

## PRIVY COUNCIL

Mt. Bahu Rani

Vs.

Thakur Rajendra Baksh Singh

P.C.A.No.75 of 1930

(Lord Thankerton J.Sir John Wallis and Sir Lancelot Sanderson JJ.)

12.01.1933

### JUDGMENT

#### SIR JOHN WALLIS J.

1. The plaintiff instituted this suit in the Chief Court of Oudh for a declaration that he was the adopted son of *Mahabir Baksh Singh*, and that the deed of gift executed by defendant 1 who is the widow of Mahabir's elder brother, *Mahesh Baksh Singh*, in favor of defendant 2 was not binding beyond her own lifetime. As the valuation of the suit proved to be under five lakhs of rupees it was insufficient to give the Oudh Chief Court original jurisdiction, and the plaint was amended by claiming reliefs as to other properties as well, but these claims are not the subject of this appeal as they failed before Pullan, J., the Trial Judge, and were given up at the hearing of the appeal in the Chief Court. Pullan, J., gave the plaintiff a declaration as to the adoption, and otherwise dismissed the suit. The Chief Court modified this decree by giving the plaintiff a declaration as to the deed of gift as well. From this decree the defendants have preferred the present appeal.

2. The following pedigree will help to show how the suit arose:

*Hardat Singh, the Raja of Bondi*, having taken an active part in the Mutiny, his estates, which had been confiscated under Lord Canning's Proclamation, were not restored to him, but were granted to the Maharajah of Kapurthala in consideration of his services, subject to the payment of a maintenance allowance of Rs. 250 a month to Hardat Singh's sons, Mahesh Bakhsh Singh and Mahabir Bakhsh Singh. Subsequently, in the years 1871 and 1875, the Government grafted the two brothers the seven villages, which are the subject of this appeal and are Nos. 2 to 8 in Schedule 1 of the plaint by three grants the

terms of which are set out in the Certificate of 22nd August 1877. The limitation in the grant of villages Nos. 2 to 4 of 5th June 1871, was to "you and your heirs,"and subject to the due observance of the conditions of the grant the Government undertook to "maintain you and your heirs as proprietors of the above-mentioned estate."

3. The grant of village No. 5 in the same year was limited to the two brothers "their heirs, executors, administrators and assigns in full hereditary and transferable proprietary right."The grant of villages Nos. 6 to 8, dated 22nd August 1877, was limited to the two brothers "and their heirs, successors and assigns."

4. It is recited in the first grant that the Government had sanctioned a grant of five thousand acres of waste land to the two brothers for their maintenance and these villages were apparently substituted, as appears from a provision in the third grant for the surrender by the two brothers of the waste lands in their possession. Mahesh Bakhsh Singh, the elder brother, was lambardar and manager of the estate until his death in 1896. Mutation of names was then effected as regards his share in favour of his minor son Swami Bakhsh Singh, and his surviving brother Mahabir Bakhsh Singh became lambardar and manager and so continued until his death in 1905. The minor Swami Bakhsh Singh died in 1899, and on his death mutation of names was effected in favour of his mother Bahu Rani, defendant 1 in this case, with the consent of her brother-in-law Mahabir Bakhsh Singh, whose name was entered as manager.

5. So far had every thing proceeded on the footing that Mahesh Bakhsh Singh's share was his separate property and had descended on his death to his minor son Swami Bakhsh Singh and on his death to his mother defendant 1 for her life with reversion to her husband's heirs. On 15th May 1900, Mahabir Bakhsh Singh adopted the plaintiff conferring upon him the name of Rajendra Bakhsh Singh, and on the following day he executed a deed of adoption and a will by which he left his property to his wife Mahadei Kuar with remainder to his adopted son the present plaintiff. On the same day defendant 1 Bahu Rani also executed a will in the plaintiff's favour in which it was recorded that the adoption had been made in consultation with her and with her consent.

6. On Mahabir's death in 1905 Bahu Rani, as the widow of elder brother became lambardar and manager. Subsequently the widows fell out and in September 1906, Mahadei Kuar, Mahabir's widow, applied that the Court of Wards should take over the estate, alleging that it was joint family property and that on Swami Bakhsh's death his share had passed by survivorship to Mahabir ; she also alleged that Bahu Rani,

defendant 1, had been mismanaging and wasting the estate. This application was rejected, and defendant 1 continued to be lambardar of the whole estate until 1909 when a partition was effected by the revenue authorities. On 12th February 1907, defendant 1 executed a second will by which she left all her property to defendant 2, and on 6th April 1926, she executed in favour of defendant 2 a deed of gift of her share in the seven villages which were the subject of these grants and put him in possession. In this deed it was alleged that the present plaintiff neither had been nor could have been adopted by Mahabir Bakhsh Singh.

7. The plaintiff then instituted the present suit on 3rd May 1927, for a declaration that his adoption was valid and that the deed of gift executed by defendant 1 in favor of defendant 2 was not binding beyond her own lifetime. The written statements of the defendants alleged that there was a family custom prohibiting adoption, that the plaintiff had not been validly adopted, and that he was incapable of being adopted because his remote ancestor Sangaram was illegitimate as his mother was a Brahmin lady whom his father Harihar Deo could not lawfully marry. They also alleged that the suit villages were joint family property, that on the death of Swami Bakhsh Singh his share therein passed by survivorship to his uncle, Mahabir Bakhsh Singh, but defendant 1 from the date of her son's death asserted her proprietary and adverse right to a one-half share in the said villages and had acquired title thereto by adverse possession.

8. The Trial Judge held that a family custom prohibiting adoption had not been proved and this finding was not questioned before the Chief Court. As regards the validity of the adoption both Courts held that the plaintiff had been duly adopted and that it was not shown that the adoption was invalid as a double adoption by both Mahabir and his brother's widow defendant 1, a case set up by the defendants at the trial. As regards alleged illegitimacy of the plaintiff's ancestor, they held it not proved that he was son of *Harihar Deo* by a Brahmin lady, and that even if he were, it was shown that the plaintiff's family were recognized as of good caste. These concurrent findings dispose of the question of adoption. The question of the defendants' title by adverse possession was the subject of issues 5 and 8:

5. Were the villages 2 to 8 in Schedule 1 granted to Mahesh Bakhsh Singh and Mahabir Bakhsh Singh (a) as tenants in-common (6) as members of a joint Hindu family.

8. Has defendant 1 become the absolute owner of the properties 2 to 8 in Schedule 1 by adverse possession ?

9. Pullan, J., was of opinion that, as at the dates of the grants the two brothers constituted a joint family, the grants must be taken to have been made to them jointly as members of a joint family. The limitation in the grants themselves which have been set out above he treated as a mere form and nothing more, which could not be taken as subversive of the ordinary rules of succession under the Hindu law. Accordingly he held that on the death of Swami Bakhsh Singh in 1899 his share passed by survivorship to his uncle, Mahabir Singh, and that defendant 1 had acquired a title thereto by adverse possession for more than 12 years, and rejected the plaintiff's claim to a declaration in respect of them.

10. On the plaintiff's appeal to the Chief Court it was contended for the defendants that the grants must be taken to have been made to a joint family consisting of the two brothers, and secondly that they created a joint tenancy with rights of survivorship as distinct from a tenancy in common. This latter contention in their Lordships' opinion is inconsistent with the decision of this Board in *Jogeswar Narain Deo v. Ram Chund Dutt* upon which strangely enough reliance was placed by the defendants in both lower Courts. In that case a Hindu testator left a four annas share of his estate to his daughter and her son for their maintenance with powers of alienation by gift or sale, and the question was whether a perpetual lease of her own share granted by the daughter was binding beyond her lifetime. Before the Board it was contended for the first time that, even if she took absolutely, she took jointly with her son as joint tenants and not as tenants in common, and that she could not before severance of the estate make an alienation without the consent of her coparcener, as held by the Madras Court in *Vyadinada v. Nagammal* (1888) 11 Mad 258. With reference to this decision Lord Watson observed :

"There are two substantial reasons why it ought not to be followed as an authority In the first place it appears to their Lordships that she learned Judges of the High Court of Madras were not justified in importing into the construction of a Hindu will an extremely technical rule of English conveyancing. The principle of joint tenancy appears to be unknown to Hindu law, except in the case of coparcenary between the members of an undivided family. In the second place the learned Judges misapprehended the law of England, because it is clear, according to that law, that a conveyance, or an agreement to convey his or her personal interest by one of the joint tenants, operates as severance."

11. In their Lordships' opinion this is a clear ruling that the principle of joint tenancy

to unknown to Hindu law except in the case of the joint property of an undivided Hindu family governed by the Mitakshara law which under that law passes by survivorship. There could therefore be no question of these grants creating a joint tenancy as opposed to a tenancy in common, even if according to English law the terms of these instruments admitted of such a construction.

12. As to the question whether these grants were made to these two brothers severally or as members of a joint family that depends on the intention of the donor as expressed in the grants. Prima facie a gift to a member of a joint Hindu family is his separate property and will only become joint family property when it descends to his sons, unless he himself has made it joint family property by throwing it into the common stock. There is nothing in the terms of these maintenance grants to these two brothers to suggest that the Government intended to make a grant to a joint family. As regards the first grant, property granted to one of the two brothers and his heirs would clearly be taken by him as his separate property and the fact that this grant was made to the two brothers and their heirs is not a sufficient reason for placing a different construction upon the grant or holding that it was intended that they should take as members of a joint family.

13. The second grant to the two brothers "their heirs executors administrators and Assigns in full transferable and proprietary right" and the third grant to them and their heirs successors and assigns" are expressed in terms even less favorable to the defendants' case. Their Lordships therefore agree with the Chief Court that these grants-conferred an estate of inheritance on each of the two brothers in the subject-matter of the grant. In their Lordships' opinion the appeal fails and should be dismissed and they will humbly advise His Majesty accordingly. The appellants will pay the respondent's costs.

Appeal dismissed.

Cases Referred.

(1896) 23 Cal 670=23 IA 37 (PC)