

Reminiscences of over half a century of the Oudh Courts and Bar

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In 1915, when I settled down in Lucknow, the civil litigation in the Court of Judicial Commissioner of Avadh (the highest court of appeal) and in the Courts subordinate thereto mainly consisted of cases under the Oudh Estates Act (Taluqa cases) involving intricate questions of law of inheritance and custom as well as cases of pre-emption, Hindu law of inheritance, adoption and wills, mortgages and transfers by fathers and widows, challenged by sons and heirs and a few cases of family settlement.

Taluqa cases

Cases under the Oudh Estates Act were usually tried by very senior Civil Judges in the districts specially appointed. Some of these Judges were very distinguished Judicial Officers, like Sir Sitla Prasad Bajpai, who after retirement became Chief Justice of Jaipur, Mr. Rachpal Singh, Syed Mohd. Raza and Mr. Pradyuman Kishen Kaul, who later became distinguished Judges of the Chief Court and the High Court. There used to be protracted litigation in these Taluqa cases lasting over years. They were very often, if not invariably, financed litigations. Champerty not being forbidden in India, greedy financiers from various places in and out of U. P. financed the litigants, purchasing shares of the properties involved from the plaintiffs or defendants, the price being the costs of litigation. They spent a lot of money in engaging very expensive counsel, and procuring evidence, oral and documentary. Taluqa cases involved interpretation of difficult provisions of the Oudh Estates Act, 1869, custom of primogeniture, exclusion of females and peculiar procedure of adoption under the said Act, legitimacy of the claimant or defendant, etc. These cases were fought strenuously in the courts of original jurisdiction, in first appeals and before the Privy Council, where the defeated party often took the cases and invariably engaged very senior and expensive counsel. In some instances, the cases went more than once to Privy Council. Arguments in the appellate courts were also prolonged. In some instances, financiers after wasting a lot of money gave up the litigation and then other financiers came in. The trouble did not end with the final decision of the appellate court in Oudh or even of the Privy Council. It began over again in execution and also in sharing the fruits of litigation with financiers. This process was not eliminated by the establishment of Chief Court in 1926 with original side for trial of suits involving property worth more than 5 lakhs.

Custom

Oudh was the land of customs-family custom, tribal custom, local custom, trade custom etc. Custom was not confined to any community or class. Muslims, e.g. Khanzadas, as much as Hindus and Jains had customs governing inheritance. In a large number of cases, whether under the Oudh Estates Act or other cases of inheritance and pre-emption, questions of custom arose. On custom and customary law, the largest number of reported cases arose in Oudh. Custom was recognized and recorded at the time of settlement in the *Wajib-ul-arzes* and *Riwaj-i-am*, which, according to the Privy Council, were authoritative documents. In cases of family and tribal customs large volume of evidence, oral and documentary, used to be produced to prove instances. There were cases in which evidence was procured from all over northern India from Kashmir to Bihar and Central Provinces and Rajputana. Trials of these cases were naturally prolonged. Even in the Court of appeal arguments lasted for weeks.

Law of pre-emption was based on custom and the Avadh Laws Act.

Hindu law cases

The cases challenging the validity of transfer made by Hindu fathers or widows in possession were many and there were conflicting decisions even of the Privy Council, beginning with the case of *Sahu Ram Chandra* (44 I. A. 126) and ending with that of *Brij Narain versus Mangla Prasad* (51 I. A. 129), in which a Full Bench of the Judicial Committee of the Privy Council had to sit to reconcile the conflicting decisions. These cases used to keep the members of the Bar busy; and eminent counsel from outside the Province were very often engaged at exorbitant fees. All this is, however, a past history. With the abolition of zamindari, now, all these cases are gone and the lawyers are left with different kinds of cases-cases under the Constitution of India, Election laws, and so on.

In the by-gone days of landlordism, there were mainly two classes of litigants, rich landlords and poor tenants. There was hardly any middle class litigant in Oudh. Landlords could afford to engage senior members of the Bar, and tenants being poor could engage only juniors who thus got a chance to show their merit and rise in the profession.

There was one redeeming feature in the days of the Judicial Commissioner's Court and early days of the Chief Court. Cases were disposed of expeditiously. First Civil Appeals, in which sometimes bulky records were prepared and printed, usually came up for argument within two years of their filing. The Second Civil Appeals, execution appeals and miscellaneous appeals were disposed of within a year. Criminal cases, in which records were printed, e.g. Capital cases, were disposed of within two to six months. Other criminal appeals were also disposed of within six to eight months. Criminal revisions and transfer applications took very little time. There was no inordinate delay. The delay commenced in the later days of the Chief Court and is now continuing. This is now a very serious problem.

In these reminiscences it is permissible to cite a few notable instances of the performance of some giants of our profession, with whom I had the privilege of coming into contact.

The first and foremost was Dr. Sir Rash Behari Ghose. He came to Oudh in more than one case. The first case in which he appeared first before Pt. Sitla Prasad Bajpai, Special Judge, who tried the case in Lucknow, and later before the Court of Judicial Commissioner, is the case of *Narendra Bahadur Singh, Taluqdar of Haswar (mortgagor) versus Oudh Commercial Bank*. The Taluqdar mortgaged his properties to the Bank in about 1880 for a sum of Rs. 80, 000. When the suit was instituted in 1911 for the sale of the mortgaged properties the claim was to the tune of over 9 lakhs. Important questions of law were involved. The appeal was argued before two eminent Judges: Sir Louis Stuart and Pt. Kanhaiya Lal and was decided in June 1915. Sir Rash Behari, assisted by Dr. Satish Chandra Banerji, Mr. A. P. Sen and others, appeared for the appellant-mortgagor. The Bank was represented by Pt. Moti Lal Nehru, Dr. Tej Bahadur Sapru, Pt. Gokarannath Misra and others (vide 2 O. L. J. 402). In the course of argument, Sir Louis Stuart as usual interrupted Sir Rash Behari by putting the question

"what is your opinion, Dr. Ghose"? Sir Rash Behari who could never brook interruption replied, "I am here to argue the case of my client and not to give an abstract opinion. " The Judges kept quiet. In the end the appeal was partly allowed and the claim of the Bank was reduced. In another case from Gonda, Sir Rash Behari was putting an alternative case before Pt. Kanhaiya Lal and Mr. S. R. Daniels (A. J. C's). Mr. Daniels who could never appreciate alternative arguments remarked; "Is this not inconsistent"? That was too much for the fiery old man. He retorted, "I have never been inconsistent in my life, dull, dull", and sat down and asked his junior to continue. As the junior could not be as effective as his veteran senior, good old Pt. Kanhaiya Lal started coaxing the irate old man, who cooled down and resumed his argument.

The first Taluqa case (Samarpaha case), in which I watched the arguments after I settled in Lucknow, was a battle of giants. Dr. Sir Sunder Lal the doyen of the Allahabad Bar appeared for the appellant, assisted by senior members of the Oudh Bar and argued for over a week. Sir S. P. Sinha (afterwards Rt. Hon'ble Lord Sinha) assisted by Mirza Samiullah Beg and Sir Wazir Hasan argued for the respondents. I had to go to Lord Sinha to make an appointment for a consultation for a client of mine (Raja of Harha). He said he was then unable to fix any time as the case was of a new type to him and all that he knew of the case was during the journey in train from the aforesaid two senior members of the Oudh Bar.

I went to Sir Sunder Lal. I found him poring over some plans of buildings and papers of the Banaras Hindu University of which, I think, he was the Vice-Chancellor. He received me very kindly and intimated that when he takes up a case, his whole time is at the disposal of his clients and until his duties were discharged he could not honestly give his attention to any other client. I later managed to have the consultation with the opinion of Lord Sinha; but he did not accept any fee, as he said, he was paid by his clients in the appeal he came to argue. This was a lesson to me of professional probity. The appeal was argued for over two weeks and I still remember the brilliant arguments of both the veterans of the Bar, though Lord Sinha, with his usual modesty, earlier told me that the subject was new to him.

The fourth case I may refer to was the last Nanpara case, heard on the original side of the Chief Court before the Hon'ble Pt. G. N. Misra, J. The case involved, inter alia, the interpretation of a will in highflowll Urdu by a former Raja of Nanpara. The case was argued on one side by Mr. Hasan Imam (a former Judge of the Calcutta High Court), then leader of the Patna Bar, and on the other by Mr. Mohammad Ali Jinnah (Qaid-e-azam). There was a contrast of personalities and arguments. Mr. Hasan Imam, an urban, courteous, silver-tongued lawyer, master of Urdu and English languages, argued the case, putting his interpretation on the will by reference to the original. Mr. Jinnah, debonair, albeit, arrogant but a distinguished lawyer, had perfect command and mastery of English language, but innocent of Urdu, had to depend upon the translation of the will with the assistance of his colleagues from the Lucknow Bar. All the same it was a brilliant performance on both the sides and a thrilling experience for us.

Bar

Though there was no paucity of legal intellect in Oudh and there was a galaxy of eminent lawyers practising in Lucknow, a list whereof has been appended to the history of the Oudh Court published in the Centenary Commemoration Volume I, litigants, or rather their financiers, very often engaged eminent lawyers from outside. Distinguished lawyers, like Sir Rash Behari Ghose, Lord Sinha, Sir N. N. Sarkar, and Mr. S. N. Banerji (in civil cases) and Mr. B. C. Chatterji (in criminal cases) and Mr. N. C. Chatterji, from Bengal. Sir Alli Imam, Mr. Hasan Imam, Sir Sultan Ahmad, Mr. S. Sinha and Mr. P. R. Das from Bihar, Sir H. S. Gaur from Madhya Pradesh, and Mr. Mohammad Ali Jinnah from Bombay, came to argue cases in Lucknow. Leaders of the Allahabad Bar, like Dr. Sir Sunder Lal, Pt. Moti Lal Nehru, Sir Mohammad Sulaiman, Sir Tej Bahadur Sapru, Dr. Satish Chandra Banerji, Mr. O'Connor, Mr. Ryves, Mr. Wallach, Mr. Lalit Mohan Banerji, Dr. K. N. Katju, Mr. P. L. Banerji, Shri S. K. Dar, Mr. Boys, Sir Charles Ross Alston, Dr. S. N. Sen, and Mr. Satya Charan Mukerji, frequently appeared in Lucknow Courts. Mr. Hoon and Bikarmajit Singh of Kanpur also appeared in civil and criminal cases at Lucknow. No jealousy or bickering marred the relationship between the members of the Lucknow Bar and those of the Allahabad Bar frequently appearing in Lucknow. On the contrary, there was cordiality and full and ungrudging co-operation between the lawyers of both the places. Some of the eminent members of the Allahabad Bar were the paying members of the Oudh Bar Association. It is hoped that, with the amalgamation of the two Courts and establishment of one Bar Council for the whole State in place of two before the amalgamation, the same spirit of cordiality and healthy co-operation will continue.