

APPELLATE CIVIL

Before Mr. Justice Ziaul Hasan and Mr. Justice
W. Y. Madeley

1937
July, 26,

MUSAMMAT SUKHRAJI (APPELLANT) *vs.* DEWAN RAMESH-
WAR PRASAD SINGH (RESPONDENT)*

Merger—Gift of under-proprietary rights in favour of taluqdar holding life estate only—No declaration by taluqdar under section 32, Oudh Estates Act, of intention to merge under-proprietary rights gifted in the taluqdari estate—Under-proprietary rights, if merged with proprietary rights—Merger, essential elements of.

Where a person holding under-proprietary rights in certain villages in a taluqa makes a gift of those rights in favour of the taluqdar and though the taluqa is to devolve after his death according to the provisions of the Oudh Estates Act, the under-proprietary rights gifted, being his personal property, the succession to it is to be governed by his personal law and he does not make any declaration of his intention to incorporate them in the taluqdari estate under section 32-A of the Oudh Estates Act, the under-proprietary rights gifted to him cannot be said to have merged in his superior proprietary rights, because that would be to impose upon lands and other property limitation of descent at variance with the ordinary law of descent applicable in the case. In order that there may be a merger in the case of a lessee, it is necessary that the interests of the lessor and the lessee should become vested in one person and *in the same right*. If, therefore, the taluqdar does not hold the taluqa absolutely but holds it only for life there can be no merger of under-proprietary rights with his proprietary rights. *Kesho Prasad Singh v. Madho Prasad Singh* (1), *Nisar Ali Khan v. Muhammad Ali Khan* (2), and *Sakina Begam v. Shahr Bano Begam* (3), relied on. *Rajindra Bahadur Singh v. Raghubans Kunwar* (4), *Sadiq Ali Khan v. Fakhr Jehan Begam* (5), *Darshan Singh v. Arjun Singh* (6), and *Bansi Dhar v. Jagmohan Das* (7), referred to.

*Execution of Decree Appeal no. 12 of 1936, against the order of K. N. Wanchoo, Esq., I.C.S., District Judge of Rae Bareilly, dated the 29th of January, 1936, setting aside the order of Syed Abid Raza, Civil Judge of Partabgarh, dated the 27th of May, 1935.

(1) (1924) I.L.R., 3 Pat., 880. (2) (1929) I.L.R., 5 Luck., 305.
(3) (1934) I.L.R., 10 Luck., 443. (4) (1918) I.L.R., 45 I.A., 134.
(5) (1931) I.L.R., 6 Luck., 556. (6) (1926) I.L.R., 1 Luck., 560.
(7) (1928) I.L.R., 3 Luck., 472.

Messrs. *M. Wasim* and *Ali Hasan*, for the appellant.

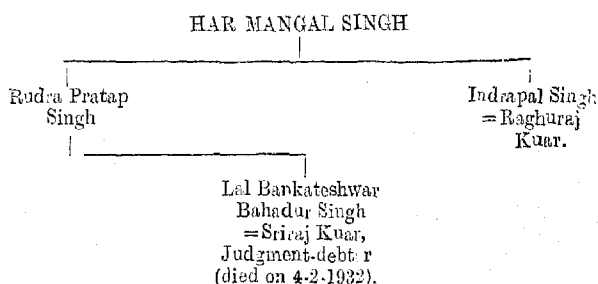
Mr. *Ghulam Hasan*, for the respondent.

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ZIAUL HASAN and MADELEY, JJ.:—This is a decree-holder's appeal against an order of the learned District Judge of Rae Bareilly reversing an order of the learned Civil Judge of Partabgarh disallowing an objection of the judgment-debtor-respondent.

On the 27th of March, 1923, the decree-holder, Musammat Sukhraj obtained a money decree against Sriraj Kuar, the late taluqdaria of Oriya Dih Jamtali. For the purposes of this appeal it is necessary to give a short pedigree of the holders of this taluqa. It is as follows:



On the 18th of October, 1894, Rudra Pratap Singh, taluqdar, granted under-proprietary rights in five villages (including the three villages now in question), to his younger brother Indrapal Singh for his maintenance (*vide* exhibit D1). On the 20th of June, 1902, Indrapal Singh bequeathed his rights in those five villages to his wife Raghuraj Kuar (exhibit D2). In 1929 Raghuraj Kuar made a waqf of one of the villages and transferred the remaining four by gift to Sriraj Kuar. The decree-holder wants to execute her decree against the under-proprietary rights in three of the four villages gifted to Sriraj Kuar by Raghuraj Kuar. Sriraj Kuar succeeded her husband Bankateshwar Bahadur Singh to the taluqa and on her death in 1932 the taluqa devolved on the respondent. The contention

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of the judgment-debtor respondent is that as Sriraj Kuar was the superior proprietor of the villages when the gift of under-proprietary rights was made in her favour by Raghuraj Kuar, the latter's rights merged in her superior proprietary rights and that therefore no under-proprietary rights now exist which can be attached and sold by the decree-holder. This objection was rejected by the trial court but was accepted by the learned District Judge and hence this appeal.

The learned counsel for the appellant challenges the finding of the learned District Judge and argues that no merger of the under-proprietary rights could take place in Sriraj Kuar's proprietary rights as she was not holding the taluqa absolutely but only for her life under section 22(7) of the Oudh Estates Act. On behalf of the respondent, on the other hand, it is contended that the fact of Sriraj Kuar holding the taluqa for life only cannot affect the merger of the two rights. We are of opinion that the appellant's argument must be accepted. In *Maharaja Kesho Prasad Singh v. Madho Prasad Singh* (1) a Bench of the Patna High Court remarked—

“In order that there may be a merger the two estates which are supposed to coalesce must be vested in the same person at the same time and *in the same right*.”

In *Sardar Nisar Ali Khan v. Khan Bahadur Sardar Muhammad Ali Khan* (2), *F*, the legatee, who had only a life estate in a taluqa purchased some under-proprietary rights in a village of the taluqa and it was held by a Bench of this Court that because *F* had only a life estate in the taluqa and never became absolutely entitled to it, the under-proprietary rights purchased by him did not merge in the estate. In *Sakina Begam v. Shahr Bano Begam* (3) a Bench of this Court, of which one of us was a party, following the decision of their Lordships of the Judicial Committee in *Rajindra*

(1) (1924) LL.R. 3 Pat., 880.

(2) (1929) I.L.R., 5 Luck., 305.

(3) (1934) I.L.R., 10 Luck., 443.

Bahadur Singh v. Raghubans Kunwar (1) and *Mohammad Sadiq Ali Khan v. Fakhr Jahan Begam* (2) held that a subject has no right to impose upon lands or other property any limitation of descent which is at variance with the ordinary law of descent of property applicable in his case and that therefore the merger of lesser estate cannot be allowed where the result will be to apply a rule of succession to the rest of the estate varying the rule provided by the personal law of the parties to whom the said estate belongs. It was further held that where a taluqdar purchases under-proprietary rights in some of his villages and makes accretions but makes no declaration of his intention to incorporate them into the taluqdari estate under section 32-A of the Oudh Estates Act, the succession to the purchases and accretions will be governed by the rule of the personal law of the taluqdar and under-proprietary rights purchased cannot be allowed to be merged in the superior proprietary rights of the taluqdar because that would be to impose upon lands and other property limitation of descent at variance with the ordinary law of descent applicable in the case. Applying this principle to the present case it is clear that while the taluqa held by Sriraj Kuar was to devolve after her death according to the provisions of the Oudh Estates Act, the under-proprietary rights gifted to her were her personal property and would go to her stridhan heirs, and as Sriraj Kuar is not said to have made any declaration under section 32-A of the Oudh Estates Act, the under-proprietary rights gifted to her cannot be said to have merged in her superior proprietary rights.

In view of the above clear decisions of this Court and of their Lordships of the Privy Council on the point before us, it is not necessary to refer to some cases of the late Court of the Judicial Commissioner of Oudh relied on by the respondent in support of the contention

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(1) (1918) L.R., 45 I.A., 134.

(2) (1931) I.L.R., 6 Luck., 556.

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that the under-proprietary rights merged in Sriraj Kuar's superior proprietary rights. The learned counsel for the respondent has also relied on *Darshan Singh v. Arjun Singh* (1) and *Bansi Dhar v. Jagmohan Das* (2) but both those cases dealt with merger as provided for by section 101 of the Transfer of Property Act and have therefore no bearing on the facts of the present case. We may however point out that even under section 111(d) of the Transfer of Property Act, which deals with merger in the case of a lessee, it is necessary that the interests of the lessor and the lessee should become vested in one person *in the same right*.

The result is that we decree this appeal with costs, set aside the order of the learned District Judge and restore that of the learned Civil Judge.

Appeal allowed.

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge
 and Mr. Justice Ziaul Hasan

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 August 4,

SYED SIBTAI HASAN (PLAINTIFF-APPELLANT) v. THE
 GUARDIAN ASSURANCE CO. LTD. AND ANOTHER
 (DEFENDANT-RESPONDENTS)*

Insurance—Insurance of motor bus—Policy providing that company shall be liable subject to conditions inscribed on its face or endorsed thereon in respect of vehicle described in schedule—Schedule giving description of vehicle and saying “warranted for carrying passengers only”—Endorsement in schedule, whether can be regarded as term of policy—Alteration of risk, how far affects obligation of insurer—Owner using bus warranted for carrying passengers for carrying monkeys—Action of owner, if amounts to alteration of risk—Insurer, if absolved from liability in event of accident.

Where the material words in the operative part of a policy of insurance on a motor bus are that ‘the company shall,

*Second Civil Appeal no. 292, of 1935, against the decree of W. Y. Madeley, Esq., I.C.S., District Judge of Lucknow, dated the 9th of January, 1935, reversing the decree of Babu Bhagwati Prasad, Civil Judge of Lucknow, dated the 15th of March, 1934.

(1) (1926) I.L.R., 1 Luck., 560. (2) (1928) I.L.R., 3 Luck., 472.