

Privy Council Appeal No. 33 of 1941

Oudh Appeal No. 30 of 1936

Syed Mohammad Saadat Ali Khan - - - - *Appellant*

v.

Mirza Wiquar Ali Beg and others - - - - *Respondents*

FROM

THE CHIEF COURT OF OUDH AT LUCKNOW

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 24TH MARCH, 1943

Present at the Hearing:

LORD ATKIN

LORD RUSSELL OF KILLOWEN

LORD PORTER

SIR GEORGE RANKIN

SIR MADHAVAN NAIR

[*Delivered by* LORD RUSSELL OF KILLOWEN]

This is an appeal by the plaintiff from a decree of the Chief Court of Oudh dated the 9th September, 1936, which reversed a decree of the Subordinate Judge of Bahraich, dated the 31st July, 1934, and dismissed the plaintiff's suit. It is necessary to set forth the history of the matter in some detail, in order to make plain the nature of the plaintiff's claim and the circumstances in which it arises.

Raja Mohammad Siddique Khan (hereinafter referred to as the testator) was the owner of the Nanpara Estate in Bahraich, Oudh. He made a will dated the 8th January, 1906, and died, *sine prole*, on the 30th December, 1907. There were many claimants to the estate, some relying on the will and others contesting it. The estate had since the month of February, 1905, been under the management of the Court of Wards, and in view of these rival claims the Court of Wards instituted, on the 28th April, 1908, an interpleader suit in the Court of the Subordinate Judge, of Bahraich. The suit was at a later date transferred to the Additional Subordinate Judge of Lucknow.

The original defendants to the suit were nine in number. Rani Qamar Zamani (defendant No. 1) contested the will and claimed the testator's property as his senior widow. Rani Saltanat, Dilafza, Champa, and Nasim Sahri (defendants Nos. 2-5) claimed both in virtue of their rights as widows of the testator, and of rights conferred by his will. Rani Kaniz (defendant No. 6) contested the will, and claimed as elder sister of the testator. Rani Sarfaraz (defendant No. 7) did not file any written statement and the suit proceeded against her *ex parte*. On the 9th March, 1909, Rani Saltanat (purporting to act under the will of the testator) adopted the present appellant, and he was subsequently added as a defendant (No. 13) to the interpleader suit. He claimed to be entitled to the property of the testator both as sole heir and under the will.

It is unnecessary to set out the provisions of the will in this judgment, because (as hereinafter appears) the rights which the appellant seeks to establish in this appeal depend not upon the provisions of the will, but upon the terms of certain compromises sanctioned by decrees in the interpleader suit. To these compromises and decrees reference must now be made.

On the 7th September, 1910, a deed of compromise was entered into between Rani Qamar, Rani Kaniz, and the appellant by which it was stated that they had settled their differences and disputes in the interpleader suit upon the terms therein set forth. Since the true construction of these terms of compromise then entered into (and subsequently sanctioned by the decree hereinafter mentioned) is a necessary step in the determination of one aspect of this appeal, they must be stated at length and *verbatim*. They run as follows:—

" I. The Court shall declare Rani Mohammad Kaniz Begam, (defendant No. 6) and Rani Mohammad Sarfaraz Begam of Muhamdi, (defendant No. 7) entitled to possession of the whole of the Taluqa of Nanpara except as hereinafter provided, in equal shares for their lives dividing all divisible profits equally after payment of the one-fourth share of profits hereinafter provided for payment to defendant No. 1. In the event of the death of Rani Mohammad Kaniz Begam without leaving male issue, her husband, Raja Mohammad Mumtaz Ali Khan of Utraula, if surviving will take her share for his life. On his death, or if he died before the Rani, and the Rani shall have no male issue then on the death of the Rani that share will revert to Rani Mohammad Sarfaraz Begam, if surviving, or if she does not survive then to Saadat Ali Khan or his heirs. On the death of Rani of Mohamdi, Saadat Ali Khan and his heirs will succeed to the estate in possession of Rani Mohammad Sarfaraz Begam.

" II. If Rani Mohammad Kaniz Begam die leaving male issue, her eldest son will succeed, and in such case the estate will be equally divided between Saadat Ali Khan and such eldest son.

" III. Rani Qamar Zamani Begam, (defendant No. 1) shall be declared entitled to and decreed to receive one fourth share of the divisible profits of the entire estate of Nanpara including all villages now under the charge of the Court of Wards from the Court of Wards or from the proprietors for the time being for a period of fifteen years, and in the event of the death of defendant No. 1 within the said period, her heirs will be entitled to receive the aforesaid one-fourth profits for the remainder of the period.

" IV. Rani Qamar Zamani Begam, (defendant No. 1) shall be declared to be entitled to full proprietary rights in perpetuity subject to payment of revenue to Government in such villages as Mr. Baillie may determine to be equivalent to the Girdharpur Ilaqa and shall be put in immediate possession thereof; but such villages will on behalf of Rani Qamar Zamani Begam or her heirs continue under the management of the Court of Wards for the period of fifteen years mentioned in clause III above.

" V. During the said fifteen years the profits of the aforesaid villages will be set off as part of the one-fourth profits of the entire estate payable to Rani Qamar Zamani Begam or her heirs as hereinbefore provided.

" VI. Rani Qamar Zamani Begam shall be entitled to receive the sum of three lakhs as her dower and shall be paid a sum of three and a half lakhs as her costs in the suit.

" VII. Rani Mohammad Sarfaraz Begam of Mohamdi shall be entitled to receive and be paid a sum of two lakhs in payment of her expenses, and fifty thousand which the Rani claims was in deposit on her behalf at Nanpara, and the two bonds executed by the Rani in favour of the Court of Wards will be considered to be cancelled.

" VIII. Rani Mohammad Kaniz Begam of Utraula will be entitled to receive a sum of two lakhs, seventy-four thousand on account of expenses and one lakh and twenty-six thousand which the Rani alleges to be held in deposit at Nanpara on her behalf.

" Any arrears of allowances sanctioned by the Court of Wards now due to Rani Mohammad Kaniz Begam of Utraula, will also be paid to her.

" IX. The money necessary for the payment of the dower and expenses of Rani Qamar Zamani Begam and the expenses of and other payments to Rani Mohammad Kaniz Begam and Rani Mohammad Sarfaraz Begam, and any other expenditure necessary in connection with this compromise will be borrowed by the Court of Wards. Such sum will be payable by annual instalments of fifty thousand rupees besides interest calculated half-yearly on the sum due. The payment of principal and interest will be a first charge on the Nanpara estate and its profits.

" X. A sum of Rs.600 per mensem shall be paid to Mohammad Ashfaq Ali Khan and such payment shall be a charge on the profits of the Nanpara estate, and a similar sum of Rs.600 similarly charged shall be paid to Raja Mohammad Mumtaz Ali Khan of Utraula, both payments to continue for the term of their natural lives.

" XI. If any of the defendants, not parties to this compromise, obtains from the Court in the interpleader suit a declaration or order for the payment of any maintenance or any other sum of money against one or more of the defendants, parties to this compromise the maintenance and payment so ordered shall be a charge on the profits of the whole estate.

" XII. Divisible profits as mentioned in the agreements shall be considered to be profits after payment of Government revenue and other dues, expenses of management and other payment by the Court of Wards, allowances to other defendants or persons determined in accordance with this agreement or decreed in Court and the annual payment towards principal and interest of the sum to be borrowed in accordance with this agreement.

" XIII. Any allowances now being paid to any relations or connections or servants of the family or estate which are not legally due, shall be discontinued by the Court of Wards on the joint request of the three parties. Where the parties are not unanimous on the subject, it will be left to the Court of Wards to decide whether the allowances should be paid or not.

" XIV. All three parties will unite in making a settlement with the other parties to the interpleader suit, or will jointly contest the claims of such other parties. All expenses incurred whether by one or more under this article will be borne by the estate as provided in Article IX "

On the 4th November, 1911, judgment was delivered in the interpleader suit. The judge held the will of the testator to be valid; he decided the claims of the parties to the compromise in accordance with its terms; and he dismissed the claims of the other parties to maintenance and dower on the ground that they could not be dealt with in the interpleader suit which related only to the title of claimants to the estate. He accordingly made a decree of the 4th November, 1911, which sanctioned and incorporated the compromise.

By this decree it was ordered " that in the present suit of interpleader a decree is passed under the terms of the compromise dated the 7th September, 1910, as follows:—" Then follow thirteen numbered paragraphs. Of these paragraphs, 1 to 10 (inclusive) and paragraph 13 follow the wording of clauses I to X (inclusive), and clause XIII of the above recited compromise terms; clauses XI and XIV of those terms are naturally omitted from the decree, but remain binding on the parties to the compromise; clause XII of the terms becomes (*mutatis mutandis*) paragraph 11 of the decree; and a paragraph (numbered 12) is added in the decree. It is in the following words:—

" 12. Explanation.—The words " Taluqa " and " Estate " in paragraphs 1, 2, 3, 5, 9 and 10 of this decree mean and include all the property in suit (moveable and immoveable)."

On the 8th December, 1911, in accordance with this compromise, Mr. Baillie, senior member of the Court of the Board of Revenue, allotted forty villages to Rani Qamar.

Appeals were presented to the Court of the Judicial Commissioner of Oudh by claimants to maintenance and dower, and a further compromise was entered into on the 20th September, 1912, between the parties to the first compromise and the three Ranis Saltanat, Dilafza, and Nasim Sahri. This second compromise was sanctioned by the Judicial Commissioner, who made three decrees (dated the 28th May, 1914), each of which allowed the appeal of one of those Ranis to the extent of the compromise attached to the decree. It will be sufficient to quote the relevant terms of the compromise attached to the decree made on the appeal of Rani Saltanat. They run as follows:—

" 1. That in return for this compromise, the Respondents Nos. 1, 2, 3 and 4, *i.e.*, Rani Qamar Zamani Begam, Rani Mohammad Sarfaraz Begam, Rani Mohammad Kaniz Begam and Muhammad Saadat Ali Khan, minor under the guardianship of Raja Ashfaq Ali Khan, shall at once make payable to us, the appellants, from the Court of Wards, Nanpara Estate, Rs.4,50,000 in cash on account of all our claims, Mahar, costs, etc., as detailed below, and we, the respondents Nos. 1, 2, 3 and 4 are and shall remain responsible for the payment of the said sum on the liability of the whole Nanpara Estate including both Taluqdari and non-Taluqdari property. And in case of improper delay and non-payment of the said sum, the appellants shall be entitled to realise it with damages by proceeding legally and we, the respondents, shall have no objection. The original suits regarding the dower debts amounting to three lacs each

that were pending in the Court of the Additional Subordinate Judge, Mohanlalganj, have also been got dismissed by the said Court under separate applications made to that effect.

" 2. That the respondents, moreover, in respect of our maintenance allowances in suit have proposed to make payable to us, the three appellants and our relations from the Treasury of Nanpara Court of Wards the sum of Rs.6,450 per month as per list attached hereto and we, the appellants, and our relations shall be entitled to receive regularly the said sum of maintenance allowances Rs.6,450 every month on the liability of the whole Nanpara Estate including both Taluqdari and non-Taluqdari property and these allowances shall create a charge subject to the terms of the compromise dated 7th September, 1910, on the basis whereof a decree has already been passed from the Court of the Additional Sub-Judge, Mohanlalganj, on the 4th November, 1911, upon the whole Nanpara Estate, Taluqdari and non-Taluqdari both.

" 3. That we, the appellants, also beg to say that, with the exception of the above sums, we or any of us or our representatives or heirs shall have no claim or right of any sort to the whole or part of the moveables and immoveables, Taluqdari or non-Taluqdari properties in suit or the outstanding allowances against the respondents, their representatives or heirs at present or in future."

The list of guzara holders referred to in clause 2 included the following, viz. Rani Saltanat, Rani Dilafza, Nawab Mohammad Sultan Khan, Nawab Sher Mohammad Khan, Musammat Moonga, Musammat Tahera Begam, and Sher Mohammad Kazim.

The nature of the appellant's claim may now be stated. He claims that the monthly maintenance allowances payable under clause 2 of the last mentioned compromise to the persons above named are charged upon Rani Qamar's forty villages as well as on his Nanpara Estate, and that he, having paid them in full, is entitled to receive out of the forty villages a proper contribution in respect of the amounts which he has so paid. He had at one time asserted in his suit similar claims in respect of payments alleged to have been made by him to the Raja Mohammad Mumtaz Ali Khan of Utraula under clause 10 of the first compromise, and in respect of payments alleged to have been made by him to two others, viz. Musammat Ketki and Rani Champa. These claims, however, proved to be ill founded, and counsel for the appellant very properly conceded that he could no longer assert them, and they disappear from the case.

Some further facts must be added.

Rani Kaniz died in 1919, Rani Sarfaraz died in 1922. Raja Mohammad Mumtaz Ali Khan of Utraula is also dead. The Nanpara Estate was, on the 3rd November, 1925, released from the superintendence of the Court of Wards. Rani Qamar died on the 22nd August, 1929. The whole of the Nanpara Estate (except Rani Qamar's forty villages) is in the possession of the appellant.

On the 2nd August, 1932, the appellant instituted the present suit against the heirs and legatees of Rani Qamar alleging that he had made payments to the amount of Rs.6,06,516, and claiming relief on the footing that the allowances were charged on Rani Qamar's forty villages as well as on his Nanpara Estate, and that the proper proportion which those villages should bear was one-fourth, viz. Rs.1,51,629. Various defences were raised by the defendants in their respective written statements.

The Subordinate Judge delivered his Judgment on the 31st July, 1934. He held the defendants bound by a previous decision of the Chief Court of Oudh delivered in First Civil Appeal No. 45 of 1930 on the 2nd March, 1931, upon the question of construction, a decision which he himself was bound to follow. He accordingly held that the maintenance allowances under the decrees of the 28th May, 1914, were charged on Rani Qamar's 40 villages. He fixed the share of the villages (as between them and the appellant's Nanpara Estate) at one twenty-second. He found the amount paid by the appellant to be Rs.3,55,998.5.0, of which the one twenty-second share was Rs.16,227.0.0. To this sum he added 3 years' interest at 6 per cent., making the total amount for which the forty villages

were liable to contribute to the appellant in respect of the payments which he had made, a sum of Rs.19,147.0.0. The order indicated in his judgment was in the following words:—

“ The plaintiff's claim is decreed for Rs.19,147/- and proportionate costs of suit against all the defendants. This amount shall be paid in six months. In default of payment the property of Rani Qamar Zamani specified in schedule I of the plaint shall be sold and the proceeds thereof shall be applied towards the payment of the decretal money. None of the defendants shall be personally liable for any part of the decretal money if the sale proceeds of the aforesaid property are found insufficient to satisfy the decree. Let a preliminary decree be accordingly prepared under Order 34, rules 4 and 15 C.P.C. Order 20 rule 1 C.P.C.”

The decree as drawn up is in the form of a preliminary decree for sale in a mortgage suit, the amount due on the security being stated to be “ the sum of Rs.19,147 for principal, the sum of Rs. *nil* for interest on the said principal, the sum of Rs.823.3 for costs of the suit awarded to the plaintiff, making in all the sum of Rs.19,970.3.” As appears from the judgment, no personal liability for payment attaches to any of the defendants.

The defendants appealed to the Chief Court of Oudh, on numerous grounds, whereupon the present appellant filed cross objections relating to the claims which are no longer in question, and which had been disallowed by the Subordinate Judge, and relating also to the question of the share properly attributable to the 40 villages.

The Chief Court delivered their judgment on the 9th September, 1936. They allowed the appeal, set aside the judgment and decree of the Subordinate Judge, and dismissed the appellant's suit with costs of both Courts. The cross objections were also dismissed with costs.

The judgment of the Chief Court is based upon the view (1) that upon the true construction of the first compromise no charge was created on the 40 villages and (2) that the before mentioned judgment of the Chief Court in First Civil Appeal No. 45 of 1930 did not make this question of construction a matter which was *res judicata* as between the parties to the present litigation.

These were the two points upon which the learned counsel based his contention, before their Lordships' Board, that the appellant was entitled to succeed in his appeal to His Majesty in Council, and their Lordships now proceed to consider them.

The Chief Court rightly states that the question of charge depends upon the true construction of the first compromise. The allowances provided by clause 2 of the second compromise are “ charged on the entire Nanpara estate, i.e. on the Taluqdari and non-Taluqdari property ”, and the clause provides that “ the charge of those maintenance allowances, subject to the terms of compromise dated 7th September, 1910, on the basis of which a decree was passed . . . on the 4th November, 1911, shall remain on the entire Nanpara estate, i.e. Taluqdari and non-Taluqdari property ” There can be no doubt in view of the words cited and of clause XI of the terms of the 7th September, 1910, that the words “ the entire Nanpara estate ” in the second compromise cover the same property as the property covered by the words “ the Nanpara estate ” and “ the whole estate ” in the first compromise. The crucial construction is, therefore, the construction of the first compromise.

The Chief Court relied upon the fact that by clause IV of the agreement Rani Qamar was given full proprietary rights in perpetuity, with immediate possession, in the villages “ subject only to the payment of Government revenue ”, and that there was no express provision creating a charge of any allowance on the villages. (It is to be noted incidentally that the word “ only ” cited above does not occur in the document.) They also state that it was “ in the very nature of things inconceivable ” that the Rani would agree to make the villages liable to pay any contribution towards maintenance allowances granted to other claimants of the Nanpara estate, and that if such was the intention, it should have been clearly expressed. They agreed with a judgment of Sir Louis Stuart and Mr.

Justice Raza delivered on the 10th February, 1928, attaching great importance to the view of Sir Louis Stuart as the view of one who, because he had heard the appeal in the interpleader suit and knew the facts and contentions of the parties was "specially qualified in virtue of his intimate knowledge of the facts and circumstances of the case to give a correct interpretation to the terms of these compromises". The Chief Court also expressed their disagreement with the different interpretation adopted by the later judgment of the Chief Court in First Civil Appeal No. 45 of 1930.

This method of construing a written document does not commend itself to their Lordships. The whole document should be considered, and it is from the language used therein by the parties, and not from any preconceived notion of likelihood or unlikelihood, that the intention of the parties is to be ascertained. It is wrong to start with an inspired assumption that it is unlikely that one party could or would have assented to a particular provision, and then to hold that because so unlikely a provision is not contained in the document in clear and express terms, it cannot have been intended to apply.

Their Lordships now proceed to consider the agreement of the 7th September, 1910, and the various clauses thereof.

Under clause III Rani Qamar is given one-fourth of "the divisible profits" of the entire estate of Nanpara for a period of 15 years. In that clause the entire estate clearly includes the forty villages, and her share of the profits must necessarily during that period have been subject to, and reduced by, her proper proportion of the maintenance allowances. In other words, during the 15 years (and notwithstanding the provision in clause IV as to immediate possession) the villages are by the compromise charged with the allowances. This is placed beyond doubt by the definition of divisible profits in clause XII. Is the position any different at the end of the 15 years when the Court of Wards cease to manage the estate, and the Rani is free to undertake the management of her villages? In their Lordships' opinion the charge must still remain, and this appears from other clauses of the agreement. Under clauses VI, VII and VIII, sums amounting to at least ten lakhs of rupees have to be raised; clause IX provides that the Court of Wards is to borrow them on a security under which annual instalments of Rs.50,000 and interest are to be paid off, and that principal and interest are to be "a first charge on the Nanpara estate and its profits". Those words obviously include the forty villages: the moneys borrowed are to be a first charge on the estate the income of which is to be divided under clause III. Therefore the mortgagees' security includes the forty villages. But it will take at least 20 years to clear off the mortgage, with the result that notwithstanding the cesser of management by the Court of Wards, the villages remain subject to the mortgage as part of the Nanpara estate. If then the words "the Nanpara estate and its profits" in clause IX include (as they must) the forty villages, it appears to their Lordships impossible to attribute any narrower meaning to the words in clause X "the Nanpara estate", or to the words in clause XI "the whole estate". Once the conclusion is reached (as it must be) that the allowances are charged on the forty villages during the 15 years, it appears to their Lordships impossible to hold, in the absence of some specific provision to that effect, that a charge which has once attached should cease to operate. The position under the agreement seems to their Lordships reasonably plain, but if reference is made to the compromise decree (and that is the document which makes the terms binding on the parties) the matter seems placed beyond doubt by paragraph 12 thereof, which expressly states that the word "estate" in paragraph 10 (which is the same as clause X of the agreement) means and includes "all the property in suit". The words "the Nanpara estate" in clause X must therefore include the forty villages in the charge thereby given for the allowances therein mentioned; and from this it follows that the allowances provided by the second compromise, in reference to which the appellant asserts his present claim, are charged upon the forty villages as well as upon his Nanpara estate.

There remains for consideration the question of *res judicata*. The facts upon which this contention is based must first be stated.

Mohammad Kazim, one of the Guzara holders referred to in clause 2 of the second compromise, died on the 22nd May, 1928. After his death his heirs filed a plaint against the appellant for arrears of his allowance of Rs.250 per mensem from November, 1925, to May, 1928, on the footing that it was charged on the entire estate of the testator including the Nanpara estate. Paragraph 15 contained the following allegation:—" That the sum of Rs.7,683.5.4 the arrears of the monthly allowance claimed is a charge on the entire Nanpara estate left by the deceased Raja Siddig Khan ". The appellant by his written statement pleaded that forty villages, part of the entire Nanpara estate, had been delivered to and were in the possession of Rani Qamar, and that she was a necessary party to the action. Rani Qamar was accordingly added as defendant No. 2, and after her death (in August, 1929) her heirs were added as defendants in her stead. They claimed that on a proper interpretation of the two compromises, Rani Qamar " obtained an absolute interest in perpetuity in the villages obtained by her free of all charges and incumbrances ". By his judgment (dated the 18th January, 1930) the Subordinate Judge held that the allowance of Mohammad Kazim was not a charge on the Rani's villages. He decreed the suit against the appellant alone, and his order stated that in case of default of payment within 3 months the Nanpara estate in the possession of the appellant only or a sufficient portion of the same should be sold. The appellant appealed (First Civil Appeal No. 45 of 1930) to the Chief Court of Oudh, the representatives of Rani Qamar and the plaintiff being respondents. The Chief Court allowed the appeal, and gave the plaintiff a decree against all the defendants. They considered in detail the terms of the two compromises and came to the following conclusion:—" Thus the whole tenor of the two documents makes it clear to our minds that the maintenance charges were attached to the whole estate, including the forty villages allotted to Rani Qamar. . . . This liability extends . . . to the profits of the forty villages now separately held by the heirs of Rani Qamar. . . ."

That decides the exact question which is now in dispute between the appellant and the heirs of the Rani in this litigation, and the question arises whether this former decision given in a suit in which the present litigants were co-defendants operates as *res judicata* so as to determine finally as between them the question whether upon the true construction of the compromises the allowances payable thereunder are charged upon the forty villages.

In order that a decision should operate as *res judicata* between co-defendants three conditions must exist: (1) There must be a conflict of interest between those co-defendants, (2) it must be necessary to decide the conflict in order to give the plaintiff the relief he claims, and (3) the question between the co-defendants must have been finally decided. (*Munni Bibi v. Tirloki Nath*, L.R. 58 I.A. 158). There can be no doubt that in the case under consideration the first and third conditions were fulfilled. Whether the second condition existed is the question to be answered. The Chief Court held that it did not exist for the reasons appearing in the following extract from their judgment:—

" In fact, the plaintiffs rested content with the decree which they had obtained from the trial Court against Raja Saadat Ali Khan alone, and it was for Raja Saadat Ali Khan, if he so chose, to bring a separate suit against Rani Qamar Zamani Begam and Raja Mumtaz Ali Khan for contribution in respect of the arrears of *guzara* allowances, which he alone was made to pay. Raja Mumtaz Ali Khan never put in an appearance either in the trial Court or before the appellate Court. We are, therefore, clearly of opinion that the judgment of this Court in First Civil Appeal No. 45 of 1930 (Exhibit 29) is not *res judicata* between the parties to this suit and is not binding on them, because the second condition laid down by their Lordships of the Privy Council in *Munni Bibi v. Tirloki Nath* (A.I.R., 1931, P.C., 114) has not been fulfilled, since it was not necessary in the suit brought by Shaikh Mohammad Sadiq and others, the heirs of Mohammad Kazim, to decide the conflict between Raja Saadat Ali Khan and Rani Qamar Zamani Begam and Raja Mumtaz Ali Khan."

Their Lordships find it difficult to accept this view. The plaintiffs claimed to be entitled to a charge on the entire Nanpara Estate left by the testator. The appellant (the original defendant in the suit) pleaded that Rani Qamar's forty villages were also charged, and that she and Mumtaz Ali Khan (who had an interest in the Nanpara Estate) were necessary parties, as indeed they were if the plaintiffs were to obtain the full relief which they claimed. The question whether the forty villages were charged was accordingly raised, and it had to be decided before the Court could determine what relief claimed by the plaintiffs could be given to them. Their Lordships are of opinion that the case falls within the decision cited above, and that accordingly the construction of the second compromise is *res judicata* between the appellant and the representatives of Rani Qamar.

There remains one more point with which their Lordships must deal. The Subordinate Judge fixed the share which the forty villages had to bear at one twenty-second. He arrived at this fraction by comparing (as at the time of the creation of the charge) the net profits of the villages with the net profits of the Nanpara Estate after excluding the net profits of the villages. The Chief Court rejected this figure on the ground that there was no evidence to support it, and stated (in case there should be an appeal to His Majesty in Council) that the only fraction which could be justified was one fiftieth, founded on an admission contained in the defendants' written statement.

Their Lordships are unable to understand why the Chief Court were of opinion that the view of the Subordinate Judge was unsupported by evidence. On the one hand there was the award by Mr. Baillie of the forty villages to Rani Qamar dated the 8th December, 1911, which stated the figures of gross and net profits. This document was put in evidence by the defendants. On the other hand it appears from a judgment of the Subordinate Judge, delivered on the 31st October, 1910, in the interpleader suit, that Mr. Sladen, the special manager of the Nanpara Estate, had given evidence before him to the effect that the net profits of the Nanpara Estate amounted to about 8 lakhs. This was a judgment given on an application to set aside the first compromise as being unfair to the present appellant, who was then a minor. The amount of the annual net profits of the Nanpara Estate was accordingly a matter of prime importance for the Judge's consideration. The result of the evidence is recorded in his judgment, and this judgment also was put in evidence by the defendants. There was therefore ample evidence upon which the Subordinate Judge could in the present suit arrive at the fraction one twenty-second; and their Lordships agree with this figure.

For the reasons indicated, their Lordships will humbly advise His Majesty that the decree of the Chief Court of Oudh dated the 9th September, 1936, should be discharged (except in so far as it dismissed the cross objections) and the decree of the Subordinate Judge dated the 31st July, 1934, restored. The appellant's costs of the appeal to the Chief Court and his costs of the appeal to His Majesty in Council must be paid by the respondents, and in default of and until payment will be charged upon the property scheduled to the last-mentioned decree.



In the Privy Council

SYED MOHAMMAD SAADAT ALI KHAN

2.

MIRZA WIQUAR ALI BEG AND OTHERS

DELIVERED BY
LORD RUSSELL OF KILLOWEN

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