
(1939) 11 AHC CK 0025
In the Allahabad High Court

Kunwar Shiam Partap Singh

APPELLANT

Vs

Rani Baisni Madho Kunwar and Others

RESPONDENT

Date of Decision : 01-11-1939

Acts Referred:

Citation : AIR 1940 All 353 : (1940) 10 AWR 300

Hon'ble Judges : Rachhpal Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rachhpal Singh, J.—These are three connected appeals arising out of two suits instituted in the Court of the Civil Judge of Mainpuri. Suit No. 19 of 1931 was instituted by one Thakur Sheorakhan Singh and Suit No. 26 of 1932 by Rani Baisni Madho Kunwar. Sheorakhan Singh, plaintiff of Suit No. 19, died during its pendency in the Court below and is now represented by the present plaintiff Kunwar Shiam Pratap Singh, his son. Rani Baisni Madho Kunwar died during the pendency of the present appeals in this Court. It is common ground between the parties to the present litigations that Raja Hukum Tej Pratap Singh was the proprietor of Partabner estate which is the subject-matter of these litigations. He died on 17th May 1925. Soon after his death several claimants appeared on the scene. It would appear that the patwari made a report to the revenue authorities that mutation should be made in the name of Raja Maha Vindeshri Pratap Singh under the guardianship of Rani Baisni Madho Kunwar, and we find that there were several objectors. One of them was Thakur Sheorakhan Singh, a kinsman, as will appear from the pedigree attached to the plaint, who claimed to be the nearest reversioner and asked that mutation should be made in his name. Rani Bhawanraj Kunwar, the widow of Raja Hukum Tej Pratap Singh, put forth her claim contending that as the widow of the deceased Raja she was entitled to the possession of the estate. One Bikram Singh, another kinsman of the deceased Raja asked that mutation should be made in his name.

2. While these proceedings were going on in the mutation Court, Rani Bhawanraj

Kunwar, the widow of Raja Hukum Tej Pratap Singh, instituted a suit in the Court of the Subordinate Judge of Lucknow on 13th January 1926 for a declaration that she was entitled to the Partabner estate. The suit was against Raja Maha Vindeshri Pratap Singh minor under the guardianship of Rani Baisni Madho Kunwar. Rani Bhawanraj Kunwar denied the adoption of Maha Vindeshri by Raja Hukum Tej Pratap Singh and pleaded that she, as the widow of her deceased husband, was entitled to the estate. In the month of February 1926 the suit was transferred to the file of the Chief Court of Oudh. A compromise was arrived at between Rani Bhawanraj Kunwar, the plaintiff, and Raja Maha Vindeshri Pratap under the guardianship of Rani Baisni Madho Kunwar on 29th October 1926. In this compromise, Rani Bhawanraj Kunwar admitted the adoption of Maha Vindeshri by her deceased husband. She also admitted that her husband had made a will under which Rani Baisni Madho Kunwar had been appointed to act as his guardian. On 11th December 1926, a decree was passed on the basis of this compromise. It appears that the Chief Court of Oudh made a recommendation to the Local Government that the estate of Partabner should be taken over by the Court of Wards. Acting on this recommendation the Court of Wards assumed superintendence of the person and property of Raja Maha Vindeshri Pratap Singh with effect from 14th December 1926. In pursuance of the decree of the Chief Court, the Revenue Court sanctioned mutation in favour of the minor Maha Vindeshri Pratap Singh by its order, dated 29th April 1927, and remarked that the first two claimants, Rani Bhawanraj Kunwar and Maha Vindeshri Pratap Singh, were present but Thakur Sheorakhan Singh was absent.

3. On 18th February 1931, Raja Maha Vindeshri Pratap Singh met his death undertaking circumstances to which a reference will be made later. When Raja Maha Vindeshri Pratap Singh died, then the Court of Wards issued a notification dated 24th September 1931 declaring that the estate would be kept under the management of the Court of Wards under Sections 48-45 of Act 4 of 1912 so long as it was not determined by the Court as to who had been declared to be the owner of the estate and entitled to it. Before this notification on 25th August 1931, Kunwar Sheorkhan Singh had instituted his Suit No. 19 of 1931 in the Court of the Subordinate Judge of Mainpuri for a declaration to the effect that he was the senior most member of the senior branch of the Partabner family and was therefore entitled to succeed to the properties of the estate which are mentioned in lists A, B, C and D. In that case he made seven defendants who are: Rani Baisni Madho Kunwar, defendant 1, Rani Rathorni Narain Kunwar defendant 2, Thakur Bikram Singh defendant 3, Thakur Kalka Singh defendant 4, Thakur Aparbal Singh defendant 5, Thakur Desraj Singh defendant 6 and Lal Ram Singh, defendant 7. He contended that Partabner estate was an impartible Raj from time immemorial and that the rule of primogeniture applied and the estate was always held by a single heir of the senior member of the senior branch of the family. He alleged that he himself was the nearest collateral descendant from the senior line of the senior branch of the family of the late Raja Maha Vindeshri Pratap Singh, according to the family pedigree, and that on the death of Raja

Maha Vindeshri Pratap Singh he became entitled to the estate. He also pleaded that the Raj being impartible had always been the joint family property of Raja Maha Vindeshri Pratap Singh and other members of the family who had been enjoying it through maintenance grant and that he himself was in possession of shares in villages Dhakpura, Rehrapur and Itaura in Mainpuri District which formed part of this Raj. It was claimed that certain properties mentioned in list B, which had been acquired by the predecessors of Raja Maha Vindeshri Pratap Singh, were acquired with the income of the "ancestral estate (mentioned in list A) and had therefore become part of the estate. As regards the properties in list C it was alleged that they had been amalgamated with Partabner estate and, therefore, had become part and parcel of the same impartible estate, that is to say, Partabner estate. List D consists of moveable properties which were stated to belong to the late Raja.

4. The plaintiff of this suit alleged that Rani Baisni Madho Kunwar defendant 1, the grandmother of Raja Maha Vindeshri Pratap Singh, and Rani Rathorni Narain Kunwar, defendant 2, step-grandmother of the deceased, had no right of inheritance to the estate and were only entitled to maintenance. As regards defendants 3, 5 and 6, he stated that they belonged to the junior line of the senior branch of the Partabner family and therefore they had no right. As regards defendant 4, Kalka Singh, the plaintiff's case was that he belonged to a junior branch of the family and as such had no right to the Raj in preference to the plaintiff. It may be mentioned here that one Madho Singh, whose position will appear in the pedigree attached to the plaint, was the natural father of Raja Maha Bindeshri Pratap Singh. Madho Singh and Kalka Singh, defendant 4, are brothers. On 18th February 1931 Madho Singh murdered Raja Maha Vindeshri Partap Singh and certain other members of his own family and then committed suicide. Plaintiff's case is that because Madho Singh had murdered the deceased Raja Maha Vindeshri Pratap Singh and as Kalka Singh was his brother and joint with him the latter was not entitled to succeed to the "gaddi," and that as the estate was in possession of the Court of Wards the plaintiff was entitled to institute a suit only for a declaration.

5. Rani Baisni Madho Kunwar, defendant 1, in her defence denied that the Partabner estate was an ancient Raj or that it was an impartible estate. She however admitted that the plaintiff was the nearest collateral descendant from the senior line of the senior branch of the family of Raja Maha Vindeshri Pratap Singh and that the pedigree given by him along with the plaint was correct. She denied that the estate was held by Raja Maha Vindeshri Pratap Singh and other members of his family as a joint estate or that the plaintiff formed a joint Hindu family along with the Raj. It was further denied that the plaintiff was in possession of any property by way of maintenance grant. Defendant 1 denied that there was any rule of succession under which a single heir succeeded to the estate to the exclusion of other members. She alleged that as Raja Maha Vindeshri Pratap Singh had died intestate and issue less and as his parents had predeceased him she was the sole heir entitled to succeed. About the properties

entered in list B, the defendant 1 pleaded that they were acquired by herself or her son with their personal funds and that these properties were "always treated by the late Raja Hukum Tej Pratap Singh as her property and that the plaintiff could not get any declaration in respect of them. As regards the properties mentioned in list C it was contended that they were acquired by the late Raja Hukum Tej Pratap Singh as a reversioner and did not form part of the Partabner estate. It was also said that the plaintiff was not entitled to the moveables entered in list D.

6. Defendant 2 Rani Rathorni Narain Kunwar, denied the adoption of Raja Maha Bindeshri Pratap Singh and further denied the will said to have been executed by Raja Hukum Tej Pratap Singh. The pedigree set up by the plaintiff was denied by her. She claimed that she herself and defendant 1 along with her were the heirs of the deceased Raja Hukum Tej Pratap Singh as his co-widows. Bikram Singh, defendant 3, denied the case of the plaintiff and contended that he himself was the nearest reversioner of Maha Vindeshri Pratap Singh. Kalka Singh, defendant 4, admitted that the estate in suit was a Raj and that it was impartible. He however contended that it was he and not the plaintiff who was the senior most member in the senior-most branch of the family. He further pleaded in defence that the ancestors of the plaintiff Sheorakhan Singh had in lieu of certain villages which were granted to them absolutely by the Raja renounced all their claim to succession to the estate. This defendant Kalka Singh also took the plea that he and his ancestors had always been joint in estate with the Raja of the estate and formed a joint Hindu family with him and that on that ground also he was entitled to succeed. He added that he and his ancestors had always been treated by the holder of the estate as his coparceners. Defendant 4 also pleaded that Bairam Singh, one of the ancestors of the plaintiff, had not been adopted by Anand Singh and that on that ground also the plaintiff belonged to a branch which, at all events, was junior to his branch. Defendants 5 and 6 did not contest the suit. Lal Ram Singh, defendant 7, admitted that the estate was a Raj and was impartible. He further admitted that the plaintiff Sheorakhan Singh was the senior-most heir from the senior-most line and that the rule of primogeniture applied. He however pleaded that the properties mentioned in list C were the properties of one Kunwar Zor Singh which had been granted to him by the British Government and did not form part of Partabner Raj. This is the history of Suit No. 19 of 1931.

7. Rani Baisni Madho Kunwar also instituted a suit for a declaration in which the plaintiff of Suit No. 19 and other defendants of that suit were made defendants. She claimed in her case that after the death of Raja Maha Vindeshri Pratap Singh she succeeded to the entire estate under the Hindu law as the mother of the father of Maha Vindeshri Pratap Singh. The defence of the plaintiff of Suit No. 19 was the same as disclosed in his plaint to which a reference has already been made. Similarly, the pleas of other contesting defendants were the same which they had raised in their defence in Suit No. 19 and to which we have already referred above. The two suits were amalgamated in the trial Court and were

disposed of by one judgment by the learned Civil Judge. The learned Civil Judge dismissed the suit filed by the plaintiff of Suit No. 19, because in his opinion the plaintiff had failed to establish that he belonged to the senior-most branch of the family. In the case of Rani Baisni Madho Kunwar he held that she was entitled to get a declaration in respect of properties in list C and also to properties mentioned in list D, and to that extent only a declaration was granted under a decree passed in her favour.

8. The plaintiff of Suit No. 19 has preferred an appeal against the dismissal of his suit and his appeal is No. 82 of 1933. Rani Baiani Madho Kunwar has also preferred an appeal in her case and that is Appeal No. 109 of 1933. Kunwar Kalka Singh, defendant 4 of Suit No. 19 of 1931, has also preferred an appeal against the decision of the Court below which is First Appeal No. 381 of 1933. He challenges the findings of the Court below on some of the minor points involved in the case to which a reference will be made at a proper stage. He further contended that on the evidence produced in the case the Court below should have given a declaration that he (Kalka Singh, defendant 4) being the eldest member of the senior line was entitled to properties about which the finding of the Court below was that they were governed by the Hindu law of succession.

9. We have already pointed out that Rani Baisni Madho Kunwar died during the pendency of these appeals. Two applications were made for substitution in First Appeal No. 109 of 1933. One was by Kalka Singh, defendant 4. That application was not pressed and was dismissed by us by a separate order. The other application was made by Rani Rathorni Narain Kunwar and that too has been dismissed by us by our separate order. First Appeal No. 109 of 1933 has therefore abated. It may further be pointed out that two applications were made in First Appeal No. 82 of 1933 in connexion with the death of Rani Baisni Madho Kunwar and both were by Kunwar Shiam Pratap Singh. One was an innocent application that the name of Rani Baisni Madho Kunwar be struck off from the record, and we have granted that application. The other was that if on the application of Rani Rathorni Narain Kunwar in First Appeal No. 109 of 1933 her name be brought on the record as an appellant in that appeal, then a note be made in First Appeal No. 82 of 1933 that as her name was already on the record as respondent she might be considered to be on the record in her own right and as the legal representative of Rani Baisni Madho Kunwar. For reasons given in our order on that application, we rejected that prayer. So the position of Rani Rathorni Narain Kunwar is that she is respondent in her own right in First Appeal No. 82 of 1933.

10. Now we proceed to discuss the points in issue between the parties. The first question for consideration is whether the Partabner estate is an impartible estate and is a raj in which according to the family custom the rule of lineal primogeniture prevails. So far as this point is concerned, there is an agreement between the plaintiff of Suit No. 19 and Kalka Singh, defendant 4. Both have pleaded that the estate is an ancient impartible raj in which succession is

governed by the rule of lineal primogeniture. Rani Baisni Madho Kunwar, defendant 1, Rani Rathorni Narain Kunwar, defendant 2, and Bikram Singh, defendant 3, had denied that the estate was an impartible raj or that the rule of lineal primogeniture applied. The same case had been set up by Rani Baisni Madho Kunwar in her own Suit No. 26 of 1932. The "Manual of Titles" which is a book prepared under the authority of the Government gives the history of the family. We have before us the 1917 edition of this book where it is recited that the owner of Partabner estate claims to be the head of the great Chauhan clan of Rajputs which for many centuries had been predominant in the district of Etawah, Mainpuri and Etah. It appears that in 1801 Raja Daryao Singh held the estate at the cession of the district to the British Government and was recognized as the Raja of this estate. He was succeeded by his son Raja Chet Singh. A reference at this stage may also be made to Ex. V which is printed at pp, 177 and onwards where a history of this estate is given. This document was prepared in the year 1928 by the Court of Wards when it assumed superintendence over the estate after the death of Raja Hukum Tej Pratap Singh. In the wazibularzes Exs. X-2 to X-19 (pages 515-549) which were prepared in the year 1872 it is recorded that at that time Raja Lokindra Singh was the owner of some villages comprising in this estate. He mentioned that he was the sole owner and that after his death his eldest son would be gaddinashin in his place and will be the owner of the entire property and that gaddinashins would pay maintenance to other heirs. This entry in the wazibularzes is evidence of the fact that Raja Lokindra Singh asserted that the estate was a raj and that the holder was a gaddinashin. A good deal of oral evidence was produced in the case and whatever defects there may be in that evidence as regards other matters the witnesses on both sides "are agreed that the estate was an ancient raj, that it was impartible and that the rule of lineal primogeniture prevailed. The learned Judge has held that the evidence produced in the case proves that the estate is an ancient raj and is impartible and we see no reason for coming to a different conclusion.

11. It may be pointed out that though defendant 1 had denied the allegations of the plaintiff that the estate was an impartible raj in which succession was governed by the rule of lineal primogeniture, we find that in Suit No. 11 of 1928 in the Court of the Additional Judge of Etah, she, in her statement as a witness, deposed that the Partabner estate was a raj and that this raj was impartible. This statement is evidence against defendant 1 and it is to be found at p. 405. It may be mentioned here that no serious attempt was made by any of the contesting defendants to prove that the estate, as a matter of fact, was not an ancient impartible raj and no arguments were addressed to us to show that the finding of the learned Civil Judge as regards this point was not correct. In *Bajjnath Prasad Singh v. Tej Bali Singh* AIR (1921)PC 62, their Lordships of the Privy Council laid down that the successor to an impartible estate which is ancestral property of a joint Hindu family governed by the Mitakshara is designated by survivorship, subject to the custom of impartibility; the eldest member of the senior branch of

the family, therefore, succeeds in preference to the direct lineal senior descendant of the common ancestor if the latter is more remote in degree. A similar question came up for consideration before this Court in Hargovind Singh Vs. Collector of Etah and Another in which case it was held that where the impartible estate is ancestral, the successor to the estate is designated by survivorship and that the estate passes by survivorship from one line to another according to primogeniture, and devolves, not on the member nearest in blood, but on the eldest "member of the senior branch of the family. This rule is clearly applicable to Partabner estate proper, details of which are given in list A attached to the plaint. We are, therefore, of opinion that the finding of the learned Civil Judge to the effect that the Partabner raj mentioned in list A attached to the plaint is an impartible estate in which the rule of lineal primogeniture prevails and that the defendants have not been able to make out a different case is correct.

12. Properties in list B are described at p. 4 of the plaint and they consist of the following items: 1. Chandanpur, Mahal Chabraj Kuer. 2. Chandanpur, Mohal Pitam Kuar. 3. One house, situated in Etawah city. 4. One bungalow, situated in Etawah city. It appears that the two Chandpur Mahals were purchased by Raja Mohkam Singh in the year 1886 (see pp. 551 and 553). The question which we have to consider is whether these properties were amalgamated by Raja Mohkam Singh or by Raja Hukum Tej Pratap Singh with their impartible estate. If they were incorporated with the parent estate, it is clear that they became part of that estate and would go by the rule of lineal primogeniture to the next holder of the estate. On the other hand, if there was no incorporation or amalgamation, then the ordinary rule of Hindu law would apply and these properties would go to the heir or heirs of the last holder, according to ordinary rule of Hindu law. The case of both the plaintiff and defendant 4 was that these properties were amalgamated with the parent estate. On the other hand, Rani Baisni Madho Kunwar had contended that there was no amalgamation. In AIR 1932 216 (Privy Council) their Lordships of the Privy Council at p. 933 made the following observations:

The power to incorporate being a power inherent in every Hindu owner applies as well to a customary impartible Raj unless it is excluded by statute or custom.

13. It is open to the owner of an impartible estate to amalgamate his acquisitions of immovable properties with his impartible estate, and the question as to whether or not there was an amalgamation would depend on the evidence produced in each case. As their Lordships of the Privy Council have pointed out in the above mentioned case,

the income of the impartible estate when received is the absolute property of the owner of the impartible estate. It does not attach to the estate as does the income of an ordinary ancestral estate attach to that estate.

14. It is, however, open to the holder of the impartible estate to amalgamate the

self acquired estate with his impartible estate. The intention to do so may be either express or implied. The learned Civil Judge in the case before us has come to the conclusion that there is no evidence on the record to show that the holder ever indicated any express or implied intention to amalgamate the self-acquisitions with the impartible estate. The correctness of this finding has been challenged before us by learned Counsel appearing for the plaintiff as well as defendant 4. After a consideration we are of opinion that the view taken by the lower Court as regards this point is correct. All that the plaintiff and defendant 4 have been able to establish is that there was one set of accounts in which the income used to be noted and one set of the estate servants used to make collections of the income. It appears to us that no inference on the question of amalgamation can be drawn from this. In *Hargovind Singh Vs. Collector of Etah and Another* it was held that it was open to the holder of an impartible Raj to incorporate self-acquired immovable properties in the parent estate. If a person comes to Court with a definite case that there has been an amalgamation of the self-acquisition with the parent impartible estate, there must be better evidence to establish the fact. Learned counsel for the plaintiff-appellant argued that the will executed by Raja Hukum Tej Pratap Singh goes to indicate that he had an intention to incorporate the self-acquisitions with the parent estate. We however do not agree with this argument. The will of Raja Hukum Tej Pratap Singh printed at page 333 only recites that after him his adopted son Maha Vindesbri Pratap Singh will be the owner of all the moveable and immovable property like himself. It appears to us that no inference about amalgamation can be drawn in favour of the plaintiff and defendant 4 from this sentence. Raja Hukum Tej Pratap Singh held both the estates, impartible as well as self-acquisition, and under the will he devised both these estates to his son. In our opinion, there is no evidence either express or implied which could help us in deciding this point in favour of the plaintiff or defendant 4. Raja Hukum Tej Pratap Singh held both these estates, and therefore it is only natural that his servants should make collections. It was for the plaintiff and defendant 4 to establish points which might lead us to draw an inference as regards the intention of Raja Hukum Tej Pratap Singh to amalgamate the two estates. We agree with the Court below in holding that no such case has been made out and we therefore hold that these properties in list B all along remained separate properties of Raja Hukum Tej Pratap Singh and were never incorporated with the Partabner Raj proper which is specified in list A of the plaint. After the death of Raja Hukum Tej Pratap Singh, Maha Vindeshri Pratap Singh held the estate, and in the absence of any evidence to the contrary it will be assumed that the self-acquisitions made by his predecessors remained in his hands as self-acquired properties which were not amalgamated with the estate.

15. Now we come to properties specified in list C which may be styled as Chakranagar block. The learned Civil Judge has held that this property was amalgamated by Raja Hukum Tej Pratap Singh with the parent estate. As regards this property the plaintiff and Kalka Singh, defendant 4 are agreed that it was

amalgamated with the parent impartible estate of Partabner. The point was however not admitted by other defendants who contested the suit. We have to decide as to whether or not the view taken by the learned Civil Judge is correct. The learned Judge has held that "Chakarnagar block was amalgamated. He has come to this conclusion because he finds that Raja Hukum Tej Pratap Singh had made a declaration that he had amalgamated the estate with the parent estate and also because there was indication of such an intention in the will which he executed on 16th May 1925. We do not agree with the learned Civil Judge on these points. The learned Civil Judge at first refers to the fact that a single set of account book was kept for both the estates but at another place he has rightly pointed out while dealing with property in list B that this fact alone does not disclose necessarily an intention to treat the properties as amalgamated. Then he refers to the evidence of Thakur Tilak Singh (P.W. 1) who deposed that the estate was amalgamated but this evidence by itself proves nothing. Then referring to some other oral evidence the learned Judge mentioned the statement of Dalganjan Singh, a witness examined by defendant 4, who deposed that at a Darbar Raja Hukum Tej Pratap Singh made a declaration that he had amalgamated the two estates. Dalganjan Singh is a worthless witness, and it is impossible to place any reliance on his evidence on the question of the alleged declaration made at a Darbar. The history of the estate goes to show that the Court of Wards authority had decided, before Raja Hukum Tej Pratap Singh got the estate, that he would get it, and there could have, in our opinion, been no occasion for the Raja to make a declaration of this nature at a Darbar. We do not agree with the learned Civil Judge in his view that the will of Raja Hukum Tej Pratap Singh shows any indication on the question of amalgamation of the two estates. Raja Hukum Tej Pratap Singh in the will simply said that Lal Maha Vindeshri Pratap Singh shall be the "gaddinashin" and owner of his entire moveable and immovable property. This does not show any indication on the question of amalgamation.

16. We may give a short history relating to this block of the property. We will first refer to the Manual of Titles. This shows at p. 63 that one Sakit Deo had three sons, Deo Brahm, Sumer Singh and Tilok Chand. Deo Brahm became the Raja of a estate called Rajaur estate. We may further point out that the ruling of this Court in Hargovind Singh Vs. Collector of Etah and Another relates to this Rajaur estate. Sumer Singh became the Raja of Partabner, while Tilok Chand became the Raja of Chakarnagar. The next document to which a reference might be made is the District Gazetteer of the United Provinces, Vol. 11, relating to Etawah district, published in the year 1911, which shows that the Raja of Chakarnagar joined the rebels in the Mutiny of 1857 and his property was confiscated and the bulk of it was given to Zor Singh, who was the uncle of Lokendra Singh, the then Raja of Partabner, and from that time onwards it appears that there has been a close affinity between the two estates. Here we may refer to Ex. V, which is printed at pp. 177 and onwards in First Appeal No. 109 of 1933. This document shows that Zor Singh was the uncle and manager of the Raja of Partabner, and

from his time onwards there seems to be a close connexion between the two estates. In this document, Ex. V, there is a reference at p. 180 to a letter of Mr. Hume, the then Collector of the district, in which it is stated:

Zor Singh is the uncle and manager of the Raja of Partabner, but I wish it to be distinctly recorded that it is on Zor Singh that the proprietary right is conferred. He can then make his own arrangement for uniting the property thus acquired with the Raja or not as he thinks fit.

17. At this page there is a reference to another letter of Mr. Lawrence, who was Collector in 1874, in which it is mentioned:

Zor Singh is rewarded with confiscated properties. During his lifetime the interest of the family estate, Partabner and his own acquired property were treated as one.

18. We find that when Zor Singh died in 1865, he had only one son alive and that was Kunwar Zabar Singh got the Chakarnagar block which was granted to his father Zor Singh but he was found unfit to manage the estate which went under the superintendence of the Court of Wards. Zabar Singh died on 22nd October 1875, and the Board of Revenue in their letter to Government No. 156 of 18th March 1876 reported:

A life interest in the property has now devolved in equal shares on his widow known as Thakurani Baisni and on Thakurani Sengar, widow of Manbhawan Singh, (another son of Zor Singh) the brother of the late Zabar Singh. On the death of these ladies the 26 villages comprised in the Chakarnagar Estate will be united to the Partabner Raj the proprietor of which is at present a minor.

19. As a result of this recommendation, this Chakarnagar block first devolved on Thakurani Sengar, the widow of Manbhawan Singh, and on Thakurani Baisni, the widow of Zabar Singh. Thakurani Sengar died in 1880 and Thakurani Baisni became the sole proprietress. In Ex. V, it is mentioned in para. 10 that Baisni died on 4th July 1912 and Raja Hukum Tej Pratap Singh at his own expense performed her cremation and other post mortem ceremonies. It would appear that while the estate was being managed by the Court of Wards as the estate of the two ladies referred to above some kind of understanding was arrived at that the Chakarnagar block was to be united with the Partabner estate on the death of the two widows. There was some litigation on the death of the last widow Thakurani Baisni. Beti Rukmin Kunwar, daughter of Zor Singh, came and asserted a claim on her own behalf as well as on behalf of her grandson Lal Ram Singh. There was however a compromise under which five villages and a house at Etawah out of the Chakarnagar block were given to Beti Rukmin Kunwar and her grandson Lal Ram Singh, and the remaining 20 or 21 villages were released by the Court of Wards in 1915 in favour of Raja Hukum Tej Pratap Singh. As a result of this compromise, it is mentioned in the estate note-book that the Chakarnagar estate reverted to the parent estate of Partabner, and there was thus some sort of understanding between the Government and Raja Hukum Tej Pratap Singh

that the Chakarnagar block should be incorporated with the Partabner Raj as, indeed, they were treated as one even during the lifetime of Zor Singh as would appear from the letter of Mr. Lawrence quoted above. Raja Hukum Tej Pratap Singh was born in 1903 and in 1915 was a young man of about 20 or 21 who had just emerged out of the control of the Court of Wards and presumably was under the influence of the executive authorities of Etawah whose wishes were well known, and under these circumstances we shall not be far wrong if we were to hold that there is indication of the Chakarnagar block having been incorporated with the Partabner estate.

20. As regards list D. This is a list of moveable properties in suit. All that we need say is that the rule laid down by their Lordships of the Privy Council in AIR 1932 216 (Privy Council) concludes the matter. At p. 933 their Lordships, while dealing with similar properties, made the following observations:

None of these considerations however apply to moveable property. Such property, their Lordships think, cannot form an accretion to an ancestral impartible estate. The income even of such an estate is not an accretion to the estate. As was said by the Board in Rani Jagdamba Kumari v. Wazir Narain Singh AIR (1923) PC 59 "the income when received is the absolute property of the owner of the impartible estate." It does not attach to the estate as does the income of an ordinary ancestral estate attach to that estate.

The conclusion to which their Lordships have come on this part of the case is that while immovable property can be incorporated with an impartible estate, moveable property cannot.

21. Learned counsel for the plaintiff-appellant however argues that some of the properties in list D are properties which are intimately connected with the raj and should therefore go to the gaddinashin, they being considered a part of the estate properties. In this connexion the observations of their Lordships of the Privy Council in the case just mentioned may be quoted. They are to be found at p. 939 and are as follows:

The only ground urged on his behalf was that the very conception of a raj involved that the raj should carry with it all such furniture, furnishings and equipments as were necessary for the support of the dignity of the Raja and the gaddi and as such were provided for use and the service with the palace and the land and buildings connected with it. Their Lordships are unable to adopt this view. The question is purely one of fact, and there is no evidence on the record to support the claim. The claim could possibly have been founded on custom, but no such custom was alleged or proved. Their Lordships think that the Courts in India were wrong in awarding any of the furniture, furnishings and equipments to the defendant (who it may be mentioned was the owner of the impartible estate) and that they should all pass to the plaintiffs.

22. The view taken by the Court below on list D therefore is correct and the succession thereto will be governed by the ordinary rules of succession under the

Hindu law. After having cleared the ground on certain minor points, we propose to discuss the main controversial question between the parties, and this is whether Thakur Sheorakhan Singh, plaintiff of Suit No. 19, was the senior member according to the rule of primogeniture or Kalka Singh, defendant 4. Sheorakhan Singh filed a pedigree along with his plaint and Kalka Singh, defendant, filed another along with his written statement. A perusal of these pedigrees will show that it is common ground between the parties that one Raja Sambhar Singh had five sons. They were Raja Narain Singh, Anand Singh, Mohan Singh, Hindu Singh and Ratan Singh. The real dispute between the rival claimants is as to whether Anand Singh was the second son as alleged by the plaintiff or Hindu Singh was the second son as alleged by Kalka Singh. Another subsidiary point is whether Bairam Singh who admittedly was one of the natural sons of Ratan Singh had been adopted by Anand Singh, the alleged second son of Raja Sambhar Singh. The learned Civil Judge has considered the evidence, both documentary and oral, and has come to the conclusion that the plaintiff of Suit No. 19 has failed to prove that Anand Singh was the second son of Sambhar Singh. He has however held that Bairam Singh was adopted by Anand Singh.

23. Having stated the nature of the controversy between the parties, we now proceed to consider whether the view taken by the learned Civil Judge is correct. (After discussing the entire evidence, their Lordships came to the conclusion that the plaintiff had succeeded in proving that he belonged to the senior-most branch of Anand Singh, and proceeded.) Two further pleas may now be considered. The first is a plea of the defendant to the effect that the plaintiff or his ancestors had renounced their title to the estate in lieu of certain villages which were given to them absolutely by the Raja of Partabner. The other is that he and his father were joint in estate apart from the notional jointness. On both these points the learned Civil Judge has given findings which are against defendant 4.

24. Taking first the plea about renunciations, we might state that there is no documentary evidence on the record to show that there was any renunciation. As a matter of fact, it is not known which of the plaintiff's ancestors were given Dhakpura, Rehrapur and Itaura. The oral evidence produced on behalf of the defendant on this point cannot be relied upon. We have some revenue papers which throw some light on the matter in question. In the Khewat of 1209 Fasli = 1801-02, which is printed at page 229, it is stated that villages Dhakpura, Rehrapur and Itaura are under the management of Partabner Raj. Assessment remarks at pp. 273, 275 and 277 relate to villages Rehrapur, Dhakpura and Mansarpur alias Itaura, and they showed that the villages in 1872 were held by Dirganj Singh and Jagannath Singh, Chauhans of Dhakpura, who were the relations of the Raja and the ancestors of the plaintiff, and from this it is argued on behalf of defendant 4 that these villages which originally belonged to Partabner Raj were given to the ancestors of the plaintiff in lieu of their renouncing all claims to the Raj. But if this allegation had been correct, then we would have expected some kind of mention that they had acquired them

absolutely by renouncing their title to the Partabner Raj. The plaintiff's ancestors were after all members of the family of the Raja and would be given some maintenance. It might well be, as suggested by the plaintiff, that they got these villages by way of guzara from the Raja. It was then said that as against this there is the fact that the ancestors of defendant 4 had only a lease in village Partabner as is evident from the document at page 269. This again would be a very slender basis for coming to a finding that the plaintiff's ancestors renounced their claim to the Raj. Our attention was also drawn to documents printed at pp. 517 to 519 where it is said that the proprietor of the village in question is Raja Lokendra Singh, and the other heirs get a maintenance of Re. 1 per day.

25. It is pointed out that the plaintiff has not tried to prove that he ever got any allowance of Re. 1 per day from the Raja of Partabner from any village whatsoever; whereas defendant's ancestors were getting some sort of allowance. We know that the plaintiff and his ancestors were well placed, he himself being a Deputy Collector and his grandfather being the manager of the Partabner Raj, and they might not therefore have considered it consistent with their self-respect to take small monetary allowance from the Raja. On the plea of jointness, the above papers and the above circumstances were relied upon by the defendant on this point as well. Our attention was drawn to some entries in account books which go to show that defendant 4 was every now and then given small sums of money on account of his school fee and for purchase of pencils, etc. Evidence of this type is hardly sufficient to show that there was any jointness. It may be that defendant 4 was a young boy and when he was attending school it was but natural that he should live in the kothi of the Raj, and the mere fact that the Raja, who was the head of the estate was every now and then giving him small sums of money does not go to show that defendant or his brother Madho Singh was joint in estate with the Raja. The strongest point on the question of the plea of jointness against defendant 4 is the fact that it is proved, and it is not disputed by the defendant, that a rent suit for ejectment was instituted against Madho Singh and Kalka Singh by Raja Hukum Tej Pratap Singh some time about 1925. If the defendant and his brother Madho Singh had been joint it is not conceivable that the Raja would have instituted a suit for ejecting members of his own. A look at the statement made by the defendant shows that he was aware of this difficulty and that is why we find that at p. 194 defendant 4 stated that "The Raja then said it was foolish of Nanak Prasad to sue for the ejectment of his joint family members." In our opinion, the view taken by the learned Judge of the Court below on both these points is correct, and so far as notional jointness is concerned the plaintiff as well as other members of the family under the law, as it stands, will be taken to be joint with the Raja.

26. Certain other pleas had been taken in the Court below by the parties, but we may state here that they were not urged before us, and we have discussed all the points which were pressed before us during the hearing of this appeal with exception of one matter which we now propose to consider. In the Court below, a

vary definite case was set up by Rani Rathorni Narain Kunwar, defendant 2, as regards issue 1 framed in the case. She denied that Raja Hukum Tej Pratap Singh had executed any will at all and she further denied the adoption of Raja Maha Vindeshri Pratap Singh by Raja Hukum Tej Pratap Singh. As Rani Baisni Madho Kunwar had pleaded that Maha Vindeshri Pratap Singh had not inherited the properties from Raja Hukum Tej Pratap Singh but had got them under his will, so it became necessary for the Court to frame this issue and also because of the denial of the will and adoption by Rani Rathorni Kunwar, defendant 1, and by Bikram Singh, defendant 3. The case of both the plaintiff as well as defendant 4 was that Maha Vindeshri Pratap Singh had been adopted by Raja Hukum Tej Pratap Singh. It suited them both to assert that the deed referred to above was not a will and that Maha Vindeshri Pratap Singh succeeded to the estates by right of inheritance as an adopted son of Raja Hukum Tej Pratap Singh.

27. As regards the execution of the deed, which is printed at p. 333, the learned Judge has found that it was proved. This finding of the learned Judge has been challenged before us by Rani Rathorni Narain Kunwar. Learned counsel appearing for her has urged before us that the deed in question is a will and that Raja Maha Vindeshri Pratap Singh got the properties in suit under this will as a legatee and therefore the properties became his self-acquired properties and would go to his heir or heirs according to the ordinary Hindu law of succession. He urged that the heir to the estate according to that rule would be the grandmother of the deceased Raja Maha Vindeshri Pratap Singh. On behalf of the plaintiff and defendant 4, it was urged that defendant 2 having denied the deed could not be allowed to take up a new and inconsistent plea in this Court. On this question we are of opinion that as defendant 2 is a respondent in the case, she is entitled to take any plea she likes in order to defeat the case of the plaintiff. Defendant 1 Rani Baishni Madho Kunwar undoubtedly had raised the plea that Maha Vindeshri Pratap Singh did not inherit any portion of the property in suit from the former Raja but got such properties under the will of Raja Hukum Tej Pratap Singh and it might well have been that defendant 2 might also in the Court below have orally asserted that she also took that plea in the alternative. We find issue 2 as having been struck by the learned Civil Judge and it is to the following effect:

Was Raja Hukum Tej Pratap Singh competent to transfer the properties in suit by means of a will? If so, was the will valid and was it acted upon?

28. Their Lordships of the Privy Council in AIR 1932 118 (Privy Council) held that where a question of law is raised for the first time in a Court of last resort upon the construction of a document or upon facts either admitted or proved beyond controversy, it is not only competent but expedient in the interests of justice to entertain the plea. We have therefore allowed defendant 2 to urge this plea before us, as the question raised is a pure question of law. The learned Civil Judge on an interpretation of the deed has arrived at the conclusion that it is not a will and that Raja Maha Vindeshri Pratap Singh succeeded to the properties as an adopted son and not as a legatee under the will. As we have already pointed

out the case of the plaintiff was-and the same was the case of defendant 4-that the deed in question was not a will as there was no testamentary disposition of any properties made under it. It was pleaded that the deed was executed for the sole purpose of making arrangements as to who should be the guardian of the minor Raja during his minority. The decision of the question depends upon the interpretation to be placed on the document. The Succession Act (Act 39 of 1925) Section 2, Clause (h) defines will. It says that

"will" means the legal declaration of the Intention of a testator with respect to his property which he desire to be carried into effect after his death.

29. This definition seems to have been taken from Jarman on Wills, Edn. 6, Vol. 1, p. 27, where the learned author says:

A will is an instrument by which a person makes a disposition of his property to take effect after his decease and which is in its own nature ambulatory and revocable during his life.

30. At p. 33 the learned author says that

the law has not made requisite, to the validity of a will, that it should assume any particular form, or be couched in language technically appropriate to its testamentary character. It is sufficient that the instrument, however irregular in form or inartificial in expression, discloses the intention of the maker respecting the posthumous destination of his property; and if this appear to be the nature of its contents, any contrary title or designation which he may have given to it will be disregarded.

31. This principle was quoted with approval by the House of Lords in a case reported in *Whyte v. Pollock* (1882) 7 AC 400. Bearing in mind these observations we proceed to construe the will which is before us. The document is printed at p. 333. It is a very short document. We have looked at the original and we regret that we find, ourselves unable to agree with the interpretation placed by the learned Judge of the Court below on this document. It appears that it was argued before the learned Judge and he has accepted the contention that the first portion of the deed which relates that Maha Vindeshri Pratap Singh shall be the owner and gaddinashin is only descriptive and the second portion only which relates to the appointment of Rani Baisni Madho Kunwar as guardian is the operative part of it. The testator at first recites that he has been ill and is growing worse and that life is uncertain. All this is, in our opinion, merely descriptive. Then he says:

After my death Vindeshri Pratap Singh...shall be the owner of my entire moveable and immovable property and he shall have all the powers like me after my death.

32. According to our interpretation, this means a clear testamentary disposition of the property. After making this provision the testator goes on to say that as his adopted son is a minor so his mother Rani Baisni Madho Kunwar is to act as

his guardian during his minority and to manage his entire estate. In the concluding portion of the deed the testator says: "I have therefore executed this will...." It appears to us that at the time when the testator executed this deed, he had three objects in view before him. A few hours before the deed in question was executed he had adopted a minor boy and he desired to make it a matter of record in order to avoid any future dispute about the adoption. In our opinion another object which he had in view was as to who was to succeed to the estate after his death and what his powers were to be and he makes clear provisions in the deed that after his death his adopted son Maha Vindeshri Pratap Singh shall be the gaddinashin and the owner of his entire estate with powers like himself. The third object was to make arrangements as to how the estate was to be managed after his death during the minority of the owner and therefore he records his wish that Rani Baisni Madho Kunwar, his mother, would manage the estate. We may also point out that the expression that life is uncertain is generally, so far as this country is concerned, to be found in cases where people make wills. The learned Judge of the Court below has referred to the opinion expressed by one Rao Narsingh Rao, one of the attesting witnesses of the will, but we think that the opinion of the witness in the matter of construction is of no importance. It is for the Court to decide this question by considering all the terms of the document. We therefore hold that the document is a will and that Maha Vindeshri Pratap Singh succeeded to the estate under the terms of this will and not necessarily as the adopted son of the deceased Raja.

33. We have found that Raja Hukum Tej Pratap Singh was the owner of an impartible estate, and it is well settled that a holder of an impartible estate has power to alienate the estate, though ancestral, by gift or will, unless the power of alienation is excluded by special custom or by the nature of the tenure. On this point we may refer to the ruling of their Lordships of the Privy Council in *Sartaj Kuari v. Deoraj Kuari*, (1888) 10 All 272. At p. 288 their Lordships expressed the following opinion:

If, as their Lordships are of opinion, the eldest son, where the Mitakshara law prevails and there is the custom of primogeniture, does not become a cosharer with his father in the estate, the inalienability of the estate depends upon custom, which must be proved, or, it may be in some cases, upon the nature of the tenure.

34. In *Venkata Surya Mahipati Rama Krishna Rao v. Court of Wards* (1899) 22 Mad 383 their Lordships held that a zamindari in that Presidency

by custom descending to a single heir by primogeniture, and impartible, is not inalienable in virtue only of its impartibility, in the absence of proof of a custom having the force of law, or of some tenure attaching to the zamindari, rendering it inalienable.

35. They referred to the case in *Sartaj Kuari v. Deoraj Kuari*, (1888) 10 All 272 in this suit. In *Lal Ram Singh v. Deputy Commissioner of Partabgarh* AIR (1923)PC

160 their Lordships laid down that under a will executed by the holder of an impartible estate in favour of one of his sons the legatee (the son) took the estate absolutely and that the estate was a self-acquired property. This case is an authority for the proposition that under the will of Raja Hukum Tej Pratap Singh dated 16th May 1925 his adopted son Maha Vindeshri Pratap Singh took the estate in suit as an absolute property and in his hand it became his self-acquired property. In *Ulagalam Perumal Sethurayar Avergal and Others Vs. Rani Subbalakshmi Nachiar*, Bench of learned Judges of that High Court had to consider the nature of the estate which the son of the holder of an impartible joint ancestral estate got under a will executed in his favour by his father. In that case the learned judges held that an impartible estate goes by survivorship to the other members of the family only if at the time the succession opens it is held as the property of the joint family, the other members having no right of enjoyment nor the right of interdicting alienation but a right of maintenance limited only to the son of the zamindar and waiting for the chance of succession on the basis of joint family. It was further held that the impartible estate will not go by survivorship to another male member if at the time when the succession opens it is not held as joint property even in the sense described above but is held only as the separate property of the propositus.

36. This case went in appeal before their Lordships of the Privy Council and their judgment is reported in AIR 1939 95 (Privy Council) and the decision of the Madras High Court was approved and affirmed. Their Lordships laid down that the son of a Hindu governed by the Mitakshara law who succeeds to an ancestral impartible estate under a deed executed by his father takes an absolute estate in the property which in his hand becomes his self-acquired property with the result that on his death the property passes as self-acquired property into the hands of his heir under the ordinary Hindu law regardless of the rule of lineal primogeniture. In this Madras case the property on the death of the son in whose favour the will was executed went to his widow in preference to the half brother who would have been entitled if the rule of lineal primogeniture had been applicable. This case settles the law so far as it is applicable to the facts of the present case. Having regard to this ruling laid down by their Lordships it must be held that the estate, namely properties in lists A and C, which have been held by us to be portions of an impartible estate, devolved on Maha Vindeshri Pratap Singh as his self-acquired property and after his death would go to his own grandmother under the Hindu law, namely to Rani Baisni Madho Kunwar. The properties in lists B and D have been held by us to be not portions of an impartible estate, and they naturally go to Rani Baisni Madho Kunwar. The impartible estate would not go to the plaintiff of Suit No. 19 even though we have held him to be the senior-most member of the senior branch, nor could they go to defendant 4 even if he had established his case of seniority.

37. We may at this stage summarize the position of the parties as a result of the decisions given by us on various issues. We have held that the properties in lists A and C are impartible properties being Partabner Raj, and that properties in lists

B and D are not portions of Partabner Raj proper, that Shiam Pratap Singh is a descendant of Bairam Singh, that Bairam Singh was adopted by Anand Singh, that Anand Singh was the second son of Raja Sambhar Singh, that the plaintiff's ancestors did not renounce their claim to the raj, that defendant 4 was not more joint with the raj than the plaintiff (in other words both of them were notionally joint) that Kalka Singh is a descendant of Hindu Singh, the fourth son of Raja Sambhar Singh, that Raj Hukum Tej Pratap Singh executed a will in favour of Raja Maha Vindeshri Pratap Singh in respect of his entire moveable and immovable properties and that the same therefore became his self-acquired property with the result that the properties on his death would not be governed by the rule of primogeniture but by the ordinary Hindu law and that the heir to Raja Maha Vindeshri Partap Singh therefore was Rani Baisni Madho Kunwar. The plaintiff would have been entitled to succeed qua properties of lists A and C if we had held that the properties in the hands of Raja Maha Vindeshri Pratap Singh were not his self-acquired properties. The difficulty in the way of the plaintiff however is that we have come to the conclusion that the properties in the hands of Raja Maha Vindeshri Partap Singh became his self-acquired properties and that his heir after his death was Rani Baisni Madho Kunwari, defendant 1. The plaintiff's suit was therefore properly dismissed by the Court below, though on grounds which do not meet with our approval and we also dismiss the appeal. Rani Rathorni Narain Kunwar will get her costs of both Courts from the plaintiff appellant, because it is really on a plea advanced by learned Counsel on her behalf that we dismissed the plaintiff's suit. The other parties to the suit will bear their own costs. Cross-objections have been filed by Bikram Singh, defendant 3, but they are governed by the decision given on the various issues in the case. The cross-objections are also dismissed with costs.

38. The dispute in the two suits and the three appeals before us related to the succession of the plaint properties after the death of Raja Maha Bindeshri Partap Singh, and the Court below as well as ourselves were asked to declare the rightful claimant after his death. We have found that Rani Baisni Madho Kunwar was the rightful claimant. As Rani Baisni Madho Kunwar died during the pendency of the appeals in this Court, it was suggested to us that we should now declare as to who amongst the contending parties is the person entitled to the properties, or, if necessary, we should remit certain issues on the point. We are clearly of the opinion that the materials on the record are not sufficient for us to decide this point, and we think it will not be fair to the parties, without knowing exactly their cases by reason of this fresh cause of action having arisen, to remit any issues. It may also be that somebody else might come forward to lay a claim to the properties, and we with regret have come to the conclusion that the matter will have to be left for decision in a fresh suit.