

CALCUTTA HIGH COURT

Hajon Manick

Vs

Bur Singh

(Richard Garth, C.J. Beverley, J.)

30.07.1884

JUDGMENT

Richard Garth, C.J.

1. This suit was brought by the raja or Chief of the State of cherrapoonjee in the Khasia Hills to establish his title to, and to recover possession from the defendant of two villages, viz., mauzas Futtehpore and Augarpur, situated in the district of Sylhet, upon the following allegations: It is said that these two villages formerly belonged to the Raja or Chief of Jyntia (whose territories in the plains were confiscated by the British Government in 1835); that in or about the year 1810 they were ceded by the then Raja of Jyntia to the Chief of Cherrapoonjee in consideration of certain assistance rendered to him by the latter Chief in a war between the Raja of Jyntia and a third Chief, the Raja of Khyram; that from that date the villages in question formed part of the State of Cherrapoonjee and were in the possession of successive Chiefs of that State down to the death of Raja Ram Sing on the 12th Bysak 1282; that during the reign of Ram Sing the defendant was appointed Jubraj or heir-apparent, and in that capacity had the management of these villages; and that on the plaintiff's accession he, the defendant, being disappointed at not being himself elected raja refused to make over these villages to the Raj and retained them in his own possession.

2. The defence is, that the villages in question were never the property of the Cherrapoonjee State as such, but were granted to the Chief of that State as his own private property; and that in Bhadro 1249, (corresponding with September 1842) the then Chief Sobha Sing by a hibanamah, or deed of gift, transferred them to the defendant; and that from that time the defendant has been in possession.

3. Eleven issues were framed in the lower Court, but the essential points in the case appear to be three only:

(1) Whether the villages in suit were the public property of the State of Cherrapoonjee, or the

private property of the Chief to whom they were given?

(2) Whether, supposing them to be the property of the State, they could be alienated by grant from the Chief? and (3) Whether, assuming them to be the property of the State, the defendant has been in adverse possession for more than twelve years before the institution of this suit, and the plaintiff's suit is thus barred by limitation?

4. The lower Court, in a very lengthy and elaborate judgment, has found for the defendant both on the merits and on the plea of limitation. The Subordinate Judge comes to the conclusion that the villages in suit were the private property of the Chief, and that they were granted to the defendant by Sobha Sing, and have been in his exclusive possession since the date of that grant.

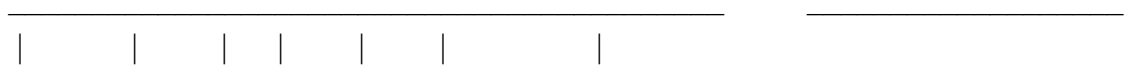
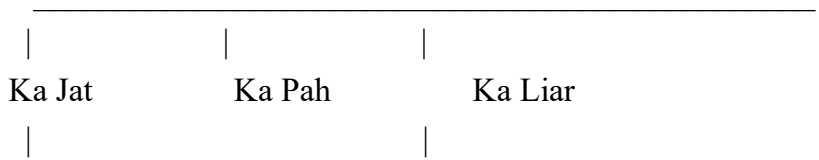
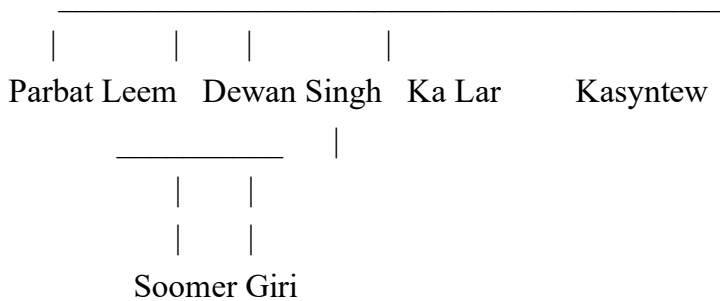
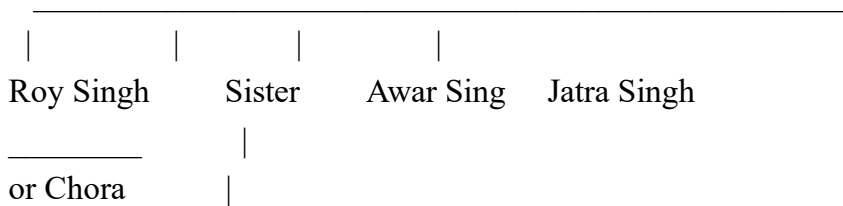
5. The plaintiff is accordingly the appellant in this Court.

6. Before entering on the particular questions involved in the case, it may be useful to consider a few facts relating to the history and circumstances of the Rajas or Chiefs of Cherrapoonjee.

7. Cherrapoonjee is one of several small semi-independent States situated in the Khasia and Jyntia Hills, which separate the valley of the Brahmaputra from the Bengal districts of Sylhet and Cachar. The State is governed by a Raja or Chief (called in the Khasia language the Leem), acting in conjunction with the heirs (or Jubrajes), the ministers (or muntries), and the headmen (or doloys). The succession to the Raj or Chiefship is regulated partly by inheritance and partly by a system of election. The ordinary rule of inheritance is based on descent through the female line; or, in other words, succession to property is traced through females, and not through males. If a male dies possessed of property which he has acquired, it will go, if he is unmarried, to his mother and her issue; if married to his wife and her issue; and if there is no issue to her, mother and her mother's issue. An exception is made in the succession to the Raj and the Chief offices of State, the reason for the exception probably being, that such offices must be held by a male. But even in these cases the succession is not from father to son, but through the mother; that is to say, a deceased Raja is succeeded by his uterine brother, or the son of his maternal aunt or his sister's son. All persons standing in such relationship to the reigning Chief are possible heirs and are styled Jubrajes, and on the death of a Chief, his successor is elected from among the Jubrajes by the twelve doloys or headmen of the State. Thus the succession to the Raj, although confined to one family, and ordinarily to an established rule of inheritance in that family, is nevertheless subject to a power of veto vested in the doloys, who can apparently pass over the nearest heir in favour of one more remote. It has been contended for the defendant in this case that this practice of election has been introduced only recently by the British Government, but from a consideration of the agreements with the Chiefs of the Khasia Hills, published in Aitchison's Treaties (vol. 1, pp. 88, 95, 99, &c.) and other evidence, we think that all that the British

Government has done has been to attempt to give validity and permanence to customs of old standing, and we find good grounds for supposing that the practice of electing the Chief from among the Jubrajes is a custom of old standing.

8. The genealogical table annexed has been drawn up from the oral evidence taken in the case. This table will be found useful not only as indicating generally the manner in which the succession to the Raj has been regulated, but as showing particularly the relationship which exists between the parties to this suit. In respect of one or two of the details shown in the table, the evidence is somewhat contradictory, but on the whole the table is sufficiently accurate for all practical purposes. It appears that Roy Sing, who was the reigning Chief at the time these mauzas were acquired from the Raja of Jyntia, was succeeded by his sister's son, Dewan Sing. Dewan Sing died before 1830, and was succeeded by his sister's daughter's son, Sobha Sing. Sobha Sing died in 1856/1263, and was succeeded by his sister's son Ram Sing. On Ram Sing's death in 1875/1282, the nearest heir would appear to have been the defendant Bur Sing, who is Ram Sing's mother's sister's son; but Bur Sing had embraced Christianity; and the doloys, therefore, vetoed his succession, and elected the plaintiff, Hajon Manick, who, it will be seen, belonged to a more distant branch of the family, his maternal grand-mother being a sister of Ram Sing's maternal grand-mother. We are inclined to attach Genealogical Table of The Raj Family of Cherrapoonjee.



Sobha Singh Ka Siar 2 Ka Shong 3 Ka Bon Ka Ahjir U Dhon Manickt Ka Tadbon

_____ | |
1263 | |
Ratan Singh _____ Bur Singh _____
| | | _____ | |
| | Def. | |
| Ka Kan- Kaget Koeri? | U Hajon Manick Bur Manick
Ram Sing grimai | _____
_____ | Chunder Sing Giri Plaintiff.
1282 |

| |
| |
Sing Manick Jobul Koer (married plaintiff's sister)
|
Jibun Roy U=Male (the masculine definite article)
Ka=Female.

considerable importance to this circumstance, and we think that it has not been sufficiently taken into account by the lower Court. The Subordinate Judge seems to have thought that the plaintiff and the defendant stood in the same degree of relationship to the late Chief Ram Singh, but this was not so. The plaintiff, it will be seen, belongs to a branch of the family quite distinct from that to which Sobha Sing, Ram Sing, the defendant Bur Sing and his witness Sing Manik belonged. And this fact will be found to be of great importance, when we come to consider how far the defendant held and managed these mauzas in his own right, or in conjunction with, and on account of, the reigning Chiefs Sobha Sing and Ram Sing. It is in evidence, that Sobha Sing, Ram Sing, the defendant and Sing Manik all lived together, whereas the plaintiff belonging as he did to a different branch of the family lived elsewhere. It is true that during the lifetime of Sobha Sing, Dhon Manick was an heir and Jubraj, and used to take a part in the management of affairs, but he seems to have died before Sobha Sing, and after his death the Jubrajes were Ram Sing and the defendant. And it further appears from the evidence of one of the defendant's own witnesses (p. 258) that Ram Sing lived generally in the house of his father's siter at some distance and only came occasionally to Cherra, the business of the State being chiefly conducted by the defendant. And the defendant seems to have retained this position during Ram Sing's reign being occasionally assisted by Ram Sing's nephew, Sing Manick. This at once explains the reason, why the defendant should be in a position to adduce evidence of his possession of the mauzas in dispute before the plaintiff's decession; and why the plaintiff's evidence of the possession of his

predecessors in the Raj should be far less satisfactory. The persons who collected the rents were all practically in the employ or acting under orders of the defendant.

9. Before proceeding, however, to deal with the case on its merits, it will be convenient to dispose of two preliminary objections that were raised at the hearing on the part of the respondent.

10. The first objection is, that the present suit will not lie under the provisions of Section 431 of the Code of Civil Procedure. That section enacts that " a foreign State may sue in the Courts of British India, provided that (a) it has been recognized by Her Majesty or the Governor-General in Council, and (b) the object of the suit is to enforce the private rights of the head or of the subjects of the foreign State." It is contended that when the object of the suit is to recover immoveable property for the State, such suit cannot be said to be brought for the enforcement of a private right. But this contention appears to us to be based on a misapprehension of the section in question. The "private rights" there spoken of do not mean individual rights as opposed to those of the body politic or State; but those private rights of the State which must be enforced in a Court of justice, as distinguished from its political or territorial rights, which must, from their very nature, be made the subject of arrangement between one State and another. They are rights which may be enforced by a foreign State against private individuals, as distinguished from rights which one State in its political capacity may have as against another State in its political capacity.

11. The rule laid down in Section 431 is only an enactment of that which prevails in England; and as the plaintiff here represents the Government of an independent State, recognised as such by Her Majesty's Government, and is suing to recover from a private individual in this country those mauzas, which (although situate in British territory) are claimed to belong to the plaintiff as the head of the State, we consider that this case comes clearly within the rule see *Emperor of Austria v. Day*¹ *United States of America v. Wagner*²

12. The second objection taken was to the effect that the property in suit being situated in British India, the rule of succession applicable to it must be that laid down in the Indian Succession Act (Section 5), and not a rule of a foreign State which is repugnant to the laws of British India.

13. This point was argued by Baboo Mohini Mohun Roy for the defendant with great ability, and at some length, and it is admitted that there would be considerable force in it, if the mauzas in question were found to be the property of a private individual. In that case the succession to the property would no doubt be governed by the *lex loci*. If, for example, these two villages were found to be the private property of the defendant, and he should die intestate, the villages would probably pass to his heirs, as defined by the Indian Succession Act, and not to those who would

be his heirs under the rule of succession obtaining in the Khasia States. But if, as the plaintiff contends, the villages in question are the property of the Cherrapoonjee State, we think that the objection ought not to prevail. As Mr. Evans has pointed out, the State must be regarded as a quasi corporation, which continues to exist as a State so long as it is recognized as such by Her Majesty, whatever the rule of succession to it may be, and whatever may be its form of government. See *The United States of America v. Wagner*.

14. So far as we are aware, there is nothing to prevent a foreign or feudatory State from holding land in British India. The Baja of Tipperah holds land in British India, as well as in Independent Tipperah; and it has been decided that the property which he holds in British India follows the succession to the Tipperah Baj, and is not governed by the British law of succession *Neelkisto Deb Burmono v. Beerchunder Thakoor*³ *Beerchunder Manikkya v. Rajcoomar Nobodeepchunder Deb Burmono*⁴ *Maharajah Beerchunder Manikkya v. Ishanchunder Thakur*⁵ We think this is the true view of the matter, and we are confirmed in this view by a consideration of the document at p. 122 of the printed book. That is a receipt or release executed by Raja Ram Sing in favour of the British Government acknowledging that he had received two villages, Gosainpur and Burnugar, situated in British territory, in exchange for certain lands at Cherrapoonjee, which he had ceded to the British Government, and the document goes on to say:-- "I and my heirs and successors to the Raj will own and possess the lands of those mauzas as zemindars under the British Government"; that is to say, the mauzas are declared to appertain to the Raj as represented by the Baja for the time being. The question of intestate succession, therefore, does not arise, and this objection falls to the ground.

15. We proceed now to consider the case on its merits, and we will first deal with the title set up by the defendant.

16. His case is that the mauzas in suit were a gift to Roy Sing personally, for services which he had personally rendered, and that they descended to Sobha Singh as his private property. He then says, that in or about the year 1840 the British Government assessed them with revenue, as part and parcel of the Jyntia State, which had been confiscated. Upon that, Sobha Singh, he says, wanted to appeal, but he was unable to do so for want of funds. He accordingly called all his nephews together and told them: "I am unable to defray the expenses of the case, you had better prosecute the litigation and pay the expenses" (pp. 176, 239). The defendant, however, according to his own account, was the only one of them willing to undertake the business, and, accordingly, he says, with the consent of the others, the deed of gift printed at page 261 was executed in his favour. This deed runs as follows: To the well-behaved Bur Sing Raja, inhabitant of Cherrapoonjee: I, Sobha Sing Raja, of the above place, do execute this hibanamah to the following effect: The Deputy Collector of Sylhet having assessed rent, as included in the territory

of the Jyntia Raj, upon my two bustis of Augarjore and Futtehpoore, appertaining to my Raj of Cherrapoonjee, I have preferred an appeal to the Revenue Commissioner of Dacca in dissatisfaction of the said order. Whereas you are my sister's son and an heir presumptive to my throne, and as I cannot conduct the said litigation, and defray the expenses thereof, I, therefore, of my own accord, make a gift to you of all the lands of the said two bustis Augarjore and Futtehpoore; you will defray the expenses of the said litigation from your own pocket, and, after the case is decided, take possession of the said two bustis, and continue to enjoy the same with, power to alienate by sale or gift. To this, I relinquish my own right and bestow it on you; you and your heirs will be entitled to alienate it by sale or gift and to enjoy the same. To this purport, I execute this hibanamah, dated Bhadro 1249 B.S.

17. Having obtained this deed, the defendant proceeded to borrow money from Colonel Lister, the Political Agent, and his sherishtadar Manick Chunder Hoom, and went to Dacca to get the mauzas exempted from payment of revenue. Notwithstanding the statement, that none of the other nephews would undertake the business, it is admitted (pp. 177, 242, 258) that Ram Sing on this occasion accompanied the defendant, and it is also a significant fact that the proceedings were conducted, not in the defendant's name, but in the name of Sobha Sing. The appeal was successful, the mauzas were declared to be revenue-free, and a sum of about Rs. 4,000 was refunded as mesne profits. From this money Colonel Lister and Manick Chunder Hoom were repaid, and a certain amount was admittedly paid to Sobha Sing. The defendant says that he paid him the profits accruing prior to the date of the gift. But Manick Chunder Hoom gives a different account of what took place. He says: "Bur Sing Raja went to Sobha Sing Raja with that money. The next day I also went there. Sobha Sing Raja had contracted with me in writing that he would pay me a 6-anna share of that money. Sobha Sing and Bur Sing were both present, and they paid me my 6 annas share. Sobha Sing paid some money to Charkha Dolay as reward. The remaining 10 annas share he took to Cherrapoonjee. Out of that the Colonel Saheb's loan was repaid" (p. 258). Charkha Dolay also says (p. 242) that it was Sobha Sing who repaid Colonel Lister's loan. From that time to the present the defendant says that he has been in possession of these mauzas.

18. In support of these allegations the defendant has filed, among other documents,

(a)--a purwanah, dated 5th May 1851, addressed by the Political Agent to Sobha Sing, which purports to show that the Agent at that time recognized these villages as the property of the defendant (p. 268);

(b)-- an account and receipt of Manick Chunder Hoom for moneys said to have been paid to him by the defendant on account of the appeal at Dacca (pp. 270, 271);

(c)--some reports which are filed to show that even after the cession of these mauzas to Roy

Sing, they continued to be part and parcel of the Jyntia State, and were never incorporated with the Cherra Raj (pp. 272 to 275); and

(d)--a large number of zemindari papers and accounts, showing that for some years past the rents have been paid to the defendant.

19. The execution of the deed of gift by Sobha Sing has not been seriously disputed in this Court, nor is it denied that the defendant has been in ostensible possession and receipt of the rents. But it is contended that the gift was not intended to operate as an alienation of the property from the State; that the defendant was at the time a Jubraj with every chance of succeeding to the Raj. And it has been argued by Mr. Evans, with considerable force, that this deed was really only executed in order to enable the defendant to raise money for the purpose of prosecuting the appeal and of appearing in person before the Commissioner as the appellant, and not with the intention of creating in him any rights antagonistic to those of the State.

20. As regards his possession, it is contended that it was permissive and not adverse to the reigning Chief, and that the defendant as Jubraj and heir was allowed to manage the properties, but that the real beneficiary owner was the State.

21. We now proceed to examine the plaintiff's case, which is to the effect (1)--that the mauzas in suit are the property of the State;

(2)--that, as such, they could not be alienated by any Chief for the time being; and (3)--that the defendant's possession was only the possession of a Jubraj on behalf of the State, and not adverse thereto.

(1) On the first point it seems to us that these lands having been ceded by the Raja of Jyntia for services rendered to him in time of war by the Cherra-poonjee Raja and his followers, the probability is that they were ceded to the Cherra State, and were not a gift to the Chief personally. It appears, moreover, that these mauzas were held by Dewan Sing and Sobha Sing as 'successive Rajas, whereas there is evidence to show that, had they been Roy Sing's private property they would have descended to other heirs. It is admitted by the witnesses on both sides that there is one rule of succession to the private property of a Chief, and another to the property of the State, and, clearly this must be so, inasmuch as the State property must follow the rule of succession to the Raj or State itself, and that rule, as we have seen above, is first subject to the condition that the Chief must be a male; and secondly, to the principle of election. As regards the private property of a Raja, however, the rule of succession is stated to be as follows:--The property would ordinarily go to a sister and her daughters; in default of daughters, to a son for life, and after him to the Raja. If the deceased Raja left no sister or sister's issue, the property would

descend to his successor in the Raj (pp. 82, 86, 91, 93, 101, 109, 113). Now, there is evidence on the record (pp. 97, 101, 247) that Roy Sing left female heirs, who would have succeeded to these mauzas had they been private property. But be this as it may, there can be no doubt that even if they descended properly to Dewan Sing as private property, Dewan Sing left sister's daughters surviving him (pp. 82, 86, 97, 101), Ka Jat and Ka Pah would, under ordinary circumstances, have been Dewan Sing's private heirs. This is admitted by the defendant (pp. 175,176) and Sing Manik (p. 248), but they try to get over the difficulty by pretending that the sisters had separated from Dewan Sing, and so were incapacitated from succeeding. We are unable to consider this explanation either sufficient or satisfactory.

22. In the next place there is evidence to show that these mauzas were dealt with as an appanage to the State. The official documents printed at pp. 120, 272, 275, of the paper-book, show conclusively that Sobha Sing claimed these villages as part and parcel of his territorial dominions, and there is oral evidence to show that he and his predecessors had exercised sovereign jurisdiction therein down to the year 1838(pp. 13, 23, 35, etc.). In the deed of gift itself we have the villages described by Sobha Sing as "appertaining to my Raj of Cherrapoonjee,"

23. On the whole evidence, therefore, we have no hesitation in coming to the conclusion that the two villages in suit were the property of the Cherra Raj, and not the private property of Sobha Sing.

24. Then the question arises, was Sobha Sing capable of alienating these villages by gift or otherwise? And on this point we must also find for the plaintiff. Putting aside the mass of oral evidence upon the point, it seems clear that if the mauzas were ceded to the State, as many of the witnesses say they were, and as we find to be the fact (pp. 81, 84, 88, 93, 96, 103), and if the Chief is, as we have already decided, an elected Chief (though always elected from the same family), he would have no authority to alienate these lands, and confer them as private property on another member of the family. An attempt has been made to prove that other Rajgi lands have been alienated by various Chiefs; but we think the attempt has failed. The grants to the British Government were either made in exchange for other lands, or for other consideration. The alleged grant of Chandpur by Dewan Sing to his son Sowargiri is not a case in point, for the defendant admits that this property (though acquired by Dewan Sing himself) descended to Sobha Sing and Ram Sing and is now in the plaintiff's possession (pp. 178, 179, 250). The Bimanna lands said to have been given by Ram Sing to his daughter were lands purchased by himself (pp. 238, 243). The Chakla lands given by Ram Sing to his son were similarly acquired, and improved out of his private means (pp. 238. 245), and it also appears that rent is paid to the State in respect of those lands (p. 250). On the whole, we consider the defendant has failed to prove any other instance in which Rajgi property has been alienated by the reigning Chief; and

looking at the constitution of the State as described above, and the limited power possessed by the Chief, we concur with the lower Court in finding that he had no authority to alienate the property of the State.

25. Then, lastly, we come to the question of limitation. And as to this we must hold that the defendant's possession has not been a possession in his own right adverse to the State. In the first place we think that the hibanamah was not intended to alienate these properties from the State. We have seen that at that time the defendant occupied the position of Jubraj and presumptive heir to the Raj. We have seen that Ram Sing accompanied him to Dacca to procure the release of these properties from the assessment that had been imposed upon them by the British Government, and we have also seen that the defendant was all along living in the same family with the reigning Chief, and that up to the death of Ram Sing it was apparently expected that he would himself one day succeed to the Raj. Moreover, we find that even after the deed of gift, Sobha Sing and Ram Sing treated these mauzas as if they were the property of the State.

26. For instance, the official documents printed at pp. 115 to 118 show that it was Sobha Sing, and not the defendant, who moved the Collector in 1846-47 to have the river Kapua included within the limits of mauza Futtehpur, and so also it was Ram Sing and not the defendant who prosecuted the cases regarding Mr. Howard's tea garden, Mr. Foley's garden and other claims to lands said to be included within these mauzas (pp. 123 to 140). It seems to be admitted, even by the defendant's own witnesses (pp. 231, 223), that those cases were not only conducted in Ram Sing's name, but by his servants, and, amongst others, by one Bongo Chunder Sen, who was admittedly the Raja's Am-Muktear.

27. Everything in fact was done in the Raja's name (p. 258). In the document printed at p. 122, the defendant is himself described as the attorney for Ram Sing. It is admitted that Ram Sing himself used at times to visit these mauzas. The persons who collected and remitted the rents admittedly collected and remitted the rents both of the Rajgi property and of the defendant's private property (Nowagaon and Sandorgaon). The only evidence there is of the defendant's possession is, the use of his name in the zemindari papers; and of this, we think, there is a sufficient explanation. The management of these estates was entrusted to him as Jubraj; he was living with Ram Sing, and his acts were no doubt looked upon as Ram Sing's acts. The papers were all in his custody, and he could keep back or make away with any that did not favour his own pretensions. On the other hand, the plaintiff, as we have seen, belonged to a different branch of the family, and though a possible heir, it is not proved that he took any part in the management of affairs before his election to the Raj. It is most difficult for him, therefore, to produce papers or give any evidence that Ram Sing was actually in possession or shared, as we quite believe he did, the rents and profits of these mauzas.

28. Then we have the fact that on the occasion of Sobha Sing's sradh, the tenants from these villages, as from other villages belonging to the Raj, attended at Cherrapoonjee with presents of goats and other things. This fact is admitted (pp. 177, 246), although the defendant attempts to put his own interpretation upon it, but it seems to us that the natural inference to be drawn from it is, that these villages were at that time recognized as an appurtenance to the Raj, and that the tenants attended with their offerings on that occasion as the tenants of the Raj a, and not as the tenants of the defendant.

29. The lower Court seems to have been of opinion that if the mauzas in suit were really the property of the State, the defendant's possession might be taken to be the possession of the Chief.

30. In paragraph 49 of his judgment, the Subordinate Judge says: "Then the plaintiff's pleader contends, that when it appears from the evidence on the side of the defendant, that Sobha Sing had granted the hiba with the consent of Ram Sing Raja, then the possession of the defendant, even if such possession be granted for argument's sake, being held with the consent of Ram Singh Raja, and a period of 12 years not having elapsed since the time when the plaintiff became the Raja in immediate succession to Ram Sing, the plaintiff, under these circumstances, cannot be barred by the possession of the defendant." It appears to me that this argument of the pleader for the plaintiff would have been to a great extent effective, if the disputed property had been proved to be a part and parcel of the state of Cherrapoonjee. But when, for the reasons alluded to above, the property in question, instead of being an integral portion of the Cherrapoonjee State, has been proved to be the exclusive estate of the Rajas in their individual rights, and that the same was capable of transfer, then such consent on the part of Ram Sing served only to extinguish his own rights, and the plaintiff on this ground cannot derive much benefit from that argument. We have, however, arrived at the conclusion, for the reasons which we have already given, that the mauzas in suit were the property of the Raj and not the personal property of the Chief, and that the Chief had no power to alienate them by deed of gift. We find, too, upon the evidence that the defendant was in possession as Jubraj in trust for, and on behalf of, the reigning Chief, and that the plaintiff is, therefore, not barred by such possession from recovering the properties. We accordingly reverse the finding of the lower Court and decree the plaintiff's claim to these two mauzas.

31. The only question which remains is as to the costs.

32. Under ordinary circumstances as the plaintiff is the successful party, we should have given him his costs. But this is a peculiar case. The circumstances under which the grant was made to the defendant, the form of the grant itself ("to him and his heirs"), the fact of its being made with the consent of the other members of the reigning family, and that the defendant has had the management, and probably shared the profits of the property from that time to the present, might

well have induced him honestly to suppose that he had a right to retain possession, at any rate during his own life. He had, moreover, good reason to expect that he himself would have become the Raja on the death of Ram Sing, and the change in his religion appears to have been the only reason why his claims have been set aside. It seems to us, therefore, that he was fully justified in taking the opinion of the Court, before giving up the property; and, as the judgment of the Subordinate Judge was in his favour, he should not be made responsible for the costs of this appeal.

33. We think, therefore, that this case should be made an exception to the general rule, and that each party should pay his own costs in both Courts.

Cases Referred.

130 L.J. Ch. 690 : 2 Giff. 628

2L.R. 2 Ch. App. 582

312 Moo. I.A. 523

4I.L.R. 9 Cal. 535

53 I.L.R. 417