

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the appeal of Triloki
Nath Singh v. Pertab Narain Singh from the
Court of the Judicial Commissioner of Oud
delivered March 20th, 1888.*

Present :

LORD HOBHOUSE.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

[*Delivered by Sir Barnes Peacock.*]

THIS is an appeal from a decision of the Judicial Commissioner of Oudh given on the 26th November 1884, and the question is whether that decision is correct with reference to the course of proceedings which had been previously taken in the various courts of Oudh and also before Her Majesty in Council.

Sir Man Singh, who was one of the great talukdars of Oudh, died on the 11th October 1870. He left a widow, the Maharani Subhao Kunwar, and a daughter named Brij Raj Kunwar, by a deceased wife, and also a son of that daughter, Pertab Narain Singh, the present Respondent.

The Maharajah made a will by which he gave all his property, moveable and immoveable, to his widow, with power to her to appoint a successor. Pertab Narain Singh, who was the son of the daughter, considering that he was entitled to the estates of the late Maharajah according to the rules of descent established by Act I. of 1869, commenced a declaratory suit against the Maharani, and also against Triloki Nath, the present Appellant, who had been

▲ 53753. 125.—5/88. Wt. 328. E. & S.

▲

appointed by the Maharani to be her successor, to have it declared that the will of the late Maharajah had been revoked by him, and consequently that the widow had no right to appoint Triloki Nath. In that suit the first court decided that the will had not been revoked, and the Judicial Commissioner upheld that decision; but upon appeal to Her Majesty in Council, it was held that the Maharajah had revoked the will, and that, consequently, the widow had no power to appoint Triloki Nath. That decision was in July 1877, and is reported in the 4th volume of the Indian Appeals, page 228. It is there said:—"It is now admitted on all sides, if it were ever seriously disputed, that the Appellant"—that is the Maharajah Pertab Narain Singh the present Respondent—"can only succeed in his suit by establishing both the following propositions:—

1. That the testamentary disposition which the Maharajah unquestionably had power to make and did make in April 1864, was revoked or became inoperative in his lifetime. 2. That the Appellant is entitled to succeed to the taluk as the son of a daughter of the Maharajah, who had been treated by him in all respects as his own son, within the meaning of the 4th clause of section 22 of Act I. of 1869, it being clear that as a mere grandson by a daughter he would not be the heir *ab intestato* to the taluk under the special canon of succession to intestate talukdars established by that section of the statute."

Their Lordships then came to the conclusion that Pertab Narain Singh was the son of a daughter, and that he had been treated by the late Maharajah in all respects as his own son. They accordingly decided in his favour, and said:—"Upon the whole, then, their Lordships are of opinion that the Maharajah died, as he intended to die, intestate; that the Appellant is the person who,

“ under clause 4 of section 22 of Act I. of 1869,
 “ was entitled to succeed to the taluk ; and that
 “ he has made out his claim for a declaratory
 “ decree to that effect.” But then they add :—
 “ The declaration, however, must, their Lordships
 “ think, be limited to the taluk, and what passes
 “ with it. If the Maharajah had personal or other
 “ property not properly parcel of the talukdari
 “ estate, that would seem to be descendible
 “ according to the ordinary law of succession.”
 Their Lordships therefore merely declared Pertab
 Narain Singh’s title to the taluks and whatever
 descended under Act I. of 1869. As to other
 property which was not included in that Act
 Pertab Narain would not have been the heir to the
 Maharajah during the lifetime of the widow.
 She would have taken the widow’s estate in all
 property except that which was governed by
 Act I. of 1869.

Subsequently, Triloki Nath applied to Her
 Majesty in Council for a review of that judgement,
 or for a rehearing, his ground being that he had
 not been properly represented in the former suit ;
 that the person who had appeared as guardian
 for him had not been properly appointed his
 guardian. Their Lordships refused to advise Her
 Majesty to grant a review of the judgement, and
 stated that the only remedy which Triloki Nath had
 was to bring another suit, to try whether he was
 bound by the decision. Accordingly, in 1879,
 he brought a suit to have it declared that he was
 entitled to all the property moveable and im-
 moveable of the late Maharajah. Previously to
 the commencement of that suit, however, the
 widow had made a second appointment under the
 will, assuming it to be in force, appointing
 Triloki Nath to take the estate at once. It has
 been contended that that appointment vested in
 Triloki Nath not only the taluks, but also the
 right to the property to which the widow had

succeeded upon the death of her husband. Whether that is so or not is not material. Triloki Nath brought his suit and he made reference to that document in the plaint. At page 8, paragraph 33, of that plaint, he stated:—"So far as the now Plaintiff is aware, no further steps were taken in the prosecution of the said appeal until September 1875, and in the meantime, that is to say on the 20th of May 1875, the Maharani executed another document recognising the now Plaintiff as successor to the said Maharajah Sir Man Singh, and on the 31st August 1875 the Revenue authorities substituted the now Plaintiff's name as the proprietor of the estates in place of the Maharani."

At page 39 of the same Record there is this statement:—"The counsel for the Defendant asks the Plaintiff as a preliminary, whether 'he is suing on the appointment executed by the Maharani on the 16th August 1872, or that mentioned in his 33rd paragraph of 20th of May 1875'? The counsel for Plaintiff answers without reservation that of the 16th August 1872." It is however to be remarked that in that suit, whether he was relying upon the document of 1872 or that of 1875, he asked to have it declared that he was entitled to the whole of the property, moveable and immoveable, of the Maharajah.

The judge by whom the second suit was tried found that the will had been revoked, following the decision of Her Majesty in Council, and dismissed the suit. On appeal to the Judicial Commissioner, at page 861 of the Record, certain points were laid down as those upon which the Judicial Commissioner was to decide, the second of which was:—"Supposing the Plaintiff Appellant to be confined to the document executed in his favour by the Maharani Subhao Kunwar on the 16th of August 1872

“ as the basis of his suit, has he, or has he not, any
 “ present *locus standi* in court? ” Then, thirdly :
 “ Supposing the Plaintiff Appellant not to be con-
 “ fined to the document of the 16th August
 “ 1872 as the basis of his suit, then has there, or
 “ has there not, been any such valid appointment
 “ of the Plaintiff Appellant under the power
 “ conferred upon the Maharani by the will of
 “ the Maharajah as to give to the Plaintiff
 “ Appellant cause of action? ” Upon that the
 Judicial Commissioner decided that the will
 had not been revoked, and he held that the
 Plaintiff was entitled to a declaration in his
 favour. At page 989 of the Record the decree
 is stated as follows:—“ Claim for declaration of
 “ right to the talukdari estates and all property
 “ moveable and immoveable belonging to the
 “ late Maharajah Sir Man Singh.” He therefore
 treated the suit of 1879 as a suit relating not
 merely to the talukdari, but to all the property
 moveable and immoveable of the late Maharajah.
 He found that the will had not been revoked,
 and decreed “ that the Plaintiff Appellant be, and
 “ he is hereby declared to be, the appointed suc-
 “ cessor of the late Maharajah Sir Man Singh,
 “ and to be absolutely entitled to the said
 “ Maharajah’s estates.” There is no doubt
 that the second suit of 1879 was brought for
 a declaration of the right of Triloki Nath to
 the whole of the estates of the Maharajah,
 talukdari as well as non-talukdari, and that the
 decree of the Judicial Commissioner gave him a
 right to that property.

An appeal was preferred to Her Majesty
 in Council against that decision, but pending
 that appeal Triloki Nath, on the 15th August
 1882, brought another suit which is the suit now
 under consideration. In that suit he asked for
 possession of all the property of the late Maha-
 rajah. “ Claim for possession of moveable and
 “ immoveable property left by the Maharajah

“ Sir Man Singh deceased.” That case coming on for trial, the first judge followed the decision of the Judicial Commissioner in the second suit, and held that the will had not been revoked. An appeal was thereupon preferred to the Judicial Commissioner, but he very properly postponed delivering his judgement upon the appeal until after the decision of Her Majesty in Council upon the appeal which was then pending in the second suit. Upon that appeal, in which judgement was delivered in July 1884, Her Majesty in Council reversed the decision of the Judicial Commissioner and dismissed the suit of 1879. The judgement of their Lordships is reported in the 11th Vol. of the Indian Appeals, 197, and at page 210 they say:—“In the result their Lordships “ will humbly advise Her Majesty to reverse the “ judgement appealed from, and to order that “ the suit of the Respondent be dismissed and “ that he pay the costs in the courts below.”

It therefore appears that Triloki Nath, the present Appellant, has never claimed the property except under an appointment made by the widow in pursuance of an unrevoked will. He has never claimed to be entitled to the estate or any part of it as having been conveyed to him by the Maharani by the appointment of 1875 as property which had descended to her in consequence of the Maharajah's having died intestate. The second suit was brought in respect of the whole of the property upon the ground that the will had not been revoked, and that the Maharani had appointed the property to him. That suit was dismissed by Her Majesty in Council upon the ground that the Plaintiff had no title to the whole or any part of the property in respect of which he was suing in that suit. The decree of Her Majesty in Council, in the suit in which Triloki Nath asked for a decree declaring that he was entitled to the

whole of the property, must be and is binding in this suit, in which he is asking, not merely for a declaratory decree, but to be put into possession of the whole property.

The claim of the Plaintiff in the present suit is founded entirely upon the will of the late Maharajah. Upon the strength of that will he is now asking to be put into possession of property to which Her Majesty in Council has decided that he has no title. It appears to their Lordships that Triloki Nath is bound by the decision of Her Majesty in Council of 1884, and that the Judicial Commissioner was perfectly right in acting upon that decision and dismissing the present suit.

Their Lordships will therefore humbly advise Her Majesty to affirm the decision of the Judicial Commissioner and to dismiss the appeal. The Appellant must pay the costs of the appeal.

