1983 PLRonline 0004

SUPREME COURT OF INDIA

Before: Justice S M Fazalali and Justice Syed Murtaza

STATE OF BIHAR

versus

RADHA KRISHNA SINGH And Others

20.04.1983

(i) Judgment – Admissibility of –

(1) A judgment in rem 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 partes 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."

[Para 145]

(ii) Evidence Act, S. 40, S. 41 S. 42, S. 43, S. 13 – Judgments of courts are admissible in evidence under the provisions of Sections 40, 41 and 42 of the Evidence Act. Section 43 – Clearly provides that those judgments which do not fall within the four corners of Sections 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 :

"43. Judgments, etc., other than those mentioned in Sections 40 to 42, when relevant.—Judgments, orders or decrees, other than those mentioned in sections 40, 41 and

42, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provision of this Act."

Some courts have used Section 13 to prove the admissibility of a judgment as coming under the provisions of section 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 Sections 40 to 42, it must fulfil the conditions of Section 43 otherwise it cannot be relevant under Section 13 of the Evidence Act. The words "other provisions of this Act" cannot cover Section 13 because this section does not deal with judgments at all. [Para 122]

(iii) 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. [Para 124]

(iv) Judgments not inter partes are inadmissible in evidence barring exceptional cases – 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 – Evidence Act, S. 40, S. 41 S. 42, S. 43. [Para 125, 135]

(v) Quote: 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. [Para 268]

(vi) Escheat – Claim of – 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. In 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 the properties. [Para 272]

(vii) Evidence Act, S. 32(5) – Statements or declarations before persons of competent knowledge made ante litem motam are receivable to prove ancient rights of a public or general nature – The admissibility of such declaration 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 controversy but they should be made even before the commencement of legal proceedings – This position however cannot hold 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. [Para 136, 137, 138]

(viii) Evidence – 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 – Practice and procedure.

(ix) Pedigree – Norms and the principles governing the proof of a pedigree by oral evidence – 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."

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 witnesses 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 clause (5) of Section 32 of the Evidence Act which must be construed to the letter and to the spirit in which it was passed.

[Para 194, 195, 196]

(x) Pedigree – Proof of – When witnesses speak of old genealogy it should be accepted as a gospel truth. The evidence of the witnesses must be scanned very thoroughly and according to the standards laid down by the Privy Council and this Court. [Para 203]

(xi) Evidence – Admissibility of documents – Probative value – 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 – Even if a document may be admissible or (sic as) an ancient one, it cannot carry the same weight or probative value as a document which is prepared either under a statute, ordinance or an Act which requires certain conditions to be fulfilled. [Para 40, 48]

(xii) Genealogy – It appears that the plaint genealogy is the very fabric and foundation of the 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 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 genealogies:

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 Section 32(5) or Section 13 of the Evidence Act.

b. They must not be hit by the doctrine of post litem motam.

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."

[Para 18, 19]

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 of 1961 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 March 26, 1893, a serious dispute arose about the impartible estate left by him. The Maharaja claimed to be a direct descendant 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 immovable and movable properties, such as lands, houses jewellery etc. As a result of the hot contest by each of the claimants, one suit was filed at Varanasi being TS No. 3 of 1955. That suit was filed by one Ram Bux Singh who claimed to be the nearest reversioner of the late Maharaja. That suit, however, appears to have died its natural death during the preliminary stages and was ultimately withdrawn on April 9, 1956, leaving only three claimants in the field.

2. Another suit was filed on August 16, 1955 in the Court of Sub-Judge, Patna which was registered as TS No. 44 of 1955. The claimant in this suit was one Suresh Nandan Singh of Sheohar who had put in his claim before the Board of Revenue which had taken over the management of the entire properties after the death of the widows of the Maharaja.

3. The third suit being TS No. 25 of 1958 was filed by two sets of plaintiffs who had entered into some agreement inter se. That suit was filed in the Court of Sub-Judge, Patna on April 11, 1958. In that suit, the main claim was put forward by Raja Jugal Kishore Singh who claimed to have succeeded to the gaddi of the Bettiah Raj in the capacity of putri ka putra of Raja Dhruva and on the extinction of the line of Raja Dalip Singh by reason of the death of Maharaja Harendra Kishore Singh, the right devolved on the plaintiff, Ambika Prasad Singh.

4. The fourth suit was filed on March 12, 1959 in the Court of Sub-Judge, Chhapra which was later transferred to the Court of Sub-Judge, Patna and renumbered as TS No. 5 of 1961.

In this suit also, there were two sets of plaintiffs — one consisting of plaintiffs who had entered into a champertous agreement with the other set of plaintiffs. In this suit, the principal plaintiff, Shri Radha Krishna Singh, one of the sons of Bhagwati Prasad Singh, claimed to have succeeded to the estate of the late Maharaja as his nearest reversioner.

5. We might mention here that the main contest before us has been between the plaintiff, Radha Krishna Singh (hereinafter referred to as the “plaintiff”) and the State of Bihar, supported by the State of Uttar Pradesh. So far as the other two suits were concerned they were dismissed both by the trial court and the High Court but the suit filed by Radha Krishna Singh (TS No. 5 of 1961) was decreed by the High Court with a majority of 2 : 1. Mr Justice G.N Prasad, with whom Mr Justice A.N Mukherji agreed, reversed the judgment of the Subordinate Judge and decreed the suit of Radha Krishna Singh and rejected the claim of the State of Bihar. Mr Justice M.M Prasad, however, took a different view and agreed with the trial court holding that the suit of the plaintiff was rightly dismissed. He accordingly gave a dissenting judgment dismissing the suit of the plaintiff.

6. It is not necessary for us to embark on the history and other circumstances of the case because Justice G.N Prasad has dextrously detailed the facts and circumstances of the entire case and has candidly narrated the historical events leading to the various crucial stages through which the litigation regarding the disputed properties had passed. We, therefore, need not repeat what has already been fully discussed by the High Court. Suffice it to say that 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, 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.

7. After her unfortunate death or even before, interested persons started casting their covetous and avaricious eyes on the huge properties left by the late Maharaja 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, as mentioned above, were filed claiming the properties of the Maharaja, some as reversioners and some as putri ka putra, etc.

8. We would like to make it clear that the three appeals i.e Civil Appeals 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 centres 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 champerters on the other.

9. We, therefore, intend to discuss and analyse the evidence — oral and documentary — only so far as the parties in Appeal No. 494 of 1975 are concerned.

10. Before dealing with the oral, documentary and circumstantial evidence it may be necessary to refer briefly to the background of the case which has doubtless been fully discussed by the courts below. Some of the historical aspects, however, have to be reiterated in order to understand the view which we take in this case.

11. Coming to the history of the Bettiah Raj, we have to go back to the 17th century. The undisputed position is that Bettiah Raj was an impartible estate having properties in the States of Bihar and Uttar Pradesh. The Raj was established by one Raja Ugra Sen as far back as the middle of 17th century and was commonly known as the Riyasat of Sirkar of Champaran, consisting of four parganas viz. Majhwa, Simrown, Babra and Maihsi. Raja Ugra Sen was succeeded by Raja Dalip Singh, Raja Gaj Singh and ultimately by Raja Dhruva Singh in the year 1715. Raja Dhruva Singh died in the year 1762 without leaving any male issue, but leaving a daughter named Benga Babui who had married one Raghunath Singh, a Bhumihar Brahmin of Gautam gotra. On the death of Raja Dhruva Singh, his daughter's son, Raja Jugal Kishore Singh entered into possession of the estate of Bettiah Raj and was in possession thereof at the time when the East India Company assumed the Government of the Province. The Company could not tolerate any resistance from the Rulers and a battle was fought in the course of which Raja Jugal Kishore Singh was driven into the neighbouring State of Bundelkhand in 1766 and the entire estate of Bettiah Raj was seized and placed under the management of the officers of the Company. During the absence of Raja Jugal Kishore Singh, Srikishen Singh and Avadhut Singh who were the sons of Prithi Singh and Satrajit Singh respectively and were younger brothers of Raja Dalip Singh, enjoyed the confidence of the Company and were placed incharge of the Bettiah Raj. However, in 1771, the Company reinstated Raja Jugal Kishore Singh obviously because he probably tendered his apologies and made a solemn promise to be loyal to the Company, as a result of which negotiations started between the Government and Raja Jugal Kishore Singh regarding the estate in question and ultimately he was allotted the Zamindari of Majhwa and Simrown which formed part of the Bettiah Raj estate and Babra and Maihsi were left in the possession of Srikishen Singh and Avadhut Singh. The East India Company had formally announced this arrangement by a decision dated July 24, 1771. Soon thereafter, there was some dispute between Raja Jugal Kishore Singh and the Company, as a result of which he was again dispossessed by the Company as he failed to pay the government revenue. Thus, the entire Sirkar of Champaran passed into the possession of the Government and was held by small farmers on temporary settlements. Raja Jugal Kishore Singh received an allowance for maintenance and died some time in the year 1783, leaving a son named Bir Kishore Singh who was succeeded by his eldest son, Maharaja Anand Kishore Singh in 1790. Upon his death leaving no issue, he was succeeded by his younger brother, Maharaja Nawal Kishore Singh who was succeeded by his eldest son, Rajendra Kishore Singh who was ultimately succeeded by Maharaja Harendra Kishore Singh, whose estate is the subject-matter of this suit.

12. On September 22, 1790, Lord Cornwallis recommended to the Board of Revenue that the estate of Majhwa and Simrown should be restored to Raja Jugal Kishore Singh but as he had died by this time, the Company directed that the heirs of Raja Jugal Kishore Singh, Srikishen Singh and Avadhut Singh be restored the possession of their respective districts. Bir Kishore Singh was not at all satisfied with the decision of the Board, mentioned above,

because he claimed the entire Province (Sirkar of Champaran) but in obedience to the order of the Governor-General, he took possession of the parganas of Majhwa and Simrown.

13. Thereafter, a long-term litigation started between Bir Kishore Singh and the heirs of Raja Jugal Kishore Singh in respect of Majhwa and Simrown and ultimately suits were filed which were followed by Memorial to the Lieutenant-Governor. It appears that whereas in the earlier suit, Raja Deoki Nandan Singh's predecessor had pleaded that Raja Jugal Kishore Singh was the son of Raja Dhruva Singh's daughter and, therefore, not a member of the family of Raja Dhruva Singh, Bir Kishore Singh had pleaded that Raja Jugal Kishore Singh having been adopted by Raja Dhruva Singh had become a member of his family. It was pleaded in the Memorial that Raja Jugal Kishore Singh, who belonged to the Gautam gotra, had been adopted by Raja Dhruva Singh who belonged to the Kashyap gotra, and had been appointed as his successor.

14. To cut the matter short, it may be stated that a spate of litigation followed putting forward rival claims to the estate left by Raja Dhruva Singh. It may, however, be noted that in none of the suits instituted in 1895, 1896 and 1905, the question as to whether Raja Jugal Kishore Singh had become a member of the family of Raja Dhruva Singh, by virtue of his adoption as putri ka putra, was decided despite a plea having been raised in all those suits. As already mentioned, out of the four suits that were filed, one of them was withdrawn. 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 Sirkar as the adopted son and successor to Raja Dhruva 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 1980 Supp SCC 720** came up for hearing before a Bench consisting of P.N Bhagwati, 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 putri ka putra his claim to the estate left by Raja Dhruva Singh as being the nearest reversioner, cannot succeed.

15. The claim of Radha Krishna 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.

16. However, it is not necessary for us to make a deeper probe into the early history of Bettiah Raj because in the instant case the relevant genealogy for the purpose of ascertaining the ancestors of the parties starts from Raja Hirday Narain Singh and his descendants who have been referred to in Ex. J, a report of the serishtedar, which appears to be the sheet-anchor of the plaintiffs' case.

17. Ex. Q-2, a genealogy filed by the plaintiffs clearly shows that Thakur Hirday Narain

Singh, who was the Raja of Bettiah after the death of his father, Thakur Hansraj Singh had five sons. One of his sons was Bansidhar Singh who was alleged to be the ancestor of the plaintiffs. Bansidhar Singh had only one son named Debi Singh.

18. 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 the 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 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.

19. 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 genealogies:

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 Section 32(5) or Section 13 of the Evidence Act.

b. They must not be hit by the doctrine of post litem motam.

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."

20. We shall now proceed to scan and analyse the evidence in the light of the principles adumbrated above referring to the important authorities on the questions arising out of the evidence, oral and documentary. Although both the parties have cited a very large number of decisions we would not like to load or crowd this judgment with all the authorities cited before us and would confine ourselves only to the important and relevant authorities of this Court and those of the Privy Council and we shall refer to the judgments of the High Court only if there is no decision of the Privy Council or of this Court directly in point.

21. To recapitulate, the plaintiffs-respondents based their title as being the nearest reversioners of the Maharaja and claimed to be entitled to immediate possession after the death of the widows of the Maharaja. The plaintiffs, therefore, claimed to be the direct descendants of Gajraj Singh and Ramruch Singh which was the branch of Bansidhar Singh's son which remained in Baraini and after the extinction of the line of the Maharaja, the properties were to revert to the descendants of Gajraj Singh. The attempt of the plaintiffs has been to show to the court that they were direct descendants of Gajraj Singh who was the son of Ramruch, Ramruch being the son of Bansidhar Singh.

22. Thus, for the purpose of this case, Bansidhar Singh may be taken to be admittedly the ancestor of Maharaja Harendra Kishore Singh. The only point of dispute and the pivotal controversy centres round the question as to whether or not the plaintiffs have proved their case that they were also the direct descendants of Bansidhar Singh so as to claim the properties in dispute on the death of the Maharaja. Both on the question of genealogy and other matters, a mass of oral and documentary evidence consisting of documents, reports, judgments, plaints, entries in registers etc. have been produced and will be considered at the relevant stage.

23. The defence of the appellant is of a negative character inasmuch as the defendants-appellants have denied the claims made by the plaintiffs-respondents and put them to strict proof of their case. The defendants, however, have been fair enough to concede that Bhagwati Prasad Singh, father of the plaintiff, has been proved to be a direct descendant of Gajraj Singh but have flatly denied that Ramruch Singh, father of Gajraj Singh, had any connection either with Debi Singh or Bansidhar Singh. In other words, the plaintiffs' genealogy, so far as they are concerned, has been accepted by the appellants, up to the stage of Ramruch Singh. The courts below also on a consideration of the oral and documentary evidence have endorsed the stand taken by the defendants that Bhagwati Prasad Singh has been proved to be the direct descendant of Gajraj Singh being 7th in that line.

24. 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. In the instant case, although the plaintiffs have produced oral and documentary evidence to show that Ramruch Singh and Debi Singh were brothers being the sons of Bansidhar Singh this position was not accepted by the trial court as also by M.M Prasad, J., who dissented from the other two Judges constituting the Special Bench who had taken a contrary view and had held that the plaintiffs had fully proved the entire genealogy set-up in the plaint.

This, therefore, makes our task easier because we need not discuss in detail the evidence and documents to show the connection of the plaintiffs up to the stage of Gajraj Singh though we may have to refer to the evidence for the purpose of deciding the main issue viz. whether or not Gajraj Singh was the son of Ramruch Singh and Ramruch Singh a brother of Debi Singh and son of Bansidhar Singh.

25. Before going into the evidence, we would like to extract the findings of the courts below on the question of title. The trial court had clearly held that the plaintiffs had not been able to prove any linkage or connection between Ramruch and Bansidhar but the majority judgment consisting of G.N Prasad and Mukherji, JJ., disagreed with this finding and held that all the links were clearly proved by the plaintiffs and it has been proved to their satisfaction that Ramruch Singh was the son of Bansidhar Singh. On this point the finding of the majority may be extracted thus:

"I have considered the oral and documentary evidence adduced by the parties on the point of genealogy and in my opinion, it has been well-established by the evidence adduced in this case on behalf of the plaintiffs of Title Suit No. 5 of 1961 that Bansidhar Singh was a common ancestor of Maharaja Harendra Kishore Singh and Bhagwati Prasad Singh (father of Plaintiffs 1 to 8 of Title Suit No. 5 of 1961)."

(Vol. VIII, p. 247, para 109)

26. M.M Prasad, J., however, dissented from the majority judgment and agreed with the view taken by the trial court. In this connection, his finding may be quoted thus:

"A discussion of the entire documentary evidence on the point of genealogy thus shows that there is no document which can be safely relied upon for the purpose of proving the two links in the genealogy of the present appellants viz. that (1) Bansidhar was the father of Ramruch and (2) Ramruch the father of Gajraj. (p. 491, para 457)

* * *

In conclusion, therefore, I find that there is not a single document which can be relied upon to prove the two disputed links, namely, that Gajraj was the son of Ramruch and Ramruch the son of Bansidhar. (p. 506, para 480)

* * *

Turning to the oral evidence which I have discussed above I find that there is not a single witness who can be relied upon for the purpose of proving the aforesaid two links. (p. 506, para 480)

* * *

Therefore, I find that the two links in respect of which there is no reliable documentary evidence have also not been proved by the oral evidence on the point those two links are Bansidhar being the father of Debi and Aini being the father of Raghunath. The

consequence thereof is that the plaintiffs of Title Suit No. 5 of 1961 have failed to prove that Bansidhar was the ancestor of Maharaja Harendra Kishore. I have already held that they have also failed to prove that Bansidhar was their ancestor, having failed to prove that Bansidhar was the father of Ramruch and Ramruch the father of Gajraj. In the result, I hold that the plaintiffs of Title Suit No. 5 of 1961 have failed to prove the genealogy set-up by them and thus they have failed to prove that they are the nearest heirs of Maharaja Harendra Kishore. (Vol. Vin, p. 533, para 533).

27. There is, however, one common factor between the majority and the dissenting judgments and it is that the plaintiffs have proved beyond reasonable doubt their connection with Gajraj Singh. This, therefore, has reduced the controversy to the bare minimum and has shortened the arena of the dispute that we are called upon to consider. Even so, this short controversy itself is a stupendous task to determine and we will have to approach this aspect with great care and caution, deliberation and circumspection because two learned Judges of Patna High Court had negatived the plea of the defence and accepted that of the plaintiffs.

28. In order to understand the various shades and aspects of the case and its historical background, it may be necessary to extract the plaint genealogy even at the risk of repetition. In fact, the plaintiffs themselves did not append any genealogy to their plaint but G.N Prasad, J., has constructed a genealogy, based on the recitals in the plaint, for the purpose of convenience which is reproduced here (reproduced on p. 134).

29. The position that emerges from a perusal of the pleadings of the parties is that so far as the left side is concerned, the plaintiffs have not proved their linkage either with Debi Singh or Bansidhar Singh or Ramruch Singh. The late Maharaja (Harendra Kishore Singh) was a direct descendant of Debi Singh who appears on the Left Side of the genealogy whereas the original plaintiff Bhagwati Prasad Singh was the direct descendant of Ramruch Singh appearing on the Right Side of the genealogy; while all other links are admitted the dispute centres round Ramruch Singh being related to Bansidhar Singh in any way either as a father of Gajraj Singh or as a brother of Debi Singh. Apart from the majority judgment, even M.M Prasad, J., as indicated above, has found that the plaintiffs have proved that they were direct descendants of Ramruch Singh. In this connection, the finding of M.M Prasad, J., may be quoted thus:

So far as the genealogy of these plaintiffs is concerned, their claim to the effect that they are descended from Gajraj is not disputed in this case. Learned Counsel appearing for the plaintiffs of Title Suit No. 25 of 1958 as also the State of Bihar have clearly stated before us that they do not dispute their genealogy up to that point. The finding of the learned Subordinate Judge is also to the effect that they have proved their genealogy up to that point. The point does not, therefore, need a detailed consideration.

* * *.

378. The other documents, however, prove that Bhagwati, the father of these appellants, was a descendant of Gajraj. (Vol. VIII, pp. ***442 & 444)***

30. Thus, the dispute which we have to resolve in this case is whether the plaintiffs have been able to prove any link between Ramruch and Gajraj Singh on the one hand and Ramruch and Bansidhar on the other. The plaintiffs can succeed only if they prove both these links by showing that Gajraj Singh was son of Ramruch Singh and Ramruch was son of Bansidhar Singh.

31. We would first examine the principal documentary evidence relied upon by the plaintiffs to prove their case. The genuineness of some documents has not been disputed by the appellants, but according to them these documents do not assist the case of the plaintiffs. There are other documents whose genuineness and admissibility have been questioned before us by Dr L.M Singhvi, appearing for the plaintiffs.

32. 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 of Section 35 of the Evidence Act and is, therefore, doubtless admissible. In this connection, the learned Judge observed thus:

"There can thus be no doubt that it is a report of a public officer in the due discharge of his public and office duties. There can thus be no doubt that it is admissible under Section 35 of the Evidence Act."

33. Certain inferences drawn by M.M Prasad, J., do not appear to us to be correct because they are not borne out by the recitals in Ex. J and are really based on a wrong interpretation of certain expressions used in Persian language. These observations appear at p. 483 of his judgment (Vol. VIII) where the learned Judge says that the document shows that Gajraj Singh was one of the descendants of Hirday Narain Singh and that Debi Singh and Gajraj Singh belonged to the same family. This anomaly appears to have crept in because the said document (Ex. J) is in Persian language and on a very close reading of the recitals pertaining to these two facts, the inferences drawn by the learned Judge do not appear to be correct. We shall elaborate this point further when we deal with the merits of the document. We agree with the unanimous view of the High Court that Ex. J is admissible. In fact, the said Exhibit itself would show that it was written by a serishtedar, 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 Section 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 Section 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 highlight when we deal with the legal value of this document.

34. Before, however, making any comment on the probative value of the document in

question it will be necessary to peruse and analyse its important contents and their legal effect on the case put forward by the parties. We might mention here that the appellants before us have not accepted the stand taken by the High Court that this document is admissible in evidence but have argued at some length that it is totally inadmissible. Dr Singhvi was not very vehement in persuading us to hold that the document is inadmissible but Mr Misra, appearing for one set of the appellants, forcefully contended that the document is inadmissible. In view of the arguments addressed before us, it may be necessary to consider the question of admissibility also.

35. In our opinion, Ex. J squarely falls within the four-corners of Section 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."

36. A perusal of Ex. J clearly shows that it is a report made by an officer of the Government in the due discharge of his official duties because the recitals of the document show that he was entrusted with the task of and enjoined the duty of ascertaining the possession of various landlords for the purpose of taking suitable steps in the matter. It is beyond dispute in this case that the said Exhibit does mention a number of persons through whom the plaintiffs claim their title and, therefore, it relates to a relevant fact. 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 Section 35 are fully complied with in this case.

37. Mr Misra, however, raised two formidable objections to the admissibility of this document. In the first place, he submitted that there is no reliable evidence to show that Durga Prasad, the author of Ex. J was a government officer at all because the possibility of his being a private revenue agent of a zamindar, who also maintains kutcheri (private office) where papers relating to realisation of rent and revenue are kept, cannot be ruled out. The designation of Durga Prasad, therefore, does not conclusively prove that he was a government officer. Secondly, it was contended that even if Ex. J contains a seal, there is nothing to show that it was not a private seal. In our opinion, the contentions raised by Mr Misra are without any substance and cannot be accepted. Reading the document (Ex. J) as a whole and taking into consideration the occasion for the entrustment of the task to Durga Prasad, its recitals and the fact that it was kept in a purely government department viz. the

Mirzapur Collectorate from where it was produced before the trial court, clearly and conclusively prove that the report was made by an official serishtedar appointed by a very high governmental authority. Even the opening lines of the Exhibit clearly indicate that Durga Prasad was a government servant, perhaps in the Revenue Department, and was asked to submit a report for official purposes. It is also established that Durga Prasad made a roving enquiry and ultimately submitted his report in the year 1813. Of course, it is true that there is no evidence to show as to what happened to this report, but that is beside the point so far as the relevancy or the admissibility of this document is concerned. In fact, we shall show that although Ex. J is admissible yet it has no probative value at all for the reasons and the circumstances that we shall discuss hereafter. Furthermore, all the three Judges of the High Court have unanimously held that Ex. J is admissible in evidence whatever be its legal value.

38. In **P.C Purushothama Reddiar v. S. Perumal, 1972 AIR 608, 1972 SCR (2) 646** this Court while considering the effect of Section 35 of the Evidence Act observed as follows: (SCC pp. 15, 16, paras 21, 22)

"It was lastly contended that the evidence afforded by the Police reports is not relevant. This again is untenable contention. Reports in question were made by Government officials in the discharge of their official duties. Those officers had been deputed by their superiors to cover the meetings in question....

The first part of Section 35 of the Evidence Act says that an entry in any public record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty is relevant evidence. Quite clearly the reports in question were made by public servants in discharge of their official duty."

39. In view of the clear decision of this Court, referred to above, it is not necessary for us to multiply authorities on this point.

40. 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. Before going to the contents of Ex. J which have been fully discussed by the High Court, we would first like to comment on the probative value of this document.

41. In adjudicating on this important aspect of the matter it may be necessary to mention a few facts and circumstances which go to show that Ex. J has no probative value at all. To begin with, a perusal of the report (Ex. J) shows that it does not at all disclose the source from which Durga Prasad collected his facts or gathered the materials disclosed therein. There is also nothing to show that the author of the report consulted either contemporary or previous records or entries therein in order to satisfy himself regarding the correctness

of various statements made pertaining to the genealogy of landlords who were in possession of the lands, as stated in the said report. It is true that at one place the author has stated that he had taken these facts from an account-book (Tumar) but he has not at all given any description or details or even the kind or the nature of the account-book and its contents. Furthermore, there is no evidence to indicate as to what happened after the author had submitted his report to the Government and whether or not any follow-up action was taken on the basis of his report or it was just filed and kept on the record lying lifeless and mute.

42. The fact of the matter is that no proper verification was made by Durga Prasad regarding the facts stated in his report from any source and that it did not form part of a revenue entry or record which was ever referred to by any executive, judicial or statutory authority subsequent to the filing of this report. In other words, the position seems to be that the fate of the report, after it was submitted, was shrouded in mystery and the report became a forgotten story unheard, unwept and unsung until the present suit by the plaintiff was filed. In these circumstances, therefore, it is difficult for us to place any reliance on the document (Ex. J) even though it may be admissible in evidence.

43. Mr Tarkunde, appearing for the respondents, however, relied on several authorities in support of his argument to show that the authenticity of this document cannot be questioned. In the first place, reliance was placed on a decision of the Privy Council in **Ghulam Rasul Khan v. Secretary of State for India in Council** 1925 52 IA 201 particularly on the following observations:

"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 Edn., Section 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."

44. The observations extracted above no doubt presumably support the contention of Mr Tarkunde but even these observations have to be read in the light of the special facts of that particular case. In that case, there was evidence of a clear government revenue record maintained in due course since 1852 showing that the term "Khayyat Mohal" did not denote a tribe but merely a profession. Secondly, the revenue record of Mauza Shahna clearly mentioned the entire pedigree of the family which was found by the trial court to have been proved. The question at issue in that case was whether Mohals were of Rajput origin and it was conclusively proved by the lower courts that Mohals were doubtless Rajputs or had a Rajput origin. The entry relied upon in that case was based on the extracts from settlement records of the district from 1852 and corroborated by later entries up to 1882. The Privy Council took special note of the fact that evidence of the character taken from public records for a series of years since 1852 could not be easily brushed aside. In this connection, Their Lordships observed as follows:

"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...."

45. Thus, it is absolutely clear to us that the facts of that case are essentially different and clearly distinguishable from the nature of the document that Ex. J is. Ex. J cannot be regarded as an entry of the type which was the subject-matter of Ghulam Rasul Khan case. There is absolutely no corroboration of the facts mentioned in Ex. J either by later entries or by any other document. There are a number of other facts mentioned in the judgment of the Privy Council which completely distinguishes that case from Ex. J in the present case. At least this much is clear, as already indicated, that in the Privy Council case there was positive evidence to show that the entry was acted upon for several years and that by process of elimination the caste of the appellants as Mohal Rajputs was established. But, in the instant case there is absolutely no evidence to corroborate the recitals in Ex. J by any contemporary or subsequent government record. In our opinion, therefore, the decision relied upon by the counsel for respondents is of no assistance.

46. Reliance was also placed on the decision in **Kuar Shyam Pratap Singh v. Collector of Etawah** AIR 1946 PC 103 where the Privy Council made the following observations:

"This document therefore is an official document prepared by a public authority in pursuance of a statutory duty, and it is not disputed that it is evidence, though not conclusive evidence of the fact stated therein.... No cross-examination of the two witnesses from the court of wards who were called was directed to ascertain the sources on which the pedigree was founded."

47. In our opinion, this decision far from supporting the case of the respondents completely belies the importance or probative value of a document like Ex. J. To begin with, the document relied upon by the Privy Council was a pedigree which was produced in courts by an officer of the court of wards. Secondly, the High Court had found that the court of wards manual was prepared under the U.P Court of Wards Act which had made a provision for an Estate Notebook for each estate in the court of wards which had to be maintained in triplicate form, one copy being kept in the district office, one in the divisional office and one in the office of the court of wards. The object of the Notebook was to provide a separate and succinct note of every estate under the management of the court of wards. It is, therefore, manifest that the document concerned in that case was maintained not merely by an officer but under a statute which required certain conditions to be fulfilled. Furthermore, sufficient notoriety and publicity was given to this document because a copy of the record was kept in the district office which could be inspected by any member of the public. In the instant case, however, we find that after Ex. J was submitted it faded into oblivion and no one ever heard of it until it was produced for the first time in the trial court from the Mirzapur Collectorate. Another important feature was that the Privy Council had found that the court of wards itself had held an enquiry and being a statutory body it must be presumed to have done its duty to the best of its ability. Fourthly, although two witnesses were examined to prove the documents from the court of wards, they were not cross-examined at all. In the instant case, a person from Mirzapur Collectorate merely

produced the document but he had no knowledge about its contents or about its being acted upon. In these circumstances, Ex. J cannot be equated in any respect with Ex. B which was the document under consideration by the Privy Council in Kuar Shyam Pratap Singh case.

48. We would like to mention here that even if a document may be admissible or (sic as) an ancient one, it cannot carry the same weight or probative value as a document which is prepared either under a statute, ordinance or an Act which requires certain conditions to be fulfilled. This was the case in both **Ghulam Rasul Khan and Kuar Shyam Pratap Singh cases.**

49. The case of **Meer Usd-oollah v. Beeby Imaman, widow of Shah Khadim Hoossain 1836-37 1 MIA 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)

50. This is a clear and important illustration of an admissible document which commands great confidence and whose probative value is almost irrebuttable and impregnable.

51. In the case of **Rajah Muttu Ramalinga Setupati v. Perianayagum Pillai 1874 1 IA 209** the Privy Council was dealing with reports made by Collectors acting under Regulation 7 of 1817 of the Madras Presidency and it was held that the report of the Collectors may not be of great judicial authority so far as the opinions expressed on private rights of the parties but being the reports made under a statutory Regulation they were entitled to be of considerable importance. The reason why the Privy Council attached great credence to these reports was that the reports when referred to the Collector were based on the depositions taken by him (Collector) and other documents on the basis of which he had given his report. Furthermore, the Board of Revenue accepted the report of the Collector and made a minute approving the same and observing that there was no question of doubting the validity of the report. In this connection, the Privy Council observed thus:

"This new dispute was referred to the then collector, Mr Wroughton. His report upon it is dated January 7, 1834. It appears that he examined the depositions sent to the collectorate in 1815, and other documents, and he records the facts which, in his opinion, are adverse

to the claims made on the part of the zamindar. He also reported in favour of the title of the pandaram Venkatachellum to the office.

* * *

But being the reports of 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 insofar 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."

52. With due respect to the Privy Council, we fully agree with the view taken by Their Lordships and the test laid down by them. The document Ex. J in the instant case does not contain any of the qualities or attributes which were present in the report of the Collectors relied upon by the Privy Council. As indicated above, while the Collector had made a thorough enquiry, based on the evidence of witnesses and other documents and had recorded his clear opinion which was accepted by the Board of Revenue, in the instant case Ex. J is a God forsaken document which does not reveal either the source on the basis of which the materials were collected nor does it indicate that the author of report recorded any statements or looked into other documents to base the truth of the genealogy or the possession of landlords referred to in his report.

53. Finally, Ex. J, unlike the document in the case before the Privy Council was not a report under any statutory authority but was merely a report submitted on the administrative orders of a high government official. In our opinion, therefore, where a report is given by a responsible officer, which is based on evidence of witnesses and documents and has a statutory flavour in that it is given not merely by an administrative officer but under the authority of a statute, its probative value would indeed be very high so as to be entitled to great weight.

54. On a parity of reasoning mentioned above, this Court had held that a report based on hearsay evidence or on the information given by an illiterate person cannot be admissible even under Section 35 of the Evidence Act. In **Brij Mohan Singh v. Priya Brat Narain Sinha 1965 3 SCR 861** this Court observed as follows:

"The entry therein showing the birth of a son to Sarjoo Singh on October 15, 1935 can however be of no assistance to the appellant unless this entry is admissible in evidence under the Evidence Act. If this entry had been made by the Chowkidar himself this entry would have been relevant under Section 35 of the Evidence Act. Admittedly, however, the Chowkidar himself did not make it.... The reason why an entry made by a public servant in a public or other official book, register, or record stating a fact in issue or a relevant fact has been made relevant is that when a public servant makes it himself in the discharge of his official duty, the probability of its being truly and correctly recorded is high. That probability is reduced to a minimum when the public servant himself is illiterate and has to depend on somebody else to make the entry."

55. In the instant case also, Durga Prasad had to depend on some unknown persons, who

were not even mentioned in the document, to gather his facts and, therefore, even if it is admissible its probative value will be almost zero.

56. Mr Tarkunde then relied on the following observations made by **Rupert Cross in his book Evidence** (1967, 3rd Edn.) at p. 408:

"Entries by a solicitor's clerk may, of course, be received under the exception to the hearsay rule which is now being considered on account of the duty owed to his employer, and, in some cases, the duty to record may have been owed by the solicitor to his client.... When speaking of the reception of declarations in the course of duty Sir Robert Phillimore said:

Entries in a document made by a deceased person can only be admitted where it is clearly shown that the entries relate to an act or acts done by the deceased person and not by third parties."

57. These observations, however, have to be read with reference to the context. Cross while making the aforesaid observations emphasised that Sir Robert Phillimore had said that entries in a document made by a deceased person can only be admitted where it is clearly shown that they relate to an act or acts done by the deceased person and not by third parties.

58. Thus, in the instant case, though Ex. J was admissible because its author is no longer alive it contains information which is obviously based on what he may have heard from third parties and hence much value cannot be attached to such a report.

59. In **Brain v. Preece 1843 152 ER 1016 Lord C.B** Abinger made the following observations:

*"The case of the attorney, in **Doe d. Patteshall v. Turfored 1832 3 B & Ad 890** stands on precisely the same grounds as that of **Price v. Torrington 1703 Holt KB 300**. There it was proved that the notices were written, and that the attorney had gone out, and indorsed the duplicate when he came back, and that it was his practice so to indorse it when he had served the original; and that was rightly held to be proof of the service of the notice. There is also another case viz., that of the notary (**Poole v. Dicas 1835 1 Bing NC 649**) where similar entries were held evidence; but a notary is a public officer, and is sworn to do his duty as a notary, and in foreign countries the acts of a notary are like the acts of a court, although that is not so here."*

60. On the other hand, commenting on the probative value of documents like Ex. J, it was held in **Sturla v. Freccia 1880 5 AC 623** where Lord Blackburn observed thus:

"I think an entry in the books of a manor is public in the sense that it concerns all the people interested in the manor.... But it must be a public document, and it must be made by a public officer. I understand a public document there to mean a document that is made for the purpose of the public making use of it, and being able to refer to it."

61. Same view was taken in a later decision in **Mercer v. Denne 1905 2 Ch 538** where the following observations were made:

"There is nothing to show that any of them was made contemporaneously with the doing or effecting of a transaction which it was the duty of the deceased person to record. There is no evidence of what his instructions were or of the relation of those instructions to the document tendered in evidence, or of the source of the knowledge or information on which the contents of the report or estimate were based....

These reports in no way resemble the field-book entries made by a deceased surveyor for the purpose of a survey on which he was professionally employed, which this Court held to be admissible in ***Mellor v. Walmesley 1905 2 Ch 164****."*

62. Although we cannot hold that Ex. J in the present case is inadmissible in view of the express provisions of Section 35 of the Evidence Act, yet the observations of the Privy Council extracted above would directly and aptly apply to the probative value or the weight to be attached to Ex. J in the absence of any disclosure by the author of the document regarding the source or the materials on the basis of which he had mentioned the facts in his report. Assuming that the case, extracted above, had taken an extreme view in that the report was not admissible at all because of the legal position in England, the hard fact remains that so far as the probative value of a document is concerned, it is reduced to the minimum where there is no evidence to disclose the nature of the instructions given to the author of the document tendered in evidence or the source or knowledge or information on which the report is based. This is a serious legal infirmity from which Ex. J suffers and on that ground alone it cannot be regarded as a reliable or a dependable document.

63. In view of the reasons given above, we reach the following conclusions regarding the law relating *to the admissibility and probative value of Ex. J:*

"(1) That Ex. J is clearly admissible under Section 35 of the Evidence Act and we agree with the finding of the High Court on this point.

(2) It appears that Durga Prasad, serishtedar, started writing Ex. J in the year 1810 and completed the same in 1813.

(3) That Ex. J mentions names of some persons who according to the plaintiffs were their ancestors but on carefully analysing the document, it is not very clear as to how Ramruch Singh was connected with Bansidhar Singh or Debi Singh.

(4) That the probative value of Ex. J is absolutely insignificant and is of no assistance to us in proving the plaint genealogy.

(5) That Ex. J was a part of the record of Mirzapur Collectorate and was summoned therefrom.

(6) It would appear from a bare perusal of Ex. J that Durga Prasad was directed to embark on an enquiry regarding the persons who were in actual possession of lands at the relevant

time and it was not a part of his duty to embark on any enquiry regarding the title of the persons holding the lands, nor did he attempt to do so. The heading of the report (Ex. J) itself shows that it is a report regarding the possession of Taluqa Majhwa."

64. 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.

65. 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 pp. 25-33 in Vol. VII of the paper-book. The document in Roman script is to be found at pp. 120-123 in Vol. V which, in our opinion is the correct reproduction of the original Exhibit with slight discrepancies here and there.

66. As the counsel for the parties have not been able to agree regarding the meaning and purport of some of the expressions used by Durga Prasad in the said Exhibit, we decided to make a detailed study of the original document side by side with the translated version. 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, 3rd Impression: 1947) and other standard Dictionaries to arrive at the correct import of the meanings of the terms and expressions used in the document.

67. In the case of **Coca-Cola Company of Canada Ltd. v. Pepsi-Cola Company of Canada Ltd.** AIR 1942 PC 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."

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

69. To begin with, the document clearly recites as to who had ordered Durga Prasad to make the necessary enquiries and this fact assumes some importance because there has been a serious controversy between the parties as to whether Durga Prasad was entrusted with the task of the enquiry by a private landlord or by a high government official. The High Court on a perusal of the opening portion of the document clearly came to the conclusion that the terms used in the opening portion and the manner in which he has addressed the

person to whom he was directed to submit the report shows that he must have been a high officer of the Government though the exact designation of the said officer is not disclosed in the said Exhibit. On perusing the original as also the translated version, we find ourselves in agreement with the view taken by the High Court. The actual words used by Durga Prasad, when translated in English, are as follows:

"Beneficent Master, generous, kind and Judge of the time, may your prosperity be everlasting."

(p. 25, Vol. VII of the paper-book)

70. We have perused the original words in Persian and find that they have been correctly translated in English as above. In these circumstances, we overrule the objection taken by the appellants regarding the document being a private one or the report being made by a private serishtedar.

71. After addressing the official, the document begins by using the word "Huzoor" and on the basis of this word it was contended that this shows that it must have been a very high official who had ordered the enquiry. Nothing much turns on the use of the word "Huzoor" which is only a term of courtesy used to address either elders or high dignitaries but the crucial word is "Huzur-e-wala". The word "wala" with Huzur qualifies the nature of the official mentioned in the opening part of the document viz. beneficent master i.e the high officer aforesaid.

72. Having determined the opening part of the report we will now proceed to the main points mentioned therein:

(1) It is mentioned that the order of the high official was received by Durga Prasad on October 26, 1810 directing the humble author of the report to peruse the documents kept in the serishtedar's office and give a detailed account as to who in the past, in which year and in what manner the predecessors of Pahalwan Singh were in possession of the aforesaid Taluka (by aforesaid Taluka Mauza Majhwa is clearly intended as would appear from the earlier part of the document). The words used in the Roman script are "buzurgan Pahalwan Singh". There was a serious controversy regarding the actual meaning of the word "buzurgan". According to the plaintiffs-respondents, the word 'buzurgan' means ancestors whereas, according to the appellant it means elders of the family of Pahalwan Singh. In other words, according to the appellant, what Durga Prasad was required to do was to find out not that the ancestors of Pahalwan Singh were in possession but the elders of Pahalwan Singh, which is a much wider term. In our opinion, the interpretation put by the appellants on the word "buzurgan" appears to be correct. To begin with, the word "buzurgan" does not mean predecessors in the strict sense of the term. The concept of "buzurgan" in Persian or Urdu language is to denote merely an elderly person.

73. In **Steingass's Persian-English Dictionary** (3rd Impression: 1947) at p. 183, the word "buzurg" is defined among others as grandee, adult and elder. The word "buzurgan" is merely a plural of buzurg. In Forbes's Hindustani-English Dictionary (1848) "buzurg" has been defined as an elder (p. 77). Similarly, "buzurgan" has been defined as elder (p. 89).

Therefore in the instant case, the actual connotation of the term “buzurgan” with reference to the context would mean not only predecessors or ancestors of Pahalwan Singh but also the elders of Pahalwan Singh who may or may not be directly related to him though they may form either near or distant relatives being elder to Pahalwan Singh. The High Court seems to have proceeded on the footing that the word “buzurgan” really means ancestors only and one of the tasks entrusted to Durga Prasad was to find out the names of the ancestors of Pahalwan Singh who were in possession of the taluka. In view of the actual meaning of the word “buzurgan” as explained above, which is supported by the dictionary meaning, we are unable to agree with the connotation of the word “buzurgan” suggested by the counsel for the respondents and we also do not accept the translation of the word “buzurgan” in the Roman script as “predecessors” only.

74. There is another circumstantial evidence in the document itself which fully supports the view taken by us. A little later, Durga Prasad while describing the heirs of Gautam tribe has used the word “warsha” (to be correctly written as “worasa”) which means descendants or heirs (vide p. 134 of Forbes’s Hindustani-English Dictionary; p. 1449 of Steingass’s Dictionary and p. 141 of Wollaston’s English-Persian Dictionary). The translation of the word “ancestor” in Persian would be Moris or Jadd or Bapdada (father and grandfather) (vide Wollaston’s Dictionary at p. 12 and Forbes’s Dictionary at p. 10) and if highest ancestor is intended, it will be translated as “Moris-e-ala”. Durga Prasad who was fully conversant with Persian language has deliberately not used the word “Moris” or “Moris-e-ala” or “Jadd” while referring to the elders of Pahalwan Singh, which is unmistakably clear from the language and the style used by him, but has used the word “buzurgan” which is of a much wider import and merely suggests that he was directed to find out the possession of the elders of Pahalwan Singh whether belonging to the same family or not. If the intention of the author was to refer to the direct ancestors of Pahalwan Singh he would have used the term “Morisane Pahalwan Singh” (ancestors of Pahalwan Singh) which he has deliberately not done.

75. We are fortified in our view by the dictionary meaning of the words “Moris” and “Moroos”. The meaning of Moroos is described by Steingass at p. 1343 as “hereditary, possessed by paternal succession”. The word “Moris” is a root of Moroos which means hereditary possession and conveys the sense of a direct ancestor. Similarly, the other expressions have been defined by different dictionaries as shown below:

Minjumla — Among all; from among (p. 1323, Steingass’s Dictionary)

Minjumla=Upon the whole (p. 510, Forbes’s Dictionary)

Aulad=Descendant (p. 121, Steingass’s Dictionary)

Descendant=Aulad (p. 72, Forbes’s Dictionary — English Part)

It follows as a logical corollary that the translation of the word “buzurgan” as “predecessor” in the Roman script of Ex. J is not quite accurate.

76. Having sorted out the problem of the word “buzurgan” we now proceed to consider the

meaning of the words used by Durga Prasad in the introductory part of his report. The document (Ex. J) proceeds to mention while addressing the high official that the zamindari of Taluka Majhwa Pargana Kaswar was previously in the possession of the descendants of Gautam tribe and further emphasised that the descendants of Gautam tribe were in possession thereof by inheritance according to the shares of their respective family members. The translation of these English words though substantially correct require some amplification. In the first place, Durga Prasad has used the word “Aulad-e-Gautam”. Aulad means “heirs or direct descendants”. This is followed by the word “biradari”. The actual sense which he wanted to convey was that the lands in the mauza were in possession of the descendants of Gautam tribe and his biradari. Biradari was sought to be interpreted by the respondents as meaning the members of the family of Gautam tribe. This, however, is wholly incorrect. The concept of Baradari in Persian is much wider than a mere family. In Steingass’s Dictionary at p. 167 the word “biradari” is defined thus :

biradari — Brotherhood, the fraternal relation ; relationship;

77. In Muhammed Mustafa Khan’s Urdu-Hindi Dictionary, the word “biradari” has been defined thus :

Baradari — One tribe, man belonging to one tribe, brotherhood (p. 422, 1959 Edn.)

Baradari — Relationship, brotherhood

(Forbes’s Hindustani-English Dictionary, p. 71)

78. It denotes only brotherhood which does not mean merely members of the family of a particular person but the entire brotherhood or caste or tribe in a broader and general sense of a group of persons of which some may or may not constitute one family. Thus, from the use of the word “baradari” it cannot be argued with any show of force that Mauza Majhwa was in possession only of the direct descendants and members of the family of Gautam tribe. Durga Prasad has taken care to use different terms to indicate different relationships. Somewhere he has used the word “aulad” where he wanted to indicate direct descendants or heirs ; at other place he has used “buzurgan” where he wanted to indicate only the elders who may or may not be related to the person concerned ; sometimes he has used the word “biradari” to indicate not only the family but the entire brotherhood or members of the caste or tribe.

79. In the last lines of first para of the report the following words are used :

“ba beradari Hirday Narain Singh dar qabza mosamiyan Debi Singh wo Barisal Singh wo Ramhit Singh wo Gajraj Sahi zamindaran boods. (The last word should be ‘bood’ and not ‘boods’.)”

80. From this, the respondents as also the High Court seem to infer that Debi Singh, Barisal Singh, Ramhit Singh and Gajraj Sahi were the direct descendants of Hirday Narain Singh or the members of his family. This inference is not borne out by the aforesaid words used by Durga Prasad. The words only indicate the undoubted possession of Hirday Narain Singh,

and the persons who were in possession along with him were the four persons mentioned above who belonged only to the brotherhood of Hirday Narain Singh. The question of all of them being direct descendants or relations does not arise on the interpretation of the words used by Durga Prasad, as indicated above. He has further stated that he had learnt the aforesaid facts from the account papers of Pargana Kaswar.

81. We might mention that even M.M Prasad, J., was carried away by the language used by Durga Prasad viz. the use of the word “biradari” to indicate that Hirday Narain Singh and four others belonged to the same family which was neither his intention nor the meaning of the sentence used by him. To this extent, therefore, we do not agree with M.M Prasad, J. It may be important to remember this fact because much has been made of the sentence “Debi Singh and the aforesaid four persons” to contend that the four persons viz. Debi Singh, Barisal Singh, Ramhit Singh and Gajraj Sahi, were the descendants of Hirday Narain Singh or Debi Singh which is also a fallacious conclusion reached by the High Court and not warranted by the words used in the document (Ex. J).

82. The word “minjoomle” merely means “among all or from among them” it does not mean “including”. The words in the last portion of second para of the report “Pahalwan Singh ham az auladey Debi Singh minjoomle chehar kashan mazkuran asht. Faqat.” do not indicate that Pahalwan Singh along with his descendants viz. Debi Singh, Barisal Singh, Ramhit Singh and Gajraj Sahi were in possession. The word “descendant” qualifies only Ramhit Singh and not the other three persons as a logical consequence of the statement made in the first para, extracted above, indicating the baradari of Hirday Narain Singh.

83. The document then proceeds to give details of the settlements made with various persons, and the relevant portion recites thus in Roman script at p. 121, Vol. VII :

“Khalispur 1 Mauza Asli,

Bawaqt bandobast patta zamindari banam Audhan Singh ke az aulad Hirday Narain Singh mazkur ashtshuda bood....”

The English translation runs thus :

“Khalispur 1 Mauza Asli,

At the time of settlement the zamindari patta was executed in favour of Audhan Singh, who is one of the descendants of Hirday Narain Singh, aforesaid. . . .”

(Vol. VII, p. 27)

84. We may pause here to indicate an important point which arises out of the aforesaid recitals. Durga Prasad has not used the word “brotherhood” or “buzurgan” while describing Audhan Singh but has clearly stated that he was a descendant of Hirday Narain Singh. If it was true that Barisal Singh, Debi Singh and Gajraj Singh were also direct descendants of Hirday Narain Singh, he would have undoubtedly mentioned their names also.

85. In the next column, Durga Prasad goes on narrating the history and mentions that at the time of settlement, the zamindari patta was executed in favour of Gurdat Singh who was one of the descendants of Debi Singh. Here also, he clearly indicates the relationship of Gurdat Singh as being a descendant of Debi Singh. What is most important is that in the plaint genealogy there is absolutely no reference either to Audhan Singh or to Gurdat Singh while describing the heirs of Hirday Narain Singh. In fact, no person by the name of Gurdat Singh is mentioned as an heir of Debi Singh in the plaint genealogy.

86. On the next page it was mentioned that Babu Deep Narain Singh purchased the village at an auction held by the Government for payment of arrears of government revenue. Deep Narain Singh obtained the zamindari sanad from the huzoor (a high official of the Government) and patta was executed in favour of Ram Baksh Singh, who is one of the descendants of Hirday Narain Singh and is alive. It may be noted that even Ram Baksh Singh is not at all mentioned in the genealogy of Hirday Narain Singh nor is he mentioned in the earlier part of Ex. J as being either a member of the family or a descendant of Hirday Narain Singh.

87. It has, therefore, been established beyond any shadow of doubt that Barisal Singh, Debi Singh and Gajraj Singh were not the direct descendants of Hirday Narain Singh. Otherwise Durga Prasad would have mentioned these persons also as heirs or direct descendants of Hirday Narain Singh as he has done in the case of Audhan Singh, Ram Baksh Singh and Ramhit Singh. Furthermore, at p. 28 on the left hand side of the document (English translation) it is clearly mentioned that zamindari patta was executed in favour of Bhagat Singh, Golami Singh, Harjan Singh who were the descendants of Hirday Narain Singh. Thus, it is clear from the scheme followed by Durga Prasad that whenever he wanted to convey a particular person or persons to be heirs or direct descendants of an ancestor he would expressly say so. On a plain reading of this part of the report, it would appear that the descendants of Hirday Narain Singh were Bhagat Singh, Golami Singh, Audhan Singh, Ram Baksh Singh, Ramhit Singh and Harjan Singh. The other persons viz. Debi Singh, Barisal Singh and Gajraj Sahi (or Gajraj Singh) have not been mentioned as descendants of Hirday Narain Singh and this, therefore, completely demolishes the case of the plaintiffs-respondents on this aspect of the matter and throws serious doubt on their genealogy. Furthermore, this circumstance supports our interpretation that in the first part of the report the words used “among the aforesaid four persons” ; connote that only Ramhit Singh and not others were descendants of Hirday Narain Singh ; they may have belonged to same brotherhood.

88. In the right hand column of Ex. J at. p. 28, Vol. VII of the English translation, it is clearly mentioned that Pahalwan Singh is one of the descendants of Debi Singh. This statement corroborates the plaintiffs’ case to this extent that Pahalwan Singh was one of the descendants of Debi Singh and shows that a part of the plaintiffs’ genealogy relating to Debi Singh is correct.

89. Referring to Baraini, Semri and Ramchandrapur villages, it is mentioned that zamindari patta was given to Mohan Singh who was a descendant of Gajraj Sahi. It may be noted that here the word used is “aulad” which means son, or grandson being in the nature of a direct

descendant. This entry throws a flood of light on the actual position occupied by Gajraj Sahi and there is absolutely no reference nor anything to show that Gajraj Sahi was in any way directly related to Debi Singh or Hirday Narain Singh. There is also no reference to Ramruch Singh. As the plaintiffs claim to be the direct descendants of Gajraj Singh, this circumstance completely falsifies their case that Gajraj Singh or Ramruch Singh were in any way connected with Debi Singh or the descendants of Hirday Narain Singh.

90. Next item relates to Villages Badapur, Kanak Sarai where it is mentioned that Hardarshan Singh who was a descendant of Ramhit Singh has been given the patta and is in possession. As regards Village Gadoi it is mentioned that at the time of settlement zamindari patta was given to Nanku Singh and Jitoo Singh who were descendants of Hirday Narain Singh. Nanku Singh died and thereafter Deep Narain Singh, son of Nanku Singh, got the patta in his own name in respect of half share.

91. The next item narrates that at the time of the settlement, the zamindari patta was executed in favour of Gurdat Singh, who was one of the descendants of Debi Singh, and he paid rent without obtaining any fresh patta. It is further mentioned that in respect of village Sabesar, zamindari patta was given to Ramhit Singh, descendant (aulad) of Hirday Narain Singh and on his death, the patta was given to Nanku Singh.

92. It is not necessary for us to wade through the details of the settlement made by various zamindars pertaining to different villages in the Sirkar of Champaran, except some entries to which we would refer hereafter.

93. As regards Jalapur which was in Taluka of Madan Gopal and Kiswar Das Thathar, the zamindari patta was executed in favour of Farman Singh and after his death Zalim Singh and Ramhit Singh, sons of Farman Singh, obtained the patta in their names and were in possesion thereof. Here also, there is no reference either to Gajraj Sahi or Gajraj Singh as being relations of Debi Singh nor is the name of Ramruch Singh mentioned at all. Again, in respect of Chak Lohani and Kalyanpur it is mentioned that Gurdat Singh was one of the descendants of Debi Singh and Hardarshan Singh was a descendant of Ramhit Singh.

94. As regards Taluka Thathra and other villages they were sold to Raja Balwant Singh and one Gajraj Singh paid rent to the sirkar on behalf of Raja Balwant Singh. The parentage of Gajraj Singh or his relationship either with Hirday Narain Singh or Debi Singh is not indicated at all. Therefore, it appears that Gajraj Singh must be someone who had nothing to do with the family of Debi Singh.

95. These are all the facts that can be collected from the document (Ex. J). Summing up, therefore, the contents of the report, the position emerges as follows :

“(1) The zamindari patta of various villages had been given to Hirday Narain Singh and his descendants,

(2) Neither Debi Singh, nor Gajraj Singh, nor Bansidhar Singh have been mentioned as being direct descendants of Hirday Narain Singh,

(3) Pahalwan Singh is no doubt a direct descendant of Debi Singh but that does not solve the problem : the descendants of Pahalwan Singh were later on given various pattas,

(4) The report (Ex. J) is purely confined to the question of possession of various patta-holders and there is not a single word to indicate the title of any of these patta-holders.

As already indicated, Durga Prasad was not called upon to embark on an enquiry regarding the question of title and, therefore, his report is concerned solely and mainly with the question of possession and not in any manner with that of title. However, if any observations have been made by him incidentally on the question of title (though as far as we have seen the report, no such observation has been made) they would be of no consequence whatsoever to prove the title of the parties.

(5) As regards the facts contained in the report though Durga Prasad says that he got them from Tumar i.e an account-book, he has not given any particulars of the account-book nor has he appended any relevant portion of the account-book with the report nor has he mentioned as to who was the author of the account-books and when and under what circumstances the account-books were prepared."

96. In these circumstances, therefore we are kept completely in the dark as to what those account-books contained and whether or not the facts mentioned in them were properly checked and verified. Even the fact as to who was the accountant or in whose custody the account-book remained, is conspicuously absent from the report of Durga Prasad. These are additional circumstances which completely reduce the probative value of Ex. J.

97. Mr Tarkunde made an attempt to convince us that Ex. J is not only admissible but is substantially corroborated by the oral and documentary evidence. It is true that a part of the plaintiffs' genealogy, which is not disputed by the appellants, receives some corroboration from Ex. J but that takes us nowhere. Our attention has not been drawn to any fact mentioned in the report which shows the direct relationship or connection between Debi Singh, Ramruch Singh and Gajraj Singh and unless this is done the corroboration, if any, is of no use at all. However, we shall deal with this argument for whatever it is worth.

98. In the first place, it was contended that the oral evidence of DWs 13, 21, 33, 34 and 35 corroborates the entries made in Ex. J. We propose at this stage to refer briefly to the oral evidence only insofar as it is alleged to corroborate Ex. J and we shall deal with the main oral evidence after we have completed the discussion of the documentary evidence.

99. It was contended by Mr Tarkunde, which is also reiterated in the summary of arguments supplied to us, that the defence witnesses referred to above support some of the statements made in Ex. J. It was argued that while the said Exhibit mentions Barisal Singh and Ramhit Singh as among the four zamindars who were in possession of Taluka Majhwa, the oral evidence shows that Barisal Singh was son of Ram Fakir who was one of the sons of Bansidhar Singh and whose line became extinct with the death of his three sons, including Barisal. In the first place, this argument is based on a wrong interpretation of the terms used in Ex. J in respect of Barisal Singh who has not been mentioned as being a direct descendant of Hirday Narain Singh. It is possible that Barisal Singh may have been distantly

related to or formed a member of the brotherhood of Hirday Narain Singh but the document does not at all indicate that he was a direct descendant of Hirday Narain Singh.

100. Coming now to the oral evidence on this point, reliance was placed on the statement of DW 33 Bhairo Prasad who is 85 to 86 years old and is a resident of Mirzapur. At p. 436 of Vol. I, the witness states that Ram Fakir had three sons Barisal, Ram Singh and Ratan Singh and that all the three sons of Fakir Singh died issueless. As regards the genealogy, he states that he came to know of the genealogy of Bansidhar Singh and his descendants from Nand Kumar Singh and Jugal Bahadur Singh and from his own grandfather. There is, however, nothing to show as to what special means of knowledge regarding the genealogy he possessed. Secondly, the witness has nowhere said that Barisal Singh and others were directly related to Hirday Narain Singh because that seems to be the main link and the pivotal base of the claim of the plaintiff. This witness was born in 1879 whereas the report is of the year 1810. It is obvious, therefore, that the memory of Durga Prasad would be much fresher and he would have better knowledge than this witness to prove the plaintiffs' genealogy and particularly the name of the elders of Pahalwan Singh about whom he had to submit his report.

101. Furthermore, we are unable to see how the evidence of this witness supports the plaintiffs which merely says that Ram Fakir had three sons viz. Barisal, Ram Singh and Ratan Singh. He does not say anywhere in his evidence that either Ram Fakir or his sons were in any way connected with Hirday Narain Singh. At another place, the witness says that Bansidhar Singh had three sons viz. Ramruch Singh, Ram Fakir and Debi Singh and Gajraj Singh was Debi Singh's son. In the report (Ex. J) there is absolutely no reference either to Bansidhar Singh or to Ram Fakir Singh or Ramruch Singh. The only person who is mentioned in the report is Debi Singh who is said to be a descendant of Hirday Narain Singh. There is also no reference to Bansidhar Singh in the entire report. Thus, the starting point of the genealogy given by him is after the report (Ex. J) was submitted. We are, therefore, unable to see how the evidence of this witness in any way corroborates Ex. J.

102. Reliance was then placed on the evidence of DW 34, Nagendra Kumar (at p. 446 of Vol. I). This witness is aged 60 years and claims to belong to Gautam gotra. He states that the ancestor of the members of his family was Babu Hansraj Singh who had two sons, Hari Narain Singh and Hirday Narain Singh. Hari Narain had a son Sah Makund and he claims to be a descendant of Makund separated by several degrees below. He further states that Bansidhar Singh was the son of Hirday Narain Singh. If the facts spoken by him are correct then we should have expected a clear mention of the name of his ancestor in Ex. J. On the other hand, though Durga Prasad was expressly entrusted the task of finding out the details of the elders of Pahalwan Singh yet he does not mention that Hirday Narain Singh was son of Hansraj Singh. In fact, there is no reference to Hansraj Singh at all. He further goes on to state that Bansidhar Singh had three sons, namely, Ram Fakir Singh, Ramruch Singh and Debi Singh. This is completely contradicted by the statements made in Ex. J as discussed above. In the whole report, there is absolutely no reference either to Ramruch Singh or Bansidhar Singh as being connected with Hirday Narain Singh. For these reasons, therefore, we are unable to agree with the argument of the plaintiffs' counsel that Ex. J is corroborated in any way by the evidence of this witness.

103. Reliance was then placed on the evidence of DW 35, Debi Singh who claims to be a resident of Mauza Majhwa and states that his ancestors were residents of Majhwa and that Bikram Sah was ten degrees above him. According to his evidence Bikram Sah and Bansidhar Singh were full brothers being sons of Hirday Narain Singh who was son of Hansraj Singh. His evidence is completely falsified by the statements made in the report where there is no reference either to Hansraj Singh or to Bansidhar Singh. We have shown from the contents of Ex. J that Durga Prasad has clearly mentioned the names of the sons of direct descendants of Hirday Narain Singh. If Bansidhar Singh and Bikram Sah were really sons of Hirday Narain Singh, he could not have missed this important fact which was very pertinent for the purpose of his report. The witness then goes on to state that Bansidhar Singh had three sons viz. Debi Singh, Ramruch Singh and Ram Fakir. While there is clear reference to Debi Singh in Ex. J, there is absolutely no reference to Ramruch Singh or Ram Fakir. Therefore, far from corroborating the contents of Ex. J he positively contradicts the same. Further comments regarding this witness would be made when we discuss the oral evidence of the parties. At present it is sufficient to show that the arguments of the respondents' counsel that Ex. J is corroborated by the evidence of this witness are wholly untenable.

104. Reliance was then placed on the evidence of DW 36, Mahadeo Singh who seems to be an interested witness because according to his evidence his ancestors and those of Bhagwati Prasad Singh, father of the plaintiff, had been on visiting, dining and inviting terms with the family of Babu Bhagwati Prasad Singh right from the time of his ancestors. He states that Bhagwati Prasad Singh and Harendra Kishore Singh were descendants from a common ancestor who was Babu Bansidhar Singh. Bansidhar Singh had three sons, Ramruch, Ram Fakir Singh and Debi Singh, and Gajraj Singh was a son of Ram Fakir Singh. His evidence ex facie does not corroborate the report (Ex. J). As in the case of previous witnesses, so here also we do not find any reference to either Bansidhar Singh or Ramruch Singh. It is impossible to believe that if Ramruch Singh or Gajraj Singh were connected with the family of Hirday Narain Singh this fact would not be mentioned in the report. Furthermore, neither Bansidhar Singh nor the fact that Debi Singh was a son of Bansidhar Singh has been mentioned in the report, and this important event could not have been missed by Durga Prasad in his detailed and copious report. We shall deal with the intrinsic merits later but what we have said is sufficient to demonstrate that like other witnesses i.e DWs 33, 34 and 35 this witness also does not corroborate the report of Durga Prasad. There is one important fact in the statement of this witness which is that he says that Ramhit Singh was a son of Madho Singh who was one of the sons of Hirday Narain Singh. This is, however, clearly contradicted by the report of Durga Prasad which mentions that Ramhit Singh was the son of Hirday Narain Singh and not of Madho Singh whose name has not been mentioned at all. This fact far from corroroborating the report Ex. J directly contradicts the said report (Ex. J).

105. As regards the documentary evidence which is said to corroborate Ex. J, we might observe at this stage that if the probative value of Ex. J is zero, it can hardly be corroborated by any other document which will have to be judged and examined on its own merits.

106. Reference was made to Ex. L which is a petition given by Raja Udit Narain Singh of Banaras seeking verification of his rights from all the zamindars, lambardars and other revenue officials as also the respectable residents of Taluka Majhwa, Pargana Kaswar, Sirkar of Banaras to the effect that the entire taluka was the khas ancestral zamindari interest of Babu Pahalwan Singh, owned and possessed by him generation after generation. This document is dated March 14, 1818, about five years after Ex. J was submitted by Durga Prasad. Apart from the question of admissibility of this document, it merely gives the history of the Zamindari of Raja of Banaras and also mentions the fact that this zamindari was purchased by the father of the applicant for a sum of Rs 59,864.11 annas. In the first place, the only purpose for which support is sought to be mustered by the plaintiffs is that there is a reference to Pahalwan Singh as being a descendant of Udit Narain Singh. As Durga Prasad was asked to find out the name of the ancestors of Pahalwan Singh, this document is said to corroborate this statement made in Ex. J. It is, however not very clear as to what was the occasion for sending this petition and what was the eventual fate which it met. It is merely a statement of Udit Narain Singh, and the document does not show that it is based on his personal knowledge or that the petitioner acquired knowledge from his ancestors. However, as it is not disputed that Pahalwan Singh was undoubtedly an ancestor of the late Maharaja and his name finds place in the plaintiffs' genealogy, nothing turns upon this statement because the defendant does not dispute the genealogy not only up to Pahalwan Singh but even higher. As discussed above, the main link is to be established between Gajraj Singh, Ramruch Singh and Debi Singh. On this point, this document throws no light at all and is therefore valueless. Nobody ever disputed that Pahalwan Singh was not a grandson of Debi Singh. Even otherwise, the document Ex. L is of doubtful admissibility.

107. It was further contended that this document supports the statement in Ex. J that Debi Singh, Barisal Singh, Ramhit Singh and Gajraj Singh were family members of Hirday Narain Singh. This argument however, is utterly misconceived and is based on a wrong interpretation of Ex. J which nowhere shows that Debi Singh, Barisal Singh, Ramhit Singh and Gajraj Singh were family members of Hirday Narain Singh. All that it says is that they belonged to the brotherhood of Debi Singh. In fact, as we have shown, the names mentioned in Ex. J regarding the parentage of Barisal Singh and Ramhit Singh and Debi Singh are quite different from the case of the plaintiffs. Furthermore, assuming that the aforesaid four persons were members of the family of Hirday Narain Singh, Ex. J does not show in what manner Ramruch and Debi Singh were related or that Gajraj Singh was a son of Ramruch Singh.

108. Reliance was then placed on Ex. DD(38) (Vol. IV, p. 251) which is a judgment delivered on April 25, 1801 in a suit between Deo Narain Singh and Mohan Singh, who, according to the plaintiffs, were grandsons of Gajraj Singh in respect of zamindari of Village Baraini. Reliance was placed on the mention of the fact in Ex. J that the settlement of Village Baraini was made in favour of Mohan Singh who was a descendant of Gajraj Singh or Gajraj Sahi. Assuming that this statement is correct, it does not advance the case of the plaintiffs any further because Ex. J does not at all show that Gajraj Singh was a son of Ramruch Singh and a grandson of Bansidhar Singh or a nephew of Debi Singh.

109. Reference was then made to Ex. F(1)(Vol. III, p. 72), Ex. G at p. 105 in the same

volume, and Ex. DD(44) at p. 107 in Vol. IV, as being instances of various grants made from time to time by Debi Singh in taluka Majhwa. These documents merely corroborate the statement in Ex. J that Debi Singh was one of the zamindars in possession of Taluka Majhwa. This fact is also undisputed and corroboration or no corroboration, the appellants have not challenged either the authenticity of this statement or the fact that Debi Singh was a zamindar of Taluka Majhwa.

110. Ex. NN(6)(Vol. V, p. 215) consists of extracts from the Banaras Gazeteer. This Gazeteer merely speaks of Barisal Singh as being one of the persons who were killed in the battle of Marui in or about the year 1719. It is not disputed that Barisal Singh was undoubtedly one of the zamindars of the village and was in possession of Village Majhwa but this fact alone cannot prove any link or connection between the plaintiffs and Gajraj Singh or between Gajraj Singh and Debi Singh.

111. Ex. TT (Vol. IV, p. 238) is another document which is relied on for corroborating Ex. J. This document merely says that zamindari patta of Village Jalalpur in Taluka Majhwa was executed in favour of Farman Singh and after his death his sons Zalim Singh and Ramhit Singh obtained patta. Assuming that the statement made above is correct, it only takes us to Farman Singh who is said to be the son of Gajraj Singh. We have already indicated above that so far as the plaintiffs' genealogy is concerned, the link up to Gajraj Singh on the right side and up to Debi Singh on the left side is clearly proved but that does not substantiate the case of the plaintiffs unless they further prove that Gajraj Singh was son of Ramruch Singh and a nephew of Debi Singh. If this link is missing, the claim of the plaintiffs must fail.

112. Similarly, Exs. **GGG-3, GGG-4, GGG-5, GGG-6 and GGG-8 at p. 187**, 192, 209, 188 and 208 (in Vol. IV) respectively are documents in the nature of mortgage deeds executed by the heirs of Gajraj Singh in respect of zamindari interest in Village Baraini. These documents also are hardly relevant for the purpose of proving the plaintiff's genealogy or to show that he was the next and nearest reversioner of the late Maharaja.

113. Similarly, Ex. WW (Vol. IV, p. 185) proves that the zamindari patta in respect of Village Baraini was granted to Mohan Singh, a fact mentioned in Ex. J which is not at all relevant for our purpose in determining the correctness of the plaintiff's genealogy.

114. Ex. SS (Vol. IV, p. 376) is a report of Salik Ram, Serishtedar Sadar (Deputy Collector) in respect of the settlement of Village Baraini and subsequent transactions in respect of the zamindari of that village. This document refers to the settlement of the village in favour of Mohan Singh in 1197 Fasli and records subsequent transfers. Mohan Singh's name is also mentioned in Ex. J and to this extent it corroborates the Exhibit but this corroboration is of no use because there is no dispute that Mohan Singh was a grandson of Gajraj Singh.

115. Thus, all the documents referred to above and relied upon by the plaintiffs-respondents for corroborating Ex. J are practically of no value in determining the real controversy in issue. The plaintiffs seem to have got hold of several old documents wherever they could find the same and wherever they found the names of the descendants of Debi Singh or Gajraj Singh, without laying their hands on any document which may show

that Debi Singh was son of Bansidhar Singh and own brother of Ramruch Singh who also was another son of Debi Singh, and that Gajraj Singh was son of Ramruch Singh. In fact, the last of the ancestors shown in the plaint genealogy is Bansidhar Singh whose name also does not find any mention in Ex. J. But, for purposes of this case we may assume that Bansidhar Singh was the highest ancestor of the late Maharaja and hence unless it is proved that Bansidhar Singh had two sons — Debi Singh and Ramruch Singh — and Ramruch's son was Gajraj Singh, the genealogy relied upon by the plaintiff cannot be said to have been proved. It is not necessary for us to make any further comments on these documents because they do not show anything beyond what we have said.

116. The explanation which is sought to be given by the respondents for the absence of names of Bansidhar Singh and Ramruch Singh is that since Durga Prasad was writing the report in the year 1810, by which time both Bansidhar and Ramruch had already died, there could be no question of their names finding a place in the report. This argument in our opinion, is wholly untenable. We have already pointed out that the main task with which Durga Prasad was entrusted was to find out the ancestors of Pahalwan Singh and if Bansidhar and Ramruch were really the ancestors of Pahalwan Singh, their names could not have escaped the attention of Durga Prasad particularly when the name of Hirday Narain Singh, who is higher than Bansidhar Singh, is mentioned in the report conspicuously. Secondly, in view of the scope of the enquiry embarked upon by Durga Prasad, he had to find out the ancestors from the records and he says very clearly in his report that his information was based on records in the serishta, particularly the tumar (account-book). If Bansidhar and Ramruch had in fact been directly connected with Debi Singh or Pahalwan Singh, there is no reason why Durga Prasad should not have mentioned their names as being ancestors of Pahalwan Singh who appeared to be only two to three degrees remote from them. In these circumstances, therefore, the absence of the names of the aforesaid persons in Ex. J is, in our opinion, a conclusive circumstance to show that there was no relationship between Bansidhar, Ramruch and Pahalwan Singh. This conclusion is further fortified by the fact that even Gajraj Sahi (or Gajraj Singh) who was the only son of Ramruch and a grandson of Bansidhar, finds specific mention in the report. For these reasons, we reject the explanation given by the respondent on this point.

117. In view of our analysis of the documents, we need not go into their admissibility though it is extremely doubtful how the statements made by various persons without disclosing their means of knowledge can be said to be admissible.

118. It appears to us that what the plaintiffs seem to have done in this case is that taking advantage of the recitals in Ex. J and of certain names of persons who were in possession of Mauza Majhwa and Village Baraini, they took Ex. J as the base for relying on some statements and observations made by Durga Prasad out of context and tried to connect Gajraj Singh with Bansidhar Singh by an ingenious process of joining tits and bits, pieces and patches here and there so as to reconstruct an exotic genealogy by inserting willy-nilly Gajraj Singh and Bansidhar Singh as being their ancestors. The methodology adopted by them has achieved precious little and is nothing but a futile and an acrimonious exercise.

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

120. We now pass on to the next limb of the argument of the plaintiffs-respondents viz. that there are unimpeachable documents which throw a flood of light on the case propounded by them in their plaint. In this connection, they have relied on private documents, public documents, recitals in judgments, judgments inter partes as also judgments which are not inter partes sale-deeds, mortgage deeds and other documents of a similar nature which we proceed to discuss hereafter but before doing so we would like to expound the legal position of the admissibility of most of the documents which have been filed by the plaintiffs in support of their case. For this purpose, the documents may be classified under three heads :

(1) documents which are per se inadmissible,

(2) recitals in judgments not inter partes, and

(3) documents or judgments post litem motam."

121. In order to put the record straight we would briefly discuss the case-law on the subject and refer to some of the important authorities of this court and those of the Privy Council or some of the High Courts which appear to us to be very relevant.

122. Taking the first head, it is well settled that judgments of courts are admissible in evidence under the **provisions of Sections 40, 41 and 42 of the Evidence Act. Section 43,** which is extracted below, clearly provides that those judgments which do not fall within the four corners of Sections 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 :

"43. Judgments, etc., other than those mentioned in Sections 40 to 42, when relevant.—Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provision of this Act."

123. Some courts have used Section 13 to prove the admissibility of a judgment as coming under the provisions of section 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 Sections 40 to 42, it must fulfil the conditions of Section 43 otherwise it cannot be relevant under Section 13 of the Evidence Act. The words "other provisions of this Act" cannot cover Section 13 because this section does not deal with judgments at all.

124. 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 judgments in personam and, therefore, they do not fulfil the conditions mentioned in Section 41 of the Evidence Act.

125. It is now settled law that judgments not inter partes are inadmissible in evidence barring exceptional cases which we shall point out hereafter. In **John Cokrane v. Hurrosoondurri Debia 1854-57 6 MIA 494** Lord Justice Bruce while dealing with the question of admissibility of a judgment observed as follows :

"With regard to the judgment of the Supreme Court, it is plain, that considering the parties to the suit in which that judgment was given, it is not evidence in the present case,.... We must recollect, however, not only that that suit had a different object from the present, independently of the difference of parties, but that the evidence here is beyond, and is different from, that which was before the Supreme Court upon the occasion of delivering that judgment."

126. It is true that in the abovementioned case Their Lordships felt that in some cases a decision proceeding from a tribunal must be given due deference but in cases like the one which was being dealt with by Their Lordships the judgment was not admissible.

127. In **Jogendro Deb Roy Kut v. Funindro Deb Roy Kut 1871-72 14 MIA 367** the following observations were made :

"If such a suit, as the first suit, was brought here and tried according to the law of this country there could not be a pretence for saying, that the judgment in it was anything like a judgment in rem, or that it could bind any but the parties to the suit.

It is sufficient for Their Lordships to say, that the judgment pleaded in this case in bar cannot be treated as one of that nature upon any principles, whether derived from the English law or from the law and practice of India, which can be applied to it, ..."

128. In the case of **Gujja Lall v. Fatteh Lall ILR 1881 6 Cal 171** a Full Bench exhaustively considered the ambit and scope of **Sections 40 to 43 of the Evidence Act** and observed thus :

"On the other hand, when in a law prepared for such a purpose, and under such circumstances, we find a group of several sections prefaced by the title 'Judgments of Courts of Justice when relevant,' that seems to me a good reason for thinking that, as far as the Act goes, the relevancy of any particular judgment is to be allowed or disallowed with reference to those sections.

* * *

I have had the opportunity of reading the judgment which the Chief Justice proposes to deliver, as well as the observations of my brother Pontifex, in both of which I generally concur, and for the reasons there stated, and those which I have shortly given, I consider the evidence inadmissible."

And Garth, C.J, made the observations :

"It is obvious that, if the construction which the respondent's counsel would put upon Section 13 is right, there would be no necessity for sections 40, 41, and 42 at all. Those sections would then only tend to mislead, because the judgments which are made admissible under them would all be equally admissible as 'transaction' under Section 13, and not only those, but an infinite variety of other judgments which had never before been admissible either in this country or in England. And it is difficult to conceive why, under Section 42, judgments though not between the same parties should be declared admissible so long as they related to matters of a public nature, if those very same judgments had already been made admissible under Section 13, whether they related to matters of a public nature or not.

* * *

I am, therefore, of opinion that the former judgment was not admissible in the present suit ; . . ."

(emphasis supplied)

129. In **Gadadhar Chowdhury v. Sarat Chandra Chakravarty AIR 1941 Cal 193** it was held that findings in judgments not inter partes are not admissible in evidence. In this connection a Division Bench of the Calcutta High Court observed as follows :

"Though the recitals and findings in a judgment not inter partes are not admissible in evidence, such a judgment and decree are, in our opinion, admissible to prove the fact that a decree was made in a suit between certain parties and for finding out for what lands the suit had been decreed."

130. This, in our opinion, is the correct legal position regarding the admissibility of judgments not inter partes.

131. In **Maharaja Sir Kesho Prasad Singh Bahadur v. Bahuria Mt. Bhagjogna Kuer** AIR 1937 PC 69 the Privy Council made the following observations :

"Whether based upon sound general principle or merely supported by reasons of convenience, the rule that so far as regards the truth of the matter decided a judgment is not admissible evidence against one who is a stranger to the suit has long been accepted as a general rule in English law.

* * *

Their Lordships find themselves in agreement with the observation of Ross, J. :

The judgment is not inter partes, nor is it a judgment in rem, nor does it relate to matter of a public nature. The existence of the judgment is not a fact in issue ; and if the existence of the judgment is relevant under some of the provisions of the evidence act it is difficult to see what inference can be drawn from its use under these sections.

Serious consequences might ensue as regards titles to land in India if it were recognized that a judgment against a third party altered the burden of proof as between rival claimants, and much 'indirect laying' might be expected to follow therefrom."

(emphasis supplied)

132. This principle was reiterated in the case of **Coca-Cola Co. of Canada Ltd.** (already referred to on the question of relevancy of dictionary while dealing with Ex. J) where Their Lordships in most categorical terms expressed the view that no judgment which was not inter partes or the one to which neither the plaintiff nor the defendant were parties could be used in evidence for any purpose. It appears that in the case referred to above the President of the Exchequer Court had relied on facts found in the judgment of the Chancellor and had drawn support from the uncontradicted evidence given by the Chancellor. The Privy Council deprecated this practice of relying on judgments which were not inter partes in the sense that a judgment in which neither the plaintiff nor the defendant were parties, and in this connection Lord Russell observed thus :

"The learned President relied on this judgment "as very formidable support to the plaintiff's contention that. . .there is likelihood of confusion ; but in Their Lordships' opinion he was not entitled to refer to or rely upon a judgment given in proceedings to which neither the plaintiff nor the defendant was a party, as proving the facts stated therein."

(emphasis supplied)

133. We entirely agree with the observations made by the Privy Council which flow from a correct interpretation of **Sections 40 to 43 of the Evidence Act**.

134. Same view was taken by a Full Bench of the Madras High Court in **Tripurana Seethapathi Rao Dora v. Rokkam Venkanna Dora** AIR 1922 Mad 71 where Kumaraswami Sastri, J. observed thus :

*I am of opinion that Section 35 has no application to judgments and that a judgment which would not be admissible under **Sections 40 to 43 of the Evidence Act** would not become relevant merely because it contains a statement as to a fact which is in issue or relevant in a suit between persons who are not parties or privies. **Sections 40 to 44 of the Evidence Act** deal with the relevancy of judgments in courts of justice."*

135. The cumulative 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, they do not take us anywhere so as to prove the plaintiffs' case.

136. 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 Edn. p. 308) where the following statement is to be found :

"Declarations by deceased persons of competent knowledge made ante litem motam, are receivable to prove ancient right of a public or general nature. The admission of declarations as to those rights is allowed partly on the ground of necessity, since without such evidence ancient rights could rarely be established ; and partly on the ground that the public nature of the rights minimises the risks of misstatement."

137. The admissibility of such declaration 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 controversy but they should be made even before the commencement of legal proeedings. In this connection, in para 562 at p. 308 of Halsbury's Laws of England the following statement is made :

"To obviate bias, the declarations must have been made ante litem motam, which means not merely before the commencement of legal proceedings, but before even the existence of any actual controversy, concerning the subject-matter of the declarations. So strictly has this requirement been enforced that the fact that such a dispute was unknown to the declarant, or was fraudulently begun with a view to shutting out his declarations, has been held immaterial."

138. This position however cannot hold 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, Section 32(5) of the Evidence Act itself fully incorporates the doctrine of post litem motam, the relevant portion of which may be extracted thus :

"32. Cases in which statement of relevant fact by person who is dead or cannot he found,

etc. is relevant.—

* * *

(5) … the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised."

(emphasis supplied)

139. In **Kalka Parshad v. Mathura Parshad ILR 1908 30 All 510** the Privy Council refused to accept a pedigree which was of the year 1892 because the controversy had originated in the year 1891, that is to say, a year before the pedigree was filed. In this connection, commenting on the genealogy relied upon by the plaintiff Their Lordships observed as follows :

"Taking them in the reverse order, the last is inadmissible, having been made post litem motam.... In order to make the statement inadmissible on this ground, the same thing must be in controversy before and after the statement is made."

140. In **Hari Baksh v. Babu Lal AIR 1924 PC 126** Their Lordships observed as follows :

"It appears to Their Lordships that these statements of Bishan Dayal who was then an interested party in the disputes and was then taking a position adverse to Hari Baksh cannot be regarded as evidence in this suit and are inadmissible."

141. It appears in that case one Bishan Dayal who was the defendant in a suit for partition which was brought on August 7, 1908 made a will on November 26, 1908, that is to say, about two and a half months after the suit was filed. The statement of Bishan Dayal in the suit of 1908 was sought to be relied on but the Privy Council held the statement to be inadmissible because he had already become an interested party and the case, therefore, had been hit by the doctrine of post litem motam.

142. In **Dolgobinda Paricha v. Nimai Charan Misra AIR 1959 SC 914** this Court held that the statement in question was admissible because it was made before the question in dispute had arisen. In other words, this Court held that in the facts and circumstances of that case the statement and the pedigree relied upon were made ante litem motam and not post litem motam, for if the latter had been the case, the document would have become inadmissible and in this connection the court observed thus :

"That being the position, the statements as to pedigree contained in Ex. I were made before the precise question in dispute in the present litigation had arisen."

143. In **Kalidindi Venkata Subbaraju & Others v. Chintalapati Subbaraju & Others AIR 1968 SC 947** while construing the provisions of sub-section (5) of Section 32 of the Evidence Act this court observed as follows :

"Both sub-sections (5) and (6) of Section 32, as aforesaid, declare that in order to be

admissible the statement relied on must be made ante litem motam by persons who are dead i.e before the commencement of any controversy actual or legal upon the same point."

144. Relying on an earlier case of the Privy Council this Court further observed thus :

"In Kalka Parshad v. Mathura Parshad [***1908 35 IA 166*** *=* ***ILR 1908 30 All 510****] a dispute arose in 1896 on the death of one Parbati. In 1898 in a suit brought by one Sheo Sahai a pedigree was filed. After this, the suit from which the appeal went up to the Privy Council was instituted in 1901. It was held there that the pedigree filed in 1898 was not admissible having been made post litem motam."*

145. 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 rem 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 partes 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."

146. We would now discuss the evidence both oral and documentary in the light of the principles laid down by the aforesaid decisions. By way of introduction, it may be noted that in the present case the onus lies squarely on the plaintiff Radha Krishna Singh to prove his case by showing that he was the next reversioner of the late Maharaja and that every link in the genealogical tree which he has set out in the plaint was proved. Only after he has discharged his burden by proving the aforesaid facts, could the defendants be called upon to rebut their case. 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.

147. With these introductory remarks we now proceed to discuss the evidence led by the plaintiffs on the points indicated above.

148. In considering the documentary evidence we shall begin with the documents Exs. P-2, V, DD-30 and DD-31 which are closely connected documents. It would appear from the plaintiffs' genealogical tree, which for the sake of convenience has been put at one place in Vol. VIII at p. 131 and which has been extracted earlier in this judgment, that Balbhadra Singh was grandson of Pahalwan Singh and Sangam Kuer was his sister who died issueless. Bhola Singh, on the right hand side of the genealogy, was grandson of Farman Singh and son of Deo Narain. It is therefore, obvious that after the death of Jaimed Kuer, Bhola Singh could not be her next reversioner, who would be Harendra Kishore Singh. Thus, the title conveyed by Bhola Singh to Maharaja of Banaras under a sale which was the subject-matter of Ex. DD-30 was a bag of wind and is the surest proof of the fact that the transaction in question was merely a sham transaction. The contents of the sale deed, Ex. V, also show that it was without consideration because it contains extraordinary terms and recitals which will be discussed by us hereafter and which were seriously commented upon by the judgment Ex. DD/ 30 rendered by the trial court in that suit.

149. Coming now to the sale deed (Ex. V) at p. 33-44 in Vol. III, it appears that the property sought to be sold actually belonged to Mst. Jaimed Kuer who died in 1881. In the sale deed Bhola Singh claimed (in our opinion falsely) that he was the legal heir of Jaimed Kuer whereas the true legal heir was the late Maharaja. According to the sale deed the properties in question were sold to Prabhu Narain Singh of Kashi (Banaras) for a sum of Rs 25,000. In the sale deed, Bhola Singh had clearly described himself as the sole heir of Jaimed Kuer, which was admittedly false because even according to the plaintiffs' genealogy the nearest heir, as we have already indicated, would be Harendra Kishore Singh and not Bhola Singh. Secondly, another extraordinary feature of the sale deed is that out of the consideration money of Rs 25,000, a sum of Rs 12,500, that is to say, half the amount, only was paid to the vendee. Furthermore, a set-off of Rs 9979-10-8 (nine thousand nine hundred seventy-nine and annas ten and pies eight) was given to the vendee in respect of the rehan money payable to him which was said to have been taken by Jaimed Kuer from the Maharaja of Banaras. Another sum of Rs 5000 was left in deposit with the vendee in order to meet the expenses for recovering the properties which were in possession of other persons. The balance of the consideration of Rs 10,022-5-4 (ten thousand twenty-two and annas five and pies four) was received by the vendor, Bhola Singh, in cash out of which Rs 2020-5-4 (two thousand twenty and annas five and pies four) were spent on the execution of the sale deed and Rs 8000 was again left in deposit with the vendee for his satisfaction till the document was executed. As Bhola Singh himself was fully aware that he had no title to the properties at the time of the sale, he, on the one hand, deposited the entire consideration money, excepting a very small amount, with the vendee and, on the other hand, made no secret of the fact that these amounts were to be spent by the vendee to meet the expenses of litigation arising out of the defect of title. Thus, on a perusal of the recitals of the sale deed, it would appear that out of a consideration amount of Rs 25,000 a paltry sum of Rs 1700 was taken by Bhola Singh which shows the very peculiar and pretentious nature of the transaction. In other words, Bhola Singh sold the properties for a song knowing full well that he had no interest in the properties. Although the sale was in

respect of the properties of Mauza Majhwa, District Mirzapur, yet the sale deed was registered in Banaras town and in order to give jurisdiction to the Sub-Registrar of Banaras a miserable mud-built house covered with earthen tiles was given to the Maharaja Prabhu Narain Singh. Most of the witnesses to the sale deed hailed from Mirzapur. The properties which were mortgaged to Mahadev were sold to the Maharaja of Banaras under this document. Most of the witnesses to the sale deed were from Mauza Baraini or Majhwa and there was only one witness from Banaras. The transaction, therefore, manifestly shows that since all the properties sold were in District Mirzapur, just to make a show of sale in respect of Banaras property also, the mud house was included in the sale deed. Thus, the main purpose for which this document has been relied upon by the plaintiffs-respondents is that it gives a genealogy which, according to them, supports that they were the descendants of Bansidhar Singh. The said genealogy is reproduced below :

Babu Bansidhar Singh First Wife Second wife Babu Ramruch Singh, died Babu Gajraj Singh, died Babu Farman Singh, died Babu Deonarain Singh, died Babu Bhola Singh, alive Babu Debi Singh, died Babu Aini Singh, died Babu Pahalwan Singh, died Babu Tilak Singh, died Babu Balbhaddar Singh Thakurain Jaimed Kuer, deceased, wife of Babu Balbhaddar Singh, deceased

150. The contention of Mr Tarkunde, was that this genealogy was filed at a time when there was no dispute between the parties and it fully supports the plaintiffs' case as it shows that Bhola Singh on one side is a direct descendant of Gajraj Singh, Ramruch Singh and Bansidhar Singh, and Thakurain Jaimed Kuer was a direct descendant of Debi Singh, son of Bansidhar Singh. It is impossible to infer that this genealogy is correct and connects all the necessary links in order to prove the plaintiffs' case as put forward in the plaint. For instance, Deep Narain Singh, elder brother of Bhola Singh has not been mentioned at all in this genealogy. Similarly, Pratap Narain Singh who was a great-grandson of Gajraj Singh has not been mentioned in this genealogy, and also the name of Raghunath Singh who was son of Aini Singh is also not mentioned therein. Moreover, no legal value or significance can be attached to the genealogy when the terms and recitals of the document have been found to be false and the court in which the suit based on the sale deed was filed was clearly of the opinion that the entire transaction was a sham one. Thus, there can be no guarantee of the truth of the statements made by Bhola Singh or even the genealogy given by him in that sale deed. Therefore, the genealogy is incorrect, inaccurate and incomplete and no reliance could be placed on this document for the purpose of proving the plaintiffs' genealogical tree. The trial court had rejected this document (Ex. V) and so had one of the Judges (M.M Prasad, J.) in the High Court and, in our opinion, rightly.

151. Lastly, regarding this document, it may be mentioned that soon after the execution of the sale deed the late Maharaja had already been substituted as the heir of Jaimed Kuer as proved by the documents Ex. U-3 and DD-43 and ultimately Narendra Kishore Singh was held to be the legal heir of Jaimed Kuer by the Allahabad High Court by its judgment dated April 13, 1888 (Ex. DD-43). In these circumstances, since the question of succession had opened between the parties the document Ex. V would also be hit by the doctrine of post litem motam and, therefore, it is inadmissible in evidence under Section 35 of the Evidence Act and hence has to be excluded from consideration.

152. Coming now to Ex. DD-30 (Vol. IV, p. 116) which is the judgment given in respect of the sale deed (Ex. V) which we have discussed above, the trial court after a full and complete consideration of the contents of the document held that Bhola Singh had no right to execute the sale deed, and that the plaintiff did not purchase any legal right. The court also held that Bhola Singh was not the next reversioner of Jaimed Kuer and that the consideration was also illusory. In other words, the trial court rejected the case of the plaintiff in toto in that suit.

153. Reliance was sought to be placed by the counsel for the plaintiff on some recitals in the judgment regarding the genealogy and the statement of some of the witnesses examined before the court. However, this question need not detain us any further because we have already held from the reported decisions of this court as also those of the Privy Council that a recital of facts or evidence or even genealogy in judgments not inter partes are totally inadmissible in evidence. The judgment Ex. DD-30, was not a judgment inter partes and therefore any recital or statement made therein would not be admissible to prove the plaintiffs' case. The argument of Mr Tarkunde that Ex. DD-30 speaks for the whole of the genealogy table of the family as being correct, is not an accurate description of the genealogy because the judgment also mentions the fact that the genealogy was disputed. Even so, taking the judgment ex facie it would appear that Ex. DD-30 bases its conclusion that Bhola Singh was a descendant of Bansidhar Singh solely on the deposition of Har Nandan Singh but as the deposition of this witness was not even produced in the present case, any statement made with respect to Har Nandan Singh would be completely inadmissible and cannot be taken into consideration for any purpose whatsoever. Furthermore, it has not been shown that Har Nandan Singh was in any way related to the family of Bhola Singh or to the late Maharaja so that he may have any special means of knowledge and on this account also his statement is hit by **Section 32(5) of the Evidence Act.** Again, Har Nandan Singh's evidence in the suit, which was decided by Ex. DD-30, clearly shows that Bansidhar Singh had a son known as Ramhit Singh whose descendants had appeared as witnesses but Ramhit Singh finds no mention at all in the plaint genealogy. In these circumstances, therefore. we are unable to place any reliance on the judgment Ex. DD-30.

154. Coming now to the appeal judgment, Ex. DD-31 (Vol. IV, p. 121) the appellate court affirmed the finding of the trial court and found that Bhola Singh was not a reversioner of Jaimed Kuer and, therefore, had no title to sell the properties to the late Maharaja. The appellate court further found that the whole tenor of the sale deed shows that the Maharaja of Banaras purchased litigation. Reliance was placed by Mr Tarkunde on certain recitals pertaining to genealogy but even though the Judge held that the late Maharaja was a descendant of Raghunath Singh yet there is no mention of Raghunath Singh in the genealogy given in that suit. Moreover, the genealogy given in Ex. P-2 is totally inconsistent with and different from the genealogy propounded by the plaintiffs. A number of names and heirs of the two lines of Bansidhar Singh, that is to say, Debi Singh and Ramruch Singh, have not at all been mentioned in this genealogy. The name of Raghunath Singh, one of the sons of Aini Singh, in Suit No. 130 of 1856 filed by Suman Kuer in respect of a pond known as Hansraj Pokhra in Majhwa village is conspicuous by its absence. The explanation given by the counsel for the respondents was that it was not necessary to give the name of all the

heirs of Bansidhar Singh or for that matter of Debi Singh, hence these omissions in the genealogy. We are, however, not at all impressed with this explanation because some of the names not mentioned in the genealogy in Ex. P-2 are supposed to be based as links in order to prove the plaintiff's right to be the next reversioner of the late Maharaja whose name also does not find a place in this genealogy although he is supposed to be a direct descendant of Debi Singh.

155. Before closing the discussion of the documents referred to above viz. Exs. V, DD-30 and DD-31, it may be necessary to notice the arguments which were advanced by Mr Tarkunde with some amount of vehemence. As regards Ex. V, the sale deed executed by Bhola in favour of Maharaja Prabhu Narain of Banaras, it was contended that even though Bhola may not have been the actual reversioner of Jaimed Kuer yet as the late Maharaja was not interested in the properties covered by Ex. V he did not raise any objection although he knew about the execution of the said sale deed. Hence, it could be safely presumed that Bhola was the de facto though not de jure reversioner of Jaimed Kuer because he was next in the line after the late Maharaja. In order to buttress this argument reliance was placed by counsel for the respondents on some observations of Mukherji, J., to be found in Vol. VIII, para 69, p. 219. With due respect, the observations made by the learned Judge were based on pure speculation and were not supported by any legal evidence. There is no evidence to show that the Maharaja was aware of the sale deed nor was there any evidence to show that the late Maharaja did not want to take the properties of Jaimed Kuer by inheritance. The only reason given for the aforesaid knowledge of the Maharaja regarding the transaction was that he was a close relation of the Maharaja of Banaras and therefore it must be presumed that he must be in the know of the aforesaid transaction. In support of this argument, our attention was drawn to some documents of the year 1885 viz. Exs. F-4, F-5, F-7 and F-8 to show that in 1885 Jaimed Kuer had made an offer to Maharaja Harendra Kishore Singh that she would like to surrender or sell out her entire properties to him. The Maharaja, however, refused to take the properties, either by surrender or by sale. From this conduct it was sought to be inferred by the counsel for the respondents that the Maharaja was not at all interested in the properties of Jaimed Kuer. In our opinion, these arguments are based on surmises and conjectures and are without any legal basis. The mere fact that the Maharaja spurned the offer of Jaimed Kuer of surrendering her properties to him would not show that he was not interested in the properties because he knew full well that after her death the properties were bound to come to him as the next reversioner and he would have an absolute interest in the same. It is quite possible that the offer of surrender may have hurt the vanity and self-respect of the Maharaja as a result of which he spurned the offer. At any rate, instead of wandering amiss hither and thither into the realm of imagination and speculation like Alice in Wonderland, the fact is that the Maharaja did get the properties and resisted all claims against the same as would appear from the documents Exs. U-3 and DD-43 by which the Maharaja was substituted as the heir of Jaimed Kuer on her death and was held to be a legal heir by the judgment dated April 13, 1888 of the Allahabad High Court (Ex. DD-43). The said judgment shows that the Maharaja accepted the position of his being the legal representative and heir of Jaimed Kuer. This, therefore, clearly negatives the contention advanced on behalf of the respondents that the Maharaja was extremely reluctant to take the properties of Jaimed Kuer. The conduct of the Maharaja in unconditionally accepting the ownership and the

inheritance of the properties of Jaimed Kuer far outweighs the speculative argument of Mr Tarkunde that the Maharaja was either not interested or had some reservations or was in any way relunctant to take the properties of Jaimed Kuer after her death. If there was any reluctance at all before the properties could legally come to the Maharaja, it was fully justified and in keeping with the self-respect of the Maharaja as indicated above. Indeed, if there was any truth in the facts adumbrated by the counsel for the respondents, the Maharaja could very well have refused to be substituted as an heir or to take the properties of Jaimed Kuer. This circumstantial evidence speaks volumes against the speculative plea of the respondents that the Maharaja was not at all interested in the properties of Jaimed Kuer. It was further explained by Mr Tarkunde that the Maharaja's reluctance in taking the properties was because of the family history of Bettiah Raj ever since the time of Raja Bir Kishore Singh and the Maharaja did not want to get rid of his Jethria caste and wanted to stick to the claim that Jugal Kishore Singh got the Bettiah Raj because of his adoption by Raja Dhruva Singh, a fact which we have already narrated in the earlier part of the judgment. This again, is another conjectural process of reasoning adopted by the learned Counsel for the respondents.

156. In fact, the main thrust of the respondents to rely on Ex. V and the two judgments was inspired by the fact that somehow or the other the genealogy mentioned therein should be proved to be correct and admissible. This is, however, not legally possible because the recitals of these documents have been held to be inadmissible in evidence. Moreover, even at the risk of repetition, we might say that it is too much to justify a rejected, dejected, sham and spurious transaction as being valid on a fictitious supposition that Bhola the executant was a sort of an illusory de facto though not a de jure reversioner and that too half a century after the judgment of the trial court and the appellate court (Exs. DD-30-31) had rejected this document as being sham and collusive which had become final and irrevocable. And all this futile and amorphous exercise only to rely on the genealogy given in Exs. V and P-2 which are both inadmissible and incorrect.

157. Dr Singhvi, appearing for the appellants, rightly pointed out that the entire edifice of the arguments of the respondents is based on a pack of cards which must collapse the moment the court makes a thorough probe into the various constituents or bricks which form the foundation of the edifice. The learned counsel also pointed out that even in the judgment (Ex. DD-30) it has not been said that the genealogy was wholly or undisputedly correct but the exact expression used is "the whole genealogical table of the family which is disputed". Since the genealogy was not admitted by the parties to the sale deed, it carries no value particularly when the judgment was not inter partes. For these reasons, therefore, the arguments of Mr Tarkunde must necessarily fail.

158. Finally, all the three documents, Exs. V, DD-30 and DD-31, are hit by the doctrine of post litem motam. We, therefore, agree with the conclusions arrived at by M.M Prasad, J., on this point. As regards Ex. P-2 which was only a plaint in the suit which was the subject-matter of Ex. DD/30, whatever is true of Ex. DD-30 equally applies to Ex. P-2 (Vol. IV, **p. 245).**

159. Ex. O-3 (Vol. 3, p. 85) is a written statement filed in Title Suit No. 55 of 1893 (the suit

which was the subject-matter of Exs. DD-30 and DD-31) in which Mahadev Prasad Singh denied all the allegations made by Bhola Singh and expressly stated that Bhola Singh was not an heir of Jaimed Kuer, and that the sale deed and ekrarnama executed in favour of the plaintiff was without consideration and are not valid. This document, therefore, far from supporting the plaintiffs negatives their case and is of no assistance to us.

160. We would next deal with Ex. Q-2 (Vol. V, p. 239) on which great reliance has been placed by counsel for the respondents. This document appears to be a genealogy which is said to have been produced on behalf of the defendants, Ram Ratan Singh and Harkhan Singh. This document is primarily used as the sheet-anchor of the plaintiffs' case in order to prove their genealogy. Unfortunately, however, the history, the manner and the circumstances under which this document has taken several different forms, throw a considerable doubt on the genuineness or authenticity of this document. One version of Ex. Q-2 is to be found in Vol. IV at p. 437-40 and another in Vol. V at p. 239 and a third which was sent to this Court by the Deputy Registrar of Patna High Court who claimed that it was taken out of a bundle of miscellaneous papers lying with the summons and vakalatnamas. The Deputy Registrar claims that this document (Ex. Q-2) is the one which was before the Judges of the High Court and was considered by them, but which seems to have been relied upon by the majority judgment of G.N Prasad and Mukherjee, JJ., and rejected by the minority judgment of M.M Prasad, J. Unfortunately, however, we are not in a position to determine as to which of the versions of Ex. Q-2 was actually considered by the court. According to the appellants, Ex. Q-2 is not a genuine document, which seems to have been introduced in the records of the present suit allegedly by the present plaintiffs.

161. To begin with, Ex. Q-2 was brought to the trial court by the Head Clerk of the Civil and Sessions Judge, Mirzapur. The original document was also called for and the stand taken by the appellant was that the document was of a very suspicious nature. At any rate, since the original document was marked in evidence, M.M Prasad, J., had rightly observed that the points urged by the appellants about the document being suspicious do not survive. It appears that the Head Clerk who was examined as DW 6 stated that the certified copy was marked as Ex. Q-2 although the earlier entry shows that the original itself was marked as Ex. Q-2. DW 6 further admitted that there was a table of contents attached to the records which he had brought but the number of suit was not mentioned in the aforesaid table. He further admitted that he was unable to decipher Item 5 in the table of contents and, therefore, could not say whether any genealogy was mentioned as being a part of the aforesaid list of documents.

162. Lastly, the learned Judge pointed out that DW 6 could not vouchsafe that the document was a part of the records of Title Suit No. 130 of 1856. Indeed, if this document had been filed in the said suit since a number of documents of that time had been produced in the present suit there could not have been any difficulty for the plaintiffs to have obtained a copy of the order-sheet or the list of documents to dispel any doubt regarding the authenticity of the original document. (Ex. Q-2).

163. M.M Prasad, J., relies on another circumstance that there is no mention of either the name of the court or the number of the suit or the names of the parties, nor any seal of the

court which could have identified or connected this document with the aforesaid suit. The document merely bears the date August 15, 1856. It appears from Ex. DD-39, a judgment in Suit No. 130 of 1856, that Ramadhin was not the vakil for the defendants. There are other circumstances which were relied upon by the learned Judge in order to doubt the veracity of this document. After considering a number of circumstances which it is not necessary for us to detail in the present case, the learned Judge observed as follows :

"It is, therefore, impossible to believe that those endorsements had been existing in the genealogy at the time of the filing of the document if at all in the suit. There cannot be the slightest doubt, even assuming that the document had been filed in the aforesaid suit, that it has been tampered with. Somebody interested in showing the relationship between Bansidhar and Bettiah family must have done it without considering that other documents would belie it.

* * *

It cannot be said that the fact that the defendant's lawyer filed the genealogy conclusively shows that the statements contained therein had been made by one of the two defendants or both. The genealogy could have as well been prepared on the instruction of anybody else making pairvi in the suit on behalf of the two defendants. It is not signed by either of the defendants. The authorship of this genealogical table cannot, therefore, be said to have been proved. This is another difficulty in the way of its admissibility." (Vol. VIII, pp. 515, 517)

164. Apart from the aforesaid circumstance the learned Judge has relied on the following circumstances to hold against the genuineness of the contents of this document :

"(1) Although it was a genealogy which formed the comer-stone of the case of the parties no Exhibit mark has been put on the document which one usually finds in a document accepted in any suit.

(2) All the important documents filed in the aforesaid suit have been enumerated or mentioned in the judgment (Ex. DD/39) but there is no mention of this genealogical table.

(3) There is no reliable evidence in this case to show that Harkhan and Ram Ratan were descendants of one Bikram Sahi or Bikram Singh who was shown as a brother of Bansidhar Singh. There are lot of other discrepancies pointed out by M.M Prasad, J. which have not been adequately rebutted either by the majority judgment or by the counsel for the respondents."

165. We now come to the most serious problem regarding the contents of Ex. Q-2. It is also worth noting that each version of Ex. Q-2 is distinctly different and it is difficult to ascertain and choose as to which of the three versions is correct. Another circumstantial evidence which throws serious doubt on the genuineness of the document is as to what had happened to the document which was got translated by the High Court, as observed by M.M Prasad, J., in his judgment. The letter of the Deputy Registrar of the Patna High Court seems to suggest that the third version which he suddenly found in the bundle of papers

containing summons and vakalatnamas was the real one. It is not at all understandable how an important document like Ex. Q-2, which was the subject-matter of a very serious controversy between the parties in the High Court, could find a place in the miscellaneous papers which do not contain important Exhibits or documents but are meant only for purposes of keeping formal papers like summons, vakalatnamas, etc. We find it difficult to believe the explanation of the Deputy Registrar of the Patna High Court that he suddenly found the real Ex. Q-2 in a bundle of papers and then despatched the same to this Court. But the fact is that this document was not despatched at the time when the records were sent to this Court though the other two versions had been sent.

166. It would appear from Ex. DD/39 (Vol. IV, p. 108) that Soman Kuer and Jaimed Kuer were related to the last male holder of the Bettiah Raj and were the plaintiffs of the suit whereas Ram Ratan and others were the defendants. Ram Ratan has not been proved to be related to the family of the late Maharaja or to that of the plaintiff. His name also was not mentioned by the plaintiffs in the pedigree propounded by them in the present suit. As Ram Ratan had no connection either with Bansidhar Singh or Ramruch Singh, the genealogy table filed by his pleader would not be admissible in evidence.

167. Realising these defects, Mr Tarkunde submitted that he would prefer to rely on Ex. Q-2 as brought out at p. 239 in Vol. V of the paper-book in the present suit though he did not give any particular reason or justification for the same. Assuming that Ex. Q-2 printed in Vol. V is the correct version, there are a number of errors and omissions in the aforesaid genealogy. It would appear that Thakur Hirday Narain Singh had five sons viz. Amar Singh, Bansidhar Singh, Rudra Sahi, Chhatra Sahi and Bikram Sahi. The name of Hirday Narain Singh finds clear mention in Ex. J where Durga Prasad mentioned the names of his sons but neither Bansidhar, nor Amar Singh, nor Rudra Sahi, nor Chhatra Sahi find place among the names of the sons of Hirday Narain Singh. Secondly, there is no mention of Ramruch Singh as being connected in any way with either Bansidhar or Debi Singh which completely falsifies the plaint genealogy, and the fundamental link which may connect the plaintiffs with the late Maharaja is absolutely wanting and even the name of Gajraj Singh does not find a place anywhere in this genealogy.

168. There are a number of other omissions and contradictions but it is sufficient for us to state that since the main links are not connected this genealogy is of no assistance to the plaintiffs. Apart from that this genealogy is not a public document but is a purely private document and it has not been shown as to who prepared this genealogy, in what manner, at what time and under what circumstances. No person having special means of knowledge of the various heirs mentioned in this document has been examined. In these circumstances and for the foregoing reasons we are unable to place any reliance on the mysterious and murky document which Ex. **Q-2 is.**

169. Exhibit Q-5 is another genealogical table of the late Maharaja which shows that he was a direct descendant of Debi Singh. A portion of this document is, however, torn and hence we cannot make out as to who the ancestor of Farman Singh was, nor is there any reference to Ramruch or Gajraj Singh. At any rate, both the majority and the minority judgments of the High Court as also of the trial court have rejected this document as being

a purely spurious one. In this connection, Mukherji, J., speaking for the majority, has clearly found that this document is inadmissible in evidence because it is alleged to have been written by Shital who had no special means of knowledge about this family. The learned Judge also found a number of inconsistencies and contradictions in the evidence of Avadh Behari, DW 32, who purported to prove Ex. Q-5. M.M Prasad, J., had also taken great pains to show that this document was per se not genuine as the paper on which it was written is old but the writing thereon is fresh. He also found that this document was somehow planted or introduced in a basta in which the papers of the Bettiah Raj case were kept. He fully agreed with Mukherji, J. that DW 32 was an entirely unreliable witness who purported to prove the signatures of Shital on Ex. Q-5. For these reasons, therefore, without travelling further into the domain of speculation and surmises we reject both these documents, Exs. Q-2 and Q-5, as being totally irrelevant and of no consequence.

170. The defects pointed out in the genealogies and the absence of vital links therein were explained away by Mr Tarkunde on the ground that since it was not necessary in the case of some of the genealogies filed to mention the entire line of ancestors or other connected relations, the incompleteness of the genealogies would not put the plaintiffs out of court or affect the correctness of the genealogies. We are, however, unable to accept this explanation which, apart from being fallacious, is ambivalent and enigmatic, for the very purpose of a genealogy is to connect all the important and essential links and if it falls short of doing so then it becomes destitute of any legal effect and has to be discarded in toto.

171. Reliance was also placed on Ex. P-5 (Vol. IV, p. 407) which is a plaint filed in Suit No. 108 of 1909 in the Court of Sub-Judge, Mirzapur, by Bhagwati Prasad Singh, father of one of the plaintiffs. This document has been filed for the purpose of adding force and weight to the genealogical tree filed and relied upon by the plaintiffs in this case. In the first place, Mr Tarkunde did not place much reliance on this document ; secondly, the plaint being in a suit not inter partes, the recitals therein are inadmissible in evidence ; thirdly, this pedigree, even if correct, stops at Gajraj Singh who is shown to be the final ancestor of the plaintiffs. This fact is not disputed by the appellants because, as already pointed out, the essential dispute is regarding the parentage and ancestry of Gajraj Singh, and this document throws no light on this vital question.

172. Reliance was placed on Ex. KK-1 (Vol. VII, p. 2) before the trial court but Mr Tarkunde appearing for the plaintiff has merely referred to this document without asking the court to place implicit reliance on it and, in our opinion, rightly, because this document is wholly irrelevant to prove the controversy in dispute and merely relates to an ikrarnama executed by Rajendra Kishore Singh nominating a committee for the purpose of managing the properties of his son, Chiranjiv Rajkumar Harendra Kishore Singh (the late Maharaja) until he attained majority. This merely shows the connection of Maharaja of Banaras and the late Maharaja of Bettiah. Therefore, this document is not relevant at all and it may therefore, be ruled out of consideration so far as the present dispute about genealogy is concerned.

173. Exhibits K and K-1 have been rejected not only by the majority judgment but also by the trial court. In these circumstances, it is not necessary for us to consider these documents in any detail. We would, however, just make a passing reference to these

documents to show that they do not support the case of the plaintiffs. These documents do not bear any seal or signature, nor is it possible to find out when, how and under what circumstances these documents came into existence. Ex facie, they are not public documents and are not admissible in evidence under Section 35 of the Evidence Act. Mukherji, J., speaking for the majority, has clearly held that these documents are inadmissible in evidence and observed thus :

"These documents, Exs. K and K-1, are alleged to be public and official documents and according to the plaintiffs of Title Suit No. 5 of 1961 they are in the nature of appendices or annexures to a report, Ex. J which is stated to be a public document. In our opinion, it has not been proved that these documents Exs. K and K-1 are in any way connected with Ex. J. These documents do not bear any seal or any signature and it is difficult to say as to when these documents came into existence. Under these circumstances, I do not accept the contention urged on behalf of the plaintiffs of Title Suit No. 5 of 1961 that these documents are public documents. These documents cannot be said to be admissible in evidence under Section 35 of the Evidence Act." (Vol. VII, p. 207)

174. Similarly, M.M Prasad, J., while commenting on these two documents and pointing out their infirmities concluded thus :

"In the absence of any evidence either intrinsic or extrinsic to that effect, it is not known whether it is a public or official document. In consideration of all these facts the two documents are neither admissible under Section 35 of the Evidence Act nor have any evidentiary value whatsoever even if they were held to be admissible." (Vol. VIII, ***p. 489)***

175. These documents are supposed to be appendices to Ex. J, the report of Durga Prasad, and have given some details regarding the relationship of Pahalwan Singh with some persons mentioned in these documents. But there is nothing to show that these documents were either appendices or parts of Ex. J nor have they been referred to at any place either expressly or by necessary implication in the report Ex. J. Furthermore, he has clearly stated that he had looked into "tumar" i.e account-books, for collecting some of the necessary materials. These documents are not in the nature of account-books at all. In these circumstances, therefore, all the courts rightly rejected these documents both as being inadmissible and unworthy of credence.

176. Ex. P-7 (Vol. V, p. 148) is also a certified copy of the plaint in Suit No. 139 of 1895 in the Court of Sub-Judge, Mirzapur. It would appear that this plaint was filed on July 26, 1895, that is to say, after the death of Maharani Sheoratan Kuer, senior widow of the late Maharaja. The plaintiff in that case was Ram Nandan Singh. In the first place, this document is hit by the doctrine of post litem motam because the dispute to the succession of the late Maharaja (Harendra Kishore Singh) had already started with his death in the year 1893 and the suit was filed two years thereafter, and it is therefore irrelevant. Secondly, the plaint filed in the suit not being inter partes, its recitals are inadmissible in evidence. The only claim put forward was that as the Bettiah Raj estate was an impartible estate, the widows of the late Maharaja could not succeed to his properties even as limited owners. Nothing of any significance turns upon the contents of this document and it was rightly not relied upon

by M.M Prasad, J.

177. Ex. G-II (Vol. III, p. 31) merely shows that the late Maharaja had made a gift of a portion of land in Pargana Majhwa, District Champaran for making a road for constructing a railway line in Bettiah but we are unable to find any relevancy of this document to the facts of the present case.

178. Ex. G-II/1 (Vol. III, p. 32) is another deed executed by the late Maharaja making a gift of a land for a similar purpose. This document also appears to be wholly irrelevant and does not prove anything of consequence.

179. Ex. H-II (Vol. III, p. 163) is a genealogy filed by the plaintiff of Title Suit No. 34 of 1905 after the present dispute had already arisen. Apart from the fact that in this genealogy a number of important names are missing, the names of Gajraj Singh, Ramruch Singh, Debi Singh or Bansidhar Singh are not at all mentioned but the highest ancestor mentioned is Raja Ugra Sen Singh. This genealogy, therefore, apart from being hit by the doctrine of post litem motam does not appear to be of any assistance to the plaintiffs and must, therefore, be excluded from consideration.

180. Ex. R(2) (Vol. III, p. 95) is merely a will executed by Maharaja Nawal Kishore Singh in favour of his son, Rajendra Kishore Singh. There does not appear to be any nexus between this document and the case of the plaintiffs as put forward in the present suit. This document is also, therefore, wholly irrelevant for the purpose of deciding the question at issue.

181. Ex. Q-3 (Vol. IV, p. 423) is a genealogical table filed in Title Suit No. 254 of 1868 and it describes the heirs of Raja Gaj Singh and appears to have been filed in order to prove the relationship of the Sheohar family with Maharaja Rajendra Kishore Singh who was the father of the late Maharaja. This also does not throw any light on the relationship of Gajraj Singh with Ramruch Singh, Bansidhar Singh and Debi Singh and is, therefore, of no consequence.

182. Other documents like Exs. NN-8 (Vol. V, p. 219) and B-3 (Vol. III, p. 205) have been filed merely to show the genealogy of the late Maharaja and to prove that Bhola Singh was the next reversioner of Janki Kuer. The fact that Bhola Singh was not the next reversioner of Janki Kuer at the time when he made the sale deed has been demonstrated by judgments Exs. DD-30 and DD-31. It is a different matter that he may have become the next reversioner some time afterwards. These documents also show that Pahalwan Singh and Raghunath Singh were brothers, yet Raghunath Singh does not find a place in the various genealogies filed by the plaintiffs, as already shown. These were merely filed to show that Raghunath Singh was a gotia of Maharaja of Bettiah. This fact is also proved by DW 36 but that does not help us at all.

183. There are a series of documents filed by the plaintiffs to prove that Bhola Singh was an ancestor of Bhagwati Prasad Singh. Even if these documents are proved, they merely take us up to Bhola Singh and some of them even up to Gajraj Singh but that linkage is not sufficient to determine the vital issue in this case viz. as to how Gajraj Singh was connected with Ramruch, Debi Singh and Bansidhar. For instance, Exs. GGG-13, GGG-14 and GGG-16

are recitals in several documents in the nature of rehan deeds, mortgage deeds and plaint in suits for declaration as also Exs. **DD-33, DDD-4 and DDD-5, GGG-8** which at the most prove that the plaintiffs were direct descendants of Gajraj Singh, and we shall assume for the purpose of this case, as the High Court has done, the fact that the plaintiffs were direct descendants of Gajraj Singh has been amply proved both by oral and documentary evidence. This fact is also proved by another set of documents viz. Exs. **GGG-3, GGG-4, GGG-5 & GGG-8, WW-1, WW-3 & WW-4, DD-40 and DD-38, XX-20, WW-2, YY-4 and P-4. All** these documents by and large prove the relationship of the plaintiffs with Bhola Singh and his ancestors' right up to Gajraj Singh but they completely fall short of proving the vital "links".

184. Ex. H merely shows that sometime in the year 1829, after the death of Pahalwan Singh the name of Balbhadra Singh was substituted. This fact, as we have already pointed out, is not disputed. This document also does not throw any light on the crucial question regarding the link between Gajraj Singh, Debi Singh and Ramruch Singh and takes us nowhere.

185. Similar is the case with Ex. M (Vol. III, p. 66) which is a deed of conditional sale executed by Pahalwan Singh and takes us at the most up to Debi Singh and shows that the late Maharaja was a direct descendant of Debi Singh. The question still remains as to what was the direct connection between Gajraj Singh and Ramruch Singh. Nor does it prove the connection of Gajraj Singh either with Debi Singh or Bansidhar Singh. In other words, no light is thrown by this document on the question that (even if it be conceded as it must be) the plaintiffs were direct descendants of Gajraj Singh or to the question of parentage of Gajraj Singh and his connection with Ramruch Singh, Debi Singh and Bansidhar Singh and unless this is done, the document does not take us anywhere.

186. Similarly, Ex. DD-44 is a rubakar which shows that Debi Singh was son of Bansidhar Singh and this fact is not disputed though the vital link between Debi Singh, and Gajraj Singh has not been shown. In other words, the plaintiffs, in order to succeed, must prove that he was the own nephew of Debi Singh, being the son of Debi Singh's full brother Ramruch Singh. This link has not been established by any of these documents. Taking these documents, therefore, ex facie they do not appear to be of any assistance to the plaintiff's case.

187. Exhibits Q-1 and T-68 are also documents falling under this class relating to the proof of relationship between Bhagwati Prasad, Bhola Singh and Gajraj Singh but the evidence stops there and there alone.

188. Exhibits F-1 and G are various remarks made by Debi Singh about lands in Taluka Majhwa which proved that Debi Singh was one of the zamindars in possession of Taluka Majhwa, as mentioned in Ex. J. These facts, however, cannot be disputed because Debi Singh who was the son of Bansidhar Singh and whose final ancestor was Hirday Narain Singh was undoubtedly in possession of Majhwa lands. But this does not improve the case of the plaintiffs unless the direct connection between Debi Singh, Ramruch and Gajraj Singh is proved.

189. Ex. NN-6 consists of extracts from the Banaras Gazetteer which shows that Barisal Singh of Majhwa was one of the persons who was killed in the battle of Marui which took place near about the year 1719. This fact is also mentioned in Ex. J but that does not mean that the plaintiffs have proved their case by virtue of these documents.

190. The other documents have already been discussed by us while referring to the documents said to have corroborated in Ex. J.

191. This is all the documentary evidence produced by the plaintiffs in support of their case. After a detailed and microscopic consideration of these documents we find ourselves in complete agreement with the dissenting judgment of M.M Prasad, J., that the plaintiffs have not proved that they were in any way directly connected with Ramruch Singh, Bansidhar Singh or Debi Singh. With due respect to the Judges constituting the majority, we are constrained to remark that they did not fully consider the factual, legal and relevant aspects of the documents produced nor did they consider what on an ultimate analysis could be the correct conclusions reached on a fuller and proper application of mind having regard to the vital issues involved in the case. The majority Judges seem to have been greatly influenced by the age of the documents or their nature rather than by the contents, relevancy and weight. The plaintiffs seem to have by a process of various combinations and permutations tried to present a very plausible case which at first sight seemed to be extremely attractive and appealing but on a very close analysis of the evidence produced by the plaintiffs we cannot think of any other conclusion that could be drawn except the one drawn by M.M Prasad, J., It is no doubt true that the judgments of Mukherji and G.N Prasad, JJ., show that they have taken great pains in applying their mind to the documents before them but, unfortunately, either the comprehensive aspects both of facts and law placed before us were not argued before them or with due respect they were carried away by the apparent importance of the documents without making a deeper probe or a scientific approach regarding the same.

192. With due deference to the learned Judges we might reiterate at the risk of repetition that they did not concentrate their pointed attention at the most vital question viz. as to whether or not the plaintiffs had proved that Gajraj Singh, who was undoubtedly the ancestor of the plaintiffs, was in any way connected with Ramruch Singh, Debi Singh and Bansidhar Singh. We have demonstratively shown that from the documents filed by the plaintiffs, the fundamental missing link between Ramruch Singh, Debi Singh, Gajraj Singh and Bansidhar Singh has not been proved and we are sure that if the majority Judges would have laid greater stress and attention on this aspect of the case, in all probability they might have found a large measure of agreement with the judgment rendered by M.M Prasad, J.

193. This now brings us to the finale of the highly complex and extremely complicated historical case in which we had to travel and traverse through diverse facts and figures, data and documents spreading over a period of almost two centuries. 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.

194. 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 witnesses 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 clause (5) of Section 32 of the Evidence Act which must be construed to the letter and to the spirit in which it was passed.

195. 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."

196. 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.

197. In the case of **Bahadur Singh v. Mohar Singh 1902 29 IA 1** the Privy Council cautioned the courts against accepting statements which may be inadmissible under clause (5) of Section 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.

198. In **Debi Pershad Chowdhry v. Rani Radha Chowdhrain 1904 31 IA 160** the law on the subject was very well expounded and clearly defined and while describing the nature of dependable evidence in such cases, the Privy Council made the following observations :

"It cannot be doubted that, in its quality, this is admissible evidence. The singular criticism of the High Court is that it comes from relatives of the appellant ; but it is difficult to see where else such evidence could be found, or that in the mouths of strangers it would have any value at all. Each of the persons who has spoken to this pedigree has been carefully cross-examined, and each proves circumstances, apart from the pedigree, which support his knowledge and credit. This is not the case of a pedigree learned by rote, but it is circumstantially corroborated, as far as time and memory admit."

(emphasis supplied)

199. In **Abdul Ghafur v. Hussain Bibi AIR 1931 PC 45** the Privy Council briefly summed up the law in this regard in the following words :

"It has been established for a long while that in questions of pedigree, I suppose upon the ground that they were matters relating to a time long past, and that it was really necessary to relax the strict rules of evidence there for the purpose of doing justice — but for whatever reason, the statements of deceased members of the family made ante litem motam, before there was anything to throw doubt upon them, are evidence to prove pedigree. And such statements by deceased members of the family may be proved not only by showing that they actually made the statements, but by showing that they acted upon them, or assented to them, or did anything that amounted to showing that they recognised them.

The rule of evidence thus enunciated is in accord with the terms of Section 32, sub-section (6) of the Indian Evidence Act, 1872, which is applicable to the present case."

200. In **Mewa Singh v. Basant Singh AIR 1918 PC 49** the Privy Council made very apt and valuable observations regarding the manner in which a pedigree could be proved and pointed out that in order to succeed, the plaintiffs must bring themselves within fourteen degrees and in this connection observed thus :

"The oldest names in a pedigree are naturally the first to be learnt and the first to be recited, and the names of the earliest generations may well survive in their proper order long after all trustworthy memory of their lives has passed away.

* * *

Those who claim to be the reversionary heirs must bring themselves within the necessary number of pedigrees viz. fourteen. They must show that they are both next heirs and near enough."

201. To the same effect is another decision of the Privy Council **in Bhojraj v. Sita Ram AIR 1936 PC 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 their objective appraisal of the veracity or dependability of the witnesses in pedigree cases, nor have the decisions given any concrete formula of universal application for adducing oral evidence which may pass the judicial scrutiny.

202. Mr Tarkunde relied particularly on the observations of the Privy Council in Devi Pershad Chowdhry case extracted above to show the approach to be made by the court. The ratio of that case is in no way inconsistent with what we have said above. The Privy Council did not accept the view of the High Court because in their opinion the High Court had rejected the oral testimony only on the ground that the witnesses were relations of the appellant. That was obviously wrong.

203. 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 thoroughly and according to the standards laid down by the Privy Council and this Court.

204. Apart from the aforesaid authorities, there are some famous textbooks which also have laid down certain principles for the appraisement of pedigree evidence. Taylor on Treatise on Evidence has pointed out in para 648 at p. 414 that the declarations by the deceased relatives deposed to by interested claimants rarely deserve much weight because these declarations are made by the relations for the first time after the contest of claim has arisen. In accepting this kind of evidence, the court runs the risk of being deceived by deliberate falsehood. The author further goes on to state thus :

“Little reliance can be placed on accuracy of his testimony, for men, without deliberately intending to falsify facts, are extremely prone to believe what they wish, what they believe with what they have heard and to ascribe to memory what is merely the result of imagination.”

205. Similar view was expressed in **Lovat Peerage case 1885 10 AC 763 HL** which is an example of how hearsay evidence can sometimes be fraught with serious consequences. In this case, it was emphasised that the time, occasion and manner of acquiring knowledge of pedigree to prove the statement of a deceased relation is crucial to the test of veracity and an imaginary story related by the witness may ultimately turn out to be a mere gossip. It was pointed out by Lord Watson at p. 783 of the report that in taking the depositions of old witnesses, the court must take into consideration that there may have been an erroneous impression in the minds of those who proved the claimant’s case.

206. **Wigmore on Evidence** in Vol. V at pp. 296 and 297 has expressed more or less the same views and observes as follows :

“Accordingly the only sound rule for the use of individual declarations is that the declarant himself must be shown to be unavailable.

* * *

The circumstantial indication of trustworthiness has been found in the probability that the 'natural effusions' (to use Lord Eldon's often-quoted phrase) of those who talk bias or passion exists are fairly trustworthy, and should be given weight by Judges and juries, as they are in the ordinary affairs of life."

207. It has also been pointed out by the author that the declarations which have been made before any controversy arises must be given greater weight. This aspect has also been emphasised in one of the Privy Council cases referred to above.

208. The majority Judges and the dissenting Judge have vitally differed in the appreciation of the oral evidence but in the case of some witnesses all the three Judges have refused to rely on the evidence of the said witnesses, which has to be ruled out at the very outset. The witnesses examined by the plaintiffs have been labelled as DWs because at one time the plaintiffs were defendants in the suit brought by other defendants-claimants but when the plaintiffs themselves filed the present suit laying a formidable claim as being the next reversioners of the late Maharaja, their witnesses continued to be labelled defence witnesses though they were really witnesses for the plaintiffs. The trial court ought to have put some mark in order to differentiate the witnesses of the plaintiffs and the defendants but unfortunately that has not been done. However, there is no dispute on the aforesaid description of the witnesses ; so this matter need not detain us any further.

209. 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.

210. 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 becomes worse confounded, remembrance 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 happening of a particular contingency which lights up the past such as marriage, death, divorce, accident, disappointment, failure, 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 every day. 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.

211. 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 Theasaurus of Quotations :

Rhoda Thomas Tripp)

212. 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 Quotations :

Rhoda Thomas Tripp)

213. Similarly, Baltasar Gracian in The Art of Worldly Wisdom very aptly puts the frailties of human memory thus :

“The things we remember best are those better forgotten.”

214. We shall now endeavour to approach and analyse the evidence of plaintiffs witnesses in the light of the principles enunciated above.

215. The oral evidence led by the plaintiffs group consists of the testimony of DWs 13, 21, 32, 33, 34, 35, 36 and to some extent PW 40. Some of these witnesses were examined on commission which will be made clear when we deal with the evidence of individual witnesses.

216. To start with, so far as the evidence of DW 32 Awadh Bihari Lall (Vol. Ip. 411) is concerned, it has been rejected both by the majority and the minority judgments in the High Court as also by the trial court. Mukherji, J. speaking for the majority after carefully scanning the evidence of DW 32, observed as follows :

“I have already adverted to above about the statement made by DW 32 in the court below and since he appears to be an omnibus witness and there are lots of inconsistencies in his evidence, it will not be proper for this Court to place reliance on his statement.” (Vol. VIII, ***p. 241)***

217. Similarly, M.M Prasad, J., who had rendered the dissenting judgment, rejected the statement of this witness in the following words :

Ultimately, the witness has admitted that he was a classmate of Bhagwati Prasad Singh, the father of these plaintiffs. That explains everything the witness represents a typical partisan

witness who can go out of the way to support one party and expose himself even to ridicule for the sake of such support. In my view, no reliance can be placed at all on his evidence.

218. The trial court also did not place any reliance on the evidence of this witness. In these circumstances, it is not necessary for us to deal with the evidence of DW 32, nor was any reliance placed by the counsel for the respondents on his evidence.

219. The evidence of DW 33, Bhairo Prasad (Vol. I, p. 433) was rejected by M.M Prasad, J. though accepted by the majority but, in our opinion, wrongly. Before dealing with the evidence of this witness, we might clarify that the trial court had numbered two witnesses as DW 33 viz. Bhairo Prasad, who was the main witness in Trial Suit No. 5 of 1961, and Kamla Prasad Singh (Vol. I, p. 299) who was a witness in Trial Suit No. 25 of 1958. The trial court as also the High Court rejected the evidence of Kamla Prasad Singh, with which we are not concerned at all. We are mainly concerned with DW 33, Bhairo Prasad who was examined on the point of genealogy in Suit No. 5 of 1961 and it is his evidence which we have to consider while dealing with the present case.

220. It is true that both the trial court and the dissenting Judge in the High Court rejected the evidence of Bhairo Prasad but Mukherji, J., speaking for the majority came to a different conclusion and held that Bhairo Prasad was not an interested witness and there was no reason to discard his evidence. With due respect, after going through his evidence, we find ourselves unable to agree with Mukherji, J., and for the reasons given hereafter we are satisfied that no reliance can be placed on the evidence of this witness.

221. To begin with, we might state that he is one of the witnesses who is almost an octogenarian. While the witness gave his age as 85-86 years, the Commissioner before whom he was examined estimated his age at 75 years, which seems to have, been accepted by Mukherji, J., Although this is a very minor discrepancy, Mukherji, J., seems to have overlooked that there is a tendency on the part of the villagers to support a case of this kind by overstating their age so as to introduce an element of personal knowledge in order to prove old genealogies. On the other hand, the Pleader-Commissioner, who recorded the evidence being a lawyer and an educated person, would be in a much better position to estimate the correct age of the witness. However, nothing much turns on this discrepancy and we shall presume that in view of the very old age of the witness, his evidence merits serious consideration. There is no doubt that this witness was closely connected with the family of Bhagwati Prasad Singh, father of the plaintiff Radha Krishna Singh as he has admitted to have scribed many documents on behalf of the family of Bhagwati Prasad Singh. Mukherji, J., also found that the witness was intimately connected with the family of Bhagwati Prasad Singh as this witness and his ancestors have scribed numerous documents for different members of the family and on this ground the learned Judge thought that he would be a more competent witness to depose about the genealogy than any other witness. Assuming what Mukherji, J., says is correct, the fact remains that being intimately connected with the family of the plaintiffs the witness cannot be said to be an independent one and he was deeply interested in the success of their case. Therefore, while this may not be a sole ground for rejecting his testimony his evidence has to be taken with great care and caution particularly when he is not deposing as an eyewitness but as a

witness to the genealogy which he may have heard from his ancestors. The approach made by Mukherji, J., in appreciating his evidence does not appear to be correct. The learned Judge has referred to several documents which have nothing to do with the genealogy in question. On the question of genealogy, which was the vital question to be determined, the learned Judge has not examined the intrinsic evidence of this witness on merits. We would, therefore, examine his evidence on the question of genealogy which was the only point to prove which he (sic) was examined.

222. After narrating the genealogy of the plaintiffs right from Bansidhar Singh he states that he came to know the genealogy from Nand Kumar Singh, Jagat Bahadur Singh as also from his grandfather, Kamta Prasad, Bhagwati Prasad, Mahadeo Singh. According to this evidence all the persons concerned from whom he had learnt the genealogy, excepting Mahadeo Singh, were dead. So far as his information derived from Mahadeo Singh is concerned, it will be inadmissible as hearsay because, according to him Mahadeo Singh is alive. At p. 439, para 51 of his evidence, he states that the narration of the genealogy by the persons mentioned by him took place in Chait 1894 (Hindi Samvat year) — he did not remember the corresponding Fasli year — that is to say when he was 15 years old, if his estimate of his own age is correct. If we accept the estimate of the Commissioner who recorded his evidence, then he was only about 5 years in which case it is impossible to believe that he would be in a position to remember such a long drawn genealogy after such a long time when he heard the same as a boy of only 5 or 15, as the case may be. This aspect of the matter has been completely overlooked by Mukherji, J. Assuming, however, that he was 85 years and therefore 15 years of age when the narrating incident took place, he does not give any particular occasion on which so many persons went on narrating the genealogy to him. He admits that he does not remember the exact date when the narration took place nor did he make any note on any paper but was speaking entirely from his memory. He further admits that all the persons mentioned by him narrated the genealogy at one sitting and yet he is unable to give the special occasion on which the narration was done. So far as his grandfather was concerned, he says that the genealogy was narrated by his grandfather in 1895. Though he does not remember the month, nor did he make a note of it on any paper, it is curious that he remembers the exact time of narration which, according to him, was 7 p.m Another pertinent statement which he made and which completely falsifies his evidence may be extracted thus :

“The family members of Nand Kumar Singh, were weeping over the death of Maharaja Harendra Kishore Singh and told the said fact to my grandfather who in reply narrated the genealogy of Babu Bansidhar’s family of Majhwa.”

223. According to this statement it is clear that both the family members of Nand Kumar Singh and his grandfather narrated the genealogy of Bansidhar’s family when they were weeping over the death of the late Maharaja (Harendra Kishore Singh) and the weeping took place at the house of Thakur Nand Kumar Singh. It is common ground that the late Maharaja died in the year 1893 while the incident of narration took place in 1895. It is absurd to believe that the weeping of the family members would take place two years after the death of the Maharaja. Similarly, when he was further cross-examined about the time and the manner in which he acquired the knowledge of the genealogy, he made a number

of inconsistent statements : sometimes he said that he acquired knowledge of genealogy from Nand Kumar Singh but he did not reduce it in writing. In answer to another question, he admits that the entire genealogy was narrated to him at one stretch but he did not learn the same at once but from time to time. He could not say how far he learnt the genealogy when it was narrated to him and then said that he learnt the same on hearing it repeatedly.

224. Indeed, if this is the primordial and rudimentary reflex of his memory, then it is the strongest possible circumstance to discredit his testimony and it leads to an irresistible inference that the store of repeated narration of the plaintiffs' genealogy is nothing but a pure figment of his imagination concocted to help and oblige his relation, friend, philosopher and guide (Bhagwati Prasad Singh). Again he makes a very strange statement which fully belies the false story of the narration. He says that the late Maharaja died in Chait 1894 AD whereas the Maharaja died on March 26, 1893, a year before. This is the best test and proof of his weak or frail memory. A person who could not remember the date of the death of his close relation, the late Maharaja who furnished the occasion for the narration of the genealogy by various relations of the family, is not expected to remember the genealogy narrated to him long before the death of the late Maharaja. This circumstance, therefore, completely destroys his evidence regarding the proof of genealogy. From a general reading of his evidence on the point of genealogy we are convinced that he has been set up to repeat parrot-like a concocted story to prove a genealogy which, in fact, never appeared to have been narrated to him. His evidence on this point, therefore, is not free from suspicion and we are unable to place any reliance on the same. We are constrained to observe that in spite of these serious infirmities and manifest defects, Mukherji, J., overlooked the aforesaid infirmities in believing the evidence of this witness. On the other hand, M.M Prasad, J., the dissenting Judge has made a correct approach to his evidence and has pointed out a number of defects and infirmities which show that his evidence is absolutely ridiculous. For instance, in cross-examination, the witness was put questions to test his memory and he denied knowledge of the families of his own near relations whose names he could not give. How can it be believed that if he could not even remember the names of his own near relations, he would remember the names in genealogies running into twelve degrees. He also laid stress on the facts referred to above, and little did the witness realise that although the late Maharaja died in 1893, the weeping took place in 1895 i.e two years after his death, which is impossible to believe. The learned Judge observes that there could be no better proof of a witness being hired and tutored to say a thing than the aforesaid discrepancy. None of the important circumstances relating to testing the memory of this witness relied on by the dissenting Judge has been considered by Mukherji, J. For these reasons, therefore we entirely agree with the conclusion of the dissenting Judge that it is impossible to place any reliance on the evidence of this witness.

225. Narbadeshwar Dutt Sharma, PW 40 (Vol. I, p. 158) who was essentially a witness for the plaintiffs of Title Suit No. 44 of 1955 has incidentally deposed to the genealogy of the plaintiffs-respondents. His evidence was considered by the majority and rejected on the ground that he had no connection with the family of Bansidhar Singh and as he did not hear the name of Farman Singh or Gajraj Singh, he was not competent to prove the plaintiffs' genealogy. In this connection, Mukherji, J. observed thus :

"This witness was also an unsummoned witness. He cannot even tell the name of the father of Bhagwati Prasad Singh. He did not even hear the name of Farman Singh or Gajraj Singh of Village Baraini. In this circumstance, this witness does not appear to be a competent witness on the point of genealogy."

(Vol. VIII, p. 247, para 108)

226. Thus, it is not necessary for us to make any further probe into the intrinsic merits of the evidence of PW 40 which stands rejected.

227. The other witnesses who are relevant on the point of genealogy are DWs 13, 21, 32, 34 and 35 and 36 (the evidence of DW 32 having been rejected by all the Judges of the High Court). Mr Tarkunde mainly relied on the evidence of these five witnesses and submitted in the course of his arguments that if he was not able to persuade the court to accept the evidence of these witnesses, then the plaintiffs-respondents would not succeed on the basis of the oral evidence led by him.

228. We, now propose to deal with the evidence of the aforesaid witnesses individually. We will, however, take up the evidence of DW 13, Radha Krishna Singh (Vol. I, p. 335) at the end because he is one of the main plaintiffs-respondents and therefore a highly interested witness, which may by itself be no ground to distrust his testimony but is undoubtedly a circumstance to scan his evidence with some amount of caution.

229. This brings us to the evidence of DW 21, Bhuneshwar Prasad Singh (Vol. I, p. 385). To begin with, the witness gives his age as only 38 years, hence, it would be necessary to scrutinise the sources of his information with great care and caution before his statement can be admissible. The witness states that Bansidhar Singh had three sons viz. Ramruch Singh, Ram Fakir and Debi Singh and Gajraj Singh, the alleged ancestor of the plaintiff, was a son of Ramruch Singh. It is pertinent to note that Ram Fakir Singh, who was another son of Bansidhar Singh, is not shown in the plaintiffs' genealogy at all. This lacuna was sought to be explained by Mr Tarkunde on the ground that Ram Fakir Singh had already died and therefore, his name is not mentioned in the genealogy. As the genealogy mentions a number of persons, who had died childless, in the list of his ancestors, there is no reason why Ram Fakir Singh's name, who was actually a brother of Debi Singh, should not be shown in the plaintiffs' genealogy. We are, therefore, unable to accept the somewhat unconvincing reasons given by Mr Tarkunde regarding the absence of the name of Ram Fakir Singh in the plaintiff's genealogy. This omission is rather important because it would throw a flood of light on the sources of information of the witness and his competency to depose about the genealogy.

230. The witness further claims that one of the brothers of Bansidhar Singh was his ancestor and goes on to state that Hirday Narain Singh, who according to the plaintiff, was the father of Bansidhar Singh, was son of Hansraj Singh. The witness claims his ancestry from Madho Singh, who was one of the seven sons of Hirday Narain Singh. It may be noted that there is absolutely no mention of either Hansraj Singh or Hirday Narain Singh or Madho Singh or any of the brothers of Bansidhar Singh or even of Ramhit Singh or any of his

descendants in the plaint genealogy. It would be pertinent to note in this context that the descendants of Ramhit Singh had appeared as witnesses in Suit No. 55 of 1893 and had declared that Ramruch Singh was not the son of Bansidhar Singh. In these circumstances, this witness cannot now be heard to say that Ramruch Singh was the son of Bansidhar Singh and not of Mangal Sah. The witness admits that he has not seen any written genealogy in respect of which he had deposed in the court. He appears to be closely connected with Gauri Babu who is the Pairvikar of the plaintiffs and admits in his evidence that Gauri Babu had gone to him in Village Baraini two/three years before his deposition ; thereby he indirectly admits that he was brought to depose in the court at the instance of Gauri Babu. Although the witness has denied that he was staying at the house of Gauri Babu for about a month and was being tutored, reading within the lines of his testimony it does appear that Gauri Babu had no doubt brought the witness to Patna and he (Gauri) being a Pairvikar of the plaintiffs, as admitted by the witness, must have brought him for a certain purpose.

231. Coming now to the intrinsic merits of his evidence we would first trace the source of knowledge of this witness. To begin with, he states that his father told him the genealogy about 50 times but he does not remember as to when the genealogy was told to him last time. He admits that there was no special occasion for his father to have told him the genealogy. He also admits that he had no written genealogy. This statement is obviously incorrect because normally a genealogy is recited on certain festive occasions like marriage, shradh etc. and not just by the way. Further, it is difficult to believe that even if his father had narrated the genealogy he would do it as many as 50 times without any rhyme or reason. The witness goes on to state that his father had told him as many as 1000 names of Bhumihar Brahmins living in Villages Majhwa, Garauli, Baraini and lot of other villages. He further states that he was also told the names of gotias only who lived in the aforesaid villages. The entire tenor of his evidence shows that the source of his knowledge, which is from his father, appears to be a tainted one and has been manufactured for the purpose of this case. The witness further admits that he had not seen any papers showing Raja Jugal Kishore Singh as the son of the daughter of Raja Dhruva Singh. He pretends to know that Bhagwati Prasad Singh was the nearest legal heir of the late Maharaja but he does not disclose the source of his information. Furthermore, while deposing about the relationship with the Maharaja of Banaras he says that he has not seen any papers showing that Maharaja of Banaras belonged to Dionwar sub-sect. He further says that he heard this fact from his father when he was only 10-12 years old.

232. The clear and categorical statement of DW 33, Bhairo Prasad, shows that none of the descendants of Bansidhar Singh had settled in Village Baraini and that Bhagwati Prasad Singh of Village Baraini had no genealogical connection with Majhwa. Thus, DW 21 is sadly contradicted by the evidence of DW 33. Furthermore, according to DW 21, Babu Debi Singh had five sons but this is completely falsified by the plaintiffs' genealogy as also the case made out by them and sought to be proved by other witnesses.

233. It was further contended by Mr Tarkunde that according to DW 21, he was a descendant of Hirday Narain Singh or of Madho Singh and therefore he would be second in the line of claim to the reversionary interest of the late Maharaja and as such he is not

likely to depose against his own interests. The witness is a young man and we have already shown that the source of his information about the plaint genealogy is not believable. The manner in which the witness was brought from his village to Patna by the Pairvikar of the plaintiff and the incorrect statement made by him regarding the genealogy clearly show that whatever he may profess he does not seem to be in any way connected with Hirday Narain Singh. In fact, DW 21 himself admits that he had no concern or interest in Bettiah Raj. He further admits in para 18 of his evidence that he came to know about the case from the plaintiff, Radha Krishna Singh, and that he did not know the claim of the respective parties. While deposing regarding the genealogy he could not tell the order of death of any of his ancestors nor could he tell in which period Hansraj and Hirday Narain Singh existed. He admits that when his father repeated the names of his ancestors 50 times he was only 16 years old. It is difficult to believe that a casual recitation of the names 50 times would be remembered by him after a lapse of more than 20 years. M.M Prasad, J., has given very cogent and convincing reasons for disbelieving the evidence of this witness. The learned Judge has pointed out, apart from the facts mentioned above, that the witness has not come across any written genealogy even of his own family, what to speak of the family of the plaintiff. Finally, the witness admitted that he is a cousin of Kamla Singh, DW 33. If this was so, then the genealogies given by Kamla Singh and the witness should have tallied but it would appear from the evidence of DW 33 that he gave a genealogy different from the one given by this witness. Having regard to the circumstances and the statements made by this witness, we find it impossible to place any reliance on the testimony of this witness. We therefore agree with the opinion of M.M Prasad, J., that the evidence of this witness is not worthy of credence.

234. Nagendra Kumar, DW 34 (Vol I, p. 445) sought to prove the genealogy of the family. The witness was 60 years old at the time of his deposition and was a resident of Majhwa. He claimed to be a descendant of Hansraj Singh, the father of Hari Narain Singh and Hirday Narain Singh, as the witness says. According to the witness, Hari Narain Singh had a son named Sah Makund and the witness claims to be from the branch of Sah Makund. Coming to the genealogy, he states that Hirday Narain Singh had a son named Bansidhar Singh, and that Bansidhar Singh had three sons viz. Ram Fakir, Ramruch and Debi Singh. We have already pointed out that although the name of Hirday Narain Singh finds place in Ex. J yet there is absolutely no reference to Bansidhar Singh. We shall presently show that there is an important document Ex. B-32 (Vol III, p. 42) where Ramruch Singh has not been mentioned as the son of Bansidhar Singh but instead Gajraj Singh has been mentioned as the son of Bansidhar Singh. This document is rather important because it is a certified copy of a deposition of one Bhupraj, who was a witness as far back as 1909 in the earlier suit. The statement of this witness that Bansidhar Singh had three sons, including Ramruch Singh, is therefore clearly contradicted by Ex. B-32, a document which came into existence long before the plaintiff’s suit of 1961 entered the arena of the present case. Moreover, in 1909, the memory of Bhupraj would have been much fresher than that of this witness.

235. In order to test the veracity of this witness on the touchstone of the principles enunciated by this Court and the Privy Council we would refer to the source of his knowledge. Admittedly, the witness had no personal knowledge about the genealogy of the family of the plaintiffs. He however represented in his evidence that he had learnt the

genealogy from his granduncle Hari Sharan Singh and Bhagwati Prasad Singh, father of one of the plaintiffs, both of whom are now dead. He further admits that his granduncle, Hari Sharan Singh, died in or about the year 1936. This means that at the time when the witness was told that about the family genealogy of the plaintiffs he was only 14-15 years and was studying in Class VI of a middle school. He then goes on to state that at the time when the genealogy was narrated, 5-6 persons of his family were present but he does not even remember the name of any of them. It is rather strange that he does not even remember the names of the persons in whose presence the genealogy was narrated by his granduncle and yet he traces the genealogy of the family told to him about 45 years back. This important circumstance shows that his memory is very weak, in which case it is well nigh impossible to believe that he would remember the genealogy narrated to him by his granduncle though he could not give the names of the persons in whose presence the genealogy was narrated to him. He does not appear to have made any note of the genealogy on any paper when his granduncle repeated the same, nor has he mentioned any particular occasion on which the genealogy was narrated to him which may have enabled him to remember the same. The graphic details about the relationship of Hari Narain Singh right up to Harendra Kishore Singh could not have been given by him in these circumstances. It appears, therefore, as rightly contended by the appellant, that he, being a highly interested witness, has concocted all conversations, chances and coincidences when his granduncle told him the genealogy. Moreover, human memory, faint and vulnerable as it is, is not likely to reflect facts of 40-50 years back unless there is something in the shape of a particular document, mode, occasion or something to remind him. At the time when the genealogy was narrated to him, the witness was only a boy of 14-15 years and he would not have at that time cared to make any particular note of the genealogy as he would be least interested in the same at that time. He further admits that his granduncle narrated to him the genealogy from his memory and not from any note, nor was the said genealogy written on any piece of paper.

236. The witness admitted that he could remember only some portion of the genealogy then and there and not the whole. He clearly admits in his deposition that he learnt the genealogy from Bhagwati Prasad Singh in the winter season after the death of Maharani Janki Kuer, that is to say after the present dispute had already started and in these circumstances his evidence is inadmissible under Section 35 of the Evidence Act on a point of law viz. being hit by the doctrine of post litem motam. Again, he embarks on a flight of fancy and goes on to narrate facts which he could never have known without reading some authentic historical book. He relates the facts of the battle of Marui which took place as far back as 1719.

237. Finally, he attributes five sons to Debi Singh whereas in the plaint it is stated that Debi Singh had only one son viz. Aini Singh. Thus, far from corroborating the genealogy, his evidence positively contradicts the plaintiff’s genealogy. He has also made a number of errors in describing the genealogy which does not tally with the plaintiff’s genealogy. In our opinion, the evidence of this witness appears to be got up and does not inspire any confidence. This is demonstrated by the fact that he admits that the plaintiff Radha Krishna Singh had told him to give evidence in the case and yet he says that he had never narrated the genealogy to Radha Krishna Singh. Indeed, if this was so, it is not understandable why

Radha Krishna Singh would have asked him to depose in his favour.

238. To crown it all, DW 34 admits that there is no document either to show that he was originally a resident of Majhwa or that Hansraj Singh was a common ancestor of this witness and Bhagwati Prasad Singh. Mukherji, J., who delivered the majority judgment, has dealt with the evidence of this witness rather summarily without alluding or referring to the important facts, infirmities, flaws and defects as discussed above which make the evidence of this witness both faulty and imperfect. All these circumstances taken together render him an unreliable witness.

239. The next evidence that falls for consideration is that of Debi Singh, DW 35 (Vol. I, p. 453) who belongs to Mauza Majhwa. It is curious that he claims his descent through Harkhan Singh who was disclaimed and disowned by Soman Kuer and Jaimed Kuer in the plaint filed by them in Suit No. 130 of 1856 relating to Hansraj Talab (Pokhar), which falsifies the evidence of this witness at the very inception. According to the witness, there were some cases relating to Hansraj Talab between Harkhan Singh and Ram Ratan Singh on the one side and Soman Kuer and Jaimed Kuer on the other. The witness claims to belong to the family of Ram Ratan and Harkhan who are descendants of Bikram Sah. He admits that Harkhan Singh was in the service of Bettiah Raj and also of Soman Kuer and Jaimed Kuer and after the dispute resulting from the suit, Harkhan's services were terminated. In the said plaint, Jaimed Kuer and Soman Kuer vehemently denied having any relationship either with Harkhan or Ram Ratan Singh. It seems to us that he has claimed Harkhan Singh and Bikram Sah as his ancestors in order to make his evidence admissible so as to trace the source of his information from the aforesaid two persons who are now dead. The plaint genealogy does not mention the name of Harkhan Singh and Bikram Sah as having any connection with Jaimed Kuer or Soman Kuer. According to the plaintiff's own case Jaimed Kuer was the wife of Balbhadra Singh whereas Soman Kuer was the wife of Tilak Singh, son of Pahalwan Singh. According to his evidence, he learnt the genealogy of the family from Jadunandan Singh, Vasisht Singh, Bhupraj Upadhya and Bhagwati Prasad Singh. All these persons are dead and he seems to have traced the source of his information to deceased persons in order to make his evidence admissible under sub-section (5) of Section 32 of the Evidence Act. The witness goes on to state that Jadunandan Singh was his granduncle and one of the descendants of Bikram Sah. In order to give a touch of truth and a cover of legal admissibility he gives a twist and turn by asserting that Bhupraj Upadhya was the Purohit of his family and wants us to believe that since he had heard the plaintiff's genealogy from the Purohit, there could be no doubt about the correctness of the said genealogy.

240. As usual with the other witnesses, this witness states that Jadunandan Singh gave out the family genealogy of Bansidhar Singh and Bikram Sah when he was aged only 15-16 years. He further asserts that Dalthumbhan, Prayag Singh and Parsidh Singh were also present and none else. None of these witnesses have been produced to support the testimony of this witness. It is also not known whether these witnesses are dead or alive. He then states that at the time when the genealogy was narrated to him he could remember only 10 or five names but he could not name those 10 or five names exactly. A person who is not able to remember the names disclosed to him about 40-46 years ago

could not possibly remember the names of all the ancestors of Jadunandan Singh after such a long lapse of time. This part of his evidence is against the balance of probabilities and fails to consider infirmities and infallibility of human memory. He admits that he did not make any note of the genealogy of Bikram Sah or Bansidhar Singh but heard the same from Bhagwati Prasad Singh. He further stated that before hearing the genealogy from Bhagwati Prasad Singh he had occasion to narrate the same to his son, Sarju Prasad. This part of his evidence is wholly unintelligible because if he himself had not heard the genealogy from Bhagwati Prasad Singh, how could he narrate it to Sarju Prasad.

241. In order to further test his memory he was asked a few questions and he admitted that he did not remember the year of his own marriage although he was married at the age of 18 years. He further admitted that he did not remember the year when his mother died. It is not understandable how he could remember the genealogy narrated to him long before if he could not remember the facts which were directly within his personal knowledge viz. either the year of his marriage or of the death of his mother. Another person from whom the witness is said to have acquired knowledge of the genealogy is, according to him, Vashist Singh. He admits that he does not remember the time, year or even the occasion for hearing the genealogy from Vashist Singh nor does he remember how many other persons were present when Vashist Singh narrated the genealogy.

242. Doubtless, this witness is highly interested being a close relation and friend of Bhagwati Prasad Singh (father of the plaintiff). Though that circumstance alone may not be sufficient to discard his evidence, yet it is a factor to be reckoned with and shows that the testimony of this witness is tainted. As the stakes in the present case are very high, his evidence has to be viewed with great care and caution. We have already adverted to his previous statement in the evidence where he has said that he did not remember more than 10 or five names in the genealogy narrated to him by Jadunandan Singh yet he claims that Vashist Singh gave out exactly the same genealogy as given by Jadunandan Singh which in fact consisted of the entire family of Bansidhar Singh up to twelve degrees and eight degrees commencing from Bansidhar Singh to Bhagwati Prasad Singh. Thus, this clear inconsistency in his statement completely belies the fact of narration of the genealogy by Vashist Singh.

243. Another circumstance to falsify his evidence on the point of genealogy is that one of the persons from whom he claims to have learnt the genealogy is Bhupraj Upadhya, priest of the late plaintiff, Bhagwati Prasad Singh. The witness says that Bhupraj narrated the genealogy but he could not say whether it was 50 times, 100 times, 20 times, 10 times or only five times, nor does he recollect the time when the genealogy was repeated on the second or the third occasion. So far as Bhupraj Upadhya’s knowledge is concerned, it has been clearly proved in this case that he could not at all be aware of the correct genealogy of the family of the late Maharaja. In the title suit of 1908 filed by the late plaintiff (Bhagwati Prasad Singh), Bhupraj deposed as a witness and the certified copy of his evidence is Ex. B-32. A perusal of his deposition would show that Bhupraj had himself given a written genealogy on the most vital point by saying that Gajraj Singh was the son of Bansidhar Singh, thereby giving a complete go-by to the case of the present plaintiffs that Gajraj Singh was son of Ramruch Singh. In fact, in his statement Bhupraj omitted the

existence of Ramruch altogether. Indeed, if this was so, how could this witness (Debi Singh) have learnt the genealogy from Bhupraj in respect of a point of which Bhupraj himself appears to be totally ignorant. This is a very strong intrinsic circumstance to discard the testimony of this witness. Furthermore, while the witness attempts to give a very long and complicated genealogy which would show that he possesses an excellent and shocking memory yet he admits that he does not remember the date of the death of his own father and mother or even of his own marriage. It is impossible to believe that a person who had such a short and weak memory so much so that who could not remember even important events of which he had personal knowledge, would remember a long and complicated genealogy running into more than a century. Thus, the hurly-burly, skinny and scrawny process of repeating the huge crowd of names of so-called ancestors of the plaintiffs said to have been narrated to him has been proved to be unreliable on his own evidence, with the result that he has made confusion worse confounded. This shows that he was out to support the plaintiffs' case without any sense of responsibility or regard for truth.

244. As regards the fact that he heard the genealogy from Bhagwati Prasad Singh in 1954 at the Shradh ceremony of Janki Kuer, this is inadmissible in evidence being post litem motam because on the death of Janki Kuer the dispute had already arisen and the question as to who would be the nearest reversioner had come out in the open.

245. Having regard, therefore, to the glaring inconsistencies and discrepancies in his statement, the shortcomings of his memory which has been demonstratively shown by his subsequent statements as referred to above, it seems that his evidence regarding the narration of the genealogy by various persons is nothing but a cock and bull story. For these reasons, therefore, we are not at all inclined to place any reliance on his evidence. We might mention here that the various discrepancies, circumstances and infirmities pointed out by us in his evidence discussed above have not been noticed much less explained by the majority judgment delivered by Mukherji, J. This is sufficient to vitiate the appreciation of the evidence of the aforesaid witness by Mukherji, J.

246. This brings us now to the last witness of the plaintiffs, who is Plaintiff 1 himself i.e Radha Krishna Singh, DW 13. It is manifest that being the son of Bhagwati Prasad Singh and the main plaintiff, he is the most interested person and is bound to support his case on which depends the fate of this litigation so far as he is concerned. His evidence also, therefore, as a rule of prudence has to be examined with great care and caution because he is interested in making statements which may go to support his case. Even so, his evidence shows that he knows very little about the conduct of the case as it does not support the genealogical tree set forth in the plaint itself. In his statement, he mentions that Bansidhar Singh had three sons viz. Ramruch Singh, Accho Singh and Fakir Singh and expressly states that Debi Singh was not one of his three sons, which knocks the bottom out of the plaintiffs' entire case. Further, his evidence does not establish any link between Debi Singh and Aini Singh even in his examination-in-chief, as a result of which he is forced to make a substantial change in his version at a later stage after several days realising that he had committed a serious blunder which might discredit his case altogether. To illustrate our point, we might extract a part of his evidence regarding his ancestor, Bansidhar Singh where he says, "Bansidhar Singh had three sons, namely, Ramruch Singh, Accho Singh and

Fakir Singh". It is pertinent to note that he does not name Gajraj Singh at all. Realising his mistake he adds that Gajraj Singh was the son of Ramruch Singh. It is obvious that before coming to the court, he must have been fully prepared with at least his own family's genealogy on the basis of which he wished to succeed in the suit filed by him and yet the omission of Gajraj Singh at the first flush seems to indicate the poor state of his knowledge.

247. Disclosing his knowledge about the genealogy, the witness states that he had learnt the genealogy from his father, Bhagwati Prasad Singh and one Bishwanath Singh Belwaria. About Bishwanath Singh he says that he had heard the genealogy when he was only 12 years old. He makes a very stark admission which shows the state of his memory. He says in para 26 of his evidence that he could not say the year of his birth and that of his brother according to Hindi Samvat and Fasli year. In order to conceal his lack of knowledge he makes out a case that his horoscope as also that of his brother, Sri Krishna were lost. He later on changed his statement immediately by saying that he could not say if the horoscope of his other two brothers were still in his house or they were also lost. In order to test his memory, some vital questions were asked and he replied thus :

"My father at times used to tell me about the different sub-sects of Bhumihar Brahmins. When I was aged 17 or 18 years, my father told me for the first time about the different sub-sects of Bhumihars and this he had told me about one hundred times. He never tested me if I remembered the different sub-sects which he had told me." (Vol. I, p. 343, para 50)

248. When questioned expressly regarding the genealogy, the witness makes the following pertinent statement :

"One of those papers was a written genealogy which would show that the persons named above belong to his family as stated by me. About two years ago that I saw the above genealogy. I cannot say who is the writer of that genealogy. I cannot say if the name of the writer is mentioned in that genealogy which is from the time of Hansraj up to the time of Adity Singh and his brother. Harkhan Singh in the line of Bikram Singh and up to the time of Ram Rupan Singh in the line of Chhatan Singh. I do not remember if in their genealogy the last member in the line of Rudra Singh is mentioned. In that genealogy the name of Musammat Jai (?) Raj Kuar and Raghunath Singh in the line of Devi Singh one of the sons of Bansidhar Singh are mentioned. There is no mention of the descendants of Ramruch Singh in that genealogy as they had gone away to Baraini. In that genealogy, there is no mention of the brothers of Bansidhar Singh or their descendants or the descendants of Bansidhar Singh who had left Village Majhwa." (Vol. I, p. 349, para 79)

249. This shows his complete lack of knowledge of his own family's genealogy which conclusively proves the fact that he has been asked to depose parrot-like just to support his case. To begin with, he says that one of the papers he had seen was a written genealogy in which the persons named in an earlier part of the statement were mentioned. He admits that he saw that genealogy about two years back but he could not say who was the writer of that genealogy and whether or not his name was mentioned in that genealogy. He has not cared to produce that particular genealogy or to prove the same along with the number of genealogical tables filed by the plaintiffs. Further, in the genealogy which he appears to

have seen, according to him, the names of Raj Kuer and Raghunath Singh in the line of Debi Singh are mentioned. A reference to the plaint genealogy will show that the name of Raj Kuer is not mentioned at all. He further admits that there is no mention at all of the descendants of Ramruch Singh which is the most vital factor to determine the truth of the plaintiffs' case. Ramruch Singh is not proved to be the father of Gajraj Singh, and therefore, the suit must necessarily fail. The witness who is the plaintiff himself is unable to explain this serious lacuna and gives a most feeble and unconvincing explanation that the omission was due to the fact that Ramruch Singh had gone away to Baraini. A number of other heirs in the plaint genealogy are mentioned who also had gone to Baraini and, therefore, the explanation given by him is to be stated only to be rejected. He further admits that in the said genealogy, there is no mention of the brothers of Bansidhar or their descendants. This, therefore, completely disproves his case.

250. The witness further goes on to state that he had not asked Gauri Babu, one of the plaintiffs in this case who was also the Pairvikar, about the papers filed by him, nor did Gauri Babu tell him what papers had been filed. He admits that Gauri Babu went to the lawyers to explain the papers to them and he has all along been present in court since the cases were taken up for hearing. In this view of the matter, his statement is most unnatural and improbable and even if believed it does not prove the vital missing links.

251. M.M Prasad, J., rightly inferred from the aforesaid statements made by the witness that he had not produced the most important document viz. the genealogy about which he had stated in his evidence mentioned above. The counsel for the respondents, however, submitted that the learned Judge was wrong because the genealogy mentioned by the witness in para 79 of his deposition was really the genealogy (Ex. Q-2). We are unable to agree with the contention advanced by the counsel for the respondents because in the first place, DW 13 has not at all mentioned that the genealogy which he had seen was produced in this case. Secondly, the genealogy (Ex. Q-2) was not at all shown to him by the counsel for the plaintiff in order to elucidate the fact that it was the genealogy referred to in his evidence in para 79 extracted above. Indeed, if Ex. Q-2 was really the genealogy referred to by the witness, as contended for the respondents, then the first thing which should have been done by the plaintiffs' counsel would have been to put Ex. Q-2 to the witness at once. It is, therefore, clear that M.M Prasad, J., was correct in making adverse comments regarding this part of the evidence of DW 13.

252. It was further argued before us by Mr Tarkunde that there was another mistake committed in the appreciation of the evidence of DW 13 and that was the fact that much was made of the statement of the witness that while naming the sons of Bansidhar Singh, Accho Singh was mentioned instead of Debi Singh. This is an unmistakably clear statement made by the witness and there is no question of there being any lapse on this part of the case. It is a different matter that the witness may have realised the omission of the name of Debi Singh later but truth comes out first. Apart from this, the learned dissenting Judge has given a number of reasons for disbelieving DW 13. The learned Judge has relied on the omission on the part of the witness to give the genealogy of the Babus of Sheohar, Madhuban and Sirsa. It was further pointed out by the learned Judge that DW 13 stated that his source of information of the genealogy was his father but it is doubtful if his father

himself would have known the genealogy of all the branches if, according to the statement of the witness, he was living in Baraini since long and would therefore have lost contact with all his relations. In this connection, the learned Judge observed thus :

"Could his father himself have known the genealogy from Bansidhar down to himself, the genealogy of Raja Dhruva and the members of his family and the genealogy of the ancestors and descendants of Raja Jugal Kishore? Circumstances do not show that he could have known all these. Thus, simply because this witness states to have learnt it from his father, it cannot be taken for granted that his father must have known all these and had communicated to him the entire genealogy of these branches." (Vol. VIII, p. 492)

253. In these circumstances, we entirely agree with the view taken by M.M Prasad, J., that no reliance can be placed on the evidence of this witness, DW 13.

254. The last witness whose evidence was not relied on by Mr Tarkunde is Mahadeo Singh, DW 36 (Vol. I, p. 462) but as the witness is an octogenarian we may just as well briefly deal with his evidence. To begin with, the witness gives a complete genealogy of Bhagwati Prasad Singh and the late Maharaja right from Bansidhar Singh up to the plaintiffs father Bhagwati Prasad Singh and tries to connect the two families as having a common ancestor, Bansidhar Singh. Mukherji, J., has held that the witness was closely associated with the family of Bhagwati Prasad Singh and the late Maharaja and being an old man he must be presumed to have special means of knowledge. The learned Judge, however, does not appear to have considered the intrinsic merits of the evidence of this witness. In the first place, DW 36 admits in his cross-examination that he could not say how Bansgopal Singh, who is a descendant in the line of Gajraj Singh, was related to Raghunath Singh in the line of Debi Singh. He further admits that he has forgotten about this relationship. This is an important circumstance to negative the fact that he had any special means of knowledge of the ancestors of the family of the late Maharaja. This crucial omission seems to have been brushed aside by Mukherji, J., without realising the importance of the aforementioned omission. On the other hand, M.M Prasad, J., has fully discussed the evidence of this witness and found that the witness is an unreliable one. In order to prove his special means of knowledge of the genealogy of the plaintiffs' family he claims that he was a close neighbour of the plaintiffs and was on visiting, dining and inviting terms with their family.

255. He also states that he and his ancestors were in the service of Bettiah Raj, more particularly, Hanuman, his grandfather, Salik Singh, his great-grandfather and Baijnath Singh, his great great-grandfather. There is, however, no evidence to show that Baijnath, Salik or Hanuman were in the service of Bettiah Raj, nor has any document been produced in support of this statement. There is also no document to prove that he was a personal attendant of the late Maharaja, as claimed by him; although he claims to be a personal attendant for three years, it is rather strange and curious that he cannot give the age of the Maharaja at the time of his death nor the time of the marriage of the Maharaja with Janki Kuer. This is rather important because it is the admitted case of the parties that Maharaja Harendra Kishore Singh died within a month of his marriage with Janki Kuer. He goes on to state that he learnt the genealogy from the late Maharaja and his uncle Ram Kumar Singh, Bhagwati Prasad Singh and Bhola Singh. He first stated that Bhola Singh was the son of

Deep Narain but immediately changed his statement and said that Bhola Singh was the son of Deo Narain.

256. Some questions were put to him in order to test his memory and he made a very specific statement to the effect that he does not know his own genealogy except up to five degrees, that is to say, up to Baijnath Singh. He further admitted that he does not know the genealogy even of his close relations, not even the names of fathers of some of his close relations, nor even of his own maternal granduncle. Indeed, if the witness was not in a position to know the genealogy of his own family how could he be expected to remember the genealogy of the late Maharaja whom he is said to have merely served.

257. Further, in order to test the truth of the genealogy given by him he was asked to repeat the 20 names of any genealogy which he remembered but the witness failed to respond and took refuge under the plea that as he was very old his memory had faded though he used to remember facts only up to the age of 20 years. It is rather surprising that although he claims that his memory has not failed him in respect of all the names that he learnt at the age of 16-17 years yet it completely failed at the time when he was giving evidence.

258. Similarly, when asked as to when his ancestor's connection with the ancestors of Bhagwati Prasad Singh on inviting terms began the witness answered "Bansidhar and Baijnath". This was a positively false statement because Baijnath being his ancestor in the sixth degree could not have been a contemporary of Bansidhar Singh who lived long before Baijnath and therefore there is no question of Bansidhar Singh or Baijnath Singh being on inviting terms.

259. None of these circumstances or admissions made by this witness were noticed or considered by Mukherji, J., In view of these confused and conflicting statements 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.

260. 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. Rokkam Venkata Reddi AIR 1937 PC 201, 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."

261. 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".

262. 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.

263. Before closing our comments on the oral evidence, we might say a few words about the methodology adopted by Mukherji, J., speaking for the majority, in appreciating and analysing the evidence of the witnesses of the plaintiffs :

"(1) The manner in which Mukherji, J. seems to have approached the evidence does not appear to be correct or scientific. On the other hand, he has dealt with the evidence of the plaintiffs' witnesses in a very casual and cursory manner, as pointed out by us, and has completely overlooked striking facts and circumstances which render the evidence of the witnesses unworthy of credence. –

(2) No attempt was made by the learned Judge to adhere to the rules of evidence regarding proof of genealogy which we have discussed above, nor was any importance attached to the most notable feature of the evidence of witnesses for the plaintiffs that while testing their memory in order to find out if they could really remember the names narrated to them, they completely failed to pass the usual tests laid down by the authorities, as indicated by us, both before and after, while dealing with the evidence of these witnesses.

(3) The learned Judge appears to have taken the evidence of the plaintiffs' witnesses for granted and accepted the same to be true ex facie without making a thorough probe into the apparent inconsistencies and glaring infirmities from which the evidence of these witnesses suffers."

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

265. A similar approach seems to have been made by the majority judgment so far as the documents are concerned, and reliance was placed by the majority judgment on a large number of documents which were either irrelevant, inadmissible or of no assistance to the plaintiffs. For instance, Mukherji, J. relied on Exs. DD-30 and 31 to prove the genealogy mentioned therein, little realising that in the first place the recitals in the judgments were not admissible as the judgments were not inter partes and the genealogy given therein was also a part of the recitals and, therefore, could not be made use of in law. 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. It is not necessary to burden this judgment by repeating what we have already said.

266. In fact, it seems to us that the majority judgment was greatly impressed by the fact that as the plaintiffs had proved their case of genealogy right up to Gajraj Singh and thereafter seem to have presumed without any cogent and reliable evidence that Gajraj Singh must have been a direct descendant of Bansidhar Singh even if there was no reliable evidence to prove this fact. On the other hand, there was positive evidence to show that Gajraj Singh was not the grandson of Bansidhar Singh from the circumstances and documents in which the name of Ramruch Singh as being the father of Gajraj Singh was completely omitted as pointed out by us above.

267. On a close and careful, detailed and exhaustive discussion of the oral and documentary evidence, the inescapable conclusions and the firm findings which we arrive at are as follows :

"(1) That the plaintiff has no doubt proved that he was a direct descendant of Gajraj Singh but that is of no assistance to him so long as it is not shown that the missing links — the relationship of Gajraj Singh with Ramruch Singh, and Ramruch Singh with Bansidhar Singh — and that Bansidhar Singh was one of the sons of Hirday Narain Singh have been established.

(2) That the plaintiff has miserably failed to prove that Gajraj Singh was in any way connected with Bansidhar Singh, or that Ramruch Singh was the son of Bansidhar Singh and brother of Debi Singh.

(3) That Ex. J was admissible in evidence though of no assistance to the plaintiffs.

(4) That the documents, transactions, judgments, robkars, plaints, written statements, etc. produced by the plaintiffs are either inadmissible or irrelevant.

(5) That the oral evidence on the point of genealogy is utterly unrealiable and unworthy of credence.

(6) That neither the documentary nor the oral evidence adduced by the plaintiffs is sufficient to prove their case and hence the plaintiffs have failed to discharge the initial onus which lay on them to prove their case.

(7) That the majority judgment is wrong in law and on facts and has arrived at factually wrong and legally incorrect conclusions and, therefore, cannot be upheld.

(8) That we entirely agree with the judgment of M.M Prasad, J., so far as the plaintiffs' case is concerned.

(9) The plaintiffs have not proved that they are the next and the nearest reversioners of the late Maharaja (Harendra Kishore Singh)."

268. 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, heterogeneous and sundry, has not been a bed of roses but indeed a herculean task. With due deference to the majority Judges we dare 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.

269. It may be stated as a sort of a postscript that great reliance was placed by the respondents on the admission made by the State of Bihar in its application for leave to appeal to this Court which is to the effect that there is no dispute regarding the links from Bansidhar Singh to Debi Singh, Aini Singh, Pahalwan Singh, Tilak Singh and Balbhadra Singh. We have earlier mentioned quite a few times that though these links are proved but they are of no use to the plaintiffs unless the links between Ramruch Singh, Debi Singh and Bansidhar Singh are proved. We have already shown that the plaintiffs have miserably failed to prove these important links. In other words, the left hand side of plaintiffs' genealogy starting from Debi Singh up to the late Maharaja has undoubtedly been proved but that by itself cannot show that the plaintiffs are the next or the nearest reversioners of the late Maharaja.

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

271. 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.

272. 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. In 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 the properties.

273. 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. M.M Prasad, J., has explained the position very clearly in his judgment and has concluded thus :

"In view, however, of what I have held that the finding or declaration of the property having vested in the State of Bihar itself cannot be sustained, the question of making a declaration in favour of the State of Uttar Pradesh regarding the property in suit in that State does not arise." (Vol. VIII, p. 535)

274. 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.

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

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

277. 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.

Equivalent: **1983 AIR 684, 1983 SCR (2) 808**