

PRIVY COUNCIL

Sheokuarbai

Vs.

Jeoraj

(Lords Buckmaster CJ, Atkinson, Sir John Edge and Mr. Ameer Ali. JJ)

9.7.1920

JUDGMENT

Sir John Edge J

1. This is an appeal by the plaintiff, Musammat Sheokuarbai, from a decree, dated the 5th April, 1917, of the Court of the Judicial Commissioner, Central Provinces, which set aside a decree of the District Judge of Nimar and dismissed her suit.

2. The parties to the suit are Sitambari Jains. The plaintiff is the widow of Shrichand Das, Gujarathi, who died about thirty years ago and left no son, but left a daughter who died some years before 1909. The plaintiff in her suit claimed a declaration that the defendant Jeoraj, whose natural father, Punamchand, had been her brother, was not the legally adopted son of her deceased husband. Punamchand died before 1909, leaving his widow Munnabai him surviving, who died before this suit was instituted. The defendant alleged that the plaintiff had validly adopted him, on 28th June, 1909, as a son to her deceased husband.

3. The Jains are of Hindu origin; they are Hindu dissenters, and although, as was pointed out by Mr. Mayne in para 46 of his "Hindu Law and Usage" -

Generally adhering to the ordinary Hindu law, that is, the law of the three superior castes, they recognize no divine authority in the Vedas and do not practise the Shradhs, or ceremony for the dead."

4. The due performance of the Shradhs, or religious ceremonies for the dead, is at the base of the religious theory of adoption, but the Jains have so generally adopted the Hindu law that the Hindu rules of adoption are applied to them in the absence of some contrary usage (Mayne's "Hindu Law," paragraphs 148 and 106, and cases there cited).

5. It is common ground that in the sect of the Jains to which the parties in this suit

belong, the only ceremony necessary to the validity of an adoption is the giving and taking of the adopted son. In this sect of Jains the widow of a sonless Jain can legally adopt to him a son without any express or implied authority from her deceased husband to make an adoption, and the adopted son may be at the time of his adoption a grown-up and married man. The question in this case is, was the defendant in fact given by his mother to and taken by the plaintiff as an adopted son to the plaintiff's deceased husband?

6. The plaintiff in her plaint alleged that she had not legally taken the defendant as an adopted son to her deceased husband according to Jain custom. The defendant in his written statement alleged that he -

"Was given by his natural mother in adoption to the plaintiff by placing him on the lap of the plaintiff, who accepted him as the adopted son of her late husband."

7. The defendant supported that allegation by his evidence as to how the adoption was made. Probably it was his pleader who was responsible for the allegation in the written statement that the defendant's natural mother had placed him upon the lap of the plaintiff. It was in the opinion of their Lordships an unnecessary allegation. So long as it was proved that the defendant's natural mother did in fact give her son to the plaintiff as an adopted son and the plaintiff did in fact accept him as an adopted son to her deceased husband the adoption was valid, although the defendant was not placed on the lap of the plaintiff. The Trial Judge, finding that there had been no physical giving and taking of the defendant as an adopted son, made the declaration which the plaintiff claimed. The learned Judges of the Court of the Judicial Commissioner on appeal, finding that in fact there had been a valid adoption although the defendant had not been put upon the plaintiff's lap, set aside the decree of the Trial Judge and by their decree dismissed the suit. From that decree this appeal has been brought.

8. Shrichand Das Thakurdas was a moneylender and cloth merchant whose principal place of business and residence was at Burhanpur; he had a branch place of business and a house at Ellichpur, which is about 500 miles distant from Burhanpur, and since his death the plaintiff has carried on the money-lending and cloth business at Burhanpur and at the branch at Ellichpur. The defendant was in her employment at Burhanpur. In June 1909 the defendant was over 25 years of age and he was married. In 1909 the defendant went from Burhanpur to Ellichpur and the plaintiff followed him to Ellichpur. Her daughter had died some years before, and the plaintiff in her evidence stated that she had been, for some time intending to make an adoption, but

until after her arrival at Ellichpur she does not appear to have decided to adopt the defendant. After the plaintiff arrived at Ellichpur the defendant's mother, Musammatt Munnabai, who was living with her son at Burhanpur, was sent for, but by whom is not certain. Munnabai went to Ellichpur and the plaintiff admitted in cross-examination that she told Munnabai that she intended to adopt Jeoraj, the defendant. The plaintiff had undoubtedly invited a Brahmin priest, Ramashastris to be present at the ceremony of her adoption of the defendant.

9. He gave evidence as to the adoption in another suit on 19th October 1915, and again in 1916, in this suit. His deposition in the former suit has been put in evidence in this suit. Many people had been assembled, on the 28th June 1909, at the plaintiff's house at Ellichpur for the ceremony of the adoption of the defendant, and the plaintiff appointed Ramashastris to act as the officiating priest. She said that Ramashastris should perform "the ceremony vidhi, which was ordinarily done amongst the shopkeepers assembled there." Ramashastris said in his evidence:-

"She (the plaintiff) told me that there were no Jains present on the occasion. She had got a house at Burhanpur and there she would go through the adoption according to the (ceremony) of Jains at Burhanpur. She asked me to do the ceremony that prevailed at Ellichpur amongst our (the Brahmin) community."

10. He mentioned what was done and that Jeoraj was not placed exactly on the plaintiff's lap, but was asked to sit near her. He said:-

"Then I told the woman (whose boy was adopted) to say the words 'may be taken' to Sheokorbai (Sheokuarbai), and then I told Sheokorbai to say the words, 'I do take.' Both the ladies uttered these words that I asked them to utter. After this the ceremony ended. Pansupari was distributed amongst the guests. Dakshina was also distributed amongst the Brahmins assembled there. Some presents were also given to me as the officiating priest."

11. If the evidence of Ramashastris is accepted as true, the valid adoption of the defendant at Ellichpur is established, and it has not been proved that any further ceremony at Burhanpur or elsewhere was necessary to the validity of the adoption. Ramashastris's evidence is corroborated by the evidence of a respectable pleader, Ramachandra, who was present at the adoption. Other witnesses spoke to the adoption and discrepancies have been pointed out in their evidence, but it is to be remembered that their evidence was given some six years after the ceremony at Ellichpur.

12. Ramachandra gave his evidence in this suit on the 6th February 1916, and

Ramashastry gave his evidence on the 3rd April 1916. The plaintiff gave her evidence on the 18th April 1916.

13. The plaintiff in her evidence in chief said: "I have not adopted Jeoraj as my son. Nothing regarding Jeoraj's adoption took place at Ellichpur," that she refused to take Jeoraj on her lap, and "I said to Ramashastry that I would take Jeoraj on my lap at Burhanpur, as my caste-people were there." She also said in her evidence in chief that Jeoraj did not sit near her at Ellichpur, and "Neither I nor Munnabai were asked by Ramashastry to repeat anything in Sanskrit. I do not know if Ramashastry spoke any word like 'I do take.' Even if he may have spoken it, I did not understand." In cross-examination the plaintiff said :-

"At first Jeoraj went to Ellichpur and I followed him for some purpose I do not remember. I had no intention of adopting Jeoraj when I left Burhanpur. At Ellichpur I thought of adopting Jeoraj.... I did not ask Munnabai whether she would give Jeoraj in adoption. I had told her 'There are two or four boys, my daughter is dead, and therefore I should adopt some one.' On this, Munnabai said, 'Do as you like.' There was talk with her as to who should be adopted. I did tell her that I intended to adopt Jeoraj."

14. The learned Judge who heard the appeal believed the evidence of Ramashastry and of the pleader Ramachandra, as do their Lordships. The oral evidence of the adoption given by those two witnesses is most strongly corroborated by a deed which the plaintiff executed on the 28th June 1909. That deed is as follows:-

"Deed of adoption executed in favour of Jeoraj Punamchand Gujarati of Burhanpur, Taluq Burhanpur, District Khandwa, now at Ellichpur, Taluq Ellichpur, District Amraoti, by Sheokuar Bai, widow of Shrichand Das Gujarati of Ellichpur, Taluk Ellichpur, District Amraoti, in 1319 Fasli, to the following effect :-

"My husband Shrichand Das died about 25 years ago, and I have been the manager and owner since then of the shop. Shrichand Das having left no male issue, I have taken you in adoption from your mother to-day, with due ceremonies and in accordance with the Shastras, with a view to perpetuating our line and name and to securing spiritual benefit as enjoined by the Shastras, and you have been named Jeoraj Shrichand Das. Now, under this deed, you have become my adopted son and acquired all the rights of my son. You have consequently executed today a separate deed of agreement in my favor. Acting up to those conditions, and behaving like my natural son, you should celebrate

our name and perpetuate our line. You have come into my family and become my son under the Shasta's. God bless you with prosperity. This deed has been executed. To-day the 28th June 1909.

"In the handwriting of Dhanaji Vithoba Saolapurkar of Ellichpur.

Signature -

SHEOKUMAR BAI, widow of Shrichand Das Gujarati, of Ellichpur. Jeoraj has been adopted, in the hand of self."

15. Munnabai, the natural mother of Jeoraj, and seven other persons, amongst whom were Nawab Dand Khan and five Hindus, witnessed that deed. On the 9th July 1909, the plaintiff personally presented that deed for registration to Narayan Yadao, the Sub-Registrar at Ellichpur, and having admitted its execution the deed was registered. (Here the separate deed of agreement referred to in the deed of adoption was quoted). The last mentioned deed also was registered. The plaintiff had been managing the business as her own for some twenty years since her husband's death and it is obvious that she was determined to keep the absolute control of it in her own hands, notwithstanding the adoption, and possibly she wished that it should not be generally known at Burhanpur that she had actually adopted the defendant, whatever the reason may have been, the adoption was to be kept secret at Burhanpur. The defendant on the 30th June 1909, wrote to his brother Kesrichand, who was at Bombay, directing him to keep the matter secret and not to speak of it, and not to write to any one at Burhanpur, and he continued to refer to himself in entries in the account-books of the business as Jeoraj Punamchand, that is, as the son of Punamchand who had been his natural father. The defendant also, on the 12th April 1910, described himself as son of Punamchand in an application to a Munsif's Court, made in a suit which the plaintiff had brought against one Supdu, and in his evidence given in that suit stated, "My father's name is Punamchand." His brothers continued to write to him as the son of Punamchand. The fact that the defendant continued to describe himself and to be described by his natural brothers as a son of Punamchand is undoubtedly inconsistent with his having been validly adopted, but in face of the evidence of Ramashastri and Ramachandra, which their Lordships believe, and the corroboration afforded by the two deeds to which reference has been made, this Board would not be justified in discarding that evidence, and their Lordships find as a fact that the defendant was validly adopted by the plaintiff to her deceased husband.

16. Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

Appeal dismissed.