

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Palakdhari Singh v. The Collector of Gorakhpur and another, from the High Court of Judicature for the North-Western Provinces at Allahabad ; delivered 10th December 1892.

Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR RICHARD COUCH.

SIR EDWARD FRY.

[*Delivered by Sir Richard Couch.*]

The suit in this case was brought by the Appellant against the Respondent, as Manager on the part of the Court of Wards of the Bansaon estate, and against another Defendant, described in the plaint as "Radha Kishen, who calls himself Dalip Narain Singh, under the guardianship of the Collector." The Appellant sought to recover possession of the Bansaon estate, of which Hanuman Parshad Singh was formerly the owner. He died on the 24th May 1872, leaving a widow, Pan Kuar. The Appellant is the grandson of Drigpal Singh, a brother of Mahpal Singh, the grandfather of Hanuman, and if Hanuman died childless the Appellant would be the heir to the estate, subject to the life estate of the widow Pan Kuar. On the 9th June 1873 the Appellant brought a suit

against Pan Kuar, the plaint in which alleged that Hanuman died childless, leaving only Pan Kuar his widow; that the property left by him devolved upon the Plaintiff as a near heir, and that the Defendant had only a life interest; that the Defendant (Pan Kuar) having procured a male child of unknown parentage gave out that it was brought forth by her although she had not been pregnant at the time when Hanuman died. The Defendant pleaded that she was pregnant when Hanuman died, and after his death Dalip Narain Singh was born. The issues settled were,—Is Dalip Narain the son of Hanuman or not? In case the birth of the child is not proved, whether the Plaintiff is entitled to inheritance or not? The case was tried by the officiating Subordinate Judge of Gorakhpur, and judgment was given on the 23rd January 1874. In it the Court decided the first issue in favour of the Defendant, and it being unnecessary to decide the second gave no opinion upon it. The suit was dismissed, with costs. Palakdhari, the present Appellant, appealed to the High Court at Allahabad, which, on the 7th December 1874, affirmed the decree of the lower Court, and dismissed the appeal. The judgment contains the following passages:—

Mr. Justice Turner says, “Furthermore, no sufficient motive is shown to exist to induce her (Pan Kuar) to be a party to a fraud. By setting up a son she loses her estate in her husband’s property, and is reduced to a right of maintenance. She is not shown to have had any personal animosity to the Appellant.”

Mr. Justice Brodhurst says, “Very clear and positive evidence would be required to establish a claim such as has been instituted by the plaintiff-appellant in the present case; but the evidence he has adduced in support of it is exceedingly weak and unreliable; and although

“ he asserts that the defendant-respondent has
 “ never given birth to a child, he is unable to
 “ furnish any clue as to whence she obtained
 “ the infant which she alleges is her own, and
 “ which she certainly has had with her since
 “ some seven or eight months subsequent to her
 “ husband’s decease. The Respondent, on the
 “ other hand, has, in support of her allegations,
 “ produced as valid proof as could, under the
 “ circumstances, have been expected of her
 “ whilst this case was pending in the lower
 “ Court.”

In 1874 Pan Kuar left Bansgaon and went to live at Sarehri with her father and mother, taking the child with her. In 1877 she made an application to the Collector of Gorakhpur that the child which she alleged to have been born of her should, under Act XIX. of 1870, be placed under the Court of Wards. This application had not, for some reason not apparent, been disposed of when in October 1879 Pan Kuar died in the house at Sarehri. Her father was dead, but her mother, Ati Kuar, survived her. Sarehri is 72 miles distant from Bansgaon. On the 5th February 1880 the Appellant presented a petition to the Court of the Subordinate Judge in which he described himself as “paternal uncle and guardian of the minor “ Babu Dalip Narain Singh,” and asked for a certificate of guardianship and administration of the property of the minor, under Act XL. of 1858. The petition refers to the previous litigation and to the Court having declared the minor to be the son of Hanuman Singh. On the 1st July 1880 the Appellant presented another petition, in which he said that the certificate case was thrown out on his application, and asked to be appointed manager of the property of Hanuman on the ground that the child called Dalip Narain Singh, who was

declared by the Court to be the son and heir of Hanuman, was missing, and that the two boys who had been set up as Dalip Narain Singh were fictitious persons. On the 3rd July Ati Kuar presented a petition in opposition asking that Palakdhari's application might be disallowed, and that she might be appointed manager. On the same day the Officiating Judge of Gorakhpur ordered that the Collector might "take the property of Dalip Narain Singh, the minor son and heir of Hanuman Singh, under his management." Ati Kuar appealed, but, having died in April 1881, this appeal abated, and her application to the Subordinate Judge was finally dismissed for the same reason on the 23rd August 1882. On the 12th March 1883 Rukmani Sewak Singh, the grandson of the eldest brother of Har Sewak Singh, the father of Pan Kuar, applied to the Subordinate Judge of Gorakhpur for a certificate of the guardianship and management of the property of Dalip Narain Singh. The application was opposed by the Collector, who stated in his petition of objection that the identity of the minor, whom the Applicant wished to set up as Dalip Narain Singh, had been questioned by the other members of the family. The application was rejected by the Judge on the 11th June 1883, on the ground that the estate had been for nearly three years in charge of the Collector to the great advantage of the minor, and the Collector was ordered to remain in charge. No notice is taken in the judgment of the statement that the identity of the minor had been questioned.

In the suit, which is the subject of this appeal and will be afterwards referred to, the Appellant was examined as a witness, and in his evidence he said (Rec., p. 79, l. 4) that when Pan Kuar died "two minors came forward to claim the property. One of them was a resident of zila

“ Chapra, and the other belonged to Azamgarh.
 “ Both these persons proclaimed themselves to
 “ be Dalip Narain Singh. I then discovered
 “ that the boy from Azamgarh was the son of
 “ Narsingh Sewak, and that the people of
 “ Sarehri wished to make him out to be Dalip
 “ Narain Singh. I cannot tell with certainty
 “ the year in which this event happened, but
 “ approximately it was in 1880. Then I
 “ commenced inquiring in all directions about
 “ the particulars of Radha Kishen. From those
 “ inquiries I learnt that this defendant, now
 “ present in Court, is Radha Kishen, the son of
 “ Narsingh Sewak.” This appears to be the
 origin of the Collector’s statement that the
 identity of the minor had been questioned.
 Matters being in this state, the Board of Revenue
 directed the Collector to nominate the owner of
 the property, and he took steps to enable him
 to do so. The case of the Chapra claimant
 was disposed of by a Sub-divisional Officer,
 Mr. MacLeod, who, on the 21st January 1884,
 reported that he was not proved to be Dalip Narain
 Singh. Regarding the identity of the boy at
 Azamgarh, by which was meant Sarehri, that
 village being in the Azamgarh District, Pandit
 Sundar Lal, Deputy Collector to the Collector of
 Azamgarh, was by an order of the Collector dated
 the 10th March 1884, ordered to make a local
 inquiry. He made his report on the 15th March
 1884. It begins by stating that on the day the order
 was communicated to him the Collector directed
 the parties, *i.e.*, Rae Rukmani Sewak Singh and
 Babu Palakdhari Singh, to be present on the
 spot on the day fixed for the inquiry, and that he
 took the precaution of obtaining their signatures
 with a view to obviate any future objections on
 the score of ignorance of the date fixed for the in-
 quiry ; that in spite of this, however, neither Babu
 Palakdhari Singh nor any representative on his

part was present on the spot, so he had to hold the inquiry in the presence of Rae Rukmani Sewak Singh only. The Appellant, in his evidence before referred to, said (Rec., p. 81, l. 25) :—“ The
 “ enquiry into the identity of Dalip Narain Singh
 “ made by the Collector of Azamgarh was not
 “ made in my presence, but on the contrary, the
 “ officer just mentioned caused me and my wakil
 “ to be turned out.” Their Lordships do not believe this. If the Deputy Collector had acted so, the Appellant or his wakil would certainly have complained to the Collector about it. The report continues (Rec., p. 91, l. 16) :—“ In order that
 “ the inquiry might be as complete and in-
 “ dependent as possible, I was not content with
 “ examining the witnesses offered by Rae
 “ Rukmani Sewak Singh, as that would have
 “ been objectionable, but selected the witnesses
 “ myself from among the residents of mauza
 “ Sarehri and of some of the adjoining mauzas,
 “ as well as from among the servants of Rae
 “ Narsingh Sewak, Rae Rukmani Sewak, and the
 “ late Mussammat Ati Kuar, the grandmother of
 “ Dalip Narain Singh. These witnesses were
 “ summoned through the agency of the police,
 “ and located in a place under proper super-
 “ vision. The result of the inquiry has been to
 “ satisfy me fully that the boy produced is Dalip
 “ Narain Singh, son of Babu Hanuman Parshad
 “ Singh and Mussammat Pan Kuar, and not
 “ Radha Kishen, son of Rae Narsingh Sewak
 “ Singh.” Narsingh Singh was an uncle of
 Pan Kuar and of Rukmani Sewak. The report then states that 38 witnesses were examined on oath, and among them were the residents and zemindars of Mauza Sarehri and of adjoining mauzas, and that all agreed that the boy was Dalip Narain Singh, son of Hanuman and Pan Kuar, and that Radha Kishen, the eldest son of Narsingh Singh, died at Allahabad the year before

during the bathing fair. It then gives the Deputy Collector's reasons for his conclusion, which is given at the end, where he says, "In conclusion, I beg to state that the result of the local inquiry held by me has thoroughly satisfied me that the boy is Dalip Narain, the son of Mussammat Pan Kuar, and that Radha Kishen died a year ago at Allahabad."

On the 15th September 1886 the Appellant brought the present suit. The plaint sought to recover possession of the property. It alleged that Pan Kuar did not give birth to a son, that the boy named Dalip Narain Singh was brought and kept by her clandestinely in her house and was the son of another person; that shortly after the decision of the High Court on the 17th December 1874 Pan Kuar caused the said boy to disappear, and from that time it was not known what had become of that boy, and that the Plaintiff received that information in 1885. The issues settled were (Rec., p. 118), "1. Whether the Defendant in the present case is the same Dalip Narain Singh whom Pan Kuar, widow of Hanuman Singh, had alleged to have been born of her, or whether he is dead, and the Defendant in this case is in reality Radha Kishen, son of Narsingh Sewak? 2. If the first part of the above issue is proved, is the present case barred as *res judicata*?" This second issue was decided in the Plaintiff's favour by a full Bench and there is no appeal from that decision. On the application of the Plaintiff's pleaders an issue was added, "Whether, after the death of Hanuman Singh, any son was born of Mussammat Pan Kuar or not?" The Subordinate Judge found that the Defendant was Radha Kishen and said it was unnecessary to record a finding on the 3rd issue. The High Court on appeal found that Pan Kuar had a child, and it appeared to their Lordships during the hearing of this appeal that

this finding could not be contested. The important question is whether the Defendant is Radha Kishen. Upon this the onus was strongly upon the Plaintiff, especially when it was established that Pan Kuar had a son. Many witnesses were examined for the Plaintiff, but it is stated in the judgment of the High Court that the learned counsel who represented him there relied upon nine witnesses with regard to this issue. They all deposed to the Defendant who was present in Court being Radha Kishen. The first is Ram Sewak Singh. He said (Rec., p. 16) :—
 “ There was no Dalip Narain Singh in mouza “ Sarehri.” This is at variance with the statement in the plaint that there was a boy named Dalip Narain Singh but not the son of Pan Kuar. He also said (Rec., p. 17) :—“ When Pan Kuar “ went to Azamghar from this district, no boy “ accompanied her I do not know “ whether there was any boy or not when the “ former suit was being litigated in this Court.” Either this statement is false, or he was not competent to prove that there was no Dalip Narain Singh. Another witness is Jagdeo Singh, a cousin of Radha Kishen, who deposed that the Defendant was Radha Kishen, and said that Radha Kishen never went to Allahabad which it was proved he did. Ram Sewak Singh had said that Radha Kishen went to Benares and not to Allahabad. The remaining witnesses also deposed to the Defendant being Radha Kishen. The High Court has commented unfavourably upon their evidence, and at the best it is of a description which in the Courts in India is regarded with much distrust. Four of the Plaintiff’s witnesses, Ram Bharose Singh, Nageshar Parshad Singh, Mahadeo Singh, and Sehdeo Singh, deposed that the Defendant had a stamp on his arm ; two said on his right arm. The Defendant and Rukmani Sewak were called as witnesses by

the Court. They both denied that the Defendant had any mark on his arm, and the latter said that the members of his family had stamps on the left and right arms. It is remarkable that upon this the Defendant was not required to show his arms, especially as the Subordinate Judge appears from his judgment to have examined his armpits. Only one of these witnesses, Sehdeo Singh, is among the nine relied upon before the High Court, which may account for no notice being taken there of the evidence of the mark. The omission to have the arms examined weakens the Appellant's case. The Defendant gave evidence of the death of Radha Kishen at Allahabad, which if satisfactorily proved would have been decisive. It is remarkable that none of the witnesses who were examined by the Deputy Collector were called to prove the death.

Their Lordships do not think it necessary to discuss this evidence. Having regard to the previous proceedings, they are of opinion that the Appellant has not satisfactorily proved that he was entitled to recover possession of the property and that his suit should be dismissed.

They will humbly advise Her Majesty to affirm the decree of the High Court, reversing the decree of the Subordinate Judge and dismissing the suit, and to dismiss this appeal. The Appellant will pay the costs of it.

