

PRIVY COUNCIL

Rajendra Prosad Bose

Vs.

Gopal Prosad Sen

Privy Council Appeal No. 112 of 1929, Patna Appeal No. 16 of 1929
(Lord Tankerton, Sir George Lowndes and Sir Binod Mitter JJ.)

26.6.1930

JUDGMENT

SIR BINOD MITTER J.

1. This is an appeal from the decree of the High Court of Judicature at Patna, dated 16th December 1927, which affirmed a decree of the Subordinate Judge at Cuttack, dated 6th August 1933, and dismissed the plaintiffs' suit with costs.
2. The following is the genealogical table of the family of Ram Prosad Bose, and the parties to the litigation claim to be his heirs. (For genealogical table see p. 244)
3. Ram Prosad Bose executed a will and also an Anumatipatra in favour of his wife Alhadini Dasi on 16th February 1869.
4. Alhadini Dasi, the widow, adopted one Krishna Prasad in the year 1885, and he died in 1909 leaving the respondent his only heir in possession of the properties claimed by the appellants. Alhadini died on 7th September 1920, and the present suit was instituted by the appellants against the respondent on 25th April 1921, praying for a declaration that the adoption of Krishna Prasad was invalid, and for the recovery of the properties in possession of the respondent and other incidental, reliefs.
5. There is no dispute now about the valid execution of the will or the Anumatipatra, nor is there any dispute that Krishna Prasad was in fact adopted, and that all necessary and proper ceremonies were performed at his adoption.
6. Ram Prosad belonged to a Kayastha family, and was governed by the Bengal School of Hindu law, and the widow therefore could only adopt in terms of the Anmatipatra, provided the same remained effective at the date of the adoption.

7. The following is the official translation of the Anumatipatra :

" Anumatipatra executed by Ram Prosad Bose in favour of Alhadini Dasi.

8. This Anumatipatra is executed by *Ram Prosad Bose* of Bhogmadhab, Ph. Jaipur, District Cuttack, at present of Bichargunj, Ph. Sunhat, Distri Balasore, to the effect following :

9. That as I was taken ill with purging and vomiting yesterday I found that it was not likely that I should live. In the circumstances I find that it is necessary that I should have an adopted son or a Snehaputra (to Inherit) the zamindari, etc., the moveable and immovable properties, which I have in Balasore and Cuttack. Hence in sound mind and out of my own free will I execute this Anumatipatra in favour of my wife Alhadini, alias *Gangsmeni Dasi*, to the effect that she will take an adopted son, that is, she will adopt my father's youngest son. At present he is called by the name of Chema. She will take him in adoption and deliver him possession of the aforesaid property on my death. If there be any obstacle to take him in adoption according to the Shastras then he will be made a Snehaputra or she may adopt any one else whom she wants, with the permission of my father, and deliver him possession as written above. To the above effect I execute this Anumatipatra that it may be of use when necessary. Dated 16th February 1869 corresponding to 7th Falgun 1276."

10. The learned Subordinate Judge, in his judgment, translated the vernacular word "matanusara" as "according to the opinion or advice," but the official translation of the aforesaid word is "with the permission."

11. Ross, J. in his judgment, accepted the official translation in its entirety, and the other learned Judge substantially did the same. The practice of their Lordships' Board is to accept the official translation as correct : (*Sasiman Chowdhurain v. Shib Narayan Chowdhury (of 49 7. A.)*) and their Lordships must decide this appeal on the official translation.

12. Both the Courts below have held that there was an obstacle to take Chema, the testator's stepbrother, in adoption, and their Lordships see no reason to differ from that view.

13. The substantial question before their Lordships for decision is whether on the true construction of the Anumatipatra, on the death of Golak Prosad, the power to adopt given to the widow by Ram Prosad came to an end.

14. In England, as also in India, even where a document is executed in vernacular, the

fundamental rule of construction is the same. The duty of the Court is to ascertain the intention from the words used in the document. The Court is entitled and bound to bear in mind surrounding circumstances, but the Court does that only to ascertain the real intention of the executant from the words used by him. The surroundings of an Indian, his manners, his outlook proceeding from different religion and social customs, are often different from those of an Englishman. Ordinarily documents executed by an Indian in his own language, particularly, without any professional aid, are often expressed in loose and inaccurate language. All these considerations have to be borne in mind, and sometimes by reason of these aforesaid circumstances a more extended or restricted meaning may have to be given to particular words than their exact literal meaning permits, provided always that the context justifies it. In short, the Court is entitled to "put itself into the testator's armchair." Once the construction is settled the Court is bound to carry out the intention as expressed and no other. The rules of construction were clearly laid down by the Board in *Venkata Narasimha Appa Row v. Parthasarathy Appa* 15. It is true that the paramount intention that often actuates a husband to empower his wife to adopt a son to him is religious, for according to Hindu religion the adopted son is able to confer on him at stated intervals spiritual benefits in a much higher degree than his brothers or any other near agnostic relations. On the other hand sometimes a husband mainly from secular motives empowers his wife to adopt a son or sons to continue his line of ancestors and to inherit his property and keep up his own name : see Mayne's Hindu Law, Edn. 6, p. 134.

16. Generally both motives induce the husband to empower the wife to adopt a son to him, and whether the paramount intention is religious or secular has to be ascertained from the language of the Anumatipatra, bearing in mind the various facts to which their Lordships have referred.

17. It is well established law in England, that when a power is given to be executed with the consent of a person, and that person dies before the power is executed, the power comes to an end.

18. Their Lordships see no reason why, subject to what they have said, the ordinary rule as to construction of powers which prevails in England should not be applicable to the construction of an Anumatipatra executed in India. Their Lordships are fortified in their view by the observations of the Board in the case of *Amrito Lal Dutt v. Surnomoye Dasi*. Their Lordships find from the document that the paramount intention was to have an adopted son to inherit the zemindaries. Instructions were given that the properties not disposed of by the will should be made over to the

adopted son. The Anumatipatra nowhere suggests that the adoption was to secure the spiritual benefit of Ram Prosad.

19. It is important to bear in mind that Ram Prosad could not have been married many years before the Anumatipatra was executed, and his wife was then only 13 or 14 years of age. It is unlikely that he could ever have wished that his girl-wife should have an unrestricted choice in the selection of his adopted son to the extent of allowing her to bring a stranger to inherit his property.

20. In their Lordships' opinion the words "with the permission of my father" created a condition precedent to the exercise of the power of adoption certainly during the lifetime of the father, and there is no reason for holding that the words are to have a different effect after the death of Golak. It is well-established law in India that authority given to a wife to adopt has to be strictly pursued. *Chowdhury Padum Singh v. Roer Udaya Singh* and *Surendrakeshav Roy v. Doorgasundari Dasse*. Their Lordships therefore hold that on the death of Golak the power to adopt came to an end.

21. Counsel for the respondent argued that in order to give effect to the true intention of Ram Prosad the words "if possible" should be added after the words "with the permission" in the Anumatipatra. Their Lordships are unable to accept this contention, and they are of opinion that the appeal should be allowed, and there should be a decree for ejectment against the respondent with mesne profits from the death of Alhadini to the date when possession is delivered to the appellants. The plaintiffs are also entitled to the declaration that Krishna Prosad was not the adopted son of Ram Prosad.

23. The appellants were unsuccessful in most of the issue raised by them, and in their Lordships' opinion each party should bear his or their costs in the Courts below, but the appellants should have such costs of this appeal as they are entitled to as appealing in forma pauperis. They will therefore humbly advise His Majesty accordingly.

Appeal allowed.

Cases Referred.

AIR 1922 PC 63=66 IC 193=49 IA 25 (PC) at p. 31

Row [1914] 37 Mad 199=23 IC 166=41 IA 51 (PC) at pp. 70, 71, 72 (of 41 7. A.).

[1900] 27 Cal 996=27 IA 128=7 Sar 633 (PC) at p. 134 (of 27 I. A.)

[1867-69] 12 MIA 350=12 WR 1=2 Suther 219=2 Sar 447 (PC), at p. 356

[1892] 19 Cal 513=19 IA 108=6 Sar 150 (PC), at p. 122 of 19 IA)