

## **PRIVY COUNCIL**

(Lala) Kanhai Lal

Vs.

(Lala) Brij Lal and others

P.C.A. Nos. 67 and 75 of 1917

(Viscount Haldane, CJ, Sir John Edge, Mr. Ameer Ali, and Sir Walter Phillimore,  
Bart. JJ)

15.3.1918

### **JUDGMENT**

#### **Sir John Edge J.**

1. These are consolidated appeals from decrees, dated the 15th June, 1915, of the High Court at Allahabad, made in appeals from decrees of the Court of the Subordinate Judge of Shahjahanpur. There were two suits, in each of which Lala Kanhai Lal and his brother, Ram Sarup, were the plaintiffs. Lala Kanhai Lal is now the appellant in these consolidated appeals. Ram Sarup's rights were established and are not now in question; he is not a party to these appeals. In one of these suits Lala Brij Lal and his daughter Musammat Ram Kali, were defendants; they are now respondents to one of these appeals. In the other suits Musammat Kausilla and Lala Sham Lal, who claims through her, were the defendants; they are the respondents to the other of these appeals. In each suit Lala Kanhai Lal claimed as a reversioner to one Bahadur Lal, who died in 1883. Bahadur Lal was a member of a Hindu joint family descended from one Balak Ram. The pedigree of the joint family, so far as it is now material, is briefly as follows:-

Musammat Ram Kali. A Respondent.

2. Upon the death of Ram Dei, on the 14th May, 1912, Lala Kanhai Lal and his brother, Ram Sarup, were the reversioner's to Bahadur Lal. The only question which their Lordships have to consider in these appeals is the question whether Lala Kanhai Lal has not been precluded from claiming as a reversioner by his having been a party to a compromise which was entered into in 1892. If he is not precluded from claiming as a reversioner, he is entitled to succeed in these appeals.

3. At the time of his death, in 1883, Bahadur Lal was by survivorship the sole owner of the family estate, and on his death his widow, Musammat Ram Dei, became entitled to that estate for her life; Musammat Parbati and Musammat Kausilla being entitled only to maintenance. The title of Musammat Ram Dei was, however, disputed by Lala Kanhai Lal, Musammat Parbati, and Musammat Kausilla. Lala Kanhai Lal set up a claim to the family estate alleging that he had been adopted by Musammat Parbati to her deceased husband, Badri Prasad, and was entitled to the whole estate as such adopted son. His case was that there was a custom in the family which enabled a brother to adopt his sister's son and that Musammat Parbati had received her husband's authority to make the adoption. It is not necessary to consider whether there was any foundation for that case. Musammat Parbati's case was that the brothers Bahadur Lal, Badri Prasad, and Ganga Ram had separated; that also was the case set up by Musammat Kausilla. Each of these widows claimed for life one-third of the family estate. Musammat Parbati also alleged that she had validly adopted Lala Kanhai Lal to her deceased husband Badri Prasad.

4. In order to protect her own interest and the interest of her daughter, Musammat Kirpa, who was then living, Musammat Ram Dai brought two suits in the Court of the Subordinate Judge of Shahajahanpur. The earlier of those suits was brought on the 20th January, 1891, against Lala Kanhai Lal and Musammat Parbati and in that suit Musammat Ram Dei claimed a declaration that the alleged adoption of Lala Kanhai Lal by Musammat Parbati was null and void. That suit was dismissed by the Subordinate Judge on the technical objection that the plaint had not been properly verified. From the decree dismissing that suit Musammat Ram Dei appealed to the High Court at Allahabad. The latter of those two suits was brought on the 4th February, 1892, against Musammat Parbati and Musammat Kausilla, and in it Musammat Ram Dei claimed amongst other reliefs, a declaration that her late husband, Bahadur Lal, had been the owner and in possession of the entire property of the joint family; that after his death she Musammat Ram Dei, was in possession of and entitled to that property according to Hindu law, and that Musammat Parbati and Musammat Kausila had no right other than that of maintenance.

5. Before the suit of the 4th February, 1892, came on for trial Musammat Ram Dei, Musammat Parbati, Musammat Kausilla, Musammat Kirpa, and Lala Kanhai Lal, had entered, on the 1st August, 1892, into the following agreement of compromise:

"We, Musammat Ram Dei, widow of Bahadur Lal, Musammat Parbati, widow of Badri Prasad, Musammat Kausilla, widow of Ganga Ram, Musammat Kirpa,

daughter of the said Bahadur Lal, and Kanhai Lal, the adopted son of the said Musammats Ram Dei, Parbati, by caste Agarwal, residents of muhalla Muzaffarganj, in Shahjahanpur, do declare as follows :

"Whereas disputes relating to property and 'imlak' have existed between Musammats Ram Dei, Parbati, and Kausilla, and I, Musammats Kirpa, daughter of Ram Dei, and I, Kanhai Lal, the adopted son of Parbati, are also regarded as claimants, we, the five persons, of our free will and accord and in a sound state of body and mind, declare that we have appointed Maharaj Badri Prasad, the general attorney of Musammats Durga Dei, as referee, and he should divide the whole of the property consisting of villages, houses, and shops as specified below and his decision as regards the profits for the past years the villages sold after the death of Bahadur Lal and the cases at present pending in the civil and revenue Courts, whatever it may be, will be admitted and accepted by us. There will be no objection or denial on our part. If any of us, the executants, take any objection, it will not be entertainable. The mode of partition of property agreed upon is that with the exception of the '*thakurdwara*' of Musammats Ram Dei, the '*thakurdwara*' of Musammats Parbati the villages of Bartara, Nagra Badhipura, the grove situated in Panwari and the 10 *biswas* share of Simri, *tahsil* Pawayan, which have been made a '*waqf*' of for the expenses of the '*thakurdwara*' and for charity, he should make four equal lots of all the villages, the shops, the banking '*kothis*' and the money-lending business, the decrees, bonds and account-books in such a way that each lot may, so far as possible, contain the above things as a whole. After the preparation of the lots, Musammats Ram Dei, Parbati, Kausilla, and Kirpa may each duly draw one of the lots. After that they should make applications for mutation of names in the Revenue Department and get (their) names recorded. I, Musammats Kirpa, and I, Kanhai Lal, will have no claim against any sharer as regards this property. Every sharer will be the owner and possessor of (her) property and will have power to make every kind of transfer as a proprietor. The said Maharaj Sahib may come to any decision he pleases as regards the partition and preparation of lots and the settlement of disputes mentioned above and enter all the particulars in detail in the arbitration award by the end of September, 1892, and get it registered. All that will be admitted and accepted by us. None of us will deviate from it.

"This agreement has accordingly been executed to stand as evidence.

"Dated the 1st of August, 1892.

"By the pen of Lalta Prasad, Kayasth, resident of Rang Muhalla.

(Sd.) Ram Dei.

Parbati.

Kausilla

Kirpa

Kanhai Lal."

The arbitrator made two awards, dated respectively the 12th and the 13th January, 1893. That of the 12th January, 1893, was filed in the suit of the 14th February, 1892, in which Musammat Parbati and Musammat Kausilla were defendants and that suit was dismissed as withdrawn by Musammat Ram Dei. The appeal to the High Court, in the suit of the 20th January, 1891, was not supported, and was dismissed.

6. Under the awards of the arbitrator one-fourth of the family property was allotted to Musammat Ram Dei, one-fourth to Musammat Kirpa, one-fourth to Musammat Parbati, and one-fourth to Musammat Kausilla, and they respectively obtained possession of the properties allotted to them. In the award of the 13th January, 1893, the arbitrator stated :-

"Kanhai Lal has been adopted by Musammat Parbati, but he has nothing to do with the other Musammat's property as such adopted son. Nor has he now any claim to their property. As regards the matter between Musammat Parbati and Kanhai Lal, it is not necessary to explain his rights in this award. Kanhai Lal's rights in the property comprised in Musammat Parbati's lot are quite safe."

7. So far as appears by the agreement of compromise and the awards, Lala Kanhai Lal got no share in the family property, but in fact he got the one-fourth share which was allotted to Musammat Parbati, and he further obtained the benefit of having the validity of his adoption by Musammat Parbati left undecided by a Court of law. On the 22nd August, 1898, Musammat Parbati executed, in favour of Lala Kanhai Lal, a deed of relinquishment of the property which had been allotted to her under the compromise and the award of the 13th January, 1893. In that deed she stated :-

"The immovable property, such as zemindari, houses, and shops detailed as below, belonged to Lala Badri Prasad, the husband of me the executant. I, the executant, have, with the permission of my husband, adopted to my husband and myself, Lala Kanhai Lal, son of my husband's sister, for the benefit of the soul of my husband in the next world. Kanhai Lal aforesaid has been living with me from the date of the permission to adopt. It is he who is the absolute owner of the property and legal representative of the entire property left by my

husband. But the name of me, the executant, has continued to be recorded in the revenue papers against the *zamindari* property. I am not the owner thereof. Kanhai Lal aforesaid is the owner of the entire property of my husband. Now I, the executant, do not also want my name to stand recorded in the revenue papers. Therefore I, of my own free will and accord, without force and coercion, relinquish my claim to the whole of the *zamindari* property and houses and shops, detailed as below, in favor of *Kanhai Lal*, adopted son of my husband and myself, and covenant in writing that Kanhai Lal aforesaid is the owner of the entire property detailed below as representative of my husband, Lal Badri Prasad. He has acquired as absolute owner all sorts of powers in respect of the property detailed below. Up to this time my name stood recorded in the papers only fictitiously. Now I do not want that my name should stand recorded in the column of proprietors. My name, which is entered against the whole of *zamindari* property, should be expunged and the name of Kanhai Lal be entered in the papers."

8. In accordance with that deed of relinquishment, Lala Kanhai Lal obtained mutation of names in his own favour, and he has hitherto enjoyed that share of Musammatt Parbati as his own property, and his right to it has not been questioned in either of the present suits. The properties which Lala Kanhai Lal has claimed in these suits as a reversioner to Bahadur Lal are the properties which were allotted, in January, 1893, to Musammatt Ram Dei, Musammatt Kirpa, and Musammatt Kausilla respectively.

9. The suits in which these appeals have arisen were not tried by the same Subordinate Judge. In one of these suits the Subordinate Judge held that Lala Kanhai Lal was precluded by his having been a party to the compromise from now claiming as a reversioner. In the other of these suits a different Subordinate Judge decided that Lala Kanhai Lal was a reversioner not bound by the compromise. The decrees of the Court of the Subordinate Judge were appealed to the High Court, and the appeals were considered by the High Court in one judgment. The High Court decided that Lala Kanhai Lal having been a party to the agreement of compromise of 1892, and having taken a benefit under that settlement of the dispute, was bound by it and could not go behind it. The result was that Lala Kanhai Lal's suits were dismissed. From the decrees of the High Court made in accordance with that judgment these appeals have been brought.

10. It has been contended on behalf of Lala Kanhai Lal that the agreement of compromise of 1892, could not deprive him of his right to claim as reversioner unless

it is capable of being treated as a conveyance of his right as a reversioner, and that he did not intend in 1892 to convey or assign such right when it might accrue to him. As it now appears, Lala Kanhai Lal was not a reversioner in 1892, and did not become a reversioner until Musammat Ram Dei died in 1912. All the interest which he had in the property of the family in 1892 was the mere possibility of becoming an immediate reversioner, in case he should be living when Musammat Ram Dei might die, and when Bahadur Lal's daughter, Musammat Kirpa, might die without a son. It was also contended on his behalf that Lala Kanhai Lal in 1892, whatever his intention may have been, was not in law, competent to convey or relinquish any future possible right as a reversioner, and as an authority in support of that contention the decision of the High Court at Bombay in *Sumsuddin Goolam v. Abdul Husein Kalimuddin*<sup>1</sup> was relied upon. That decision is not in point. There is no question here of a conveyance of, or of an agreement to relinquish any future right or expectancy. The question here is whether Lala Kanhai Lal did not by his acts in 1892 debar himself from now claiming as a reversioner.

11. The facts in this case are simple. In 1892 the family was a Hindu joint family to which the ordinary Hindu law applied. All the sons of Balak Ram had died. Ganga Ram had died childless in 1874, and Badri Prasad had died childless in 1877. Bahadur Lal had died sonless in 1883, leaving his widow Musammat Ram Dei surviving him. Musammat Ram Dei became, on the death of Bahadur Lal, entitled for life to a Hindu widow's right to the whole of the family property. Lala Kanhai Lal had then no right of any kind to any share in the family property, but he set up a claim to the whole property based on the allegation that he had been validly adopted by Musammat Parbati to her deceased husband, Badri Prasad. If that claim had been substantiated by proof of a valid adoption, Lala Kanhai Lal would have been entitled to the whole family property, and Musammat Ram Dei would have been entitled merely to maintenance. Although as a general rule of Hindu law a man cannot adopt his sister's son, the claim was a serious one. Lala Kanhai Lal's case was that, according to an Agarwal custom (the family was of the Agarwal caste) which governed the family, a man could lawfully adopt his sister's son, and he alleged that Badri Prasad had given Musammat Parbati authority to make the adoption, and that he, Lala Kanhai Lal, had been validly adopted to Badri Prasad. That Lala Kanhai Lal might have found it difficult or impossible to prove that he had been validly adopted is immaterial. He made the claim; it was a serious one, and it was supported by Musammat Parbati and it must have influenced Musammat Ram Dei, who was induced, doubtless mainly by that claim, to consent to a division of the family property, in which she obtained for

herself merely a one-fourth share. The claims which were set up by Musammat Parbati and Musammat Kausilla, that the three sons of Balak Ram had separated, must also have influenced Musammat Ram Dei to agree to the compromise of 1892. Lala Kanhai Lal was a party to that compromise. He was one of those whose claims to the family property, or to shares in it, induced Musammat Ram Dei, against her own interests and those of her daughter, Musammat Kirpa and greatly to her own detriment, to alter her position by agreeing to the compromise, and under that compromise he obtained a substantial benefit, which he has hitherto enjoyed. In their Lordship's opinion he is bound by it, and cannot now claim as a reversioner.

12. Their Lordships will humbly advise His Majesty that these consolidated appeals should be dismissed with costs.

Appeals dismissed.

Cases Referred:

1. [1906] 31 Bom.165 : 8 Bom.L.R.781