

(1910) 05 BOM CK 0004
In the Bombay High Court

Thakur Anant Singh

APPELLANT

Vs

Thakur Durga Singh

RESPONDENT

Date of Decision : 07-05-1910

Acts Referred:

Citation : (1910) 12 BOMLR 504

Hon'ble Judges : Macnaghten, J;Collins, J;Arthur Wilson, J;Ameer Alli, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Collins, J.—The question on this appeal is as to the right of a step-brother in a Hindu family to share equally with a brother of the whole blood in the succession of a deceased brother. Ratan Singh died in 1899, leaving certain shares in the Deokaha estate, as well as some house property. He was succeeded by his widow, who died in April, 1903. On her death the appellant Anant Singh, his stepbrother, claimed to be equally entitled with Dunga Singh, his sole surviving brother of the whole blood, to share in his succession. His contention was upheld by the Subordinate Judge, but on appeal the learned Judicial Commissioners overruled his decision and held that the succession passed to the brother of the whole blood, the now respondent, alone. The learned Judicial Commissioners, in their Lordships' opinion, gave excellent reasons for refusing to regard the evidence adduced by the plaintiff as sufficient to establish such a special custom in the family as to rebut the ordinary presumption that the Mitakshara Law prevailed. It has been pointed out more than once at this Board that there is no class of evidence that is more likely to vary in value according to Circumstances than that of the *Wajib-ul-arzes* (1898) L.R. 25 I.A. 161 (Privy Council) and *Musammat Parbati Kunwar v. Rani Chandarpal Kunwar* (1909) L.R. 36 IndAp 125, and where, as here, from internal evidence, it seems probable that the entries recorded connote the views of individuals as the practice that they would wish to see prevailing rather than the ascertained fact of a well-established custom the learned Judicial Commissioners properly attached weight to the fact that no

evidence at all was forthcoming of any instance in which the alleged custom had been observed. The question involved was one of fact only, and their Lordships see no reason whatever to differ from the opinion of the learned Judicial Commissioners.

2. Their Lordships will humbly advise His Majesty that the appeal be dismissed with costs.