Privy Council Appeal No. 98 *of* 1930.
Patna Appeal No. 6 *of* 1929.

Thakur Bageshwari Charan Singh - - - - - *Appellant*

v.

Thakurain Jagarnath Kuari and another - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 4TH DECEMBER, 1931.

Present at the Hearing:
VISCOUNT DUNEDIN.
LORD BLANESBURGH.
SIR JOHN WALLIS.
SIR GEORGE LOWNDES.
SIR DINSHAH MULLA.

[*Delivered by* VISCOUNT DUNEDIN.]

This is an appeal from a decree of the High Court of Judicature at Patna, dated the 9th January 1929, which affirmed a decree of the Additional Subordinate Judge of Hazaribagh, dated the 26th April, 1926, dismissing the plaintiff-appellant's suit.

Thakur Jadu Charan Singh, the plaintiff's grandfather, was the owner of an impartible estate known as the Dhargulli Estate, in the District of Hazaribagh. He was heavily in debt, and by an order passed under Section 2 of the Chota Nagpur Encumbered Estates Act (VI of 1876) in 1894, the management of the whole of his estate was vested in a Manager appointed under that Act. The management of the estate continued under the Act until the 15th May 1909, when the estate was released and made over to him according to the provisions of the Act.

Section 12A, paras. 1, 2 and 3 of the Act provide :—

"12A.—(1) When the possession and enjoyment of property is restored, under the circumstances mentioned in the first or the third clause

of Section 12, to the person who was the holder of such property when the application under Section 2 was made, such person shall not be competent, without the previous sanction of the Commissioner—

"(*a*) to alienate such property, or any part thereof, in any way, or

"(*b*) to create any charge thereon extending beyond his lifetime.

"(2) If the Commissioner refuses to sanction any such alienation or charge, an appeal shall lie to the Board of Revenue, whose decision shall be final.

"(3) Every alienation and charge made or attempted in contravention of Subsection (1) shall be void."

In 1909 Jadu Charan Singh, without having obtained any sanction from the Commissioner, executed a deed of gift of certain lands in favour of his second wife, who is now his widow and the respondent in this appeal. She entered into possession of these lands and was in possession up to 1920, when she transferred the lands to her son, also a respondent in this appeal. Jadu Charan Singh died on the 21st February 1924. His eldest son being dead, he was succeeded in the estate by his grandson, the plaintiff-appellant. The present suit was instituted by him on the 24th February 1925, and sought to recover the lands which had been transferred without sanction in 1909. The only effective defence was under the Limitation Act, and this defence was found to be good by the Subordinate Judge and by the Court of Appeal, and the suit was dismissed. Both these Courts held that it was a case of adverse possession and therefore fell within Article 144 of the First Schedule of the Limitation Act of 1908. In their Lordships' view, inasmuch as it has been found as a fact that after the deed of 1909 the late Thakur discontinued his possession and never resumed it, it is rather a case which falls within Section 142. The result, however, is the same if the 12 years run from 1909. But the appellant pleads that the 12 years do not run from 1909, owing to the following facts. In March 1916, the Thakur filed a petition with the Commissioner in which he related the deed of gift to his wife, expressed a doubt as to whether the deed of gift was valid, and asked the Commissioner either to declare that the deed was valid or to give his sanction to the execution of a fresh deed of gift. At the same time the wife, present respondent, filed a petition in these terms:—

"The humble petition of Thakurain Jagarnath Kuari, wife of Thakur Jado Charan Singh, proprietor of Gadi Dhurgulli, Pargana Rampore, district Hazaribagh. Most respectfully sheweth—

"That in view of the petition filed by Thakur Jado Charan Singh, your petitioners beg to file the original deed of gift and prays that your Honour may be pleased to sanction the same or order a fresh grant on the same terms to be executed."

This petition was signed by herself.

Section 19 of the Limitation Act is as follows:—

"19.—(1) Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by

some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

" *Explanation* 1.—For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right."

The appellant urges that this is an acknowledgment of liability in terms of the section and that therefore the period of limitation only began in 1916, and 12 years had not elapsed when the suit was raised in 1925. Both the Subordinate Judge and the Judges of the High Court disposed of this in a single sentence by simply saying they found no such acknowledgment. Their Lordships are unable to agree with this view. The petition produces the deed of gift and asks that it may be sanctioned or that a fresh grant may be ordered. This is a clear acknowledgment that unless one of the two things is done, she has no title at all, or, in other words, that she recognizes that the title is in the Thakur, her husband, and not in herself.

The Subordinate Judge, however, raised another point. He says that the acknowledgment contained in the petition, not being registered, cannot be received in evidence, and he quotes in support of this the case of *Faki* v. *Khotu*, I.L.R., 4 Bomb. 590. The section of the Registration Act on which the question depends is Section 17 (1), which is as follows :—

" The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely :—

" (*b*) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property."

Now the case of *Faki* v. *Khotu* undoubtedly goes the whole length that the respondents desire. It was a case where limitation was pled. The judgment on page 593, after reciting the document in question, goes on thus :—

" The plaintiff wishes to use it [*i.e.*, the document] as an admission or acknowledgment of his title to the lands, and as proof that, at the date of the document, the defendant's possession was not adverse to him. The document undoubtedly contains such an acknowledgment; and if it be genuine and relevant, a Court, which had to determine the question of fact, would probably consider that acknowledgment sufficient proof that the defendant's possession was really the plaintiff's possession. . . .

" The Assistant Judge has held that the document is inadmissible in evidence, because it is not registered ; and we are of opinion that this decision is right. The plaintiff wishes to use the document as an acknowledgment of a right, title and interest in immovable property, which is admittedly

> of a higher value than one hundred rupees. If admitted, it will 'operate to declare' such a right, title and interest, and it thus appears to come within the terms of Section 17 of Act XX of 1866."

But the question remains whether that case was rightly decided. Their Lordships are of opinion that it was not and that it was inconsistent with a long track of decisions which are incompatible with it. The first of these will be found in the case of *Sakha Ram Krishnaji* v. *Madan Krishnaji* (I.L.R., 5 Bomb. page 232). The question there was as to a document in the following words :—

> "Our eldest brother M. has built houses and is building new houses on property appertaining to his share. . . . To the same we three persons and our heirs and representatives have no interest of any kind whatever. If we or they should prefer any claim, then the same is to be null. This release paper we have duly passed in writing jointly and severally and in sound mind."

The document had not been registered, and it was objected that it could not be put in evidence in order to contradict a witness. Dealing with it West J. said :—

> "Here . . . the document is not itself one which declares a right in immovable property, in the sense probably intended by Section 17. There 'declare' is placed along with 'create,' 'assign,' 'limit' or 'extinguish' a 'right, title or interest,' and these words imply a definite change of legal relation to the property by an expression of will embodied in the document referred to. I think this is equally the case with the word 'declare.' It implies a declaration of will, not a mere statement of fact, and thus a deed of partition, which causes a change of legal relation to the property divided amongst all the parties to it, is a declaration in the intended sense ; but a letter containing an admission, direct or inferential, that a partition once took place, does not 'declare' a right within the meaning of the section."

Now it is quite clear in comparing these two cases that they took diametrically opposite views as to the proper meaning of the word "declare" in the 17th section, and it is upon that point that the whole question turns. Subsequent decisions have given full effect to the view of West J. in the *Krishnaji* case.

In the case of *Jiwan Ali Beg* v. *Basa Mal* (I.L.R., 9 All., 108) the head note accurately sets forth one of the points in the case :—

> "An instrument to come within Section 17 (*b*) of the Registration Act (III of 1877) must in itself purport or operate to create, declare, assign, limit or extinguish some right, title or interest of the value of Rs. 100 or upwards in immovable property."

Then in the case of *Runganayaki Ammal* v. *Virupakshee Rao Naidu* (45 Madras Law Journal, 100), at page 102, the learned Judge in the High Court expressly cites the words of West J. in the *Krishnaji* case, and in the case of *Baldeo Singh* v. *Udal Singh* (I.L.R., 43 All., at page 4), precisely the same thing is done.

Their Lordships have no doubt that this track of decision is right. Though the word "declare" might be given a wider meaning, they are satisfied that the view originally taken by West J. is right. The distinction is between a mere recital of a fact and something which in itself creates a title. The distinction has been acted on in cases connected with mortgages by deposit

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of documents of title. A comparison of the case of *Ariff v. Dawood* in 43 I.A. 127, with that of *Subramonian* v. *Lutchman* in 50 I.A. 77, will show that, according to this distinction, a document requires registration or not. In the present case the statement in the petition of the respondent did not create any right in the Thakur. It merely acknowledged as a fact that such right was his. There was therefore no necessity for registration. It is not out of place to remark that this exactly fits in with explanation 1. If you take the case of an acknowledgment contained in a communication addressed to a third party registration is not practicable; it is scarcely conceivable that it could be required.

Their Lordships will therefore humbly advise His Majesty to allow the appeal and to set aside the decrees of both the Courts below with costs, and in lieu thereof that judgment ought to be entered for the appellant. The respondents will pay the costs of the appeal.

In the Privy Council.

THAKUR BAGESHWARI CHARAN SINGH

v.

THAKURAIN JAGARNATH KUARI AND ANOTHER.

Delivered by VISCOUNT DUNEDIN.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1931.