

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
Bhaiya Ardawan Singh v. Raja Udey Partab  
Singh, from the Court of the Judicial Com-  
missioner of Oudh, Lucknow; delivered 5th  
March 1896.*

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Present:

LORD WATSON.

LORD HOBHOUSE.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

The parties to this appeal are lineal descendants, through males, of Raja Sheo Singh who, at the beginning of this century, possessed the taluka of Bhinga; the Respondent being the descendant of Sarabjit Singh his eldest, and the Appellant of Umrao Singh, his second son. At the time of the Mutiny, the taluka was confiscated; but it was subsequently restored to the family, and was settled in 1856-57, and again in 1858-59, upon Raja Kishen Dutt, the son of Sarabjit. Raja Kishen Dutt died in 1862, and was succeeded by the Respondent.

Jabraj Singh, father of the Appellant, who was the son of Umrao Singh, died in 1881; and, in March 1887, the present suit was brought by the Respondent, in which he claims proprietary possession of two villages within the taluka, Gutwa and Basthanwa, which are also known by the common name of Sochouli, and, in the alternative, that the Appellant is bound to relieve him of the revenue payable to government in respect of these two villages. The only

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reward; and, in regard to the subjects now in controversy, they found "that the two villages " Gutwa and Basthanwa, given as maintenance, " be decreed in favour of Plaintiff (to continue) " as heretofore." That deliverance was confirmed by Maharaja Sir Maun Singh, on the 6th July 1869.

The award was thereafter approved by the Financial Commissioner, and was filed in Court upon the 16th July 1869, which was more than six months after the passing of the Oudh Estates Act, No. I. of 1869; and it therefore did not come within the provisions of Section 33 of the Act, which, if the award, with the Commissioner's approval, had been filed ten days earlier, would have made it "enforceable as if a court " of competent jurisdiction had passed judgment " according to the award and a decree had " followed upon such judgment." But the award was not on that account invalid. It did not constitute *res judicata*, in the proper sense of that term; yet it was obligatory upon both parties to the submission and upon those whose interests they represented. Raja Kishon Dutt at that time represented the taluka, and had power to submit the dispute to the Association, so as to bind his successors; and the award, if it gives the Appellant a right to possess these two villages, is available to him in any question with the present Respondent. The real controversy in this appeal turns upon the construction of the deliverance issued by the British Indian Association. It conclusively determines that the villages were "given as maintenance"; and the parties mainly differ as to the true import of the expression "(to continue) as heretofore." According to the Appellant's argument, it signifies that he was to take by succession the same right of possession which had been previously enjoyed by his father and grandfather.



custody. On the other hand, the Additional Judicial Commissioner found that these documents "have not been proved either by evidence or by "presumption of law." In that finding their Lordships cannot concur. Legal presumption appears to them to be in favour of the authenticity of the pottahs, and, so far as the terms of the grant which they contain are expressed, they are entirely consistent with the facts of the case which are *aliunde* admitted or proved. They expressly state that the grants to Umrao Singh were of the two villages in question, and that under them the possession of these villages was to be rent-free; and it is either proved or admitted that since the date of the grants, the villages were successively possessed by Umrao, and the next male descendant of his body, the revenue duty being paid by the talukdar.

It is no doubt true that the grants made by these pottahs are, in some respects, as indefinite as the award of 1869. They do not state that the grant was confined to a right for maintenance; and they do not specify whether such grants, if given for maintenance only, were to Umrao Singh personally, or were to be inherited by his descendants. They are conceived in general terms, which are quite capable of being construed in either of these ways, and according to the nature of the possession which was had under them with the assent of the talukdar. In the present case, their Lordships are of opinion that the state of possession which followed upon the grants, in the absence of any clear words of limitation, support the contention of the Appellant.

In construing the final award of the British Indian Association, which determines that the right of maintenance then held by Jabraj Singh shall thenceforth continue as it had previously existed, their Lordships are of opinion that it is



Raja under his control. The arbiters subsequently recorded their own opinion upon Jabraj's claim, holding that he was entitled to the two villages Gutwa and Basthanwa "by right of primogeniture," or in other words because he was the eldest son of Umrao. That finding was obviously the basis of their final award, which was merely delayed until they inquired how far the claims of Jabraj were "adverse" to the Raja, when they decided that they were of that character, and beyond their jurisdiction, in so far as relating to the 28 villages.

In that state of the facts, their Lordships have had little difficulty in coming to the conclusion that Jabraj possessed the two villages in succession to Umrao, and under the same grant. To that extent, they concur in the result arrived at by the District Judge. But they are unable to assent to his view that the terms of the award are insufficient to confer upon the Appellant a right to possess the villages rent-free. The award expressly bears that the right of possession, whatever its quality might be, was to continue as before, which plainly imports that, so long as it may be held to exist, the extent and incidents of possession under it are to be precisely the same as they were before the Mutiny. It is beyond dispute that one of the incidents of possession under the right before that time was, that the burden of paying revenue for the two villages fell upon the talukdar.

Their Lordships will for these reasons humbly advise Her Majesty to reverse the judgment appealed from, and to dismiss the Respondent's suit with costs in both Courts below. The Respondent must pay to the Appellant his costs of this appeal.

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