

Sardar Gurbakhsh Singh - - - - - *Appellant*

*v.*

Gurdial Singh and another - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 19TH JULY, 1927.

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*Present at the Hearing :*

VISCOUNT DUNEDIN.

LORD SHAW.

LORD SINHA.

SIR JOHN WALLIS.

[*Delivered by* LORD SHAW.]

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This is an appeal against a judgment and decree dated the 9th April, 1924, of the High Court of Judicature at Lahore, which reversed the judgment and decree of the 1st December, 1919, of the Subordinate Judge at Ludhiana.

Sardar Jawala Singh was a jaghirdar possessed of certain properties in the Ludhiana and Ferozepore districts of the Punjab. He lived in the village of Bhikki Khatra, in the Ludhiana district.

Jawala died on the 19th August, 1915, leaving two widows. The elder, Harnam Kuar, was childless. The younger, Bhagwan Kuar, had borne to him a daughter, who at the date of his death was ten years old. These constituted the household.

It is admitted that according to the law in operation in that part of the Punjab, if there had been a son in the household, he would have succeeded to the properties ; but that, failing a son, and there being only a daughter, the estate would fall to a collateral male relative. That relative was a step-brother named Gurbakhsh Singh, who is the present appellant. If, however, a posthumous son was born, then that posthumous son would, of

course, succeed, the household would be kept together, and Gurbakhsh, the step-brother, would have no rights.

The story of this litigation, and of various other proceedings, partly legal and partly administrative, which preceded it, hangs upon the question whether such a posthumous son ever was born. It appears clear that a possible attempt to procure a spurious son was in the minds of all parties from the moment of Jawala's death, or even before that. He died on the 19th August, 1915.

The appellant maintains that no such posthumous son was born. Almost immediately after the death he proceeded to raise the question. Simultaneously, or almost simultaneously, Bhagwan, the younger widow, disappeared.

Every day was of importance for the defeat of a plot, if plot there was, and for the immediate discovery of the truth. There seems to be little doubt that dissatisfaction arose as to the delay of the Patwari of the village in taking action. It is a fact that the death having occurred on the 19th August, the Patwari only entered the fact in his diary so late as the 29th August.

In the Mutation Register, which purports to be dated the 23rd August, 1915, but which was only in reality completed on the 29th, there is in the last column the following entry :—

“ To-day, Bachittar Singh, a co-sharer of Mauza Attari, stated :—

“ Jowala Singh, a co-sharer and jaghirdar of Mauza Attari, died sonless on the 19th August, 1915. Mussammats Harnam Kaur and Bhagwan Kaur, his widows, are entitled to succeed to the property left by him in equal shares. A report regarding the death with regard to the jaghir has been separately submitted to the Tahsil. Hence the mutation entry relating to the khata is submitted.

“ He also states that Mussammat Bhagwan Kaur is pregnant.

“ Dated the 23rd August, 1915.

(Signed) “ BACHITTAR SINGH,  
“ Declarant.”

There remains in the case very considerable doubt as to when the words, “ He (Bachittar Singh) also states that Musammat Bhagwan Kaur is pregnant,” were entered. As will be shown, Bachittar Singh, the alleged informant, was not examined as a witness.

On the 31st August, Gurbakhsh, by a petition to the Mutation Officer, claimed that the property was his. By this time the parties were undoubtedly at arm's length. Gurbakhsh, the step-brother appellant, had applied to the Collector; the application has not been found, but at least by the 14th September an application was lodged which frankly made the charge of the attempt to procure a spurious son :—

“ In our family there is a custom that when a member died sonless his collaterals get his jaghir, and his widows are entitled to get maintenance only. They support themselves with the income of the ancestral land. The village Patwari has colluded with his (deceased's) widow. He made a false and

fictional report in the mutation register to the effect that Musammat Bhagwan Kaur is pregnant, whereas she is not at all pregnant. Our rights are prejudiced owing to collusion with the Patwari. Musammat Bhagwan Kaur (she was the second and much the younger of the two widows) may be got medically examined by a doctor so that she may not procure a spurious son. If she procured a son somewhere or is trying to procure a son, we do not accept him. It is therefore prayed that local enquiry may be got made by a Tahsildar and relief granted."

This challenge should, as was meant, have brought matters to a head. The request made was reasonable. The condition of Bhagwan was the critical and conclusive fact in the case. Without any doubt whatsoever she should have appeared, if her case was true; her condition of advanced pregnancy would have been plainly enough established in the course of that enquiry. She did not so appear. The proceedings were delayed. The Deputy Commissioner on the 13th October demanded to know what had become of the matter.

Meantime events ripened, or were alleged by the elder widow to have ripened, by the alleged birth of a son to Bhagwan in a remote village of an adjoining native state.

Gurbakhsh at once took action, and on the 21st October another application was made to the Collector, which narrated as follows :—

"After his death Musammat Bhagwan Kaur, in order to prejudice my rights, gave out, in consultation with the village Patwari, that she was pregnant, whereas she was not at all pregnant. I filed applications in your Court praying that enquiry may be got made at the spot or the woman may be got medically examined, but up till now no attention has been paid to those applications."

Then follows the second stage of the case :—

"But a short time ago Musammat Harnam Kaur (that is, the elder widow) gave out that a son was born, whereas no son was born, nor is it known where was Musammat Bhagwan Kaur, nor yet did she tell on what date and in which village the son was born. This is all fraud."

This is the one side, namely, the step-brother's allegations. It is, however, interesting to know what was the admitted attitude of the widows themselves upon the important subject of the possibility of a spurious son.

In the application before the Collector, Musammat Harnam Kaur, the elder widow, made the following statement on the 25th October, 1915 :—

"The name of my co-wife is Musammat Bhagwan Kaur. Our husband died about two months ago ;"

and then there follow these words :—

"About a month after his death, I sent her to my parents' house for the reason that she might, perhaps, give birth to a daughter and might go to her parents' house and secure a spurious son in order to prejudice my rights."

This is a curious statement, but in some respects it has obvious importance. It shows that the departure from the family home

was deliberate. Next, the disappearance was in the mind of this co-widow connected with the birth or the production of a son. Further, the elder widow was to manage the affair of the residence of the younger.

This deliberate design was followed by the departure of the second widow, who went off in the first place to her own parents' house. This was natural and usual: but she was only there a day or two when she was taken therefrom by a nephew of the first widow, and immediately thereafter to Patiala, outside British territory and in a native state. Not content with this, she was again removed by him from Patiala to his own residence at a place called Lakha Singhwala, in Nabha, also a native state, This nephew states that his aunt Harnam wished him to take Bhagwan from Patiala to Lakha Singhwala in order to avoid the apprehended change from a girl to a boy.

The facts of these changes of residence are undoubted; but their Lordships do not believe a word of the story as to the object of the journey, or as to the absentee widow having borne a son.

The Board does not go into the details further than to say that it is satisfied with the interpretation put upon them by the Subordinate Judge. They think it true to say firstly, that the suggestion of an apprehended change from a girl to a boy is without any foundation whatsoever. Secondly, the deliberate removal from her home and even from the home of her own parents to these two different places in a foreign state was effected with the object of destroying traces of her whereabouts, of making it practically impossible compulsorily to secure her medical examination, of making it possible to lay a foundation for the fraud of obtaining a spurious son and of maintaining thereafter that in this remote place she herself had given birth to it. Their Lordships, in short, agree, on the whole of that part of the case, with the views of the Subordinate Judge.

One or two points, however, may be stated in addition. It was argued that the statement as to pregnancy attributed to Bachittar Singh was interpolated by the Patwari in the original record of the death of Jawala Singh. The challenge was made before the proceedings, either before the Collector or in this suit, were instituted, and it is striking and suspicious that Bachittar Singh, to whom this statement was attributed, was not called as a witness to clear up the point, or to state upon what information his alleged statement was made.

There may be very considerable doubt as to whether the statements made before the Collector, which truly did not form a part of the present *lis*, should have been admitted in these civil proceedings. The thing, however, was done. As already mentioned, the appellant took action almost at once to have the truth as to Bhagwan's condition investigated. She, however, disappeared, and it was practically impossible for a private litigant to fetch her back, or possibly even to ascertain her whereabouts.

The investigation proceeded in the Collector's tribunal, and on the 12th November the Revenue Assistants reported to the Deputy Commissioner that the boy was fictitious.

It may be remembered, however, that there being a report circulated that Harnam was certain that a son was born, Gurbakhsh instantly took action. By another application of the 21st October he requested that some high officer might be specially sent to the spot and a thorough inquiry made so that the true facts might come to light. The authorities could not use force beyond the British frontier, and in the course of the further proceedings on the 2nd February, 1916, the following order was pronounced by the Presiding Officer of the Revenue Court:—

“Mussammat Bhagwan Kaur is keeping out of the way and cannot be found. Sardarni Harnam Kaur be summoned to Ludhiana for the 21st February, 1916. Her whereabouts be inquired from Sardar Bahadur Sardar Gajjan Singh and Mr. Sarab Kishen. They state that do not know where the Sardarni Sahiba is, nor did any Mukhtar of her come to them again.”

A last opportunity was given, but Bhagwan did not appear until the 3rd March, accompanied by a boy to which she maintained she had given birth in the previous October.

It appears clear to their Lordships that she was purposely keeping out of the way, not only from August, 1915, when she disappeared, but from October, when her alleged son was born. This further delay from October to March, about five months, was also deliberate. It was for the purpose of preventing the possibility of any medical examination of her after such a long period throwing light upon the question of the birth of a child by her in October. The Assistant Collector, however, heard her, and he was in no way moved by her evidence. “The statement,” says he, “of Mussammat Bhagwan Kaur has been taken down. Even after hearing her I see no reason to alter my first view.”

Further proceedings took place in the Revenue Courts, and then this civil suit followed. As already indicated, their Lordships see no reason to doubt either the great carefulness of the investigation made by the Subordinate Judge, or the soundness of the conclusions at which he arrived. The disappearance of Bhagwan, and the manifest approval of the co-widow; the refusal by her to come to the Court to submit to a medical examination, or even to remain for a reasonable period in her own old home, but in preference to go outside the jurisdiction of the Court and into a native state, would in any view have thrown the greatest doubt upon the story of her having given birth to a son as alleged; and then the second feature of the case—her continued absence for a long period after the alleged birth—the whole of this appears to their Lordships to be but part of a transaction which was simply a nefarious plot.

It must be stated that in taking a different view the High Court went very far, as, for instance, when they say, “We do not find any proof that Bhagwan Kaur did, in fact, shirk examination.”

Their Lordships think it unnecessary to repeat the numerous details of the story, but, as it involves a general and important question of procedure and practice, they think it expedient to make the following reference to what occurred at the trial of this civil suit. At the Bar of the Board it was admitted by the respondents that she, Bhagwan, had been present in Court when the evidence was being taken, and that she did not go into the witness box, and was not examined as a witness on her own or her alleged son's behalf.

Notice has frequently been taken by this Board of this style of procedure. It sometimes takes the form of a manœuvre under which counsel does not call his own client, who is an essential witness, but endeavours to force the other party to call him, and so suffer the discomfiture of having him treated as his, the other party's, own witness.

This is thought to be clever, but it is a bad and degrading practice. Lord Atkinson dealt with the subject in *Lal Kunwar v. Chiranjil Lal* (37 I.A. 1), calling it "a vicious practice, unworthy of a high-toned or reputable system of advocacy."

The present case, however, is a pointed instance of the evils which flow from such a practice. Bhagwan's case had been the subject of prolonged investigation in the Revenue Courts, and had been pronounced by them a bogus case. She had appeared and told a story there, and it had not been believed. She was, however, also present in this civil suit, the issue in which was the legitimacy of the boy that she was putting forward as the Jaghir of the estate. Her non-appearance in answer to the challenge, that is to say, to disclose the actual fact as to her condition shortly after her husband Jawala's death, her disappearance into a foreign state, and all the other circumstances mentioned, had been established. If her story were, notwithstanding all this, a true story, it was her bounden duty to give evidence in the suit, telling the whole facts in support of her and her alleged son's case; but she did not. If under advice she did not do so, that advice was of the worst description, and worthy of the animadversion above made. But in any view her non-appearance as a witness, she being present in Court, would be the strongest possible circumstance going to discredit the truth of her case.

How did the High Court deal with this? They say:—

"It is true that she has not gone into the witness box, but she made a full statement before Chaudhri Kesar Ram, and it does not seem likely that her evidence before the Subordinate Judge would have added materially to what she had said in the statement."

Their Lordships disapprove of such reasoning. The true object to be achieved by a Court of Justice can only be furthered with propriety by the testimony of the party who personally knowing the whole circumstances of the case can dispel the suspicions attaching to it. The story can then be subjected in all its particulars to cross-examination.

To say that she would likely have repeated what she had already said omits the entire force of the consideration as to cross-examination, and their Lordships cannot doubt that if this part of the case had been treated from the point of view consistent with sound practice, as just stated, the High Court could never have reached the conclusion come to.

Their Lordships will humbly advise His Majesty that the appeal should be allowed, and the judgment of the Subordinate Judge restored with costs here and below.

In the Privy Council.

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DELIVERED BY LORD SHAW.

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