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be modified so as to allow the plaintiff to recover interest at the rate of Rs. 1-4 per cent. *per mensem* upon the principal from the date of the bond to the date of realization, as also compound interest at the same rate; and we direct that a decree be drawn up in accordance with this declaration in terms of the Transfer of Property Act. Costs in proportion.

J. V. W. *Decree modified.*

Before Mr. Justice Ghose and Mr. Justice Gordon.

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CHHATRADHARI SINGH (DEFENDANT), AND ON HIS DEATH HIS SON AND HEIR KUNJ BEHARY SINGH *v.* SARASWATI KUMARI (PLAINTIFF.)*

Ghatwali Tenure—Right of succession to ghatwali tenure in Beerbhoom—Regulation XXIX of 1814, section 2—"Descendants," Meaning of—Impartible property—Separate property—Hindu law, Mitakshara.

Ghatwali tenures in Beerbhoom are tenures to be held in perpetuity and are descendible from generation to generation subject to certain conditions and obligations, and it would be inconsistent with the true character of these tenures to hold that the Legislature intended that they should devolve on issue of the body only, and not on heirs generally according to the law which may govern such succession. The word "descendants" therefore in section 2 of Bengal Regulation XXIX of 1814 is not to be construed in its restricted meaning, but includes the widow of a deceased *ghatwal*, who may therefore be one of his heirs. *Lall Dharee Roy* v. *Brojo Lall Singh* (1), and *Kustooree Koomaree* v. *Monohur Deo* (2) referred to.

Where a *ghatwali* tenure was admittedly impartible and governed by Mitakshara law, and the only heirs were the widow and the brother of the late *ghatwal*, *Held* (it being found on the evidence that the brothers had separated and that the *ghatwali* tenure was the exclusive property of the late *ghatwal*), that his widow was his heiress according to Mitakshara law.

Although, according to the decision of the Privy Council in *Chintaman Singh* v. *Nowlukho Kooncari* (3), impartible property is not necessarily separate property, yet, *Semble* that with reference to the peculiar character of *ghatwali* tenures as described in Regulation XXIX of 1814, they were intended to be the exclusive property of the *ghatwal* for the time being, and not joint family property in the proper sense of the term.

* Appeal from Original Decree No. 132 of 1893, against the decree of W. H. Smith, Esq., Sub-divisional Officer and Subordinate Judge of Deoghar in Zillah Sonthal Pergunnahs, dated the 15th of February 1893.

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(3) I. L. R., 1 Calc., 153; 13 W. R., P. C., 21.

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THIS was a suit to recover possession of a *ghatwali* estate in Beerbhoom.

The plaintiff was the widow of the late *ghatwal* Ananta Narain Singh, who died on 14th Agrahan 1295 (2nd November 1888), and she claimed to succeed to the estate in preference to the defendant Chhatradhari Singh, the brother of her late husband, who was appointed by the Deputy Commissioner of the Sonthal Pergunnahs to be *ghatwal* on 7th June 1889 in supersession of the plaintiff's claim. This defendant, she alleged, had separated from the family before the death of Darbar Singh, his and her husband's father, and had remained separate ever since. The plaintiff claimed to be heiress of her husband and *ghatwal* of the estate under the law and custom which prevails in *tuppeh* Sewruth Deoghur, which was that the eldest son becomes *ghatwal*, and if there is no male issue then the widow is entitled to succeed.

The Secretary of State for India in the person of the Deputy Commissioner was made a party defendant to the suit.

The defendant Chhatradhari Singh alleged that he was joint with his brother, the late Ananta Narain Singh up to the time of his death, and that there had been no separation between them; that according to the Benares school of law by which the family was governed he was entitled to succeed to the *ghatwali* in preference to the plaintiff; and he submitted that the plaintiff was not the heiress to the estate either according to Regulation XXIX of 1814 or Act V of 1859.

The Secretary of State submitted that the plaintiff being a widow of the deceased *ghatwal* was not his "descendant" within the meaning of section 2 of Regulation XXIX of 1814, and was therefore not entitled to succeed to the *ghatwali* estate; and that the succession to the *ghatwali* was not regulated by any system of Hindu law, or by *kulachar* (custom), and therefore the plaintiff, as she had not been appointed *ghatwal* by the executive authorities, could not recover possession of the estate, the suit not being maintainable.

The material issues raised were :—

(1.) Was the Deputy Commissioner justified by law in appointing the defendant Chhatradhari Singh as *ghatwal* in preference

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to the plaintiff, or is there any valid local custom under which he was bound to appoint the plaintiff in preference to the defendant?

(2.) Was the defendant Chhatradhari Singh separate in estate and transactions from his brother the late Ananta Narain Singh, and, if so, could he succeed his brother?

(3.) Is there in *tuppeh* Sewruth Deoghur, the custom of appointing females as *ghatwals*, and, if so, can the plaintiff claim as of right to be made *ghatwal*?

The Subordinate Judge on these issues found that the defendant was separate in food and transactions from his brother, and therefore not entitled to succeed him; that there was a custom in Sewruth Deoghur of females succeeding to *ghatwali* estates; and, referring to the case of *Kustooree Koonwree* v. *Monohur Deo* (1), held that there was nothing in this respect to bar the plaintiff from succeeding as *ghatwal*; that the Deputy Commissioner had no power to appoint any one as *ghatwal* without reference to whether he had the best claim as a natural heir, referring to *Lall Dhuree Roy* v. *Brojo Lall Singh* (2); and that the plaintiff was, within the meaning of section 2 of Regulation XXIX of 1814, a "descendant" of her husband, and therefore entitled to succeed him as *ghatwal*.

The defendant Chhatradhari Singh appealed to the High Court. The grounds of appeal and the arguments are sufficiently stated in the judgment of the Court.

Babu *Mohini Mohun Roy* and Babu *Adhoy Coomar Banerjee* for the appellant.

The *Senior Government Pleader* Babu *Hem Chunder Banerjee* and Babu *Karuna Sindhu Mookerjee* for the respondent.

The judgment of the Court (GHOSE and GORDON, JJ.) was as follows:—

One Ananta Narain Singh was the holder and possessor of an ancestral *ghatwali* tenure in the Sonthal Pergunnahs described in the plaint as "Mehal No. 38 *ghatwali* taluk Nowlad within *towji* No. 1, within pergunnah Shaontadi *tuppeh* Sewruth in Deoghur." He died without issue on the 14th Agrahan 1295, leaving a widow,

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Srimati Saraswati Kumari, who is the plaintiff in this suit, and who claims to be entitled as her husband's heiress to succeed to the *ghatwali* in preference to her husband's brother, Chhatradhari Singh. Her case as set out in the plaint is substantially this: According to long-established custom the *ghatwali* is held by one person and descends to his eldest son, and in default of male issue to his widow; that after her husband's death she applied to have her name recorded as her husband's successor to the *ghatwali*, but that the Deputy Commissioner rejected her application and illegally appointed her late husband's brother, the defendant Chhatradhari Singh, to be *ghatwal*; that the defendant is not her husband's heir, that he separated from her husband during the life-time of his father, the late Darbar Singh, and has ever since remained separate in food and transactions; and that according to the custom prevailing in *ghatwali* tenures, he was allotted certain *mouzahs* for his maintenance. She accordingly brought this suit to establish her right to the *ghatwali* tenure as heiress of her husband, and to set aside as illegal the order appointing her husband's brother as his successor to the *ghatwali*. The defence raised by Chhatradhari Singh was that he was not separate from but joint with his brother, and that under the Benares School of Hindu Law he was his brother's successor and not the plaintiff; and the defence of the Secretary of State, who was subsequently added as a defendant, was that the plaintiff is not a descendant of the deceased *ghatwal*, within the meaning of section 2, Regulation XXIX of 1814, and is therefore not entitled to succeed to the *ghatwali* in question. The learned Subordinate Judge has decreed the suit. He finds that the Deputy Commissioner was not legally competent to appoint Chhatradhari to succeed his deceased brother as *ghatwal*; that the word "descendants" in section 2 of Regulation XXIX of 1814 is not necessarily restricted to actual issue of the body but includes natural or legal heirs; that Chhatradhari Singh was separate from his brother in estate and transactions at the time of his brother's death; that, therefore, the plaintiff, and not Chhatradhari, was the legal heir of Asaram Narain, and that there was no bar to the plaintiff's right by reason of her being a female, it being established that there is a custom prevailing in *tuppeh* Sewruth Dooghur of females succeeding to *ghatwali* tenures.

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Against this decree, the defendant Chhatradhari appealed to this Court. He has since died, and his eldest son has been substituted as his legal representative for the purpose of the present appeal. His learned pleader has attacked the judgment of the lower Court mainly on two grounds, *viz.*, (1) that plaintiff being the widow of the late *ghatwal* is not a "descendant" within the true meaning of the term as used in section 2 of Regulation XXIX of 1814; and (2) that Chhatradhari was joint with his brother at the time of his death, that the *ghatwali* tenure was joint family property, and therefore that Chhatradhari was entitled to succeed under the law of the Mitakshara.

As regards the first ground, we are not prepared to give the word *descendants* the restricted meaning contended for by the learned pleader for the appellant. No doubt in its strict grammatical sense, the word denotes issue of the body, but having regard to the origin, character and incidents of these Beerbhoom *ghatwali* tenures as described in Regulation XXIX of 1814 (the tenure in the present case is admittedly a Beerbhoom *ghatwali*) it seems to us very doubtful whether the framers of the Regulation intended to give to it that restricted meaning. Mr Justice Jackson in the case of *Lall Dharee Roy* v. *Brojo Lall Singh* (1) observes in reference to Regulation XXIX of 1814: "By this enactment a hereditary tenure was secured to the *ghatwals* and their descendants, subject only to the condition of punctual payment of the rent assessed upon them and fulfilment of their other obligations." We entirely concur in the remarks of that learned Judge. We think that these tenures are in fact tenures to be held in perpetuity, and are descendible from generation to generation subject to certain conditions and obligations, and that it would be inconsistent with the true character of these tenures to hold that the Legislature intended that they should devolve on issue of the body only and not on heirs generally according to the law which may govern such succession. Moreover, the case of *Kustooree Koomaree* v. *Monohur Deo* (2), appears to us a clear authority in favour of the view we take. In that case the learned Judges held that under the Mitakshara the mother of the last *ghatwal*, in default of

(1) 10 W. R., 401.

(2) W. R., Gap., No. (1864) 39.

issue of the body, had a preferential right to the *ghatwali* tenure as against a collateral male member of the family. It is true that the meaning of the word "descendants" in Regulation XXIX of 1814 does not appear to have been discussed in that case, the principal point for determination being whether a female could hold a *ghatwali* tenure, but at the same time we do not think it likely that the learned Judges, in arriving at the conclusion they did arrive at, entirely overlooked this matter. In describing the nature of these tenures they observed as follows: "These tenures, it must be remembered, were in existence in many parts of the country long before the accession of the present Government, and were grants of land made either by the authority or sanction of the Government to certain persons as remuneration for their services as police. The head or *sirdar* of each of these police stations was required to keep up a certain number of men properly armed to apprehend criminals, protect travellers, keep the peace and to perform other police duties. They were liable to be dismissed for misconduct or neglect, and any stranger might have been appointed in their room. Some of these grants were hereditary in their origin, and all very soon became so, and it being inconvenient and wholly subversive of the *ghatwali* system to admit the element of Hindu law, which requires an equal division of the deceased father's property among his sons, the *ghatwali* tenure descended undivided to the eldest son, to the exclusion of the others, who either lived with, or were supported by him, or followed their own pursuits."

We think that these observations indicate that the learned Judges then understood that the word "descendants" in the Regulation was not meant to be confined to the heirs of the body but that it included heirs generally according to the particular law applicable to the case.

The plaintiff then being, as we think, a descendant of her husband within the meaning of the Regulation, the next question which arises is whether she or her husband's brother is the preferential heir of Ananta Narain Singh. It is admitted that by custom the *ghatwali* tenure is impartible and descends to the eldest son, and further that this family is governed by the law of Mitak-

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shara. In the case of *Nilkristo Deb Barmono* v. *Bir Chandra Thakur* (1), [see also *Sartaj Kuari* v. *Deoraj Kuari* (2)], their Lordships of the Privy Council at page 542 of the report in Moore's I. A observed: "Where a custom is proved to exist, it supersedes the general law which however still regulates all beyond the custom." Applying this principle to the present case, the point for determination is whether Chhatradhari, at the time of the death of his brother Ananta Narain, was joint with or separate from him. We have examined the evidence bearing on this matter, and we have no hesitation in accepting the conclusion of the learned Subordinate Judge that Chhatradhari was separate from his brother in food, estate, and transactions. We think the evidence proves that Chhatradhari separated in 1262 during the life-time of his father Darbar Singh, who then assigned to him for his maintenance five villages appertaining to the *ghatwali* holding—an assignment which after his father's death was renewed by Ananta Narain in 1292. The evidence further proves that Chhatradhari exclusively enjoyed the profits of these five villages; that he held some other villages on lease from his father, two of which he dealt with as his own property by sale to Muktaram Dutt and Torab Khan; and also that his transactions generally were separate from those of his brother. We find also on the evidence that the *ghatwali* was exclusively the property of Ananta Narain, who was in sole enjoyment of the profits thereof with the exception of the villages assigned to Chhatradhari according to the prevailing custom. In this view the plaintiff, being the widow of Ananta Ram, is clearly his heiress under the Mitakshara, and neither Chhatradhari nor any of his sons has any right to succeed by survivorship.

The learned pleader for the appellant has however contended before us that, although this *ghatwali* tenure is impartible, yet, according to the decision of their Lordships of the Privy Council in *Chintaman Singh* v. *Nowlukho Koonwari* (3), it is not necessarily separate property, and that as their Lordships observe "whether the general status of a Hindu family be joint or undivided, property

(1) 12 Moo. I. A., 523; 9 B. L. R., P. C., 13.
(2) I. L. R., 10 All., 272; L. R., 15 I. A., 51.
(3) I. L. R., 1 Calc., 153; 13 W. R., P. C., 21.

which is joint will follow one and property which is separate will follow another course of succession." The decision referred to is no doubt an authority for the proposition that there may be impartible joint family property, such as a raj or other estate similar to a raj, but whether such property is to be regarded as joint or separate would appear to depend generally upon the character of the property at its inception, such as the nature of the grant, &c., creating it. Having regard however to the view we have already expressed as to the status of the family in the present case, and as to the *ghatwali* tenure having been the exclusive property of Ananta Narain, we think it is unnecessary to determine what was originally the character of this tenure, although, if we were called upon to decide the question, we should be disposed to say, with reference to the peculiar character of these tenures as described in Regulation XXIX of 1814, that they were intended to be the exclusive property of the *ghatwal* for the time being, and not joint family property in the proper sense of the term. And in this connection we would refer to some observations of the learned Judges who decided the case of *Kustooree Koomaree* v. *Monohur Deo* (1) already referred to. They say: "The party who succeeds to and holds the tenure as *ghatwal* must be, and has always been, looked upon as sole proprietor thereof, and therefore the other members of the family cannot claim to be co-parceners and entitled to share in the profits of the property, though they may by the permission and good will of the incumbent derive their support, either from some portion of the property which he may have assigned to them or directly from himself, and if it be so with the nearer members, the distant members of the same family cannot be considered as holding in common with the incumbent so as to bar the widow or mother's right to succeed."

For the above reasons we think the learned Subordinate Judge has rightly decreed this suit, and we accordingly dismiss this appeal with costs.

Appeal dismissed.

J. V. W.

(1) W. R. Gap. No. (1864) 39.