*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Lala Rup Narain and another* v. *Mussammat Gopal Devi and others, from the Chief Court of the Punjab; delivered the 11th May, 1909.*

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Present at the Hearing:

LORD MACNAGHTEN.
LORD ATKINSON.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.

[*Delivered by Sir Arthur Wilson.*]

The suit out of which this Appeal arises was brought by the present Appellants against a number of persons as defendants. The plaintiffs, alleging themselves to be prospectively reversionary heirs to an estate now enjoyed by two ladies, claimed a declaration that certain alienations, four in number, of portions of the estate made by those ladies were not binding on the reversioners.

Both Courts in India have agreed that there was no such legal necessity as could justify the alienations; and their Lordships have not been asked to review that finding.

The questions which do arise are of quite a different character. It is necessary to follow the pedigree of the family in order to appreciate the

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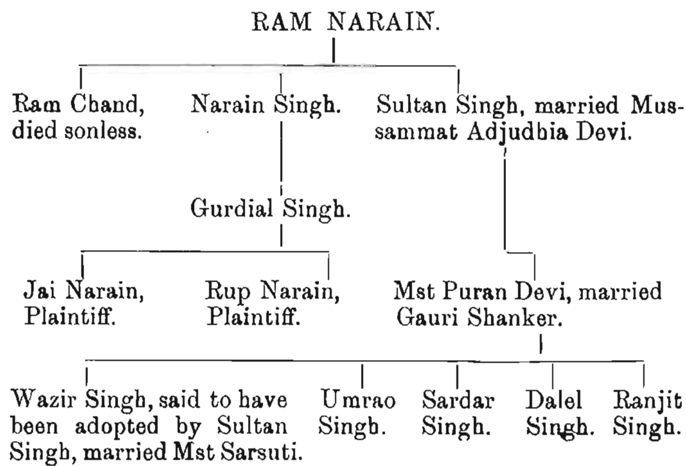
contentions raised on each side. The pedigree, so far as material, is as follows :—




The properties in question formed part of the estate of Sultan Singh, who died in 1861. He was succeeded by Wazir Singh. Wazir, as will be seen by the pedigree, was the eldest son of Sultan's daughter, and, according to the case of the plaintiffs, was adopted by Sultan.

It is not disputed that, if Wazir was the adopted son of Sultan, the present plaintiffs are competent to maintain this suit as reversionary heirs of the estate of Wazir. If Wazir was not such adopted son, the plaintiffs (Appellants) have no right to sue.

The first important question, therefore, is whether Wazir was the adopted son of Sultan.

On this question the Courts in India have differed. The District Judge of Umballa, who tried the case, thought the adoption proved. The Chief Court took a different view. The adoption, if it took place, was about fifty years ago, so that direct evidence of much value could hardly be looked for.

Their Lordships are of opinion that the adoption is established. Before the death of Sultan in

1861 Wazir is described as his adopted son. On the death of Sultan, Wazir succeeded to the estate without controversy, which he could only have done as adopted son, and enjoyed it and disposed of it as his own without controversy down to his death in about 1870. Almost every document, both during the life of Wazir and since his death, is framed entirely upon the basis of the adoption.

It was sought to raise another point in connection with the adoption, that if it took place in fact, it was invalid in law on the ground that under Hindu law a daughter's son could not be adopted. With this point their Lordships think the District Judge dealt rightly. The general rule of Hindu law cannot be disputed, but it may be varied by family custom, and often is so varied in the province from which this Appeal comes. If the legal point had been duly raised in proper time by the pleadings or issues, it would have been examined with the aid of any evidence adduced on either side bearing upon the question. But it was not so raised. It was put forward for the first time at the very last stage of the hearing after all the evidence was closed, and when nothing but argument remained. Their Lordships think that the District Judge was right in refusing to entertain at that stage a new question of this kind of which the solution must be dependent upon evidence.

For these reasons their Lordships are of opinion that the Appellants have established their right to maintain the present suit.

The second question of importance is as to the effect of the alleged assent of one Gur Dial Singh, the father of the plaintiffs, to the disputed transactions or some of them. Gur Dial witnessed an important document of the 3rd of September, 187 , and one of those of transfer, and it was said that

by so doing he was estopped from disputing the validity of the alienations, and that his sons, the now Appellants, were similarly estopped.

On this question the first Court decided in favour of the plaintiffs; the Chief Court of the Punjab held otherwise, and considered that the estoppel contended for bound Gur Dial, and also the plaintiffs, his sons. This decision involves two propositions—first, that Gur Dial was estopped, and secondly that the estoppel was binding upon his sons. The second of these propositions it is immaterial to consider unless the estoppel against Gur Dial is first accepted; and, in order to see whether it should be so accepted or not, it is necessary to examine the documents upon which it is based. The document of the 3rd September, 1871, is the most important of them, and it affords a very clear indication of the positions taken up by the parties. It purported from its title to be a deed of partition executed by Sarsuti, the widow of Wazir, in favour of Puran Devi, his natural mother.

The most notable point about this deed is that according to its terms Sarsuti is the only person who conveys anything, and this is in accordance with the recitals, which allege that Wazir was the adopted son of Sultan Singh, and that Sarsuti, Wazir's widow, had succeeded him on his death. The next notable point about the deed is that, with the exception of the last few lines of the operative part, everything contained in the deed is within the rights of the executant as heiress of her husband, because she purports to deal only with her life estate. The exception in those last few lines purports to affect the devolution of the inheritance after the deaths of Sarsuti and Puran, which was clearly beyond Sarsuti's powers as the widow of Wazir.

The contention being that Gur Dial, by having signed this deed, became an assenting party to the transaction embodied in it, it is necessary to consider what the nature of that transaction is. It is one by which Sarsuti professes to divide her life-interest with Puran, which she could do without any assent of Gur Dial. It purports, secondly, to provide for the descent of the inheritance after her death in a line different from that prescribed by law, a thing which apparently she could not do either with or without the consent of reversioners.

The second document relied upon was one dated the 1st July, 1888, purporting to be the deed of sale by Sarsuti and Puran containing one of the alienations impugned in the suit. The most obvious peculiarity of this document is that it is framed on a basis altogether inconsistent with that of the document last referred to.

It recites that the two ladies inherited the property in question with other property from Sultan Singh by virtue of their right of succession, and also by reason of abandonment and relinquishment of their rights by all the collateral heirs of Sultan. They then refer to the document of the 3rd September, 1871, and another document. They say that they, the executants, have been absolute owners by exercising proprietary rights. They go on to convey the land to the purchasers absolutely, and they proceed :—

> "Now and hereafter neither we nor our rever-
> "sionary heirs nor any other persons coming forward
> "as claimants by right of succession or by virtue of
> "their being male descendants of the aforesaid family
> "shall raise any sort of objection. . . . Even if the
> "heirs of the family of the above-named Munshi had
> "any sort of right, whether vested or contingent,
> "in the property in question at all, such right has
> "been extinguished by their putting their signatures

"to this deed and admitting its contents to be "correct."

The deed was executed by Sarsuti and Puran and witnessed, amongst others, by Gur Dial.

Assuming that Gur Dial effectually assented to this document, the document itself must be looked at, in order to see what it was that he assented to. And on the face of the document, it is clear that all it professes to do is to bind the ladies themselves who executed the deed, and the collateral heirs of Sultan from whom they claim to have derived title. It does not profess to affect any title coming from Wazir. But the present plaintiffs claim title from Wazir, and are therefore unaffected by any estoppel arising from Gur Dial's assent to the deed.

Another point raised on behalf of the Respondents was that, at any rate, the Respondents, or some of them, had spent money upon the properties purchased by them, and that such persons could not be evicted without compensation. On this point it is enough to say that it does not arise on this Appeal, and cannot arise till the death of Sarsuti. Their Lordships therefore have only to say that they abstain from expressing any opinion upon the question and from saying anything which could tend to prejudge the question in case it should be raised hereafter in due time and in due manner.

Another question discussed in argument was whether the Chief Court was right in the mode in which it dealt with an alleged misjoinder of causes of action. Their Lordships think it is at least very doubtful whether, upon the strictest construction to be placed upon the Procedure Code, it can properly be said that there was any misjoinder in this case. And if there was any such misjoinder, Section 578 of the Code has, in

their Lordships' opinion, the effect of preventing such a defect from being made a ground of appeal and from being dealt with on appeal as it was dealt with by the Chief Court.

Their Lordships will, therefore, humbly advise His Majesty that the Appeal should be allowed, the Decree of the Chief Court set aside with costs, and the Decree of the District Court restored, but with costs in favour of the Plaintiffs, and without prejudice to the right of such of the Respondents as claim to have expended money on the properties respectively purchased by them to raise the question of compensation in such manner as they may be advised.

The Respondents will bear the costs of this Appeal.

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