(1880) 11 PRI CK 0001

Privy Council

Case No: None

The Court of Wards, On Behalf of Chandra Shekhar, A. Minor		APPELLANT
	Vs	
Rani Anand Kunwar and another		RESPONDENT

Date of Decision: Nov. 19, 1880

Citation: (1881) 6 ILRPC 764

Hon'ble Judges: J. W. Colyile, B. Peacock, M. E. Smith, R. P. Collier, JJ.

Judgement

R. P. Collier, J.

1. The suit out of which this appeal arises was institued in the Court of the Deputy Commissioner of Lucknow, in the Province of Oudh, by the respondent, the Superintendent of the Court of Wards, on behalf of Raja Chandra Shekhar, a minor, against Rani An and Run war and Radakishen, the appellants, to set aside an adoption set up by them, by which, as they alleged, the first defendant had adopted the second defendant as the son of her deceased husband, Shunkersahai.

2. The suit was transferred to the Court of the Deputy Commissioner of Bara Banki in the district of Sitapore.

3. The minor on whose behalf the suit was instituted is the taluqdar of Sessendi, the taluq having descended to him as the adopted son of Raja Kashipershad, the former taluqdar.

4. By an order of Her Majesty in Council made in the year 1873, in pursuance of a report of the Judicial Committee in an appeal in which the first defendant was appellant and the aforesaid Raja Kashipershad was respondent, the first defendant was declared to be entitled, as the widow and heiress of the aforesaid Shunkersahai, to a Hindu widow''s estate of inheritance, in four of the mouzas, and to a one-third share of the profits of seven others of the mouzas comprised within the said taluq of

Sessendi, and to a sub-settlement of the said four mouzas {see the ease of the Widow of Shunkersahai v. Rajah Kashipershad (L. R., 4 Ind. App., 198).

5. The plaint in the present suit, which was filed on the 8th July 1875, stated, that the suit was brought to set aside the so-called adoption of the second defendant, and also to set aside a decree given under Section 15, Act VIII of 1859, declaratory of the so-called adoption, obtained by the defendants by fraud and collusion. It alleged, that the said Raja Chandra Shekhar was taluqdar of Sessendi; that, at the time of the said decree, the defendant No. 1 was a sub-proprietor of the said taluq, and liable to him for the Government revenue demand plus a certain percentage; and that the effect of the so-called adoption and decree so long as they were not set aside, was to put the so-called adopted, son of the first defendant in her place as sub-proprietor, and thus to thrust upon the taluqdar, in a method contrary to law, an obnoxious sub-proprietor.

6. The plaint further stated, that the said Raja Chandra Shekhar was entitled, in reversion, to the sub-proprietary estate so held by the defendant No. 1, and that the effect of the so-called adoption and of the decree declaratory of it, was illegally to injure and postpone that reversion; that the said Raja Chandra Shekhar was further entitled, immediately in reversion, to the sub-proprietary estate so held by the defendant No. 1 as aforesaid, by right of purchase under a deed of sale bearing date 7th day of November 1862, and that the effect of the so-called adoption and of the decree declaratory of it, was illegally to injure and postpone that reversion.

7. The first defendant filed a written statement, in which she set up the adoption as having been made in 1851 in pursuance of the verbal and written authority of her deceased husband. She also set out a genealogical tree of the family, which both parties admitted to be correct so far as it goes, and of -which the following is a copy:

Imrit Lall Pathuk. Koondun Lall. Mohun Lall. Sitaram. Shunkersahai, Mussanut Ummed Had three married to Koer, married daughters, Mussamut Anund to Raja sons, all who have Koer. Kashipershad alive now. Radakishen, Chandra Shackar, Adopted son of adopted by Raja Shankersahai. Kashipershad. Adjudhia Luchman Rughunath Beni Madho, Pershad, Pershad, Pershad, alive. alive. alive. dead. Sheo Rutton, Ram Rutton, alive. alive.

8. She further stated, that the plaintiff had no locus standi, nor had the Superintendent of the Court of Wards any right to institute the suit.

9. Further, she alleged that the plaintiff had no right to sue, because he was only her husband''s uncle''s daughter''s son, and during the lifetime of her husband''s male cousins (the sons of Sitaram Pathak) and their sons (to wit, Sheo Button and Ram Button), and the possibility of an adoption of a son being made by any of them, the plaintiff could not, by any means, be considered the nearest reversioner to her or to her husband.

10. The Deputy Commissioner held, that the plaintiff was not the immediate reversioner, either by right of his being the taluqdar or by inheritance; but that he was a remote reversionary heir, and was kept out of his rights by virtue of the alleged adoption and declaratory decree, and that he had thereby sustained sufficient injury to entitle him to maintain the suit. Accordingly, he made a decree that the alleged adoption and the decree declaratory of it be set aside so far as the plaintiff was concerned.

11. Upon appeal the Commissioner affirmed the decree of the Deputy Commissioner, but on a different ground. He agreed with the Deputy Commissioner that the plaintiff had not proved the alleged deed of purchase of the 7th November 1862, upon which he relied; he held that the plaintiff was not a reversionary heir of Shunkersahai, but considered that, as taluqdar, he had a reversionary interest in the sub-proprietary estate, which entitled him to maintain the suit.

12. Their Lordships are of opinion that the first ground upon which reliance was placed on behalf of the plaintiff, and upon which the Commissioner decided in his favour,-viz., that as taluqdar he had aright to have the alleged adoption and declaratory decree set aside as against him,-is wholly untenable. Indeed, the learned Counsel for the respondent was obliged to abandon it. The last of the three grounds upon which the plaintiff relied in his plaint,-viz., that he was entitled, by purchase, to the immediate reversion in the said sub-proprietary estate,- fails in fact, inasmuch as both the lower Courts concurred in finding that the alleged deed of sale of the 7th November 1862 was not proved.

13. The only remaining question then is-Is the minor a reversionary heir of Baja Kashipershad; and if so, is he entitled to maintain the suit?

14. It appears from the genealogical table above set out, and it is not disputed, that the minor is the adopted son of Baja Kashipershad, who was the husband of Ummed Koer, the daughter of Mohun Lall, who was a brother of Koondun Lall, the father of Shunkersahai. It is unnecessary to determine whether he could, under any circumstances, succeed by inheritance to the property of Shunkersahai; and their Lordships abstain from expressing any opinion upon that point. Admitting, however, for the sake of argument, and only for the sake of argument, that, as an adopted son, he had the same rights as a naturally-born son, and that, as a naturally-born son of Ummed Koer, he would have been entitled, in default of nearer relations, to succeed by inheritance to the property of Shunkersahai, it could only have been in the character of a distant bandhu. It is clear that a son of a daughter of a father''s brother is much farther removed in the order of succession than a son of a father''s brother, or a son of such a son. In any view of the case, the minor had not a vested, but at most a contingent, interest in the property of Shankarsahai during the lifetime of his widow; see Hurrydoss Dutt v. Rungunmoney Dossee (2 Tay. and Bell, 279).

15. The question then arises, is the contingent reversionary interest which the minor has, if he has any, sufficient to enable him to maintain the action which is brought to impeach the adoption of the second defendant?

16. Their Lordships are of opinion that although a suit of this nature may be brought by a contingent reversionary heir, yet that, as a general rule, it must be brought by the presumptive reversionary heir,-that is to say, by the person who would succeed if the widow were to die at that moment. They are also of opinion that such a suit may be brought by a more distant reversioner if those nearer in succession are in collusion with the widow, or have precluded themselves from interfering. They consider that the rule laid down in Bhikaji Apaji v. Jagannath Vithal (10 Bom. H. C. Rep., A. C.J., 351) is correct. It cannot be the law that any one who may have a possibility of succeeding on the death of the widow can maintain a suit of the present nature, for, if so, the right to sue would belong to every one in the line of succession, however remote. The right to sue must, in their Lordships'' opinion, be limited. If the nearest reversionary heir refuses, without sufficient cause, to institute proceedings, or if he has precluded himself by his own act or conduct from suing, or has colluded with the widow, or concurred in the act alleged to be wrongful, the next presumable reversioner would be entitled to sue; see Kooer Goolab Sing v. Rao Kurun Sing (14 Moore''s I. A., 176). In such a ease, upon a plaint stating the circumstances under which the more distant reversionary heir claims to sue, the Court must exercise a judicial discretion in determining whether the remote reversioner is entitled to sue, and would probably require the nearer reversioner to be made a party to the suit.

17. In the present case, the Superintendent of the Court of Wards claims in the plaint a right to sue on behalf of the minor as a reversionary heir, without alleging that there are no others nearer in the line of succession, or that those who are nearer have precluded themselves from suing.

18. In the course of the argument before their Lordships, it was contended that Adjudhia Pershad and Luchaman Pershad, two of the sons, and Sheo Button and Earn Button, the two grandsons of Sitaram, had precluded themselves from suing to set aside the adoption and declaratory decree mentioned in the plaint; but no such allegation was made in the plaint, nor does the point appear to have been taken in the Courts below.

19. No issue was raised, nor was there any finding of either of the lower Courts, in support of that view of the case. The point is not even expressly alluded to in the respondent''s case or reasons. Their Lordships cannot, at this stage of the case, give any effect to the contention.

20. Even if it were allowed to prevail, it would not apply to Beni Modho, who was stated to be alive, but not to have been heard of for some time. It does not appear, that he had been unheard of for a length of time sufficient to warrant a

presumption of his death. Moreover, there was no allegation of his death, and no issue whether he was alive or dead, nor any evidence of an attempt to ascertain the fact. It must, therefore, be taken that there may be a son of a brother of Shunkersahai''s father in existence who is not precluded from suing. Consequently, the minor, who is merely the son of a daughter of a brother of the father, is not, under the rule applicable to such actions as the present, entitled to maintain the present suit.

21. It must further be remarked that it appears from the genealogical table that Sitaram had three daughters who have sons living. They would be as near in succession to Shunkersahai as the minor plaintiff would have been, even if he had been a naturally born son.

22. It must also be borne in mind that even if Adjudhia Pershad, Luchman Pershad, Sheo Button, and Bam Button have precluded themselves from suing to set aside the adoption, the minor plaintiff could not, even if he were a naturally born son, and the adoption of the second defendant should be set aside, succeed to the property of Shunkersahai, if either of the sons or grandsons of Sitaram should survive the first defendant. The minor, admitting him to be a bandhu, has merely a very remote possibility of ever succeeding to the property of Shunkersahai. Their Lordships will, therefore, humbly advise Her Majesty to reverse the decisions of both the lower Courts, and to dismiss the suit, with costs, in both the lower Courts. The appellants'' costs of this appeal must be paid out of the estate of the minor Chandra Shekhar.