[2] ESHANCHUND RAI, *Appellant* v. ESHORCHUND RAI, *Respondent.*

(1792. *Feb.* 23*rd.*)

A gift, in the nature of a will, was made by a Hindoo zemindar, settling the whole of his zemindary on the eldest of his four sons, subject to a pecuniary provision for the younger ones. At the suit of one of the younger sons after the zemindar's death, for a fourth share of the estate, under the Hindoo law of inheritance, adjudged, that the disposition made by the zemindar was good.

IN the year 1781, Kishenchund, zemindar of Nuddea, by a deed of gift executed shortly before his decease, reciting, that he was infirm and approaching to his end; that his zemindary (termed by him his Raj or principality) had never been divided: and that he wished to prevent quarrels respecting it among his sons, after his death; settled the whole zemindary with its honors, on Sheochund, the eldest of his four surviving sons, with pecuniary provisions for the three younger, and for the adopted children of two other deceased sons, payable out of the *moshahira*, or proprietary income of the zemindary. The eldest son was accordingly put in possession of the estate; and at his demise was succeeded by Eshorchund, his son. In August 1789, Esbanchund, one of the younger sons of Kishenchund, brought this suit in the Zillah Court at Nuddea, against his nephew Eshorchund, for a fourth share of the zemindary, as one of the sons of Kishenchund, on the ground that, by the Hindoo law of inheritance, each of the sons was entitled to a portion; that the disposition made by Kishenchund was not a gift, and at all events that he had not by law power to make one: against which the defendant pleaded his title to the whole estate, under the deed in his father's favor. And the question in the case (independently **[3]** of the point as to whether the zemindary was or was not subject to division) was whether the zemindar was legally empowered, or not, to make the gift pleaded by the defendant. Numerous pundits, of different parts of the country, were consulted; and, according to the majority of their opinions, by which whether the zemindary had been previously exempt from division or not the gift made by the zemindar, settling the zemindary on the eldest son, with a provision for the younger ones, was declared legal. The Judge of Nuddea, maintaining the validity of the gift, and of the title derived from it, decreed the whole zemindary to be the right of the defendant, subject to a pecuniary provision for the plaintiff. And the Sudder Dewanny Adawlut, in appeal, (present C. Stuart, F. Speke and W. Cowper) affirmed his decree. The opinion delivered by two distinguished pundits *Jagannath* and *Kirparam* was founded on the following reasons: 1st, that, according to law, a present made by a father to his son, through affection, shall not be shared by the brethren: 2nd, that what has been acquired by any of the enumerated lawful means, among which inheritance is one, is a fit subject of gift: 3rd, that a co-heir may dispose of his own share of undivided property: 4th, that although a father be forbidden to give away lands, yet, if he nevertheless do so, he merely sins, but the gift holds good: 5th, that *Raghunandana* in the *Dayatatwa*, restricting a father from giving lands to one of his sons, but clothes and ornaments only, is at variance with

Jimuta Vahana, whose doctrine he espouses, and who only says, that a father acts blameably in so doing: 6th, that a principality may lawfully and properly be given to an eldest son (a).

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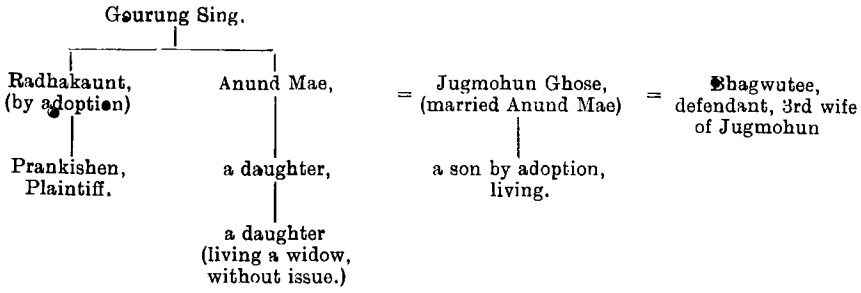
[4] PRANKISHEN SING, *Appellant v.* MUSSUMMAUT BHAGWUTTEE (WIDOW OF JUGMOHUN GHOSE), *Respondent.* (1793. *April 25th*)

Property given by a Hindoo to his daughter on the occasion of her marriage, is *stridhun*, and passes to her daughter at her death. At the daughter's death it passes to the heir of the daughter, like other property; and here the mother's brother is heir, in preference to a daughter who is a widow without issue.

THE following is a sketch of the family of the parties in this case:—



In the Bengal year 1161, Gourung Sing made over to his daughter Anund Mae, on her marriage with Jugmohun, a talook and tank, by a deed of gift, reciting, that he separated it entirely from his own possessions; that he made it over to his said daughter; that she was to get it registered in her husband's name, and hold it as her property. The talook was registered in the *Khalsa* in the name of Jugmohun; and a *sunnud* was granted conformable to the terms of the gift, by the existing government. Anund Mae died in 1163, without issue male; but left a daughter, and that daughter's husband. The daughter died in 1176, leaving a daughter, now living a widow without issue. Gourung Sing died in 1164, leaving an adopted son Radhakaunt; who died in 1179. Jugmohun died in 1196, leaving an adopted son, and Bhagwutee, his third wife. It would appear that after the death of his wife Anund Mae, Jugmohun held the property in question till his decease; and that it was then taken possession

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[3] (a) Admitting the father's disposition of his estate in favour of his eldest son, to have been an improper exercise of power on his part, as possessor of the hereditary patrimony, still the validity of a gift actually made by a father is affirmed by *Jimuta Vahana* (Ch. 2, §§ 29 and 30). For since the gift of the entire estate to a stanger would have been valid, (however blameable the act of the giver might be), the donation in favour of one son, with provision for the support of the rest, would seem to be equally valid according to the doctrines received in the province of Bengal. And after extending to the case of sons, no less than to that of strangers, *Jimuta Vahana's* position, respecting gifts valid though made in breach of the law, it becomes necessary to the consistency of the doctrine equally to maintain, that a father's irregular distribution of the patrimony at a partition made by him in his life-time in portions forbidden by the law (*Jimuta Vahana*, Ch. 2. § 77), shall in like manner be held [4] valid, though on his part sinful. No opinion was taken from the law officers of the Sudder Dewanny Court in this case. But it has been received as a precedent which settles the question of a father's power to make an actual disposition of his property, even contrary to the injunctions of the law, whether by gift, or by will, or by distribution of shares.

of by his widow Bhagwutee, as his heir. At the suit of Prankishen against her, in the Dewanny Adawlut of Moorshedabad for the right to the property, judgment went for the defendant; in appeal from which judgment to the Sudder Dewanny Adawlut, the question was, who was the right heir to **[5]** this property of Anund Mae, at her demise? On this point the pundit was called on to explain the law; and the answer of Radhakaunt pundit was this: Upon the death of Anund Mae, the property devolves to her daughter. It comes under the description of *Stridhun*, and as such devolves to the daughter. But it is not the *Stridhun* of the daughter, and upon her death, it will not go to her daughter, but to the brother of her mother; and if he is not living, to his son.

The Sudder Dewanny Adawlut (present Earl Cornwallis, F. Speke, W. Cowper, and T. Graham), adjudged, that the claimant should recover the property; and passed a decree accordingly, reversing that of the Zillah Judge (a).

NUNDA SING. *Appellant v.* MEER JAFIER SHAH, *Respondent.*
(1794. *April* 10*th.*)

Suit for lands, to which the defendant pleads a title under a deed of composition for homicide, and certain other instruments. And the Sudder Dewanny Adawlut maintain his title.

JAFIER SHAH was plaintiff in this case, in the Dewanny Adawlut at Tirhoot, and Nunda Sing defendant. The suit was for the mouza Alahdadpore, containing about 1,000 beegas of malguzary land, as being the plaintiff's right by inheritance. The defendant rested his title on three deeds; 1st, *Sunudi khoon beha*, or grant of retribution for the blood of Soobha Sing, grandfather of the defendant, by Nusrodin, maternal grandfather of the plaintiff, to Adhar Sing, the defendant's father, for 100 beegas, *malikana* land in mouza Alahdadpore, dated in the Fusslee year **[6]** 1149; 2nd, an *ikrar-namah*, by the plaintiff, confirming the above, dated 1188: 3rd, a *hibeh-namah* from the plaintiff, to the defendant running thus, "I hereby declare that I make over the village of Alahdadpore, hitherto mine and possessed by me, to Nunda Sing, son of Adhar Sing, son of Soobha Sing; and constitute him *malika* and *mokuddin.*" dated 1911. The validity of this, as a deed of gift, was not admitted by the plaintiff, (though there does not appear any denial of a gift having been made); and he moved that the *moulvee* of the Court might be consulted, whether such a deed was of any avail; and whether, if it were, the gift made by it might not be resumed. An opinion was taken accordingly in the Zillah Court from the

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[5] (a) The property having been given to Anund Mae by her father on the occasion of her marriage, was undoubtedly her *Stridhun* (*Jimuta Vahana*, Ch. 4, Sec. 1); and should have devolved, upon her death, on her daughter, whether unmarried, married, or widow. (Ibid. Sec. 2, § 9, 12 and 22.) But on the demise of that daughter, the land being, in respect of her, an inheritance, and not the peculiar property termed *Stridhun*, it would not pass to her daughter being a childless widow (*Jimuta Vahana*, Ch. 11, Sec. 2, § 3); but to the next nearest heir. This appears to be the ground of the opinion delivered by Radhakaunt Pundit in this cause; and it supposes the childless widow to have been so at the time of her mother's decease; for if she had been then unmarried, or if her husband had been living, she would have succeeded to her mother's property of every sort, in preference to the mother's brother or his son; (*Jimuta Vahana*, Ch. 11, Sec. 2) who could only have come in after her decease. (*Ibid.* § 30.)