Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Udai Raj Singh and others v. *Raja Bhagwan Bakhsh Singh and others, from the Court of the Judicial Commissioner of Oudh; delivered 15th February*, 1910.

Present at the Hearing:

LORD MACNAGHTEN.

LORD COLLINS.

SIR ARTHUR WILSON.

MR. AMEER ALI.

[*Delivered by Lord Macnaghten.*]

This is an Appeal from the Court of the Judicial Commissioner of Oudh affirming a decree of the subordinate Judge of Lucknow.

The matter in controversy is the right of succession to the Amethi Taluqa in the Sultanpur District of the Province of Oudh, formerly the property of Raja Madho Singh deceased, whose name appears in Lists I. and II. mentioned in Section 8 of the Oudh Estates Act (Act I. of 1869).

Madho Singh died on the 24th of August, 1891. Under his will dated the 1st of May,

1891, the Respondent Bhagwan Bakhsh Singh has been in possession ever since Madho Singh's death.

The Respondents' title is challenged by the first Appellant Babu Udai Raj Singh, representing the late Plaintiff Gur Bakhsh Singh.

The claimant Gur Bakhsh Singh deduced his title from one Lal Lachhman Singh who was adopted by Madho Singh but died on the 12th of April, 1891, in the lifetime of his adoptive father. His case was that Madho Singh in his lifetime made over the estate to Lachhman Singh in one or other of two ways. Either by a verbal gift to be inferred from Madho Singh's conduct and the circumstances of the case or by a registered instrument which is dated the 5th of May, 1887, and was intended, it is said, to take effect as an immediate transfer.

The cause of action as alleged by the claimant accrued on the death of Madho Singh's widow, Lachhman Singh's adoptive mother, on the 17th of December, 1893. But the suit was not instituted until the 22nd of August, 1903.

At the trial there was a great mass of evidence on issues not material on this Appeal.

The Appeal, which was allowed by special leave, is confined to two questions :—

1. Is immoveable property in Oudh transferable by gift *inter vivos* otherwise than by a registered deed ?

2. What is the meaning and effect of the instrument dated the 5th of May, 1887 ?

The Subordinate Judge, though he rejected as untrustworthy the testimony of a large body of witnesses who deposed to the fact of a verbal gift, thought that there must have been a gift of that sort, but he held the gift invalid having regard to the provisions of the Act of 1869. The Court of the Judicial Commissioner declined to

go into the question of a verbal gift, holding that no transfer by way of gift could be effected otherwise than by a registered deed.

The point is too clear for argument. Section 16 of the Act of 1869 enacts that no transfer—a term which is defined in the Act as "an alienation *inter vivos*"—made by a Taluqdar, shall be valid unless made by an instrument in writing and attested by two or more witnesses. Section 17 requires, as a condition of the validity of a deed of gift, registration within one month from the date of the execution of the instrument. It was suggested in the course of the argument that this provision does not apply to a gift to a person in the position of an adopted son because Section 13, which is to be found in the preceding chapter of the Act headed "Powers of Taluqdars and Grantees to transfer and bequeath," enacts that no Taluqdar shall have power to give his estate to a person not being a member of a designated class (which includes an adopted son), except by an instrument executed not less than three months before the death of the donor and attested and registered as therein mentioned. It is difficult to discover any contradiction in these sections or to understand how it can be argued that a gift in contravention of Section 16 may be valid in case the object of the gift is exempt from the operation of Section 13, and the gift therefore is not subject to the additional fetter imposed by that section.

The question as to the meaning and effect of the deed of the 5th of May, 1887, is rather more difficult.

The circumstances which led up to the execution of that instrument are as follows :—

On the 1st of June 1878 by a registered deed of that date, Madho Singh made over the Amethi Taluqa with the exception of certain

Muafi villages and certain villages dedicated to the endowment of a temple at Benares to one Sarabjit Singh subject to certain conditions and provisions.

On the 26th of May, 1883, Madho Singh executed a will stating that he had adopted Lachhman Singh and giving him the entire Taluqa but making provision for the event of his leaving a natural born son.

On the 29th of May, 1883, Sarabjit Singh executed a registered deed stating that he had relinquished the property and all proprietary rights acquired by him under the deed of gift of the 1st of June, 1878, in favour of Madho Singh and declaring that the adoption of Lachhman Singh had been made at his instance.

On the 28th of April, 1886, Madho Singh effected mutation of names in respect of the Amethi Taluqa (except the Muafi villages and the villages dedicated to the endowment of the temple at Benares) in favour of Lachhman Singh on an application which stated that if Lachhman Singh's connection with the estate should be severed during Madho Singh's lifetime then the whole estate would revert to him. Mutation of names in the case of the Muafi villages followed on a supplementary application by Madho Singh.

On the 5th of May, 1887, Madho Singh executed the instrument which has given rise to the present question. The document is not very clear, nor is it altogether intelligible. In the last paragraph Madho Singh declares that he had written the deed "by way of a deed of adoption and codicil to a will in order to amend and rectify the deed of 26th of May, 1883, by adding some necessary provisions to it." The deed in the main is clearly testamentary in its character, but there are two paragraphs which gave some colour to the Plaintiffs' claim. The first five paragraphs

have no material bearing on the present question. Paragraph 6 begins by stating that he (Madho Singh) had had the instrument of the 1st of June, 1878, which he had executed in favour of Sarabjit Singh, cancelled and destroyed with the consent of Sarabjit Singh, and Sarabjit Singh had again put him in possession of the estate. Madho Singh then declares that, after getting possession he had made over the whole of the said property to his adopted son, and had absolutely and unconditionally relinquished all rights and proprietorship, as well as ceased interference with the property, and he concludes the paragraph by saying, " therefore neither Sarabjit Singh himself nor his representatives have any right left to make a claim under the deed of 1st of June 1878." In Clause 8 Madho Singh describes Lachhman Singh as " my adopted son, and donee and legatee under the deed dated 26th of May, 1883, as well as under this deed . . . . in respect of all my moveable and immoveable property which has already been acquired, or which may be acquired hereafter during my lifetime or which may come to me by inheritance or to which I may become entitled."

Madho Singh's object in putting on record the statement contained in paragraph 6, probably was to make the position of Lachhman Singh secure against the interference of certain relatives with whom, it is said, he had a blood feud, one of whom might possibly claim under Sarabjit Singh. Paragraph 8 carries the matter no further. In styling Lachhman Singh " donee," the document refers simply to what was given to him by the will and codicil.

Looking at the matter broadly their Lordships agree with the learned Judges in the Court of the Judicial Commissioner in holding that the instrument of the 5th of May, 1887, was testa-

mentary and can not be construed as a deed of gift *inter vivos*.

Their Lordships will therefore humbly advise His Majesty that the Appeal must be dismissed.

The Appellants will pay the costs of the Appeal.

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