

**(1894) 07 PRI CK 0002**

**In the Privy Council**

Prit Koer

APPELLANT

Vs

Mahadeo Pershad Singh and others

RESPONDENT

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**Date of Decision :** 14-07-1894

**Acts Referred:**

**Citation :** (1895) 22 ILRPC 85 : (1894) 21 IndApp 134

**Hon'ble Judges :** Hobhouse, Macnaghten, Morris, R. Couch, JJ.

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## **Judgement**

R. Couch, J. 1. Doman Singh, who died in 1806, had two sons, Dharam Singh and Ramdyal Singh. Dharam Singh died on the 13th July 1843, leaving two widows, Mussummats Chowrasu Koer and Bhup Koer, and a daughter who is the plaintiff in the suit and the present appellant. He had no other issue. Ramdyal Singh died on the 24th December 1839, leaving two sons, Bheodyal Singh and Ram Lal Singh. Sheodyal died in 1281 F.S. (1873-74) leaving sons and grandsons, who are defendants in the suit and now respondents. Ram Lal Singh was the first defendant. He died after the filing of his written statement in defence, and is now represented by his son Mahadeo Pershad, the first respondent. Both the widows of Dharam Singh are dead. Bhup Koer the plaintiff's mother survived Chowrasu. The date of her death was disputed, the defendants alleging that she died about 1865 and relying on the law of limitation. But it has been found by the first Court and the High Court that she died on the 3rd April 1875, as alleged by the plaintiff, and the suit having been commenced on the 21st March 1887 is not barred by the law of limitation. 2. The plaintiff claimed as heiress of her father Dharam Singh, alleging that he was separate from his nephews Sheodyal and Ram Lal at the time of his death, and that the properties in dispute were his separate properties. The family was admittedly governed by the Mitakshara law, according to which a daughter is entitled, in the absence of sons, to inherit the separate estate of her father after the death of his widows. As it could not be disputed that Dharam and Ramdyal were at one time joint in estate, and Dharam and his nephews would also be so, the onus" was upon the plaintiff to prove that there had been a separation. 3. The First Subordinate Judge of Patna in an able judgment has stated the evidence

produced to prove the separation, as well as that upon the question of the date of Bhup Koer's death, and has evidently given a very careful consideration to this evidence. As to the oral evidence he says that in his opinion the oral evidence on either side was not of much worth, and could not be relied upon unless corroborated by something more reliable; that none of the witnesses appeared to him as truthful or unbiassed; that "they pretended to recollect occurrences which took place upwards of forty years ago, with as much vividness as if they had witnessed them only a few months ago;" and that the question of separation had to be decided mainly upon the documentary evidence. The High Court agreed in this. 4. The earliest documentary evidence is a bond dated the 15th September 1843. It purports to be made by Dusruth Lal, mokhtar of Mussummat Chowrasu Koer, wife of Dharam Singh, in favour of Kanhai Lal, who was then in possession of Sherpore, one of the disputed properties, under a zurpeshgi ijara granted by Dharam Singh. The bond alludes to the ijara, and creates a further charge upon Sherpore for the money then borrowed. It purports to be signed "Mussummat Chowrasu Koer, widow of Babu Dharam Singh. By the pen of Sheodyal Singh," and is witnessed by Dusruth Lal and Sheodyal Singh. The next document is a zurpeshgi ijara, dated the 28th June 1844. It purports to be made by "Dusruth Lal, mokhtar of Mussummat Chowrasu Koer, widow of Babu Dharam Singh, deceased." It refers to the ijara by Dharam Singh, and the further charge of the 15th September 1843, and to the term of the ijara having expired, and renews it for a further term of three years. This is signed by Dusruth Lal only, and has the seal of Chowrasu Koer. Sheodyal neither signs nor witnesses it. 5. Another document is a judgment of the Additional Principal Sudder Amin of Patna, dated the 11th September 1844, in a suit by two persons against Chowrasu Koer, Sheodyal Singh and Earn Lal Singh and others for a share of the produce of a village in mouza Darnara Buzurg, which was stated in the plaint to have belonged to Dharam Singh. In the judgment it is stated that Chowrasu Koer had filed her answer, denying the connection of Sheodyal Singh and Ram Lal Singh with the inheritance of Dharam Singh, and that Sheodyal, for himself and as guardian of his minor brother, Ram Lal, had personally filed his answer in support of the defence of Chowrasu Koer, to the effect "that the heir of his uncle Dharam Singh is Mussummat Chowrasu Koer, the widow of Dharam Singh, and accordingly suits have been disposed of and are pending from the zillah to the Sudder Court on the establishment of her heirship; and that the plaintiffs' suit against him, the defendant, on the allegation of being the heir of Dharam Singh, deceased, is wholly an act of selfishness on their part." 6. The order made in the suit is "that the suit be decreed against Mussummat Chowrasu Koer, and the remaining defendants be exempted from liability in this case." 7. Another document is a judgment of the Munsif of Hilsa of the 23rd August 1844, in a suit by one Fyez Ali Khan against Chowrasu Koer, Sheodyal Singh and Ram Lal Singh, and others not members of the family, for the recovery of a share of the produce of property in mouza Mahomedpore, said to have been forcibly cut and carried away by a servant of Dharam Singh under the orders of him, and the other defendants. The defendants denied the

plaintiff's title, and said that the land from which the produce was taken was in their mouza Mahomedpore. The Subordinate Judge says this shows that Chowrasu had some interest in that mouza. The suit was dismissed on the ground that the plaintiff had not proved his title, and the question, who were the heirs of Dharam Singh, appears to have been immaterial. 8. Another document is a decree of the Sudder Court, dated the 14th September 1844, in a suit relating to property of considerable value. Dharam Singh had instituted a suit to establish his title to it, and had obtained a decree on the 29th April 1843. An appeal was preferred against it, and after the death of Dharam, Chowrasu Koer was made respondent as his representative. The Subordinate Judge says that no attempt was made on the part of Sheodyal and Ram Lal to have their names substituted for that of Dharam, and that they would in all probability have done so, if they had been joint with him and had become entitled to the property by right of survivorship. Their Lordships do not see any weight in this, if indeed there is any such probability. Ram Lal was a minor and Sheodyal may have had reasons, other than knowing he had no title, for not becoming a respondent. If the decree of the 29th April 1843 had been reversed, he would not have been bound by the decree of the Sudder Court. 9. In truth the only documentary evidence of importance is the statement by Sheodyal that he and Ram Lal were not heirs of Dharam. This was made more than 40 years ago, and Sheodyal being dead, and there being no documentary evidence to explain the statement, reasons for his setting up Chowrasu Koer as the heiress of Dharam Singh can only be suggested. In Ram Lal's written statement it is said that the reasons were, the existence of litigation about the time of Dharam Singh's death, the indebtedness of Sheodyal, and attempts said to have been made by his creditors to sell properties belonging to the family. Ram Lal was a minor when the statement was made, and may have known nothing about the matter. Chowrasu Koer was set up as the solo heiress, which was untrue, Bhup Koer being equally an heiress. The statement was therefore partly untrue, and this suggests that there may have been some reason, not now capable of being proved, for setting up a sole title in Chowrasu Koer. The Subordinate Judge thought there were two alternatives : that the assertions of her title by Chowrasu Koer should be regarded as bond fide acts, or that they should be regarded "as blinds contrived by Shoodyal Singh to deceive the world and conceal his own title." But the assertion of her title by Chowrasu Koer being partly false makes the bond fides of it doubtful. Then, as is observed by the High Court, the fact that there is no evidence of any documents of partition or separation of any kind is of great importance, having regard to the value of the family property, and to the family being obviously one very much versed in the conduct of business affairs. , It was clear that on the death of Doman, Dharam and Ramdyal were joint in estate, and on Ramdyal's death, Dharam became joint in estate with his nephews. The plaintiff had to meet the presumption that this continued, and to prove a separation in estate. The documentary evidence-the only reliable evidence in the case is in their Lordships' opinion insufficient to prove this, even when considered with the oral evidence of the plaintiff and her two witnesses, which it

is plain the Subordinate Judge thought was of no value. The High Court on appeal by the defendants dismissed the suit, and also dismissed a cross-appeal of the plaintiff, and their Lordships will humbly advise Her Majesty to affirm the decree of the High Court and dismiss this appeal. The appellant will pay the costs of it.