

*Privy Council Appeal No. 31 of 1913.*  
*Bengal Appeals Nos. 22 and 34 of 1910.*

**Thakurani Tara Kumari** - - - - *Appellant,*  
*v.*  
**Chaturbhuj Narayan Singh and others** - - *Respondents;*  
**Maharajah Sir Ravaneswar Prasad Singh**  
**Bahadur** - - - - *Appellant,*  
*v.*  
**Chaturbhuj Narayan Singh and others** - - *Respondents.*  
*(Consolidated Appeals.)*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM,  
IN BENGAL.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 13TH JULY 1915.

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*Present at the Hearing.*

VISCOUNT HALDANE.  
LORD SHAW

SIR JOHN EDGE.  
MR. AMEER ALI.

[*Delivered by* SIR JOHN EDGE.]

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These are consolidated appeals. That in which Thakurani Tara Kumari is the appellant has arisen in a suit which was brought by her on the 19th August 1907 in the Court of the Subordinate Judge of Monghyr against Chaturbhuj Narayan Singh and his minor sons. In that suit Maharajah Sir Ravaneswar Prasad Singh was a *pro forma* defendant. The other appeal, in which Maharaja Sir Ravaneswar Prasad Singh is the appellant, has arisen in a suit which was brought by him on the 19th August 1907 in the Court of the Subordinate

Judge of Monghyr against Chaturbhuj Narayan Singh and his minor sons. In the latter suit Thakurani Tara Kumari and others were *pro forma* defendants. In each suit the Subordinate Judge made a decree in favour of the plaintiff in the suit. From each decree Chaturbhuj Narayan Singh and his minor sons appealed to the High Court of Judicature at Fort William in Bengal, which, by its decree in each appeal, reversed the decree to which the appeal related and dismissed the suit. From those decrees of the High Court these consolidated appeals have been brought.

The Thakurani is the widow of Thakur Ram Narayan Singh, who was a son of Thakur Ranjit Narayan Singh, who was the elder of the two sons of Thakur Bhairo Narayan Singh. Chaturbhuj Narayan Singh was the son of Bhupat Narayan Singh, who was the younger son of Thakur Bhairo Narayan Singh. Thakur Ram Narayan Singh died without issue male. The immovable property to which the suits relate is known as Taluka Telwa, otherwise the Telwa Gadi, in the District of Monghyr. Taluka Telwa is an ancestral impartible estate which, in his lifetime, was held as his estate by Thakur Ram Narayan Singh, and had previously been held by his father Thakur Ranjit Narayan Singh, and before him by his father Thakur Bhairo Narayan Singh. By the kolachar or family custom Taluka Telwa descends by the rule of primogeniture. The appellants allege that Thakur Ranjit Narayan Singh, on the 14th September 1879, granted to his brother Bhupat Narayan Singh a mokurari pottah (perpetual lease) of a part of Taluka Telwa for the maintenance of Bhupat Narayan Singh and his descendants, and that Thakur Ranjit Narayan Singh and his brother Bhupat Narayan Singh

separated and ceased to constitute a joint Hindu family; except in so far as the family custom applies, the law of the Mitakshara governed Thakur Bhairo Narayan Singh and his descendants. The Thakurani claims that she, as the widow of Thakur Ram Narayan Singh, who left no issue, succeeded to the estate on his death for a Hindu widow's interest. It is proved that after her husband's death she, in order to discharge debts which had been contracted by Thakur Ranjit Narayan Singh, sold a moiety of Teluka Telwa to the Maharaja. In her suit the Thakurani claimed possession of one moiety of Taluka Telwa, as the widow of Thakur Ram Narayan Singh. The Maharaja in his suit claimed possession of the other moiety of Taluka Telwa as the vendee from the Thakurani. Chaturbhuj Narayan Singh is in possession, and he and his minor sons deny that Thakur Ranjit Narayan Singh and Bhupat Narayan Singh separated.

The written statement of Chaturbhuj Narayan Singh in the suit of the Thakurani is not before this Board, but his written statement in the suit of the Maharaja is, having regard to the evidence and to the findings of the Courts below, instructive. In his written statement in the Maharaja's suit Chaturbhuj Narayan Singh alleged :—

“4. That the said family is governed by the Benares  
 “ School of Hindu Law save and except that according to  
 “ family custom the said ancestral zamindari descends  
 “ according to the rule of primogeniture on the eldest male  
 “ member of the eldest line and the junior members are  
 “ entitled to maintenance and that females are in no way  
 “ entitled to succeed to the said zamindari. The junior  
 “ members even after Khorposh or maintenance grants are  
 “ made to them out of the joint property, are entitled to  
 “ obtain the expenses of marriage, sradh and other similar  
 “ ceremonies and all other necessary expenses from the  
 “ income of the said property in the hands of the holder of  
 “ the said estate for the time being.

"5. That with reference to paragraph 3 this defendant  
 " states that Thakur Ranjit Narayan Singh succeeded to the  
 " said estate on the death of his father in accordance with  
 " the family custom aforesaid and that the mokurari settle-  
 " ment referred to in the said paragraph was also made in  
 " accordance with the said custom and not otherwise. This  
 " defendant craves leave to refer to the original of the said  
 " mokurari deed for the terms thereof. This defendant  
 " wholly denies that either before or after the said mokurari  
 " settlement Bhupat Narayan Singh became separate from  
 " the said Ranjit Narayan Singh or that he was at any time  
 " separate in food, worship or estate from the said Ranjit  
 " Narayan Singh or that he lived in a house separately built.  
 " This defendant asserts that he and his father the said Bhupat  
 " Narayan Singh during his life time were joint in food,  
 " worship and estate with the said Ranjit Narayan Singh and  
 " after his death with Thakur Ram Narayan Singh and that  
 " they never ceased to reside in the family dwelling house.  
 " This defendant continued joint in food, worship and estate  
 " with the said Thakur Ram Narayan Singh until the latter's  
 " death and thereafter with the defendant No. 6, until shortly  
 " before the commencement of the registration proceedings  
 " when disputes and disagreements arose. The allegations  
 " to the contrary in paragraph 3 of the plaint are wholly  
 " false.

"6. That assuming, though by no means admitting, that  
 " Bhupat Narayan Singh and this defendant became separate  
 " from Thakur Ranjit Singh in the year 1287 F. S. and  
 " since then he and this defendant were separate in mess  
 " and business and lived in a separate house, as has been  
 " falsely alleged in the plaint, this defendant submits that  
 " nevertheless the impartible estate taluka Telwa continued  
 " to remain joint family property as before, as it never was  
 " nor could be the subject of partition and the Defendant  
 " No. 1 therefore became solely entitled to it under the  
 " family custom on the death of Thakur Ram Narayan  
 " Singh, in preference to his widow."

The "defendant No. 1" mentioned in the  
 written statement is Chaturbhuj Narayan Singh,  
 and the "defendant No. 6" is the Thakurani,  
 who, as has been already stated, was a *pro*  
*forma* defendant in the suit of the Maharaja.  
 So far as is now material, the defence of  
 Chaturbhuj Narayan Singh, as disclosed by

his written statement, was that females were by the family custom excluded from a succession to the impartible estate and that the joint family had not separated.

No custom excluding the widow of a sonless and separated holder of the impartible estate of Taluka Telwa from the succession to the estate for a Hindu widow's interest has been proved, and it is well decided law that the widow of the last holder of an impartible estate which descends by the rule of primogeniture is not excluded from the succession if her husband was in fact separated and died without issue male, and if no custom which would exclude her from the succession is proved. It was held by this Board in *Neelkisto Deb Burmono v. Beerchunder Thakoor* (12 Moore's Ind. Ap. 523) that where a custom is proved to exist it supersedes the general law, which, however, still regulates all outside the custom. In *Ram Nundun Singh v. Maharani Janki Koer* (29 Ind. Ap. 178), this Board held that:—

“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”

Consequently the only issue in these suits which is now material is one of fact, namely, the issue as to whether Thakur Ranjit Narayan Singh and Bhupat Narayan Singh separated.

The Subordinate Judge came to the conclusion that Thakur Ranjit Narayan Singh, being displeased with his brother Bhupat Narayan Singh because the latter kept women, separated from him. It was found as a fact by the Subordinate Judge that Bhupat Narayan Singh built a pucca house about a *tussi* (120 feet) to the westward of the family house, established a

*Tulsi Pindu* there, and removed his family to his pucca house and lived there separately from Thakur Ranjit Narayan Singh. As a fact Thakur Bhupat Narayan Singh built a wall between his pucca house and the family house of Thakur Ranjit Narayan Singh and established a separate *Tkakurbari* in his house. The houses were quite separate houses, as was found by the Subordinate Judge on the evidence.

A daughter of Chaturbhuj Narayan Singh was married after Thakur Ranjit Narayan Singh had in 1879 granted the *mokurari pottah* to Bhupat Narayan Singh. Chaturbhuj Narayan Singh attempted to prove that Thakur Ranjit Narayan Singh defrayed the expenses of that marriage. The Subordinate Judge, however, found on incontestable evidence that the expenses of the marriage were defrayed by Bhupat Narayan Singh and not by Thakur Ranjit Narayan Singh. As a matter of fact, Bhupat Narayan Singh borrowed Rs. 689.2.6 for the expenses of that marriage, and on the 27th June 1897 gave to Shir Lal Modi and Amir Modi a mortgage of lands which he held under the *mokurari pottah* to secure the repayment to them of, amongst other moneys, that sum of Rs. 689.2.6, which was stated in the mortgage deed to have been borrowed by him from them "for performing the marriage of my own granddaughter, *i.e.*, the daughter of my son, Baba Chaturbhuj Narayan Singh."

On the 27th April 1905 Chaturbhuj Narain Singh, on his examination in a criminal case which apparently related to the removal of some timber, stated, "I am separate from the Thakur of Telwa."

On a careful review of all the evidence the Subordinate Judge came to the conclusion that Bhupat Narayan Singh and his son Chaturbhuj

Narayan Singh were separate from Thakur Ranjit Narayan Singh and his son Thakur Ram Narayan Singh.

The learned Judges of the High Court, whilst accepting as correct the findings of facts of the Subordinate Judge on which he had come to the conclusion that there had been a complete separation between Thakur Ranjit Narayan Singh and his brother Bhupat Narayan Singh, came to the conclusion that it was not proved that there was a separation in intention and in fact. As it is difficult to understand the reasoning of the learned Judges of the High Court it is better to give the following extracts from their joint judgment. They say:—

“ It is the case common to both sides that Bhupat Narain  
 “ was a man of licentious habits and that he made himself  
 “ a nuisance to his brother Ranjit Narain and created a  
 “ scandal by introducing his mistresses into the family  
 “ dwelling house. It was in consequence of this that Ranjit  
 “ Narain executed the maintenance grant in his favour in  
 “ 1287 to enable him to start a separate establishment.  
 “ There can be no doubt that, after receipt of the grant,  
 “ Bhupat Narain built himself a new house outside  
 “ the old family dwelling and that in course of time a  
 “ Thakurbari and a Tulsi Pinda were established in that  
 “ house and that a wall of separation between his house  
 “ and the family house was constructed. It seems to be  
 “ also beyond doubt that after receipt of the grant Bhupat  
 “ Narain raised money by mortgages on the property leased  
 “ to him and spent it on the marriage of members of his  
 “ family and on their maintenance. Still are not all these  
 “ acts such as might have been expected on the part of  
 “ a member of the family who had received a grant for his  
 “ maintenance? Or must they be accepted as incontestable  
 “ proof of an intention to separate from Ranjit Narain  
 “ from the time of the grant and of a separation in fact  
 “ from that time?

“ It has not been contended before us, nor indeed could the  
 “ contention be accepted as a sound one, that a separation  
 “ in estate and from the joint family must follow as a  
 “ necessary consequence from the receipt of a maintenance  
 “ grant.

“ The learned Subordinate Judge has accepted these facts  
 “ coupled with the admitted separation in food as sufficient  
 “ proof that from the date of the maintenance grant, Ranjit  
 “ Narain and Bhupat separated and ceased to be members  
 “ of a joint Hindu family. We have given our careful  
 “ consideration to the judgment of the Subordinate Judge  
 “ and also to the evidence and the arguments of the learned  
 “ pleader and Counsel which have been advanced before  
 “ us and even though we accept the findings of the Sub-  
 “ ordinate Judge we are unable to agree in his conclusion  
 “ that the plaintiffs have proved that there was a separa-  
 “ tion in intention or in fact.”

“ The fact that after the grant of the mokurari lease for  
 “ maintenance Bhupat Narain lived in a separate house  
 “ alongside his family homestead, that he and his branch  
 “ of the family were afterwards separate in food and  
 “ possibly in worship and that he paid the expenses of his  
 “ family out of the profits of the property granted to him  
 “ for maintenance, by borrowing money on mortgages on  
 “ that property, do not appear to us in this case to be  
 “ sufficient to prove that there was a complete separation  
 “ between Bhupat Narain and Ranjit Narain, by which  
 “ Bhupat sacrificed his expectancy to succeed to the family  
 “ property on the failure of nearer male heirs of Ranjit  
 “ Narain.”

In the opinion of their Lordships, the evidence clearly proved that there had been complete separation between Thakur Ranjit Narayan Singh and his brother Bhupat Narayan Singh in worship, in food and in estate, and they find that there had been complete separation.

Their Lordships infer from the extracts which they have quoted from the judgment of the learned Judges of the High Court that those Judges considered that there could have been no complete separation of the joint family, as the impartible estate of Taluka Telwa had not been partitioned between Thakur Ranjit Narayan Singh and his brother Bhupat Narayan Singh. Those learned Judges overlooked the fact that Bhupat Narayan Singh and his son



had no coparcenary rights in the impartible estate, and no rights in that estate which entitled them or either of them to a partition of the impartible estate. They could not have prevented Thakur Ranjit Narayan Singh from alienating that impartible estate in such a way as to determine any contingent interest they had in it under the custom. Their contingent interest under the custom was liable to be defeated by an alienation of the estate by Thakur Ranjit Narayan Singh even if the family had remained joint, and as the family ceased to be a joint Hindu family the ordinary Hindu law of the Mitakshara gave to the Thakurani her widow's interest in the impartible estate in priority to the contingent interest of Chaturbhuj Narayan Singh under the custom. The Thakurani sold a moiety of the impartible estate to the Maharaja, and as there was valid necessity for that sale she conveyed a good title to the Maharaja.

Their Lordships will humbly advise His Majesty that these consolidated appeals should be allowed, that the decrees of the High Court should be set aside with costs and the decrees of the Subordinate Judge should be restored.

The respondents, Chaturbhuj Narayan Singh and his four minor sons, must pay the costs of the appeals.

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In the Privy Council.

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THAKURANI TARA KUMARI

v.

CHATURBHUJ NARAYAN SINGH  
AND OTHERS;

MAHARAJAH SIR RAVANESWAR  
PRASAD SINGH BAHADUR

v.

CHATURBHUJ NARAYAN SINGH  
AND OTHERS.

*(Consolidated Appeals.)*

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