

Jagat Singh and others - - - - - Appellants

v.

Sangat Singh and others - - - - - Respondents

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 26th FEBRUARY, 1940

*Present at the Hearing:*

LORD THANKERTON

SIR GEORGE RANKIN

MR. M. R. JAYAKAR

[*Delivered by* SIR GEORGE RANKIN]

This appeal is brought from a decree of the High Court at Lahore dated 31st January, 1936, reversing a decree of the Subordinate Judge, Lyallpur, dated 31st January, 1935, and dismissing the appellants' suit. The subject matter of the dispute is some 6 $\frac{3}{4}$  squares of land in the district of Lyallpur in the Punjab, which (as is now admitted) belonged to one Ishar Singh who died childless on the 6th October, 1905, leaving him surviving a widow Bishan Devi; also a brother's son Sundar Singh who died on 10th January, 1922. On the 7th February, 1929, the widow purported to make a gift of one portion of the land to Sangat Singh (respondent No. 1) and of another portion to a certain Gurdwara (respondent No. 2). The present suit was brought on the 7th August, 1933, by the appellants, who are three of the four sons of Sundar Singh. The fourth son was made a defendant and is now respondent No. 3. The claim of the plaintiff is for a declaration that the gifts of land to Sangat Singh and to the Gurdwara have no validity or effect beyond the life of Bishan Devi.

Ishar Singh on 19th September, 1905, made a will of which probate was granted to Bishan Devi by the District Judge of Peshawar on 3rd November, 1906. Apart from an interest in the family house at Rawalpindi, Ishar Singh by his will declared himself to be the absolute and exclusive owner of the property which he disposed of thereby. He declared that Sundar Singh, his nephew, was disobedient and of bad character and was to be totally disinherited. He made the following dispositions in favour of his wife:—

4. My wife is Musammat Bishan Devi. She has greatly served me. She has all along been faithful to me. I make this will in her favour that she shall be exclusive (*illegible*) owner of the following properties after my death:—

(a) Entire cash including pro-notes for Rs.13,000 and other items.

- (b) Liquor, Charas, Opium, etc., of all kinds.
- (c) Land, situate in Nathe.
- (d) Lands, situate in Lyallpur.
- (e) Three-quarter share in Nowshahra property.
- (f) All ornaments.

Sundar Singh or any other person shall have no connection therewith, nor shall they interfere in the management thereof. My wife, Musammat Bishan Devi, may manage the said property in whatever way she likes. She shall have all kinds of powers to deal with the property aforesaid. She shall be considered full owner. So long as Malik Arjan Singh is alive, he will manage the land in Lyallpur.

7. After the death of my wife, Musammat Bishan Devi, whatever property remains shall be owned by the sons of Sundar Singh. Sundar Singh shall have no connection or concern therewith. Besides, my wife, Musammat Bishan Devi, shall not be entitled to sell immoveable property. The sons of Sundar Singh shall also have no such right.

8. The remaining moveable or immoveable property of mine shall be exclusively owned by my wife, Musammat Bishan Devi.

Mutation of the lands at Lyallpur into the name of Bishan Devi was obtained from the Colonisation Officer on 13th March, 1907, but the entry was restricted by the condition "so long as she is alive and does not remarry." This was in accord with the customary law of the parties independently of her husband's will. On the 12th November, 1906, Sundar Singh filed a plaint in the Court of the District Judge, Peshawar, against Bishan Devi and other defendants. By this plaint as amended he claimed a declaration that the will of Ishar Singh was not valid or binding on him as regards (*inter alia*) the immoveables at Mahal Nathe and Nowshahra, or the stock of liquor and opium, etc., at Peshawar or the Government Promissory Notes for Rs.13,000 in deposit at the Treasury, Peshawar. The sole relief claimed was a declaration and the suit was brought upon a Court fee of Rs.10 only, though valued for purposes of jurisdiction at over Rs.26,000. The case made was that the business of dealers in intoxicants, etc., under excise licences was not the separate business of Ishar Singh but a joint family business which had been carried on by him jointly with his brothers and after their deaths with the plaintiff Sundar Singh, and that all the properties had been acquired out of the joint funds of the business. Sundar Singh claimed to be the sole heir to and possessor of the property above mentioned and sued for a declaration "that the will is unlawful and null and void and has no effect upon the rights of the plaintiff who holds proprietary possession over the property in question." The plaint stated that "a separate suit will be brought for recovery of the ornaments, valued at Rs.15,000, other moveable property and lands situate at Lyallpur which are in possession of the defendants."

This suit was compromised in June, 1907, and as the validity and effect of the compromise is now in question it becomes necessary to notice it in detail. On the 9th June a petition to the Court of the District Judge was signed by Bishan Devi and by Sundar Singh. It set forth that the

parties had made the settlement therein expressed and it concluded "hence this application by way of a compromise is submitted with the prayer that it may be accepted and the case decided in terms thereof". The main terms were that the lands at Mahal Nathe and at Lyallpur should belong to Bishan Devi for her life and on her death to Sundar Singh and his male descendants. An iron safe, a cow and a calf were to belong to Bishan Devi. Sundar Singh was to pay her Rs.8,150 in cash. Government Promissory Notes to the value of Rs.13,000 deposited in the Treasury were to be entered in the names of the sons of Sundar Singh. Bishan Devi was to be absolute owner of all ornaments, clothes and other moveables in her possession. Sundar Singh was to get the book-debts, stock-in-trade and other trade moveables and to be liable to pay any debts of Ishar Singh. The petition of compromise was signed at Rawalpindi and was handed over to one Mohan Singh, an honorary magistrate, who sent it by post to the District Judge. On 11th June the case came on before the District Judge and Bishan Devi was represented by her agent Jagat Singh and by a pleader. Sundar Singh was present in person. As appears by the note of the District Judge, Jagat Singh stated to the Court:—

Musammat Bishan Devi signed the compromise in my presence but she subsequently stated that she only accepted it if the Rs.8,150 was paid at once and if the Rs.13,000 was invested in a bank. She signed of her own free will knowing the contents of the deed.

By his decree the District Judge "ordered that a decree be and the same is hereby passed on the terms and under the conditions embodied in the deed of compromise dated 9th June, 1907, as a whole with this reservation that the sum of Rs.8,150 shall be paid into Court within fifteen days from to-day, in case of failure defendant No. 1 (Bishan Devi) to be entitled to recover that amount by execution."

On some date between 26th June and 15th July, 1907, an application for execution was filed by Jagat Singh on behalf of Bishan Devi against Sundar Singh asking that a sum of Rs.7,535 lying in the Treasury on account of Ishar Singh be paid to Bishan Devi on account of the sum of Rs.8,150 due to her under the compromise. This application was successful and on 15th July a receipt was given by Jagat Singh on the lady's behalf for Rs.7,535 received through Court. Other instances of action taken under the compromise are in evidence but need not here be referred to.

The gifts made on 7th February, 1929, by Bishan Devi to the first and second respondents of the lands at Lyallpur are contrary to the terms of the compromise of June, 1907, whereby these lands were to belong to her for her lifetime only and she was not to be competent to alienate them. Hence the present suit brought by sons of Sundar Singh on 7th August, 1933. The defence of Bishan Devi (original defendant No. 1) was that she was *pardanashin*, that she signed a blank paper and not the completed deed of compromise, that her signature was obtained by undue pressure and

without independent advice, and that she never agreed to the compromise. She contended further that the compromise could not be put in evidence for want of registration and that the Court at Peshawar was not competent to pass the compromise decree. Other contentions need not now be referred to.

It was maintained for the plaintiffs that the will of Ishar Singh gave to his widow a life interest and no more, and that the plaintiffs were entitled as his nearest reversioners to the declaration which they sought independently of the compromise.

The learned Subordinate Judge dealt with a number of questions which are no longer in dispute. He found (*inter alia*) that the land at Lyallpur was Ishar Singh's and not his wife's, that the business in which he was engaged was his separate business and not a joint family business, that Sangat Singh (respondent No. 1) was not adopted by him. But in the High Court the issues were narrowed to three questions only, (1) whether by her husband's will Bishan Devi got an absolute interest in the Lyallpur lands, (2) whether the compromise was brought about by coercion and undue influence or whether she signed the deed after fully understanding its contents, (3) whether the deed was inadmissible in evidence for want of registration.

On the question as to the true construction of the will of Ishar Singh the trial Court and the High Court were agreed in holding that its effect was to make Bishan Devi absolute owner of the Lyallpur property. Their Lordships are of the same opinion. The prohibition against selling the immoveables is not addressed to the widow only but is extended to the sons of Sundar Singh under clause 7, and is not in their Lordships' view to be regarded as showing an intention to give to the widow an interest for life or the estate of a Hindu woman, but as a condition which the testator was proposing to attach to an absolute interest. Clause 4 is in clear and emphatic language, consistent only with the gift of an absolute interest, and the phrase "whatever property remains" in the first part of clause 7 of the will is in keeping with this intention. The prohibition against selling must be disregarded as repugnant to the absolute gift to Bishan Devi. Clause 8 is a residuary clause which does not affect the land at Lyallpur.

It is therefore necessary for the plaintiffs appellants to rely upon the compromise of June, 1907. The learned Subordinate Judge held that the deed was admissible in evidence; that the compromise was entered into by Bishan Devi with knowledge of its contents and voluntarily; and that the case of coercion and undue influence was untrue. The learned Judges of the High Court have held that the deed is inadmissible for want of registration and that it has not been established that it was read over to her or that she signed it after fully understanding its meaning or effect. They do not appear to hold that coercion or undue influence has been proved. At the root of their judgment is an opinion formed by them to the effect that by not including in the

suit of 1906 a claim to recover possession of the Lyallpur lands Sundar Singh had forfeited all right therein by virtue of O. 2 R. 2 C.P.C. (section 43 of the Code of 1882). They are mistaken in supposing that the claim to Rs.13,000 Government Promissory Notes and to the land at Nowshara was not included in the suit. The plaint was on the footing that Sundar Singh was in possession of these and other items and required only a declaration to clear his title; whereas the land at Lyallpur and the ornaments were in Bishan Devi's possession and the claim to them must necessarily be put as a claim to recover possession. In these circumstances their Lordships cannot agree with the High Court in regarding the compromise as bad by reason that Bishan Devi was not advised that she could safely treat the claim of Sundar Singh to the Lyallpur lands as barred. On the contrary, such advice had it been given, would in their Lordships' view have been rash rather than sound. The lands at Lyallpur being situate in the Punjab, outside the district of Peshawar, a claim to relief in respect of them could have been entertained by the District Judge under section 19 of the Code of 1882. The High Court would seem to have assumed that section 19 was not merely permissive: also that the claim to recover possession of the Lyallpur lands and the claim to a declaration as regards the other lands were claims in respect of the same cause of action (cf. *Payana v. Pana Lana* (1914) L.R. 41 I.A. 142). Their Lordships think that both assumptions are highly debateable. But in any case the claim of the present appellants as reversioners of Ishar Singh would not have been barred so far as regards the question whether Ishar Singh's will gave to his widow an absolute interest or an interest for her life. Moreover, so long as the suit of 1906 was undisposed of, it was always possible that the Court, if it thought that there was anything in the point as to O. 2, R. 2, would give leave to the plaintiff to amend by including a claim to recover possession of the ornaments and Lyallpur lands. It does not appear that the lawyers advising Bishan Devi thought anything of the point now taken by the High Court and with all respect to the learned Judges their Lordships cannot regard it as a good one.

By the decree of 11th June, 1907, the District Judge had purported to direct that the terms of the compromise should be carried out as a whole. He had not in terms excluded the Lyallpur land from the operative part of the decree and he had not recited the contents of the deed. Though it is clear that his decree was made upon the petition and that both documents would become part of the same record, he had neither marked and exhibited the deed nor scheduled it or a copy of it to the decree. He had referred to the deed by date and in a manner which has given rise to no doubt or difficulty. No proceedings were taken at any time during the next 20 years for having the decree set aside whether on the ground of some defect in the agreement of compromise or some error or irregularity in the decree itself. On the contrary the decree was enforced as

to one of the terms of the compromise by execution proceedings taken on behalf of Bishan Devi: and it may well be a question whether after taking this advantage under the decree she would have been entitled in equity to have the decree set aside. Under the Registration Act (III of 1877) no question of registration arises as regards decrees [section 17 (i)]. In these circumstances their Lordships agree with the argument of Sir Hari Singh Gour on behalf of the appellants that the first question is one of jurisdiction in the strict sense of the term. Had the learned District Judge at Peshawar jurisdiction to pass this decree as regards the lands at Lyallpur or is his decree so far as regards these lands a nullity which Bishan Devi was entitled to disregard without taking any proceedings to have it set aside or varied? As the learned Judges of the High Court thought that the claim to the Lyallpur lands came within Order 2, Rule 2, they must have considered that this claim was within the jurisdiction of the District Judge. In any case when it was agreed that Bishan Devi should have the Lyallpur lands for her life, there was no doubt or difficulty as to the jurisdiction of the District Judge of Peshawar to include these lands within the declaration made as to the other lands and assets. It was no longer a question of a decree for possession but merely of a judicial determination as to the reversionary rights of Sundar Singh or his descendants. Whether the District Judge acted irregularly and failed to comply strictly with section 375 of the Civil Procedure Code of 1882 matters nothing. He acted by consent and within his jurisdiction: his decree was enforced in execution by Bishan Devi and no proceedings have at any time been taken to have it set aside. He might have acted more strictly in compliance with the terms of section 375 had he first amended the plaint by including the reversionary interest in the Lyallpur lands within the declaration sought, but the mere fact that he could have done so shows that he was not devoid of jurisdiction.

In these circumstances it is clear that in 1928 Bishan Devi was not entitled to treat as a nullity this judicial determination to the effect that she had only a life interest in the lands at Lyallpur.

Their Lordships, considering the compromise of 1907 (as the Courts in India have considered it) as a contract, are further of opinion that it was valid and binding upon Bishan Devi. The learned Judges of the High Court held that the District Judge had not acted correctly under Order 23, Rule 3, C.P.C. (meaning section 375 of the Code of 1882) and had not ordered the compromise to be recorded. Their Lordships have already noticed that the decree directs effect to be given to the whole compromise and have dealt with the position so created. But in any view the decree in their Lordships' opinion recorded the compromise though the compromise was not recited textually either in the body of the decree or in a schedule thereto. In *Hemanta Kumari v. Midnapur Zemindary Co., Ltd.* (1919) L.R. 46 I.A. 240, the Board was careful to avoid laying down any method of

compliance with section 375 of the Code of 1882 as the only method. Lord Buckmaster was at pains to say that "their Lordships are not aware of the exact system by which documents are recorded in the Courts in India", and it was not intended by pointing out one "perfectly proper and effectual method" to alter or nullify the rights of parties which for many years past had depended on the previous Indian practice being treated as valid. That section 375 was sufficiently complied with by a reference to the compromise being made in the decree appears from the judgment delivered by Lord Watson on behalf of the Board in *Pranal Annee v. Lakshmi Annee*, (1899) L.R. 26 I.A. 101, 106, where it was said that "the order of the learned Judge if it had referred to or narrated these terms of compromise would have been judicial evidence available to the appellant that the respondents had agreed to transfer to her the moiety of the land now in dispute". (See also *Hemanta Kumari's case supra* at p. 247 of the report.)

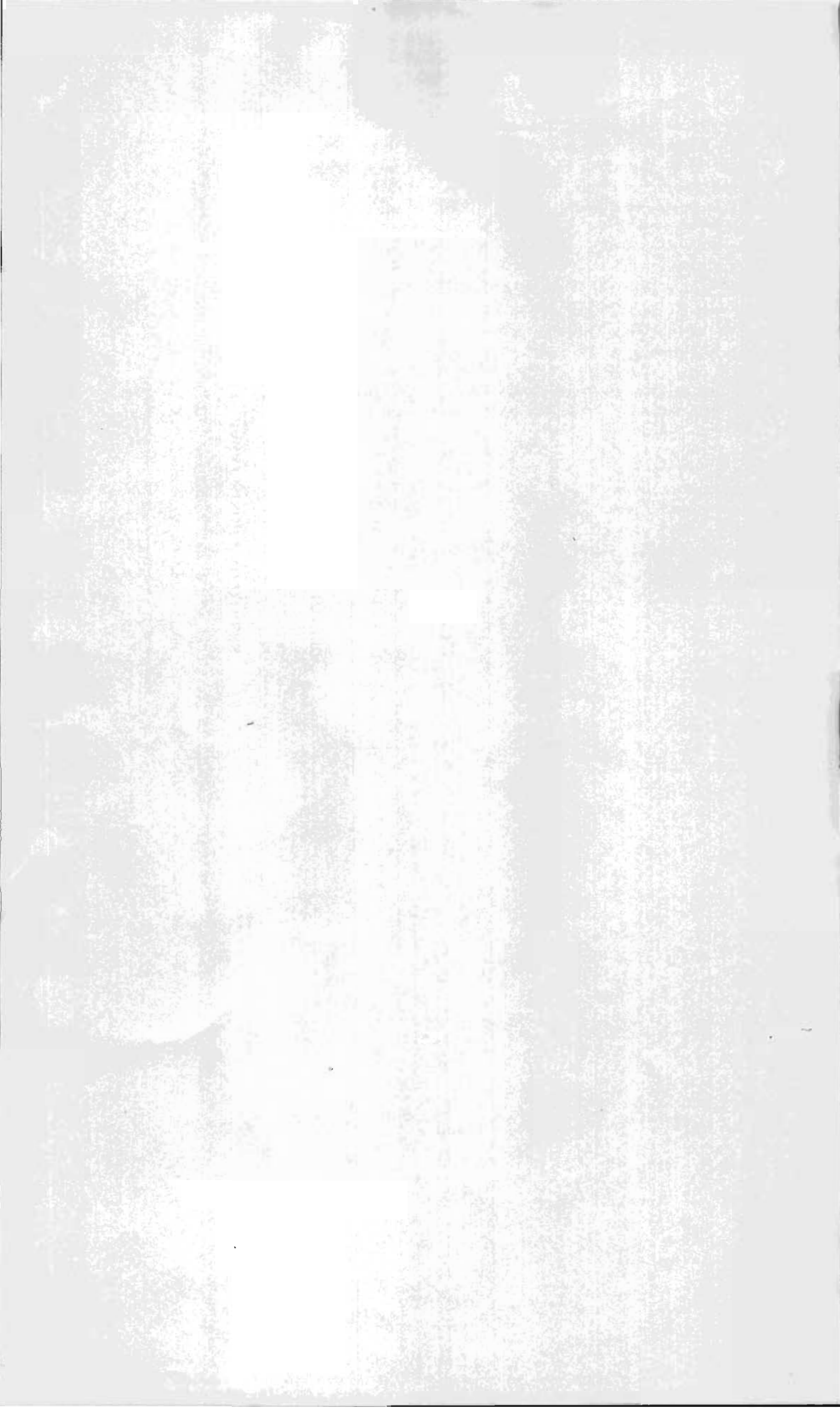
The only remaining question is whether Bishan Devi entered into the compromise voluntarily and with understanding of its effect. It does not appear that she was *parda-nashin* in the strictest sense, and her evidence is that of an intelligent woman. She took the benefit of the compromise and acted on it for many years before repudiating it. As she not only got rid of the claim of Sundar Singh to be sole owner of her husband's lands and other assets, but enforced one of the terms of the compromise against him, there is more than sufficient *prima facie* evidence that she understood the transaction. It is satisfactorily proved that the terms of the compromise were settled after much haggling in the course of which Jagat Singh conveyed her instructions to the retired District Judge, Bhagat Narain Das, who was acting as conciliator between the parties and who witnessed her signature to the petition of compromise.

The case that she signed a blank paper is, in their Lordships' opinion, disproved. They reject as worthless the evidence of Jagat Singh on this point and also the evidence to the effect that she was brought to agree by his threat to cease acting for her in the suit. The allegation that undue pressure was brought upon her by certain members of the *baradri* (brotherhood) is the only matter which requires serious consideration upon this part of the case. It is said that she was told that certain members of the family would not take part in the marriage ceremonies of her sister's son, Nidhan Singh (brother of Jagat Singh), unless she compromised with Sundar Singh. But as the Subordinate Judge noticed there is no reason to think that this threat if made would have greatly troubled Bishan Devi. Her own evidence is that she said at the time that she did not care and that "if they would not let the marriage take place let them do so". The learned Judges of the High Court do not appear to find that undue influence was used but proceed upon the view that Bishan Devi is not proved to have understood the compromise or to have voluntarily entered into it. After 20 years and more, when Bhagat Narain Das is dead, direct

oral evidence of the explanation of the petition can hardly be expected. The High Court, largely because of the argument as to the effect of Order 2, Rule 2, on the lands at Lyallpur, thought that the compromise was one-sided. Also they mistakenly thought that the sum of Rs.8,150 was to be paid to Bishan Devi out of the Rs.13,000 (which is not the case of either party). The Rs.13,000 consisted of Government Promissory Notes which were to be put in the name of the sons of Sundar Singh, and the sum of Rs.7,535 realised in execution was a different matter. Their Lordships agree with the trial Judge in holding that Bishan Devi entered into the compromise voluntarily. She appears to have been surrounded with legal advisers and in Bhagat Narain Das, admittedly a man of high standing and good reputation, had a family friend specially competent to give her sound and practical advice.

Their Lordships will humbly advise His Majesty that this appeal should be allowed, that the decree of the High Court should be set aside and the decree of the Subordinate Judge restored. The first and second respondents will pay the appellant's costs in the High Court and of this appeal.





In the Privy Council

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v.

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DELIVERED BY SIR GEORGE RANKIN

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