

1872 Tipperah case—*Neelkista Deb Burmono v. Beer Chunder*

MAHARANI
HIRANATH
KOER
v.
BABOO RAM
NARAYAN
SING

Thakoor (1), the Pachete case—*Maharaja Gurunarain Deo v. Unund Lal Sing* (2), the Chota Nagpore case—*Thakoorai Chutturdharee Singh v. Thakoorai Telukdharee Singh* (3).

Custom must relate to a particular class of property, not to all kinds of property in a district or division. The settlement paper of chota Nagpore consists of six divisions, of which Ramghur is one. Markby, J., finds that it is a modern political division, and an appendix to the Fifth Report to Parliament shows that the ancient divisions were different (4). Custom can only apply within certain limits, or to a certain area. [Mr. Woodroffe.—The plaint gives as its local and geographical limit, that it was the custom of the family and of the highland country. MACPHERSON, J.—The appendix to the Fifth Report (4), states that Ramghur forms part of the highland district. Is not that sufficient ?] Mr. Blochman proves that formerly these lands were a portion of the old Kokra country (5); at the present day some of them lie in zilla Bhagulpur, and others in zilla Monghyr. In the case of the Chakaye Mehal, which is situated in zilla Monghyr, a woman succeeded her son—*Tikait Durga Prasad Sing v. Mussamat Durga Kunwari* (6). There is a materia

(1) 1 W. R., 177; affirmed by the Baboo Annada Prasad Bannerjee Privy Council on appeal; 3 B. L. R., for the respondent. P. C., 13; S. C., 12 Moo. L. A., 523.

(2) 6 Sel. Rep., 232.

(3) 6 Sel. Rep., 260.

(4) The Fifth Report by the Select Committee on the affairs of the East India Company, p. 417.

(5) Asiatic Society's Proceedings, Part I, No. 2, p. 111

(6) *Before Mr. Justice Norman and Mr. Justice E. Jackson.*

TIKAIT DURGA PRASAD SING AND OTHERS (DEFENDANTS) v. MUSSAMAT DURGA KUNWARI (PLAINTIFF).*

The 5th January. 1870.

Baboo Anukul Chandra Mookerjee and Chandra Madhab Ghose for the appellants.

NORMAN, J.—This was a suit by the plaintiff, Mussamat Durga Kunwari for possession of two-thirds, and a declaration of title to the other one-third of a zemindari mehal called Chakaye in zilla Monghyr. Her title is a very plain one.

Tikait Futteh Narayan Sing died on the 14th of Chaitra 1270, leaving three widows, Lallit Kunwari, Narayan Kunwari, and Durga Kunwari. Durga Kunwari, the plaintiff, was pregnant at the time of her husband's death, and in the month of Sranba 1270, gave birth to a son, Gurda Narayan, who lived till Chaitra 1272. On the death of Gurda Narayan, who, of course, on his birth, succeeded to

* Regular Appeal, No. 133 of 1869, from a decree of the Subordinate Judge of Bhagulpore, dated the 23rd March, 1869.

Collector, dated 1812, 1836 and 1842. In the form sent to Shambunath to be filled up, he was merely asked to give the names of the sons, who, under the then circumstances, were entitled to succeed. He could not insert the name of his wife, and at that time he had no son. The *kulachar* was not set up in the case of *Tikait Durga Prasad Sing v. Mussamat Durga Kunwari* (1) until the present case had been decided by the Deputy Commissioner. Nor was any evidence of local or family custom given in *Ranee Hingun Koonwaree v. Nundlal Singh* (2), in which case the widow succeeded. The plaintiff cannot be said to have proved his case until he has shown that there had been an instance in which a woman entitled to succeed was passed over: mere proof that no female ever has succeeded is not sufficient—*Raja Nugender Narain v. Rughoonath Narain Dey* (3) and *The Government v. Monohur Deo* (4). There is no reliable evidence of custom: most of the witnesses either know nothing, or only speak from hearsay. The plaintiff has not shown that the usage prevails in the other six zemindaris in this district. The performance of the pujas mentioned by the witnesses is not an essential duty of the ruler; the plaintiff can sit under an umbrella in her own apartments. The idea of a female ruler is by no means new to the Hindu mind; there are many such instances in Sanscrit literature.

Mr. Woodroffe for the respondent.—There were two issues, the one relating to the devolution of the raj and estates of Ramghur, and the other to *Gaddi* Khurkhur. No reference has been made by either of the learned counsel for the appellant to the latter, and I am, therefore, not called upon to say anything with respect to it. [COUCH, C.J.—Although the Judges of the Division Bench have not touched upon that point, yet, if I see, on the whole case, that that part of the judgment is wrong, I shall not allow it to stand merely because counsel have not argued it.] According to the Full Bench Ruling in *Roy Nandipat Mahata v. Urquhart* (5), I ought to have been relieved of the necessity of showing that Ramghur is a raj,

(1) *Ante*, p. 306.

(2) S. D. D. for 1857, p. 155.

(3) W. R., from Jan'y. to July 1864,

(4) W. R., from Jan'y. to July 1864,

p. 39.

(5) 4 B. L. R., A. C., 181.

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since the Judges below did not differ on the point. [COUCH, C.J.—That case, like the present one, was before three Judges; it was not a Full Bench decision, and we are not bound by it as we should be by a Full Bench ruling on a reference by a Division Bench.] Where by the Charter an appeal is given to the High Court when two Judges differ, the judgment on appeal is a judgment of the High Court, whether three, four or five Judges sit. [COUCH, C.J.—It is a judgment of the High Court, and as such is binding on the parties, not on any other Court.] We ought to take it that Ramghur is a raj; it has been treated as such throughout. The succession to the dignity of a raj is exceptional, by reason of the impartibility of the dignity—*Koonwur Bodh Singh v. Seonath Singh* (1), *The Secretary of State in Council of India v. Kamachee Boye Sahaba* (2), and *Baboo Gunesh Dutt Singh v. Maharaja Moheshkur Singh* (3). The title of raja is not absolutely essential to the tenure of a raj—*Baboo Beer Pertab Sahee v. Maharaja Rajender Pertab Sahee* (4). The estate of a raja is not necessarily impartible—*The Court of Wards v. Rajkumar Dio Nandan Sing* (5); but if the estate be impartible, it

(1) 2 Sel. Rep., 92.

(2) 7 Moo. I. A., 476.

(3) 6 Moo. I. A., 164; see p. 187.

(4) 12 Moo. I. A., 1.

(5) *Before Mr. Justice L. S. Jackson and Justice Macpherson.*

THE COURT OF WARDS ON BEHALF OF
RAJKUMAR SHIORAJ NANDAN
SING (ONE OF THE DEFENDANTS) v.
RAJKUMAR DIO NANDAN SING
(PLAINTIFF) AND OTHERS (DEFEND-
ANTS).*

The 11th July 1871.

The Advocate-General for the appellant.
Mr. Cowie for the respondent.

MACPHERSON, J.—The main question in this appeal is as to the position of the Raja of Seohur in Tirhoot.

The contention for the plaintiff (who appears as respondent before us) is that, on the death of a raja of Seohur, the estate passes to his heirs according to

*Regular Appeal. No. 91 of 1870, from a decree of the Subordinate Judge of Tirhoot, dated the 21st December 1869.

the ordinary law of inheritance prevailing among Hindus in the Tirhoot district. The contention for the defendant (the appellant) is that the estate is impartible, and passes with the raj from raja to raja, the other members of the family being entitled to maintenance only. The Court of Wards defends the suit, and now appeals to this Court, on behalf of Raja Shioraj Nandan, whom the plaintiff admits to be the present raja. Shioraj Nandan is the plaintiff's nephew, being the elder son of the late Raja, Shio Nandan, who was the plaintiff's elder brother. Shio Nandan and the plaintiff were the two sons of Jadu Nandan, the younger brother of Raja Raghu Nandan, on whose death the raj passed to his nephew Shio Nandan. The plaintiff by his case in fact admits that he himself and his father Jadu Nandan were only "baboo," *i. e.*, persons not entitled