(1890) 03 PRI CK 0007

Privy Council

Case No: None

Pirthi Pal Kunwar	APPELLANT
Vs	
Guman Kunwar and another	RESPONDENT

Date of Decision: March 13, 1890

Citation: (1890) 17 ILRPC 934

Hon'ble Judges: Macnaghten, B. Peacock, R. Couch, JJ.

Judgement

B. Peacock, J.

1. The circumstances of this case are very fully stated by the Judicial Commissioner in his judgment, and their Lordships have very few remarks to make beyond those which the Judicial Commissioner made when he delivered that judgment. He referred to the case of Sreenarain Mitter v. Kishen Soondery Dassee 11 B.L.R. 171, at p. 190 : L.R. I.A. Sup. Vol. 149, and read the remarks which had been made by the Judicial Committee in that case. Amongst those remarks it was said: "It is not a matter of absolute right to obtain a declaratory decree. It is discretionary with the Court to grant it or not, and in every case the Court must exercise a sound judgment as to whether it is reasonable or not, under the circumstances of the case, to grant the relief prayed for. There is so much more danger than here of harassing and vexatious litigation that the Courts in India ought to be most careful that mere declaratory suits be not converted into a new and mischievous source of litigation."

2. The Judicial Commissioner, in exercising that judgment which the Judicial Committee had suggested ought to be adopted by the Courts in India, thought that this was not a case in which, in the exercise of a sound judicial discretion, he ought to grant a declaratory decree, or that a declaratory decree ought to have been granted by the Court of First Instance and he therefore reversed the decision of that Court and refused a declaratory decree. It appears to their Lordships that the Judicial Commissioner exercised a very sound judgment in what he did. All that is suggested by the learned Counsel on the part of the appellant in support of a declaratory decree is this-that, at some time or another after the death of the

present plaintiff, the person who according to the plaintiff''s contention is not an adopted son may by some means, either by an act of the Government or otherwise, obtain possession as an adopted son. The only object, therefore, of having a declaratory decree is to prevent him being put into possession. Their Lordships cannot assume that the Government, if petitioned to put the person claiming to be an adopted son into possession, would do so unless they saw that he had a right to that, possession. The officers of Government would in ordinary course, if there were any doubt as to the title, refer the parties to the Civil Court.

3. If the person claiming to have been adopted brings an action to enforce his title, the question will be investigated whether he was validly adopted or not.

4. Under these circumstances, their Lordships think that there was no ground for this appeal, and they will humbly advise Her Majesty that the judgment of the Judicial Commissioner be affirmed.