

THE
INDIAN LAW REPORTS,
Bombay Series.

PRIVY COUNCIL.

AJAB SINGH AND OTHERS, APPELLANTS, v. NANABHAU VALAD
DHANSING RAUL, RESPONDENT.

On appeal from the High Court at Bombay.

*Documentary evidence—Old reports of pancháits—Claim to a vatan
existing from Marátha rule.*

P. C.*
1898.
November
10, 11 and 26.

Title to an inheritance devolving upon a single heir was contested between the parties representing, respectively, two lines of descent from the same ancestor. He had three sons whose posterity continued in three lines till the extinction of the senior line of descendants in 1877. On this, the last of the younger of the two surviving lines claimed to have his right to the succession declared.

The question was whether an ancestor of the claimant had adopted as his son a member of the family born in the senior line. The decision depended on the weight to be attached to entries in old documents. These were reports by pancháits to the Collector of the years 1819—21, preserved among the Mámáldár's records, and they related to questions of succession between the heads of the family lines, disputing then, as were their successors now. The authenticity of the reports was not impeached. But the adoption now in question could hardly have been the point then in dispute, and the entries as to it had been tampered with.

The enquiry, however, into the history of the family was minute, it took place before a competent local tribunal, and the report was signed by the plaintiff's grandfather. The findings were held strong evidence in matters of family pedigree. The decision of the High Court, which had dismissed the suit, (after bringing home the fact of the part obliteration of the entry to the plaintiff), was, on the evidence, maintained.

APPEAL from a decree (2nd December, 1890) of the High Court reversing a decree (30th November, 1887) of the Subordinate Judge of Dhulia.

*Present: LORDS HOBHOUSE, MACNAGHTEN, AND MORRIS, AND SIR R. COUCE.

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This suit for a declaration of title was brought by the father of the present appellants against the respondent, claiming to establish his right to the Rawulki vatan at Karwand, as his ancestral vatan, in taluka Shirpur, zilla Khândesh. The plaintiff alleged that he was entitled, as the nearest of the descendants from a common ancestor, Sultanji, who died in the last century, to inherit on the death of the last male holder Bhilesing, who died unmarried on the 14th September, 1877. Sultanji having had three sons, there were three lines of descent, the senior line becoming extinct on the death of Bhilesing. The plaintiff Madhavsing was sixth in descent in the third line, and Nanabhau, the defendant, was sixth in the second line. Each of these claiming to be heir next after Bhilesing, they were, before the recognition of either, referred to proceedings in the Civil Court, and, accordingly, this suit was brought on the 9th September, 1886.

The claim of Madhavsing, with the assent of both parties, turned upon the decision of a single question of fact; whether Sujansing, youngest son of Bhaba, the latter being first in the senior line, had been adopted by Futtehsing, son of Esba, in the junior line; it not being disputed that Sujansing would have been thereby removed from his original branch to the other one, or that the proof of this adoption would dispose of the plaintiff's claim.

The facts are stated in their Lordships' judgment. The Subordinate Judge decided this question in favour of the plaintiff. This decision was reversed by the High Court (Sargent, C.J., and Candy, J.).

The question of the fact of the adoption was again raised on the present appeal.

Part of the judgment of the High Court was as follows:—
“The parties in the present case having elected to go to trial on the sole issue whether Sujansing was adopted by Futtehsing, rely on certain old documents taken from the Mámlatdár's records. In 1818-1819 there was a dispute between Bhimsing and Nahar as to which was the senior, Bhaba or Gungba. This was referred to a panch, who in their report gave a history of the family,

holding that Bhaba was the senior. Nahar admitted the fact, and gave a "*khotpatra*" to that effect.

"In 1821-1822 there was a dispute between Bhimsing and his son Udesing on the one side, and Nahar's son Devising on the other, as to Devising's alleged adoption by Durjan's widow Baijabai. This matter was referred to a panch, who in their report gave a history of the family, holding Devising's adoption proved. This was confirmed by a judicial decision.

"The present defendant, on whom the onus primarily lies, asserts that the fact of Sujan's adoption by Futtehsing was incidentally mentioned in these documents, and that plaintiff has tampered with these documents, and endeavoured to remove all trace of the mention therein of the adoption. If defendant can make good his contention, then there is a presumption that Sujansing was really adopted by Futtehsing. The only person whose object it could have been to remove the mention of the fact of the adoption from the documents is the plaintiff, and his object must have been to conceal the fact. If the fraud is brought home to him, it may be inferred that, as a fact, Sujan was adopted by Futtehsing, and plaintiff is not entitled to any assistance from the Court in asserting his title to be considered the senior representative of the family. Inspection of the report of the panch in 1819 shows that words reciting Sujan's adoption were originally written in the document. This fact cannot be denied by plaintiff, for whom, however, it is contended that the words were deleted at the time when the document was drawn up. This is extremely improbable, as there is no trace of any signature or endorsement attesting the deletion, which is made with ashes or some such substance mixed with ink, the object apparently being to entirely obliterate as far as possible the words in question. They cannot now be read without the paper being held up against the light. In one portion the smudge has entirely concealed the former writing.

"But it can be shown that the deletion must have been made, not in 1818, but between 1878 and 1883.

On a strict examination, it was made clear that this was the case; that the recital of the adoption existed when the docu-

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ments were signed, and that the attempted fraud was the plaintiff's, not the defendant's.

The claim was dismissed with costs.

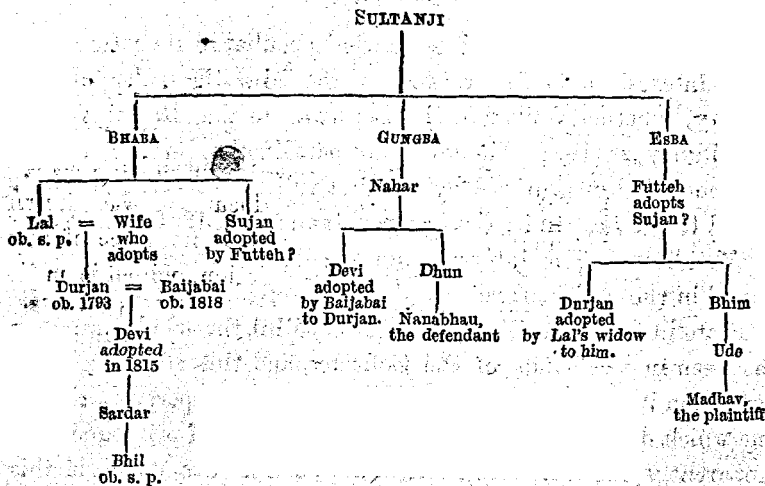
On this appeal *A. Phillips*, for the appellants, argued that the evidence was sufficient to support their claim. The burden of proof had been rightly laid on the defendant, but there was error in the finding that it had been discharged. The respondent had not proved that Gungba was senior to Esba, or that Sujansing was adopted by Futtehsing.

J. D. Maigne, for the respondent, submitted that the High Court was right in finding that the adoption of Sujansing was established.

A. Phillips replied.

Afterwards, on the 26th November, their Lordships' judgment was delivered by

LORD HOBHOUSE:—The question in this case is most readily explained by means of a pedigree; and one is annexed which has been extracted from those in the Record, with the omission of some unnecessary names—



It shows that from the common ancestor of the parties there have descended three lines of issue; that the senior line, that of Bhaba, is extinct; that the defendant belongs to the second line, that of Gungba; and the plaintiff to the third, that of Esba.

Plaintiff and defendant each claim to be heir-at-law of Bhil, or adding his honorary suffix Bhilesing, the last owner of the property in dispute. The plaintiff is the lineal descendant of Sujan who was born into the senior line. The pedigree shows that he was adopted into the third line. The plaintiff denies that, and the question in this appeal is whether or no the adoption was made. The Subordinate Judge determined that issue in favour of the plaintiff, and the High Court in favour of the defendant. The plaintiff has appealed, and the present appellants are his heirs.

In opening the case Mr. Phillips submitted another question, *viz.*, whether the line of Esba is not senior to that of Gungba, so that Sujan's descendant would still be heir even if he had been adopted into Esba's line. The contents of this Record do not favour such a supposition. But their Lordships are clear that the plaintiff never raised the question in the Courts below. The plaint says nothing about it; neither do the settled issues; the Subordinate Judge does not address himself to it; and the High Court says expressly that the only question is the adoption of Sujan on proof of which the plaintiff's case must fail.

The property in dispute is somewhat peculiar in its nature. It is an interest in lands granted by the Marátha ruler of the country, whether Holkar or the Peishwa, to the Rawal family for military services. The lands are part of the territory which was conquered or acquired by the first ruling Holkar, and which passed to the East India Company in January, 1818, by the Treaty of Mundisore. The interests not granted to the Rawals were vested in the Sirkár or ruler and have passed to the Secretary of State in Council. Since the death of Bhil the whole property has been in the hands of the Collector, and this suit is not for possession but for declaration of title. The property is clearly one which descends to a single heir by the rules of primogeniture. Apparently the incidents of title are such as are usual in this kind of tenure, but it has not been necessary to travel minutely into such matters, because all things material to the present question have been the subject of express findings in the course of legal proceedings.

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In the year 1793 Durjan died without issue, leaving Baijabai his widow. At that time the reigning Holkar was a lady whose variously spelt name may be designated as Ahilya Bai. She was the widow of the son of the first Holkar conqueror, and after his death she assumed the government and carried it on with marked ability and success for thirty years. Notice of Durjan's death was given to her by Baijabai according to the custom in such cases, and apparently because of her double capacity as Sirkár and as joint-owner. Ahilya Bai's answer runs as follows:—

"From your friend Ahilya Bai Holkar Raul, tarf aforesaid, salutations. The Sur year one thousand two hundred and ninety-three (A. C. 1792-93). I have received the letter which you sent and have noted the contents. You wrote to say that Durjansing Raul had been ailing and that the medicines tried (on him) proved ineffectual and that he died, that God willed it so, and that could not be helped, and prayed that an *abhayapatra* might be sent in the name of his full brother Bhimaji Raul. As to that, Durjansing died; God's will be done. I have sent a separate *abhayapatra* in the name of his brother. Should the bhau-bands (kinsmen), &c., take objections (to the same), do you issue strict (peremptory) orders. Be this known."

The lunar dates of writing and receipt have been destroyed by white ants, but it is shown that the letter passed some time in 1793.

Bhim was accordingly placed in the management, and in the year 1805, upon some complaint by him of disturbance on the part of Nahar, the then reigning Holkar Yeshwant Rao confirmed his position. Mr. Phillips has argued from the language of these orders that Bhim became the owner of the property. There is nothing in the language to denote that he was made owner, though doubtless management carried some emolument with it, and was a coveted position; but it is not worth while to examine closely into the question what kind of interest was conferred on Bhim, because it is quite clear that his position, whatever it may have been, was one liable to be displaced by the adoption of a son to Durjan. It is certain, however, that he continued to be manager for some years.

Not long after the death of Ahilya Bai the Marátha States became a prey to violent disorders which lasted many years. In Holkar's own dominions civil war broke out; complicated strifes arose between him and others of the great Marátha families,

the Peishwa, the Gáekwár and Scindia, and between them all and the Company. The villages belonging to this property were devastated. Bhim fled away. Nahar assumed the task of re settling and managing the lands. In that state were affairs in 1815 when Baijabai adopted Nahar's son Devi to be son of Durjan.

Some time afterwards it appears that Baijabai repented of her adoption and inclined to Bhim's branch of the family. The adoption of Devi, however, could not be, or at all events never was, undone. But about the time of Baijabai's death in 1818, Bhim made attempts to dispute the title of Devi or the management of Nahar, and these attempts led to proceedings which furnish the proof of Sujan's adoption by Futteh. The dispute was referred for enquiry to a pancháit, whose report dated 7th February, 1819, will be found in Exhibit No. 73. After stating the family pedigree down to the brothers Lal and Sujan the report continues:—

“Of these the elder Raul, Lalsing, had enjoyment of the kárbhár (management) till his death. Sujansing (b) was taken in adoption by Yesba's son Futtehsing (b), a minor (c).”

The references (b) and (c) are to the subjoined remarks made in the Record.

“(b) The equivalents of the words ‘Was taken in adoption by Yesba's son Futtehsing’ have been deleted, and the deletion appears to have been made with ashes or some such substance mixed with ink, the object being to entirely obliterate the words in question.”

“(c) An interlineation in the original.”

Both the disputants Bhim and Nahar signed the report, or memorandum as it is called in the translation; each saying that he agreed to what is stated in it.

It does not appear whether any formal order was made on this report, and there is not in the Record any order of reference or formal statement of the case to show what was the precise subject of decision. But the report was filed and preserved in the Collector's office from whence it is now produced. The adoption of Sujan could, it is true, hardly have been the point in dispute at this time. But it is clear that a minute local enquiry into the history of the family from Sultanji downwards took place before

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a competent local tribunal; and their findings are strong evidence in matters of family pedigree. When it is added that the parties to the dispute were the heads of the two family lines that are now disputing; that Bhim could not have been insensible to the importance of keeping himself, if he could, in the senior line; and that he signed the report; its evidence against him is conclusive unless he can bring some counter-evidence to contradict or invalidate it.

The Subordinate Judge appears to have treated the report very lightly because it has been tampered with. But its original wording though smudged is decipherable, and there is no dispute but that it ran as above quoted, except possibly as regards the interlineation, which is not material. If the original words of the panch can be known with certainty, a subsequent attempt to destroy some of them cannot do away with their effect. The plaintiff's counsel at this bar has taken a different line of argument. He submits that the smudged words were so treated by the panch themselves and represent their final opinion before the report was signed. This suggestion is pure conjecture, it rests on no evidence, and it is to the highest degree improbable. The suggestion is that the draft report must have been found erroneous in a point important enough to call for alteration, that the alteration was effected by some ineffectual smudging, that in that state it was signed by the seven members of the pancháit, by nine witnesses and by the contending parties, and yet that nobody thought of affixing any note or mark to indicate that any alteration had been made. That is incredible.

Moreover, if the words in question are removed, what remains is nonsense. Either the word "Sujansing" alone remains, or if the interlineation be accepted "Sujansing a minor." Neither has any meaning at all. Their Lordships hold that the suggestion now made for the plaintiff is without weight, and that the report must be read as originally written. It is sufficient to prove the adoption of Sujan by Futteh.

There was a further reference to another panch on the question whether *Dévi* had been adopted. They reported in the year 1822, and on their report the Collector's Court found that *Dévi* had been adopted, and decreed that he should carry on the

management. In point of fact, after Devi's adoption he or his son and grandson have been in possession. But the records of the second panch, introducing as they do an assertion of Sujan's adoption, have had tricks played upon them very similar to those played upon the records of the first panch. The second panch indeed supports the first. But such support is not necessary, and as there is no suggestion that the proceedings in 1822 contradict those of 1819 or in any way impair their force, their Lordships do not now go into detail about them.

The learned Judges of the High Court have subjected Exhibit-73 and the several copies or duplicates connected with it to a rigorous examination with the view of finding out when it was tampered with and how. They conclude that it was done between the years 1878 and 1883 in the interest of the plaintiff. They show strong grounds for this opinion, and the plaintiff's counsel, though he disputes their inference and suggests another explanation of the condition in which No. 73 is found, has not challenged any of the statements on which the learned Judges found their inference. It can hardly be doubted that they are right, or that there is strong suspicion of fraud by the plaintiff. A similar result has followed an examination of the documents relating to the proceedings of 1822. Their Lordships, however, again refrain from going into details in either case on this occasion because in any view the authenticity of No. 73 as stated in the record is unimpeached, and that is sufficient to prove the defendant's point.

The plaintiff has failed to prove his title, and their Lordships will humbly advise Her Majesty to dismiss the appeal. The appellants must pay the costs.

Appeal dismissed.

Solicitors for the appellant:—Messrs. *Crouch, Edwards, and Heron.*

Solicitors for the respondent:—Messrs. *T. L. Wilson and Co.*