

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Kidar
Nath v. Mathu Mal, from the Chief Court of
the Punjab (P.C. Appeal No. 141 of 1910);
delivered the 14th February 1913.*

PRESENT AT THE HEARING :

LORD SHAW.

LORD MOULTON.

SIR JOHN EDGE.

MR. AMEER ALI.

[DELIVERED BY LORD SHAW.]

This is an Appeal from a judgment and decree of the Chief Court of the Punjab. The decree was dated the 7th of July 1906. It reversed a decree of the District Judge of Delhi. The Respondent, as Plaintiff, sued the Appellant for possession of a house and compound in Delhi. The first Court dismissed the suit, and on appeal the Chief Court gave the Plaintiff a decree for possession of the property on certain terms.

Nine issues were raised, and evidence was adduced with regard to them in the Court of first instance; the questions have now, however, been limited to the issues upon which the Chief Court proceeded, and which are now to be referred to.

The first of those questions is, has the relationship of the Plaintiff, which is in issue in this suit, been proved? The proof is denied. One Bishun Lal, the former owner of the

property, was twice married; by his first wife the allegation is that he had a daughter who was the mother of the Plaintiff, Mathu Mal. The oral evidence upon the point is meagre and conflicting.

Under these circumstances the Chief Court looked for assistance to any deeds or documents under the hand of the second wife, Munia, of the Plaintiff's grandfather. That second wife executed a will, and the particular provisions of that will are to be found on pages 15 and 16 of the Record. The will was executed on the 22nd of November 1899. In that will this lady, who, of all people, was the person to make a statement of fact with regard to her husband's history, his relationships, and his succession, at two different parts of the document declares that she has no issue nor any near relative. She says: "Hardeo Sahai, *alias* " Mathu Lal, is related to me as my daughter's " son." Then, after mentioning a further relative, she says: "These are my relatives on my husband's side." She repeats the statement, to a similar effect, in the same document, and she puts forward Mathu Lal, so related to her husband, as the person who is first in order of choice for performing the funeral religious ceremonies of Kirya Karam, that circumstance being one, in regard to these Indian relationships, of great value.

In this situation their Lordships are of opinion that, in the most solemn form, this lady had declared facts which must have been within the scope of her own knowledge; and, if her version of the facts be sound, there can, in their Lordships' view, be no doubt that the Judgment appealed from is correct. Their Lordships put to the learned Counsel, who argued the case with conspicuous moderation,

the point whether, if this lady, being alive, had testified in a Court of Law in the same sense as this will declared, there could have been any answer; and it was admitted that such testimony, unshaken in cross-examination, would have been conclusive on this matter of fact.

Their Lordships are accordingly of opinion that the Chief Court was justified in attaching great weight to the contents of this will, and that the conclusion, upon this matter of fact, reached by them, is a conclusion which now cannot be successfully assailed.

Their Lordships desire to add that they do not think it is open to this Board to entertain, in lieu of evidence, a suggestion to the effect that this will—made five years before her death—was part of a scheme which was to emerge in favour of one party to the present suit, after that suit was brought. These were conjectural efforts made in argument, but they do not amount to anything which would weigh with the Judgment of the Board on the point of evidence. Their Lordships conclude their Judgment upon this portion of the case by remarking that the person who drew this document was himself a witness. He was open to cross-examination, and no suggestion in favour of these conjectural considerations was made while the witness was in the box.

There now only remains one question to be determined, and that is as to the amount of the allowances which are to be made as a condition of taking possession of this house and compound. It appears that in the course of the possession of the last holder a temple was erected upon the ground, and other expenditure was incurred to a considerable amount. The

Chief Court assessed the sum of Rs. 1,400 as a fair sum to the extent of which the property as a vendible subject has been enhanced in value by the operations of the last holder. Their Lordships are of opinion that the grounds upon which the Chief Court proceeded are sound. In such a case it is always to be borne in mind that the amount of the expenditure made has occasionally very little to do with the real issue; and that that issue is, to what extent has enhancement of the subject been produced? Their Lordships agree with the Chief Court in thinking that it has been produced to the extent of Rs. 1,400. But with regard to the difference between that sum and the Rs. 7,000 claimed, a large part of that difference stands to the account of the erection of the temple upon the land. It has not been contended in argument before the Board that the erection of the temple would of itself add to the selling value of the property, and the real question is, was the property, as a marketable subject, enhanced in value or not? Their Lordships are of opinion that it was enhanced, but only to the extent stated in the Judgment appealed from.

Their Lordships will therefore humbly advise His Majesty that this Appeal should be dismissed, and that the Decree of the Court below should be affirmed. The Appellant must pay the costs of the Appeal.

In the Privy Council.

KIDAR NATH

2.

MATHU MAL.

DELIVERED BY
LORD SHAW.

LONDON :
PRINTED BY EYRE AND SPOTTISWOODE, LTD.,
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1913.