

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Har Shankar Partab Singh and another v. Lal Raghuraj Singh, from the Court of the Judicial Commissioner of Oudh; delivered the 15th May 1907.*

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Present at the Hearing :

LORD ROBERTSON.

LORD COLLINS.

SIR ARTHUR WILSON.

[*Delivered by Lord Collins.*]

The Appellants, who are the successors in title of the original Plaintiff, appeal from a decision of the Court of the Judicial Commissioner of Oudh in favour of the Defendant Lal Raghuraj Singh, the present Respondent, overruling a decision of the Subordinate Judge of Partabgarh in favour of the Plaintiff. The matter in dispute is the right of succession to the Taluka of Shampur and the question for decision is whether or not the Respondent was validly adopted as the son of Lal Bisheshar Bakhsh Singh by the widow of the latter, Thakurain Baijnath Kunwar. The suit was brought in the Court of the Subordinate Judge of Partabgarh by Balbhaddar Singh, the predecessor in title of the present Appellants. The taluka in question was granted by Sanad to one Lal Surajpal Singh, brother of the Respondent, in 1872. Lal Surajpal Singh died childless and intestate on the 21st February 1892, and was succeeded by his widow, Thakurain Raghubans Kunwar, who took the estate of a Hindu widow. She died on the 11th November 1901. On the 19th

March 1902 the Assistant Commissioner of Partabgarh caused the name of the Respondent to be entered as holder, and he obtained and holds possession. The original Plaintiff thereupon claimed as one of four persons entitled to succeed on the death of the widow to a fourth share, and sought to oust the Respondent by proving that he had been adopted into another family and thus lost the right which would otherwise have been his of succeeding to the property as heir to his natural brother, Lal Surajpal Singh. Hence the importance of the question, whether the Respondent had been validly adopted out of his own family. There was considerable evidence of conduct on the part of the Respondent holding out and asserting, when it suited his purpose to do so, that he had been adopted as the son of Lal Bisheshar Bakhsh Singh, and three issues were formulated and considered by both Courts on this part of the case,—

1. Was it *res adjudicata*?
2. Was the Respondent estopped as against the Plaintiff from denying it?
3. Supposing the Plaintiff failed on both these issues, had he proved a valid adoption in fact?

The Subordinate Judge found all these issues in favour of the Plaintiff. The Court of the Judicial Commissioner arrived at the opposite conclusion. It becomes necessary, therefore, to consider each of these questions.

First, as to *res adjudicata*. The contention of the Plaintiff on this point is based upon the award of the Committee of Talukdars in 1867 affirmed by the Financial Commissioner in 1869. This award was made on a claim for maintenance or for a 4 annas share in the Taluka brought forward by the present Respondent against Surajpal Singh. This claim was dismissed on the

ground that the applicant (the Respondent) had been adopted by Thakurain Baijnath Kunwar and had consequently ceased "to have any interest in the heritage of his natural father." The argument for the Appellants on this part of the case was based on Section 13 of the Code of Civil Procedure (Act 14 of 1882), which provides that "no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title in a Court of jurisdiction competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such Court." He is bound, therefore, to show that the Committee of Talukdars formed such a Court, and he relies on Section 53 of the Oudh Estates Act, 1869, as justifying this contention. That section runs thus:—

"And whereas bodies of Taluqdars have in several cases made awards respecting the provision to be made for certain relatives of Taluqdars, and it is expedient to render such awards legally enforceable: it is hereby further enacted that every such award shall, if approved by the Financial Commissioner of Oudh and filed in his Court within six months after the passing of this Act, be enforceable as if a Court of competent jurisdiction had passed judgment according to the award and a decree had followed upon such judgment."

*See Sykes, p. 282.*

It seems quite clear, therefore, that the Committee of Talukdars was not in any sense a Court, much less a Court with such jurisdiction as is described in the 13th Section of the Civil Procedure Code above cited as essential to found an estoppel, and, for the reasons given in the judgment of the Additional Judicial Commissioner, their Lordships are of opinion that the Committee had no jurisdiction to decide the question of adoption, and the affirmation by the Financial Commissioner of their refusal to award

maintenance could not give judicial validity to their decision on a point outside their jurisdiction. Their Lordships therefore concur with the view taken by the Court below on this issue.

Next, as to the question of estoppel. That which is set up is said to arise from the fact that on the death of Thakurain Baijnath Kunwar in 1879 the Respondent set up title to succeed her as the adopted son of her husband Bisheshar Bakhsh Singh, and on this footing secured the succession to which Partab Singh, as the nearest heir, would have been entitled but for the Respondent's intervention; that the Respondent was thus estopped as against Partab from denying the adoption, and that the Appellants are now claiming under Partab. But there is no evidence that Partab in any way opposed the Respondent's claim; on the contrary, he was living with and apparently co-operating with the Respondent at the time, and consequently the essential elements of an estoppel between these persons are lacking, and even if the Appellants were claiming through Partab, they cannot establish an estoppel.

Their Lordships therefore agree with the Court below on this point also.

The remaining question is whether the Appellants have established the fact that the Respondent was effectually adopted as the son of Lal Bisheshar Bakhsh Singh. To establish this, they must prove that, if the adoption was ever formally made at all by Thakurain Baijnath Kunwar, as he alleges, it was made by the direction of her husband, and further that the Respondent's father had given him in adoption. Having regard to the length of time which has elapsed since these conditions could have been fulfilled, if they ever were fulfilled, the Appellants admit that they cannot prove them but contend that they ought to be presumed.

But to justify such a presumption they ought to establish an initial probability that the adoption was likely to have been validly made and that the conduct of the parties cognizant of the facts has been at least consistent with such an hypothesis. It would not be right to repeat here the reasoning by which the Court below have come to the conclusion that, putting aside the statements made by the Respondent himself when it suited his purpose, the position of the Thakurain and the necessary consequences to her of the adoption rendered it unlikely that she should have made it; and that her conduct on crucial occasions was more consistent with the hypothesis that she did not regard him as having been validly adopted than that she did. It is quite clear that no weight can be given to any statements of the Respondent, if they fall short of founding an estoppel, as he has asserted or denied the adoption just as it suited his purpose throughout the whole of the protracted litigation between the members of the family. It has been already pointed out that they do not suffice to found an estoppel and, taking into consideration the rest of the evidence, their Lordships fully concur in the reasoning and the conclusion of the Court below.

Their Lordships will therefore humbly advise His Majesty that this Appeal be dismissed. The Appellants will pay the costs of the Appeal.

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