

(1922) 03 AHC CK 0034

Allahabad High Court

Case No: None

Rao Narsingh Rao

APPELLANT

Vs

Beti Maha Lakshmi Bai and
Others

RESPONDENT

Date of Decision: March 3, 1922

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 110
- Evidence Act, 1872 - Section 112

Citation: (1922) ILR (All) 470 : 66 Ind. Cas. 902

Hon'ble Judges: Grimwood Mears, C.J; Pramada Charan Banerji, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Grimwood Mears, C.J. and Pramada Charan Banerji, J.

1 This is an application by Rao Narsingh Rao for leave to appeal to His Majesty in Council.

2. The case is a very important one and the position of the applicant is such as to enlist the sympathy of every one acquainted with his history.

3. Rao Narsing Rao commenced an action against one Rani Kishori on the allegation that he was entitled to property of the value of upwards of fifty lakhs because he was the son of Rao Balwant Singh and Musammat Dunaju. Rao Balwant Singh and Musammat Dunaju were husband and wife. His allegation that he was the son of Musammat Dunaju was the main essential fact to be proved. The Rani Kishori denied it and set up that Rao Narsingh Rao was in fact the son of one Shekhar Singh. In the lower court and here Rao Narsingh Rao failed to prove that Musammat Dunaju was his mother, and there are thus two concurrent findings against him.

4. We have listened very carefully to Mr. Nihal Chand's arguments with complete readiness to grant the application if that could consistently and properly be done.
5. Mr. Nihal Chand argues that the Court ought to have applied the provisions of Section 112 of the Evidence Act and. he formulates his case in this way. He says that when the defendants had failed to establish the case which they set up that Rao Narsingh Rao was the son of Shekhar Singh, thereupon there arose a conclusive presumption that Rao Narsingh Rao was the son of Musammat Dunaju by her husband Rao Balwant Singh. We have pointed out elsewhere that the defendants were under no obligation to prove the paternity of Rao Narsingh Rao. It was for him to prove that he was the son of Musammat Dunaju.
6. He has cited to us the cases of Narendra Nath Pahari v. Ram Gobind Pahari ILR (1901) Calc. 111 and, Tirlok Nath Shukul v. Lachmin Kunwari ILR (1903) All. 403. It will be noticed that in both those cases the Privy Council found as a fact that the lady had in fact given birth to a child and then on proof that the other requirements of the section were complied with, the conclusive presumption arose.
7. Had Rao Narsingh Rao been able to prove that Musammat Dunaju had on the 2nd of March, 1894, given birth to a child, practically all his difficulties would have disappeared, as it would, in our opinion, in the circumstances have been proper to conclude that he was in fact the child and that Rao Balwant Singh was the father. Section 112 could only have been relied upon by him after proof of the giving of birth to a child by Musammat Dunaju.
8. The weight of evidence was against the alleged childbearing by Musammat Dunaju, and being of opinion that Section 112 has no application, we are compelled to decide that the applicant has failed to show that there is any substantial question of law in the proposed appeal and, therefore, reject the application as not fulfilling the requirements of Section 110 of the Code of Civil Procedure.