

Privy Council Appeal No. 45 of 1945

Rani Munia and another - - - - - Appellants

v.

Raja Surendra Bikram Singh - - - - - Respondent

FROM

THE CHIEF COURT OF OUDH AT LUCKNOW

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 21ST JULY, 1947

Present at the Hearing :

LORD SIMONDS
LORD UTHWATT
SIR JOHN BEAUMONT

[*Delivered by* LORD UTHWATT]

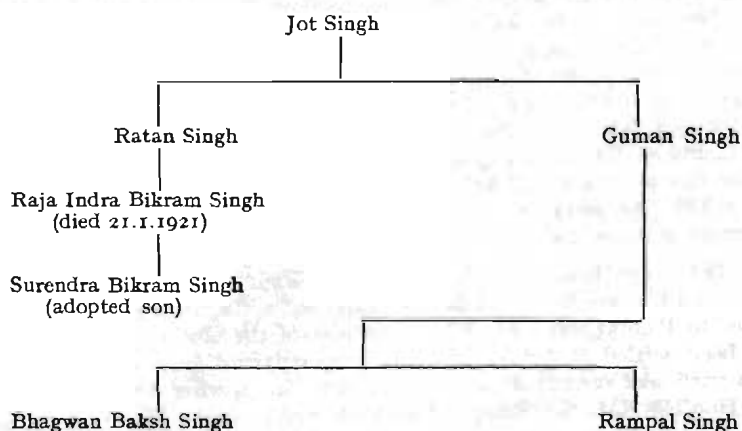
This is an appeal from a judgment and decree of the Chief Court of Oudh at Lucknow dated the 15th October, 1943, which partly reversed and partly affirmed a judgment and decree of the Civil Judge of Malibabad, Lucknow, dated the 9th April, 1941.

The appeal arises out of proceedings brought by the appellants in which they claimed *inter alia* possession of three villages, Mohammadpur Saraiyan, Jam Khanwan and Agasar. The title to these three villages is now the only matter in dispute. The rights of the parties depend upon the true construction of a deed of Family Settlement dated the 4th October, 1923, the appellants contending that under it Bhagwan Bakhsh Singh was either entitled to these villages absolutely or was entitled to dispose of them by will, and the respondent contending that he had no such interest or power.

The Civil Judge held that Bhagwan Bakhsh Singh was absolutely entitled to the villages. The Chief Court held that he was entitled to a life interest only and had no power of disposition by will.

The question at issue arises in the following circumstances. The three villages in question form part of the taluqdari estate of Itaunja in the District of Lucknow. In the year 1923, the Itaunja family shown in the following pedigree consisted of three members, Surendra Bikram Singh Bhagwan Bakhsh Singh and Rampal Singh. Surendra Bikram Singh had then just attained his majority while Bhagwan Bakhsh Singh and Rampal Singh were of the age of 53 years and 45 years respectively.

Upon the death of Raja Indra Bikram Singh, then taluqdari of Itaunja estate, disputes arose between Surendra Bikram Singh and Bhagwan



Bakhsh Singh as to the succession to the estate of Itaunja. The Revenue Court in the mutation proceedings recorded in the Revenue Register the name of Surendra Bikham Singh in respect of the late Raja's non-taluqdari property and that of Bhagwan Bakhsh Singh in respect of his taluqdari estate. Both being dissatisfied they filed suits one against the other in the Court of the Subordinate Judge of Lucknow to establish their respective claims to the whole of the Itaunja estate. The two suits were consolidated for trial but were afterwards settled and a decree dated the 13th September, 1923, was made in the terms of the compromise.

Rampal Singh was not a party to either of the two suits although he was interested in the property to which they related. He was accordingly not bound by the compromise, but on the 4th October, 1923, the deed of Family Settlement was entered into by the three members of the family giving effect to the terms of compromise.

In the deed Bhagwan Bakhsh Singh, Rampal Singh and Surendra Bikram Singh are referred to as declarant No. 1, declarant No. 2 and declarant No. 3. It recites the suits, the fact of a compromise and the circumstance that Rani Sheoraj Kuar Saheba, the wife of Bhagwan Bakhsh Singh, had died since the making of the compromise and the desire to execute the deed and ratify its terms as a family arrangement. Clause 1 states that the entire property left by Indra Bikram Singh is mentioned in the Lists appearing in the deed and is in the deed styled "the property in dispute." List No. 1 specifies seven villages including the three villages in question; List No. 2 gives details of the debts of the parties and of Indra Bikram Singh; List No. 3 specifies other immoveable properties; and List No. 4 gives details of maintenance-holders and recipients of payments as a matter of favour.

Clauses 3, 4 and 5 of the deed are as follows:—

"3. On the entire 'property in dispute' the declarant No. 1 shall remain in possession for his life without the co-parcenership of anybody else. But, excepting the property mentioned in the List No. 1 of this deed, he shall not possess any sort of right of transfer regarding any of the remaining properties. In respect of the property mentioned in List No. 1, the declarant No. 1 shall possess all sorts of power of transfer. If the declarant No. 1, on account of the death of Rani Sheoraj Kuar Saheba, marries again and from the womb of this 2nd Rani and from his loins there be born a male child then that male child born from his loins shall not acquire any right in the 'property in dispute' excepting in the property mentioned in List No. 1. Such a son can inherit only the property mentioned in List No. 1 and in such a case the declarants Nos. 2 and 3 or their descendants shall have no right to the property mentioned in List No. 1. After the death of the declarant No. 1, the declarant No. 2 shall, for his life (and) without power of transfer, remain in possession of the entire 'property in dispute' subject to the terms of this deed relating to the payment of debts and maintenance. After the death of the declarant No. 2, and if, God may forbid, the declarant No. 2 were to die in the lifetime of declarant No. 1, then, at the time of the death of declarant No. 1, the declarant No. 3 shall, subject to the terms of this deed relating to the payment of debts and maintenance, remain in possession of the entire 'property in dispute' for his life (and) without power of transfer. After the death of the declarant No. 3 or if the declarant No. 3 were to die in the lifetime of the declarants Nos. 1 and 2, then at the time of the death of the person who might be the last possessor of the property, he, who out of the male descendants born from the loins of the declarant No. 3, will be the oldest descendant of the senior branch shall be absolute owner of the 'property in dispute' subject to the terms of this deed, relating to the payment of debts and maintenance, and he shall be deemed to be governed by the provisions of Act 1 of 1869. If out of these none be existing then whoever out of the family of Raepur Ekraria Estate, be the nearest heir and be entitled under the provisions of Act 1 of 1869, shall be the absolute owner of the entire 'property in dispute', subject to the terms relating to the payment of debts and maintenance.

4. Debts due from Raja Indar Bikram Singh and from the declarants Nos. 1 and 3, are being detailed in List No. 2 the total amount whereof comes to Rs.6,53,000. As to the payment of the whole of these debts it has been settled that the moveable property in dispute excepting some such particular ornaments as the declarant No. 1, after consultation with the Hon'ble Raja Sir Rampal Singh aforesaid, might like to keep, and

the immoveable property mentioned in List No. 3, are earmarked for the payment of the debts. The said Raja Sir Rampal Singh has kindly taken upon himself the responsibility of paying off the debts by disposing of the moveable and immoveable property in accordance with the said arrangement. The Raja Saheb aforesaid will be competent to dispose of the said properties in such manner as he might like and to execute deeds of conveyance under his own signature, and whatever the said Raja Saheb will do in this matter will be deemed to have been done by all the three declarants and their representatives and those (acts) will be binding on the three declarants and on their representatives. If the properties mentioned in this paragraph be found to be insufficient to pay off the debts then the said Raja Saheb will be competent, after consultation with the person then in possession (of estate), to dispose of another 'property in dispute' excepting the property mentioned in List No. 1, and to satisfy the remaining debts. Whatever property the said Raja Saheb will dispose of in order to pay off the debts, will be disposed of free from the charge of maintenance. If in respect of these transfers, may God forbid, the said Raja Saheb be at any time called to explain, or if in any form any litigation might crop up then the liability for all damages and costs will be on the 'property in dispute' and on the person who will then be in possession of the estate and the Raja Saheb aforesaid shall not be liable under any circumstances.

5. That during the possession of the declarant No. 1 and of the declarant No. 2 the declarant No. 3 and his male descendants born from his loins shall continue to get maintenance to the extent of Rs.750 monthly from the person then in possession (of the estate) and the charge of this maintenance also shall remain over the entire 'property in dispute' excepting over the property mentioned in List No. 1, but if after the death of the declarant No. 1 the property mentioned in List No. 1 also were to come into the possession of the declarant No. 2 then that property also shall be liable for the said maintenance like other 'property in dispute'. If at the time the declarant No. 3 or his male descendant born from his loins get possession, over the property in dispute, there be existing any male descendant born from the loins of declarant No. 2 then that male descendant born from the loins of declarant No. 2 shall be entitled to get Rs.750 per month for maintenance for generation after generation from the person then in possession and the charge of this maintenance also shall remain on the entire 'property in dispute' like the maintenance of Lal Surendra Bikram Singh. Other items, relating to maintenance and payments as a matter of favour, have been mentioned in detail in List No. 4 which according to their entries in the said list, will be binding as against all the persons in possession of the 'property in dispute' excepting against the property mentioned in List No. 1 and the charge of the various items of maintenance mentioned in the said list shall, like the maintenance in favour of declarant No. 3, remain on the entire property in dispute in the manner mentioned above."

The remaining provisions of the Deed are immaterial for the purpose in hand.

Bhagwan Bakhsh Singh died childless on the 25th August, 1926, and by his will affected to dispose of *inter alia* the three villages in question in favour of Rampal Singh. The appellants claim under Rampal Singh and, as has been stated, they contend that upon the true construction of the deed Bhagwan Bakhsh Singh as respects the villages was given an absolute interest or alternatively was given a power of disposition by will. The respondents contend that Bhagwan Bakhsh Singh was not given any such interest or power of disposition.

In their Lordships' opinion it is clear that Bhagwan Bakhsh Singh did not take an absolute interest in the properties mentioned in List No. 1. His proprietary interest is in terms limited to a life estate and, however widely the powers of transfer given to him are construed, they cannot operate to enlarge an estate which is in terms limited. They remain powers annexed or incident to the estate conferred.

The question remains whether the declaration that in respect of the properties mentioned in List No. 1 Bhagwan Bakhsh Singh shall possess "all sorts of power of transfer" conferred upon him a power of disposition by will of an absolute interest in the property. That declaration is capable of being construed as authorizing disposition *inter vivos* while not also authorizing testamentary disposition. It is not capable of being construed as authorizing testamentary disposition and not authorizing disposition *inter vivos*. The appellants must therefore face the fact that on their

construction of the deed Bhagwan Bakhsh Singh would for all practical purposes be in the position of an absolute owner. If that were intended, the parties would appear to have gone out of their way to express a simple idea at length and in a tortuous manner. An examination of the terms of the Deed has led their Lordships to the conclusion that the appellants' construction does not reflect the true intendment of the Deed.

On the Deed as a whole, the outstanding feature is that the limitations subsequent to the life interest of Bhagwan Bakhsh Singh go upon the footing that successors to him will take the property in List No. 1. The interest of his male child is not expressed to be subject to any exercise of a power of disposition by Bhagwan Bakhsh Singh and there is not elsewhere in the Deed language which suggests that all the property will not devolve under the Deed to the persons named or designated in it. This though not conclusive upon the point is not without weight in determining the ambit of the power given to Bhagwan Bakhsh Singh.

Turning to the details of the Deed, it is to be observed that in the gift of a life interest to Bhagwan Bakhsh Singh the entire property in dispute is treated as a single unit. That limited interest does not suggest that in any circumstances Bhagwan Bakhsh Singh should have any power to transfer an absolute interest in any part of the property. But a power to transfer is in terms denied to him as regards all the properties except those in List No. 1. The declaration that he is to have all sorts of powers of transfer as respects the properties in List No. 1 is indeed positive in form, but the point made is the contrast between his position as respects the one set of properties and his position as respects the other set of properties in both of which he has a life interest. As regards the life interests of other persons arising under the Deed (which might extend to the entire property in dispute) there is once more the declaration that they are without power of transfer.

Rationally the declarations restricting transfer can refer only to the life interests. If they do this the declaration permitting transfer by Bhagwan Bakhsh Singh as regards the properties in List No. 1, can only refer to his life interest. It would appear therefore that the parties thought fit to declare one way or another whether the possessor of a life interest was or was not to be subject to a restriction on alienation.

A sufficient reason for making a declaration prohibiting alienation by Bhagwan Bakhsh Singh of his life interest in the entire property other than that in List No. 1 and of prohibiting alienation of the other life interests in the entire property can be found in the provisions of clauses 4 and 5 of the Deed. Properties other than those included in List No. 1 were liable to be sold for payment for debts and were subject to maintenance charges. Properties in List No. 1 were not liable to be sold for debts but, after the death of Bhagwan Bakhsh Singh without a male heir, became subject to maintenance charges. Effective resort to the properties liable to be sold or liable to be charged for maintenance would be precluded if possessors of life estates were at liberty to alien their life estates free from these obligations. It is understandable therefore that a statement should be made that in general life interests were not to be alienable, and by way of contrast that the life interest of Bhagwan Bakhsh in the properties mentioned in List No. 1 was to be freely alienable. The fact of the supremacy of the over-riding power is stated and its proper limits are marked out. Bhagwan Bakhsh Singh was to remain free to deal with his own as he thought fit. Their Lordships therefore take the view that the declaration that Bhagwan Bakhsh Singh shall possess all sorts of powers of transfer relates only to his life interest in the properties mentioned in List No. 1. It follows that their Lordships are of the opinion that Bhagwan Bakhsh Singh had no power of disposition by will.

Their Lordships will therefore humbly advise His Majesty that this appeal be dismissed. The appellants will pay the costs of the appeal.

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In the Privy Council

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DELIVERED BY LORD UTHWATT

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