

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Thakur Tirbhuvan Bahadur Singh, minor son and legal representative of Thakur Sher Bahadur Singh, deceased, under the guardianship of the Deputy Commissioner, Rae Bareilly v. Raja Rameshar Bakhsh Singh, from the Court of the Judicial Commissioner of Oudh; delivered the 27th July 1906.*

Present at the Hearing :

LORD MACNAGHTEN.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

SIR ALFRED WILLS.

[*Delivered by Lord Macnaghten.*]

This is an Appeal from a Judgment and Decree of the Court of the Judicial Commissioner of Oudh, affirming a Decree of the Subordinate Judge of Lucknow.

The matter in dispute is the title to the Taluka of Samarpaha in the district of Rae Bareilly in Oudh. The Appellant's claim is based on an alleged adoption. The Respondent claims as next heir under Act I. of 1869, Section 22, Clause 6.

The last male owner of the Taluka was Thakur Basant Singh. He died on the 12th of November 1857. His next heir was his widow Thakurain Daryao Kunwar. After the confiscation of proprietary rights in Oudh by the Proclamation of March 1858, a summary settlement of the Taluka was made with her on the 10th of May 1858, and a sanad was afterwards granted to her. On the preparation of

the lists of Talukdars in accordance with the provisions of Act I. of 1869, her name was entered in Lists I. and II. It is not disputed that the Thakurain became Talukdar, not in right of her husband Basant Singh, but in her own right.

The Thakurain died intestate on the 13th of November 1893. Shortly after her death, the Appellant's father, Thakur Sher Bahadur Singh, being found in possession and claiming under an adoption alleged to have been made in his favour by the Thakurain after her husband's death, had his name entered by the Deputy Commissioner in her place in the Revenue Register.

On the 27th of May 1899, the Respondent, who attained majority in June 1896, instituted the present suit, claiming to succeed as next heir in right of his grandfather, who was the eldest brother of the Thakurain.

Both Courts decided in favour of the Plaintiff. The Defendant appealed to His Majesty in Council, having obtained a certificate to the effect that the case fulfilled the requirements of Section 596 of the Code of Civil Procedure, and that the Appeal involved substantial questions of law.

Many questions were raised in the Courts below which have now disappeared, or were argued so faintly before their Lordships, that it is not worth while to discuss them.

The main contest throughout has been in regard to the alleged adoption of Thakur Sher Bahadur Singh. On this point there was a difference of opinion in the Courts below. The Subordinate Judge held that there was an adoption in fact, attended with the ordinary ceremonies of adoption, although it was invalid because the Thakurain had not the authority of her husband in the matter. The Court of the Judicial Commissioner held that there was no

adoption in fact, but only a nomination of the Defendant as the Thakurain's heir, or, in other words, an adoption in a popular sense.

On the Appeal before their Lordships it was argued that there was at any rate an apparent adoption, and that, on that assumption, it mattered not whether the adoption was valid or invalid, because there was enough to satisfy the provisions of the Limitation Act of 1871, as interpreted by this Board in the case of *Jagadamba Chowdhrami v. Dakhina Mohun*, L.R. 13 I.A. 84. Mr. Cohen, who argued the case with great ability, relied entirely on the Act of 1871. He contended that the Limitation Act of 1877 did not apply because the Appellant relied on title acquired before the passing of the Act of 1877, and his rights were therefore saved by Section 2 of that Act. He admitted that if the Act of 1877 applied his client was out of Court.

Their Lordships are unable to accede to Mr. Cohen's argument. Giving full effect to the *Jagadamba* case and the other cases which followed it, they do not think that the immunity, such as it is, gained by the lapse of twelve years after the date of an apparent adoption amounts to acquisition of title within the meaning of Section 2 of the Act of 1877.

Their Lordships think that the Appeal may be disposed of on this short ground, whether the alleged adoption was or was not an apparent adoption to which the ruling in the *Jagadamba* case would apply if the Act of 1871 were now in force.

Their Lordships do not think it necessary to enter upon a consideration of the other difficulties in the way of the Appellant. But they may observe in passing that if they had to choose between the opposite views of the Courts below as to the so-called adoption, their

Lordships would be disposed to prefer the view of the Judicial Commissioner. They may add that they are not satisfied that the finding of the Commissioner of Rae Bareilly in 1878 in the suit between the Thakurain and the Appellant (reported at an earlier stage before the Privy Council, 3 I.L.R., Calcutta, 645) on the issue of adoption or no adoption, would not be fatal to the Appellant's case. Whatever objections there may have been to that issue being raised before the Commissioner on remand, both parties accepted it. It was treated as the main question in the suit. The issue was decided adversely to the Appellant. The Appellant abandoned an Appeal to the Privy Council which he had begun, and so the decision became final. Having regard to the language of the Code of Civil Procedure, Section 13, which deals with issues as well as suits it would seem that the finding on the issue as to adoption must be treated as *res judicata*. This point, however, was only touched upon in the argument, and their Lordships therefore abstain from expressing a final opinion on the question.

Their Lordships will humbly advise His Majesty that this Appeal should be dismissed.

The Appellant will pay the costs of the Appeal.

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