

*Judgment of the Lords of the Judicial Committee of the Privy Council, on the Appeal of Rani Badam Kunwar v. The Collector of Bijnore, on behalf of Chaudri Ranjit Singh, from the High Court of Judicature for the North-Western Provinces of Bengal; delivered June 21st, 1882.*

---

Present:

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

THIS was a suit by one Ghasa Singh to obtain a declaration of his proprietary right and possession of a large quantity of land in a zemindari, and to set aside an Order of the Collector which was against his possession. The title set up by Ghasa Singh was a very simple one, that he was one of two brothers, his brother being Bhup Singh, who died in 1850; that he was joint in property with Bhup Singh; that upon Bhup Singh's death, leaving two sons, Amrao and Basant, his estate went to those two sons, and that he, Ghasa Singh, then became joint with them; upon their both dying without issue the whole estate devolved on him. He brought his action against three widows, one of whom only has appealed, the widow of Basant Singh. Her case is that Bhup Singh and Ghasa Singh were separate; that the whole of the property in question belonged to Bhup Singh, the Plaintiff having no interest therein, but acting only as manager; that consequently it descended to the sons of Bhup; and that she as the widow of the survivor is entitled to the property. That is the issue between the parties.

R 2567. 125.—7,82. Wt. 3701. E. & S.

A

The Defendant alleged that Sheoraj Singh, who died in the year 1800, shortly before his death, adopted his grandson, Bhup Singh, then a young child, and that by that adoption Bhup Singh obtained the whole of the property. The Plaintiff denied the adoption; he further contended that no such adoption could have been legally made, and asserted that Bhup Singh, soon after or about the time when he became of age, entered into possession of the property of his grandfather by the permission of the widow of the grandfather and his own mother, who certainly would have taken before him, and that he in point of fact was in possession; that the Plaintiff, his younger brother, who was born some 10 years after him, making a claim to the property, he and Bhup Singh, after some dispute between them, came to an arrangement which was embodied in an agreement dated the 4th of January 1835, whereby they shared the property equally between them, Bhup Singh's name alone being entered in the register as the owner.

If that agreement is made out, it becomes immaterial to consider whether there was an adoption, or whether such an adoption could legally take place. Their Lordships have accordingly confined the argument in the first instance to the question whether there was such an agreement.

The Lower Court have found that there was an adoption, and that there was no such agreement, and that a document put in by the Plaintiff which purports to be a copy of the agreement was a forgery. The High Court have reversed that judgment, finding that the agreement of the 4th of January 1835 was a valid one, and that it was sufficiently proved; and they have found further, as a fact, that Ghasa Singh has been all along in possession of the property, and in recognised possession, first by his brother Bhup, and subse-

quently by his nephews. From that judgment of the High Court this Appeal is preferred.

The Plaintiff (for whom, on his death, his son has been substituted) called for a certain box which was in the custody of the Court of Wards, in which he said he thought that certain agreements would be found, among other documents. Upon the box being opened a copy of the alleged agreement, which he certainly did not set up in his plaint, was found. This copy, according to the stamp, must have been made at least as late as 1846.

Before going into the question whether this document is genuine or a forgery, it is necessary to deal with objections which have been made at their Lordships' bar to its reception. In the first place, it has been objected that the original has not been shown to have been lost or destroyed; secondly, that there is no sufficient evidence, assuming that there had been an original, that this document is a true copy. These objections do not seem to have been taken, or at all events to have been insisted upon, in the first Courts. Both sides appear to have applied themselves to the question, on which they went into a vast quantity of evidence, as to whether this document was or was not a forgery. If the contention of the Defendant had been, not that it was a forgery, but that it ought not to be looked at, because the original had not been searched for or shown to be lost or destroyed, that is an objection which ought to have been taken and dealt with by the Courts below; but it is not dealt with in either of the judgments. Even if the document had been improperly received in the first Court it would not have been too late to have objected to its reception in the High Court. But no such objection appears to have been taken, and the High Court considered the only question before them to be whether this document was a forgery or not.

With respect to the proof of it, their Lordships have to observe that it purports upon the face of it to be a copy certified by the record keeper. It is certified by Thakur Dass, record keeper, and it is compared by Kadir Baksh, assistant, and Kadir Ali, copyist; and referring to certain parwanahs, (which for this purpose must be assumed to be genuine,) it would appear that the agreement of which the copy is put in was one which arose in this way: Parwanahs were issued from the office of the Collector, one, being the earliest of them, of the 14th October 1834, in which this is stated:—

“It appears from the petition of Ghasa Singh that he, being displeased with his brother Bhup Singh, prays for the entry of his own name in respect of the estate;” and then further there seems to be a report from Anup, the father of the brothers; and there follows a parwanah of the 12th November 1834, which runs in this way:—

“I perused your report dated 13th October 1834, endorsed on the petition of Ghasa Singh, purporting that you have effected an adjustment between your sons Bhup Singh and Ghasa Singh in the following manner.” And then the manner is related. Then again there is a further paper signed “H. Lushington, Collector”:—“As Chaudhri Anup Singh and Bhup Singh have carried out the Court’s order, the Court has been pleased and satisfied. The papers may be deposited.” And there is a further order of H. Lushington:—“Entered in Diary No. 72. Let it be filed with the record.” So this a document executed in pursuance of an Order from the Court, and directed to be filed upon the records of the Court. It is certified by the record keeper, and appears to have been compared by copyists.

Under these circumstances it appears to their Lordships that this is a document purporting to be a copy of a public record certified by the

officer who had the custody of it; and under those circumstances it would be admissible in evidence, and should be taken notice of by the Courts in India, whose law on that subject is very much the same as ours.

So much therefore with respect to the technical objections to the admissibility of this document.

With respect to its being a genuine document or a forged one, these considerations arise: If it were forged it would seem that it must have been forged by the Plaintiff in August or September 1871. Upon the death of Basant, his last surviving nephew, early in August 1871, the box which has been spoken of, containing those and other papers, seems to have got into his possession, but was given up by him on the 15th of September of that year, and if he did forge this and the other documents in the box he must have forged them then; and he must have been guilty of very extensive forgeries, because this is not an isolated document, but is connected with a good many others. It is connected with the two parwanahs which have been referred to; and it may here be as well to read the parwanah of the 12th November 1834. "To Anup Singh, high in rank—may you be in peace. I perused your report, dated 30th October 1874, endorsed on the petition of Ghasa Singh, purporting that you have effected an adjustment between your sons Bhup Singh and Ghasa Singh in the following manner: 'That, this estate having been left by Chaudhri Sheoraj Singh, the false grandfather of the two brothers, Ghasa Singh is entitled to inherit in the same way as Bhup Singh; but, according to the ancient custom prevailing among all the Rais and the brotherhood, Bhup Singh, the elder brother, was installed,' and so on. Then it goes on to say: "As the adjustment made by you

" is quite satisfactory, the Court approves of it;  
 " but it behoves you to cause a writing to be  
 " drawn up by the two brothers, in order to pre-  
 " vent future disputes, as you are the protector  
 " of both of them." Then comes the copy of  
 the agreement which is contended on the part of  
 the Plaintiff to have been made in pursuance  
 of this parwanah, and it is in these terms: It  
 purports to be signed by Bhup Singh. It is  
 possible that there may have been two docu-  
 ments, and one may have been signed by one  
 brother, and one by the other. "I, Chaudri  
 " Bhup Singh, son of Chaudhri Anup Singh,  
 " resident of Sherkote and talukadar of Sherkote  
 " and Afzalgarh Rosinda, hereby do declare:  
 " That in these, Chaudhri Ghasa Singh, my real  
 " brother, being displeased with me, presented  
 " an application to the Collector for the entry  
 " of his name in respect of the illaka; that a par-  
 " wanah dated the 14th October 1834 was issued  
 " by the authorities to Chaudhri Anup Singh, my  
 " father, directing him to settle the dispute be-  
 " tween me and the said brother; and he effected  
 " a reconciliation between us on these terms,  
 " that my name should continue recorded in the  
 " public papers, as before, that the riasat having  
 " been left by Chaudhri Singh, the false grand-  
 " father of us two brothers, the said brother is  
 " a co-sharer in and proprietor of the estate, and  
 " the entry of my name shall not be prejudicial  
 " to his right; that under these circumstances  
 " the said brother should be my co-partner, and  
 " enjoy the profits and bear losses, and he shall  
 " on his own authority manage all the estate  
 " affairs and make collections and alterations;  
 " that the said brother shall always spend what-  
 " ever amount he should deem proper for the  
 " expenses connected with the family affairs, for  
 " the establishment, and for maintaining the  
 " durbar (*prestige*) to the estate; that I, who

“ have been the masnad-nashir of the riasat  
 “ from the beginning, should continue to remain  
 “ as such, but I should not interfere with and  
 “ make alterations in the transactions effected by  
 “ the aforesaid brother; that the said brother  
 “ should, with my consent, manage and look  
 “ after the illaka and make collections and altera-  
 “ tions in the manner he thinks proper. I have  
 “ therefore executed this deed of agreement, that  
 “ it may serve as evidence in time of need.”  
 A further parwanah on the 12th January 1835  
 recognises this document. “As Chaudhri Anup  
 “ Singh and Bhup Singh have carried out the  
 “ Court’s Order, the Court has been pleased and  
 “ satisfied. The papers may be deposited as  
 “ parwanah certifying my satisfaction [*a piece of*  
 “ *paper is wanting here*]. 12th January 1835.”  
 If the agreement is a forgery, it seems to follow  
 —and that contention has not been shrunk from  
 by the counsel for the Defendant—that these  
 other parwanahs which have been read are also  
 forgeries.

But there are subsequent Orders, for example  
 a Hukumnamah of the 14th June 1836, which is  
 addressed to Bhup Singh and Ghasa Singh, pos-  
 sessors of Tuppa Bamnauli. There is a parwanah  
 of the 24th April 1839, addressed to Anup Singh,  
 father and guardian of the two sons, Bhup Singh  
 and Ghasa Singh, zemindars of Miambhaipur  
 Pargana Sherekote; there are parwanahs of the  
 13th July, and one of the 13th September; there  
 are later parwanahs addressed to Bhup Singh and  
 Ghasa Singh as possessors of the estate. If the  
 Defendant’s case is correct, namely, that Ghasa  
 had no connection whatever with this property,  
 that he was merely an agent and a manager, all  
 these parwanahs are entirely unaccountable; he  
 must contend that they are all forgeries.

But the difficulty of holding these documents  
 to be forgeries does not stop here, because we

have, in parts of these voluminous and confused records, a number of other papers which are called minutes relating to the estate. The first minute put in is dated the 23rd December 1860:—"During the current year the sugarcane crop has failed in several of the villages in the Bangar Division. In order to collect the balance of the rents, it seems proper, under all circumstances, to make a remission of the rents for the sugarcane lands in favour of the cultivators; but whereas this cannot be done without the sanction of my uncle Kibla Chaudri Ghasa Singh, this minute should be submitted to him for his sanction." That is signed Umrao Singh. There is indeed some question whether that was written by Umrao or by somebody for him; but there are many others which follow as to which there is no question as to the signature. Then there is this entry:—"That minute forwarded by Umrao and Basant was read before me to-day, Whereas it seems proper that the sugarcane field should be measured;" and so on. Then a direction is given that it should be done, and it is signed "Ghasa Singh." A number of these follow, many of which it is not necessary to read; but it may be as well to refer to one as late as the 27th June 1865. This is signed "Umrao Singh," and it is addressed to "Ghasa Singh":—"As you are my and my brother Basant Singh's patron, guardian, and also the proprietor of the estate; and as Chaudri Basant Singh, my brother, is squandering away money;" and so on. Then he requests Ghaza to make the proper arrangements:—"Make whatever arrangements you deem best; you are the owner and guardian."

With respect to these documents,—and there are many more of them,—it is to be observed that the Subordinate Judge does not declare them to be forgeries, but merely expresses some doubt



as to their genuineness. The High Court make this observation with respect to them: "The minutes," . . . . "are proved to be genuine documents, and prove beyond a doubt that the position of the Plaintiff was not that of an agent, but that of a principal owner of the estate; exactly that position, in short, which was assigned to him by the agreement of 4th January 1835." These minutes, therefore are treated by the High Court as undoubtedly genuine, and are not pronounced to be otherwise by the Court below; and their Lordships see no reason whatever for not accepting them as genuine. If so, these minutes have a very strong bearing on the previous parwanahs and the agreement; they are altogether consistent with them, and tend to show that they also are genuine. Taking the evidence of the parwanahs, together with the evidence afforded by these minutes, their Lordships are of opinion that even if the copy of the agreement were altogether rejected, on whatever ground, whether technical or otherwise, there would be a very strong case on behalf of Ghasa that there had been some arrangement between the brothers, and that he had been in possession of the estate for such a space of time as would throw on the Defendant a burden of proof that he was wrongfully in possession, which she has altogether failed to discharge.

Under these circumstances their Lordships are of opinion that the judgment of the High Court was right; and they will humbly advise Her Majesty that that judgment should be affirmed, and this Appeal dismissed with costs.

