

## PRIVY COUNCIL

Diwakar

Vs.

Chandan Lal Rao and others

P.C.A No. 22 of 1914

(Lords Shaw Parmoor and Mr. Ameer Ali. JJ )

24.7.1916

### JUDGMENT

#### **Lord Parmoor J.**

1. The only question raised in this appeal is whether the late *Mahipat Rao Bhau* adopted the appellant Diwaker as his son, and heir to the *Hatta Zamindari*, on the 10th November, 1898. If the adoption did take place, the adoptive father could not subsequently revoke the adoption. It is not argued that he had any such power.

2. The appellant was born on the 26th October, 1898, and was the second son of Indraraj. Bhau. Mahipat Rao was a relation on the agnatic side and had had eight children by his deceased wife, all of whom had died in infancy, except Gotoo, who died in 1894 aged about 16. At the time of the alleged adoption Mahipat Rao had two young wives, one married in 1891, and one in 1895. There was no reason why he might not have further issue; two children were in fact born to him at later date. Both Indraraj and Mahipat Rao were *Zamindars* of considerable position.

3. There was no deed of adoption and the case for the appellant depends almost entirely on oral testimony. The judge of the District Court found in favor of the appellant. This judgment was reversed in the Court of the Judicial Commissioner, Central Provinces. In their Lordships' opinion it is important to appreciate the general position of the parties and the surrounding circumstances before attempting to determine what weight should be attached to the evidence called on behalf of the plaintiff.

4. Indraraj, the appellant's father, resided at Fulchur. Mahipat Rao with his two wives, respondents Nos. 2 and 3, went to Fulchur to be present at the appellant's Barsa, a

ceremony performed 12 days after the birth of an infant. They stayed at Fulchur a few days after the Barsa and the alleged adoption is said to have taken place on the 10th November, 1899. Subject to two matters, to which attention will be drawn, it is clear that Mahipat Rao from the outset and during his life consistently denied that the plaintiff was his adopted son. A letter of the 10th February, 1899, written only three months after the date of the alleged adoption supports the case of the respondents and is inconsistent with that of the appellant. This letter refers to arrangements having been made "for taking of younger Bhau's zalar near Pinglai Goddess on the 18th February 1899." In reference to this letter, Indraraj says in his evidence: "The removal of the first hair of a boy in my family is made in the temple of Pinglai at Bhandara." When the appellant's hair was removed Mahipat Rao was invited, but for some reason or other he was unable to attend. It is further stated that Mahipat Rao did not bring his children to Bhandara to be shaved, and that he had not written to Indraraj in reference to the ceremony. At some time between the 11th January and the end of March, 1899, Kaluram Pachourey, District Saugor, visited Mahipat Rao, and had a talk with him about the adoption of the boy. His evidence is that Mahipat Rao told him that the members of Lataria Bhau's family expressed to him a desire that the new-born son might be adopted by him but that he did not express his willingness or agree to the proposal. In August, 1902, Indraraj was told by Mr. Laurie that Mahipat Rao was denying that he had adopted the appellant, and Indraraj states that after this denial he had no talk with Mahipat Rao about the adoption. The evidence of Mr. C. E. Low, who was Deputy Commissioner of Balaghat throughout the year 1906, is to the same effect. He says that Indraraj had a talk with him about the marriage of his son (the appellant), and that Indraraj asked him to persuade Mahipat Rao to admit that he had adopted the appellant. After this conversation Mr. Low saw Mahipat Rao, who said that he did not admit the adoption and could not bear the expenses of the appellant's marriage. On the 17th January, 1907, Indraraj wrote to Mahipat Rao saying that it was eight years since he had taken the appellant in adoption, and that the marriage ceremony of the appellant could not under any circumstances be postponed. On the 26th January, Mahipat Rao replied, saying that the whole story was false and that the act of adoption had not been done at all. It is unnecessary to examine further this part of the case since the counsel for the appellant was unable to point to any act or statement of Mahipat Rao which in any way admitted the adoption of the appellant, except a statement in a letter written by Kelkar in 1902, and an alleged procession at *Hatta* on the 2nd June, 1901, at which date it is said that the appellant was taken to *Hatta* with his natural parents with some pomp, and that the visit was the occasion of

considerable rejoicings. The incident of the alleged procession at *Hatta* is put forward as an important factor in the plaint of the appellant, but the evidence was disbelieved by both Courts, and throws suspicion on the appellant's case. Kelkar was the pleader representing the respondents, but called as a witness on behalf of the appellant towards the end of the appellant's case. A letter said to have been written by Kelkar to Indraraj on the 2nd February, 1902, was produced, in which Kelkar said that Mahipat Rao admitted that the appellant was his son. The importance of the letter is that it supports the view that Mahipat Rao did admit, on this occasion the adoption of the appellant. Kelkar himself states that he had a talk about adoption with Mahipat Rao subsequent to the letter, and that Mahipat Rao then emphatically denied the adoption, and that to his recollection Mahipat Rao never at any other time made any admission as to the adoption, and that his impression was that Mahipat Rao was denying the adoption; and that he said so to Mr. Low and Mr. Bathurst. Their Lordships cannot attach any importance to a letter produced under such circumstances, and which contains a statement in direct contradiction of what is proved to be the general attitude of Mahipat Rao in denying the adoption of the appellant. There is no reason to doubt that Mahipat Rao did from the outset consistently deny that he had adopted the appellant. Under these circumstances, it is a matter for grave suspicion that, though it was open to Indraraj to commence a suit claiming to have the adoption of the appellant declared valid, no such suit was commenced until two and a half months after Mahipat Rao's death.

5. The case for the respondents is further strongly corroborated by the absence of any reference to expenditure on the ceremony of adoption, either in accounts of Indraraj or Mahipat Rao. The importance of the evidence afforded by accounts has been recognised by this Board (*Lal Kunwar v. Chiranji Lal*,<sup>1</sup>)

"Having regard to the well-known and often proved habits of the Indian people with regard to the keeping of accounts, recording their most minute transactions, the non-production of any books in which anything connected with the ceremony was entered, covers the plaintiff's case with suspicion."

6. The accounts of Indraraj are set out in the record starting from the 6th November, 1898, and extending over the period in which the adoption is said to have taken place. There are a number of items of expenses incurred in connection with the appellant's barsa, but not a single item of expenditure in reference to the ceremony of adoption, or any entry which indicates that any such ceremony ever took place. It was suggested that the expenses of the ceremony of adoption might be found in the accounts of

Mahipat Rao as the adoptive father. Mahipat Rao's accounts set out in the record tell the same story. There is no item of any expense incurred in the ceremony of adoption, although a considerable sum is included under the head of barsa expenses.

7. There was no deed of adoption or any other formal written record of the event at the time. The appellant's horoscope was produced at the hearing by the family astrologer, but if any importance is to be attached to this document it is not to the advantage of the appellant's case. This document was filed on the 25th October, 1907. The witness alleges that the red ink postscript, reciting the appellant's adoption, was written on his return after performing the ceremony, but it is made more than suspicious by the addition of the names of Mr. Rajaram and Prated. The detailed horoscope was prepared two years after the birth of the appellant, but it describes him as the son of his natural father and there is no reference to adoption except in the passage which has been specially translated. This passage predicts evil to the adoptive father eight years after the appellant's birth, and it is difficult to avoid the conclusion that it was prepared after the death of Mahipat Rao. Although a deed of adoption, or a formal written record of the fact of adoption, may have to be carefully scrutinized if forgery is alleged, it is certainly remarkable that in such a case as the present, no deed or other formal written record can be produced which gives any support to the claim made on behalf of the appellant. This Board in the case of *Sootrugun Sutputty v. Sabitrady*<sup>2</sup> said:-

Although neither written acknowledgments nor the performance of any religious ceremonial are essential to the validity of adoptions, such acknowledgements are usually given, and such ceremonies observed, and notices given of the times when adoptions are to take place, in all families of distinction as those of *Zamindars* or opulent Brahmins, that wherever these have been omitted, it behoves this Court to regard with extreme suspicion the proof offered in support of adoption. I would say, that in no case should the rights of wives and daughters be transferred to strangers, or more remote relations, unless the proof of adoption, by which that transfer is effected, be proved by evidence free from all suspicion of fraud, and so consistent and probable as to give no occasion for doubt of its truth."

8. It is an additional factor that no feast is proved to have taken place on the occasion of the adoption, that the ceremonies, said to have been performed, were of the briefest possible description, that no form or notification was made to the authorities, that the child's name was not changed, and that he was never taken to live with his new family

or recognized by them in any way. It is not too much to say that not only do their Lordships find no act or document to support the claim of the appellant, but that, on the contrary all the surrounding circumstances and conditions point in the opposite direction and make it highly improbable that Mahipat Rao did adopt the appellant at the alleged date.

9. Their Lordships have carefully considered the oral evidence and have come to the conclusion that, having regard to the conditions and circumstances already mentioned, it is quite insufficient to support the case of the appellant. They agree with the view of the Judicial Commissioner and think it is unnecessary to analyze the evidence in detail. There are, however, two witnesses of special importance, Indraraj and Mr. Rajaram. Much reliance was placed upon the evidence of Mr. Rajaram, but in reality it gives no support to the appellant's claim. Mr. Rajaram knew Indraraj, but did not remember to have seen Mahipat Rao except on one or two occasions in Fulchur. He remembered going to Fulchur from Gonda on one occasion, and sat in the Mandap which was erected for receiving guests for some ceremony. He was received by Mahipat Rao, but cannot recollect whether he said to him that he had a mind to adopt the appellant, or that he had adopted him. He was present about half an hour and no ceremony of any kind was performed in his presence. He did not consider the talk of any importance to him in his private or official capacity. He is not prepared to contradict Mahipat Rao if he said that he nearly intended to adopt the plaintiff, but that there was no form or complete adoption. It is on this evidence that the District Judge appears largely to base his opinion that the appellant had been adopted by Mahipat Rao, but their Lordships cannot attach the same weight and importance to it, and consider it to fall far short of the requirements necessary to establish the fact of adoption when there is no deed or formal written document, and all the surrounding facts point to a different conclusion.

10. The inconsistencies in the case put forward on behalf of the appellants, are attempted to be explained on the view that Mahipat Rao was in the first instance very desirous to adopt the appellant, and that he subsequently changed, or was persuaded to change, his opinion. This theory of the attitude of Mahipat Rao runs through the evidence of Indraraj, but there is nothing to corroborate his evidence or to give it probability. He says that on the next day, after the Barsa ceremony, he came to know that Mahipat Rao wanted to adopt the plaintiff, and that on his refusal, Mahipat Rao was displeased, and began to make preparations to leave the next day, and that, consequently, after consultation with his relatives, he came to the conclusion that there

was no harm in giving this boy in adoption, that the adoption took place the same or the next day, and that Mr. Rajaram was present. There is no doubt that it was the interest of Indraraj that the appellant should be adopted as the son of Mahipat Rao, and heir to the *Hatta Zamindari*, and if the adoption took place that it should take place under conditions which would not lead to subsequent doubt and dispute. It appears not only that no such precautions were taken but that there is no explanation of the haste with which the alleged ceremony is said to have been performed or the absence of all formal record of so important an event. The remainder of his evidence is equally unsatisfactory. The incidents of the ceremonial visit to *Hatta* are not believed in either Court, there is no explanation of the continued residence of the appellant at the home of his natural father, or of the removal of the first hair of the boy in the temple of Pingalai at Bhandara, or of the arrangements for his marriage which Mahipat Rao declined to attend.

11. In August 1902 Indraraj went to Nagpur when Mahipat Rao attended a meeting of the Police Commission. He admits that, while at Nagpur, he heard from Sir A. Fraser, Mr. Craddock and Mr. Laurie that Mahipat Rao denied the adoption of the appellant, and there is no doubt that at this time Mahipat Rao's attitude had raised a serious question in the mind of Indraraj, but he took no steps to establish the fact of adoption. Their Lordships are not satisfied of the accuracy of the account of Indraraj's interview with Mahipat Rao on his return from Nagpur. Their Lordships have already referred to the letter said to have been written by Kalkar and its production does not tend to make the evidence of *Indraraj* more trust-worthy. It is said that Indraraj is an Honorary Magistrate who has received from Government the title of Rao Bahadur, and that it is unlikely that such a person would bring a false case into Court. Their Lordships do not forget this consideration, but are unable to come to any other conclusion than that the evidence of Indraraj cannot safely be relied on and that it is not so free from all suspicion of falsehood and so consistent and probable in itself that it can be accepted as establishing the claim of the appellant, either of itself, or in conjunction with the other evidence adduced on the appellant's behalf.

12. In the result their Lordships agree with the conclusions of the Judicial Commissioner and will humbly advise His Majesty that the appeal be dismissed. Indraraj Bhau must personally pay the respondents' costs.

Appeal dismissed.

Cases Referred.

1. [1909] 32 All. 104 : 5 I.C. 549 : 37 I.A.1 (P.C.)
2. [1834] 2 Knapp. 287