

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Ram
Nundun Singh v. Maharani Janki Koer,
from the High Court of Judicature at Fort
William in Bengal ; delivered the 2nd August
1902.*

Present at the Hearing :

LORD DAVEY.

LORD ROBERTSON.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

SIR JOHN BONSER.

[*Delivered by Lord Davey.*]

The dispute in this litigation relates to the succession to a large estate known as the Bettia Raj. The succession opened on the death of Maharaja Sir Harendra Kishore Singh who died childless on the 26th March 1893. On his death his elder widow Maharani Sheo Ratan Koer took possession of the estates and on the 26th July 1895 the present suit was commenced against her for the recovery of possession by the present Appellant Ram Nundun Singh claiming as the nearest male heir of the deceased Maharaja. The original Defendant died after the commencement of the suit and the present Respondent the second widow was substituted as Defendant.

The Bettia Raj now consists of two pergunnahs Simrown and Majhwa. But at the date when the East India Company became the rulers of Bengal in 1765 what is now known as the Bettia Raj was included in a larger property called the Raj Reasut of Sirkar Champarun which was an ancient impartible raj comprising in addition to pergunnahs Simrown and Majhwa

two other pergunnahs called Maihsi and Babra. According to the pedigree in the case as to which there is no dispute between the parties the Sirkar Champaran was formerly held by Rajah Guj Singh who died in 1694 leaving Dhalip Singh his eldest son, and successor to the Raj and two other sons named Pirthi Singh and Satrajit Singh. The Appellant is descended in the direct line from Pirthi Singh. Rajah Dhalip Singh died in 1715 and was succeeded by Rajah Dhrub Singh who died in 1763 without sons but leaving a daughter. On the death of Rajah Dhrub Singh his daughter's son Rajah Jugal Kishore Singh entered into possession of the Sirkar Champaran and was in possession thereof at the date when the East India Company assumed the government of the province. At the same date the junior branches of Rajah Guj Singh's family were represented by Srikishen Singh son of Pirthi Singh and Abdhut Singh son of Satrajit Singh. Whether Rajah Jugal Kishore had any title to succeed his maternal grandfather is a matter in dispute. In the course of a litigation at the beginning of the last century Srikishen's son and representative alleged he was a mere usurper without title and the son and successor of Jugal Kishore alleged he had been adopted by his grandfather or had become his lawful son by some customary mode of affiliation. In this litigation the parts have been changed. The Appellant now relies on the adoption of Jugal Kishore and it is necessary for him to do so in order to make out his title as agnate to Sir Harendra. The Respondent on the other hand denies any adoption or affiliation by which Jugal Kishore became his grandfather's lawful son. The late Sir Harendra was a descendant in the direct line from Raja Jugal Kishore.

It is not denied by the Respondent that the Bettia estate is and has always been treated as an impartible raj but the Appellant contends that

according to the custom of the family it descends to male heirs only in a course of lineal primogeniture in exclusion of females. He also contends alternatively that the Bettia estate was the joint family property of the predecessors of the late Sir Harendra and himself between whom there had been no division of estate and he is therefore entitled to succeed as co-parcener by right of survivorship in exclusion of the widows of Sir Harendra the family being governed by the law of the Mitakshara. The Respondent on the other hand contended that the Bettia estate consisting of the pergunnahs Simrown and Majhwa became and was the self-acquired separate property of Raja Jugal Kishore by grant from the Government in the circumstances now to be stated.

On the accession of the East India Company to the Government of Bengal Raja Jugal Kishore offered some resistance to their authority and the Company's troops were despatched to enforce his submission. Raja Jugal Kishore fled into the neighbouring State of Bundelkhund and his estates were seized and placed under the management of the Company's officers. The exact date on which the flight of Raja Jugal Kishore took place is in dispute. It is variously stated to be the 4th October 1765 or the beginning of the year 1766 or even the year 1767. It is only of importance for its bearing on the genuineness of a document put in by the Appellant which purports to be a perwana from Lord Clive bearing a date corresponding to the 12th January 1766. This document purports to direct payment of an annuity to Raja Srikishen Singh who is described as the "proprietor and zemindar of Sirkar "Champarun" in addition to the "malikana "sadusi and zemindari perquisites." Another perwana purporting to bear a date corresponding with the 8th April 1769 was also put in by the Appellant. This is a document addressed to the

“ Mokusuddis of pergunahs Majhwa &c. of “ Sirkar Champarun ” directing payment of an annuity of the same amount to Raja Srikishen Singh again described as proprietor and zemindar of the said Sirkar stated to have been for some time past settled upon him. It incidentally describes the Sirkar as consisting of four pergunahs Majhwa Maisi Simrown and Babra. The authenticity of these documents is disputed by the Respondent. It is unnecessary now to express any opinion on their genuineness or to fix the exact date of Raja Jugal Kishore's flight. Certain it is that prior to the year 1771 Srikishen had found favour with the Government and was placed in possession of the zemindari of Sirkar Champarun on some temporary settlement or as farmer of revenue.

On the 15th June 1771 Mr. Golding the supervisor of Sirkar Sarun addressed a letter of that date to the Board of Revenue at Patna. The writer speaks of Sirkar Champarun as being in a state of desolation and ruin and suggests the re-admission of Raja Jugal Kishore as a means of its recovery. He adds “ As the plan for settling “ Sirkar Champarun is now under consideration “ I think it necessary to mention that the “ pergunah Maihsi which pays at present about “ a fourth part of the rents but is not equal to “ that in extent was not formerly a part of the “ zemindari of the Bettia Raj. The inhabitants “ there I am informed were active against “ Jugal Kishore at the time of his expulsion and “ would be now highly disgusted to be placed “ again under him. I would therefore propose “ that this district be given to the manage- “ ment of Raja Srikishen and Babu Abdhut “ Singh the other branch of Raja Dhrub Shah's “ family who remained attached to the Company “ when Jugal Kishore was disaffected and “ drove out of the country.”

The Judges in the High Court have discussed and commented on the correspondence which ensued on Mr. Golding's letter with the Council at Patna and the Committee of Revenue at Calcutta and also the important correspondence which took place in the subsequent years 1789 to 1791 with a fullness which renders it unnecessary for their Lordships to traverse the same ground in any detail. They will therefore content themselves with stating the results.

The Government determined to allot the zemindari of Majhwa and Simrown pergunnahs to Raja Jugal Kishore and to leave Babra and Maihsi in possession of Srikishen and Abdhut Singh. The Patna Council announced this decision to Mr. Golding in their letter of 24th July 1771 in the following terms:—

“The Committee of Revenue having approved
“ of the re-instatement of Raja Jugal Kishore
“ we have now granted to him the zemindari of
“ Majhwa and Simrown pergunnahs and have
“ settled his revenue as follows ” :—

The revenue settlement was of the entire Sirkar for three years and certain estimated sums were deducted on account of Babra and Maihsi. Raja Jugal Kishore consented to execute a kabulyat on these terms for pergunnahs Majhwa and Simrown and was put into possession but having failed to pay the Government revenue he was again dispossessed in the following year. Srikishen and Abdhut refused to execute a kabulyat for the two other pergunnahs alone and they were also dispossessed. The entire Sirkar thus passed into the possession of the Government and was held by farmers of revenue on temporary settlements until the year 1791. Raja Jugal Kishore received an allowance for maintenance from the Government and died in 1783 or 1785 leaving a son Bir Kishore Singh.

On the 10th October 1789 Mr. Montgomerie the then Collector addressed a letter of that date to the Revenue Board asking for advice as to the settlement of Sirkar Champarun. In that letter he mentioned that Srikishen Singh and Bir Kishore Singh were competitors for the zemindari. The Government in the first instance directed a mofussil settlement of Sirkar Champarun to be made for one year only and reserved their decision as to the future settlement of the district. And on the 22nd September 1790 the Governor-General in Council (Lord Cornwallis being then the Governor General) addressed the following letter to the Board of Revenue :—

“It appearing from our proceedings that the
 “late Raja Jugal Kishore was driven out of the
 “country for acts of rebellion, and upon his
 “being allowed to return into the Company’s
 “dominions, that the late President and Council
 “thought proper to divide the zemindari of
 “Champarun, allotting to Jugal Kishore the
 “districts of Majhwa and Simrown, and to
 “Srikishen Singh and Abdhut Singh those of
 “Maihsi and Babra, we direct that the heirs of
 “the late Raja Jugal Kishore and Srikishen
 “Singh and Abdhut Singh be respectively restored
 “to the possession and management of the above
 “districts (with the exception of such parts
 “thereof as may belong to other zemindars or
 “talookdars, being the proprietors of the soil,
 “who are to pay their revenues immediately to
 “the Collector of the district), and that the
 “Decennial Settlement be concluded with them
 “agreeably to the General Regulations.”

Both parties were dissatisfied with this decision. Bir Kishore Singh claimed to be entitled to the entire Sirkar Champarun but in obedience to the orders of the Governor-General he took possession of the two pergunnahs allotted to him and gave in his agreements for the settlement of them and

at the same time he expressed his hope to be put in possession of the other two pergunnahs also. Srikishen and Abdhut also claimed the entire estate on the ground that Raja Jugal Kishore was not a member of the family and had no title to the estate as "by the Hindu Shastra the female branch is not entitled to a share of the estate much less the whole." They accordingly at first refused to give in their Kabulyats for the pergunnahs Maihsi and Babra but on Mr. Montgomerie's advice they ultimately did so under protest and were placed in possession of those two pergunnahs. Separate dowl settlements of Government revenue on the mehals in pergunnahs Majhwa and Simrown and on those in pergunnahs Maihsi and Babra were made with and accepted by Bir Kishore and by Srikishen and Abdhut respectively. The Sirkar Champaran was thus divided *de facto* into two distinct zemindaries to be held by the grantees at revenues allotted to each of them separately.

In the year 1808 Gunga Pershad Singh the son and successor of Srikishen who had died in the interval commenced an action in the Provincial Court of Patna against Bir Kishore Singh to recover possession of pergunnahs Majhwa and Simrown. By his plaint he claimed the Sirkar of Champaran through his father Srikishen who he alleged was entitled to it as next heir male of Raja Dhrub Singh and also under an alleged deed of conveyance executed by the last-named Rajah of the Rajgi and milkiut of the estate comprising the whole of the aforesaid Sirkar in favour of Srikishen. In his defence Bir Kishore alleged that Raja Dhrub Singh had adopted Jugal Kishore and given him the tilak of the Rajgi and put him in possession of the entire Sirkar Champaran. The suit was dismissed on the ground that the cause of action was barred

by limitation and the decree was ultimately affirmed on that ground by this Board.

On these facts the High Court has come to the conclusion that the two pergunnahs Majhwad and Simrowa which are now known as the Bettia Raj became the separate property of Bir Kishore Singh free from any coparcenary rights of succession of the branches of the family then represented by Srikishen and Abdhut. They rightly say that the question is not whether there was a confiscation using that word in its technical or applied sense but whether the East India Company seized the zemindaris of Sirkar Champaran assumed dominion over them and effected a division of the pergunnahs. They point out that Lord Cornwallis's letter of the 22nd September 1790 states in the clearest terms that Jugal Kishore was driven out of the country for acts of rebellion and thus shows the basis of the action then taken by the Government. The facts of the present case are in some respects similar to those in the Hunsapore case dealt with by Lord Cornwallis about the same time but they differ in this respect that the grantee in that case was not the dispossessed rajah but a member of a junior branch of his family. Their Lordships however think that equally in this case the grant of the two pergunnahs should be treated as proceeding from the grace and favour of the Government in exercise of its sovereign authority.

The Government held itself at liberty to divide the Sirkar into two portions and to grant one portion away from the heir of the former owner of the estate and it was equally at liberty to grant the whole away from him though from reasons of policy it preferred to extend its favour to him in a certain measure. It cannot be doubted that the grant of Maihsi and Babra to Srikishen and Abdhut was a direct exercise of

Sovereign authority and proceeded from grace and favour alone and if so it is difficult to avoid the conclusion that the re-instatement of the heir of Raja Jugal Kishore in a portion of his father's former estate also bore that character. Following the judgment of this Board in the Hunsapore case (12 Moo. Ind. Ap. 1) their Lordships think that the present Bettia Raj must be taken to have been the separate and self-acquired property of Bir Kishore Singh though with all the incidents of the family tenure of the old estate as an impartible raj.

The Appellant alleged in his plaint in this suit that Rajah Dhalip Singh granted the two pergunnahs Maihsi and Babra and tuppa Duho Suho in pergunnah Majhwa to his brothers Pirthi Singh and Satrajit Singh by way of maintenance and habuana for themselves and their families. His object of course was to explain away the division of the Sirkar Champaran originally proposed by Mr. Golding in 1771 and carried into effect by Lord Cornwallis's direction in 1791. He would thus represent that what was done in 1791 was but the restoration of the old order in all respects. This alleged babuana grant is heard of for the first time in the present litigation and both Courts below have held that the allegation is unsupported by evidence. Indeed the evidence shows that Raja Jugal Kishore was in possession of all four pergunnahs at the time of his flight or expulsion. It is unnecessary therefore to say more about it.

Their Lordships will now consider the evidence on the question whether by the custom of this family females are excluded from inheritance. The Subordinate Judge decided this issue in favour of the Appellant but the High Court reversed that finding. At their Lordships' Bar learned Counsel for the Appellant endeavoured to shift the burden of proof on the Respondent.

His argument was that when once you admit a custom as of impartibility you are outside the common law and it lies upon those who maintain any particular right as of females to take by inheritance to prove it. The answer to this argument lies on the surface. "Where a custom is proved to exist it supersedes the general law which however still regulates all outside the custom." There is no inconsistency between a custom of impartibility and the right of females to inherit as may be illustrated by the well known Shivagunga case and therefore the general law must prevail unless it be proved that the custom extends to the exclusion of females. There is no instance in this family in which the alleged custom prevailed. It is true that the Maharaja Nawal Kishore Singh grandfather of the late Sir Harendra succeeded his brother who died childless in preference to the latter's widow and in a petition for mutation of names he described himself as having succeeded the late Maharaja according to the custom obtaining in the family. But it appears that he was joint in estate with his brother and therefore was entitled to succeed him in the family property by survivorship. The documentary evidence consists of awards of two rajas made in an arbitration as to the succession to an estate of Balia said to be situate in the same part of the country. The arbitrators found that there was a custom prevailing in the family then in question for a brother to succeed to a raja dying childless which proves nothing material to the present case. But one of the arbitrators stated that a similar custom prevailed in the families of rajas of that part of the country and the other one Raja Tejmal spoke of the custom obtaining "in the family of rajas of position of olden times." The oral evidence consists of (1) the depositions of certain rajas (2) the deposition of

Neelkisto Deb Burmono v. Beerchunder Thakoor 12 Moo. Ind. Ap. 523, on p. 542.

9 Moo. Ind. Ap. 539.

the Appellant himself and (3) that of other witnesses. The evidence of the rajas is perfectly general and there is a complete absence of any condescendence on particulars. Two of these witnesses on cross-examination admitted that they did not know personally any instance in which a female had been excluded from the guddi in the estates referred to in their examination-in-chief and a third admitted he knew nothing of Bettia and had said that the custom prevailed there "because the custom of all the impartible rajes " must be one and the same " and a fourth said that "in the whole Presidency of Bengal females " are not allowed by custom to sit on the guddi." This evidence like the statement in Raja Tejmal's award seems to prove too much. On the other hand at least one instance was given in one of the neighbouring estates where a female had sat upon the guddi. Their Lordships need not refer at length to the evidence of the other witnesses. They none of them speak with any particularity to a custom prevailing in this family and in some cases their means of knowledge are deficient. Their Lordships agree with the High Court that there is not sufficient evidence of a custom to exclude females from inheritance affecting the Bettia raj.

There remains only the issue whether Raja Jugal Kishore was adopted by his maternal grandfather Raja Dhrub Singh or became his son and a member of his family by some customary mode of affiliation. The determination of this issue against the Appellant would be fatal to his case because in that case he would not be able to prove that he was of the same family as the late Sir Harendra. The learned Judges have not found it necessary for the decision of the present case to decide this issue and their Lordships agree with them in thinking that it is the better course not to do so because the same issue may

hereafter arise for decision between different parties.

The Appellant's case however fails on other grounds and their Lordships will therefore humbly advise His Majesty that the Appeal ought to be dismissed. The Appellant will pay the Respondent's costs.
