes a statement.

Messrs. *Hyder Husain, H. H. Zaidi* and *Ram Swarup Nigam,* for the appellants.

Messrs. *M. Wasim* and *Radha Krishna Srivastava,* for the respondent

THOMAS and ZIAUL HASAN, JJ.—This is a first appeal against a judgment and decree of the learned Civil Judge of Partabgarh decreeing the plaintiff-respondent's suit for possession of village Nadipur and for mesne profits amounting to Rs.996-9-2.

The village in suit is comprised in the *taluqa* of Uriyadih Jamtali of which Harmangal Singh was the first taluqadar, being entered in list I prepared under section 8 of the Oudh Estates Act at no. 261 and in list II at no. 121. The following pedigree will show the

(1) (1924) I.L.R., 3 Pat., 842. (2) (1932) I.L.R., 54 All., 534.

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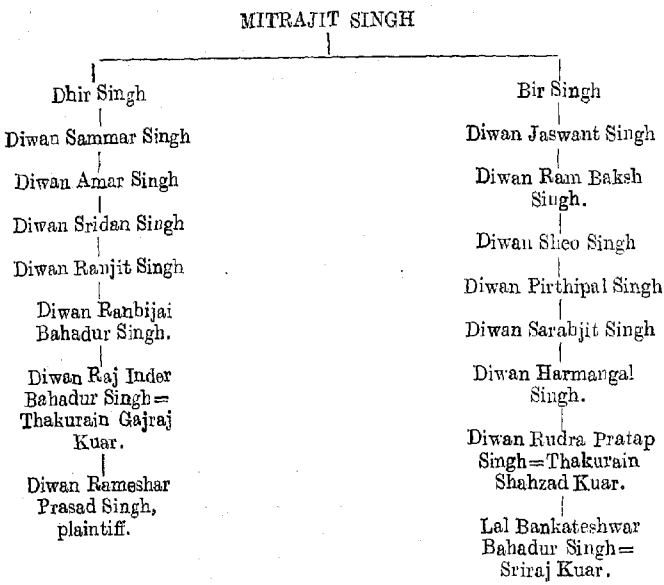
relationship of the plaintiff, Rameshwar Prasad Singh with Harmangal Singh:



Harmangal Singh was succeeded on his death by his son Rudra Pratab Singh. On the 21st of August, 1936. Rudra Pratab Singh executed a deed of gift (exhibit 7) in respect of the entire *taluqa* in favour of his son Bankateshwar Bahadur Singh, who was about ten years of age at the time. On the 5th of October, 1899, Bankateshwar Bahadur Singh died leaving a widow, Thakurain Sriraj Kuar and on the 13th of April, 1901, Thakurain Sriraj Kuar executed a deed of relinquishment (exhibit A-3) in respect of the taluqa in favour of her father-in-law, R. P. Singh. On the 19th of April, 1901. R. P. Singh executed a will (exhibit A-2) by which he devised the entire taluqa to his wife Shahzad Kuar. for her life and after her to Thakurain Sriraj Kuar. R. P. Singh died on the 11th of March, 1908 and was succeeded by his widow Shahzad Kuar. On the 16th of January, 1918, Shahzad Kuar died and was succeeded by Sriraj Kuar. When the latter died on the 4th of February, 1932. various persons, including the present

plaintiff, laid claim to the estate. The matter was referred by the contending parties to arbitration with the Deputy Commissioner of Partabgarh as the *sarpanch*. The arbitrators gave their award on the 28th of April, 1933, by which the village of Nadipur, which is in dispute, along some villages was given to the present plaintiff. The plaintiff obtained mutation in his favour on the 31st of July, 1933.

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The defendants claimed to be in possession of the village in suit by virtue of a unsufructuary mortgage deed (exhibit A-1, dated 6th August, 1915) executed by Thakurain Shahzad Kuar. There was a case under section 145 of the Code of Criminal Procedure between the present parties and on the 14th of July, 1933, the crimial court confirmed the defendants' possession over the village as against the plaintiff. On the 10th of July, 1934, the plaintiff brought the present suit against the defendants for possession of the village and for Rs.1,200 mesne profits.

The plaintiff's case is that by virtue of the deed of gift (exhibit 7) executed by R. P. Singh on the 21st of August, 1896, B. B. Singh became the absolute owner of the taluqa, that he was succeeded by his widow Sriraj Kuar as a life estate holder under section 22 of the Oudh Estate Act and that after the death of Thakurain Sriraj Kuar he became entitled to the village in suit under the arbitrators' award of the 28th of April, 1933. With regard to the deed of relinquishment (exhibit A-3) executed by Sriraj Kuar in favour of R. P. Singh, the plaintiff's case is that Sriraj Kuar being in possession for life only under the Oudh Estates Act, she had no right to execute that deed and that it is therefore invalid. With regard to the mortgage-deed set up by the defendants, his case is that the relinquishment by Sriraj Kuar being invalid, R. P. Singh got no interest thereby in the taluqa and that

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consequently Thakurain Shahzad Kuar could derive no legal title to the taluqa through R. P. Singh and was not competent to make the mortgage in favour of the defendants.

The defendants' contention is that the deed of gift (exhibit 7) was executed by R. P. Singh fictitiously as he was heavily indebted and wanted the taluqa to be taken over by the Court of Wards and because he thought that the Court of Wards would take the taluqa under their management if he should transfer it to his minor son, B. B. Singh. The defendants say that in spite of the execution of the deed of gift in favour of B. B. Singh, R P. Singh remained in possession of the entire taluqa and that when the purpose for which the fictitious gift was made failed by reason of the refusal of the Court of Wards to take over management and when B. B. Singh died, R. P. Singh obtained a formal relinquishment from B. B. Singh's widow, Sriraj Kuar. They further allege that Thakurain Shahzad Kuar obtained the entire taluqa as an absolute owner after R. P. Singh's death under the will (exhibit A-2) and that Shahzad Kuar was therefore perfectly competent to make the mortgage in question. They also say that Thakurain Sriraj Kuar was competent to execute the deed of relinquishment referred to above and further plead that they have perfected their mortgagee rights by adverse possession. The other pleas of the defendants were that the mortgage in question was made by Shahzad Kuar for legal necessity and that they are protected by section 41 of the Transfer of Property Act.

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On the pleas raised by the defendants, the trial court framed a number of issues but the learned Judge decided ten of them and decreed the plaintiff's suit.

In appeal before us the following points were argued by the learned counsel for parties:

(1) Was the gift in favour of B. B. Singh fictitious or genuine?

(2) Was the relinquishment or her rights by Sriraj Kuar in favour of R. P. Singh valid?

(3) Was Thakurain Shahzad Kuar absolute owner of the estate under the will of her husband?

(4) Was Thakurain Shahzad Kuar in adverse possession of the taluqa and is the mortgage in favour of the defendants therefore unassailable?

(5) Was the mortgage made by Shahzad Kuar for legal necessity and is it binding on the plaintiff?

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The other grounds of appeal contained in the memorandum of appeal were not pressed by the learned counsel for the appellants. We take up the above points seriatim.

First point—

This is the most important question in the present appeal. The deed of gift being on the face of it a perfectly valid and genuine document it was for the defendants to prove that it was executed fictitiously but they have in our opinion entirely failed to prove this. Much stress is laid on the fact that, as recited in the deed of gift itself, R. P. Singh's taluqa was heavily indebted and that he desired to put it under the management of the Court of Wards to liquidate those debts. It is said that as his attempts to put it under the management of the Court of Wards on his own behalf failed, he executed the deed of gift in question in favour of his minor son in order to gain his object. The facts that the taluqa was indebted and that R. P. Singh wanted that the Court of Wards should undertake its management are not however inconsistent with the genuineness of the gift. For the purpose that the Court of Wards should take over the management of the taluqa, it was not necessary that the gift in favour of R. P. Singh's minor son should be fictitious. Indeed, the purpose could be better achieved by there being a genuine deed of gift in favour of the minor. We are therefore unable to accept the argument that the fact

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of R. P. Singh trying to put the taluqa under the superintendence of the Court of Wards leads to the conclusion that the deed of gift in question was executed fictitiously.

The defendants rely on certain statements made by Sriraj Kuar and R. P. Singh in the deeds of relinquishment, exhibit A-3 and will exhibit A-2, respectively. In the former Sriraj Kuar says—

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> "In order to arrange for discharge of debts of bankers through Court of Wards my father-in-law, Dewan Rudra Partab Singh fictitiously executed a registered deed of gift in respect of taluqa Uriya Dih Jamtali on 21st August, 1896, in favour of my husband . . . the Dewan himself remained actually the owner in possession of the said *taluqa* . . . with the object of placing the estate under the management of the Court of Wards . . . My husband never had any sort of objection against the ownership and possession of the Dewan."

and further says—

> " I declare that the deed of gift . . . was quite fictitious."

Similarly, in his will in favour of his wife and daughter-in-law, Rudra Pratab Singh made the following statement:

> " On the 21st August, 1896, I having executed a fictitious deed of gift in favour of my son . . . got the mutation effected in his favour under my guardianship though in fact I was the owner in posession thereof . . . The ownership and possession over the taluqa of Uriya Dih Jamtali vested in me entirely even in the lifetime of the Lal and I am still vested therewith."

On behalf of the plaintiff-respondent it is said that these statements are inadmissible in evidence. We do not however agree with this view. Reliance in the first place is placed on section 6 of the Evidence Act and particularly on illustration (*a*) to that section. That section runs as follows:

> "The facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places."

It is argued that for the statements to be admissible in evidence it was necessary that they should have been made at or about the time of the execution of the deed of gift. Section 6 of the Evidence Act however shows only one of the ways in which a fact can be relevant and it cannot be argued that because a fact or statement is not relevant under this section, it is not relevant at all. Then, the learned counsel relies on section 21 of the Evidence Act which says that admissions cannot be proved by or on behalf of the person who makes them or by his representative-in-interest except in three cases and the learned counsel's contention is that the statements under consideration do not fall under any of the exceptions mentioned in section 21. We do not accept this view also. In our view these statements come possibly under the second exception by being admissible under section 32(7) of the Evidence Act and certainly under the third exception which is to the following effect:

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> "An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission."

It seems to us that the statements in question are relevant under clause (1) of section 11 of the Evidence Act because they are inconsistent with the fact in issue. It was said that section 11 of the Evidence Act related to facts and not to statements but "fact" includes any "thing, state of things, or relation of things capable of being perceived by the senses" (*vide* section 3) and a statement is thus included in the definition of "fact" as is clear from illustration (*a*) to section 6 also which was relied on by the learned counsel himself. In his judgment in suits nos. 2 and 3 of 1925 which one Rai Krishnapal Singh brought in this Court in the lifetime of Sriraj Kuar to get certain transfers made by Sriraj Kuar declared invalid, and which were tried on the original side by KING J., the learned Judge was of opinion that the statements in question which were

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relied on before him also were inadmissible owing to the provisions of section 92 of the Evidence Act. With respect we are unable to agree. Section 92 deals with the contradiction, or variation of, or addition to or subtraction from the terms of a document and not with an allegation regarding the nature of the document itself. The learned counsel for the respondent before us does not also take his stand on section 92 of the Indian Evidence Act. We therefore see no reason to hold that the statements relied on by the defendants are irrelevant or inadmissible.

But though we hold that the statements in question are admissible we are definitely of opinion that they have little evidentiary value. When B. B. Singh died only about three years after the gift in his favour it was not only in the interest of R. P. Singh but a matter of the utmost importance to him that he should be in possession of the taluqa as proprietor rather than let Sriraj Kuar be the taluqadaria and himself be dependent on her, and it is clear that he could not achieve this object unless he made it appear that the deed of gift which he had executed in favour of his minor son was fictitious. Sriraj Kuar was a young widow living at the house of her father-in-law, and as in those days remarriage of Hindu widows was unheard of especially among the higher classes, she had to spend the whole of her life in the family of her father-in-law and could not therefore afford to go against his wishes and to offend him. In these circumstances she could not but accede to R. P. Singh's wishes and had to execute the deed of relinquishment and to say in it that the deed of gift in favour of her husband was fictitious. Similarly in his will, dated the 19th of April, 1901, R. P. Singh in order to show his right to dispose of the taluqa and to rely on the relinquishment made in his favour by Sriraj Kuar had perforce to say that the deed of gift executed by him in favour of B. B. Singh was fictitious. It is

thus clear that the statements in question were prompted by the exigencies of the situation and can by no means be relied upon as representing the true state of facts. The appellants have absolutely failed to satisfy us that the gift in question was fictitious and we therefore hold that it was a genuine transaction. We may note that Mr. Justice King also came to the same conclusion about the gift in Rai Krishnapal Singh's suits referred to above.

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Some legal objections to the validity of the gift were also put forward though it was at last conceded that if the gift be held to be genuine all the requirements of law for the validity of the gift had been fulfilled. It was said that under section 17 of the Oudh Estates Act which held good at the time of the execution of the deed of gift in question and was only repealed in 1910, it was necessary not only that the deed of gift should be registered within one month from the date of its execution but also that delivery of possession should have been made within six months after the execution of the deed The reigstration of the deed of gift in question was effected on the very date of its execution but it was contended that delivery of possession was not made as required by section 17. Now, although in *Ram Lal* v. *Musammat Jani Begam* (1) it was held that in order that a gift be valid under the Oudh Estates Act all that was required by section 17 was either that the deed of gift should be registered within a month or that possession should be delivered within six months of the execution of the deed, yet we agree with the learned counsel's contention that the language of section 17 obviously means that both the conditions must be fulfilled in order to make the gift valid. This view is sppported by the decision in *Rai Krishnapal Singh* v. *Thakurain Sriraj Kuar* (2) which is a judgment of KING, J. in suites nos. 2 and 3 of 1935 and is exhibit 39 of the record. There is however ample proof of the fact that the gift in question

(1) (1899) 2 O.C., 244. (2) (1927) 1 Luck., Cas., 97.

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was followed by delivery of possession soon after the gift. R. P. Singh himself applied for mutation being effected in favour of the donee and it was accordingly effected. Receipts to tenants were given in the name of the donee and suits were filed and defended in his name after the gift. None of these facts is disputed and they are in our judgment quite sufficient to prove delivery of possession to the donee.

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Next it was said that both under the Hindu Law and under section 122 of the Transfer of Property Act it is necessary that a gift should be accepted by the donee. We perfectly agree with KING, J. that the gift in question is governed by the Oudh Estates Act which is a special Act and not by the general Hindu Law or by section 122 of the Transfer of Property Act. Section 17 of the Oudh Estates Act did not render it necessary for the validity of a gift that it should be accepted by a donee, but even if acceptance be deemed necessary in the present case, on this point also there is sufficient evidence of the acceptance of the gift on behalf of B. B. Singh. In the case of the donee being incapable of signifying his acceptance by reason of age or of his being an impersonal being such as a deity, the acceptance required can be made on his behalf by somebody else competent to act as an agent—*vide Deo Saran Bharthi* v. *Deoki Bharthi* (1) and acceptance will be presumed after his possession, actual or constructive, by the donee—*vide Anandi Devi* v. *Mohan Lal* (2). In the present case the donee was a minor and his natural guardian was the father, the donor himself. We have mentioned that R. P. Singh himself applied for mutation of names in favour of the donee and that he continued to act in dealing with the property on behalf of the minor as his guardian and this is to our mind sufficient acceptance on behalf of the minor donee. In fact, as noted above the learned counsel for the appellant himself conceded that he could not very well press the legal objections to the validity of the gift

(1) (1924) I.L.R., 3 Pat., 842. (2) (1932) I.L.R., 54, All., 534.

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in the present case. We therefore decide this point against the appellants.

Second point—

The question is whether the relinquishment made by Sriraj Kuar in favour of R. P. Singh was valid and conferred any rights on R. P. Singh. It was argued by the learned counsel for the appellants that the relinquishment by Sriraj Kuar was no more than a surrender of the widow's estate to the next reversioner which had the effect of ending the widow's rights and vesting the property immediately in the reversioner. Section 22 of the Oudh Estates Act contains special rules of succession for intestate taluqdars and granters and after providing for succession by various heirs in clauses 1 to 10, the unamended Act in clause 11 provided—

> "Or in default of any such descendant then to such persons as would have been entitled to succeed to the estate under the ordinary law to which persons of the religion and tribe of such taluqdar or grantee, heir or legatee are subject."

It was argued that as the relinquishment in question was made at a time when the unamended Act was in force, it should be seen who would have been entitled to the estate after the death of Sriraj Kuar under the "ordinary law" to which Sriraj Kuar was subject. Now, although formerly doubt existed as to whether the expression "ordinary law" in section 22(11) of the Oudh Estates Act meant only the personal law or such law as modified by custom or the terms of a *sanad*, it is now to be deemed as settled that "ordinary law" includes custom and the terms of a taluqdar's *sanad*. In *Badri Narain Singh* v. *Harnam Kuar* (1) their Lordships of the Judicial Committee dealing with a case under section 23 of the Oudh Estates Act clearly laid down that "the words 'ordinary law in section 23, like the similar words in section 22 clause 11, include the rule of succession laid down in the *sanad* by which the estate had been granted."—This decision has since been consistently

(1) (1922) L.R., 49 I.A., 276.

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followed by this Court—*vide Abadi Begam* v. *Mohammad Khalil Khan* (1), *Dal Bahadur Singh* v. *Har Bakhsh Singh* (2), *Ganesh Bakhsh Singh* v. *Ajudhiya Bakhsh Singh* (3) and *Mata Bakhsh Singh* v. *Ajodhiya Bakhsh Singh* (4) and was again repeated by their Lordships of the Privy Council in *Dal Bahadur Singh* v. *Har Bakhsh Singh* (5). We take it, therefore, that in 1901 when the deed of relinquishment was executed by Sriraj Kuar in favour of R. P. Singh, the latter was a person entitled to the estate under section 22(11) of the Oudh Estates Act if Sriraj Kuar had died, since there is admittedly a *sanad* of primogeniture succession in the family. The question however is whether Sriraj Kuar had the power to relinquish the estate in favour of R. P. Singh.—We have heard the learned counsel at length on this point and after giving our best consideration to it, have come to the conclusion that Sriraj Kuar had no such power. Paragraph 1 of section 11 of the Oudh Estates Act provides—

> "Subject to the provisions of this Act, and to all the conditions under which the estate was conferred by the British Government, every taluqdar and grantee, and every heir and legatee of a taluqdar and grantee, of sound mind and not a minor, shall be competent to transfer the whole or any portion of his estate, or of his right and interest therein during his lifetime, by sale, exchange, mortgage lease or gift, and to bequeath by his will to any person the whole or any portion of such estate, right and interest."

"Estate" is defined in the Act as the taluqa or immovable property acquired or held by a taluqdar or grantee in the manner mentioned in section 3, section 4 or section 5 or the immovable property conferred by a special grant of the British Government upon a grantee, and 'heir' is defined as a person who inherits property otherwise than as a widow under the special provisions of this Act. It is not denied that the taluqa in question was an estate within the meaning of the Act and from paragraph 1 of section 11 and the definition of the term

(1) (1930) I.L.R., 6 Luck., 282.
(2) (1930) I.L.R., 6 Luck., 730.
(3) (1931) I.L.R., 7 Luck., 564.
(4) (1936) Oudh, 340.
(5) (1934) 11 O.W.N., 1641.

"heir" it is quite clear that the legislature did not intend to give the power of transfer in respect of an estate to a widow. Further, the Oudh Estates Act provides special rules for succession to the estates of taluqdars and grantees and no taluqdar or grantee much less the widow of a taluqdar has power to change the prescribed line of succession. Therefore Sriraj Kuar had no power to relinquish the taluqa in favour of R. P. Singh so as to make him a fresh stock of descent when under the law somebody else would be entitled to succeed to the taluqa on her death and the relinquishment, the effect of which was to contravene the provisions of the Oudh Estates Act, must be held to be invalid. Reliance was placed by the learned counsel for the appellants on the case of *Rangasami Gounden* v. *Nachiappa Gounden* (1) in which their Lordships held that a Hindu widow can surrender her whole interest in the whole estate in favour of the nearest reversioner or reversioners at the time, but that cases was of an ordinary Hindu widow and not of a widow governed by the Oudh Estates Act.

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Reference was also made to Halsbury's Laws of England, Volume 24, page 292, paragraph 526 and it was argued that a surrender was recognized by the English law also but, in the first place, surrender and release under the English law arise out of a grant and do not relate to inheritance (*vide* Halsbury's Law of England, Volume 24, page 212, paragraph 402) and in the second place, in the face of the special provisions of the Oudh Estates Act to which Sriraj Kuar was subject *qua* the estate in her possession no other law can be applicable to her.

It was argued that the Oudh Estates Act being silent as to the power of a widow to surrender her rights to the next reversioner the ordinary Hindu Law should be looked to and applied and in support of this contention reliance was placed on *Raghuraj Chandra* v. *Subhadra Kunwar* (2), *Harnath Kuar* v. *Indar Bahadur Singh* (3) and *Jadunath Kuar* v. *Bisheshar Bakhsh Singh* (4) but in

(1) (1918) L.R., 46 I.A., 72.
(2) (1928) I.L.R., 3 Luck., 76.
(3) (1922) L.R., 50 I.A., 69.
(4) (1932) 9 O.W.N., 478.

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our judgment it is not correct to say that the Oudh Estates Act is silent on the point and we have already given our reasons for holding that that Act bars an alienation by a taluqdar's widow.

We therefore hold that the relinquishment in question was unauthorized and therefore invalid.

Third Point—

Thomas and Ziaul Hasan, JJ.

In view of the findings recorded above the question whether Thakurain Shahzad Kuar got only a life estate or was made absolute owner of the estate by the will of R. P. Singh does not arise. As we have held the gift in favour of B. B. Singh to be genuine and valid he became the absolute owner of the taluqa and as Sriraj Kuar's relinquishment has been held to be invalid, R. P. Singh got no interest in the taluqa to bequeath to his wife or anybody else. The will in favour of Shahzad Kuar was consequently invalid and the taluqa must go after Sriraj Kuar's death to those entitled to it by the provisions of the amended Oudh Estates Act of 1910. This point also goes against the appellants.

Fourth Point—

The plea that Shahzad Kuar had completed her title by adverse possession by tacking R. P. Singh's possession on to her own has no force as it was only in 1932 that Sriraj Kuar died and the present plaintiff succeeded to the estate. Even under the ordinary Hindu Law it is well settled that adverse possession against a Hindu female heir will not be effective against and binding on the reversioners.

Fifth Point—

As the gift in favour of B. B. Singh has been held to be valid and the relinquishment made by Sriraj Kuar in favour of R. P. Singh invalid, Shahzad Kuar had no right to make the mortgage in question in favour of the appellants and the plaintiff is not at all bound by that mortgage.

The result is that we hold that the suit of the plaintiff-respondent was rightly decreed by the court below and dismiss this appeal with costs.

Appeal dismissed.