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(1936) 09 AHC CK 0016

Allahabad High Court

Case No: None

Hargovind Singh		APPELLANT
	Vs	
Collector of Etah and Another		RESPONDENT

Date of Decision: Sept. 15, 1936

Final Decision: Dismissed

Judgement

1. This appeal arises out of a suit for possession of 52 villages known as the Rajaur Raj. Ten of these villages have been acquired in recent times, but the parent estate is admittedly very ancient; in fact it is alleged in the plaint that it goes back to the time of Maharaja Prithvi Raj, the last Hindu King of Delhi. Whether this be so or not there can be no doubt that it is a very old estate, its origin being lost in antiquity. There is a pedigree at p. 132 of our paper book, and there is no dispute in this Court as regards its accuracy. It will be seen that one of the holders of the estate was Raja Umrao Singh, who had four sons, Dat Singh, Tej Singh, Mohan Singh and Stub Singh. Dat Singh admittedly succeeded to the gaddi on the death of his father and became the Baja. Raja Dat Singh entered into an engagement under Regulation No. 25 of 1803 for payment of revenue at the rate of Rs. 9,160 per annum. In 1815 Raja Dat Singh defaulted in a sum of Rs. 5,000 and the estate was sold. Apparently there were no bidders and so Government bought the estate itself; but in 1818, for reasons which we will deal with later on, Government restored the estate to Raja Dat Singh. There was a surplus of revenue for the intervening years which amounted to Rs. 3,764-2-1, and it was directed that this should be handed over to Raja Dat Singh. Rs. 2,120-0-9 were made over to him, but he died before the balance of Rs. 1,644-1-4 could be paid. This amount was accordingly paid to his successor, Raja Daulat Singh.
2. Daulat Singh was the nephew of Raja Dat Singh, being a son of the latter''s brother, Tej Singh. According to the defendants, Daulat Singh was adopted by Raja Dat Singh, hut this is not conceded on behalf of the plaintiff. It is admitted on his behalf that Daulat Singh succeeded to the estate on the death of Raja Dat Singh, but it is alleged that he succeeded as Raja Dat Singh''s nephew and not as his adopted

son. We have not been referred to any evidence one way or the other, but it seems to have been accepted by the Court below that Daulat Singh was adopted by Raja Dat Singh. Raja Daulat Singh left two sons, Ishri Singh and Diragpal Singh. The former succeeded, to the estate, but died without issue and his brother then ascended the gaddi. Raja Diragpal Singh was succeeded by Khushal Singh, a grandson of Chandan Singh, who was a brother of Raja Daulat Singh and a son of Tej Singh, brother of Raja Dat Singh.

3. The two widows of Raja Isheri Singh, instituted a suit against Raja Khushal Singh and in that suit Raja Khushal Singh pleaded that he had been adopted by Raja Diragpal Singh and had heen placed on the gaddi by the Banis of Ishri Singh in pursuance of a will which Raja Diragpal Singh had made. The suit of the. widows of Raja Ishri, Singh was dismissed by the principal Sadar Anain and the appeal was dismissed by the Sadar Diwani Adalat in a judgment dated 13th September 1864. Raja Khushal Singh died in 1901 leaving two sons, Sanwal Singh and Dharam Singh, the former of whom succeeded to the gaddi. Before his death Raja Khushal Singh had purchased shares in six villages in the name of Dharam Singh and on his death Dharam Singh was also given the village of Kharrawa for his maintenance. It appears that in 1908 Dharam Singh adopted a boy named Khiyali Singh, who was the son of Lala Gokul Singh, an uncle of the plaintiff. He executed what is described as a deed of trust in favour of Khiyali Singh and applied for mufcuition of the latter''s name. The application for mutation of names was contested by Raja Sanwal Singh, but ultimately an amicable settlement was effected and on 2nd and 3rd November 1909, three documents were executed, being a deed of settlement, an authority to adopt and a deed of relinquishment. To these we shall have occasion to refer later on.

4. Raja Sanwal Singh died on 7th September 1918, leaving two widows, Rani Bhagwan Kunwar and Rani Gulab Kunwar. The latter is defendant 2. After the death of her husband Rani Bhagwan Kunwar applied for mutation of her name in respect of the Raja''s estate. Her application was contested by defendant 2 and there were also two other rival applicants for mutation, Har Chand Singh and Bikram Singh. Har Chand Singh is a brother of the plaintiff and the latter supported his case; and Bikram Singh is a great grandson of Tej Singh. The Revenue Court allowed the application of Mt. Bhagwan Kunwar and mutation was accordingly effected in her favour. She remained in possession until 1922, but she was then declared unfit to manage the estate and it was taken over by the Court of Wards. The Court of Wards is defendant 1 in the suit out of which this appeal arises. There has been litigation between defendant 2 and defendant 1, the former claiming a right to joint possession; but we are not concerned with that litigation for the purpose of this appeal. The plaintiff in the suit is Har Govind Singh, a descendant of Tej Singh, who was the brother of Raja Dat Singh. His case was that the forty-two villages specified in Schedule A have always formed part of an ancestral and impartible raj and that by virtue of an immemorial custom he, as the senior member of the next senior branch

of the family, as set out in the pedigree, is entitled to succeed to the estate of Raja Sanwal Singh. In other words, he bases his claim on the right of lineal primogeniture. As regards the ten villages set out in Schedule B, he pleads that these were purchased out of the income of the impartible ancestral zamindari and were incorporated into the raj. Finally he contended that by virtue of a custom prevailing in the family, widows are excluded from inheritance. He accordingly prayed for possession of the whole estate with pendente lite and future mesne profits up to the date of possession.

5. Defendant 1''s defence was inter alia as follows : The estate is certainly impartible and descendible to a single heir, but there is no custom of lineal primogeniture. The plaintiff and his ancestors were separate from Raja Sanwal Singh and his ancestors, and the plaintiff has no right to succeed. Raja Daulat Singh succeeded to the estate as the adopted son of Raja Dat Singh and not as his nephew and Raja Khushal Singh succeeded as the adopted son of Raja Diragpal Singh. The ten villages acquired by Raja Sanwal Singh were not incorporated into the parent estate. There is no custom whereby widows are excluded from succession. Under a testamentary disposition in a deed of authority to adopt executed by Raja Sanwal Singh, on 3rd November 1909, defendant 1 is the owner of the estate until such time as she may adopt a son in pursuance of the authority granted to her under the aforesaid document.

6. Some of these pleas were adopted by defendant 2, but she also put forward certain contentions which are in conflict with the defence of defendant 1. She not only denied that the estate was descendible by lineal primogeniture but she also denied its impartiality; she claims that it is ordinary partible zamindari. She goes on to plead that, even if it was originally an impartible estate, it ceased to be such when the Government re-granted it to Raja Dat Singh in 1818 after having put it to sale and purchased it in 1815. She further alleges that Raja Khushal Singh succeeded to the raj not as the adopted son of Raja Diragpal Singh but by virtue of a will. By reason of this will the estate assuming that it had hitherto been joint family property, became the self acquired estate of Raja Khushal Singh. She also pleads that the conduct of the plaintiff was tantamount to a renunciation. Among other pleas of defendant 1 with which she associates herself, she relies upon the "will" of Raja Sanwal Singh dated 2nd November 1909.

7. The principal findings of the learned Judge of the Court below are as under : (a) The 42 villages in Schedule A, i.e. the parent estate, are an impartible raj. The ten villages in Soh. B have not accrued to the parent estate and are, therefore, partible, (b) The plaintiff is the senior member of the next senior branch of the joint family of which Raja Sanwal Singh was a member. (c) The plaintiff did not renounce his claim; he remained joint in status with Raja Sanwal Singh. (d) Though the raj is an impartible estate, it became the self-acquired property of Raja Dat Singh in 1818. (e) Khushal Singh was adopted by Raja Diragpal Singh, but succeeded to the estate under a will, and therefore even if the estate were joint up to then, it became the

self-acquired property of Raja Khushal Singh, (f) By reason of the testamentary disposition in the deed of authority to adopt dated 3rd November 1909, the widow was entitled to succeed to Raja Sanwal Singh. (g) There is no custom excluding females. (h) No custom in the family has been proved whereby the senior member of the senior branch is entitled to succeed to the exclusion of other heirs. The learned Judge goes on to find, however, that in fact the plaintiff, as the senior member of the next senior branch of the family would have been entitled to succeed by survivorship to the villages specified in Schedule A, if it were a joint ancestral estate of the descendants of Raja Umrao Singh; but in view of the finding that it was a separately acquired estate in the hands of Raja Sanwal Singh and his predecessors and also in view of Raja Sanwal Singh''s testamentary disposition in favour of his widow, the plaintiff''s suit must fail.

8. The learned Judge accordingly dismissed the suit with costs. The plaintiff has appealed to this Court. It is common ground before us that the Rajaur raj is very ancient and that it is an impartible estate and descendible to a single heir. We will now proceed to deal with the pleas which have been urged before us by learned Counsel for the plaintiff appellant. The first point which we will consider is whether the ten villages which were acquired by Raja Sanwal Singh out of the income of the parent estate were incorporated in the impartible raj and so became subject to all its incidents. In AIR 1932 216 (Privy Council) their Lordships of the Privy Council held that unless the power is excluded by statute or custom, the holder of a customary impartible estate, can by declaration of his intention, incorporate with the estate self-acquired Immovable property, and thereupon the property so acquired accretes to the estate and is impressed with all its, incidents, including a custom of descent by primogeniture. It is thus clear that it is open to the holder of an impartible raj to incorporate self-acquired Immovable property in the parent estate; and this proposition has not been disputed by learned Counsel for the defendants-respondents. The question is one of fact and will depend upon the finding of the Court as regards the intention of the person who held the Raj and acquired the additional property. In this case there was no express intention on the part of Raja Sanwal Singh; but learned Counsel for the plaintiff-appellant, contends that there was an implied intention to incorporate the acquired property.

9. He founds this plea upon the fact that in 1909, when the question of succession to the raj after Raja Sanwal Singh''s death was in issue between the Raja and his brother, no distinction was made in any of the three documents, which were then, drawn up, between the parent and the acquired estate, the two being apparently treated as an indivisible whole. We are not impressed with this argument, for there was no occasion at that time for the Raja to give any indication of his intention one way or the other as regards the acquired property, and therefore the absence of any indication of intention to treat the acquired property as separate can lead to no inference of an intention on his part to incorporate them in the Raj. Learned Counsel for the plaintiff-appellant admits that the mere fact of joint accounts and joint

employees being kept for the two estates is not sufficient to establish any intention to incorporate the self-acquired property with the parent estate. We have no hesitation in agreeing with the view of the Court below on this point and we find that the ten villages acquired by Raja Sanwal Singh are a separate and; self-acquired property. The next point to consider in this appeal is whether, assuming for the moment that this impartible Raj is a joint ancestral estate, succession will go by lineal primogeniture. At p. 614 of Mulla''s Principles of Hindu Law, 8th Edn., para. 591 (1), the learned author states the law as follows:

Where the impartible estate is ancestral, the successor to the estate in a joint family governed by the Mitakshara is designated by survivorship. The estate passes by survivorship from one line So another according to primogeniture, and devolves not on the member nearest in blood but on the eldest member of the senior branch.

10. The above observation is based on various authorities, including the ease in Baijnath Prasad Singh and Others Vs. Babu Tej Bali Singh, and the affirming judgment of the Privy Council in the same case Baijnath Prasad Singh v. Tej Bali Singh AIR 1921 P.C. 62. In this case the plaintiff claimed a right to succeed to an impartible raj by survivorship on the ground of lineal primogeniture and it was held that, if the estate was joint and there had been no separation up to the time of the last holder, succession would go to the senior co-parcener of the senior line. This view was affirmed by their Lordships of the Privy Council in Baijnath Prasad Singh v. Tej Bali Singh AIR 1921 P.C. 62 we find the following observation:

Their Lordships are therefore of opinion that this zamindari being the ancestral property of the joint family, though impartible, the successor falls to be designated according to the ordinary rule of the Mitakshara law, and that the respondent being the person who in a joint family would, being eldest of the senior branch, be the head of the family is the person designated in this impartible raj to occupy the Gaddi.

11. This authority appears to us to be conclusive. We accordingly find in favour of the plaintiff-appellant on this point. The next contention which has been put forward by learned Counsel for the plaintiff-appellant is that the Court below has erred in finding that the original raj which was a joint ancestral estate became the self-acquired property of Raja Dat Singh in 1818. We have already shown that in 1815 the Government put the estate to sale for arrears of revenue amounting to Rs. 5,000 and itself purchased it for want of other bidders. On 6th November 1818, the Board of Commissioners wrote to the Governor-General in Council recommending that the estate be restored to Raja Dat Singh. The letter reads as follows:

We do ourselves the honour to lay before your Lordship the annexed copies of a correspondence with the Collector of Etawah, relative to the ''talooka'' of Rajore, the property of Raja Dat Singh. 2. The estate was held at an assessment of Rs. 8,592 until the year 1220 when the Raja was induced to accede at the quinquennial

settlement to an increased assessment of Rs. 9,160, on which a balance accrued to the year 1223 of Rs. 5,000 for which the estate was brought to sale and for want of other bidders was purchased on account of Government. 3. A village settlement was subsequently informed for three years from 1223 to 1225 at a progressive assessment of 9,712, 11,120 and 11,283 and in consequence of its appearing to us from the result of these arrangements which were understood to exhibit the utmost of the village assets that the default considering the very unfavourable circumstances of the year 1223, was not attributable to my mismanagement or misappropriation of the Raja we were induced to anthorize his re-admission at the expiration of the village settlement and to direct that in the meantime he should have credit for the surplua receipts on such settlement beyond the fixed assessment. 4. The actual receipts during the three years have amounted to Rs. 31,442-2-1 and the surplus, after crediting Government for a total demand of Rs. 27,480 at the annual assessment of Rs. 9,160 amounts to Rs. 3,764-2-1 for which we take the liberty of soliciting your Lordship''s sanction to its being credited to the Raja.... 5. The Raja has been re-admitted to engage from the commencement of the present year 1226, at the same assessment of Rs. 9,160 and in consideration of the respectability and antiquity of his family and his own general good character we beg leave to recommend to your Lordship the relinquishment to him of the proprietary right acquired by Government.

12. This letter is printed at p. 383 of the paper book. On 29th December 1818, the recommendation of the Board of Commissioners was accepted. The proprietary rights in the estate were relinquished in favour of Raja Dat Singh and it was directed that he should be given credit for the surplus receipts of revenue for the three past years, amounting to Rs. 3,764.2.1. Of this sum, as we have already shown, Rs. 2,120-0-9 were refunded to Raja Dat Singh and the balance of Rs. 1,644-1-4 were handed over to Raja Daulat Singh, who in the meanwhile had succeeded to the estate. Learned Counsel for the plaintiff-appellant argues that by this act of relinquishment in 1818 the estate reverted to its status quo with ail its original incidents as a joint ancestral raj. On the other hand, learned Counsel for the defendants-respondents contends that in 1818 the estate ceased to be a joint ancestral raj and became the self-acquired property though admittedly re-impressed with the character of impartibility of Raja Dat Singh. It is pointed out that there was an out and out transfer in 1815 and ownership vested in the Government, that no malikana or exproprietary allowance was granted to the Raja, that the restoration of the estate was for personal grounds and was an act of grace on the part of Government and it is contended that by this act of restoration, Raja Dat Singh became the sole and exclusive owner of the estate as his self-acquired property.

13. We will first discuss the authorities upon which learned Counsel for the defendants-respondents relies. The earliest case to which he has referred us is that in Katama Natchier v. Moottoo Vijaya Raganadha (1861) 9 M.I.A. 539, which, is

known as the first Shivagunga case. It appears that the estate which was the subject of the litigation was granted in 1730 by the Nawab of the Carnatic in favour of a certain person, but on the extinction of his lineal descendants in 1801 it was treated as an escheat by the East Indian Company, which had then become possessed of the sovereign rights of the Nawab, and it was granted by the Government of Madras to a person named Gowery Vallabha Taver. He had an elder brother named Oya Taver, who died in 1815. He himself died in 1829. He had seven wives, of whom three survived him. By his various wives he had a certain number of daughters, but no son. One of the questions before their Lordships of the Privy Council was whether even if the late zamindar continued to be joint and undivided in estate with his brother''s family, the estate was to be treated as a separate and self-acquired property of Gowery Vallabha Taver and as such was descendible to his widows and daughters and their issues or whether it was to be treated as part of the common family stock, in which case one of the sons of Oya Taver would be entitled to succeed. At p. 606 their Lordships observed:

Every Court that has dealt with the question has treated the zamindari as the self-acquired property of Gowery Vallabha Taver. Their Lordships conceive that this is the necessary conclusion from the terms of the grant, and the circumstances in which it was made. The mere fact that the grantee selected by Government was a remote kinsman of the zamindar of the former line does not, their Lordships apprehend, bring this case within the rule cited from Strange''s Hindu Law by Sir Hugh Cairns.

14. It will be observed that the facts of that case were different from those with which we are now dealing. The re-grant was made to a remote kinsman of the original holder and the conclusion at which their Lordships arrived was based on the terms of the grant and the particular circumstances in which it was made. The next case is that in Baboo Beer Pertab Sahee v. Maharaja Rajender Pratap Sahee (1867 12 M.I.A. 1). This is known as the Hunsapore case. There was an impartible raj which had been originally held by one Futteh Sahee. In 1767 he rebelled, and the Easte India Company took over the estate. It retained it until 1790, sometimes letting it to farmers and sometimes making collections through its own officers. In 1790 Lord Cornawallis granted the property to one Chutterdharee Sahee, a representative of a younger branch of the family. Chutterdharee Sahee died in 1858, and a dispute arose as regards succession. The question was whether the estate should descend to the four grandsons of Chutterdharee Sahee in equal shares or should go to the eldest of them. The latter relinquished his claim in favour of his son, the respondent in the appeal, who rested his claim partly on a will and partly on the ground that the Raj, being impartible and descendible by custom according to the rule of primogeniture, he, by reason of his. father''s abdication in his favour, was entitled to it to the exclusion of the other members of the family. At pp. 33-34 their Lordships of the Privy Council observed:

In this suit, however, both parties claim under Chutterdharee Sahee; and as between them and for the purposes of this suit, it must be taken for granted that he derived his title (whatever may have been the nature of his estate or the incidents to it,) by grant from the East India Company, which had full dominion over the estate, and,, therefore, the power to grant it.

One consequence from this conclusion is that the estate must be taken to have been the separate and self acquired property of Chutterdharee Sahee. The fact that he was the member of the family which had so long held the estate, next in. succession to the line of Raja Futteh Sahee, and the son and grandson of persons who had established claims on the gratitude of the Company, may have been a motive determining the selection of him as grantee; but it does not affect the nature of his estate or give to it the character of ancestral property. The legal foundation of his title is still the grant to him from those who had power to make or to withhold it. This point was ruled in Katama Natchier v. Moottoo Vijaya Raganadha 1861 9 M.I.A. 539 .

15. It is true that, as in the case which is now before us, there was no sanad or formal grant in favour of Chutterdharee Sahee; hut it seems to us that the facts are nevertheless distinguishable. The East India Company kept the estate for 23 years, appropriating the whole surplus-revenue to its own use. Ultimately it re-granted the estate to a person who would have had no claim to it at law, inasmuch as the sons of Futteh Sahee were still living. Chutterdharee Sahee had had no concern with the estate before its grant to him and had no immediate right of succession to Futteh Sahee, and, therefore, under the grant which was made to him in 1790, the estate became his self acquired property.

16. The next case to which we have been referred is known as the Bettia Raj ease Ram Nundun Singh v. Janki Koer (1902) 29 Cal 828. It appears that there had been an old impartible Raj known as Raj Riyasat Sirkar Champarun. One of the holders of this Raj was Raja Guj Singh, who died in 1694, leaving three sons, Dalip Singh, Prithvi Singh and Satrajit Singh. Dalip Singh succeeded to the estate on the death of Raja Guj Singh, and after his death the estate passed by successive stages to Raja Jugul Kishore Singh. Raja Jugul Kishore resisted the authority of the East India Company and fled from his estate. In his absence Sri Kishen, a son of Prithvi Singh, was put in possession of the estate, but in 1771 two parganas which came to be known as the Bettia Raj were restored to Raja Jugul Kishore Singh and the other two parganas were left with Sri Kishen and his cousin Abdhut Singh, son of Satrajit Singh. For certain reasons which we need not discuss Raja Jugul Kishore Singh, Sri Kishan and Abdhut Singh were subsequently dispossessed and the whole estate passed to Government until 1790. In that year the heirs of the aforementioned persons were restored to the respective parganas which had been held by Raja Jugul Kishore Singh on the one hand and Sri Kishen and Abdhut Singh on the other. The heir of Raja Jugul Kishore Singh was Bir Kishore Singh. The last holder of the Bettia Raj was

Maharaja Sir Harindra Kisbore Singh. On his death disputes arose between his widows and a descendant of Prithvi Singh. At p. 851, their Lordships of the Privy Council observe as follows:

The Government held itself at liberty to divide the Sirkar into two portions and to grant one portion away from the heir of the former owner of the estate, and it was equally at liberty to grant the whole away from him, though from reasons of policy it preferred to extend its favour to him in a certain measure. It cannot be doubted that the grant of Maihsi and Babra to Sri Kishen and Abdhut was a direct exercise of sovereign authority and proceeded from grace and favour alone, and if so, it is difficult to avoid the conclusion that the re-instatement of the heir of Raja Jugul Kishore in a portion of his father''s former estate also bore that character. Following the judgment of this Board in the Ram Nundun Singh v. Janki Koer (1902) 29 Cal 828 their Lordships think that the present Bettia Raj must be taken to have been the separate and self-acquired property of Bir Kisbore Singh, along with all the incidents of the family tenure of the old estate as an impartible Raj.

17. It will be observed that in that case Government held the Raj for a considerable number of years and then partitioned it into two distinct estates, to be held by the grantees at a revenue separately allotted to each. Thus there was a partition of the original estate effected by Government, the legal consequence of which would be that the descendants of Prithvi Singh and Satrajit Singh on the one hand and the descendant of Raja Jugul Kiahore Singh on the other would separately hold their respective estates as self-acquired property under the grant from Government.

18. The last case to which we have been referred is that in Venkata Narasimha Appa Row v. Rangayya Appa Row (1906) 29 Mad 437. The litigation in that case was concerned with a property known as the Nidadavole estate; but the judgment gives us little information as to the history of that estate except that there was a forfeiture and a re-grant. The learned Judges of the Madras High Court had to decide inter alia whether the estate was partible or impartible and whether or not it was descendible to a single heir. At p. 442 they observed:

It has been argued that there was no forfeiture in this case, but only the removal of one member of the family for misconduct and the substitution of another; and in support of this view reliance is placed upon the Ramnad case (1901) 24 Mad. 613. It is clear, however, from Exs. 214 and 20 that it was a complete forfeiture, and that Government considered itself free to convert the estate into Havelly that is, ordinary Government lands, and that it was re-granted to the son purely as an act of grace. In the previous litigation the Courts (including the Privy Council) have always referred to this transaction as a forfeiture for rebellion, and we see no reason to take any other view of its character. In making the re-grant however to his son the Government did not express any intention to interfere with the quality of the estate in regard to its descendibility to heirs. We take it that, in accordance with the principle laid down in the Hansapore case Baboo Beer Pertab Sahee v. Maharaja

Rajender Pertab 1867 12 M.I.A. 1 and affirmed in the Shivagunga case Katama Natchier v. Moottoo Vijaya Raganadha 1861 9 M.I.A. 539, the re-grant would not operate to render it partible if it was previously impartible and descendible to a single heir. It no doubt. rendered the estate the self-acquisition of the new grantee.

19. As we have already said the judgment does not disclose very much about the history of that estate. Moreover, we do not know what were Exs. 20 and 214 and what were the terms of the re-grant. This concludes the authorities on behalf of the defendant-respondent. Learned counsel for the plaintiff-appellant relies upon the case in Martand Rao v. Malhar Rao AIR 1928 P.C. 10 and upon two other cases to which we have already made reference in another part of this judgment Baijnath Prasad Singh and Others Vs. Babu Tej Bali Singh, and Baijnath Prasad Singh v. Tej Bali Singh AIR 1921 P.C. 62. In Martand Rao v. Malhar Rao AIR 1928 P.C. 10, an elder brother instituted a suit against his younger brother claiming that on the death of their father he alone was entitled to succeed to the family estate on the allegation that by the terms of the grant under which the estate was held and by a family custom and also by a territorial custom the said estate was impartible and succession thereto was governed by the rule of lineal primogeniture and that the younger brother was entitled to suitable maintenance only and not to any specific share in the estate. At p. 407, their Lordships laid down certain propositions of law by reference to which the case had to be decided. These propositions are enumerated as (a), (b) and (c). We are concerned with proposition (c) only, which runs as follows:
That if an impartible estate existed as such from before the advent of British rule, any settlement or re-grant thereof by the British Government must, in the absence of evidence to the contrary, and unless inconsistent with the express terms of the new settlement, be presumed to continue the estate with its previous incidents of impartibility and succession by special custom.

20. The case in Baijnath Prasad Singh and Others Vs. Babu Tej Bali Singh, was concerned with an estate known as the Aghori Barhar estate, which was an ancient impartible raj. It appears that in 1744 Raja Shambhoo Shah was dispossessed by Raja Balwant Singh. During the insurrection of Chet Singh, Warren Hastings restored the estate to Adil Shah, the grandson of Raja Shambhoo Shah. It was held by this Court that the state resumed its joint character. Learned Counsel for the defendants, respondents challenges the applicability of this case on the ground that the original holder was dispossessed by a neighbouring Raja and therefore never lost his legal rights. This criticism is not without some force; but at p. 608 the learned Chief Justice made the following observation:

No doubt the Government in making a grant of an estate can determine the nature of the grant, but I do not think, in the absence of specific terms in the grant, surrounding circumstances can or ought to be ignored. I will give an example. 8uppose Government confiscated what was admittedly joint family property and

suppose (in consequence of representations made by a member of the family to the effect that the confiscation had been made by mistake or for insufficient reasons) the Government restored the property by making a fresh grant to the member without any special terms or conditions in the grant. I think that the property so restored would be joint Hindu property in the hands of the member of the family to whom the grant was made just as it would have been if there had been no confiscation.

21. That hypothetical ease is exactly similar to the case now before us. The view taken by this Court was affirmed by their Lordships of the Privy Council in Baijnath Prasad Singh v. Tej Bali Singh AIR 1921 P.C. 62. , their Lordships remarked:

The family in question was an ancient family, holding sway as Indian Rajas. They were dispossessed by a neighbouring raja in the 18th century, but, having helped the English, they were re-instated by Warren Hastings. Their Lordships are satisfied that the re-instatement, which was finally carried out at a subsequent period, restored the family possessions to what they had always been in ancient times, viz. an impartible raj or zamindari, and that the zamindari now is ancestral property and not self-acquired.

22. As we have already shown, it is common ground before us that the Rajaur raj is an impartible estate and is descendible to a single heir. It is also not denied that it was a joint ancestral estate up to 1815. In that year Government put the estate to sale for arrears of revenue and itself purchased it. Three years later, i.e. in 1818, Government began to reconsider the matter, apparently thinking that Raja Dat Singh had perhaps been treated with undue severity. It accordingly relinquished its proprietary rights and restored the estate to Raja Dat Singh. There was no formal re-grant of sanad : merely a relinquishment of rights. Furthermore, Government refunded to Raja Dat Singh and his successor the surplus of the revenue which had been collected during the intervening three years. It seems to us that the intention of Government was to undo, so to speak, the act of confiscation and treat it as a nullity to treat it, in fact, as though it had never occurred. In the circumstances above mentioned and after giving full consideration to the various authorities which have been cited before us by learned Counsel on both sides, we disagree with the finding of the Court below and we hold that the Rajaur raj reverted in 1818 to its original status as a joint ancestral estate and became re-impressed with all the incidents of such an estate. The next question which falls to be decided is whether Raja Khushal Singh succeeded to the estate under a will or as the adopted son of Raja Diragpal Singh. Defendant 1 dearly and unambiguously admitted that Khushal Singh obtained the estate as an adopted son. Defendant 2, on the other hand, set up a plea that Khushal Singh succeeded to the raj under a will of Raja Diragpal Singh. The Court below finds the adoption proved, but finds that Khushal Singh succeeded to the gaddi under an oral will and that the estate therefore became his self-acquired property.

23. We have been referred to certain documents by learned Counsel for the plaintiff-appellant in proof of the fact that Khushal Singh was the adopted son of Raja Diragpal Singh. There is a pedigree printed at p. 271 of our book, which is taken from the mutation case of 1919, i.e. after the death of Raja Sanwal Singh. This pedigree was relied upon by defendant 1 in her claim for mutation and in it Khushal Singh is shown as the adopted son of Raja Diragpal Singh. This fact, as we have already shown, is still admitted by defendant 1. Then there are two khewats, one of 1871 and the other of 1873, printed at pp. 348 and 352 of the paper book. In both of these Khushal Singh is shown as the adopted son of Raja Diragpal Singh. The alleged adoption took place many years ago and in the nature of things there can be no direct testimony in respect to it. The entries in the above mentioned khewats therefore supply valuable evidence of the fact of adoption. At p. 163 of our paper book we have a judgment of "the Sadar Diwani Adalat dated 13th September 1864. There had been litigation between the widows of Ishri Singh and Khushal Singh. The principal Sadar Amin, who tried the suit, held that Khushal Singh had been adopted by Raja Diragpal Singh. Before the Sadar Diwani Adalat, which heard the appeal, there was apparently some dispute as to whether Khushal Singh had been adopted by Raja Diragpal or by the Ranis. The learned Judges at p. 167 observed as follows:
We consider that in the question before us it matters little whether the deceased Rajah or the Ranis adopted defendant. We however think that the difficulty, if there be one, may be settled by the conclusion, founded on the circumstances following the deceased Rajah''s death, that the Rajah before his decease recognized defendant as his heir, and desired that he should be adopted as such, and that whatever was necessary for this purpose was completed by the Ranis in pursuance and execution of that wish.

24. It is on the strength of this judgment that the learned Judge of the Court below finds that Khushal Singh succeeded under a will; but we can find nothing in the judgment to show that a will was made by Raja Diragpal Singh devising the estate to Khushal Singh. The utmost that this judgment amounts to is a finding by the Court that Raja Diragpal Singh expressed a wish before his death that Khushal Singh should be adopted by the Ranis and should thus ascend the gaddi. Upon the available documents and upon the admission of defendant 1 we find it proved that Khushal Singh was adopted by Raja Diragpal Singh; and that being so, there was no occasion for a will. In any case there is no evidence whatsover to show what were the terms or dispositions of the will wherein it is alleged that the estate was devised to Khushal Singh. Baboo Beer Pertab Sahee v. Maharaja Rajender Pertab 1867 12 M.I.A., to which reference has already been made in this judgment, their Lordships of the Privy Council at p. 28, in dealing with a nuncupative will, observed:

He who rests his title on so uncertain a foundation as the spoken words of a man, since deceased, is bound to allege as well as to prove, with the utmost precision, the words on which he relies, with every circumstance of time and place.

25. In our judgment defendant 2 has totally failed to establish that Khushal Singh succeeded to the estate under a will. We find that he succeeded as the adopted son of Raja Diragpal Singh. The last point, which is to be considered in this appeal, is the interpretation of the term of the deed of authority to adopt dated 3rd November 1909. On behalf of the defendants it is argued that this document contains a testamentary disposition in their favour; for the plaintiff, on the other hand, it is contended that the widow was in clear terms excluded from succession. Learned Counsel for each party pleads that the context, the circumstances and the probabilities, all support his respective claim. The Court below has found in favour of the defendants. In 1909 Raja Sanwal Singh was a widower with no issue, but was contemplating remarriage. His younger brother, Dharam Singh, also had no issue. Raja Sanwal Singh was 36 years of age and Dharam Singh was 28. In 1908 Dharam Singh executed a so called deed of trust in which he transferred his interest in his own separate property to Khiyali Singh, whom he had apparently adopted. Khiyali Singh is a son of Lal Gokul Singh, the uncle of the plaintiff. When Dharam Singh applied for mutation in favour of Khiyali Singh, Raja Sanwal Singh objected on the ground (1) that Dharam Singh had no power to alienate the property; and (2) that he was a drunkard, his mind was unbalanced, and therefore the transfer was illegal. On 22nd July 1909, Raja Sanwal Singh gave evidence in the mutation case and he stated: When I was questioned some time after my installation to the gaddi, I caused the name of Dharam Singh to be recorded as my heir after my death. Now I do not want Kunwar Dharam Singh to succeed me.

26. Ultimately a compromise was arrived at and on 2nd November 1909 a deed of settlement was drawn up, which was signed by Raja Sanwal Singh, Dharam Singh and Lal Gokul Singh. The dispute between the parties concerned (a) the devolution of Dharam Singh''s property and (b) the devolution of the Raj after the death of Raja Sanwal Singh. The deed of settlement provided as follows : (1) Raja Sanwal Singh should remain sole owner of the Raj; Dharam Singh should have no claim to it. (2) Dharam Singh should remain the permanent owner of his own property. (3) If Raja Sanwal Singh and Dharam Singh should each have a son, each of the said sons should inherit respectively his father''s estate. If Raja Sanwal Singh alone had a son, he should inherit the whole estate. Similarly if Dharam Singh alone had a son he would inherit the whole estate. (4) Khiyali Singh should be entitled to an allowance of Rs. 1,000 per annum for all time from his father''s separate property. (5) If neither Raja Sanwal Singh nor Dharam Singh had any issue, then Khiyali Singh should succeed to the estate of Dharam Singh. (6) Raja Sanwal Singh in the event of having no issue should be at liberty to select a member of the family as his son and heir who should succeed to the Raj. (7) This paragraph deals again with Khiyali Singh''s right to an allowance of Rs. 1,000 per annum. (8) If Dharam Singh were to die before Raja Sanwal Singh (presumably without issue), then Khiyali Singh should succeed to Dharam Singh''s estate. If Raja Sanwal Singh were to die in the lifetime of Dharam Singh, then the person to be nominated-by Raja Sanwal Singh should succeed to the

raj.

27. Next day, i.e., on 3rd November, a deed of authority to adopt and a deed of relinquishment were drawn up and these were also signed by Raja Sanwal Singh, Dharam Singh and Lal Gokul Singh, and'' a postscript was added to the deed of settlement of 2nd November to the effect that the two documents executed on 3rd November should form part of the said deed of settlement. It will be seen that, although in the deed of settlement Raja Sanwal Singh had contemplated the adoption of an heir in the event of neither he nor Dharam Singh having a son, no specific provision for such adoption was made in that deed. Nor was there any mention therein of his widow. It is, however, clear from that document and from Raja Sanwal Singh''s deposition of 22nd July 1909, that he was determined at all costs to exclude Dharam Singh from succession to the Raj. The original deed of authority to adopt was produced in the suit by defendant 1. It has been translated by the learned Judge at p. 137 of our paper book as follows:

Whereas I, Raja Sanwal Singh one of the executants, has no male or female issue at present, and there is no certainty about this borrowed life, hence I for the preservation and management of my Raj Talluka, Rajore, consider it proper that if after my death I do not leave any issue born of my loins as my heir, then my wedded wife will not be the owner. If Kunwar Dharam Singh''s son, born out of his loins, be (sic) then he will be the owner of the estate and if both of us do not beget any issues, then my wedded wife will have the right to, and I hereby authorise her, whoever she may be after my death (to) adopt from my family and of her choice, a son according to the rules of Shastras and may by deed declare him as the adopted son and execute a deed in his favour.

28. The Urdu words which have been translated as "my wife should not be the owner" are "meri zauja meri malik na hogi". The more correct rendering is ''shall not be'' and not ''should not be''. It is alleged on behalf of the defendants-respondents that at the time when the document was written the word ''hogi'' and not ''na hogi'' was written. The whole question depends upon whether there was or was not a dot or shosha over the first letter. For the defendants, it is contended that the dot which now exists was subsequently added; for the plaintiff, it is pleaded that the document as it stands is correct and that the certified copy in which the dot is absent is wrong.

29. We have had before us Register No. 3, in which the document was transcribed at the time of registration, and in the transcription there is no dot over the word. It cannot be denied that in Urdu dots are frequently omitted from above and below letters forming a word; but whether the registration clerk, seeing ''na-hogi'' clearly written in the document (the dot is quite clear in the original document as it now stands) would omit it so that the word would, unless it was obvious that the context otherwise required it, be read as ''hogi'' thereby completely reversing the meaning of this document is at least a matter of some doubt. This particular clerk seems to have been in the habit of putting in his dots. The original will was produced by

defendant 1 on 10th April 1931. She alleged that Chattar Singh, an employee of hers, had obtained it from Lal Gokul Singh; and she also alleged that the two other documents which were executed on or about the same day and had been filed by the plaintiff in the mutation case relating to the Rajaur estate. These allegations were not denied by the plaintiff in his application in reply; all that he alleged therein was that the copy filed by defendant 1 differed from the original by the circumstance that a negative was omitted.

30. It may be mentioned that the certified copy, taken from Register No. 3 corresponds with the transcription of the original which is therein contained. The plaintiff summoned Lal Gokul Singh as a witness and he attended Court; but the plaintiff did not produce him to contradict the allegation that the original document had been handed over by him to Chattar Singh and that he had himself produced the two connected documents in the mutation proceedings. On behalf of the defendants, certain witnesses were examined to prove that the original document had remained with Lal Gokul Singh. Qazi Pida Husain is a Municipal Commissioner, a Special Magistrate and a Qazi appointed by Government. He was the mukhtar of Raja Sanwal Singh for 13 years from 1905 and used to conduct his cases in Court. He states that he prepared the drafts of the three deeds, i.e. the deed of settlement, the authority to adopt and the deed of relinquishment, and he swears that after registration he handed them over to Lal Gokul Singh under instructions from Raja Sanwal Singh. He says that the deed of authority to adopt provided that the widow was to be the owner of the Raj in case neither Raja Sanwal Singh nor Dharam Singh left a son. The witness is not prepared to accept that the dot has been added, but he says that it is superfluous and that ''such dots often occur''. He states that Chattar Singh came to him from defendant 1 and asked for the original document. He told him that he had returned it along with the other two documents to Lal Gokul Singh.

31. The latter portion of the above statement is corroborated by Chattar Singh, who states that he thereupon went to Lal Gokul Singh and asked him for the document, and three or four days later Lal Gokul Singh handed it to him. The witness then handed it over to Amjad Ali, a clerk in the Court of Wards, who has also been examined and deposes to the same effect. There is no rebutting evidence and Chattar Singh was not seriously cross-examined in respect of his statement that he had obtained the document from Lal Gokul Singh. Ex. H.-1 is a judgment of an Assistant Collector dated 28th April, 1919 and it shows that in the mutation proceedings the deed of settlement was filed on behalf of Harchand Singh, the brother of the plaintiff, for whom Lal Gokul Singh was admittedly acting as pairokar. Thus it is a fact that the plaintiff''s uncle did produce one of the three documents; and the plaintiff was supporting his brother''s claim, as is evident from his objection printed at p. 267 and by his statement printed at p. 269.

32. Learned Counsel for the plaintiff-appellant offence an explanation as to why the deed of settlement should have remained in the hands of Lal Gokul Singh. He points

out that that document recognized the adoption of Lal Gokul Singh''s son Khiyali Singh and his right to an allowance of Rs. 1,000 per annum and in certain circumstances his right to succeed to Dharam Singh''s property, whereas the authority to adopt was concerned with the Rajaur raj only, with which Lal Gokul Singh had no concern. There is some force in this explanation, but the fact remains that defendant l''s allegation in her application of 10th April 1931, was unchallenged; and as we have already shown, there was no serious cross-examination of Chattar Singh. It is also pointed out to us by learned Counsel for the plaintiff-appellant that on 19th December 1910, Raja Sanwal Singh obtained a decree for Rs. 16-6-0 against Lal Gokul Singh and it is argued that the Raja would not be likely to allow this important document to remain with a man with whom he was on such terms that he was prepared to litigate with him for a trifling sum. But there is nothing to show that they were not on good terms in November 1909; in fact the amicable settlement rather suggests the contrary.

33. It is perhaps somewhat remarkable that neither party relied on the original document or on the copy in the mutation proceedings in support of his or her respective claim; but such was apparently the case. In order to arrive at a decision as to what was the intention of Raja Sanwal Singh, it is necessary to read the deed of settlement and the authority to adopt in the light of the circumstances and probabilities. There can we think, be little doubt that Raja Sanwal Singh wanted to exclude Dharam Singh personally from succession, and this fact must be borne in mind in our endeavour to interpret the document. We will first take it as it stands; that is to say, we will read it as excluding the widow. Under the rules of law governing the succession to this estate, Raja Sanwal Singh''s widow would not in any case succeed, and therefore on the face of it there was no apparent reason why she should be specifically excluded. In the event of Dharam Singh having no son and in the event of the widow not adopting a son the estate would not go to the widow; it would go to Dharam Singh. This disinheriting clause would, therefore, be superfluous; it would also be gratuitously offensive to the lady who was to become Raja Sanwal Singh''s wife. It is argued by Dr. Katju for the plaintiff, appellant that in 1909 and thereabouts the impression in legal circles in India was that an impartible estate was the separate property of the holder and that in circumstances such as existed in the present case the widow would succeed.

34. We have been referred to certain authorities in support of this contention, and if is argued that this would explain the disinheriting clause. But if Raja Sanwa Singh was so very anxious that his wife should not succeed, it is legitimate to as! why he did not adopt a son himself. Even if Dr. Katju''s contention respecting the view prevailing in 1909 in respect of succession to an estate of this sort be correct, it is blear that if the words "na hogi" were written, i.e. if the widow was excluded, then in the event of her not adopting a son and in the event of no son being born to Dharam Singh, succession would go to Dharam Singh which was the very contingency that Raja Sanwal Singh was most anxious to ensure against. Of course,

if Raja Sanwal Singh was certain that his widow would adopt a son and so exclude Dharam Singh, the matter might have a different aspect; but what guarantee had he that his widow would in fact avail herself of the authority which had been given to her? Raja Sanwal Singh died in 1918, but no adoption has yet been made. In the circumstances it seems to us natural that he would want to guard against this contingency and also that in the anticipation of his widow fulfilling his wishes, he would desire to provide for an interregnum, so to speak, during such period as there remained a reasonable likelihood of Dharam Singh begetting a son. In our opinion the contention of the defendants must be accepted. We think that the relevant portion of the document (discarding the negative) might be paraphrased somewhat as follows:

I think it meet that, in the event of my having no son, my wife shall be the owner of the estate. If, however, Dharam Singh has a son, that son shall be the owner. But if it be found that Dharam Singh also begets no son, I hereby authorize my wife to adopt a boy from within the family and he shall then become owner in my wife''s stead.

35. It cannot be denied that the document is loosely worded, and the arguments which have been addressed to us by learned Counsel for the plaintiff-appellant have considerable force; but after a careful survey of the evidence and of all the circumstances and probabilities we think that it was the intention of Raja Sanwal Singh to devise the estate to his widow until such time if any as either Dharam Singh begot a son or she took a boy in adoption. If it be accepted - as we think it must be accepted - that the disputed word in the document was "hogi" and not "na-hogi," there can, we think, be no doubt that the clause amounted to a testamentary disposition within the meaning of Section 2(h), Succession Act. This deed of authority to adopt was moreover a revocable document. The fact of it not being described as a will by the executant will not deprive any testamentary dispositions contained therein of their testamentary effect. In view of our above finding that Raja Sanwal Singh devised the estate to his widow, the plaintiff''s suit must fail. This appeal is accordingly dismissed with costs.