

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Achal
Ram v. Udai Partab Addiya Dat Singh, from
the Court of the Judicial Commissioner of
Oudh ; delivered 30th November 1883.*

Present :

LORD FITZGERALD.

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

THIS was a suit brought by Udai Partab against Achal Ram, who was the husband of Brij Raj Kunwari, deceased, and who obtained possession of the estate in question upon the death of his wife. The Plaintiff alleged himself to be the heir of Perthi Pal Singh, and in the action of ejectment it was necessary for him before he could turn out the Defendant to prove that he had a better title. He attempted in support of his title to show that the estate was to descend according to the rules of lineal primogeniture. If that rule prevailed he appears to have been the heir of Perthi Pal Singh. A question was raised in the suit whether Perthi Pal Singh had made a will; but it is unnecessary to decide that question, because, whether he made a will or not, or whether his daughter, Brij Raj Kunwari, the wife of the Defendant, took an absolute estate or not, is immaterial, if the Plaintiff fails to prove that he has a better title than the Defendant. It is necessary, therefore, for the Plaintiff to make out that the estate descended according to the rules of lineal primogeniture as distin-

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guished from descent to a single heir amongst several in equal degree.

The estate in question was a talook created by the Government of India after the confiscation of Oudh. Perthi Pal Singh, upon whom it was conferred, died before Act 1 of 1869 was passed ; but the talook was one in respect of which the Government of India laid down certain rules as to the title of the talookdars whom they had created and as to the mode of succession. The preamble of Act 1 of 1869, intituled The Oudh Estates Act, is in these words:—"Whereas
 " after the re-occupation of Oudh by the British
 " Government in the year 1858, the proprie-
 " tary right in divers estates in that province
 " was under certain conditions conferred by
 " the British Government upon certain talook-
 " dars and others: And whereas doubts may
 " arise as to the nature of the rights of the said
 " talookdars and others in such estates and as to
 " the course of succession thereto: And whereas
 " it is expedient to prevent such doubts and to
 " regulate such course and to provide for such
 " other matters connected therewith as are herein-
 " after mentioned, it is hereby enacted as fol-
 " lows." Among other enactments is section 8,
 which provides that "Within six months after
 " the passing of this Act the Chief Commis-
 " sioner of Oudh, subject to such instructions as
 " he may receive from the Governor General of
 " India in Council, shall cause to be prepared six
 " lists; namely, first, a list of all persons who
 " are to be considered talookdars within the
 " meaning of this Act." Perthi Pal Sing, who
 had been allowed to contract for the revenue, and
 with whom a summary settlement had been made,
 was entered in the first of the lists as a talookdar;
 and he must therefore be deemed a talookdar
 within the meaning of the Act. He was also
 entered in the second of the lists, which is a

list of the talookdars whose estates, according to the custom of the family on and before the 13th day of February 1856, ordinarily devolved upon a single heir. Therefore the talook must be considered as a talook which ordinarily descended upon a single heir; but it omits altogether to state that that heir is to be ascertained by the rules of lineal primogeniture. The third list is " A list of the talookdars not included in the " second of such lists to whom sunnuds or grants " have been or may be given or made by the " British Government up to the date fixed for " the closing of such lists, declaring that the suc- " cession to the estates comprised in such sunnuds " or grants shall thereafter be regulated by the " rules of primogeniture." Perthi Pal Singh was not entered in that list, and it is contended that because he was in the list of estates which ordinarily devolved upon a single heir it is to be presumed that the heir was to be ascertained according to the rules of lineal primogeniture. Their Lordships cannot concur in that contention. They are of opinion that when a talookdar's name was entered in the second list and not in the third, the estate, although it is to descend to a single heir, is not to be considered as an estate passing according to the rules of lineal primogeniture.

Now the Plaintiff having to make out his title, the District Judge in the First Court found that the estate was to descend according to the rules of primogeniture, not saying lineal primogeniture. There was no evidence to show that the estate had descended according to the rules of lineal primogeniture, even if such evidence could have got rid of the provisions of the Act. The Judicial Commissioner also found that the estate descended according to the rules of primogeniture, and it is said that there were two concurrent findings upon a question of fact; but

when their Lordships come to examine the reasons and the grounds of the decision of the Judicial Commissioner, they find that he was in error. He says that there was a sunnud granted to Perthi Pal Singh, according to which the estate was to pass according to the rules of primogeniture. He says:—"In the present case the confiscation " was admitted in favour of Bhaiya Perthi Pal " Singh, and the grant as by sunnud is to him " and his heirs male according to the law of " primogeniture; so that unless his daughter " from some cause takes a full proprietary " heritable estate, those entitled to succeed after " her must be sought for amongst the heirs of " Bhaiya Perthi Pal Singh." Then he enters into the question whether the Plaintiff is the nearest heir according to the rules of lineal primogeniture. Both Courts appear to have failed with reference to the principle that a Plaintiff seeking to recover possession of an estate against a person who is in possession must recover upon the strength of his own title, and not upon the weakness of his adversary's title. That is a principle of law, and a very essential principle to be acted upon. The Judicial Commissioner, after deciding that the male reversionary heirs of Perthi Pal Singh were to come in, says:—"There remains the question as to " whether the Plaintiff-Appellant, Bhaiya Udai " Partab Singh, is such male reversionary " heir, considering that, as stated in an early " part of this judgement, according to ordinary " Hindu law Harbhagat Singh was the nearest " collateral heir male to Bhaiya Perthi Pal Singh " at his death, and failing him Jabraj Singh, " Arjan Singh, and the sons of Harbhagat Singh " would have precedence as collateral male " heirs. Those named above are not parties " to this litigation, and no right that they " might have as against Udai Partab Singh

“ would be prejudiced by a decree in his favour
 “ against Achal Ram, who is found to have no
 “ right or title at all in the talooka. And in
 “ one sense there is a community of interest
 “ in all the males of the BHINGA branch, that
 “ the Birwa Mahnoun estate should not pass
 “ to a stranger, to the prejudice of their rever-
 “ sionary rights to succeed the last male pro-
 “ prietor. In both these estates the succession
 “ is to be regulated by the rule of primogeni-
 “ ture; and Plaintiff-Appellant, as senior, heir
 “ male of the BHINGA BISSIN family, has suc-
 “ ceeded to and is in full proprietary possession
 “ of that talooka. He may therefore well be
 “ held to be representative of the reversioners
 “ in his branch, and anyhow it does not lie in
 “ the mouth of Defendant-Respondent, who is
 “ found to have no legal warrant for his posses-
 “ sion of the Birwa estate, to deny that the
 “ Plaintiff has a *locus standi*, on the ground that
 “ it may be that he may not afterwards be found
 “ to be the man among the reversioners whom
 “ he represents, who should succeed.” In short,
 the Judicial Commissioner comes to the conclusion
 that, inasmuch as the Defendant is shown to have
 no title according to his ruling, therefore he has
 no right to say that the Plaintiff is not entitled
 to succeed. He entirely reverses the rule on
 which actions to recover possession are founded;
 namely, that he who seeks to turn another out of
 possession must first prove that he has a better
 title. His judgement is consequently erroneous,
 and ought to be reversed.

It has been stated that the judgement obtained
 by the Plaintiff has been executed, and that
 the Defendant has been turned out of possession.
 There is no evidence to that effect; but if it is
 the case the Defendant ought to be restored to
 possession, and ought not by reason of his having
 been turned out under an erroneous judgement

to be placed in the position of having to seek to recover possession himself and to prove his title.

Their Lordships will humbly advise Her Majesty that the decree of the Judicial Commissioner be reversed, and the decree of the officiating District Judge affirmed; that the Respondent do pay the costs in the lower appellate Court; and that, if the Appellant has been put out of possession under the decree of the lower appellate Court, he be restored to possession.

The Respondent must pay the costs of this Appeal.