MOHESH CHUNDER DHAL
v.
SATRUGHAN DHAL.

P. C.*
1901
Nov. 29,
Dec. 2.
1902.
Feb. 22.

[On appeal from the High Court at Fort William in Bengal.]

Hindu law—Custom—Lineal Primogeniture—Proof of such custom as the rule of succession to an impartible Raj—Effect of decrees not inter partes as evidence.

To prove the custom of lineal primogeniture as the rule of succession to an impartible Raj, the following evidence was relied on by the High Court:—

(*a*) Oral evidence to show that it was well understood in the family and in families belonging to the same group that no descendant of a younger branch could take until all the elder branches were exhausted, though no witness was able to point to any actual instance in which the rule had been either followed or departed from;

(*b*) Decrees relating to disputes in families belonging to the same group, in which it was decided that the rule of succession was lineal primogeniture, and which, although not binding on the parties to the present suit, showed the prevalence of the custom among families having a common origin and settled in the same part of the country; and

(*c*) Evidence that in the family the heir-apparent and those in immediate succession were dignified in the order of seniority with titles denoting precedence, which would naturally be attached to the lines of descent traced from them.

Held, the custom was proved.

APPEAL from a judgment and decree (21st August 1896) of the High Court at Calcutta, which affirmed a decree (28th December 1891) of the District Judge of Bankura, by which the appellant's suit was dismissed.

The plaintiff Mohesh Chunder Dhal appealed to His Majesty in Council.

The suit was brought to recover possession of an ancestral impartible zemindari estate, called Dhalbhoom, in the Loharduga district on the death of the last sole owner, Raja Ram Chunder Dhal III, who died childless on 5th January 1887, leaving three widows--respondents 2, 3 and 4 in the present appeal.

Raja Ram Chunder was a descendant of Raja Chitreswar I, whose descendants appear in the following pedigree, the accuracy of which is supported by concurrent findings of both the Courts in India, and from which the relationship of the various parties to the present litigation may be at once seen (1)—

* *Present*: LORD MACNAGHTEN, LORD LINDLEY, and SIR FORD NORTH.

(1) See page 344.

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All the necessary facts are fully and clearly stated in the judgment of the High Court (GHOSE and GORDON JJ.) from which the present appeal was brought, which is as follows:—

"This suit (No. 17 of 1890) was instituted on the 4th October 1888 in the Court of the Deputy Commissioner of Singbhoom by Nityanund Dhal for establishment of his title to, and for recovery of possession of, the Dhalbhoom zemindari or Raj in the district of Singhbhoom, on the allegation that he was entitled to it as the next heir of the last holder, Raja Ram Chunder Dhal, who died on the 5th January 1887. On the 6th December 1888, another suit (No. 1 of 1889) with a similar object was brought in the Court of the District Judge of Bankura by Rani Siromoni, the eldest of the three widows of Raja Ram Chunder Dhal; and by an order of this Court, dated the 15th May 1890, the present suit was transferred to the Court of the District Judge of Bankura in order that both suits might be heard and tried together by the same tribunal. The principal defendants in the present suit are Satrughan Dhal and Iswar Chunder Dhal, and Satrughan was also the principal defendant in the Rani's suit. Nityanund was also a defendant. Both Nityanund and his son Jagajibun Dhal died during the progress of these suits, and Nityanund is now represented by his minor grandson (son of Jagajibun), Mohesh Chunder Dhal, the present appellant. The Rani's suit was decided adversely to her by the District Judge on the 19th August 1891, and his decision was affirmed on appeal by this Court on the 15th August 1893. Certain issues which were common to the two suits were disposed of by the District Judge in his judgment in the Rani's suit; but he reserved the issues which arose between Nityanund on the one hand and Satrughan and Iswar Chunder on the other hand for separate trial in the suit out of which the present appeal has arisen. The Dhalbhoom estate is one of the Jungle Mehals, to which the provisions of Regulation X of 1800 are applicable. The family (as has been found in suit No. 1 of 1889) is governed by the law of the Mitakshara, and the estate is an ancestral impartible zemindari or Raj, the succession to which by custom devolves on a single heir, the other male members of the family being given certain mouzahs as *khorposh* or maintenance grants. At the present time there are three branches of the family, *viz.*, (1) the Ghatsila branch, (2) the Baharagura branch, and (3) the Jambuni or Bansbuni branch. Nimai *alias* Baikunt, the third son of Raja Chitreswar I, left Ghatsila, where the family dwelling-house was at the time situated, and went to a place called Baharagura, some thirty miles from Ghatsila, and there became the founder of the Baharagura branch, while Kamala Kant, a son of Raja Jagannath I, inherited through his mother the zemindari or Raj of Jambuni in Midnapore, and so became the founder of the Jamboni branch of the Dhalbhoom family.

"The plaintiff Nityanund is the second son of Raja Kamala Kant of Jamboni, who was the step-brother of Raja Ram Chunder II, the great-grandfather of the last holder; Satrughan is the grandson of Hikim Nursing, the uterine brother of the great-grandfather of the last holder, and Iswar Chunder is the grandson of Raja Mangobind, the eldest son of Kamala Kant. The question in the present case is, who is entitled to succeed to the estate left by Ram Chunder III?

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"Nityanund claims the estate on the ground that he is nearest in blood to the last owner, Ram Chunder; that is to say, he is one degree nearer to him than Satrughan and two degrees nearer than Iswar, and that he is, according to the *kulachar* or custom of the family, the preferential heir.

"Nityanund's claim is resisted both by Satrughan and Iswar on the ground that the custom of lineal primogeniture prevails in their family; in other words, that the Raj devolves, in the first instance, on the last holder's eldest son (this much is admitted by Nityanund) and then on his descendants in the male line, and on failure of the eldest branch, to the second son or Hikim and his descendants in the male line, and so on to each branch in order of seniority. Accordingly, Satrughan claims to have a preferential title as being the grandson of Hikim Nursing, the uterine brother of Raja Ram Chunder II and second son of Raja Jagannath I, while Iswar alleges that his great-grandfather, Kamala Kant, and not Hikim Nursing, was the second son of Raja Jagannath I, and that therefore he is entitled to the Raj as being a descendant of the elder branch, that is to say, as being the grandson of Raja Mangobind, the eldest son of Raja Kamala Kant. Satrughan further contends that when Kamala Kant obtained the Jamboni zemindari, he became separate in estate from the Ghatsila branch of the family, and that therefore neither Nityanund nor Iswar was entitled to succeed under the law of survivorship, which obtained in the family.

"On these pleadings two main issues were settled for trial by the District Judge, *viz.*, (1) Whether at the time of the death of the late Raja Ram Chunder Dhal, the plaintiff Nityanund lived joint in mess and property with him, and (2) whether according to the custom prevailing in the family, Nityanund Dhal is entitled to succeed. What is that custom?

"On the first issue the learned District Judge has found in favour of the plaintiff, *viz.*, that Nityanund, though separate in mess, was not separate in estate from the late Ram Chunder; and on the second issue he has found, against the plaintiff, that lineal primogeniture in a limited form is the rule of succession in the Dhalbhoom family; that the line of the eldest son of the Patrani failing, the property should devolve on Hikim's line, and that Hikim Nursing, Satrughan's grandfather, was the second son, and Kamala Kant, the fourth son, of Raja Jagannath I; and he has accordingly dismissed the plaintiff's suit.

"From this decision the plaintiff has appealed to this Court, and the defendant Satrughan has filed, under s. 561, Civil Procedure Code, a cross-objection to the finding of the District Judge that Nityanund was joint in estate with the late Raja Ram Chunder Dhal.

"In regard to the cross-objection, which was not seriously pressed before us by the learned vakil for the respondent, we think it is not necessary for us to say much. We are of opinion that, on the evidence, the learned District Judge has come to a right conclusion, that although Kamala Kant, when he succeeded to the Jamboni Raj, practically separated from the Ghatsila branch of the family, yet, as a matter of law, he and his son Nityanund still continued to be joint in estate with the Rajas of that branch. The fact that after he succeeded to the Jamboni estate, he continued to hold four mouzahs on account of maintenance; that on his death two of them were possessed by

his son Nityanund and two by his son Mangobind; and also that on the demise of Nityanund one of these mouzahs (Beharipore) passed to his son Jagajibun, and two others, *viz.*, Charichaka and Beldangri, were assigned to him for maintenance by Raja Ram Chunder III in 1884, are all inconsistent with the supposition that the Jamboni branch had separated in estate from the Ghatsila branch. We, therefore, accept the finding of the District Judge on this point.

"The appeal by the plaintiff raises the most important question in the case, *viz.*, what is the rule of succession according to the family custom. The defendants allege that lineal primogeniture is the rule of succession in the family, and no doubt the onus is on them to prove this custom, though that a custom exists in the family is admitted by the plaintiff. Mr. Woodroffe for the plaintiff has contended that they have failed to establish any such custom, and that, independently of any custom, his client being the nearest of kin to the last holder, is by law the preferential heir. He has argued that the Raj, though impartible, must be regarded as the separate or self-acquired property of the last holder, Ram Chunder Dhal, and that therefore, according to the rules of inheritance laid down in the Mitakshara, it devolved on Nityanund.

"We think, however, that it is not necessary for us to discuss this proposition of law, or to consider the various reported cases bearing upon this particular matter to which our attention has been drawn by Mr. Woodroffe and the learned vakils for the respondents, because on a careful consideration of all the evidence, oral and documentary, we have come to the same conclusion as that arrived at by the District Judge, *viz.*, that the custom of lineal primogeniture prevails in this family. The oral evidence on both sides is in favour of the custom as alleged by the defendants. Several witnesses who, from their position, are likely to have knowledge of this particular matter, give instances showing that the rule of lineal primogeniture is followed in this family, as well as in other families of zemindars, whose estates are also included within the Jungle Mehals. Still stronger and more important evidence in support of this rule of succession is to be found in several judgments of Court, and in particular in the judgments in the Bishenpore, Pandra, and Manbhoom cases. In the Bishenpore Raj case, which was decided on the 25th November 1805, Chaitan Singh, the last owner, had two sons, Madan and Nimai. Madan predeceased his father, leaving a son, Madho, who, it was held, had a preferential title to Nimai according to the family custom. In the Pandra case also it was held by the Subordinate Judge and this Court that the custom of lineal primogeniture prevailed, and that Madhu Sudan, the grandson of Chet Lal, had a preferential title to Periag, a brother of Chet Lal. To the like effect is the judgment in the Manbhoom estate, dated the 15th April 1861, where the grandson by the eldest son was preferred to the second son. Bishenpore, Pandra, and the Manbhoom estates are included within the Jungle Mehals, and therefore these decisions have an important bearing on the question of custom prevailing in the Dhalbhoom family.

"Great stress is laid by Mr. Woodroffe on the statement of heirship in this family (Ex. III*a*), which was submitted by Raja Chitreswar II in 1845, on the requisition of the authorities of that time. This is no doubt an important

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piece of evidence, and at first sight it would appear to support the plaintiff's case, because, under the heading of near and remote heirs, Nimai Dhal, the step-uncle of Raja Chitreswar, is placed above Gopi Nath Dhal, son of Hikim Nursing, and Kinu Dhal, son of Jugal Kishore, both Nursing and Jugal Kishore being uncles of Raja Chitreswar, senior in point of age to Nimai. We have given our best consideration to this statement, and we are unable to accept it as decisive upon the question of the custom that prevails in the family. We observe that Chota Nimai Dhal and Madan Dhal are placed in the statement above Mangobind Dhal and Nitya Dhal (sons of Kamala Kant), although the latter are two degrees nearer in blood to Chitreswar than Chota Nimai and Madan Dhal. This portion of the statement, therefore, is not consistent with the rule of succession set up by the plaintiff; and having regard to this, as well as to the very cogent evidence, oral and documentary, to which we have already referred in favour of the rule of lineal primogeniture, we are not prepared to hold that Raja Chitreswar intended to declare that his uncle, Nimai Dhal, would have a preferential title to Gopi Nath or Kinu as successor to the Raj. The statement no doubt indicates generally the rule of succession, *viz.*, that the son of the Patrani succeeds in the first place and is styled the Jubaraj, and that the other sons in order of seniority get the titles of Hikim, Bara Thakoor, &c., meaning thereby that they succeed after the Jubaraj according to their respective rank; but, beyond this, we are unable to take the statement as laying down any positive rule of succession obtaining in the family.

"We accordingly find that the rule of succession by lineal primogeniture is sufficiently proved, and in this view the plaintiff's suit necessarily fails; for, even if Kamala Kant was the second son of Raja Jagannath I, Natyanund could not succeed as against Iswar Chunder, who is grandson of Kamala Kant's eldest son, Mangobind. We may say, however, that we entirely concur in the decision of the District Judge that Hikim Nursing was the second son and Kamala Kant the fourth son of Raja Jagannath I. The evidence is conclusive that the eldest son of the ruling Raja takes the title of Jubaraj, the second son that of Hikim, the third son that of Bara Thakoor, the fourth that of Koer, the fifth that of Musib, and the remaining sons that of Babu. It is also clearly proved that Nursing was the Hikim, and that this title was conferred on his son, Gopi Nath, and also on his grandson, the defendant Satrughan, thus showing that the line of Nursing was treated as the line of the elder brother. On the other hand, Kamala Kant was called Koer, a title which is given to the fourth son. For all these reasons we think that the judgment of the District Judge is right, and we accordingly dismiss this appeal with costs."

From this decision the plaintiff obtained special leave to appeal to the Privy Council, the High Court having refused leave to appeal on the ground that there were two concurrent decisions against the plaintiff; that on the facts the custom of lineal primogeniture regulated the succession in the Dhalbhoom family, and that that was the whole question in the case.

Rattigan K. C. and *C. W. Arathoon* for the appellant. The respondent Satrughan Dhal has failed to prove that the custom of lineal primogeniture prevailed in the Dhalbhoom family. It is submitted that this is not a case to which the principle as to concurrent judgments on facts is applicable; the question of the prevalence of a particular custom contrary to the ordinary law being not a mere question of fact. Sufficient proof has not been given to establish the custom—*Hurpurshad* v. *Sheo Dyal* (1), where the requisites for proof of a family custom as distinguished from a territorial custom are laid down; *see* also *Rajkishen Singh* v. *Ramjoy Surma Mozoomdar* (2). Not one instance has been given of collateral descent decided in accordance with the custom contended for. The instances shown of direct descent from father to son and grandson do not prove the custom, such succession not being necessarily dependent on a custom of primogeniture, and not establishing the mode of collateral succession contended for. These instances, too, are, in other families, not governed by the same law. Cases of succession by lineal primogeniture in other families shown by decrees in litigation as to the right to succeed are not evidence of the custom in this family, the members of which were not parties to such decrees. The statement as to heirship made by Chitreswar II in 1845 lays down a rule of succession as prevailing in the Dhalbhoom family, not in accordance with the custom contended for, namely, a rule depending on nearness of relationship. That document has not been correctly interpreted by the High Court.

If the custom is not established, the succession in the family is governed by the ordinary Hindu law in force in the district, which is the Mitakshara law. Dhalbhoom is in the Midnapore district; *see* Regulations XVIII of 1805, s. 3, and XIII of 1833, s. 2. In 1833, therefore, the estate of Dhalbhoom was not in the Jungle Mehals, but in Midnapore. Hunter's *Gazetteer* does not mention it as being one of the Jungle Mehals. Regulation X of 1800, which refers to Regulation XI of 1793, does not affect the Hindu law in regard to impartible estates

(1) (1876) L. R. 3 I. A. 259, 285; 26 W. R. 55.
(2) (1872) I. L. R. 1 Calc. 186, 195; 19 W. R. 3

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except so far as it is modified in the Midnapore district by the Regulation of 1793, and does not lay down any special rule of succession; so that the ordinary Hindu law prevails unless a special custom is shown to exist. As showing what the law was, see the following cases and authorities:—*Katama Natchier* v. *Raja of Shivagunga* (1); *Doorga Persad Singh* v. *Doorga Konwari* (2); *Jogendro Bhupati Hurrochundra Mahapatra* v. *Nityanand Man Sing* (3); *Subramanya Pandya Chokka Talavar* v. *Siva Subramanya Pillai* (4); Manu Ch. IX, verse 187, Mitakshara, Ch. II, section 3, verses 3 and 5; Vivada Chintamoni, page 274, paragraph 3, and page 295, Jolly's "Tagore Law Lectures," 1873, page 172, end of paragraph 1. In these the governing principle laid down is propinquity of relationship as the test of the right of succession. By that test Nityanund was entitled to succeed, being one degree nearer than Satrughan, and the appellant, therefore, has now the right of succession. The principle of propinquity of heirship is not confined to the Dyabhaga, but is also applicable under Mitakshara law—Mayne's *Hindu Law*, third edition, page 461, last edition, pages 546, 723; Mitakshara, Ch. I, section 5, verse 1. The selection of an heir is to be made on this principle even where a custom of descent to a single heir is proved to exist, as the general law, though superseded by the custom, would govern anything beyond the custom—*Nilkristo Deb Barmano* v. *Bir Chandra Thakur* (5) and *Yanumula Venkayamah* v. *Yanumula Boochi Venkondora* (6).

Asquith K. C. and *J. H. A. Branson* for the respondent. Satrughan Dhal contended that the High Court had rightly held that the appellant had not made out his title to the Dhalbhoom estate, and that the succession in the family was by custom according to the rule of lineal primogeniture, by which rule Satrughan, as being descended from the second son of Raja Jagannath, was entitled to succeed in preference to

(1) (1863) 9 Moore's I. A. 539, 588, 589.
(2) (1878) I. L. R. 4 Calc. 190, 201; L. R. 5 I. A. 149, 160.
(3) (1890) I. L. R. 18 Calc. 151; L. R. 17 I. A. 128, 131.
(4) (1894) I. L. R. 17 Mad. 316.
(5) (1869) 3 B. L. R. P. C. 13; 12 Moore's I. A. 553; 12 W. R. P. C. 21
(6) (1870) 13 W. R. P. C. 21; 13 Moore's I. A. 333.

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the appellant, who was a descendant of the fourth son. Instances have been given in this family of succession according to the rule of lineal primogeniture, and no instance has been shown of the junior line being preferred to the senior line, where the succession was disputed. The document relied upon as containing a rule of succession laid down by Raja Chitreswar II contrary to the custom contended for by the respondent has been rightly held by both Courts below not to support the contention of the appellant, that the succession in the family is according to propinquity of relationship. It is merely an enumeration of the heirs without any strictness as to the order in which they were entitled to succeed. The question of custom, moreover, is, it is submitted, one of fact, and both Courts below have concurrently found that the custom of lineal primogeniture is established. Apart from custom and according to the Mitakshara law, which, if no custom were proved, would govern this family, descent follows the rule of lineal primogeniture in a case where the estate descends to a single heir. By that law each member of the family becomes from his birth a co-parcener: on the death of any member survivorship rather than succession is the rule; and where this principle is applied to impartible estates, to which there must be some special and definite heir, that heir must be one who, if the estate were partible, would be entitled to demand partition. The right of heirship is determined either by (*a*) propinquity in blood relationship, (*b*) seniority in age, or (*c*) seniority of the stock or line of descent. The last mode is that contended for by the respondent. In Mayne's *Hindu Law*, last edition, page 723, the first rule is that the estate goes to the senior heir. Where it passes from one line of descent to another, an impartible estate, or one devolving on a single line of descent, devolves, where no special custom is proved, on the nearest heir in the senior line—*Naraganti Achammagaru* v. *Venkatachalapati Nayaniaru* (1), *Muttu-vaduganatha Tevar* v. *Periasami* (2). The senior stock must

(1) (1881) I. L. R. 4 Mad. 250, 266.

(2) (1892) I. L. R. 16 Mad. 11, on appeal (1895) I. L. R. 19 Mad. 451; L. R. 23 I. A. 128, 132, 134, 137.

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be exhausted before the junior line can be entitled to succeed. It is submitted therefore that the High Court has rightly decided that the respondent Satrughan, who is descended from the senior line, is the proper heir rather than the appellant, who is descended from the junior line, and that the judgment should be upheld.

Rattigan K.C. in reply.

1902 *Feb.* 22.

The judgment of their Lordships was delivered by

LORD MACNAGHTEN. The only question on this appeal is, whether the Calcutta High Court was right in holding that lineal primogeniture is the rule of succession in the Dhalbhoom family, whose head-quarters are at Ghatsila. There were other questions raised in the suit, but they have all been finally determined. In the Court of first instance the District Judge of Bankura seems to have come to the same conclusion. He found that the rule of succession in the family was lineal primogeniture "in a limited form." He did not, however, explain what he meant by that qualification, and no satisfactory explanation of it has been offered.

The High Court, considering that the question was merely a question of fact, on which they agreed with the Lower Court, properly declined to give leave to appeal. This Board, however, under the circumstances recommended that special leave should be given. All the evidence that was adduced in the Lower Court was laid before their Lordships, and the case was very ably argued on behalf of the appellant. But their Lordships see no reason to differ from the conclusion at which the High Court arrived.

It will therefore not be necessary for their Lordships to deal with the matter in any detail.

The property in dispute is undoubtedly an impartible Raj, which descends upon a single heir. The last owner, Raja Ram Chunder Dhal III, died on the 5th of January 1887 without issue. On his death the eldest line of descent from Raja Jagannath I, who took settlement of the estate from the Government in 1777, became extinct. A contest then arose between the respondent, Satrughan Dhal, the eldest male lineal descendant of the second son of Jagannath I, and the original plaintiff, Nityanund Dhal

(now represented by the appellant), who was descended from the fourth son of Jagannath I, but was nearer by one degree to the person from whom descent was traced.

The Dhalbhoom family is one of a group of families whose ancestors originally came from the north-west of India and established themselves by conquest in that part of Bengal which is known as the Jungle Mehals. Some of these families, like the Dhalbhoom family, are now governed by the Mitakshara law and others by the Dyabhaga. But there are intermarriages between them. In all the Raj descends on a single heir. These families, or, at any rate, the more important of them, keep up a sort of semi-royal state and dignify the heir-apparent and those in immediate succession with titles of honour which denote precedence. Thus in the Dhalbhoom family the eldest son of the ruling Raja takes the title of Jubaraj, the second that of Hikim, the third that of Bara Thakoor, the fourth that of Koer, the fifth that of Musib, and the remaining sons that of Babu.

It cannot be disputed that, according to the *kulachar* or custom in this family and those belonging to the same group, a grandson, whose father is dead, succeeds to the grandfather's estate in preference to a surviving uncle. But it was contended on the part of the appellant that this does not prove that the rule of lineal primogeniture applies in cases of collateral relationship. Standing alone it might not be sufficient to establish the point, though it has an important bearing on the question. Then it was said that there is no instance of a case of descent among collaterals on all fours with the present. That is quite true. Of course such cases must be exceedingly rare. On the other hand, there is no instance of a collateral relation in a junior line nearer in degree being preferred to the descendant of an elder line.

The High Court relied on the oral evidence, which was very fully discussed in the Court of first instance. There was abundant evidence to show that it was well understood in the family and in families belonging to the same group that no descendant of a younger branch could take until all the elder branches were exhausted. But there, again, no witness was able to point to an actual instance in which, in cases of collateral relationship, the rule had either been followed or departed from. The evidence of

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course would have been much stronger if the witnesses had been able to cite instances confirming their view. But still the evidence is not to be disregarded.

The High Court relied principally on certain decrees relating to disputes in families belonging to the same group, in which it was decided that the rule of succession was lineal primogeniture. These decrees do not of course bind the parties to the present suit, but they go a long way to show the prevalence of the custom among families having a common origin and settled in the same part of the country.

Lastly, the High Court relied on the precedence conferred or marked by the titles of honour given to the sons of the reigning Raja in order of seniority—a precedence which would naturally be attached to the lines of descent traced from them.

All these various considerations point in one direction, and in one direction only.

The principal argument on behalf of the appellant, apart from the obvious argument that no one of these considerations would be sufficient of itself, was founded on a statement or return made in answer to an official requisition on a printed form by the grandfather of the last owner, Chitreswar II, when he was the ruling Raja. Their Lordships think that the learned Judges of the High Court were right in treating this as an important document and also in declining to accept it as laying down any positive rule of succession in the family. It is a clear statement of succession as regards the Raja's own sons. In dealing with more remote relations the Raja does not seem to have arranged the members of his family in any intelligible order of succession: he puts a person who was one generation distant from him before a person who was two generations distant, but immediately afterwards he puts a person who was four generations distant before two persons only two generations distant. And indeed the heading of the column in which the relationship of these persons is stated does not seem to require that the names entered therein should be arranged according to their order of succession to the estate. The heading simply requires that there should be written "how many sons, how many brothers and brothers' sons the zemindar has, and

amongst them who are near and who are remote, and by how many generations remote with particulars."

Their Lordships therefore, agreeing with the High Court, will humbly recommend His Majesty that this appeal should be dismissed.

The appellant will pay the costs of the first respondent, who alone defended this appeal.

Appeal dismissed.

Solicitors for the appellant: *T. L. Wilson & Co.*

Solicitors for the respondent, Satrughan Dhal: *Miller, Smith, and Bell.*

J. V. W.

APPELLATE CIVIL.

Before Sir Francis W. Maclean, K.C.I.E. Chief Justice, and Mr. Justice Banerjee.

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NUND KISHORE LAL v. KANEE RAM TEWARY.*

Transfer of Property Act (IV of 1882) s. 6, cl. (a)—Hindu reversioner's contingent right—Mortgage of such right, validity of.

The interest of a Hindu reversioner expectant upon the death of a Hindu female cannot be validly mortgaged by the reversioner.

Brahmadeo Narayan v. *Harjan Singh* (1) overruled by *Sham Sunder Lal* v. *Achhan Kunwar* (2).

THE defendants Nund Kishore Lal and others, Nos. 5, 6 and 7, appealed to the High Court.

The suit was instituted for the recovery of Rs. 9,732 for principal and interest due on a deed of mortgage executed by the defendant No. 1 in favour of the plaintiffs on the 16th day of August 1890 by the sale of the properties mortgaged, which consisted of an entire mauza, called Tutlo, and an eight annas' share in mauza Atakora. The mortgagor himself did not defend the suit, but subsequent purchasers from him, *i. e.*, subsequent to

*Appeal from Original Decree No. 284 of 1900, against the decree of Babu Nepal Chunder Bose, Subordinate Judge of Ranchi, dated the 28th of June 1900.

(1) (1898) I. L. R. 25 Calc. 778. (2) (1898) L. R. 25 I. A. 183.