

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Haranund Roy Chetlangia v. Ram Gopal Chetlangia and Another, from the High Court of Judicature at Fort William in Bengal; delivered 9th December 1899.

Present at the Hearing :

THE LORD CHANCELLOR.

LORD HOBHOUSE.

LORD MORRIS.

LORD DAVEY.

LORD ROBERTSON.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The Plaintiff, now Appellant, is suing to recover a share of the estate of Ram Buksh who died about the year 1884. He alleges that Chuni Bibi, who was the widow of Shib Narain the eldest son of Ram Buksh, adopted him to be the son of her husband after his death, which took place in the year 1877. It is not disputed that in point of form the adoption took place; but the Defendants deny that Shib Narain gave his widow any authority for that purpose. Unless the Plaintiff can prove that she had such authority, his suit must fail. It has failed in both the Courts below, and at this Bar the argument has been confined to the one question: had the widow authority to adopt, or not?

The Subordinate Judge dismissed the suit on another objection which need not now be

dwelt on. In the High Court Mr. Justice Prinsep throws serious doubt on the evidence given to prove that Chuni Bibi had authority, but he does not rest his judgment finally on that ground. He considers that the parties are governed by the law of their domicile, which is in the State of Jeypore, and that in Jeypore there prevails a local custom to the effect that a widow cannot adopt without permission both from her husband and from the head of the family for the time being. (Rec. p. 572.) Ram Buksh was the head of the family, and so far from permitting the adoption, he strongly opposed it.

The other Judge was Mr. Justice Ameer Ali. He thinks that the evidence given to establish the local custom alleged by the Defendants is not sufficient. He supports the decree below on the ground that the Plaintiff failed to show any authority given by Shib to Chuni Bibi. In his view the utmost that the evidence can prove in favour of the Plaintiff is that Shib may have suggested to his wife to adopt a boy who would be chosen by his father Ram Buksh. (Rec. p. 577.)

Besides the evidence of Chuni Bibi herself Mr. Branson has laid before their Lordships the evidence of four witnesses: three of them being uncles of Chuni Bibi, and the other a cousin. It is very far from precise. With regard to three of these witnesses, named Rurmal, Bridhi, and Chota Lal what they say rather suggests that Shib Narain was desirous that a boy should be brought to himself for adoption, preferably by his father Ram Buksh, and failing his father, should be brought by his wife. The language ascribed to him is not that of a man conferring an important authority on his wife. The other witness Sadasuk speaks more definitely

of permission. His evidence in chief is as follows :—

“ About a month and a half after Shib Narain's coming to Calcutta, one day, at about 11 or 12 o'clock of the day, I was seated near Shib Narain, when Chuni Bibi seeing Shib Narain vomit a large quantity of blood, began to cry. Upon this Shib Narain said, 'My father has said that he will get you a boy, if he does not get you a boy, you take a boy and preserve my family (name), I give you permission.' Shib Narain said this to Chuni Bibi in the presence of every one.”

From his cross-examination it appears that nobody else said anything except Ram Buksh, who said to Shib “ May God restore you to health ; if you are not restored I will get you a boy.”

This is at best a very slender basis on which to rest an authority in the wife which the husband did not take the trouble to put into writing. Ram Buksh's remark, elicited in cross-examination, suggests, what the three other witnesses suggest, that if Shib's illness continued, his father was to bring him a boy for adoption. But the witnesses are not very well agreed together. Sadasuk says that Rurmāl was present (p. 320) and Rurmāl says that there was only one occasion on which he heard adoption talked about (p. 308). These two persons then must be speaking of the same occasion ; and Rurmāl says nothing about permission. Bridhi also is said to have been present. He tells us (p. 310) that after Shib Narain spoke nobody said anything on the point of adoption ; only Ram Buksh spoke, and what he said was that as Shib had not recovered at Calcutta he would take him to Goari. Chota Lal is said to have been present too. He speaks (p. 310) to several conversations in the family about adoption : and it is not easy to identify that one of which Sadasuk speaks. Some of these conversations clearly contemplate a boy being brought to Shib for adoption ; and

in none of them is any express permission mentioned, such as Sadasuk speaks of.

These are small differences, quite consistent with the truthfulness of the witnesses, who it will be remembered were speaking of conversations some 12 or 14 years after they took place. But the question is whether, when these persons were present, Shib intended to confer, and did so express himself as to confer, a legal authority on his wife; it is of importance to know exactly what he said; and the differences between the narrators are such as to reduce to a very low value the introduction of two or three important words by one of them. Their Lordships do not refer here to the denial of such conversations by Ram Buksh's wife Bodhi and his son Ram Gopal who are alleged to have been present. The Judges of the High Court attached importance to these denials: but at present the sufficiency of the Plaintiff's evidence is under examination.

There remains the important witness Chuni Bibi. She must, unless she has forgotten, know the truth; her evidence is not lacking in precision; and if believed, it would fully support the Plaintiff's case. She gives (p. 378) an account of the conversation at which Sadasuk and the others were present. It is as follows:—

“No children were born of me. I said ‘get me a son.’ I also told my brother Chota Lal to tell him (my husband) to get me a son. My brother went to Babu Shib Narain and told him, ‘You are now ill; have a son brought.’ Upon this, Shib Narain Babu said, ‘If I recover from my illness, then I will go to my native country and bring a boy.’”
 “I then began weeping; upon which he said, ‘Why do you weep? My father, mother, and brother are sitting here: if my father brings you a boy, that will be well; if not, I give you permission to take a son and preserve my family.’”
 “All this talk took place in the house of Natu Ramji Laddu. This talk took place in the month of Magh of the year in which he fell ill. At the time of this talk the persons present were, Chota Lal, Sadasuk, Rurmāl, (my uncle)

“Bridhi Chand, the son of my maternal uncle Ram Cocmar, my father-in-law Ram Buksh, and Latu Ram, Ram Gopal the brother of my husband, the Defendant Jodhi Bibi my mother-in-law, Ramanund Thakoor, the servants of the house and other persons. All this talk took place at 11 or 12 o'clock in the day. No one gave any answer when my husband said all this. My father-in-law said ‘God may cure you of your illness, otherwise I will get a boy for you.’”

This accords with Sadasuk's account except that Chuni makes the important addition that she and Chota Lal opened the attack on Shib, and that the permission given by him was the outcome of that attack, whereas Sadasuk deposes that Chuni said nothing and the three others do not mention any intervention by her.

In her cross-examination she admits (p. 386) that her husband several times put off her importunities. “He used to say ‘I shall go home after my recovery and fetch a boy’” or “when I am well I will talk about it.” That accords with the answer which she says that Shib made to her brother Chota Lal at the outset of this interview. But she alleges that he gave formal permission on four several occasions. He used these very words “If my father procures a boy for you, well and good; if not, I authorize you to preserve my family by taking a son in adoption.” But his words were not put into writing, and neither Chuni nor any other of the numerous people who heard these things ever once suggested that they should be put into writing.

The other incidents to which Chuni deposes need not be detailed. If believed, she proves the Plaintiff's case. If she is to be treated as a witness intending to speak truth, but only liable like every one else to error or forgetfulness or the unconscious bias of interest or the tendency to ascribe to a particular time and person things belonging to later times and other persons, all the evidence should be carefully weighed to see whether her story, however improbable on its

surface, may not after all be the true result. But if she has made false statements on important matters of fact which it is impossible that she should not recollect, her testimony on other matters in favour of herself is attended with great suspicion.

The Defendant Ram Gopal in his written statement, filed in 1889, alleges that in the year 1880 litigation took place in Jeypore regarding this adoption between Ram Buksh and Chuni, as the result of which the adoption was declared by the Court of Sikhur to be invalid (Rec., p. 22). The Defendants relied on this decision as *res judicata* in bar of the present suit, but the High Court has rightly disallowed that plea. The nature of the Jeypore suit is left too uncertain for any such use to be made of it. But the proceedings are material to show that Ram Buksh disputed the adoption and that Chuni supported it. The way in which she meets the Defendants' allegation is to deny the litigation entirely. "Ram Buksh Babu did not bring any suit against me before the Raja of Sikhur. I did not give any evidence at Sikhur." This she said in March 1891 (Rec., p. 391).

The Defendants then brought evidence to prove the Sikhur proceedings. One Bala Buksh was examined. He is an official in the Sikhur Court. He speaks of the litigation there, and says that in his presence the evidence of Chuni Bibi was taken by the Judge Moonshi Mahomed Meeah, and that in his presence the suit was adjudicated and the order passed. He puts in a document (Exhibit X A) which he swears is a copy of Chuni's deposition, and is in the handwriting of one of the Court amla. It is endorsed "Copy corresponding with the original": which is in the handwriting and bears the signature of Mohun Lal the Sharistadar of the Court (Rec., pp. 274 *et seq.*, 398). He proves in the same way the deposition of

Ram Buksh, whom he knew personally (*ibid*). Ram Buksh alleges that a widow has no power to adopt a son. Chuni does not meet the allegation by alleging authority from her husband, but complains of the interested hostility of her father-in-law, who is Shib's heir.

Bala Buksh's evidence was given in May 1891. Evidence was taken through the months of June and July and the cause was not heard till the end of November. The Plaintiff did not make any attempt to introduce rebutting or explanatory evidence. He has now nothing to say in answer except to suggest that the woman who was called Chuni Bibi in the Sikhur Court was somebody who personated the real Chuni Bibi the widow. It is impossible to listen to such a suggestion of audacious fraud, unsupported by a shadow of proof or even of allegation. Bala Buksh was cross-examined at some length, but no question was asked tending to suggest a trick of the kind which the Plaintiff now puts forward. There is nothing to contradict him except Chuni's general denial of all proceedings against her at Sikhur made before he had spoken. The Plaintiff does not improve his mother's position, or his own, by his present suggestion. Their Lordships must look on Chuni's denial as a wilful falsehood and as invalidating her testimony.

The High Court appear to have excluded all the Sikhur proceedings on the ground that they were not proved according to the mode mentioned in Section 86 of the Evidence Act. That section says that if a copy of a foreign judicial record purports to be certified in a given way, the Court may presume it to be genuine and accurate. It does not exclude other proof. The assertion of Bala Buksh that Ram Buksh sued Chuni and that she gave evidence before Moonshi Meah in his presence is primary

evidence of those matters. His proof of the Sikhur records is secondary evidence; and by Sections 65 and 66 of the Evidence Acts secondary evidence may be given of public documents, which these are under Section 74, without notice to the adverse party, when the person in possession of the document is out of the reach of or not subject to the process of the Court, which is the case here. Bala Buksh shows that Chuni has told downright falsehoods, and that in a litigation in which her authority to adopt was challenged, she did not assert it. Their Lordships wholly disbelieve the story, at best an improbable one, which she tells of her husband's permissions.

The result is to leave the Plaintiff's case substantially unsupported. It is probable enough that some conversations took place between Shib Narain and his relatives concerning the adoption of a son by him; but their Lordships agree with the learned Judges below in thinking that the attempt to prove an authority given by him to his wife has failed. They will humbly advise Her Majesty to dismiss the Appeal. The Appellant must pay the costs.
