

Privy Council Appeal No. 135 of 1915.
Allahabad Appeals Nos. 9 and 10 of 1913.

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|-------------------------|---|---|---|---|---|---|---|---|-------------------|
| Fateh Chand | - | - | - | - | - | - | - | - | <i>Appellant</i> |
| | | | | | | | | | <i>v.</i> |
| Pandit Rup Chand | - | - | - | - | - | - | - | - | <i>Respondent</i> |
| Same | - | - | - | - | - | - | - | - | <i>Appellant</i> |
| | | | | | | | | | <i>v.</i> |
| Same | - | - | - | - | - | - | - | - | <i>Respondent</i> |

Consolidated Appeals

FROM

**THE HIGH COURT OF JUDICATURE FOR THE NORTH-WESTERN
PROVINCES, ALLAHABAD.**

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 23RD JUNE, 1916.

Present at the Hearing :

LORD SHAW.
LORD PARMOOR.
MR. AMEER ALI.

[*Delivered by* LORD SHAW.]

In these consolidated appeals it has been admitted in the argument submitted to the Board by the Counsel for the appellant that substantially only one question falls now to be determined. That question has reference to the construction of a Will dated the 18th September, 1901, of one Musammat Gombi Kunwar. In that document there is a description of the title of the testatrix given in the following words : " I am the sole owner in possession of his "[her husband's]" entire estate and possess all the proprietary powers." Their Lordships note that throughout this Will the term thus translated "sole owner in possession" or "owner in possession" is "malik-o-qabiz."

Having thus described the property she proceeds to bequeath "the entire estate of my husband to Fateh Chand." There is, however, appended to this bequest of the entire estate the subjection of the whole of the estate "to the following conditions," and a covenant in writing by herself that she would abide by those conditions. One of those conditions is in

the following terms :—(4.) “ I have bequeathed Mauza Khudda, with all the property to Musammat Gomi, the daughter of my priest (prohit) whose marriage was celebrated by my father-in-law, and whom I have brought up as my own daughter. After my death, she shall be the owner in possession of the entire property in Mauza Khudda aforesaid.”

Their Lordships hold that there can be but little doubt that under the first sentence of condition 4 there would have been a competent bequest of Khudda, the village, with the totality of rights falling under the designation “ jumla-i-hakiat.”

Under the second part of condition 4 which says that the village is to be owned in possession, their Lordships cannot hold that there has been any abatement of the force of the words employed. Those words are “ malik-o-qabiz.” Translated “ owner in possession ” they truly are “ owner and possessor of.” There can, according to their Lordships view of this Will, if condition 4 were alone under construction, be therefore no doubt, under either branch of it, that that village now belongs under this Will to Musammat Gomi.

The argument presented to the Board, however, was that while that same form of expression was used in earlier portions of the Will, there were appended to it certain conditions or elaborations of which a sample may be given from condition 1. “ I shall continue ” says that portion of the Will “ to be the owner in possession of the entire estate the subject of the Will,” and then there are added these words “ and possess all the powers such as (those of) making sales, mortgages, gifts,” &c.

In their Lordships’ opinion these expressions do not abate from the completeness of the ownership and possession, nor do they fortify it in any way whatever. Accordingly condition 4, omitting the words which are thus surplusage, has to be given effect to, and it must be given effect to in the full sense recognised by law.

Their Lordships are of opinion that with regard to that sense there is now in the Indian law no doubt whatever. The judgment of Lord Collins in *Musammat Surajmani v. Rabi Nath Ojha* (35 I. A., p. 17), attaches to the word “ malik-o-qabiz ” unquestionably a signification of a full ownership in property. Such an ownership in property in their Lordships’ view was thus conveyed in this village to Musammat Gomi, and their Lordships will only conclude these observations by saying that in their view there is no repugnancy in such a construction. It is perfectly true that the entire estate was conveyed in the first place to Fateh Chand, but it was subject to conditions. On a perusal of those conditions, No. 4 occurs to the effect that as an exception from the conveyance of the entire estate this village is conveyed. This is not a repugnancy in the proper sense of the term, and taking the clauses of the Will together it simply means that Fateh Chand takes the entire estate, with the exception of this village, while it, in proper conveyancing terms, is disposed of in favour of Musammat Gomi.

Their Lordships are accordingly of opinion that there is no ground for the argument which would upset the judgment of the learned Judges of the High Court. Their Lordships agree with that judgment, and they also agree with the observations made as to the judgment of the Subordinate Judge who, with much care had arrived at a different conclusion. The views of the High Court are shared by this Board, and accordingly they will humbly advise His Majesty that these appeals be dismissed with costs, including the costs of the petition for special leave to appeal.

In the Privy Council.

FATEH CHAND

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PANDIT RUP CHAND.

SAME

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SAME.

DELIVERED BY LORD SHAW.