

Privy Council Appeal No. 98 of 1934

Oudh Appeal No. 15 of 1933

Raja Ram - - - - - Appellant

v.

Raja Bakhsh Singh 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 2ND NOVEMBER 1937.

Present at the Hearing:

LORD THANKERTON.

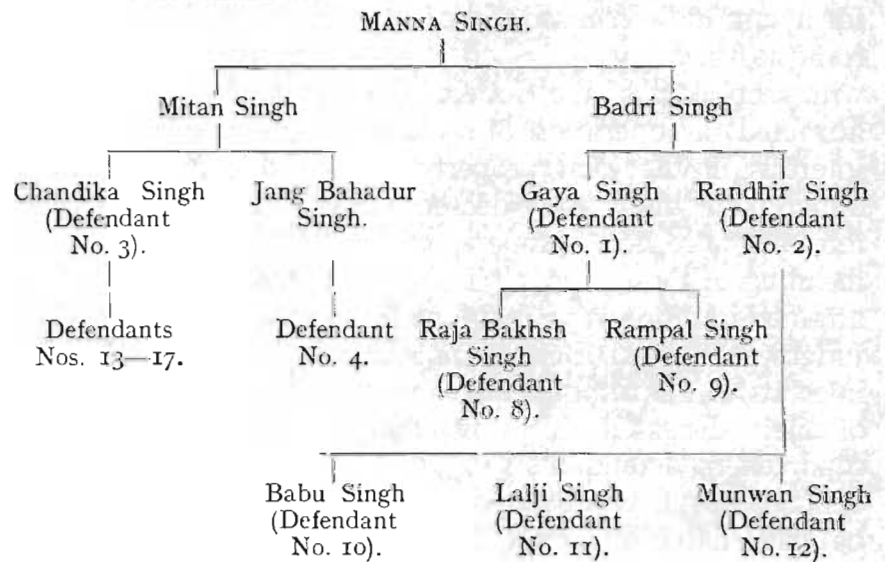
LORD WRIGHT.

SIR GEORGE RANKIN.

[Delivered by SIR GEORGE RANKIN.]

On the 15th November, 1920, two persons named Badri Singh and Chandika Singh, members of a joint Hindu family governed by the Mitakshara, executed a mortgage deed in favour of the appellant, Raja Ram. Badri Singh having died, the appellant on 25th August, 1930, brought a suit in the Court of the Subordinate Judge at Hardoi to enforce the mortgage. He impleaded 17 defendants. In addition to Chandika Singh (defendant No. 3) and other persons, he sued Badri Singh's two sons, Gaya Singh and Randhir Singh (defendants 1 and 2), and their five sons (grandsons of Badri Singh) (defendants 8 to 12), who are now the five respondents to this appeal.

The relationship of the defendants to the suit may be exhibited as follows:—



For reasons which may or may not have been valid, regard being had to the case made by the plaintiff, the decision of the Subordinate Judge, dated 13th May, 1931, was as follows:—

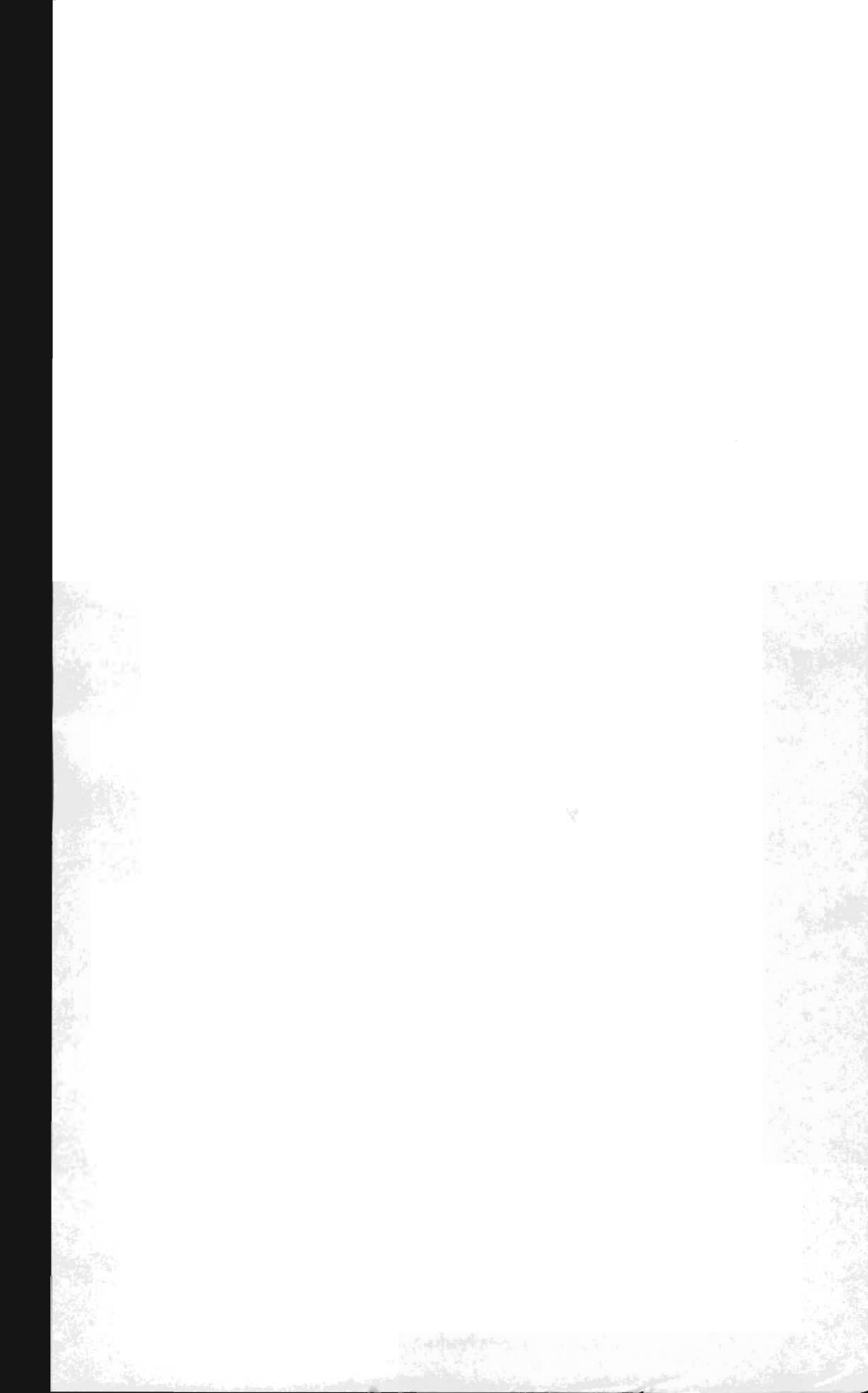
The result is that a simple money decree can only be passed on the basis of the deed in suit as against the estate of Badri Singh and against the defendant No. 3 personally.

I therefore decree the sum of Rs.19,500/- with costs, interest at the contract rate on Rs.10,000/- during the pendency of the suit and future interest at 6 p.c. p.a. on the entire decretal amount as against the defendant No. 3 personally and against the estate of Badri Singh in the hands of the defendants Nos. 1 and 2 under Rule 1, Order 20 and Rule 6, Order 9, Schedule 1, Civil Procedure Code. The suit is dismissed as against the other defendants. The defendants Nos. 4, 7 and 8 to 17 will get their respective costs from the plaintiff.

On the 15th May, 1931, the appellant applied for execution of this decree, not only against Chandika Singh and the two sons of Badri Singh, but also against the present respondents and their interest in the family property, notwithstanding that they had been dismissed from his suit with costs. The latter objected that execution of the decree could not be had against them, but on 27th October, 1931, the Subordinate Judge, on the ground that the whole family estate was liable for Badri Singh's debt, dismissed their objections and allowed execution to proceed. On appeal the Chief Court of Oudh set aside this order, and directed (27th February, 1933) that the interest of the respondents in the family property be released from attachment. This is the decision of which the appellant complains.

Their Lordships are of opinion that the decision is correct. If the debt in question was not contracted for purposes regarded as immoral by the Hindu law, and if the respondents being grandsons of Badri Singh were liable therefor to the extent of their interest in the joint family property, then the Subordinate Judge's decree of 13th May, 1931, was erroneous. The appellant should have appealed therefrom, claiming that, instead of dismissing the suit as against the respondents, the Subordinate Judge should have given decree against them in like manner as against defendants 1 to 3, namely, as representatives of Badri Singh for a sum to be realised out of any property of Badri Singh come to their hands. Such a decree passed in accordance with section 52 of the Code of Civil Procedure would have attracted the operation of section 53, and the respondents' interests in the joint property would have been liable to attachment under the decree notwithstanding that such interests were not "property of the deceased" in the strict meaning of those words. The same result might have been attained in more ways than one had the appellant recovered judgment against Badri Singh in his lifetime. But the interests of the respondents cannot be regarded as property of their deceased ancestor come to the hands of their coparceners, defendants 1 to 3 or any of them. The respondents having been dismissed from the suit with costs cannot be made liable under the decree.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed. The appellant must pay the respondents' costs.



In the Privy Council

RAJA RAM

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RAJA BAKHSH SINGH AND OTHERS

DELIVERED BY
SIR GEORGE RANKIN

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