PETITIONER:
RAJ KUMAR MOHAN SINGH & ORS.

Vs.

RESPONDENT:
RAJ KUMAR PASUPATINATH SARAN SINGH & ORS.

DATE OF JUDGMENT:
29/04/1969

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
RAMASWAMI, V.
MITTER, G.K.

CITATION:
1970 AIR 42 1970 SCR (1) 428
1969 SCC (2) 258

ACT:
Oudh Estates Act 1 of 1869-Ss. 8 and 22(6) if rebuttable presumption exists that non-taluqdari estate also devolves upon single heir as in case of taluqdari estate.

HEADNOTE:
Section 8 of the Oudh Estates Act 1 of 1869 provided for the preparation of lists of taluqdars and grantees, and another list of taluqdars whose estates, according to the custom of the family on and before 13th February, 1856, ordinarily devolved upon a single heir. The taluqdari estate of Tiloi was entered in the second list. Upon the death of the taluqdar and in the absence of any brother or a male lineal descendant, the estate devolved, in accordance with the provisions of s. 22(6) upon the widow of the deceased taluqdar for her life. Thereafter she adopted a son. The adopted son by a deed of trust executed in August, 1932, settled certain properties. By judgment dated April 19, 1968, this Court declared that the deed of trust of August, 1932 did not operate to settle any property being part of the taluqdari estate and governed by the Oudh Estates Act of 1869.
In the present petition for review of the judgment it was contended that even if the settlor had no interest in the taluqdari estate under the ordinary Hindu law, on adoption, the non-taluqdari property vested in him and he was competent under the deed of settlement to dispose of the property in the manner directed by that deed. It was also contended that the widow of a taluqdar was not an "heir" within the definition of the expression in the Act.
HELD : That even in the non-taluqdari estate left by the taluqdar which devolved upon the widow, her adopted son, the settlor, had so, long as the widow was alive no interest which he could transfer, alienate or settle. [433G]
it is well settled that where property devolves upon, a single heir of a taluqdar entered in the second list under s. 8 of the Act, there is a rebuttable presumption that the non-taluqdari estate also devolves upon him. In the present case there was no reason to depart from that rule. Prior to the enactment of the Oudh Estates Act 1869 there was no dis-

tinction between taluqdari and non-taluqdari estate and the presumption merely gave effect to family custom. [432E-F]
Rani Huzur Ara Begam and Anr. v. Deputy Commissioner Gonda, L.R. 65 I.A. 397 followed.
Murtaza Husain Khan v. Mahomed Yasin Ali Khan L.R. 43 I.A. 269;Thakur Ishri Singh v. Baldeo Singh, L.R. 11 I.A. 135: referred to.

JUDGMENT:
CIVIL APPELLATE JURISDICTION: Civil Appeal No. 380 of 1965.
Appeal from the judgment and decree dated May 23, 1963 of the Allahabad High Court, Lucknow Bench in First Civil Appeal No. 70 of 1950.
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C. B. Agarwala, Ishtiaq Ahmad Abbasi, S. Rehman and, C. P. Lal, for the appellants.
S. P. Sinha, Mohammad Hussain and S. S. Shukla, for the respondents Nos. 1 and 3.
The Judgment of the Court was delivered by
Shah, J. By our judgment dated April 19, 1968, we passed the following order in this appeal :
"It will be declared that the deed of trust executed by Raja Bishwanath on August 29, 1932, did not operate to settle any property being part of the taluqdari estate and governed by the Oudh Estates Act 1 of 1869, for the purposes specified therein."
The Senior Raj Kumar applied for review of judgment on the ground that the deed of trust dated August 29, 1932, settled properties non-taluqdari as well as taluqdari and the Court at the earlier hearing did not make any order as to the revolution of the non-taluqdari property. Apparently at the earlier hearing no argument on the matter now sought to be raised was advanced, though the hearing lasted for several days. We have, however, granted review of judgment and heard the parties on the question whether a different rule of revolution prevails in respect of properties which are non-taluqdari.
We have held that on the death of Raja Surpal Singh the taluqdari estate of Tiloi vested in Rani Jagannath Kuar, and she continued to hold the property as life owner under s. 22(7) of the Oudh Estates Act, even after she adopted Raja Bishwanath Singh on February 21, 1901, and so long as she was alive Raja Bishwanath Singh had no interest in the estate which he could settle or convey. The deed of settlement was executed by Raja Bishwanath Singh during the lifetime of Rani Jagannath Kuar and did not operate to convey the taluqdari estate. Counsel for the Senior Raj Kumar contends that even if Raja Bishwanath had no interest in the taluqdari estate, under the ordinary Hindu law, on adoption the non-taluqdari property left by Raja Surpal Singh vested in Raja Bishwanath Singh and he was competent under the deed of settlement to dispose of the property in the manner directed by that deed. Counsel says that the revolution of non-taluqdari property is governed by the rules of Hindu law, and that on adoption of a son by Rani Jagannath Kuar her interest in the property was divested and the adopted son became the owner of the property.
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Counsel for the Junior Raj Kumar resists this claim. Section 8 of the Oudh Estates Act 1 of 1869 provides for the preparation of lists of taluqdars and grantees, and the second list prepared under that section is a list of taluqdars whose estates, according to the custom of the

family on and before the 13th day of February, 1856, ordinarily devolved upon a single heir. The taluqdari estate of Tiloi was entered in the second list. By s. 10 of the Act .it is provided :

"No persons shall be considered taluqdars or grantees within the meaning of the Act, other than the persons named in such original or supplementary lists as aforesaid. The Courts shall take judicial notice of the said lists and shall regard them as conclusive evidence that the persons named therein are such taluqdars or grantees.'

Section 22 of the Act prescribes a special mode of succession to intestate taluqdars and grantees. By cl. (6) of S. 22 in default of any brother, or a male lineal descendant, the estate devolves upon the widow of the deceased taluqdar or grantee, heir or legatee, for her life-time only, and by cl. (7) on the death of the widow, the estate devolves upon such son as the widow shall, with the consent in writing of her deceased husband, have adopted, and his male lineal descendants. The Tiloi Estate which was a taluqdari estate, therefore, devolved upon Rani Jagannath Kuar and she held that estate during her life-time. The rule of Hindu law that on the adoption of a son by a widow to her deceased husband, the estate vests in the adopted son, is by the express provisions of cls. (6) & (7) of s. 22 of the Oudh Estates Act inapplicable to taluqdari estates. That was so held in our earlier judgment dated April 19, 1968, and on that account the claim of the Senior Raj Kumar to take the taluqdari estate under the deed of settlement 'was negatived.

It was decided by the Judicial Committee of the Privy Council that it will be presumed that the non-taluqdari estate of a taluqdar governed by the Oudh Estates Act, 1869, is governed by the same -rules which govern succession to the taluqdari estate. In Rani Huzur Ara Begam and Anr. v. Deputy Commissioner, Gonda(.), the Judicial Committee held that the entry of a taluqdar in List 2 prepared under S. 8 of the Oudh Estates Act, 1869, which raises an irrebuttable presumption of single heir succession to the taluqdari property -also raises a presumption, rebuttable by evidence proving a different rule of revolution, that the family custom of ,single heir succession applicable to the taluqa governs the suc-

(1) L.R. 65 I.A. 397.

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cession to the non-taluqdari property, movable as well as immovable, of the taluqdar. In that case the taluqdar of Utraula Estate obtained decrees for recovery of money against a debtor. The taluqdar died on March 4, 1934, leaving him surviving a widow, a daughter and two sons. The widow on behalf of herself and as the guardian of her daughter filed applications for execution of the decrees obtained by the taluqdar. The execution was resisted on the ground that the widow and the daughter had no right to enforce the decrees because the right to the decrees had devolved upon the eldest son who was under the Oudh Estates Act the, sole heir under the law and family custom of single heir succession. The Board upheld the contention raised ,by the judgment-debtor. They observed :

> "Now, the taluqdar of the Utraula Estate is named in list 2 of the taluqdars prepared under S. 8 of the Oudh Estates Act, 1 of 1869, whose estate, according to the custom of the family on or before February 13, 1856, ordinarily devolved upon a single heir. Section 10 of the statute provides that the

Court shall take judicial notice of the said list and regard as conclusive the fact that the person named therein is such taluqdar. In other words, there was a pre-existing custom attaching to the estate on which its inclusion in list 2 was based. There is, therefore, an irrebuttable presumption in favour of the existence of the custom of the family by which the estate devolves on a single heir, but the provision as to the conclusiveness of the custom is confined to the estate coming within the ambit of the statute. It does not apply to any property which is not comprised in the estate or taluqa. What is the rule which governs succession to non-taluqdari property ? If immovable property forming part of the taluqa is governed by the custom of single heir succession, there is no prime facie reason why immovable property which is not comprised in the taluqa should follow a different rule.

Indeed, it has been decided by this Board that there is a presumption that the rule as to succession to a taluqa governs also the succession to non-taluqdari immovable property: Murtaza Husain Khan v. Mahomed Yasin.Ali Khan [(1916) L.R. 43 I.A. 269]. It must, therefore, be taken as a settled rule that, whereas the entry of a taluqdar in list 2 is conclusive evidence that this taluqa is governed by the rule of revolution on a single heir, it raises also a presumption that -the family custom applying to a taluqa governs also -the succession to non-taluqdari immovable property."

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Counsel for the Senior Raj Kumar contended that the rule enunciated by the Judicial Committee in Rani Huzur Ara Begam's case(1) applies only to Muslims and has no application to Hindus. Counsel submitted that in Murtaza Husain Khan v. Mahomed Yasin Ali Khan(2) Mr. Ameer Ali delivering the judgment of the Board explained that the reason of the rule is that the presumed custom applies to the acquired property of a Muslim taluqdar since under the Mahomed an law, ancestral and self-acquired properties are subject to the same rule of descent, and that in the case of self-acquired property of a Hindu taluqdar, the presumed custom only affects the succession upon proof that the property was incorporated with the taluqa, either by intention of the owner or by family custom. It is true that in Rani Huzur Ara Begam's case(2) the dispute related to the succession to the estate held by a Muslim taluqdar, but the Board in that case relied upon the observations at p. 148 in Thakur Ishri Singh v. Baldeo Singh(3)-a case of Hindu succession to a taluqdari held by a Hindu taluqdar. Counsel also invited our attention to s. 23 of the Oudh Taluqdars Act, but we see no inconsistency between the presumption that non-taluqdari property also devolves upon a single-heir and the terms of s. 23 of the Act.

Counsel for the Senior Raj Kumar contends that the decision of the Judicial Committee gives no reasons in support of the view taken by the Board and should be reconsidered by this Court. We are unable to agree with that contention. The rule has apparently been settled for the last many years

that where property devolves upon a single heir of a taluqdar entered in the second list, there is a presumption that the non-taluqdari estate also devolves upon him and we see no reason to depart from that rule. To do so would result in upsetting settled titles. Prior to the enactment of the Oudh Estates Act, 1869, there was no distinction between taluqdari and non-taluqdari estates and the presumption merely gives effect to family custom. There is, therefore, a presumption, unless rebutted, that non-taluqdari property of a taluqdar entered in List 2 devolves by the custom of the family upon a single heir. On the death of Raja Surpal Singh his entire estate devolved, upon his wife Rani Jagannath Kuar and by virtue of the custom, she must be presumed to have remained life owner of the non-taluqdari estate also. The customary rule may undoubtedly be rebutted by evidence to the contrary, but at no stage of the hearing of this protracted trial was the contention raised that if the Senior Raj Kumar had under the deed of

(1) L.R. 65 I.A. 397. (2) L.R. 43 I.A. 269.
(3) L.R. 11 I.A. 135.

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settlement interest in the non-taluqdari estate even if his claim to the taluqdari estate under that deed failed to take effect.

It was then urged that in any event the widow of a taluqdar is not an "heir" within the definition of the, Act. It is true that in the interpretation clause in the Act an "heir" means a person who has inherited or inherits otherwise than as a widow or a mother, an estate or portion of an estate whether before or after the commencement of the Act. But we fail to appreciate the bearing of this definition upon the question in issue. By virtue of s. 22(6) of the Act the taluqdari. estate devolved upon Rani Jagannath Kuar on the death of her husband and the estate enured during her life-time. She also inherited the non-taluqdari estate. Technically she may not be called an "heir" under the Act, but that is irrelevant in determining whether in the devolution of the taluqdari and non-taluqdari estates different rules prevail.

Counsel then contended that though the argument was not raised at an earlier stage, the Senior Raj Kumar should be permitted to amend his pleading to contend that there was a -custom in the family under which non-taluqdari estate did not devolve upon a single heir. This case is more than 22 years old and we do not think that we would be justified at this date in allowing the parties to raise a new contention and give it a fresh lease of life. On the record there is evidence relating to devolution of the estate since the time of Raja Jagpal Singh to whom the Tiloi Estate was granted by the Government, and it has never been suggested that the non-taluqdari estate devolves otherwise than upon a single heir.

Counsel also contended that even if leave to amend the written statement be not granted to the Senior Raj Kumar the Court may review the evidence and hold on the evidence already on the record that such a custom did prevail in the family. Our attention has, however, not been invited to any reliable evidence on this part of the case.

We, therefore, declare that even in the non-taluqdari estate left by Raja Surpal Singh which devolved upon his widow Rani Jagannath Kuar for her life-time, Raja Bishwanath Singh had on August 29, 1932, no interest which he could transfer, alienate or settle.

Counsel for the Senior Raj Kumar finally submitted that the Trial Court did not decide issues Nos. 14 & 15 relating to

the rights of Rani Aditya Binai Kumari-defendant No. 4-and Rani Fanindra Rajya Lakshmi Devi-defendant No. 5-and these issues should be decided. No argument was advanced before
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the High Court in respect of issues -Nos. 14 & 15. The reason is obvious : in the Trial Court the defendants agreed that no findings should be recorded on those issues. We cannot at this stage enter upon the trial of issues which, it was agreed, had to be tried in another suit.
The Senior Raj Kumar will pay the costs of this hearing.
R.K.P.S.
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