

PRIVY COUNCIL

Rani Huzur Ara Begam

Vs.

Deputy Commissioner, Gonda,

P.C.A.No.61 of 1937

(Lord Romer, Sir Shadi Lal and Sir George Rankin JJ.)

22.07.1938

JUDGMENT

SIR SHADILALJ.

1. *Raja Mohammad Mumtaz Ali Khan*, taluqdar of the Utraula Estate in the District of Gonda of the Oudh Province, obtained on 22nd April 1930, against Raja Saadat Ali Khan, taluqdar of the Nanpara Estate, two decrees for the recovery of certain sums of money. These decrees were based upon an award made by the Commissioner of Lucknow Division on 8th April 1930. The award after finding the amounts of money due to the taluqdar of Utraula, concluded as follows :

The payment of the annuity to the Raja of Utraula will cease on his death. But should his death occur before the liquidation of the arrears amounting to Rs. 2,09,919, payment of these arrears will be completed to his heirs.

2. Raja Mohammad Mumtaz Ali Khan died on 4th March 1934, leaving him surviving four persons who were his heirs under the Mahomedan law ; namely his widow Rani Huzur Ara Begam, his minor daughter Rajkumari Fatma Begam, and two minor sons Raja Mohammad Mustafa Ali Khan and Iqbal Ali Khan. On 18th September 1934, the widow, Rani Huzur Ara Begam, on behalf of herself and as guardian of her daughter, filed in the Chief Court of Oudh two applications for execution of the two decrees. The total amount, for which execution was sought, was Rs. 1,85,925-2-8 with reference to one decree, and Rupees 11,43,227-5-4 with reference to the other decree. The applications expressly stated that they were made by the widow in her personal capacity and as guardian of her minor daughter, and also for the benefit of the two minor sons. The judgment-debtor challenged the right of the widow to execute the decrees obtained by her husband. Her right was disputed also by the Deputy Commissioner of Gonda who, as the representative of the Court of Wards, was in

charge of the persons and properties of the two minor sons. He asserted that under the law and the family custom of single heir succession, the estate of Raja Mohammad Mumtaz Ali Khan, including his rights under the decrees, devolved on his elder son Raja Mohammad Mustafa Ali Khan alone ; and that neither the widow nor his other children were entitled to succeed to any portion of his estate. He accordingly denied the right of the applicant to execute the decrees.

3. Now the taluqdar of the Utraula Estate is named in list 2 of the taluqdars prepared under Section 8, Oudh Estates Act, 1 of 1869, whose estate, according to the custom of the family on or before 13th February 1856, ordinarily devolved upon a single heir. section 10 of the Statute provides that the Court shall take judicial notice of the said list and regard as conclusive the fact that the person named therein is such taluqdar.

4. In other words, there was a pre-existing custom attaching to the estate on which its inclusion in list 2 was based. There is therefore an irrebuttable presumption in favour of the existence of the custom of the family by which the estate devolves on a single heir, but the provision as to the conclusiveness of the custom is confined to the estate coming within the ambit of the Statute. It does not apply to any property which is not comprised in the estate or taluqa. What is the rule which governs succession to non-taluqdariproperty ? If immovable property forming part of the taluqa is governed by the custom of single heir succession, there is no prima facie reason why immovable property, which is not comprised in taluqa, should follow a different rule. Indeed it has been decided by this Board that there is a presumption that the rule as to succession to a taluqa governs also the succession to non-taluqdari immovable property :*Murtaza Husain Khan v. Mahomed Yasin Ali Khan*,. It must therefore be taken as a settled rule that, whereas the entry of a taluqdar in list 2 is conclusive evidence that his taluqa is governed by the rule of devolution on a single heir, it raises also a presumption that the family custom applying to a taluqa governs also the succession to non-taluqdari immovable property. The only difference is that, while in the case of taluqdari estate there is an irrebuttable presumption in favour of the rule of devolution on a single heir, the presumption in the case of non-taluqdari immovable property may be rebutted by evidence proving a different rule. The question then arises whether there is any other rule in the matter of succession to the non-taluqdari moveable property left by the taluqdar. As observed in *Thakur Ishri Singh v. Baldeo Singh*,

5. Their Lordships consider that the District Judge in this case is quite right when he argues from the law relating to the taluka to the law relating to all other family property, and says there is a presumption from the actual decisions relating to the

taluka that the family property followed the same law, or rather, as he puts it accurately, there is no evidence to show that the other family property followed a line of devolution different from that of the taluka.

6. Their Lordships' attention has been invited to Section 7 of the Act which provides that if a taluqdar or grantee desires that any elephants, jewels, arms or other articles of moveable property belonging to him should devolve along with his estate, he should make an inventory thereof and deposit it in the office of the Deputy Commissioner of the district wherein his estate is situated. Thereupon the articles mentioned in the inventory shall be enjoyed and used by the person who under, or by virtue of, the Act may be in actual possession of the said estate. It is argued that the necessity for making this special provision for the devolution of heirlooms mentioned in the inventory arose because the Legislature contemplated that moveable property of a taluqdar would devolve, not on a single heir along with the estate, but upon the persons who might be his heirs under the ordinary law. Their Lordships think that the object of the Section was to enable the taluqdar to ensure that the heirlooms mentioned in the inventory should pass along with the estate in all circumstances, but it does not warrant the inference that the Legislature intended that the descent of moveable property, for which no inventory was made, should be governed by the ordinary law. The result is that the non-taluqdari property, immovable as well as moveable, is governed by the custom applicable to the taluka, as there is no evidence to prove a custom to the contrary. The judgment of the Court of Appeal, dissenting from that of the single Judge, of the Chief Court of Oudh, must therefore be affirmed. Their Lordships will accordingly humbly advise His Majesty that these consolidated appeals should be dismissed with costs to be paid to the respondent the Deputy Commissioner as representing the elder son, Raja Mustapha Ali Khan, the owner of the Utraula estate.

Appeals dismissed.

Cases Referred.

(1916), 3 AIR 1916 PC 89=36 IC 299=38 All 552=19 OC 290=43 IA 269 (PC)

(1884) 10 Cal 792=11 IA 135=13 CLR 418 (PC).