

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Lala
Muddun Gopal Lal and Another v. Mussumat
Khikhinda Koer, from the High Court of
Judicature at Fort William in Bengal;
delivered December 13th, 1890.*

Present :

LORD MACNAGHTEN.

SIR RICHARD COUCH.

MR. SHAND (LORD SHAND).

[*Delivered by Lord Macnaghten.*]

KISHEN Jewan Lal, who seems to have acquired, or succeeded to, considerable property, moveable and immoveable, was the head of a Hindu family governed by the Mitakshara law. He died in the year 1835. He left issue three sons, and no more. Kuldip was the eldest, and it is upon his acts and conduct that the question in this case mainly turns. The second son was Madhoram. He died about a year after his father's death, without issue, leaving a widow named Rajbunsi. The third son, Sadhoram, was not more than two or three years old when his father died.

Twenty-two years afterwards the position of the family was this:--Kuldip was advanced in years. He was apparently a widower, and without issue living, except one daughter, Ram Lochun, and one grandson, the son of that daughter, who was named Biseswar. Rajbunsi was living, and entitled to maintenance under a compromise following litigation and a previous ineffectual compromise. Sadhoram was a widower, and childless; but it appears that he had been deaf and dumb from his birth, and it is found that he was incapable of inheriting

or succeeding to property according to Hindu law.

In this state of things, on the 18th June 1867 Kuldip executed a document called a Tamliknama, stating the deaths of Sadhoram's mother and wife, and the particular circumstances which showed that Sadhoram, by reason of his incapacity, had no interest in the property, and making over the whole of the property to Biseswar; and Biseswar was then publicly invested with possession. Kuldip died on the 9th May 1870, Sadhoram having died in the previous year. Biseswar died in 1876, without issue, leaving his wife, Khikhinda, who is the present Respondent. On Biseswar's death she succeeded to the property, and continued to enjoy it, without any interruption from Biseswar's mother, Ram Lochun, who lived till 1880.

In 1882 the Appellant Muddun Gopal brought the present suit. By his plaint he made no claim to the estate left by Kuldip. He left over that claim, he said, for another occasion. His case was that Sadhoram survived Kuldip, and that on Sadhoram's death Biseswar illegally took possession under the Tamliknama, and he sued for recovery of possession of the property of Sadhoram, whose nearest heir he claimed to be. The Subordinate Court dismissed the suit, having found that Sadhoram was incapable of inheriting, and also that he died before Kuldip. Muddun Gopal appealed to the High Court. The High Court agreed with the Subordinate Court both as to the incapacity of Sadhoram and the survivorship of Kuldip; but for some reason not very apparent they seem to have thought that Muddun Gopal ought to be permitted to make out his case in some other way if he could; and accordingly with the consent of the Respondent, given for some reason which is also not very apparent, they remanded the case to the Subordinate Court, for the

trial of certain issues. One of those issues was whether any and what title passed by the Tamlik-nama. Further evidence was taken, and in the result the Subordinate Court held that though Sadhoram was incompetent to take by inheritance he might take by gift, and that Kuldip, by recognising him as joint owner after his incapacity must have become apparent, had created a new title in his favour. Both parties took objections to the finding of the Subordinate Court. On the 12th January 1887 the High Court pronounced final judgment. As to the legal result of Kuldip's conduct the High Court were of opinion that it had the effect of giving a new and valid title to Sadhoram, either by way of family arrangement or by virtue of the law of limitation. They discussed the effect of the Tamliknama, and the effect of Biseswar's possession, which they held to have been exclusive; and they came to the conclusion that the law of limitation ran against Muddun Gopal from Sadhoram's death at the latest, and that the suit was accordingly barred.

Their Lordships are of opinion that the dismissal of the suit may be justified on other and, perhaps, sounder grounds. They are unable to agree with the High Court in thinking that the acts and conduct of Kuldip operated to create a new title in Sadhoram. Undoubtedly up to the year 1856 Kuldip did in every way and on every occasion recognise Sadhoram as jointly interested with him in the family property. Nothing, perhaps, shows this recognition more plainly than the line of defence adopted in the litigation with Rajbunsi, in which her claim was defeated by setting up Sadhoram's interest. It is also shown by a deed of conveyance, by a petition for registration, by leases, and other documentary evidence. But nevertheless their Lordships think it would be wrong to hold that Kuldip's position

was prejudiced by his conduct. Kuldip naturally and properly treated his afflicted brother as a member of the family, and entitled to equal rights, until it became absolutely clear that his malady was incurable. Their Lordships think it would not be reasonable, or conducive to the peace and welfare of families, to construe acts done out of kindness and affection to the disadvantage of the doer of them, by inferring a gift when it is plain that no gift could have been intended.

Their Lordships are satisfied that there is no ground for supposing that Kuldip intended to divest himself of his own property or to waive any rights accruing to him by reason of Sadhoram's incapacity; and they are equally clear that there is no principle of law founded on the doctrine of estoppel, or laches, or the law of limitation or otherwise, which compels them to hold that under the circumstances of this case Kuldip's acts and conduct had an effect and operation which he could not have intended or contemplated.

Their Lordships therefore think that the suit was properly dismissed, and that this appeal ought also to be dismissed, and they will humbly advise Her Majesty accordingly. The Appellants will pay the costs of this appeal.