

Judgment of the Lords of the Judicial Committee of the Privy Council on the two consolidated Appeals of Munshi Indar Sahai v. Kunwar Shiam Bahadur and others, from the High Court of Judicature for the North-Western Provinces, Allahabad (P.C. Appeals Nos. 108 and 109 of 1911; Allahabad Appeals Nos. 7 and 8 of 1910); delivered the 26th November 1912.

PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD MOULTON.

SIR JOHN EDGE.

MR. AMEER ALI.

[DELIVERED BY SIR JOHN EDGE.]

The Appellant Munshi Indar Sahai was with one Madan Mohan Lal deceased, a defendant in a suit which was brought in 1904 in the Court of the Subordinate Judge of Bareilly and related to shares in Mauza Partapur, two other villages, and a house and shops in the City of Bareilly. The Appellant was also sole defendant in a suit which was brought in 1905 against him, as manager of a temple, in the Court of the Subordinate Judge of Bareilly, and related to a moiety of Mauza Nawadia Bahmanpuri. The suits were tried by different Subordinate Judges. The suit of 1904 was dismissed by the Subordinate Judge, and on appeal his decision was set aside by the

High Court at Allahabad, and the High Court gave the Plaintiffs in that suit a decree. From that decree of the High Court one of these consolidated Appeals has been brought. In the suit of 1905, the Subordinate Judge gave the Plaintiffs in that suit a decree which was affirmed by the decree of the High Court on Appeal. From the latter decree of the High Court the other of these consolidated Appeals has been brought.

The common ancestor of the Plaintiffs-Respondents and the Defendant-Appellant was Munshi Jiwan Sahai. Jiwan Sahai had three sons, namely, Ram Sahai, who died in 1888; Tirbeni Sahai, who died childless in 1883, leaving a widow Musammat Lado, who died in 1904; and Indar Sahai, who is the Defendant-Appellant. From Ram Sahai the Plaintiffs-Respondents descended in the male line. Jiwan Sahai died on the 10th September 1893. Jiwan Sahai and his sons Ram Sahai, Tirbeni Sahai, and Indar Sahai had constituted a joint Hindu family governed by the law of the Mitakshara, and at the time of the death of Jiwan Sahai, he, his surviving son Indar Sahai, and the sons and grandsons of Ram Sahai who were then living, constituted the joint Hindu family.

On the 15th May 1893, Jiwan Sahai made a will by which he purported to give to Musammat Lado, the widow of his deceased son, Tirbeni Sahai, the villages to which the suits respectively relate, and an interest for her life in the house and shops in the City of Bareilly, with a direction that Musammat Lado should dedicate Mauza Nawadia Bahmanpuri to the Thakurdwara of the god Krishna in Mohalla Darzi Chauk. In one of the suits the Subordinate Judge found that Jiwan Sahai had not made that will, but the High Court found that Jiwan Sahai had in fact made the will. With that finding of the High Court their Lordships agree. The validity of Jiwan Sahai's will has been, however, on other

grounds contested. On behalf of the Plaintiffs-Respondents it has been contended that the property dealt with by the will was the property of the joint Hindu family, which Jiwan Sahai had no power to dispose of by his will, and that the will was not made by Jiwan Sahai with the consent of the other members of the joint family, and was consequently inoperative. On behalf of the Defendant-Appellant Indar Sahai, it has been contended that the villages Nawadia Bahmanpuri and Partapur were self-acquired property of Jiwan Sahai, and never became the property of the joint Hindu family, and further that the will was made by Jiwan Sahai with the consent of the other members of the joint family. It is now common ground that the property which Jiwan Sahai purported to dispose of by his will other than the villages Nawadia Bahmanpuri and Partapur was the property of the joint family.

The villages Nawadia Bahmanpuri and Partapur were granted by the Government to Jiwan Sahai as a reward for his services in the Indian Mutiny of 1857, and undoubtedly were obtained by him as self-acquired property. It was found by the Subordinate Judge of Bareilly on a remand which was ordered by the High Court that Jiwan Sahai had been the head and managing member of the joint Hindu family, and that he kept one account of the income of his ancestral and self-acquired property, and used to treat the income of both kinds of property as one amalgamated fund. The accounts which had been kept by Jiwan Sahai were examined by a Commissioner and the High Court found that :—

“ It appears from these accounts that the income of all
 “ the property, ancestral and self-acquired, was blended
 “ together in one general account. No distinction was made
 “ between the income derived from the different classes of
 “ property and the whole of the income was thrown into
 “ one common stock and was devoted to the expenditure of

“ the whole of the joint family of which Jiwan Sahai, his
“ sons, grandsons, and great grandsons were members. The
“ self-acquired property therefore became the property of
“ the joint family. There is nothing to indicate that Jiwan
“ Sahai wished to or did treat the property acquired by
“ him as his separate property. The oral evidence adduced
“ by the Defendants on the point is unsatisfactory and is
“ negatived by the evidence afforded by the accounts to
“ which we have referred.”

Their Lordships agree with the conclusion of the High Court that the property which had been acquired by Jiwan Sahai as his self-acquired property had become the property of the joint family.

It remains to be considered whether or not the Defendant-Appellant Indar Sahai established his contention that the will of Jiwan Sahai of the 15th May 1893 was made by him with the consent of the other members of the joint family. That issue was upon him. In one suit the Subordinate Judge had found that the will had been made with the consent of the family. In the other suit the Subordinate Judge had found that the will was a forgery. The High Court found that there had been no consent. Their Lordships consider that the oral evidence which was given to prove consent was of the most unsatisfactory and unreliable description. After the suits had gone on appeal to the High Court and after the High Court had made its order of remand the Defendant-Appellant on the 15th of January 1908 for the first time produced a document dated the 8th May 1893 which purported to be a Razamandinama, a deed of consent, made by or on behalf of the Plaintiffs-Respondents and the Defendant-Appellant Indar Sahai. The genuineness of that document was denied on behalf of the Plaintiffs, and Shiam Bahadur, one of the Plaintiffs, by whom it was said to have been written and by whom it purports to have been signed, swore that it was not written

by him and was not signed by him. The High Court considered that the document was not genuine. As to it the High Court said:—

“The suspicious circumstances under which it was produced, the absence of any mention of it in the proceedings held in this and the connected suit before issues, were referred by us to the Court below, the absence of any reference to it in the will of Jiwan Sahai, specially when the will was not attested by the Plaintiffs and Indar Sahai, lead us to think that the deed of consent is not genuine, and to hold that it is at least a doubtful document.”

Their Lordships regard the document dated the 8th May 1893, with the gravest suspicion. Their Lordships do not draw from the fact that the property in question in these suits was not dealt with on the partition between the Plaintiffs and the Defendant-Appellant, Indar Sahai, after the death of Jiwan Sahai an inference that the will of Jiwan Sahai was made with the consent of the family. The omission to include that property in the partition was probably owing to the reluctance of the members of the family to interfere during Musummat Lado's lifetime with what were certainly the wishes of their ancestor, Jiwan Sahai. It is also to be observed that Musummat Lado was entitled to maintenance. Upon her death these suits were brought. For similar reasons their Lordships do not infer from the entries in the Revenue papers that the family had consented to the making of the will. The whole tenour of the will seems to their Lordships to negative the contention that the family had consented to its being made. Their Lordships agree with the opinion of the High Court that had the making of the will been assented to by the members of the joint family the fact that they consented would have been mentioned in the body of the will, and their signatures to it would have been obtained as attesting witnesses. Their Lordships find that the will of Jiwan Sahai

was not made with the consent of the members of the joint family, and that the will was inoperative.

Their Lordships will accordingly humbly advise His Majesty that these consolidated Appeals should be dismissed, and the Decrees of the High Court be affirmed. The Defendant-Appellant must pay the costs of these Appeals.

In the Privy Council.

MUNSHI INDAR SAHAI

v.

KUNWAR SHIAM BAHADUR AND
OTHERS.

DELIVERED BY SIR JOHN EDGE.

LONDON:
PRINTED BY FYRE AND SPOTTSWOOD, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1912.