

**(1928) 04 AHC CK 0011**

**Allahabad High Court**

**Case No:** None

Urjun

APPELLANT

Vs

Mathura Nath and Others

RESPONDENT

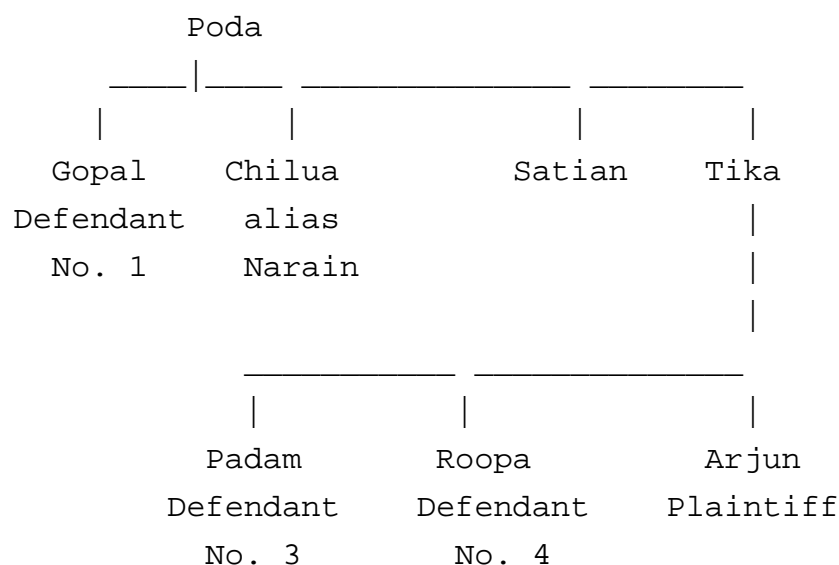
**Date of Decision:** April 27, 1928

**Citation:** AIR 1928 All 395

**Final Decision:** Dismissed

### Judgement

1. The relative position of the parties will appear from the following genealogical table:



2. The property in controversy in this suit is a house which originally belonged to Poda, the common ancestor. Gopal is the own brother of Tika. Tika is the father of the plaintiff and of defendants 3 and 4. On 6th January 1912, Gopal sold the house to Mathura Nathji, defendant 2, and the latter has remained in possession of this property since the date of the sale. Tika died about 17 years ago. The present suit was instituted on 14th February 1924, for the avoidance of the sale-deed and for recovery of the possession of a half-share in the house on the allegation that Gopal

was not competent during the minority of the plaintiff and his brothers to transfer the property by sale to defendant 2.

3. The claim was resisted inter alia on the ground that Tika had been transplanted from his natural family and had been given in adoption to one Gordhan, the maternal uncle of Tika. If that be so, Tika and the sons of Tika including the plaintiff could not have any claim to the house in dispute which would remain the property of Gopal and his brothers. There is a concurrent finding of the two Courts that amongst the Chaubes there is a custom legalizing the adoption of a sister's son and in pursuance of the said custom Tika was taken in adoption by Gordhan. This is a finding of fact which cannot be assailed in second appeal. But the learned Counsel for the appellant argues that it was not open to the Courts below to arrive at this finding because of a judgment in suit No. 156 of 1890 between Tika and Gordhan in which it was categorically held that Tika was not the adopted son of Gordhan. It is pleaded that the said judgment has the effect of a judgment inter omnes and is conclusive against the whole world on a question of status. Prior to the passing of the Indian Evidence Act, there was a cloud of controversy over the question whether a judgment determining the question of adoption was a judgment in rem. There were, however, two important pronouncements made: one by Hallway, J., in *Yarakalamma v. Anakala Naramma* 2 M.H.C. 276, where it was decided that a decision by a competent Court that a Hindu family is joint and undivided, or upon a question of legitimacy, adoption, partibility of property, rule of descent in any particular family, or upon any other question of the same nature in a suit inter partes, is not a judgment in rem or binding upon strangers, i.e., persona neither parties to the suit nor privies.

4. This was quoted with approval and adopted by Peacock, C.J., in the well-known case of *Kanhaiya Lal v. Radha Charan* 7 W.R. 338. The matter, however, has now been placed beyond the range of controversy by reason of the provisions of Section 41, Evidence Act. No judgment except that passed by a Court in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, upon any matters indicated in Section 41 of the said Act, can have the effect of a judgment in rem.

5. We hold, therefore, that there was nothing to preclude the learned Additional Subordinate Judge from going into the merits of the question of facts raised in the case, namely whether Tika was adopted by Gordhan

6. The various other pleas raised in the grounds of appeal have not been pressed.

7. There is no force in this appeal and it is dismissed with costs.