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Calcutta High Court

Case No: None

Mathura Dass Karnani		APPELLANT
	Vs	
Srikissen Karnani and Others		RESPONDENT

Date of Decision: Dec. 14, 1917

Citation: 44 Ind. Cas. 5

Hon'ble Judges: Shamsul Huda, J; Fletcher, J

Bench: Division Bench

Judgement

Fletcher, J.

This is an appeal by the defendant No. 1 against the Judgment of the learned Subordinate Judge of Darjeeling, dated the 2nd March 1915, decreeing the plaintiffs suit. The plaintiff brought his suit on the allegation that he was the adopted son of a deceased Hindu of the Maheswari caste of Bikaneer--the name of the person who had adopted being Amar Chand Karnani--and he sought to recover from Mathura Das Karnani and others, who were the natural relations of the deceased Amar Chand Karnani, a certain property and for consequential relief by way of accounts and discovery. The case set up by the plaintiff was that there was a Hindu of the Maheswari caste called Swairam Karnani. He had three sons, Katchi Das who was the father of Mathuradas, the defendant No. 1, Amar Chand Kernani the adoptive father of the plaintiff, and Jaithrupa who was the husband of the defendant No. 3. The plaint alleged that Amar Chand had been adopted by one Gangadas and, therefore, according to the ordinary rules of the Hindu Law, Amar Chand ceased on that adoption to be member of the family of Swairam and passed into the family of Ganga Das. That allegation was made distinctly in the pedigree that formed a portion of the plaint and it was not traversed in the written statement nor in the course of the trial. It is, therefore, an admitted fact that Amar Chand passed out of the family of Swairam and passed into the family of Ganga Das. No evidence was offered as to who Ganga Das was. There has been a suggestion made in reply that Ganga Das was some sort of relation of Swairam and that, therefore, although Amar Chand in his adoption passed out of the family of Swairam, it does not follow that

the other sons of Swairam, who remained joint with their father, ceased to be the reversionary heirs of Amar Chand on his death. That case was not made or suggested in the course of the proceeding and it is much too late in the course of the reply to put forward a case unsupported by any evidence or any statement made in the Court below.

2. Now, the facts are these--and these facts are not disputed. The three sons of Swairam had built up a business in the district of Darjeeling. Katchi Das, the eldest son, died in 1880 and his only son and heir is the defendant No. 1. Jaithrupa died in 1888 leaving his widow the defendant No. 3. Amar Chand died in 1899 after having been adopted by. Ganga Das, leaving him surviving his widow the defendant No. 2. The business after the death of Amar Chand was carried on by the 1st defendant. There were some disputes between the defendant No. 1 and the widow of Amar Chand, the defendant No. 2, in the year 1803 and apparently her remittances that she had been accustomed to get from the business in Darjeeling were stopped. She then went to Darjeeling and there the parties arrived at certain agreements which were reduced in writing, the agreements being dated the 21st April 1903. Under the terms of those agreements, a sum of Rs. 7,500 was deposited with certain Marwari bankers", the interest being payable to the defendant No. 2 for her maintenance and the capital sum to go to the defendant No. 1 on the death of the defendant No. 2. The documents seem to me to have been quite clearly executed on the footing that the defendant No. 1 would on the death of the defendant No. 2 become entitled to the estate of the deceased Amar Chand Karnani. The agreements do not seem to have put an end to the disputes between the parties, and in 1903 the defendant No 2 is said to have adopted the plaintiff as the adopted son of her deceased husband Amar Chand Karnani.

3. The main controversy in this case has turned on the question as to whether the evidence establishes the case that the plaintiff was duly adopted. Both parties admitted that the parties were governed by the Mitakshara School of Hindu Law. The learned Counsel for the defendant-appellant in opening the appeal asserted that the admission meant that the rights of the parties were regulated by the Benares School of Hindu Law. But after consideration of the evidence the learned Counsel was bound to admit that the evidence established important variations applicable to the parties which were not in accordance with the opinion held by the Benares School of Hindu Law. It is quite true that he did not admit that the rights of adoption applicable to the parties were different to those laid down by the Benares School of Hindu Law; but he was bound to admit that in certain particulars the rights of the parties in this case were shown to be different from those prevailing in the Benares School of Hindu Law. It seems to me that that is an important fact, because you at once get rid of the suggestion put forward that the admission meant that the parties were governed by the Benares School of Hindu Law simpliciter because it is admitted that there were variations from that. The Mitakshara as varied from the Benares School applies in a large portion of India. It applies in Bombay, Western

India and Southern India, and in all those different Schools of Law there are variations of Mitakshara not consistent with the view adopted in the Benares School. It seems to me quite clear in the present case that the admission did not amount to a statement that the rights of the parties as to adoption could be ascertained from the principles held by the Benares School of Hindu Law. If you get to that, you have got to look at the evidence. The evidence that has been given in this case as to what is requisite for a valid adoption is not the evidence of learned persons but the evidence of shop keepers, Marwaris being largely a trading caste. These shop, keepers, it may be said, do not know the principles of the Hindu Law, but the evidence shows without doubt that these shopkeepers have undergone the process of adoption, as many as four times. The evidence also shows that the ceremonies required for a valid adoption by a person belonging to this class are not formal. The evidence is that on the adoption of a boy the guests and relations receive coconuts and sweets and the adopted son has got to have payjama placed on his head. These seem to be the only ceremonies that are requisite for a valid adoption. The adoption is not also limited, according to the evidence, to the case of children of tender age. There may be an adoption, as in this case, of a person of full age and it does not matter whether that person is married or not. That is the evidence in this case and the learned Judge says that the custom seems to be the same as that obtaining in Bombay or in Western India. It has been suggested that the learned Judge of the Court below stated that the law as applicable in the Presidency of Bombay applied in the State of Bikaneer. I do not read the judgment of the learned Judge in that way. I think what he remarks is that the evidence shows that the law as to adoption is the same in Bikaneer as in Western India.

4. Then, the question was whether the consent of the relatives was necessary. That seems to be the point that was debated not only in the Court below but also in the suit in the Bikaneer Court, and the view that was taken was this: That this was not the case of a widow adopting a son to introduce him into the family consisting of the defendants, but it was the case of a widow of a separated brother who, although she had no authority from her husband to adopt, had adopted of her own motion the plaintiff. That seems to have been the case put forward. Then the learned Judge came to the conclusion that that case had been established in accordance with the custom prevailing in Bombay and Western India. The evidence, it is quite true, is not all one way; there are statements made by the witnesses on both sides. But the learned Judge had the opportunity of seeing the witnesses in the witness-box and remarking who were the most intelligent and also the truthful witnesses amongst them, and he came to the conclusion that this custom had been satisfactorily established. There does not seem to be any reason to disagree with the conclusion arrived at by the learned Judge of the Court below.

5. The next question that was raised was as to whether the adoption had or had not been made. That does not seem to have been seriously contested in the Court below. The widow, that is, the defendant No. 2 who adopted the plaintiff, states in

her deposition that the child was given to her by his natural father and received by her in adoption and there do not seem, according to the evidence, to be any other ceremonies required beyond those observed in this particular case.

6. Then reference has been made to the proceedings of the Court at Bikaneer and it is said that the adoption cannot have taken place on the date alleged by the plaintiff. I do not read the proceedings of the Court at Bikaneer in the way that the learned Counsel for the appellant has attempted to read them. The proceeding originated out of an application by the widow for what is called a khola, that is, a certificate of adoption. That is a certificate of the Court at Bikaneer that the widow has, in fact, adopted the plaintiff as a son to her deceased husband, Amar Chand. On that application being made for certificate, the present defendant No. 1, that is, the plaintiff in the Bikaneer Court, brought a suit for an in junction to restrain the widow, that is, the adoptive mother of the present plaintiff from proceeding on the footing of the adoption, for the reason that by the deeds of 1903 the widow had precluded herself from making an adoption of any person, and the grounds so far as I can gather from the judgment of the Judges of the Chief Court at Bikaneer were these: That the deeds executed in 1903 operated as a release by the widow of Amar Chand of her interest in the property so as to accelerate the estate of the defendant No. 1 Muthura Das, so that he having taken an absolute interest in the estate of Amar Chand, the widow was incapable of making an adoption so as to defeat him of the rights in the properties he had acquired. The case came on before one of the Munsifs in the State and he decided one of the issues against the present defendant No. 1. On appeal to the Sudder Nizamut of the State, the Judge of that Court held that the appropriate fee payable to the State on the plaint not having been paid the suit must fail. On appeal to the Chief Court, the learned Judges of that Court disagreeing with the view of the Judge of the Sudder Nizamut held that the plaint was properly stamped but they came to the conclusion that there was nothing in the deed''s to prevent the widow of Amar Chand from proceeding to adopt the present plaintiff. That, so far as I gather from the judgement of the Chief Court at Bikaneer, was the matter in dispute there. After the determination of that litigation, the khola, that is, the certificate of adoption, was issued by the State to the widow of Amar Chand. This is the fact, so far as it can be ascertained from the judgments of the Courts at Bikaneer.

7. It is said in this case that the plaintiff asked the Court to set aside the deeds of 1603 on the ground that they had been obtained by fraud or undue influence. The learned Judge of the primary Court came to the conclusion that there was no fraud or undue influence. That seems to be clearly, correct because there is no evidence of either fraud or undue influence having been exercised by the defendant No. 1 in obtaining the deeds. Then the learned Judge remarks that, the deeds would appear to show that the parties had entered into them on the footing of a common mistake, because they had been entered into by the widow of Amar Chand and the present, appellant on the footing that the present appellant was the sole reversionary heir to

the estate of his natural brother Amar Chand. But the learned Judge says that it is an admitted fact that Amar Chand had passed out of the family on his adoption by Ganga Das and that, therefore, the deeds could not be by way of a family arrangement, as the appellant before us was not a member of the same family as the deceased Amar Chand. He, therefore, came to the conclusion that as against the plaintiff, the adopted son of Amar Chand, the deeds could not be set up as a bar to his rights to Amar Chand''s properties that he would acquire on his adoption. That, I think, is right. The evidence in this case, as we have it, shows quite clearly that it is an admitted fact that Amar Chand passed out of the family of which the present appellant is a member into the family of Ganga Dass. There is nothing on the record to suggest that Ganga Dass was a close or any relation of Swairam, the grandfather of the appellant, so that on the death of Amar Chand his reversionary heir would be his brother''s son Mathura Das, the present defendant No. 1. That is the case that has been suggested in reply, but there is not a word to support such an allegation on the record. It seems to me quite clear in this case that these deeds entered into by the widow only with reference to her maintenance cannot be set up as deeds of family arrangement between the members of the family then in existence barring the rights of the adopted son, the plaintiff in the present suit. If that is so, the plaintiff is entitled to recover the share of Amar Chand and the learned Judge of the Court below has decreed to the plaintiff relief in that form. No objection has been raised or urged that the form of the relief that the learned Subordinate Judge has given to the plaintiff is incorrect, nor is it suggested that the finding that the learned Judge has arrived at, namely, that the plaintiff is entitled on his adoption to 1/3rd of the properties is wrong. If that is so, I think there are no reasons to come to any conclusion different from that arrived at by the learned Judge of the Court below, namely, that the plaintiff having proved that he was duly adopted by the widow of Amar Chand as a son to her deceased husband is not barred by the deeds of April 1903 from recovering the property of the deceased Amar Chand.

8. A point has been made in this case that there is a decision reported somewhere in some of the unauthorized reports (27 Indian Cases See 27 Ind. Cas. 701 - Ed.) of the Chief Court in the Punjab to the effect that an adoption of this sort amongst Maheswari Hindus is not permitted. The case does not establish anything of the sort. In that case, it was stated that one of the widows in a joint and unseparated Hindu family had attempted to adopt without the consent of the kinsmen a son into the joint family. That is a totally different case from the case of a widow of a separated brother adopting of her own motion a son to her deceased husband, as in the present case.

9. I think the conclusion arrived at by the learned Subordinate Judge of Darjeeling was correct. The present appeal, therefore, fails and must be dismissed with costs.

Shamsul Huda, J.

10. I agree.