SUPREME COURT OF INDIA

Raj Kumar Mohan Singh

Vs.

Raj Kumar Pasupatinath Saran Singh

(J.C. Shah, V. Ramaswami and G.K. Mitter JJ.)

19.04.1968

JUDGMENT

Y SHAH, J.

The following is the genealogical table explaining how the parties are related:

Raja Jagpal Singh

Raja Surpal Singh d. 1900

(married Rani Jagannath Kuar)

Raja Bishwanath Saran Singh d. 1946

second wife Third wife

First wife Rani Fanindra Rajya Rani Sonamani Rani Aditya Lakshmi Devi, D 5 Devi, D6 Binai Kumari

D4

Rajkumar Pasupatinath

Saran Singh, D2

Rajkumar Rajkumar

Mohan Singh Vijai Singh

D1 D3

Raja Jagpal Singh was granted the taluqdari of the Tiloi Estate by the Government, and his name was entered as in Lists 1, 2 and 5 prepared under s. 8 of the Oudh Estates Act A of 1869. He died on September 15, 1875, and was succeeded by his son Raja Surpal Singh as taluqdar of the estate. Raja Surpal Singh had no legitimate children. On June 13, 190-0, Raja Surpal Singh executed a will disposing of his property and conferring upon his wife Rani Jagannath Kaur power to adopt a son.

Raja Surpal Singh died on June 21, 1960. Rani Jagannath Kuar adopted on February 21, 1901, a son who was known as Raja Bishwanath Saran Singh hereinafter called 'Raja Biswanath. After the death of Raja Surpal Singh, the Court of Wards took over the management of the Tiloi Estate and continued to manage it till March 30, 1920, when it was released in favour of Raja Bishwanath. On August 29, 1932, Raja Bishwanath executed a deed of trust in respect of the Tiloi Estate and other properties primarily for the benefit of his creditors and the residue remaining after satisfying his debts for the benefit of his son Rajkumar Pasupatinath Saran Singh-hereinafter called "the Senior Rajkumar". Rani Jagannath Kuar died on August 7, 1933. On November 21 1936, Raja Bishwanath revoked the deed of trust On January 31 1942, the Court of Wards again assumed management of the Tiloi Estate on behalf of Raja Bishwanath and continued to manage the estate till it was released on the abolition of the Estate under the U.P. Zamindari Abolition and Land Reforms Act 1 of 1951. On August 2, 1946, Raja Bishwanath executed a will bequeathing the Tiloi Estate and its appurtenances to his son Rajkumar Mohan Singh-hereinafter called "the Junior Rajkumar". Raja Bishwanath died on November 8, 1946, and disputes arose soon thereafter between the Senior Rajkumar and the Junior Rajkumar-the former claiming the estate relying upon the deed of trust and the latter relying upon the will of the late Raja. The Court of Wards instituted in the Court of the District Judge, Rai Bareilly, an inter-pleader suit on July 7, 1950, impleading the three widows of Raja Bishwanath, his three sons and the deity Sri Jagannath Bahari Ji for whose benefit certain lands were settled under two deeds by Rani Jagannath Kuar. The District Judge held that the deed of trust executed by Raja Bishwanath was acted upon and was "not invalid and unenforceable' for any of the reasons set up by the Junior Rajkumar, and that the Senior Rajkumar was not precluded from claiming the estate relying on the trust deed. He further held that the provisions of s. 22 of the Oudh Estates Act, 1869, applied to the taluqdari estate held by Raja Bishwanath, but not to his non-taluqdari property. Since, however, a major portion of the property was the subject matter of the trust under the deed executed in 1932, and the rest had been bequeathed in favour of the Junior Rajkumar, the question of succession by lineal primogeniture did not arise in respect of any portion of the property which was the subjectmatter of the suit. The Court further held that Item 210 of Sch. A to the plaint was not. in possession of the Court of Wards and consequently in that respect an interpleader suit did not lie, and in respect of Items 8 to 12 of Sch. B to the plaint, the three sons of Raja Bishwanath had only a right of management as shebalts, that the deed of trust constituted a valid gift and the included in the deed of trust was subject to the obligations created. thereby, that Raja Bishwanath was fully competent to execute the deed of trust, and that the will dated August 2, 1946, executed by Raja Bishwanath in favour of the Junior Rajkumar was operative in respect of Items 102 and 1 12 of Sch. A: of the plaint, and also in respect of Items 4, 5, 6 & 7 of Sch. B to the plaint and the other appurtenances of the Tiloi Estate which were not included in the deed of trust executed by Raja Bishwanath or in the deed of trust executed by Rani Jagannath Kuar. The Court gave certain directions in respect of the property settled under the deeds of trust created by Rani Jagannath Kuar, but since no claim is raised in respect of those properties, nothing need be said in that behalf. Substantially as a result of the findings recorded by the District Judge, the will set up by the Junior Rajkumar and the deed of trust set up by the Senior Rajkumar were both upheld', and a decree was made in favour of the Junior Rajkumar in respect of those properties which were not covered by the deed of trust.

Against that decree the Junior Rajkumar, his brother Rajkumar Vijai Singh and their mother Rani Sonamani Devi appealed. The Senior Rajkumar did not prefer an appeal against that part of the decree which upheld the will of Raja Bishwanath and the claim of the Junior Rajkumar. During the pendency of the appeal, the Senior Rajkumar was appointed receiver of the properties in dispute under an order of the Court dated March 24, 1959, and he continued to remain in posse on

thereafter. On the abortion of the Zamindari, the Court of Wards was struck off from the record.

Before the High Court of Allahabad, two principal questions fell to be determined, (1) whether the deed of trust dated August 29, 1932, executed by Raja Bishwanath was valid and operative so as to create an interest in favour of the Senior Rajkumar; and (2) whether the deeds of trust executed by Rani Jagannath Kuar on September 21, 1920 and May 15, 1933 were valid and operative. The High Court substantially agreed with the Trial Court on both the questions. Against that decree passed by the High Court, this appeal was filed with certificate granted by the High Court by the Junior Rajkumar, his younger brother-Rajkumar Vijai Singh-and his mother-Rani Sonamani Devi.

Counsel for the appellants did not challenge the finding of the High Court, about the validity and the operative character of the deeds of trust executed by Rani Jagannath Kuar. The only question canvassed by counsel for the appellants related to the property covered by the deed of trust executed by Raja Bishwanath We have heard counsel for the appellants on two out of the several contentions raised by him-(1) that on a true interpretation of the will of Raja Surpal Singh, no interest in the estate was intended to be conferred upon Raja Bishwanath; and (2) granting that it was intended by the testator to bequeath the residuary estate in favour of Raja Bishwanath the will was inoperative by virtue of S. 13 of the Oudh Estates Act, 1869, and that in any event Raja Bishwanath had under the will no vested interest in the taluqdari estate during the life-time of Rani Jagannath Kuar.

Being of the view that the appellants must succeed on the second contention, we have not thought it necessary to determine whether the title of the Senior Rajkumar suffered from any other infirmity, viz. that the deed of trust was not a permissible transaction under S. 11 of the Oudh Estates Act 1869; that possession of the property was not delivered to the trustees within six months of the date of execution of the deed of trust as required by s.13(2) of the Oudh Estates Act, and the trust failed for noncompliance with the mandatory provisions of law in that regard; that the provisions of the deed of trust were vague and indefinite and on that account incapable of enforcement; that the trust was lawfully revoked by Raja Bishwanath and that the main purpose of the trust-satisfaction of the debts of Raja Bishwanath-has since the-date of the deed of trust been achieved by the operation of the U.P. Encumbered Estates Act 25 of 1934, the U.P. Zamindari Abolition and Land Reforms Act 1 of 1951 and the U.P. Debt Reduction Act 15 of 1953.

Raja Surpal Singh executed his will on June 13, 1900. The preamble and the first four paragraphs of the will which are material in this appeal may first be read: "Let it be known to all concerned that I Raja Surpal Singh Bahadur Taluqdar and proprietor of Tiloi Estate do hereby declare my last wishes and make the disposition of my property as below and it will operate after my demise unless and until I cancel these presents by duly executed will.

1. As I have got no heirs competent to manage the estate properly and independently, I solicit the Government to take the estate under the Court of Wards superintendence unless and until there be some male successor fit to manage the estate.

2. As I have got no issue begotten of my wedded wife (Rani Jagannath Koer) I authorize my said Rani to select a fit and promising boy with the approval of the Deputy Commissioner from the Rajkumar Thakurs of village Chilowli or other village and adopt him as my son.

3. The Deputy Commissioner of the District will very kindly press the said Rani to make the adoption according to law as soon as practicable after my demise and from the time of adoption the

Court of Wards should hold the estate on. behalf of the said adopted son.

4. My wife Rani Jagannath Koer will receive a suitable maintenance of rupees one thousand a month whether the estate be under the charge of the Court of Wards or of my adopted son." By paragraphs the testator directed that one Col.R.F. Angels should be continued as special manager of the estate on the same pay and privileges that he enjoyed at the date of the will. By paragraphs provision was made for two illegitimate children of the testator, and by paragraphs it was directed that the personal servants and others who it was stated had faithfully served the testator should be adequately rewarded.

In favour of the son to be adopted, there is in the will no express bequest. But we are unable to hold that the testator by his will intended merely to devise specific legacies and to provide for the management of the estate and not to dispose of the residue. The preamble to the will declares the intention of the testator to dispose of his property as set out therein. By the first paragraph he requested the Government to take the estate under the superintendence of the Court of Wards until there was some male successor fit to manage the estate, and by paragraph-2 he authorised his wife to adopt a son to him with the approval of the Deputy Commissioner from amongst certain classes. By paragraphs he recommended that the Deputy Commissioner should persuade the Rani to make the adoption according to law as soon as practicable after his demise, and after the adoption the Court of Wards was to hold the estate on behalf of the said adopted son. In our judgment, the intention of the testator was that after his death Rani Jagannath Kuar should adopt a son selected by her and that his estate should then remain under the management of the Court of Wards on behalf of the adopted son. This clearly indicates that the adopted son was on adoption intended to be the beneficiary of the estate. The will does not expressly devise the estate in favour of the adopted son, but the language clearly implies that intention. Till the adoption was made, the estate was to remain under the management of the Court of Wards and no beneficial owner was designated. What the effect in law of that direction is,. we will presently consider. But there is no doubt that the testator intended that the son adopted by Rani Jagannath Kuar was to take the estate and the Court of Wards was to hold the estate on behalf of the adopted son. We therefore agree with the High Court that the testator intended to confer an estate of inheritance upon the son to be adopted by the Rani.

The finding that under the will of Raja Surpal Singh, the adopted son was on adoption intended to take an estate of inheritance is however not sufficient to justify the decision that Raja Bishwanath-the son adopted by Rani Jagannath Kuar-was invested lawfully with interest in the taluqdari estate which he could settle at the date of the deed of trust. There are special rules governing inheritance and succession to a taluqdari estate and testamentary dispositions made by a taluqdar within three months before his death are valid only if certain conditions are fulfilled and not otherwise. Again, under the will, between the date of the death of the testator and the date of adoption of a son by the Rani, the beneficial interest in the residue was not devised in favour of any person, and the estate remained in abeyance till the Rani adopted a son. The legal effect of the will in the light of the Oudh Estates Act and in particular of S. 22 remains also to be considered.

To appreciate the provisions of the Oudh Estates Act 1 of 1869, which have a bearing on the questions in dispute, it is necessary in the first instance to refer to certain peculiar features of the estates held by the Oudh Taluqdars. Annexation of Oudh by the East India Company was effected on February 13, 1856. In anticipation of the change of Goverment, the GovernorGeneral addressed a letter to the Resident on February 4, 1856, for guidance in the administration of the province, and directed that settlement of lands be made by the Government with the actual occupants of the soil,

that is, with the petty zamindars or proprietors, and to exclude taluqdars who held the estates in the Province of Oudh. A summary settlement with the persons in occupation of the soil was commenced, but before the summary settlement was completed, insurrection by the Indian troops broke out at Lucknow on May 13, 1857, and the territory of Oudh was up in arms against the foreign regime. After the insurrection was quelled, the Government made a change in its policy, and the Commissioner of Oudh recommended to the Government of India that "talookas should only be given to men who have actively aided us, or who, having been inactive, now evince a true willingness to serve us, and are possessed of influence sufficient to make their support of real value". This policy recommended by the Commissioner was accepted by the Government of India, and on March 15, 1858, the Governor-General Lord Canning, issued his proclamation divesting the landed proprietors (except holders of five estates) in Oudh of all their proprietory rights in the soil and vesting them in the British Government. The effect of the proclamation was that all lands within the province of Oudh, with the exception of five estates, were at the disposal of the British Government, and all rights of the entire body of proprietors of lands covered by the said proclamation were extinguished, and any future rights to be, claimed by any proprietors had to be claimed under regrant from the Government. Under the new scheme, sanads were granted to the taluqdars and tables setting out the names of taluqdars and the nature of their rights were prepared After Lord Canning's proclamation a second summary settlement was started, by which a hierarchy of interests in the lands analogous to the feudal system in England was created.

The Oudh Estates Act 1 of 1869 was enacted in 1869 to deal with the special kind of property called "estate", brought into being in Oudh as a result of the Act. The long preamble of the Act recited that "whereas, after the re- occupation of Oudh by the British Government in the year 1858, the proprietary right in diverse estates in that province was, under certain conditions, conferred by the British Government upon certain Taluqdars and' others; and whereas doubts may arise as to the nature of the rights of the said Taluqdars and others in such estates, and as to the course of succession thereto, and whereas it is expedient to prevent such doubts, and to regulate such course, and to provide for such other matters connected therewith as are hereinafter mentioned;", the Act was enacted. The Act made provisions about the nature of the rights of the taluqdars to the course of succession thereto and incidental matters. It had the merit of being an enactment declaring the rights of all the taluqdars qua their estates. and prescribed a uniform course of succession irrespective of the personal law which governed individual taluqdars.

Since we are primarily concerned to determine the rights of the parties arising by virtue of a will executed in the year 1900, we propose not to refer to amendments made in the Act after the year 1900. The expression 'transfer' was defined in the Act as meaning "an alienation inter vivos"; and "will" was defined as meaning "the legal declaration of the intentions of the testator with respect to his property affected by this Act, which he desires to be carried into effect after his death"; 'taluqdar' was defined as meaning "any person whose name is entered in the first of the lists mentioned in section eight"; "estate" was defined as meaning "the taluqa or immoveable property acquired or held by a Taluqdar or grantee in the manner mentioned in section three, section four or section five, or the immoveable property conferred: by a special grant of the British Government upon a grantee"-. and 'heir' was defined as meaning "a person who inherits property otherwise than as a widow, under the special provisions of this Act",; and 'legatee' was defined as meaning "a person to whom property is bequeathed under the same provisions". By s. 3 the rights of taluqdars were declared : every taluqdar with whom a summary settlement of the Government revenue was made between the first day of April 1858, and the tenth day of October 1859. or to whom, before the passing of the Act and subsequently to the first day of April 1858, a taluqdari sanad had been granted, was deemed

to have thereby acquired a permanent, heritable and transferable right in the estate comprising the villages and lands named in the list attached to the agreement or kabuliyat executed by, such taluqdar when such settlement was made. By s. 8 the -Governor-General of India was enjoined to prepare six lists-of 'which the following are material:

"First.-A list of all persons who are to be considered Talukdars within the meaning of this Act.

Second.-A list of the Taluqdars whose estates according to the custom of the family, on and before the thirteenth day of February 1856, ordinarily devolved upon a single heir;

Fifth.-A list of the Grantees to whom sanads or grants may have been or may be given or made by the British Government, up to the date fixed for the closing ,of such list, declaring that the succession to the estates comprised therein shall thereafter be regulated by the rule of primogeniture;"

By s.11 power was conferred upon every taluqdar and grantee and every heir and legatee of a taluqdar and grantee to transfer the whole or any portion of the estate or of his right and interest therein during his lifetime, by sale, exchange, mortgage, lease or gift and to bequeath by his will to any person the whole or any portion of such estate, right and interest, but by s. 13 certain restrictions were imposed upon taluqdars as to the manner in which gifts and devises could be made. It was provided, insofar as it is material :

"No Taluqdar or Grantee and no heir or legatee of a Taluqdar or Grantee shall have power to give or bequeath hi-.; estate or any portion thereof or any interest therein to any person not being either-

(1) a person who, under the provisions of this Act or under the ordinary law to which persons of the donor or testator's tribe and religion are subject, would have succeeded to such estate or to a portion thereof or to an interest therein, if such Taluqdar or Grantee, heir or legatee had died intestate, or

(2)..... except by an instrument of gift or a will executed and attested not less than three months before the death ,of the donor or testator, in manner herein provided in the case of a gift or will, as the case may be and registered within one month from the date of its execution."

By S. 14, insofar as it is material, it was provided : "If any Taluqdar or Grantee . . . . or his heir or legatee, shall hereafter transfer or bequeath, the whole or any portion of his estate to another Taluqdar or Grantee, or to. .. . . . . a person who would have succeeded according to the provisions of this Act to the estate or to a portion thereof if the transferor or testator had died without having made the transfer and intestate,, the transferee or legatee and his heirs and legatees shall have the same rights and powers in regard to the property to which he or they may have become entitled under or by virtue of such transfer or bequest, and shall hold the same subject to the same conditions and to the same rules of succession as the transferor or testator"

Chapter VII dealt with intestate succession, and S. 22, set out special rules of succession to the estates held by Taluqdars and Grantees dying intestate. It provided : "If any Taluqdar or Grantee, whose name shall be inserted in the second, third or fifth of the lists mentioned in section eight, or his heir or legatee, shall die intestate as to his estate, such estate shall descend is follows, viz: --

"(1)To the eldest son of such Taluqdar or Grantee, heir or legatee, and his male lineal descendants,

subject to the same conditions and in the same manner as the estate was held by the deceased;

(2).-Or if such eldest son of such Taluqdar or Grantee, heir or legatee, shall have died in his lifetime, leaving male lineal descendants, then to the eldest and every other son of such eldest son successively, according to their respective seniorities, and their respective male lineal descendants, subject as aforesaid; (3).-Or if such eldest son of such Taluqdar or Grantee, heir or legatee, shall have died in his father's lifetime without leaving male lineal descendants, then to the second and every other son of the said Taluqdar or Grantee, heir or legatee, successively, according to their respective seniorities, and their respective male lineal descendants, subject as aforesaid;

(4).-Or in default of such -,on or descendants, then to such son (if any) of a daughter of such Taluqdar or Grantee, heir or legatee, as has been treated by him in all respects as his own son, and to the male lineal descendants of such son, subject as aforesaid;

(5).-Or in default of such son or descendants, then to such person as the said Taluqdar or Grantee heir or legatee, shall have adopted by a writing executed and attested in manner required in case of a will and registered, subject as aforesaid;

(6).-Or in default of such adopted son, then to the eldest and every other brother of such Taluqdar or grantee, heir or legatee, successively, according to their respective seniorities, and their respective male lineal descendants, subject as aforesaid;

(7).-Or in default of any such brother then to the widow of the deceased Taluqdar, Grantee, heir or legatee; or, if there be more widows than one, to the widow first married to such Taluqdar or Grantee, heir or legatee, for her lifetime only;

(8).-And upon the death of such widow, then to such son as the said widow shall, with the consent in writing of her deceased husband, have adopted by a writing executed and attested in manner required in case of a will and registered, subject as aforesaid;

(9).-Or on the death of such first married widow and in default of a son adopted by her with such consent and in such manner as aforesaid, then to the other widow, if any, of such Taluqdar or Grantee, heir or legatee, next in order of marriage, for her life, and on the death of such other widow, to a son adopted by her with such "consent and in such manner as aforesaid; or in default of such adopted son, then to the other surviving widows according to their respective seniorities as widows for their respective lives, and on their respective deaths to the sons so adopted by them respectively and to the male lineal descendants of such sons respectively, subject as aforesaid;

(10) Or in default of any such widow or of any son so adopted by her, or of any such descendants then to the male lineal descendants, not being najib-ul-tarfain of such Taluqdar or Grantee, heir or legatee, successively, according to their respective seniorities and their respective maile lineal descendants whether najib-ultarfain or not; 13
(11) Or in default of any such descendant then to such persons as would have been entitled to succeed to the estate under the ordinary law to which persons of the religion and tribe of such Taluqdar or Grantee, heir or legatee' are subject.

Nothing contained in the former part of this section shall be construed to limit the power of alienation conferred by section eleven." Raja Surpal Singh died within three months of the date of

his will: the will was made on June 13, 1900, and presented for registration and was duly registered on June 15, 1900. Raja Surpal Since died on June 21, 1900. If the will be regarded as made in favour of a person who would not, under the provisions of the Act or the ordinary law to which the testator was subject, have succeeded to the estate, the will was, by virtue of s. 13(1) inoperative. We have already observed that under the will there was an intention to grant the residue of the estate to the adopted son, but till adoption the devise of the estate was in abeyance. The adopted son was still a person who would have, under the provisions of the Act, succeeded to the estate or to an interest therein. It may be observed that the legacies by Raja Surpal Singh in favour of illegitimate children and strangers to the family could not apparently come out of the taluqdari estate, but was are in the absence of necessary parties not called upon to express any final opinion on that question. A son adopted by the widow with the consent in writing of the taluqdar would be entitled by cl. (8) of s. 22 to take the estate upon the termination of the estate of the widow under cl. (7). But the son adopted by the widow in pursuance of the authority from the taluqdar would, under the provisions of the Act, be deemed to be a person who would have succeeded to the estate or interest therein within the meaning of s. 13(1). On that part of the case there is abundant authority.

In Maharani Indar Kunwar and Udit Narayan v. Maharani Jaipal Kunwar(1) it was held by the Judicial Committee that a junior widow who under S. 22(9), on the death of the senior widow and in default of a son adopted by her with such consent, is entitled to take the estate of a taluqdar, holds an interest in the estate of a taluqdar within -the meaning of S. 13 (1) even though her right to succeed is subject to a life estate in the taluqdari property expectant on the determination of the life estate of the senior widow therein, and is subject to be defeated by an adoption made by the senior widow. In Bhaiya Rabidat Singh v. Maharani Indar Kunwar and others(2), which is an offshoot of the, ease

(2) L.R. 16 I.A. 53.

(1) L. R. 15 1. A. 127.

decided in Maharani Indar Kunwar's case(1), it was held by the Judicial Committee that the word 'intestate' in sub-s. (1) of S. 13 means intestate as to estate. An adopted son is a person who would have succeeded to an intestate within the meaning of that section, although the authority to adopt him was conferred by the will of the taluqdar. Similarly in Abdul Latif v. Abadi Begam(2) it was held by the Judicial Committee that the junior widow of a taluqdar in List 2 was a person who would have succeeded to an interest in the estate upon intestacy, and accordingly S. 13 did not preclude the taluqdar from making a bequest to her by a will executed within three months of his death. Therefore the fact that Raja Surpal Singh died within three months of the date his will was executed and attested, does not operate under s. 13 of the Act as a bar to the acquisition of an interest by Raja Bishwanath under the will of Raja Surpal Singh.

But under the will the devise of the residue in favour of Raja Bishwanath could become effective only on his adoption by Rani Jagannath Kuar. Between the date of his death and the adoption of a son there was intestacy in respect of the taluqdari estate which was not lawfully disposed of. As under the Hindu Law, so under the provisions of the Oudh Estates Act 1 of 1869, the estate does not remain in abeyance. On the death of the testator therefore the widow took the estate by virtue of S. 22(7), and that estate must enure for the lifetime of The widow, for the Act does not contemplate that the statutory estate which the widow takes under s.22(7) on intestacy may be restricted. By express provision of the Act, the widow is not an heir : when she takes the estate of a taluqdar on

intestacy, she does not inherit the estate as an heir, but she takes it by virtue of the statutory right conferred upon her. The source of her right is in S. 22(7) and its extent and incidents are delimited thereby. She holds the estate as an owner, and she is entitled to enjoy it during her lifetime. She cannot alienate or encumber the estate or any part thereof beyond her lifetime. But so long as she is alive, no one has any vested interest in the estate. The person or heir who would take the estate will be determined on the termination of her natural span of life. If she adopts a son, pursuant to authority given in writing by her husband, and the son survives her, the estate will devolve upon the adopted son. If she is not authorised to adopt, or being authorised does not adopt, or even if she has lawfully adopted and the adopted son dies leaving no male lineal descendants, the estate will devolve upon the next junior widow, if any, for her lifetime, and on the death of such other widow to a son (1) L. R. 15 I.A. 127.

(2) L.R. 61 I.A. 322

adopted by her with the consent in writing of her husband and in default of an adopted son to the next surviving widow, according to their seniorities as widows for their respective lives, and "on their respective deaths to the sons so adopted by them respectively, and to the male lineal descendants of such sons respectively."

The Oudh Estates Act, as observed by the Judicial Committee, is a Special Act, which is self-contained and complete in regard to the matters contained therein : Pandit Chandra Kishore Tewari and others v. Deputy Commissioner of Lucknow in Charge Court of Wards Sissendi Estate and another(1). The rules relating to Inheritance and succession contained therein follow no definite pattern consistent with any system of law-Hindu, Muhamadan or English. As remarked by the Judicial Commissioner of Oudh in Babu Abdul Karim Khan v. Babu Hari Singh (2) s. 22 of Act 1 of 1869 "follows neither the Hindu nor the Muhamadan nor the English Law, but borrowing something from each of them, lays down a peculiar line of succession applicable to the estate of those taluqdars and grantees dying intestate whose names are to be found in the second, third or fifth of the lists prepared under s. 8 of the Act". The taluqdars of Oudh comprise among them. Hindus, Mussalmans, Christians and Sikhs, and s. 22 was enacted to lay down a complete scheme of succession applicable to all taluqdars irrespective of the religious faith of the taluqdar. Under S. 22(7) in default of heirs mentioned in cls. (1) to (6) the property of a taluqdar devolves upon the widow first married to such taluqdar for her lifetime only. By the use of 'the expression "for her lifetime only" it is clearly intended that though the widow has full enjoyment during her lifetime, she must leave the estate unimpaired for the successor : Bisheshar Baksh Singh v. Jang Bahadur Singh(3) . The position assigned to the widow of a taluqdar-be he a Hindu, Muhamadan, Christian or Sikh-in the scheme of succession is peculiar. In default of heirs mentioned in cls. (1) to (6) the widow takes the estate, but for her lifetime only, whatever may be the personal law governing her husband dying intestate. In determining the nature of her estate and the powers she may exercise, analogies drawn from the personal law of the taluqdar would be misleading. There is no provision in the Act which forfeits the interest which the widow of a taluqdar takes on the death of her husband in default of heirs mentioned in cls. (1) to (6) of S. 22. Her interest in the estate is not liable to be defeated once it is vested in her. She holds the estate for her natural lifetime : the son adopted by her in pursuance of the

(1) L. R.76 I.A (2) 1 O.D. 264.

(3) A.I.R. (1930) Oudh 225, 230.

authority of her husband, does not divest her of the estate. The adopted son inherits the estate on her death under cl. (8) of s. 22 and not before.The adopted son is undoubtedly an 'heir' but he has during the lifetime of the widow no interest in the estate. He merely takes precedence over the junior widow who takes the estate by virtue of cl. (9). The widow's interest in the property entires only for her lifetime, but she is the owner of the estate and the estate is fully vested in her, and the adopted son has during the lifetime of the widow no interest in the estate which he may transfer.

The learned Judges of the High Court were of the view that adoption of a son by a widow of a taluqdar relates back to the date of the adoptive father's death, and in arriving at that conclusion the learned Judges made a somewhat intensive research into the different systems of law which permit affiliation of a -,on. "Adoption" in its dictionary meaning is the act by which relation of paternity and affiliation are recognised as legally existing between persons not so related by nature. The effect of adoption was to cast the succession on the adopted, in case the adoptive father died intestate, and created a relation of paternity and affi- liation not before recognized as legally existing, and the change of name was more an incident than the object of adoption. Adoption was not known to the English Law until the Adoption of Children Act, 1926. Under that Act the High Court and certain other courts were (riven power to make adoption orders in respect of infants upon the application of a single person or married couple,. subject to certain restrictions as to age and sex of the applicant, and to the consent of the infant's parent or guardian. The French Law admitted of adoption, and the adopted child succeeded to the inheritance of the adopter : Code Nepoleon, art. 350. Adoption was also known to the Spanish Law and the person adopted succeeded as heir to the person who adopted him : Title 16, 4th Partidas. It was recognised in Greece, but in the interests of the next of kin whose rights were affected : adoption could be made at a fixed time the festival of Thargelia. In Rome the system was in vogue long before the time of Justinian, but the ceremonies to accomplish the result were cumbered with much formality. Justinian reduced the statement to a code which simplified the proceeding. But none of these systems of law gave 'retrospective operation to an adoption made by a widow to the date of her husband's death. Adoptions under the diverse systems brought into being affiliation and a fictional paternity from the date of adoption, but they did not envisage the refinements which the Hindu law of adoption had reached. Under the Shastric Hindu Law adoption had the effect of transferring the adopted boy from his natural family into the adoptive family : it severed all his ties with the family in which he was born, and invested him with the same rights and privileges, in the family of the adopter as the legitimate son, subject to certain specific exceptions. Adoption of a son by a widow related back to the date on which the adoptive father died and the adopted son by a fiction of law was to be deemed to have been in existence, as the son of the adoptive father at the time of the latter's death.

But the adoption contemplated to be made by a taluqdar or by his widow with his consent under the Oudh Estates Act 1 of 1869 has not the incidents and consequences of adoption under the Hindu Law. The taluqdars belonged to the Hindu, Muhamadan, Christian and Sikh communities. The personal laws governing the Hindus and Sikhs recognise adoptions and the creation of rights in the adopted sons. Amongst the Muhamadans and Christians no adoptions are recognised by their personal laws. Under the Oudh Estates Act it was open to a taluqdar, whatever his persuasion, to authorise by writing his wife to adopt a son. To such an adoption the personal law had no application. In matters not expressly covered by the provisions of the Oudh Estates Act, the personal law of the taluqdar may be applicable, but the right of adoption not being uniformly exercisable by the taluqdars according to their personal laws, the peculiar incidents of Hindu adoptions have no application. Under the Hindu Law, adoption has primarily to be viewed in the context of spiritual

rather than temporal considerations, and the devolution of property is only of secondary importance. The spiritual considerations are out -of tune in considering the status of a son adopted by a Muslim or by a Christian. Under the Hindu Law it is not disputed that the adoption made by a Hindu widow relates back to the date of the death of the adoptive father, but in the absence of any express provision in the Act, it would be impossible to attribute to the adoption made by a widow of a taluqdar pursuant to the authority given by her husband the incidents of an adoption under the Hindu Law. It is a necessary concommitant of the doctrine of relation back, that the adopted son takes the estate of his father as if he were in existence at the date of his death. Any attempt to give to the adopted son an interest or right which is deemed to commence from the date of the adoptive father's death so as to divest the estate which is already vested in the widow is not only inconsistent with the personal law of taluqdar who is not a Hindu or a Sikh, but come-, in conflict with express provisions of the Act. The Act provides that,a son adopted by a widow in pursuance of the instructions given by her husband takes the property on her death and not before. If the rule suggested were applicable, it would operate to deprive ',lie widow of her right to the property vested in her on the death of her husband and to which she is declared by law to be entitled for her lifetime. That would be plainly contrary to the terms of s. 22(7). We are unable, therefore, to agree with the High Court that the doctrine of relation back is applicable to an adoption made by the widow of a taluqdar governed by the Oudh Estates Act, 1869.

Therefore, in our view, during the lifetime of Rani Jagannath Kuar, Raja Bishwanath had no interest and his interest in the taluqdari estate arose on the death of Rani Jagannath Kuar and' not before. We may in this connection refer to the judgment of the Judicial Committee in Harnath Kuar v. Indar Bahadur Singh(1). In that case a Hindu while he was next in the order of succession after the death of the widow of a taluqdar of an Oudh Estate in List II of Act 1 of 1869 obtained a decree declaring that a will, which the widows of the last holder alleged authorised them to adopt, was invalid, and that he was entitled to the estate upon the death of the last surviving widow. The claimant succeeded to the estate on the death of the last widow of the taluqdar. In order to finance litigation which he had undertaken, the claimant had, in consideration of a loan for Rs. 25,000/-, purported to sell half the estate to a stranger, and he had agreed to put the vendee in possession of the property. After the death of the last surviving widow of a taluqdar the representative of the vendee sued the vendor for possession of the estate sold to the vendee. It was held that there was no effective transfer of the villages, since the vendor had only an expectancy, and the decree did not create any greater interest in him. It was, it is true, not a case of an adopted son, but of a reversioner. But the case does establish that so long as the widow was alive,, the estate was fully vested in her, and the heir who would ultimately take the estate under the rule of succession on intestacy had during the lifetime of the widow no interest in the estate, and he could not during the lifetime of the widow transfer the estate or any part thereof to another person.

Raja Bishwanath was, though, not precluded by virtue of S. 13 from setting up the will, was still not entitled to a present vested interest during the lifetime of Rani Jagannath Kuar. He was accordingly, during the lifetime of Rani Jagannath Kuar, not competent to settle the estate for the benefit of his creditors.

Counsel for the Senior Rajkumar contended that in any event the claim of Rani Jagannath Kuar was extinguished before the deed of trust was executed, and Raja Bishwanath had acquired title thereto by adverse possession. Counsel contended that the (1) L.R. 50 I.A. 69. estate was, at all material times since 1901, held by the Court of Wards for and on behalf of the adopted son, and not on behalf of Rani Jagannath Kuar. Reliance in support of the plea of adverse possession was placed

upon the sanction given by the Board of Revenue by letter dated February 22, 1901, to the adoption by Rani Jagannath Kuar; sanction by the Government of India by letter dated April 3, 1901 to the assumption of superintendence of the Tiloi Estate on behalf of the adopted son and clarifying that the Rani had no interest left in the estate thereof except that of maintenance holder; letter of the Board of Revenue to the Commissioner directing that the necessary notification be published in the Government Gazette, and that steps be taken to have the name of Raja Bishwanath mutated in the revenue record; letter dated June 15, 1901 by the Deputy Commissioner to the Commissioner that the intention of the will was to make the adopted son, and not the Rani, the successor of Raja Surpal Singh; the letter of the Board of Revenue that the Rani should be required to execute a deed acknowledging that she had adopted the child in pursuance of the will of her late husband; correspondence between Rani Jagannath Kuar and the Deputy Commissioner regarding the adequacy of maintenance awarded to her and the offer by the Board of Revenue to the Rani to assign sixteen villages formerly held by Rani Harbans Kuar and acceptance thereof; letter written by the Deputy Commissioner dated January 10, 1920 in anticipation of the approaching date of majority of Raja Bishwanath recommending that the Board be moved to release the estate with effect from March 29, 1920; letter dated April 3, 1920, informing the Commissioner that the Tiloi Estate had been released by the Court of Wards with effect from March 30, 1920; and upon the fact that thereafter Raja Bishwanath remained in possession of the estate and exercised all rights of proprietorship in respect of it until August 29, 1932, when he executed the deed of trust. It is true that between the years 1901 when Raja Bishwanath was adopted and August 29, 1932, the date of the deed of trust, the estate was held either by him or on his behalf. But no contention was raised in the Trial Court that the interest which Rani Jagannath Kuar held in the estate was extinguished by adverse possession and during the lifetime of Rani Jagannath Kuar, Raja Bishwanath had acquired title to the estate. The High Court declined to allow the plea that the title of the Rani was extinguished by adverse possession to be raised before them on the ground that it Was not raised in the pleadings, and was not urged at any stage of the trial, and since the question of adverse possession was a mixed question of law and fact they declined to allow it to be agitated for the first time before them. In our view, the High Court was right in declining to allow that question to be raised. An issue of adverse possession raises mixed questions of law and fact : it may be decided effectively after the relevant facts are proved. Again, even though Rani Jagannath Kuar was given a mere maintenance, the minor Raja was living with her and it does not appear that she was excluded from the estate or any part thereof. Mere erroneous admission of title of another person without effective deprivation of possession would not result in extinction of title by adverse possession. In the alternative, counsel for the Senior Rajkumar contended that those claiming under the will of Raja Bishwanath were estopped by the equitable doctrine embodied in s. 43 of the Transfer of Property Act. It was urged that even if Raja Bishwanath had no title at the date when he purported to transfer the property to the trustees for purposes mentioned therein, when he acquired title on the death of Rani Jagannath Kuar, the Raja and those claimed under him were estopped from claiming that at the date of the transfer, lie had no temple. Section 43 of the Transfer oil Property Act which incorporates the doctrine of feeding the grant by estoppel reads

"Where a person fraudulently or erroneously represents that he is authorised to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transfer or may acquire in such property at any time during which the contract of transfer subsists.

Granting that Raja Bishwanath erroneously represented that he was authorised to transfer the estate sought to be settled by the deed of trust, the doctrine incorporated in s. 43 of the Transfer of

Property Act may apply if the transfer is for consideration and not otherwise. In the present case, for effecting a settlement there was no consideration on the part of the trustees under the deed of settlement. Counsel for the Senior Rajkumar contended that by the deed of trust the trustees had undertaken to carry out various' duties, and by so undertaking, consideration for the transfer moved from them. We are unable to hold that by agreeing to carry out the obligations imposed upon them, the transfer may be deemed to be one for consideration. Under the deed of trust, diverse powers 'ire conferred upon the trustees : to make rules and amend them from time to time for continuing and running the trust administration, to appoint subcommittees for some special purpose or management, to appoint from amongst them a Chairman, Secretary, 'Cashier and Legal Adviser. to pay off the debts due by the settler and to exercise all the proprietory rights relating to the mortgage, sale, gift and perpetual lease etc. in respect of the said property. By undertaking these duties the trustees rendered no consideration and the transfer cannot be said to be one for consideration. It was also said by counsel for the Senior Rajkumar that in any event, two of the trustees were creditors of the settlor, and since they had undertaken to administer the trust, the transfer must be regarded as one for consideration. But by the deed of settlement the debts due to the creditors were not satisfied. Two of the trustees were, it is true, creditors of the settlor: those two trustees held a dual capacity-they were to administer the trust and also to receive payment in execution of the deed of trust. But on that account it cannot be said that the amounts due to them from the settlor were satisfied. We agree with the High Court that the deed of trust was not executed for consideration and, therefore, the principle of s. 43 of the Transfer of Property Act had no application. The appeal must therefore be allowed and the decree passed by the High Court modified. It will be declared that the deed of trust executed by Raja Bishwanath on August 29, 1932, did not operate to settle any property being part of the taluqdari estate and governed by the Oudh Estate, Act 1 of 1869, for the purposes specified therein. The direction in the decree of the High Court that. In respect of the properties mentioned in the trust deed"--"Ext. E-7 dated August 29, 1932, made by Raja Bishwanath Saran Singh, the receiver should hand over possession of the said properties to Rani Fanindra Rajya Lakshmi Devi, who is the life trustee under the said deed of trust and entitled to manage the same herself or along with any other trustees that might be ap- pointed in respect of the said trust", shall be deleted, and be substituted by the direction that the receiver shall hand over the properties mentioned in Ext. E-7 to Rajkumar Mohan Singh.

In the circumstances of the case, we are of the view that there shall be no order as to costs of this appeal in this Court and in the High Court, except as to the costs of the deity Shree Jagannath Bahari Ji. The order of the High Court as to costs of the deity shall be maintained and the costs of the deity in this Court will be paid out of the Estate.

G.C. Appeal allowed and decree modified. 22