

## **PRIVY COUNCIL**

Padmalav Achariya

Vs.

(Srimatyia) Fakira Debya

P.C.A.No.99 of 1929

(Lord Macmillan, J. Sir John Wallis and Sir George Lowndes JJ.)

19.01.1931

### **JUDGMENT**

#### **SIR JOHN WALLIS J.**

1. The parties in the case belong to a Brahmin family of good standing who carried on a money-lending business in the District of Cuttack in Orissa and acquired moveable and immovable property valued at two lakhs of rupees. The defendants are the sons and grandsons of Narsingh, who belonged to the senior branch of the family and died in 1914, and the plaintiff, Fakira, is the widow of Abhimanyu, the posthumous son of Kulamoni, who belonged to the junior branch. According to the defendants Kulamoni before his death in 1877 adopted Narsingh's second son Udaya, and similarly in 1903 Kulamoni's son Abhimanyu twelve years before his death in 1915, adopted Udaya's eldest son Padmalav, defendant 1.

2. In June 1924, nine years after her husband's death, the plaintiff, Fakira, filed the present suit in the Court of the Subordinate Judge of Cuttack to recover her husband's share in the suit properties. She alleged that before her husband's death Narsingh's son, Udaya, had set up a false case that he had been adopted by Kulamoni and that for the sake of peace and to avoid litigation, it had been settled that he should have a one-fourth share of the properties which would otherwise have fallen to her husband, and accordingly she only claimed the remaining three-fourths. She denied that the adoption of defendant 1, Padmalav, by her deceased husband, Abhimanyu, had ever taken place, and alleged that she had been terrorized by some of the defendants and others into signing under a threat of criminal proceedings a deed of settlement under which she was only to be entitled to maintenance.

3. There were other issues, but the main question in both the lower Courts was as to

the factum of the adoptions set up by the defendants. The Subordinate Judge found that both adoptions were proved and dismissed the plaintiff's suit. The plaintiff thereupon appealed in forma pauperis to the High Court at Patna. Das, J., who delivered the judgment of the Court, expressed grave doubts as to the earlier adoption, but did not record a formal finding, as the plaintiff had not disputed Udaya's right to the one-fourth share which was all he would in any case have been entitled to on partition with the plaintiff's husband, a natural son born after the adoption. As regards the second adoption, he held that it was clouded with suspicion which the defendants had failed to dispel, and accordingly the High Court reversed the decree of the lower Court and decreed the plaintiff's suit.

4. From this decree the defendants preferred the present appeal to His Majesty in Council on the grounds, as stated in the appellant's case, that the judgment of the High Court is largely based on suspicion for which there is no justification; that the judgment of the Subordinate Judge is based on the credibility of witnesses examined before him which the High Court had not given any cogent reasons for disbelieving; that the weight of the evidence is in favour of the appellants; and that the suit is barred by limitation.

5. As regards limitation the Subordinate, Judge had held that the suit was barred under Article 116, Lim. Act, but, as pointed out in the judgment of the High Court, it is now finally settled by the judgment of the Board in *Kalyandappa v. Chanbasappa* that this article is inapplicable, and consequently the suit is not barred.

6. For better understanding of the case it appears desirable in the first place to show the state of the family in the absence of the alleged adoptions.

7. It is common ground that for nearly forty years before his death in 1914 Narsingh was the karta of the joint family, and the plaintiff's husband, Abhimanyu, was the sole representative by birth of the junior branch, and was at any time after attaining majority entitled to separate, and if there had been no adoption by his father Kulamoni, to take half of the family property on partition, leaving the other half for Narsingh, his five sons and their issue. Further, according to the evidence, Abhimanyu was an unsatisfactory member of the family, and did not attend to the family business or look after the management of their estates. His widow says that he was known in the village as the " Mad Babu," and latterly he spent most of his time in a natch akra which he had built for the amusement of himself and his friends in the village. The word it translated "dancing-saloon" in the judgment of the High Court, and it would

appear to have been a sort of village assembly room where the entertainment would not be confined to nautches, but might also include music and other Indian forms of dancing.

8. Now the case for the respondents, which receives considerable support from the judgment of the High Court, is that in this unsatisfactory state of things from his point of view, Narsingh, at some time after Kulamoni's death in 1877, began to pass off his second son Udaya as having been adopted by Kulamoni before the birth of the latter's own son Abhimanyu and that much later Narsingh began to fabricate evidence that Udaya's son Padmalav, defendant 1, had been adopted by Abhimanyu, it is now said, in the year 1903. As the defendant's case is that Kulamoni also directed that, in the event of a natural son being born to him, Udaya, the adopted son, was to share equally with him, the result would be to reduce Abimanyu's share to one fourth of what he would otherwise have been entitled to.

9. As regards the earlier adoption in 1877, it is argued for the respondent that it is in the last degree improbable that Kulamoni, who as shown in the judgment of the High Court, was a young man still in the thirties at the time of his death, and, according to the defendants, had already had male children who had died, would have adopted a son from the other branch of the family at a time when his own wife was enceinte and might bear him a natural son, as in fact she did; and it is, if possible, even more improbable, that he should have directed that the adopted boy should share equally with the afterborn natural son.

10. Similarly, it is said to be extremely improbable that in 1903, when he was at most twenty-six years of age, Abhimanyu would have resorted to adoption merely because, as alleged by the defendants, his first wife, who was then only fourteen or fifteen, had not yet borne children and was suffering apparently from some disorder of the uterus. In their Lordships' opinion these considerations of themselves make it incumbent on the Court to satisfy itself that in each of these cases the factum of the adoption is established by clear and satisfactory evidence.

11. The necessity is all the greater in the absence of any contemporary record of the adoptions either in a deed of adoptions or by entries in the detailed accounts which families in this position in India are in the habit of keeping. In the case of the second adoption the defendants' own evidence is that expenses were incurred, which, in their Lordships' opinion, must have found a place in the family accounts. Their Lordships agree with the High Court that the defendants' explanation of their failure to produce

these accounts in support of their case is wholly unsatisfactory, and, in these circumstances, this case is governed by an early decision of the *Board, Sootsroogun v. Sabitra 2 Knapp 287.*, where their Lordships observed with particular reference to the absence of entries in the accounts which ought to have been forthcoming:

"That in no case should the rights of wives and daughters be transferred to strangers or more remote relatives, unless the proof of adoption, by which the transfer is effected, be proved free from all suspicion of fraud and so consistent and probable as to leave no occasion for doubt of its truth."

12. This case has been followed by this Board in a more recent case *Diwakar v. Chandanlal Rao (of 44 Cal.)* and it has next to be seen whether the evidence for the defendants is of this unimpeachable character.

13. It will be convenient in the first place to deal with the documentary evidence in support of defendant 1's adoption in 1908, which proves on examination to be exceedingly meagre. Ex. O is a sale deed of 27th April 1909 for Rs. 46 of a small share in certain land in favour of Shri Gopinath Thakur, the village god, "through Marfatdar Padmalav Achariya, minor, represented by father and guardian, Abhimanyu Achariya. " Why the sale deed to the god should have been effected in he name of defendant 1 who, as appears from the next document, was then five years old, rather than in the name of his grandfather Narsingh, the shebait of the deity, is not explained, and the sale deed, which was registered, though it did not require registration, has every appearance of having been given this form for the express purpose of supporting the alleged adoption.

14. It is not shown that Abhimanyu knew anything about it, and the fact that at the subsequent revenue settlement defendant 1 appeared in the register as owner of the share, and that the public had the fullest opportunity of inspecting the register at several stages, does not render it probable that any of the people in the village noticed it or that if they did, they would have ventured or cared to interfere in the internal affairs of one of the leading families in the village.

15. Exhibit C is a deed of sale of the same year for Rs. 200 of an eight pies share in certain lands in favour of defendant 1 described as "Babu Padmalav Achariya, aged five years, son of Babu Abhimanyu Achariya," and of Dinabandhu Misra, the family purohit or priest. Here again it is not shown that Abhimanyu knew the property had been purchased in the name of the boy Padmalav, nor is it explained why it was so purchased. In their Lordships' opinion it cannot be inferred from these documents that

Abhimanyu knew that Padmalav was being put forward as his adopted son.

16. After Abhimanyu's death in 1915 there was a suit about this property dealt with in Ex. C, and a written statement was filed by Padmalav, the minor defendant 1, which purports to be signed by the plaintiff as his mother and guardian, but she denies her signature, and there is no evidence that she in fact signed it or that it was explained to her.

17. Narsingh died in November 1914, and the plaintiff's case is that not long before his death he effected an amicable partition between Abhimanyu and Udaya, Abhimanyu, she says, denied Udaya's adoption, but ultimately, for the sake of peace and to avoid litigation, consented to his taking a one-fourth share ; and she has framed her suit accordingly. The Subordinate Judge found the separation not proved, but the plaintiff's evidence is confirmed by the evidence of the defendants' witness 4, who was called to prove the alleged adoption, and spoke very positively about the separation in cross-examination. It is also supported by Ex. 3, a letter from Narsingh to Abhimanyu in 1913, which the Subordinate Judge appears to have misread. That letter shows that Abhimanyu was then pressing for a partition, and that the division of shares was already far advanced. The High Court however did not consider it necessary to record any finding on this issue.

18. Abhimanyu did not long survive Narsingh, but was carried off, it is said, by cholera a few months later, in August 1915, when his mother committed suicide, leaving the plaintiff and her two minor daughters as the sole representatives of the junior branch of the family, apart, of course, from the alleged adoptions.

19. In their Lordships' opinion there can be no doubt that Padmalav, defendant 1, officiated as Abhimanyu's son at his funeral ceremonies, though the plaintiff denies it. It is also clear that Padmalav was thenceforth treated by the family as a duly adopted son and that the plaintiff for a long time was not in a position to make any effective resistance, as she was completely dependant on her husband's family, and had no one to help her. The defendants have put in evidence three letters purporting to have been written by the plaintiff about this time to her "brother-in-law," Udaya, in which she signs herself "Padla-bow," or Padmalav's mother. She denied having written them, and the appellate Court considered it improbable that she would have used a signature which admitted the adoption, especially in view of the evidence-in-chief of the defendants' witness 3 that at this time she went by the name not of "Padla-bow," but of "Sobha-bow" or the mother of her daughter Sobha. This was decidedly not the answer

wanted, and the witness qualified it by adding that before Sobha's birth-and therefore also before the letters could have been written -she had been known as "Padla-bow." On these grounds, and also having regard to the evidence as to handwriting, the appellate Court held that these letters had not been proved to have been written by the plaintiff.

20. For the appellants it was argued that their genuineness sufficiently appeared from the contents, but to this it was answered that they were fabrications reproducing genuine letters with the necessary alterations. In their Lord-ships' opinion they are not above suspicion, and it would be unsafe to treat them as decisive of the present case. They would also observe in this connexion that what has to be proved in this case is the factum of the adoption in 1903, and that on this issue admissions made by the plaintiff during her widowhood while she was entirely in the power of her husband's relations, would necessarily carry much less weight than if made at an earlier period.

21. That the plaintiff had not abandoned her claims to her husband's estate, and that the defendants : were afraid of them, appears sufficiently, in their Lordships opinion, from the steps they took in 1921 to extort a renunciation from her by threats of criminal proceedings. While the plaintiff was absent from home on a visit to a temple, Udaya and others broke into her house and carried off all her jewels and other valuables. When she came back she found no difficulty in getting one of Udaya's brothers and others to assist her in retaking possession. A pretext was thus afforded for launching proceedings against her under section 107, Criminal PC, in which those who had assisted her were duly joined. There is no documentary evidence as to these proceedings, but, according to the defendants, owing to the position of the family, the case was taken up by the District Magistrate himself, and the defendants' witness 7, a Police Inspector of the Criminal Investigation Department, who was then at Cuttack, was appointed to investigate it.

22. According to his evidence, defendant 4, Narsingh's eldest son, who is one of the leading lawyers at Cuttack, had an interview with the District Magistrate at Cuttack, and was asked by him to go to the village with defendants' witness 4, Udaya's wife's brother, who is a manager of the Court of Wards, and the Police Inspector, and to bring about a settlement. It appears from the deed of compromise that they gave out that they were acting at the request of the Collector, and this in itself was calculated to overawe the plaintiff. Exactly what happened it is of course impossible to say. The plaintiff's story is that a constable threatened to handcuff her unless she signed. The defendants' witnesses say that it took two days to bring about the settlement, and that

when she had communicated her acceptance to the Police Inspector the compromise was drafted by Narsingh's eldest son, defendant 4.

23. It is nowhere expressly stated in the compromise that Padmalav is the adopted son of Abhimanyu, but it proceeds on that footing and provides that the plaintiff is to live and mess separately from Padmalav and that he is to pay her maintenance which is to be a charge on his eight annas share of the family property, that is to say, the share he took as Abhimanyu's adopted son, and that he to hand over certain articles to her.

"Except as aforesaid, Fakira has no claim to any other property of Padmalav, nor will Padmalav be entitled to claim any property from Fakira."

24. It thus amounted to a complete renunciation of her claim to succeed to her husband's estate. Both the lower Courts have held the compromise not to be binding on the plaintiff and the High Court has further commented on the inadequate provision made for the plaintiff and her daughters and the oppressive conditions imposed upon her. In their Lordships' opinion the whole of this incident, far from dispersing the clouds of suspicion resting upon these alleged adoptions is, if anything, calculated to darken them, especially having regard to the fact that the Subordinate Judge's finding as to the factum of the second adoption is largely based on the evidence of two of these arbitrators. Their Lordships agree with the learned Judges of the High Court that they were not only near relatives but also partisans of the defendants, and that it would be unsafe in a case of this kind to act upon their evidence.

25. In their Lordships' opinion both these adoptions are most improbable in themselves and are not supported by the contemporaneous evidence which ought to have been forthcoming. The High Court has dealt very fully and carefully with the oral evidence, and has arrived at the conclusion that it cannot be regarded as dispelling the grave suspicions in which the defendants' case is involved ; and their Lordships, after a careful and anxious consideration of the whole evidence both oral and documentary, see no reason to differ from that conclusion. In their opinion the appeal fails and should be dismissed with costs and they will humbly advise His Majesty accordingly.

Appeal dismissed.

Cases Referred.

AIR 1924 PC 137=79 IC 971= 51 IA 220=48 Bom. 411 (PC),

AIR 1916 PC 81=39 IC 6=12 NLR 164=44 Ca 201 (PC) at p. 208

