

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of Manick  
Chand v. Hira Lal from the Court of the  
Judicial Commissioner of Oudh, Lucknow;  
delivered 24th May 1892.*

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Present :

LORD WATSON.

LORD MORRIS.

SIR RICHARD COUCH.

LORD SHAND.

[*Delivered by Sir Richard Couch.*]

This case has reference to a dispute between two brothers, the sons of one Janki Parshad, as to the right of the younger brother, the Respondent, to a half share of three villages called Bairampur, Ichna, and Dubawan. The District Judge decided that the elder brother, Manick Chand, was entitled to all the three villages, to the exclusion of his younger brother, Hira Lal. Upon appeal the Judicial Commissioner reversed that decision so far as it related to two of the villages, Dubawan and Ichna, and decided that Manick Chand was entitled to one village, Bairampur, as Jethansi, and that Hira Lal was entitled to share in the other two villages.

The case depends upon the effect of a family arrangement which is stated in a Petition presented on the 8th November 1882 to the Court of Hazari Lal, Extra Assistant Commissioner of Sitapur, and in the proceedings thereon on the 9th November. In order to explain the nature of the arrangement it should be stated that Janki

Parshad was one of five brothers. One of them, Atma Ram, is now represented by Lalta Parshad; another is Bhawani Parshad; the third, Thakur, is represented by Saonlai Lal, who was adopted by him, but who was a son of Janki Parshad; the fourth is Chote Lal.

The questions which were the subject of the compromise had arisen in the lifetime of Janki Parshad, who died in June 1882, a few months before the compromise was actually entered into. This is important, as showing that what the parties were agreeing about was, not the right of Manick Chand as the eldest son of Janki Parshad as against the other members of the family, but the right of Janki Parshad, and the claim which he had upon the other members of the family on account of his services in managing the property, and in acquiring other property, and so increasing the value of the family estate.

The petition states that, a dispute having arisen between Bhawani Parshad, Chote Lal, and Lalta Parshad, on the one side, and Manick Chand, Hira Lal, and Saonlai Lal, on the other side, and a case about the matter being before the Court of the Extra Assistant Commissioner of Sitapur, the above-named parties had, at the request of their kinsmen, and of certain neighbouring zemindars, settled the matter amongst themselves, upon the terms that "out of the whole lot of zemindari and mortgaged villages in parganas Chandra and Aurangabad, two entire villages, viz., village Ichna . . . and village Dubawan . . . shall be given with proprietary right to Manick Chand, the eldest son of Maharaj Janki Parshad, deceased, to the exclusion of others and over and above his shares . . . As to the rest of the villages in parganas Chandra and Aurangabad it has been determined that Jethansi dues shall be levied in them at the rate of 5 bighas per

“ Rs. 100 or at the cash rate of Rs. 5 per cent.  
 “ on the revenue, the village Bairampur . . .  
 “ becoming included in Bai Kuian pargana  
 “ Aurangabad. The revenues and profits of this  
 “ village shall be at the disposal of Manick Chand,  
 “ no other party shall have anything to do with  
 “ it. Should the area of Bairampur be found  
 “ wanting in payment of Jethansi dues at the  
 “ rate of 5 bighas per Rs. 100, the deficiency  
 “ shall be made good from other villages in the  
 “ manner to be proposed . . . mentioned  
 “ above.”

The question is, what was meant by the statement that the villages, Ichna and Dubawan, were given “with proprietary right to Manick Chand, to the exclusion of others, and over and above his shares.” On reference to a subsequent passage in the petition, it is clear that the shares there alluded to were the shares of Manick Chand, as representing his father Janki Parshad, and the shares of the other four brothers. It says: “All the rest of the land belonging to each village . . . shall form one whole. and shall be divided into 5 equal shares amongst the undermentioned shareholders: 1. Bhawani Parshad; 2. Chote Lal; 3. Lalta Parshad; 4. Manick Chand, Hira Lal; 5. Saonlai Lal.” There is no allusion to any question having arisen between Manick Chand and Hira Lal regarding their respective shares in the property of their father Janki Parshad.

Further on, in the petition, there is the following important statement that Hira Lal, named there as Hazari Lal, but evidently in mistake for Hira Lal, “states that he has a share in the entire share of Manick Chand, including the Jethansi right, and Manick Chand states that he (Hazari Lal) has no share in Jethansi, he has share in other properties.” Hira Lal claimed there more than he was entitled to, because the

Jethansi being the right of the elder brother he could have no share in it, but the importance of the statement lies in the fact that Manick Chand said that Hira Lal had no share in the Jethansi, but that he had a share in other properties. These words would apply to the two villages, Ichna and Dubawan, which are not stated to be given as Jethansi to Manick Chand, but as in proprietary right. That the parties were not dealing with any rights, as between Manick Chand and Hira Lal, in the two villages which were given in proprietary right really on account of Janki Pershad the father, is apparent from another passage in the petition where it is said:—

“Every co-sharer should repay the debts in proportion to his share, or should become responsible for its payment, according to his share, which, in the case of Manick Chand, would include Jethansi. The debts due to co-sharers including Jethansi, might also be divided out in proportion to shares, that is to say in calculating the proportion, the Jethansi and other villages awarded to Manick Chand, in excess of other shares, will be taken into account.”

The words “in excess of other shares” must mean not in excess of any share which Manick Chand had as between himself and Hira Lal, but in excess of the shares of the other four brothers, shewing that what the parties were dealing with in the compromise was not a question between Manick Chand and Hira Lal as to their shares, but the division of the property between the five brothers, one share being given to the sons of Janki Parshad as representing him, and entitled to succeed to the property as his sons.

This view is further supported by another petition, presented to the Court on the 8th November 1882, but in the heading dated by mistake the 8th January 1882, in which it is said, in almost similar language to that quoted

above: "A dispute regarding division of shares  
 " in all villages held in zemindari right, and  
 " by mortgage in village, pargana and tahsil  
 " Chandra, all villages belonging to Bai Kuian,  
 " grant in pargana Aurangabad, tahsil Muhamdi,  
 " having taken place among the parties, viz.,  
 " Bhawani Parshad, Chote Lal, sons of Khushal  
 " Ram, and Lalta Parshad, son of Atma Ram, on  
 " the one side, and Manick Chand, Hira Lal,  
 " sons of Janki Parshad, and Saonlai Lal, adopted  
 " son of Thakur Parshad, \* \* \* on the  
 " other side, a suit is pending in the Court of  
 " Munshi Hazari Lal, Extra Assistant Commis-  
 " sioner, district Sitapur." That shows that  
 even before this compromise a suit had been  
 commenced, and was pending, between the  
 representatives of three of the sons on the one  
 side and Manick Chand and Hira Lal, sons of  
 Janki Parshad, and Saonlai Lal, the adopted son of  
 Thakur Parshad, on the other side, and obviously  
 pointed to the nature of the dispute which had  
 arisen, and which was to be compromised.

The construction of the arrangement come to  
 by these petitions appears to their Lordships to  
 be that it was not intended thereby to deal with  
 the rights of Manick Chand and Hira Lal as  
 between each other, but with the rights of  
 Manick Chand and Hira Lal as representing  
 their father Janki Parshad, and the rights of  
 the other brothers. The Judicial Commissioner  
 appears to have rested his Judgment upon Manick  
 Chand's statement that Hira Lal had no share  
 in Jethansi, but had a share in other properties.  
 Probably it would not be correct to give so much  
 effect as he has done to that statement; but,  
 it is in accordance with the contents of these peti-  
 tions, and their Lordships are of opinion that the  
 decision of the Judicial Commissioner that Hira  
 Lal was entitled to a share in the two villages, is  
 the right decision, and they will humbly advise  
 Her Majesty to dismiss the Appeal.

