(1872) 11 PRI CK 0001

Privy Council

Case No: None

Gopee Lall		APPELLANT
	Vs	
Mussamat Sree Chundraolee Buhoojee		RESPONDENT

Date of Decision: Nov. 30, 1872

Citation: (1872) 1 IndApp 131

Hon'ble Judges: James W. Colvile, Barnes Peacock, Montague E. Smith, Robert P. Collier, JJ.

Judgement

Robert P. Collier, J.

1. This was a suit brought to recover possession of a temple and certain jewels and valuables held therewith. The Plaintiff claimed as heir of one Luchmunjee. He endeavoured to prove his heirship in this way. He asserted that his grandfather Damodurjee had two wives, Luchmee and Charmuttee : that shortly before his death he gave a power to his wives to adopt two sons; that after his death his first widow Luchmee adopted Gobind Jee, the father of the Plaintiff; that some four years afterwards the second widow, Charmuttee, adopted Luchmun Jee, through whom the Plaintiff claims. The Plaintiff asserts that on the death of Luchmun Jee, who according to his case was his uncle, he became the heir to Luchmun Jee, who was in possession of the property. He admits that the Defendant, the widow of Luchmun Jee, had a life interest in the property, but he alleges that she had forfeited that life interest by committing waste.

2. The Principal Sudder Ameen found in effect that the Plaintiff had proved the whole of his case. The High Court reversed the decision of the Principal Sudder Ameen; they expressed themselves by no means satisfied that the Defendant had forfeited the property by committing waste; but they deemed it unnecessary to decide this question, inasmuch as they came to the conclusion that the Plaintiff had failed to prove his heirship to Luchmun Jee. They were by no means satisfied that the Plaintiff proved all the facts on which he relied; but they came to the conclusion that, assuming all those facts to be proved, as the Plaintiff alleged them, still in point of law his case failed for this reason,

that according to Hindu law there cannot be two valid successive adoptions, and that the first widow having adopted a son, Gobind Jee, the second widow could not, while Gobind Jee was alive, make another valid adoption.

3. The question of successive adoption was argued very elaborately and very carefully considered in the case of Bungama v. Atchama and Ors. reported in the 4th volume of Moore''s Privy Council Appeals, page 1; and since the decision of that case, whatever doubts may have been entertained on the question before, it must be considered as settled law that a man cannot, while he has an adopted son living, adopt another son. And in their Lordships'' opinion it follows on principle that a man cannot delegate to others, t to be exercised after his death, any greater power than he himself possessed in his lifetime; and that inasmuch as he, Damodurjee, could not, one adopted son being living, adopt another, his second widow Charmuttee could not by virtue of any authority delegated from him adopt a son while an adopted son was still living.

4. Their Lordships therefore concur with the judgment of the High Court, which amounts to this, that, assuming all the Plaintiffs'' facts, as he alleges them in his own favour, still that in point o? law the second adoption was invalid, and that consequently there was no relationship between him and the second adopted son, Luchmunjee, under whom he claims.

5. That being so, their Lordships do not think it necessary, to give an opinion as to whether the facts on which the Plaintiff relies have been substantiated or not. Assuming them to have been substantiated his case in point of law fails.

6. It has been argued on the part of the Appellant that the Defendants in this case are estopped from setting up the true facts of the case or even asserting the law in their favour, inasmuch as they have represented in former suits and in various ways, by letters and by their actions, that Luchmunjee was the adopted son of Damodurjee, adopted by Damodurjee''s widow, his mother. But it appears to their Lordships that there is no estoppel in the case. There has been no misrepresentation on the part of Luchmunjee or the Defendant on any matter of fact. They are alleged to have represented that Luchmunjee was adopted. The plaintiff''s case is that Luchmunjee was in fact adopted. So far as the fact is concerned there is no misrepresentation. It comes to no more than this, that they have arrived at a conclusion that the adoption which is admitted in fact was valid in law, a conclusion which in their Lordships'' judgment is erroneous; but that creates no estoppel whatever between the parties.

7. It may further be observed that if Luchmunjee''s statement is to be taken; it must be taken as a whole; and what he asserts is that he was validly adopted. But if he was validly adopted it follows that the Plaintiff was invalidly adopted; and therefore in this view of the case it appears to their Lordships that no reliance can be placed upon this question of estoppel.

8. It has, indeed, been further argued that even putting it not so high as estoppel, still the Plaintiff has been misled, by various representations made by the Defendant, into framing his suit as it is now framed. If that were so it would not empower their Lordships to depart from the rule which has always prevailed, that a man must recover according to his allegations and his proofs. It would not enable their Lordships to allow (as the Appellant asks them to allow) an entirely new case to be now brought forward before them, which is not even set up or hinted at in the plaint.

9. The new case suggested appears to be that, assuming an invalid adoption of Luchmunjee, and treating Luchmunjee as a mere trespasser, still the Plaintiff could recover by proof of his title from Damodurjee. Whether he has such a case or not their Lordships do not think it necessary to decide, but they feel themselves bound to say that that case cannot be gone into, inasmuch as it has not been set up in the plaint. Their Lordships do not desire to construe plaints with any extreme strictness or technicality, but it would manifestly be extremely inconvenient, and certainly contrary to their practice to allow a case to be raised here which is entirely different from the one which has been previously insisted upon.

10. For these reasons their Lordships are of opinion that the decree of the High Court is right and ought to be affirmed. Their Lordships understand the High Court simply to have ruled that the Plaintiffs had failed to prove the title on which they sued, that the Principal Sudder Ameen''s decree ought therefore to be reversed and the suit dismissed, with costs. But inasmuch as the formal decree, which simply orders that the appeal be decreed, with costs, and the decision of the Principal Sudder Ameen reversed, may hereafter lead to some doubt as to what was really decided by the High Court, their Lordships think that the formal decree should be varied by ordering that the decision of the Principal Sudder Ameen be reversed and the suit dismissed, with costs, in both Courts; and their Lordships will humbly advise Her Majesty to this effect. The Appellants must pay the costs of this appeal.