A77

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 10866-10867 OF 2010

IN THE MATTER OF: -

M. Siddiq (D) Thr. Lrs. ... Appellant

VERSUS

Mahant Suresh Das &Ors. etc. etc. ... Respondents

AND
OTHER CONNECTED CIVIL APPEALS

COMPILATION ON LAW RELATING TO GAZETTEERS

BY

DR. RAJEEV DHAVAN, SENIOR ADVOCATE

ADVOCATE-ON-RECORD: EJAZ MAQBOOL

INDEX

A. STATUTORY PROVISION: INDIAN EVIDENCE ACT, 1872

1. With regard to gazettes, it is relevant to mention Section 81 of the Evidence Act,1872, which is as follows:-

Section 81:

Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents.—*The Court shall presume the genuineness of every document purporting to be the London Gazette, or*[1] *[any Official Gazette, or the Government Gazette] of any colony, dependency of possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament*[2] *[of the United Kingdom] printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.*

[1]Substituted by A.O 1937, for "the Gazette of India, or the Government Gazette of any L.G., or".
[2]Inserted by A.O. 1950

B. NOTE ON CASES ON GAZETTEERS

(Cases relied by Plaintiffs in Suit No. 5)

1. Several cases were cited to support reliance on Gazetteers.
2. It is submitted that these cases do not treat the Gazettes as authoritative, except for certain limited purposes in limited contexts.
3. This is self evident from cases cited from the Vaidyanath Compilation: Volume III.

These are discussed below:

i. *Mahant Shri Srinivasa v. Surajnarayan Dass (1966) Supp. SCR 436*(Page 612-628 of Compilation tendered by Mr C.S Vaidyanath, Vol III- Compilation A24)

This case concerned the question of whether a math was an endowment within the meaning of the Orissa Religious Endowment Act 1939. The Court treated a passage from the Puri Gazetter as something that (at p.446)

> *"fits in with our finding."*

Thus it was only corroborative.

The Court added: (p. 447)

> *"These statements in the Gazetteare not relied on as evidence of title but as providing historical material and the practice followed by the math and its head. The Gazetter can be consulted on matters of public history"*

ii. *Sukhdev Singh v. Maharaja Bahadur of Gidhaur (1951) SCR 534*(Page 629-643 of Compilation tendered by Mr C.S Vaidyanath, Vol III-Compilation A24)

In this case, the issue related to the nature of the zamindary. The District Gazetteer was examined. The Court observed: (at 543)

> *"The statement in the Gazetteer is not necessarily conclusive, but the Gazetteer is an official document of some value, as it is compiled by experienced officials with great care after obtaining the facts from official records. As Dawson Miller CJ has pointed out in Fulbati's case...there are a few inaccuracies in the latter [art of the statement quoted above, but so far as the earlier part of it is concerned, it seems to derive considerable support from the documents to which reference is made"*

Thus, all statements are not to be accepted, except those which are grounded in documents.

iii. *Vimla Bai v. Hiralal Gupta (1990) 2 SCC 22*, (Page 644-645 of Compilation tendered by Mr C.S Vaidyanath, Vol III-Compilation A24)

In this case, the issue was whether a female bandhu was entitled to succeed to the estate of the male holder through her mother's side within 5 degrees of the male holder. The Court observed: (at pr. 4) that the "inam register is of great evidentiary value but the entries cannot be accepted on the face value without giving due consideration to other evidence on record". This part was not read. But on the issue of the Gazetteers, the Court observed: (at pr 5)

> *'The statement of fact contained in the official Gazette made in the course of the discharge of the official duties on private affairs or on historical facts in some cases is best evidence of facts stated therein and is entitled to due consideration but should not be treated as conclusive in respect of matters requiring judicial adjudication. In an appropriate case where there is some evidence on record to prove the fact in issue but it is not sufficient to record a finding thereon, the statement of facts concerning management of private temples or historical facts of status of private persons etc. found in the official Gazette may be relied upon without further proof thereof as corroborative evidence. Therefore, though the statement of facts contained in Indore State Gazette regarding historical facts of Dhangars' social status and habitation of them may be relevant fact and in an appropriate case the court may presume to be genuine without any further proof of its contents but it is not conclusive. Where there is absolutely no evidence on record in proof of the migration of the family of the plaintiff or their ancestors from Mathura area, the historical factum of some Dhangars having migrated from U.P. and settled down in Aurangabad District or in the Central Province by itself cannot be accepted as sufficient evidence to prove migration of the plaintiff family. Further no evidence was placed on record connecting Holkars of Indore with Dhangars of Bombay Province. Shri Lalit, learned counsel, admits that the statement of facts of Dhangars contained in Indore State Gazette is not conclusive evidence but he says that it may be taken into account as evidence connecting the family of the plaintiff. In the absence of any evidence proving migration of the family of the plaintiff or their ancestors from Mathura to Ahmednagar, the historical factum of the migration of Dhangars from U.P. State mentioned in Indore State Gazette is of little assistance to the respondents so as to hold that they carried with them to Indore the Banaras School of Hindu Law prevailing in Uttar Pradesh.'*

iv. *Bala Shankar v. Charity Commr. (1995) Supp. 1 SCC 485*, (Page 656-669 of Compilation tendered by Mr C.S Vaidyanath, Vol III-Compilation A24)

In this case, the issue was whether the Temple of Kalika Shrine on Pavagadh Hill was a public trust within the meaning of the Bombay Public Trusts Act 1950. Holding that it did, the Court also stated (at pr. 22) :

'It is seen that the Gazette of the Bombay Presidency, Vol. III published in 1879 is admissible under Section 35 read with Section 81 of the Evidence Act, 1872. The Gazette is admissible being official record evidencing public affairs and the court may presume their contents as genuine. The statement contained therein can be taken into account to discover the historical material contained therein and the facts stated therein is evidence under Section 45 and the court may in conjunction with other evidence and circumstance take into consideration in adjudging the dispute in question, though may not be treated as conclusive evidence. The recitals in the Gazette do establish that Kalika Mataji is on the top of the hill... '

Thus, the Gazette cannot be stand alone evidence.

v. *Rajah Muttu Ramalinga Setupati v. Perianayagum Pillai, (1873-4) 1 IA 209(from SCC Online)*(Page 670-692 of Compilation tendered by Mr C.S Vaidyanath, Vol III-Compilation A24)

In this case, the Rajah failed to establish customary rights which had to proved by testament. As regards, the views of Collector Nelsen's Madura Manual, the Privy Council felt that the High Court "attached too much weight to the reports of the collectors which they described as quasi judicial proceedings". The relevant passage on this aspect was:

'It is to be observed, however, that it is the duty of the collectors, under sect. 10 of the Regulation of 1817, to ascertain and report to the board the names of the present trustees, managers and superintendents of the temples, and by whom and under what authority they have been appointed or elected, and whether in conformity to the special provisions of the original endowment by the founder, or under any general rules. They are also, under section 11, to report all vacancies, with full information to enable the Board to judge of the pretentions of claimants, and whether the succession has been by descent, or by election, and if so, by whom. The report, therefore, of Mr. Wroughton was entirely within his province, and the line of his duty.

Their Lordships think it must be conceded that when these reports express opinions on the private rights of parties, such opinions are not to be regarded as having judicial authority or force. But being the report of the public officers made in the course of duty, and under statutable authority, they are entitled to great consideration so far as they supply information of official proceedings and historical facts, and also in so far as they are

relevant to explain the conduct and acts of the parties in relation to them, and the proceedings of the Government founded upon them.'

This quoted passage has often been cited without the context quoted above.

(Incidentally Nelson was deprived of his High Court judgeship because he felt the true Hindu law was the customary law at variance with the Shastra.)

vi. *Aliyathammuda B. Pookoya v. Pattakal Cheriyakoya (2019) 10 Scale 263*
(Page 693-714 of Compilation tendered by Mr C.S Vaidyanath, Vol III-Compilation A24)

This case concerned the status of a mutawali in respect of a mosque in Laksdweep. This had nothing to do with Gazette but (at pr. 23) that customary rights have to be proved. It is submitted that the reliance on Gazetteers by the Plaintiff as firm conclusive evidence is not correct.

C. OTHER CASES ON GAZETTEERS

S.NO.	Name
1.	Ghulam Rasul Khan v. Secretary of State for India in Council AIR 1925 PC 170
2.	Gopal Krishna Ketkar v. Mohammad Haji Latif &Ors AIR 1968 SC 1413
3.	State of Bihar v. Radha Krishna Singh AIR 1983 SC 684

(7)

J. C. 1925

PROBHUDAS v. GANIDADA.

A change of duty means a change in the rate of duty. Their Lordships are of opinion that, there having been no change whatsoever in the rate of duty in the present case, the contention that a change of tariff values of sugar is constructively a change in the sugar duty is without justification. The rate of duty was not reduced. But suppose—to test the matter—suppose that the rate of duty had been reduced, and that the tariff values had also been reduced, the buyer would, then, be claiming two different reductions, one in respect of actual duty and a second in respect of a constructively reckoned duty. The Act could not mean that. To bring in tariff values into the question of increase or reduction of sugar duties, is to introduce an improper and confusing element into the construction of the taxing Act.

Their Lordships will humbly advise His Majesty that the appeal should be disallowed with costs.

Solicitors for appellant: *Ranken Ford & Chester.*

Solicitors for respondent: *T. L. Wilson & Co.*

GHULAM RASUL KHAN (PLAINTIFF) . . APPELLANT;

AND

SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT) . . . RESPONDENT.

J. C.* 1925 *March.* 12.

ON APPEAL FROM THE HIGH COURT AT LAHORE.

Punjab—"Agricultural tribe"—Mohal Rajput—Khayyat—Evidence—Entries in Revenue Records—Punjab Alienation of Land Act (XIII. of 1900), s. 13.

The appellant sued for a declaration that he was a Mohal Rajput. Rajputs have been formally recognized as an "agricultural tribe" for the purposes of s. 3 of the Punjab Alienation of Lands Act, 1900. Since 1852 the appellant's family had been entered in the revenue records as Mohal Khayyat by caste. The High Court found that Khayyats (tailors) were not a separate tribe, and that a Rajput might be a Khayyat; also

---

* *Present*: LORD SHAW, LORD CARSON, LORD BLANESBURGH, SIR JOHN EDGE, and MR. AMEER ALI.

J. C.
1925
GHULAM RASUL KHAN v. SECRETARY OF STATE FOR INDIA.

that there was no tribe except the Rajputs which had a got (sub-tribe) named Mohal. The Court however rejected the claim on the ground that the appellant had not shown that he was a Mohal, as there was no proof that the first member of the family entered in the revenue record had any real title to use the term Mohal:—

Held, that the entries in the revenue records since 1852 were evidence establishing that the appellant was a Mohal, and that it followed from the findings of the High Court that he was a Rajput and entitled to the declaration prayed for.

Judgment of the High Court reversed.

APPEAL by special leave from a decree of the High Court (October 25, 1920) reversing a decree of the Subordinate Judge, first class, of Ludhiana.

The appellant brought a suit for a declaration that he was a Mohal Rajput, and that entries in the revenue papers showing his caste as Mohal Khayyat were incorrect. The trial judge made a decree as prayed, but that decree was reversed by the High Court (Chevis and Scott-Smith JJ.) upon appeal and the suit dismissed.

The facts and the grounds of the decision of the High Court appear from the judgment of the Judicial Committee.

1925. Feb. 9, 10. *De Gruyther K.C.* and *Parikh* for the appellant.

Dunne K.C. and *Kenworthy Brown* for the respondent.

1925. March 12. The judgment of their Lordships was delivered by

LORD CARSON. The (plaintiff) appellant is a resident in the District of Ludhiana of the Punjab and is the owner of "culturable lands" in that district. In or about the year 1912 he bought certain other lands and applied for mutation of names. The Deputy Commissioner and, on appeal, the Financial Commissioner of the Punjab, on May 3, 1913, refused the application on the ground that the alienation in question was against the policy of the Punjab Alienation of Lands Act (No. XIII of 1900).

That Act by s. 3 enacts as follows: "3.—(1.) A person who desires to make a permanent alienation of his land shall be at liberty to make such alienation where—

(9)

(a) The alienor is not a member of an agricultural tribe; or

(c) The alienor is a member of an agricultural tribe and the alienee is a member of the same tribe or of a tribe in the same group.

"(2.) Except in the cases provided for in sub-section (1.), a permanent alienation of land shall not take effect as such unless and until sanction is given thereto by a Deputy Commissioner.

"(3.) The Deputy Commissioner shall enquire into the circumstances of the alienation and shall have discretion to grant or refuse the sanction required by sub-section (2.)."

The grounds of the decision both of the Deputy Commissioner and the Financial Commissioner were that the plaintiff was described in the revenue records as "Khayyat Mohal" that that tribe was not one of the notified agricultural tribes of the Ludhiana District, nor was the Mohal tribe to which it corresponded. The plaintiff alleged that although described in the revenue record of the land belonging to him as "Mohal Khayyat" he was nevertheless a Rajput and a member of an agricultural tribe. It was admitted that if he was a Rajput he was entitled to become the alienee of the property, as Rajputs were an agricultural tribe and were so declared in the Punjab Gazette of April 21, 1904.

The plaintiff then instituted this suit in the Court of the District Judge of Ludhiana against the respondent and prayed for a declaratory decree to the effect that he was a Mohal Rajput and that all the entries in the revenue papers showing his caste as "Mohal Khayyat" were incorrect. The parties went to trial on one issue only—namely, "Is the plaintiff a Rajput?"

On June 24, 1915, the Subordinate Judge, after hearing a number of witnesses and examining a number of documents on both sides, delivered judgment and passed a decree in favour of the plaintiff. The respondent appealed to the High Court of Judicature at Lahore and on October 25, 1920, that Court set aside the decree of the Subordinate Judge and dismissed the plaintiff's suit. Hence the present appeal in which,

(10)

J. C. 1925

GHULAM RASUL KHAN v. SECRETARY OF STATE FOR INDIA.

admittedly, the only question for determination is whether the plaintiff is a Rajput.

The case made by the plaintiff, as the appellate Court states, was that although in the revenue records the plaintiff's family has been shown since 1852 as holding land and their caste been described as "Khayyat Mohal" the term "Khayyat" does not denote a tribe, but merely a profession —namely, tailoring, that his got (i.e., sub-tribe) is Mohal and that his real tribe is Rajput and that there is no other tribe except that of Rajputs, which contains a got of the name of Mohal. The revenue records of Mauza Shahna give his pedigree back as far as his great-grandfather Nathu, who by a pedigree propounded by the plaintiff was alleged to be one of the four sons of Khana, who was himself descended in the thirteenth generation from Mohal. The appellate Court admitted that if Nathu was proved to be descended as alleged from Khana the plaintiff would have proved his right to be a member of the Rajput tribe. That Court however refused to rely upon the evidence produced as proving that the plaintiff traced his pedigree through his great-grandfather Nathu to Khana and thence to Mohal. In the view that their Lordships take of the other evidence in the case proving that the plaintiff's got is Mohal and that thereby his tribe is Rajput their Lordships do not think it necessary to pronounce any opinion as to whether Nathu was descended from Khana.

As the appellate Court finds, "there seems to be little doubt that Mohal is the name of a sub-division of the tribe of Rajputs, and so far as the evidence in this case shows there is no other tribe in the Punjab which has a got of the name of Mohal," and the same Court also states: "The conclusion at which we arrive is that, so far as is known, there are no persons in the Punjab who have any real right to be described as Mohals except Rajputs and some Jats, who rightly or wrongly claim that they are really of Rajput origin."

It is clear, therefore, that if the appellate Court had been of opinion that the plaintiff had a title to the use of the term "Mohal" that Court would have decided in favour of the

(11)

appellant. Now the first thing to be observed is that in the course of the present litigation S. Bachan Singh, the respondent's pleader, stated on oath that it was conceded "that plaintiff is Mohal got of Khayyat tribe": see statement of July 27, 1914.

The appellate Court has found that the mere fact that various members of the family have worked at tailoring cannot be regarded as any proof that the plaintiff is not a Rajput, for, as stated in Ibbetson's Census Report, p. 333, which has been quoted by the learned Subordinate Judge, men of all castes follow the trade; or as the Subordinate Judge has stated, Khayyats do not make a tribal clan by themselves. It is proved beyond all doubt and so found by the appellate Court that in the revenue records the plaintiff's family has been shown since 1852 as holding land, their caste being described as Khayyat Mohal—and there are in evidence extracts from the settlement records of this district for 1853 in which Ilahia and Gahia, grand-uncle and grandfather of the plaintiff, are put down as owners of twenty-five ghumaons of land in the village of Shahna, their quaum being mentioned in Kayyat (Mahommadan) and got as Mohal. Similar entries are to be found in relation to the settlement of 1882. It is admitted by the appellate Court that if these records truly described the plaintiff's family as Mohals it would prove the plaintiff's right in this action, but they attempt to dispose of this evidence by saying "there is no proof that whoever first caused this entry to be made had any real title to the use of the term Mohal." That is the only link apparently which the appellate Court has found to be absent from the evidence necessary to prove the plaintiff's case.

Their Lordships cannot share the view of the appellate Court that evidence of this character, taken from public records for a series of years since 1852 and recorded in accordance with the requirements of the law, can in a pedigree case be disregarded for the reason stated by the appellate Court. No evidence is given and no suggestion is made that such entries were false or that there was any existing

(12)

J. C.
1925
GHULAM RASUL KHAN v. SECRETARY OF STATE FOR INDIA

reason why deliberately false entries should have been made. In such a case as the present, statements in public documents are receivable to prove the facts stated on the general grounds that they were made by the authorized agents of the public in the course of official duty and respecting facts which were of public interest or required to be recorded for the benefit of the community: Taylor's Law of Evidence, 10th ed., s. 1591. In many cases, indeed, in nearly all cases, after a lapse of years it would be impossible to give evidence that the statements contained in such documents were in fact true, and it is for this reason that such an exception is made to the rule of hearsay evidence. Their Lordships being of opinion that the plaintiff has proved that he is entitled to the description of Mohal, it follows from the facts found by the appellate Court, and already referred to, that the plaintiff is a Rajput and is entitled to the relief claimed in this action.

Their Lordships will therefore humbly advise His Majesty that this appeal should be allowed with costs here and in the Court below and that the decree of the Subordinate Judge should be restored.

Solicitor for appellant: *E. Dalgado.*
Solicitor for respondent: *Solicitor, India Office.*

(13)

(1968) 3 SCR 862 : AIR 1968 SC 1413

In the Supreme Court of India

(BEFORE J.C. SHAH, V. RAMASWAMI AND G.K. MITTER, JJ.)

GOPAL KRISHNAJI KETKAR ... Appellant;

Versus

MOHAMED HAJI LATIF & OTHERS ... Respondent.

Civil Appeal No. 954 of 1965, decided on April 19, 1968

Advocates who appeared in this case :

H.R. Gokhale, Senior Advocate (W.P. Oka, S.W. Oka and Ganpat Rai, Advocates with him), for the Appellant;

Danial Latfi, Senior Advocate (Hardev Singh, Advocate with him), for Respondents 3 & 4;

M.S.K. Sastri and R.H. Dhebar, Advocates, for Respondent 5.

The Judgment of the Court was delivered by

V. RAMASWAMI, J.— This appeal is brought, by certificate, from the judgment of the Bombay High Court dated March 8, 1963 in First Appeals Nos. 338 of 1960 and 422 of 1960.

2. On or about April 15, 1952 the appellant made an application to the Deputy Charity Commissioner, Greater Bombay Region under Section 18 of the Bombay Public Trusts Act (Bombay Act 29 of 1950), hereinafter referred to as "the Act" for registration of the Peer Haji Malang Dargah near Kalyan in the Thana District (hereinafter referred to as the "Dargah") without prejudice to his contention that the Dargah was not a public trust to which the Act was applicable. On August 3, 1953 the Deputy Charity Commissioner made an order declaring that the Dargah was a public trust and directed its registration as such. The Deputy Charity Commissioner further held that among the properties of the Dargah was the land bearing Survey No. 134 of Village Wadi on a portion of which the Dargah is located. The Deputy Charity Commissioner also directed that the appropriate court might be moved for framing a scheme and appointing trustees. The appellant preferred an appeal to the Charity Commissioner, Bombay under Section 70 of the Act against the order of the Deputy Charity Commissioner. The appeal was registered as Appeal No. 66 of 1953. Under orders of the Government the appeal was heard by the Deputy Charity Commissioner, Ahmedabad invested for that purpose with the powers of the Charity Commissioner. By his order dated September 11, 1954, the said Deputy Commissioner with appellate powers dismissed the appeal. Feeling aggrieved, the appellant filed an application under Section 72 of the Act in the Court of the District Judge, Thana to set aside the order of the Deputy Charity Commissioner with appellate powers, contending that the Dargah was not a public trust, that Survey No. 134 was not the property of the trust and that the appellant was a hereditary trustee. The application was opposed by Respondents 1 to 4 who had intervened during the proceedings before the Deputy Charity Commissioner and by the Charity Commissioner, Respondent 5 who was also impleaded by the appellant in that application. The respondent contended that the Dargah was a public trust and the land bearing Survey No. 134 belonged to the trust and the appellant was not a trustee of the Dargah. By his judgment dated April 26, 1955 the District Judge, Thana held that the Dargah was a public trust but he left the questions as to whether Survey Plot No. 134 belonged to the Dargah or not and whether the appellant was a trustee or only a de facto manager of the Dargah, open

(14)

for decision in the suit which had been filed by the Charity Commissioner. Against the order of the District judge the Charity Commissioner filed an appeal in the High Court, being Appeal No. 501 of 1955. The appellant also filed his cross objections. The said appeal and cross objections were heard together and the High Court by its judgment dated November 19, 1958 confirmed the finding of the District Judge about the public nature of the trust and further held that the District Judge should have decided whether Survey Plot No. 134 was the property of the Dargah or not and whether the appellant was a trustee or a manager of the trust. The case was therefore remanded back to the District Judge for deciding these questions. Accordingly the District Judge reheard the matter and by his judgment dated February 29, 1960 held, in the first place, that Survey Plot No. 134 of village Wadi was not the property of the Public trust Peer Haji Malang Saheb Dargah and that the appellant was the hereditary trustee of the trust, his family being its hereditary trustee. Against the judgment of the District Judge two appeals were filed in the High Court. First Appeal No. 338 of 1960 was filed by Respondents 3 and 4 and First Appeal No. 422 of 1960 was filed by the Charity Commissioner, Respondent 5. Both the appeals were heard together by the High Court. By its judgment dated March 8, 1968, the High Court allowed both the appeals. The High Court confirmed, in the first place, the finding of the District Judge that the management of the Dargah has been in the family of the appellant. With regard to ownership of Survey Plot No. 134 on which the Dargah is situated, the High Court held that the appellant was not the owner of that Plot but that it was the property of the Dargah.

3. The main question presented for determination in this appeal is whether the land comprised in Survey Plot No. 134 was the property of the Dargah or whether it belonged to the appellant.

4. It is necessary at this stage to set out the origin and history of the Dargah. The Dargah has been in existence for over about 700 years. Its origin is lost in antiquity but the Gazetteer of the Bombay Presidency tells us that the tomb is that of a Muslim saint who came to India as an Arab missionary in the thirteenth century. According to tradition, there are two tombs in the Dargah in one of which is the dead body of a Hindu princess and in the other tomb the dead body of the Muslim saint. The fame of the saint was at height when the English made their appearance at Kalyan in 1780. As they only stayed for two years, their departure in the year 1782 was ascribed to the power of the dead saint. The Peshwas were then in power in that region and after the departure of the English they sent a thanks offering under the charge of one Kashinath Pant Ketkar, a Kalyan Brahmin. It is said that the offering sent by the Peshwas was a pall of cloth of gold trimmed with pearls and supported on silver posts. The tomb was in disrepair and Kashinath started to repair it and according to tradition was miraculously assisted by the dead saint who, without human aid, quarried and dressed the large blocks of stone which now cover the tomb. It appears that Kashinath was not content to repair the tomb. He also wanted to manage it and this led to a dispute with Kalyan Muslims who resented Brahmin management of a Muslim shrine. Matters came to a head in 1817 and the dispute came before the Collector who declared that the dead saint should settle the affair and that the only way of ascertaining the saint's wishes was by casting lots. This was done and three times the lot fell on the representative of Kashinath and so the matter ended and Kashinath's representative was proclaimed guardian of the tomb.

5. On behalf of the appellant reference was made to the Area Book, Ex. 66 of the year 1890. The entry shows the name of Laxmibai widow of Govind Gopal Ketkar under the heading "bl eps ukao" (name of the person). Exhibit 67 is the entry from the Phalani Book for the year 1897 and shows the land as "Kilyacha Dongar" and under the column "bl eps ukao" is shown the name of Laxmibai widow of Govind Gopal. Exhibit 68 is of the same year from the revision Phalani containing similar entry with the map

attached. In Exhibit 70 the name of Laxmibai is shown as "Khatedar" for the year 1906. In the remarks column there is an entry "one built well, one pakka built masjid, one Dargah, one tomb". Exhibit 71 is an entry for the year 1915 from *Akar Phod Patrak* and in the column of "*Kabjedar*" the name of Rukminibai Hari appears with regard to Plot 134. Thereafter, in the record of rights for the year 1913, Exhibit. 76, the name of the predecessor of the appellant is shown. On the basis of these entries it was submitted by Mr Gokhale that the ownership of the Plot was with the appellant and not with the Dargah. But there are important circumstances in this case which indicate that the appellant is not the owner of Survey Plot No. 134. Exhibits 64 and 65 are significant in this connection. Exhibit 64 is an entry from the "Sud" in Marathi for the year 1858 in connection with Survey Plot No. 134 (Revisional Survey Number). The original survey number of this Plot was 24 and it was known as "Kilyacha Dongar". The total area is shown to be 249 acres and 24 gunthas. It is shown as "Khalsa" land. *Kharaba* is shown as 89 acres 24 gunthas and the balance of the area is shown as 160 acres. In the last column the name of the cultivator is not mentioned but it is shown as "Khapachi". It is significant that the name of the Ketkar family is absent from this record. No convincing reason was furnished on behalf of the appellant to show why his name was not entered in the "Sud". It is also important to notice that the appellant has furnished no documentary evidence to show how his family acquired title to the land from the earliest time; there is no sanad or grant produced by the appellant to show that he had acquired title to the land. It further appears that the appellant's family did not assert any title to the land at the time of the survey made in 1858; otherwise there is no reason why its name was not entered in the "Sud" of the year 1858. It is true that there are a number of entries subsequent to the year 1890 and 1897 in which the Ketkar family is shown as the "Khatedar" or the occupant but these entries are not of much significance since the Ketkar family was in the fiduciary position of a manager of the Dargah and was lawfully in possession of Survey Plot No. 134 in that capacity. There is also another important circumstance that the appellant has no lands of his own near Plot No. 134 and the nearest lands he owns are in Bandhanwadi which are admittedly 3 ½ to 4 miles away from the top of the hill. There is also the important admission made by the appellant in the course of his evidence that there are 2 or 3 tombs behind the Musaferkhana. He stated further that "there is no cemetery or burial ground in Survey No. 134". But this evidence is in direct conflict with the statement of the appellant in the previous case that "Round about the Dargah many people die every year.... Anyone that died there, whether Hindu, Muslim or Parsee if he has no heirs is buried there". He also conceded that there is one public tank known as "Chasmyachi Vihir" near the Dargah and there are 5 wells near the Dargah and five boundaries "Aranas" about one mile from the Dargah. Lastly, reference should be made to the important circumstance that the appellant has not produced the account of the Dargah income. In the course of his evidence the appellant admitted that he was enjoying the income of Plot No. 134 but he did not produce any accounts to substantiate his contention. He also admitted that "he had got record of the Dargah income and that account was kept separately". But the appellant has not produced either his own accounts or the account of the Dargah to show as to how the income from Plot No. 134 was dealt with. Mr Gokhale, however, argued that it was no part of the appellant's duty to produce the accounts unless he was called upon to do so and the onus was upon the respondents to prove the case and to show that the Dargah was the owner of Plot No. 134. We are unable to accept this argument as correct. Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in

controversy and to rely upon the abstract doctrine of onus of proof. In *Murugesam Pillai* v. *Manickavasaka Pandara*[1] Lord Shaw observed as follows:

> "A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof, and failing, accordingly, to furnish to the Courts the best material for its decision. With regard to third parties, this may be right enough — they have no responsibility for the conduct of the suit; but with regard to the parties to the suit it is, in Their Lordships' opinion, an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition."

This passage was cited with approval by this Court in a recent decision— *Biltu Ram* v. *Jainandan Prasad*[2]. In that case, reliance was placed on behalf of the defendants upon the following passage from the decision of the Judicial Committee in *Bilas Kunwar* v. *Desraj Ranjit Singh*[3]:

> "But it is open to a litigant to refrain from producing any documents that he considers irrelevant; if the other litigant is dissatisfied it is for him to apply for an affidavit of documents and he can obtain inspection and production of all that appears to him in such affidavit to be relevant and proper. If he fails so to do, neither he nor the Court at his suggestion is entitled to draw any inference as to the contents of any such documents."

But Shah, J., speaking for the Court, stated:

> "The observations of the Judicial Committee do not support the proposition that unless a party is called upon expressly to make an affidavit of documents and inspection and production of documents is demanded, the Court cannot raise an adverse inference against a party withholding evidence in his possession. Such a rule is inconsistent with Illustration (*g*) of Section 114 of the Evidence Act, and also an impressive body of authority."

6. For these reasons we are of the opinion that the High Court was right in reaching the conclusion that Survey Plot No. 134 belonged to the Dargah and must be shown as the property belonging to the public trust. This appeal is accordingly dismissed with costs. One hearing fee.

———

* Appeal from the Judgment and Decree dated 8th March, 1963 of the Bombay High Court in First Appeal Nos. 338 & 422 of 1960.

[1] 44 IA 98, at p 103

[2] Civil Appeal No. 941 of 1965 decided on April 15, 1968

***$$$

[3] 42 IA 202, at p. 206

(17)

(1983) 96 LW (JS) 93

State of Bihar v. Radha Krishna Singh

SUPREME COURT

20-4-1983

C.A. Nos. 494-496 of 1975 (From Patna)

MURTAZA FAZAL ALI, VARADARAJAN AND BALAKRISHNA ERADI, JJ.

State of Bihar

versus

Sri Radha Krishna Singh & Ors.

Evidence Act, Ss. 13 and 32 (5) — Genealogy proof as to — Principles governing admissibility — Evidence should not be hit by the doctrine of post litem motam — Even if one link is missing the genealogy cannot be said to be proved.

Evidence Act, S. 35 — Entry made in a public Register by a public officer in the discharge of his duties — Admissibility — Conditions to be fulfilled for applicability of S. 35 — Privy Council and Supreme Court decisions examined.

Evidence Act, Ss. 40, to 43 — Recitals in documents, judgments inter partes and not inter partes documents or judgments post litem mortom — Relevancy of — Conditions to be fulfilled.

Evidence Act, S. 32 — Applicability — Corroboration, need for — Principles.

Evidence — Hearsay — Scope — Imperfections and infirmities of human memory — Facts and events seen with some amount of precision and accurancy — Distinction from facts and events heard.

Words and Phrases — Dictionary meanings, use of — Scope.

Succession — Escheat — Claim for by government — Court frowns on the estate being taken by escheat unless essential conditions are fully and completely satisfied — Onus on government — Public, notice to be given — Failure — Claim for escheat left open for decision.

Note:— In this case the Judgment of the court runs to 167 Pages of typed matter. The Supreme Court upheld the dissenting Judgment of M.M. Prasad, J. while reversing the majority Judgment of the Patna High Court by G.N. Prasad and A.N. Mukherji, JJ. The passages relating to the legal propositions laid down in the case are extracted hereunder, after omiting, the discussion relating to constants of documents, statements of witnesses and dictionary meanings of words in the documents considered.—Ed.

JUDGMENT:— ***Fazal Ali, J.***

These appeals are directed against a judgment of the special Bench of the Patna High Court by which the High Court decreed Title Suit No. 5/61 after reversing the Judgment of the trial court. It appears that after the death of Maharaja Harendra Kishore Singh (hereinafter referred to as the 'Maharaja') who died issueless on the 26th of March, 1893, a serious dispute arose about the impartible estate left by him. The Maharaja claimed to be a direct descendent of Raja Hirday Narain Singh who was the admitted owner of the properties. Several persons came forward with rival claims of being the heirs to the properties left by the Maharaja which consisted of immoveable and moveable properties, such as land, houses, jewellery, etc...

...The eventful story of the present litigation opens with the death of Maharaja Harendra Kishore Singh which took a more serious turn when his two widows,

(18)

Maharani Sheoratan Kuer died on March 24, 1896 and Maharani Janki Kuer was declared incompetent to manage the estate, as a result of which the

management of the entire estate was taken over by the Court of Wards. As the properties in question were situated in both the States of Bihar and Uttar Pradesh the Courts of Wards of Bihar and Uttar Pradesh jointly carried on the management of the properties. Maharani Janki Kuer resided at Allahabad and died childless on November, 27, 1954.

After her unfortunate death or even before, interested persons started casting their covetous and avaricious eyes on the huge properties left by the late Maharaji and litigation started by putting forward rival and conflicting claims thus making strenuous efforts to "turn chance into good fortune." The last and inevitable step of the drama long in process reached its climax with the death of Maharani Janki Kuer when as many as four suits...were filed claiming the properties of the Maharaja, some as reversioners and some as *putrikaputra*, etc.

We would like to make it clear that the three appeals, i.e. Civil Appeal Nos. 494 to 496 of 1975, have been filed by the State of Bihar arraying the plaintiffs and other claimants as the respondents in each of the appeals. The pivotal dispute centers round appeal No. 494 between the State of Bihar, supported by the State of Uttar Pradesh on one side and the plaintiff, Radha Krishna Singh and his champarters on the other.

We, therefore, intend to discuss and analyse the evidence oral and documentary only, so far as the parties in appeal No. 494 are concerned....

...In the present appeals, we are only concerned with two rival claims put forward to the Bettiah Raj on the death of Maharaja Harendra Kishore Singh and his two widows. In Suit No. 25 of 1958, the claimants were Ambika Prasad Singh and others claiming the estate on the basis that as Raja Jugal Kishore Singh succeeded to the gaddi of Sirkarasthe adopted son and successor to Raja Dhrub Singh and not as his daughter's son, Ambika Prasad being nearest among the reversioners was entitled to succeed to the estate after the death of the widows. The suit of Ambika Prasad Singh was dismissed by the trial court as also by the special Bench of the High Court and some appeals were brought to this Court by certificate. The said appeals, being Civil Appeals Nos. 114–119 of 1976, in *Shyam Sunder Prasad Singh* v. *State of Bihar* (1981) I S.C.K. 1 came up for hearing before a Bench consisting of P.N. Bhgawati. A.P. Sen and E.S. Venkataramiah, JJ This Court dismissed the appeals and rejected the claim of Ambika Prasad Singh holding that as Raja Jugal Kishore Singh could not in law be considered as a *putrikaputra* his claim to the estate left by Raja Dhrub as being the nearest reversioner, cannot succeed.

The claim of Radha Krishanan Singh and others in Suit No. 5 of 1961 was left to be decided by another Bench and it is these appeals that have now been placed before us for hearing....

After a brief narration of the facts, mentioned above, before going to the oral, documentary and circumstantial evidence, it may be necessary to state the well established principles in the light of which we have to decide the conflicting claims of the parties. It appears that the plaint genealogy is the very fabric and foundation of tne edifice on which is built the plaintiff's case. This is the starting point of the case of the plaintiff which has been hotly contested by the appellant. In such cases, as there is a tendency on the part of an interested person or a party in order to grab, establish or prove an alleged claim, to concoct, fabricate or procure false genealogy to suit their

(19)

ends, the courts in relying on the genealogy put forward must guard themselves against falling into the trap laid by a series of documents or a labyrinth of seemingly old genealogies to support their rival claims.

The principles governing such cases may be summarised thus:

(1) Genealogies admitted or proved to be old and relied on in previous cases are doubtless relevant and in some cases may even be conclusive of the facts proved but there are several considerations which must be kept in

mind by the courts before accepting or relying on the gemalogies:

(a) Source of the genealogy and its dependability.

(b) Admissibility of the genealogy under the Evidence Act.

(c) A proper use of the said genealogies in decisions or judgments on which reliance is placed.

(d) Age of genealogies

(e) Litigations where such genealogies have been accepted or rejected.

(2) On the question of admissibility the following tests must be adopted:

(a) the genealogies of the families concerned must fall within the four-corners of S. 32 (5) or S. 13 of the Evidence Act.

(b) They must not be hit by the doctrine of *post litem mo tarn*.

(c) The genealogies or the claims cannot be proved by recitals, depositions or facts narrated in the judgment which have been held by a long course of decisions to be inadmissible.

(d) where genealogy is proved by oral evidence, the said evidence must clearly show special means of knowledge disclosing the exact source, time and the circumstances under which the knowledge is acquired, and this must be clearly and conclusively proved.

It is well settled that when a case of a party is based on a genealogy consisting of links, it is incumbent on the party to prove every link thereof and even if one link is found to be missing then in the eye of law the genealogy cannot be said to have been fully proved....

To start with, the main fabric and the cornerstone of the documents produced by the plaintiffs appears to be Ex. J., an ancient document of the year 1810 whose admissibility was seriously disputed by the appellants but all the courts have found this document to be admissible. Apart from the majority judgment, even M.M. Prasad, J., has clearly held that Ex. J being an entry in a Register made by a public officer in the discharge of his duties squarely falls within the four corners S. 35 of the Evidence Act and is, therefore, doubtless admissible....

We agree with the unanmious view of the High Court that Ex. J is admissible. In fact, the said Exhibit itself would show that it was written by a serishtadar, a Government officer, on the direction of a very high governmental authority who had asked him to make a detailed enquiry regarding the possession of various Zamindars and submit a Report to the Government about possession. We are, therefore, of the opinion that all the conditions of S. 35 of the Evidence Act are fully complied with and fulfilled, and it is difficult to accept the conclusion that the document is not admissible either under S. 35 or under any other provision of the Evidence Act. It is a different matter that even though a document may be admissible in evidence its probative value may be almost zero and this is the main aspect of the case which we propose to

(20)

highlight when we deal with the legal value of this document...

In our opinion, Ex. J squarely falls within the four corners of S. 35 of the Evidence Act which requires the following conditions to be fulfilled before a document can be admissible under this section:—

1. the document must be in the nature of an entry in any public or other official book, register or record,

2. it must state a fact in issue or a relevant fact,

3. the entry must be made by a public servant in the discharge of his official duties or in performance of his duties especially enjoined by the law of the country in which the relevant entry is kept.

...The question as to whether the relevant fact is proved or not is quite a different matter which has nothing to do with the admissibility of the document but which assumes importance only when we consider the probative value of a particular document. The fact that the Report was called for from the Mirzapur Collectorate has been amply proved both by oral and documentary evidence. Thus, all the aforesaid conditions of S. 35 are fully complied with in this case.

P.C. Purushotama Reddiar v. *S. Perumal*, (1972) 2 S.C.R. 646 — *Relied on.*

The admissibility of Ex. J or its genuineness is only one side of the picture and, in our

opinion, it does not throw much light on the controversial issues involved in the appeal. We may not be understood, while holding that Ex. J is admissible, to mean that all its recitals are correct or that it has very great probative value merely because it happens to be an ancient document. Admissibility of a document is one thing and its probative value quite another—these two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and weight or its probative value may be nil.

Ghulam Rasul Khan v. *Secretary of State for India in Council*, 52 I.A. 201 (P.C.);

Kuar Shyam Pratap Singh v. *Collector of Etawan*, A.I.R. 1946 P.C. 103.

The case of *Meer Usd-oollah* v. *Mussumat Beeby Imaman, Widow of Shah Khadim Hossain*, 1 M.I.A. 19 appears to us to be a clear illustration of a document which while being an entry in a public record is of great probative value and carries the utmost weight. In this case, the Registers concerned were probably under Bengal Regulations and the act of registration in the Registers was made after a proclamation amounting to a public, open and notorious assertion of title. Such a document was held by the Privy Council to be of very great importance, and in this connection the following observations were made:

"This fact is most important, not because the registers themselves are at all of the nature of conclusive evidence of title, (for, the Regulations provide against that) *but because this act of registration after a proclamation amounts to a public, open and notorious assertion of title on the one side, and the omission to register, unexplained by proof* of the ill health of the claimant, or absence in a distant country, or ignorance, afford an equally strong presumption of the non-existence of any title on the other."

(Emphasis supplied)

This is a clear and important illustration of an admissible document which commmds great confidence and whose probative value is almost irrebuttable and

(21)

impregnable.

Raja Muttu Ramalinga Setupati v. *Perianayagam Pillai*, 1 I.A. 209 (P.C.) — *Referred to.*

With due respect to the Privy Council, we fully agree with the view taken by their Lordships and the test laid down by them.

Brij Mohan Singh v. *Priya Brat Narain Singh* 1965 3 S.C.R. 861;

Rupert Cross on 'Evidence' (1967: Third Edition) at page 408;

Brain v. *Preece Lord* (C.B. Abinger) 152 English Reports 1017;

Maria Mangini Sturla v. *Filippo Tomasso Mattia Freccia, Augustus Keppri Stevenson* 1880 A.C. 623. (Lord Blackburn); and

Mercer v. *Denne*, 1905 2 Ch. 538.— *Referred to.*

Even if Ex. J is taken into consideration, it will prove not the title of the plaintiffs respondents but only the possession of lands held by some of their alleged ancestors. In other words, the document will not be any evidence of title in the suit out of which the present appeals arise which are mainly concerned with the question of title and not with the question of possession.

We now come to a detailed discussion of the contents of Ex. J to show the extent of its relevancy or importance. The original Exhibit is in Persian language and had been kept separately in a basta. During the course of hearing of the appeal, the said Exhibit was got retranslated and the said translated English version appears at pages 25–33 in Volume VII of the paperbook. The document in Roman script is to be found at pages 120–123 in Volume V which, in our opinion is the correct reproduction of the original Exhibit with slight discrepancies here and there....

Fortunately, as one of us (Fazal Ali, J.) happens to possess sufficient knowledge of Persian language we found no difficulty in deciphering the correctness of the disputed meanings of the expressions used in the Exhibit. Even so, we have consulted the most reliable Persian-English Dictionary (*Steingass*—1947-3rd Impression) and other standard dictionaries to arrive at the correct import of the meanings of the terms and expressions used in the document.

In the case of *Coca-Cola Company of Canada Ltd.* v. *Pepsi-Cola Company of Canada*

Ltd. A.I.R. 1942 P.C. 40 it was clearly held that Dictionaries can always be referred to in order to ascertain not only the meaning of a word but also the general use of it. In this connection, their Lordships observed as follows:—

"While questions may sometimes arise as to the extent to which a Court may inform itself by reference to dictionaries there can, their Lordships think, be no doubt that dictionaries may properly be referred to in order to ascertain not only the meaning of a word, but also the use to which the thing (if it be a thing) denoted by the word is commonly put."

This is what we have tried to achieve in addition to the knowledge of Persian language that one of us possesses....

We have already shown that the scheme followed and the *modus operandi* adopted by the plaintiffs are based on an incorrect translation and wrong interpretation of the meaning of actual words in Persian with the result that the entire scheme followed by them instead of effectuating the goal sought to be achieved by them, has rendered their case totally abortive. With these findings and observations we close the chapter

(22)

so far as Ex. J and its alleged corroboration by documentary and oral evidence is concerned.

We now pass on to the next limb of the argument of the plaintiffs respondents, viz., that there are unimpeacheable documents which throw a flood of light on the case propounded by them in their plaint....

For this purpose, the documents may be classified under three heads—

(1) documents which are *per se* inadmissible.

(2) recitals in judgments not *inter parties*, and,

(3) documents or judgments *post litem motam.*

Taking the first head, it is well settled that judgments of courts are admissible in evidence under the provisions of Ss. 40, 41 and 42 of the Evidence Act. S. 43... clearly provides that those judgments which do not fall within the four corners of Ss. 40 to 42 are inadmissible unless the existence of such judgment, order or decree is itself a fact in issue or a relevant fact under some other provisions of the Evidence Act.

Some Courts have used S. 13 to prove the admissibility of a judgment as coming under the provisions of S. 43, referred to above. We are, however, of the opinion that where there is a specific provision covering the admissibility of a document, it is not open to the court to call into aid other general provisions in order to make a particular document admissible. In other words, if a judgment is not admissible as not falling within the ambit of S. 40 to 42, it must fulfill the conditions of S. 43, otherwise it cannot be relevant under S. 13 of the Evidence Act. The words "other provisions of this Act" cannot cover S. 13, because this section doss not deal with judgment at all.

It is also well settled that a judgment in *rem* like judgments passed in probate, insolvency, matrimonial or guardianship or other similar proceedings, is admissible in all cases whether such judgments are *inter partes* or not. In the instant case, however, all the documents consisting of judgments filed are not judgments *in rem* and therefore, the question of their admissibility on that basis does not arise. As mentioned earlier, the judgments filed as Exhibits in the instant case, are judgment in *personam* and therefore, they do not fulfill the conditions mentioned in S. 41 of the Evidence Act.

It is now settled law that judgments not *inter partes* are inadmissible in evidence barring exceptional cases which we shall point out hereafter.

John Cockrane v. *Hurrosoondurri Debia*, (Lord Justice Bruce) 6 M.I.A. 494;

Jogendro Deb Roy Kut v. *Funindro Deb Roy Kut* 14 M.I.A. 367;

Gujju Lall v. *Fatteh Lall*, I.L.R. 6 Cal. 171 (F.B.);

Gadadhar Chowdhury v. *Sarat Chandra Chakravarty*, 44 C.W.N. 935 (D.B.);

Maharaja Sir Ke bo Prasad Singh Bahadur v. *Bahuria Mt. Bhagjogna Kuer*, A.I.R. 1937 P.C. 69; and

Seethapati Rao Dora v. *Tenkanna Dora*, I.L.R. 45 Mad. 332 (F.B.) (Per Kumaraswami Sastri, J. — *Referred to.*

The cumulutive effect of the decisions cited above on this point clearly is that under the Evidence Act a judgment which is not inter partes is inadmissible in evidence except for the limited purpose of proving as to who the parties were and what was the

decree passed and the properties which were the subject-matter of the suit. In these circumstances, therefore, it is not open to the plaintiffs respondents to derive any support from some of the judgments which they have filed in order to support their title and relationship in which neither the plaintiffs nor the defendants were parties. Indeed, if the judgments are used for the limited purpose mentioned above, tbey do not take us anywhere so as to prove the plaintiffs' case.

It is also well settled that statements or declarations before persons of competent knowledge made *ante litem motam* are receivable to prove ancient rights of a public or general nature, vide: *Halsbury's Laws of England* (Vol. 15: 3rd Edition, p, 308)....

The admissibility of such declarations is, however, considerably weakened if it pertains not to public rights but to purely private rights. It is equally well settled that declarations or statements made *post litem motam* would not be admissible because in cases or proceedings taken or declarations made *ante litem motam*, the element of bias and concoction is eliminated. Before, however, the statements of the nature mentioned above can be admissible as being *ante litem motam* they must be not only before the actual existence of any contraversy but they should made even before the commencement of legal proceedings.

Para 562 at page 308 of Halsbury's Laws of England. — *Referred to.*

This position however cannot bold good of statements made *post litem motam* which would be clearly inadmissible in evidence. The reason for this rule seems to be that after a dispute has begun or a legal proceeding is about to commence, the possibility of bias, concoction or putting up false pleas cannot be ruled out. This rule of English law has now been crystallised as one of the essential principles of the Evidence Act on the question of admissibility of judgments or documents. M.M. Prasad, J has dealt with this aspect of the matter fully and we entirely agree with the opinion expressed by him on this point, In fact S. 32 (5) of the Evidence Act itself fully incorporates the doctrine of *post litem motam*.

Kalka Prasad v. *Mathura Prasad* I.L.R. 30 All. 510 (P.C.);

Hari Baksh v. *Babu Lal*, A.I.R. 1924 P.C. 126;

Dolgobinda Paricha v. *Nimai Charan Misra* (1959) Supp. 2 S.C.R. 814; and

Kalidindi Venkata Subbaraju v. *Chintalapati Subbaraju* (1968) 2 S.C.R. 292; — *Referred to.*

Thus, summarising the ratio of the authorities mentioned above, the position that emerges and the principles that are deducible from the aforesaid decisions are as follows:—

(1) A judgment *in term*, e.g. judgments or orders passed in admiralty, probate proceedings, etc, would always be admissible irrespective of whether they are inter partes or not,

(2) judgments *in personam* not *inter parties* are not at all admissible in evidence except for the three purposes mentioned above.

(3) On a parity of aforesaid reasoning, the recitals in a judgment like findings given in appreciation of evidence made or arguments or genealogies referred to in the judgment would be wholly inadmissible in a case where neither the plaintiff nor the defendant were parties.

(4) The probative value of documents which, however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety is precious little.

(5) Statements, declarations or depositions, etc., would not be admissible if they are *post litem motam*.

(24)

...On a careful scrutiny of the evidence it seems that what the plaintiff has done is to file any and every document, deposition, statement, declaration, etc., where there is any genealogy which connects him with either the Maharaja of Banaras or his *gotias* without making any attempt to prove the main link on which rests the entire fabric of his case. The result has been that the plaintiffs have landed themselves into a labyrinth of delusion and darkness from which it is difficult for them to come out and the case made out by them has been reduced to smithereens and smoulders and despite all their snaring and snarling they have miserably failed to prove the pivotal point, viz., the link between Ramruch Singh, Gajraj Singh, Debi Singh and Bansidhar Singh....

...The last chapter consists of the oral evidence of the pedigree propounded by the plaintiffs and we shall deal with the same for whatever it is worth after a complete consideration of the opinions expressed in, the majority and the minority judgments of the High Court.

Before, however, opening this chapter it may be necessary to restate the norms and the principles governing the proof of a pedigree by oral evidence in the light of which the said evidence would have to be examined by us. It is true that in considering the oral evidence regarding a pedigree a purely mathematical approach cannot be made because where a long line of descent has to be proved spreading over a century, it is obvious that the witnesses who are examined to depose to the genealogy would have to depend on their special means of knowledge which may have come to them through their ancestors but, at the same time, there is a great risk and a serious danger involved in relying solely on the evidence of witnesses given from pure memory because the witness who are interested normally have a tendency to draw more from their imagination or turn and twist the facts which they may have heard from their ancestors in order to help the parties for whom they are deposing. The court must, therefore safeguard that the evidence of such witnesses may not be accepted as is based purely on imagination or an imaginary or illusory source of information rather than special means of knowledge as required by law. The oral testimony of the witnesses on this matter is bound to be hearsay and their evidence is admissible as an exception to the general rule where hearsay evidence is not admissible. This is culled out from the law contained in Cl. (5) of S. 32 of the Evidence Act which must be construed to the letter and to the spirit in which it was passed.

In order to appreciate the evidence of such witnesses, the following principles should be kept in mind:

(1) The relationship or the connection however close it may be which the witness bears to the persons whose pedigree is sought to be deposed by him.

(2) The nature and character of the special means of knowledge through which the witness has come to know about the pedigree.

(3) The interested nature of the witness concerned.

(4) The precaution which must be taken to rule out any false statement made by the witness *post litem motam* or one which is derived not by means of special knowledge but purely from his imagination, and

(5) The evidence of the witness must be substantially corroborated as far as time and memory admit.

These are the broad outlines on the basis of which in cases whose facts start from

very olden times such oral testimony has to be judged and evaluated.

In the case of *Bahadur Singh* v. *Mohan Singh*, 29 I.A. 1, the Privy Council cautioned the courts against accepting statements which may be inadmissible under Cl. (5) of S. 32 of the Evidence Act and which have been made *post litem motam*. This aspect of the matter has been dealt with while dealing with the doctrine *of post litem motam*. We might mention that in this particular case the evidence of almost all the witnesses is *post litem motam*.

Pershad Chowdhry v. *Rani Radha Chowdhrain*, 31 I.A. 160 (PC);

Abdul Ghafur v. *Hussain Bibi* 58 I.A. 188 (P.C.);

Mewa Singh v. *Basant Singh* A.I.R. 1918 P.C. 49; — *Referred to*.

To the same effect is another decision of the Privy Council in *Bhajraj* v. *Sita Ram*, A.I.R. 1936 P.C. 60. We have already pointed out that in the aforesaid cases, the principles enunciated by us are wholly consistent with what the Privy Council says and we fully endorse the same. None of these cases lays down that the courts should suspend....

Similarly, other cases on which reliance was placed, which have already been discussed above, do not lay down that wherever witnesses speak of old genealogy it should be accepted as a gospel truth. The evidence of the witnesses must be scanned very thro roughly and according to the standards laid down by by the Privy Council and this Court.

Apart from the aforesaid authorities, there are some famous text books which also have laid down certain principles for the appraisement of pedigree evidence.

Taylor on '*Treatise on Evidence*' Page 414, Para 648;

Lovat Peerage case, (1884–85) 10 A.C. 763 (Lord Watson); and

Wigmore on 'Evidence' in Volume V at pages 296 and 297 — *Referred to*.

To begin with, before dealing with the evidence of the plaintiffs' witnesses on the point of genealogy we would like to preface our discussion with the description of the imperfections and infirmities of human memory which alone would determine the dependability of the evidence.

Indeed, as a mortal man is not infallible so is human memory. It records facts and events *seen* with some amount of precision and accuracy, but with the lapse or distance of time, unless the facts or events are noted or recorded in writing, the facts or events fade, sequences get lost, consistency gives way to inconsistency, realities yield to imagination, coherence slowly disappears, memory starts becoming blurred, confusion bccomts worse confounded, rememberance is substituted by forgetfulness resulting in an erosion of facts recorded by the memory earlier. This equally applies to facts merely heard by one from some other person. Thus, if a person having only heard certain facts or events repeats them after a long time with mathematical precision or adroit accuracy, it is unnatural and unbelievable and smacks of concoction and fabrication being against normal human conduct, unless he repeats some special or strikingly unusual incident of life which one can never forget or where a person is reminded of some conspicuous fact on the haprening of a particular contingency which lights up the past such as marriage, death, divorce, accident, disappointment, failure,

(26)

wars, famine, earthquake pestilence, (personally affecting the subject and the like, etc., and revives the memory in respect of the aforesaid incidents. Of course, if the person happens to be an inimitable genius or an intellectual giant possessing a very sharp and shocking memory, the matter may be different. But, such persons are not born everyday. To say, in this case, that all the witnesses one after the other, were geniuses is to tell the impossible. Weakness and uncertainty of human memory is the rule. The witnesses of the plaintiffs examined in this case are normal human beings suffering from the usual defects and drawbacks of a common man.

Describing the vagaries of human memory, Ugo Betti so aptly and correctly observes:

"Memories are like stones, time and distance erode them like acid."

(P. 395, The International. The saurus of Quotations: Rhoda Thomas Tripp)

In the same strain, Sir Richard Burton in his article 'Sind Revisited' expresses his thoughtful experience in the following words:

"How strange are the tricks of memory, which, often hazy as a dream about the most important events of a man's life, religiously preserve the merest trifles."

(P. 395, The International Theasaurus of Questions: Rhoda Thomas Tripp)

Similarly, Baltasar Grecian in 'The Art of Worldly Wisdom' very aptly puts the frailties of human memory thus:

"The things we remember best are those better forgotten".

We shall now endeavour to approach and analyse the evidence of plaintiff's witnesses in the light of the principles enunciated above.

...We find it difficult to place any reliance on the evidence of DW-36 and we agree with M.M. Prasad, J., that the witness was not worthy of credence.

It was to meet and save such or similar situations resulting from the shortcomings and frailties of the failing and fading human memory that Sir George Rankin, in the case of *Rokkam Lakshmi Reddi* v. *Rnkkan Venkata Reddi*, A.I.R. 1937 P.C. 201 at 203 like a sage counsel sounded a note of caution in the following prophetic and classic words:—

"It cannot rightly be left to time or chance or cross-examination to disclose whether a statement has any basis which could give it value or admissibility."

To sum up, the ingenious and imaginative, fanciful and foggy, nasty and nebulous narration of genealogies by the plaintiffs' witnesses one after the other looks like a 'sleeping beauty' or Cinderella's Dream or as Shakespeare's Macbeth would say "A tale told by an idiot, full of sound and fury, signifying nothing."

Thus, on a complete and careful consideration of the oral evidence also the plaintiffs have miserably failed to prove the two important links, viz., that Gajraj Singh was the son of Ramruch Singh, and that Ramruch Singh was the son of Bansidhar Singh and brother of Debi Singh.

We are,...unable to uphold the view taken by the majority judgment in respect of the oral evidence on the point of genealogy...

...We have fully discussed both the legal and the factual position of the documents relied on by the plaintiffs and have demonstrated that the said documents ought not to have been relied on by the majority judgment.

We must confess however that to discover and sift the truth from a huge mass of

materials relevant or irrelevant, ancient and archaic, varied and diverse, heterogenous and sundry has not been a bed of roses but indeed a herculean task. With due deference to the majority Judges wedare say that despite their strenuous and perhaps genuine efforts to reach legally correct conclusions on important issues involved in the case, in the ultimate analysis they have only been able to do poetic rather than legal justice. We have, therefore, taken great care to rely only on those documents or evidence which appeared to us to be reliable and dependable: thus eliminating any chance of mistake. No mortal person whether he be a Judge or a Jurist can ever claim to be infallible and all that is required is to do justice on the materials and records uninfluenced and undaunted by any extraneous circumstances. This is what we have endeavoured to do in the present case which may be one of the many cases before us but doubtless a prestigious one for the parties involved in the appeal...

In view of the findings given by us, the plaintiff's suits have to be dismissed. '

Before closing the colourful chapter of this historical case we would now like to deal with the last point which remains to be considered and that is the question of Escheat. So far as this question is concerned, M.M. Prasad, J. has rightly pointed out that as the State of Bihar did not enter the arena as a plaintiff to claim the properties by pleading that the late Maharaja had left no heir at all and, hence, the properties should vest in the State of Bihar, it would be difficult to hold that merely in the event of the failure of the plaintiffs' case the properties would vest in the State of Bihar.

It is well settled that when a claim of escheat is put forward by the Government the onus lies heavily on the appellant to prove the absence of any heir of the respondent anywhere in the world. Normally, the court frowns on the estate being taken by escheat unless the essential conditions for escheat are fully and completely satisfied. Further, before the plea of escheat can be entertained, there must be a public notice given by the Government so that if there is any claimant

anywhere in the country or for that matter in the world, he may come forward to contest the claim of the State. To the instant case, the States of Bihar and Uttar Pradesh merely satisfied themselves by appearing to oppose the claims of the plaintiffs respondents. Even if they succeed in showing that the plaintiffs were not the nearest reversioners of the late Maharaja, it does not follow as a logical corollary that the failure of the plaintiffs' claim would lead to the irresistible inference that there is no other heir who could at any time come forward to claim properties.

The trial court was wrong in accepting the case of escheat put forward by the appellants without at all considering the well-known rules and considerations governing the vesting of properties in the State by escheat.

We entirely agree with the opinion expressed by the learned Judge on this question. However, we would like to leave this question open without deciding it one way or the other because for the purpose of deciding the appeal it is not at all necessary to go into the question of escheat which may have to be determined when the States of Bihar and Uttar Pradesh come forward to claim escheat in a properly constituted action. The plea taken by both the States on the question of escheat is therefore left undecided.

It is obvious that the majority judgment expressed no opinion on the question of escheat in view of its finding that the plaintiff's suit had to be decreed.

We might further state that as the properties are under the management of the Court of Wards of the States of Bihar and Uttar Pradesh, the status quo will be

(128)

maintained until any of the States is able to prove its plea of escheat in a properly constituted action.

The result is that the appeals are allowed, the dissenting judgment of M.M. Prasad, J. is affirmed and the plaintiffs' suit is dismissed with costs throughout.

Dr. L.M. Singhvi & Mr. S.C. Mipra, Lenior Advocates, M/s. U.P. Singh, S.N. Jha & L.K. Pandy Advocates with them for the Applt.

M/s. V.M. Tarkuude & U.R. Lalit Senior Advocates, M/s. D.N. Goburdhan & D. Goburdhan, Advocates for Respts.

Dr. Y.S. Chitale, Senior Advocate, Mrs. Sobha Dikshil, Advocates for the State of U.P.

Mr. S.K. Verma, Advocate for the Intervener:

Appeals allowed.

VCS.

———