(1869) 05 CAL CK 0020

Calcutta High Court

Case No: Regular Appeals No. 187 of 1868

Saroda Sundari Dasi		APPELLANT
	Vs	
Tarini Charan Chowdhry		RESPONDENT

Date of Decision: May 11, 1869

Judgement

Loch, J.

This suit is brought by the plaintiff, as mother and guardian of her minor son Sital Chandra Dhar, to set aside a will hearing date 16th Aghran 1247 (1840) containing a permission to adopt, said to have been executed by Gagan Chandra Podar, and an adoption alleged to have been made by Paresmani, widow of Gagan Chandra, by virtue of the permission aforesaid, and to recover possession of the eight-anna share of property, real and personal, left by his maternal uncle Mohan Chandra Podar, or subsequently acquired from joint funds. Gagan Chandra Podar and Ananda Chandra Podar were uterine brothers, joint in estate and mess. Gagan Chandra died on 2nd Pous 1247 (December 1840) leaving a widow Paresmani, a minor son named Mohan Chandra, and three or four daughters, one of whom is the plaintiff Saroda Sundari who, subsequent to her father''s death, was married to Haradhan Dhar, by whom she has issue a son Sital Chandra, on whose account the present suit has been brought.

2. Mohan Chandra died on 5th Magh 1257 (January 1851) while still a minor, and his mother Paresmani succeeded to the property and continued in joint possession with her brother-in-law Ananda Chandra. In Falgun 1257 (1851) Paresmani, under the authority vested in her by the will aforesaid, adopted Tarini Charan, the second son of Ananda Chandra. Saroda Sundari was married, it is said, in 1253, and gave birth to her son Sital in Aswin 1261, and brought the present action in Baisak 1274 (30th April 1867) seventeen years after the adoption of Tarini by Paresmani, who died on 28th Jaisti 1273 (1866).

3. The defendants Tarini Charan and Ananda contend that the will, hearing date the 16th Aghran 1247 (1840) is a genuine document executed by Gagan Chandra; that the

adoption made by Paresmani under the permission given her in the will is valid; that a separation in mess took place between Paresmani and Ananda in 1258 (1851-52); that the properties acquired by Ananda subsequent to this separation were acquired by him from his own means and by his own exertions; that the plaintiff''s claim to the personal property is arbitrary, for of the cash which was in Ananda''s custody, he paid rupees 22,000 to Paresmani, receiving from her an ikrar hearing date the 27th Magh 1258 (1852), and he paid a further sum of rupees 15,000 to Tarini on his attaining majority; and that of the real property claimed by plaintiffs. Nos. 11, 45, 46, 47, 48, 227, 228 and 229 were acquired by Ananda after the separation in mess, and have been sold by him to Rani Durga Sundari of Chachrah; Nos. 70, 71, 80, 192, 196, 208 and 209 are not in existence; Nos. 96 and 127 have been twice recited in the plaint; Nos. 206, 213, 214 and 235 have been given up to the zamindar; Nos. 238 and 239 have been sold by auction; No. 126 belongs to Sadoka Sundari, the daughter of Ananda; and Nos. 4, 20, 21, 67, 73, 74, 90 and 97 were the property of Manoka Sundari Dasi, the sister of Ananda Chandra, and were by a will executed by her devised to Jaggat Chandra, and Tarini Charan, her nephews, who are in possession. It is added by Tarini Charan in his written statement that when Gagan Chandra died in 1247 (1840) the plaintiff was then about 6 years old; that consequently she was of age in 1258 (1851), and her statement that she came of age in 1265 (1858) is untrue, for her son was born in 1261 (1853); that the plaintiff in the year 1258 (1851) admitted that Tarini Charan was the adopted son of Gagan Chandra, and took a darpatni lease of Niz Jaffarpore from Ananda Chandra and Paresmani as the mother and guardian of Tarini Charan, and underlet the same property to Jaggat Chandra, and that her husband had both these leases registered: and that when application was made to the Collector for the insertion of Tarini''s name as proprietor in place of Mohan Chandra, the will of Gagan Chandra was produced and filed, and though proclamation calling on objectors to appear was issued, the plaintiff, though then of full age, raised do objections.

4. The Subordinate Judge, for reasons assigned by him in his judgment, rejected the plea of limitation, and held that Sital Chandra, as sister''s son of Mohan Chandra, was the legal heir of the said Mohan Chandra; that the will was not proved, and must be set aside; that the adoption of Tarini fell with it; and that with the exception of certain properties, the plaintiff was entitled to a moiety of the remaining real property, and a moiety of such personal property as had been admitted by the defendants and a moiety of the jewels of the idols or their value, and two and a half lakhs in cash, rupees 12,533 in Government Promissory Notes, and a moiety of the sums due by the debtors to the estate and mesne profits of the landed property from Jaisti 1273, to be ascertained in execution, with interest and costs in proportion to the amount decreed, and costs on a moiety of rupees 67,500 (ascertained to be due from debtors) with interest thereon from the date of decree, and interest on mesne profits from date of ascertainment, at 12 per cent., to the date of realization.

5. Appeals have been preferred from the judgment of the lower Court, the grounds of which may be comprised under the following heads:--

1.--The sister''s son cannot in this cause succeed. 2.--Limitation. 3.--Imperfect investigation in regard to the examination of witnesses and burden of proof. 4.--Validity of the deed of permission. 5.--Validity of the adoption. 6.--That no separation took place. 7.--That the appellants, Tarini Charan and Jaggat Chandra, are entitled to Manoka Sundari''s separate property left to them under her will. 8.--Was any part of the property in suit separately acquired by Ananda from his own funds?

6. On the first point, while it is admitted that the sister''s son is in default of others the legal heir, yet it is contended in this case that as the sister''s son Sital Chandra was not born at the time of his uncle Mohan Chandra''s death, he is not entitled to succeed. It was said with reference to the judgment of the Privy Council in the case of Mussamut Bhobun Moyee Debia v. Ram Kishor Acharji Chowdhry 10 M.I.A. 279, that "the rule of Hindu law is that in the case of inheritance, the person to succeed must be the heir of the last full owner;" and it is urged that Paresmani, who succeeded her son Mohan Chandra was not the full owner, and as Sital Chandra was not born when Mohan Chandra died, the property would go to the nest legal heir of Mohan Chandra. This point, however, is apparently not seriously contended, and indeed the words which follow the portion of the passage quoted above from the judgment of the Privy Council are clearly against the contention, and they are as follows:-- "In this case Bhowani Kishor was the last full owner, and his wife succeeds as his heir to a widow''s estate. On her death, the person to succeed will again be the heir at that time of Bhowani Kishor." We may in the present case adopt the very words used by their Lordships, merely altering the names of the parties. Mohan Chandra was the last full owner, and his mother Paresmani succeeded as his heir to a mother''s estate. On her death, the person to succeed will again be the heir at that time (viz., the death of the mother) of Mohan Chandra. We think it unnecessary to go further into this objection which has been already settled by several decisions of this Court. The second objection taken is on the point of limitation. Tarini Charan was adopted in Falgun 1257 (1850). The plaintiff as well as her husband was cognizant of that adoption. In 1258 (1851) they ratified the adoption, inasmuch as plaintiff then received a patni lease of Mauza Jaffarpore from Paresmani, who styled herself as the mother and guardian of her adopted son Tarini Charan. This lease was duly registered by the plaintiff''s husband Haradhan Dhar. Her son was born in 1261 (1853), but the suit was not brought till 1274 (1867), or seventeen years after the adoption. Paresmani had the name of her adopted son registered in the Collector''s books on 7th August, 1851, and held possession till Tarini attained majority, and that possession has been in Tarini for more than 12 years. It is urged therefore that this suit should have been brought within twelve years from the date of adoption, which was a fact notorious to the public and particularly known to the plaintiff, and it is contended that by the rulings of this Court a suit to set aside an adoption must be brought within 12 years from the date of such adoption. The cases of Nobin Chandra Chuckerbutty v. Issur Chandra Chuckerbutty Case No. 460 of

1867; April 27th, 1866. (B.L.R. Sup. 1008), Radha Kishore Dasi v. Guthi Kishen Sirkar W.R. 1864, 272, Gopal Sing v. Kanyalal Sahebzada 2 B.L.R. App. 14, Dhurm Das Pandey and Others vs. Mussumat Shama Soondri , Radha Kissen Mahapattur v. Srikissen Mahapattur 1 W.R. 62, Shama Sundari v. Shurrut Chandra Dutt 8 W.R. 500, Sooburnomonee Dabea v. Petumber Dobey Mar. R. 221, Ismar Chandra Mitter v. Shamasundari Dasi 3 B.L.R. A.C.J. 150-N : 5 Mad. Jur. 60-N Govind Kishore Roy v. Radhamadhab Adhikari S.D.A. (1856) 450, Radhamadhub Adhikari v. Govind Kishore Roy S.D.A. (1857) 377 have been referred to in support.