

[CORRECTED JUDGMENT.]

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Kishen Pershad Sing and others v. Thakoor Pershad Sing and others, and Kishen Pershad Sing and others v. Luchoomun Pershad Sing and others, from the High Court of Judicature at Fort William in Bengal; delivered on Friday, the 13th June 1873.*

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Present:

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

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SIR LAWRENCE PEEL.

THIS is a case in which two suits were consolidated. The one was brought by the first cousin, the other by more distant relatives, against the Defendants.

The Plaintiffs in both cases allege that they, together with the Defendants, were members of a joint and undivided Hindoo family, and that by that title they were entitled to a certain share in the properties, to recover which the suits were brought. They allege that the principal Defendants, Kishen Pershad Sing and Hurruk Narain Sing, were the sons of Kunhya Sing, who had been for a long time the head and manager of the joint family, and that Kunhya Sing had acquired the greater portion of the property in question by the joint funds of the family. There were one or two small properties also in dispute which were alleged to have been acquired by Kishen himself out of those joint funds.

The question was purely one of fact, and there was a great deal of evidence directly contradictory.

The High Court in their judgment very carefully and elaborately reviewed this evidence, and came to the conclusion that upon the whole the evidence in favour of the Plaintiff's case preponderated. Their Lordships, after considering the evidence and the judgment, have come to the conclusion that there are no sufficient grounds for disturbing the finding of the High Court upon questions purely of fact; and inasmuch as the evidence has been reviewed at great length by that Court, it does not appear to their Lordships necessary or advantageous to review it again, but they confine their observations to one or two prominent facts in the case. The main dispute upon which the case itself may be said in a great measure to hinge, is this: which of two accounts is true with respect to the acquisition, somewhere about the year 1832, by Kunhya Sing, the father of the principal Defendants, of a four annas share in an estate called Ophanseypore?

The statement of the Defendants is this: that Kunhya Sing gave his advice and assistance to his father-in-law, Jungha Pershad, who, together with some other persons, was concerned in a suit for the recovery of this talook Ophanseypore, which appears to have been one of considerable value; and that this four annas share of the talook to be recovered, and which was recovered, was given by Jungha Sing to Kunhya Sing as a present to Kunhya Sing solely in consideration of his advice and assistance in the suit, although he was no lawyer; and they further allege that the transfer of this property was by word of mouth, and that there was no writing whatever relating to or evidencing the transaction.

The statement on the part of the Plaintiffs is

that Jungha Pershad and the other persons who were co-plaintiffs with him in that suit did make a bargain of the kind, but that Kunhya Sing was to have a four annas share in Mouzah Ophanseypore, not merely for such advice and assistance as he might be able to give as a layman, and which perhaps would not be very valuable, but for much more material assistance in the shape of finding funds for the prosecution of the suit; that his family being rich he was in a position to advance out of its joint property the funds which were wanted in that suit by the Plaintiffs, who, until they recovered the property, were poor; and they allege that the agreement was that one Sheo Sing and Kunhya Sing were to advance the money necessary for the conduct of the suit, and were to have this one-fourth share of the property recovered; that Sheo Sing failed to advance his share, and thereupon the whole of the fourth share came to Kunhya Sing. The Plaintiffs further allege that there was an ikrarnamah whereby this transaction was put into writing, and they called witnesses who had seen this ikrarnamah, but the High Court held (and their Lordships are not prepared to say that they were wrong in this finding,) that the Plaintiffs had failed in giving sufficient secondary evidence of the contents of this document. There was however much evidence of the transaction, independently of this ikrarnamah, and their Lordships are of opinion that the High Court was right in giving credence to the evidence of the Plaintiffs in preference to that of the Defendants. It is far more probable that a property of this description (which is represented to be of the value of a lac of rupees, or thereabouts,) should have been given in consideration of material assistance in the shape of money advanced than of mere advice, and they think it very unlikely that it should have been conveyed

without any document of any kind evidencing the transaction.

This, as before observed, is the cardinal point of the case, because if the four annas share of Mouzah Ophanseypore was acquired by Kunhya Sing by his own funds, or was acquired by him as a gift, and became his separate property, then he might have had the power out of his own separate property to purchase many of the other estates which he subsequently purchased, and which are in dispute; whereas if the Plaintiffs' case be true, that this four annas share was obtained by contributions from the common funds of the family for the carrying on the suit, then the estate would become common property, and what was bought with the proceeds of the estate would also become common property. Indeed there is little evidence that either Kunhya or Kishen, who acquired some small properties in his own name, had funds for purchasing other than those derived from this source. Without further reviewing the evidence, it appears to their Lordships that,—considering the finding on this principal question, in which they concur, coupled with the undoubted fact that this family did live in the same compound up to the time of their separation, that by admission some portion of the property, which is the subject of this suit was joint property, and that they were a joint family, therefore, for some purposes,—there are no sufficient grounds for disturbing the decision of the Court below; indeed, so far from being disposed to do so, their Lordships incline to think that if the case had come to them as a court of first instance, they would have arrived at the same conclusion which is consistent with the presumptions of the Hindoo law.

Under these circumstances their Lordships will humbly advise Her Majesty that the decision of the Court below be affirmed, and that these appeals be dismissed, with costs.