

Rattan Lal - - - - - Appellant

Baij Nath and others - - - - - Respondents

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 24TH JUNE, 1937

Present at the hearing :

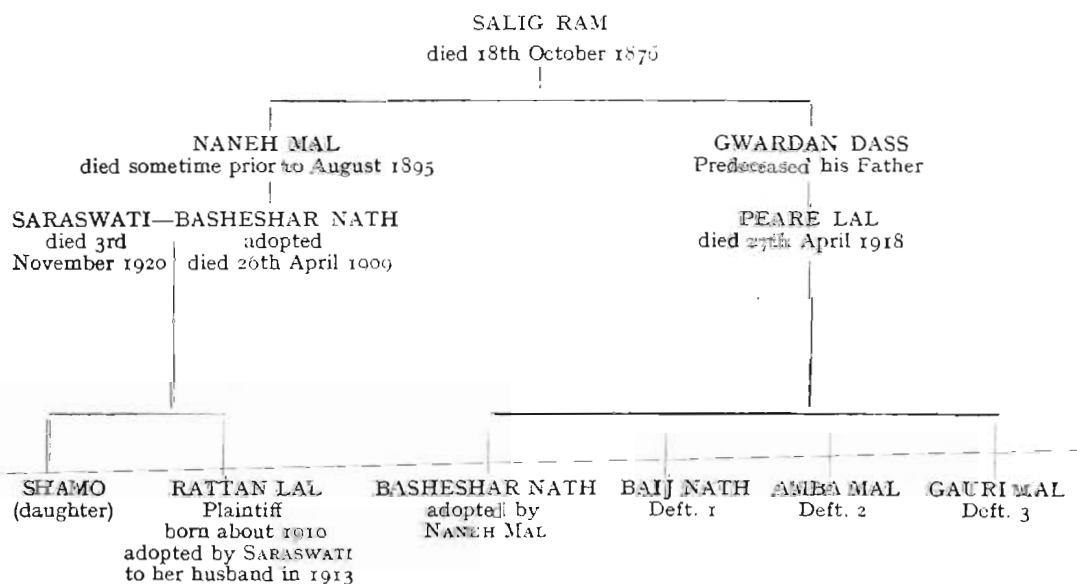
LORD RUSSELL OF KILLOWEN.

SIR SHADI LAL.

SIR GEORGE RANKIN.

[Delivered by SIR SHADI LAL.]

On the 26th April, 1909, one Basheshar Nath, a Vaisha Hindu residing in the town of Delhi, died leaving him surviving a widow, Saraswati, and a minor daughter, Shamo. On the 25th April, 1909, he had made a will authorising his widow to adopt a son, and appointed four persons, namely, Peare Lal, Peshi Mal, Mul Chand and Bashambar Nath, to be his executors. Peare Lal was the natural father of the testator, but the other executors were only remotely related to him. The following pedigree table shows the exact relationship of the various persons who are interested in this litigation:



It will be observed that Basheshar Nath, who was the eldest son of Peare Lal, was adopted by Naneh Mal, and it is no longer disputed that after his adoption Basheshar Nath was separate in estate from Peare Lal, though some immoveable property was held by them in common and had not been partitioned by metes and bounds.

The probate of Basheshar Nath's will was, after some contest among the executors, granted to them on the 30th July, 1910, and thereafter they began to administer the estate and to perform other duties specified in the will. Now, one of the duties was the selection of a boy to be adopted by the widow, and it appears that Peare Lal, who, as the natural father of her deceased husband, was vitally interested in the matter, was asked by the other executors to find a suitable boy for this purpose. Thereupon, he went to a place called Matan, and selected in 1911 the plaintiff, Rattan Lal, who possessed the requisite qualifications. The boy was then an infant, only a few months old. He came with his mother to Delhi and began to live there with the widow. After he had resided with her for nearly two years, he was formally adopted by her, in 1913, in the presence of a large number of persons.

Thereafter he continued to live with his adoptive mother and was treated, not only by her, but also by Peare Lal, his sons and their relatives as the adopted son of Basheshar Nath. During his minority Peare Lal managed his estate, and realised, on his behalf, rents and profits thereof. He was still a minor when Peare Lal died in April, 1918, but his sons continued to carry on the management of the estate. They subsequently repudiated his right to the estate, with the result that he brought the present action to recover from them the immoveable property which belonged to him, and also asked for a rendition of the accounts of the monies realised by them on his behalf. In his plaint he relied upon his adoption by the widow in accordance with the directions of her deceased husband, and also referred to the latter's adoption by Naneh Mal.

The defendants denied both the adoptions, and the Trial Judge, after recording the statements of the counsel for the parties to elucidate their pleadings, framed only one issue for trial. That issue, which consisted of two parts, was in these terms: "Whether the plaintiff is the adopted son of Basheshar Nath, and whether Basheshar Nath was the adopted son of Naneh Mal". The learned Judge then heard the evidence produced by the parties on that issue and gave judgment for the plaintiff. He discussed all the relevant evidence, oral as well as documentary, and reached the conclusion that Basheshar Nath was adopted by Naneh Mal, and that the plaintiff was adopted by Basheshar Nath's widow in accordance with the authority conferred upon her by the will of her husband.

Against the decree pronounced by the Trial Court the defendants preferred an appeal to the High Court of Judicature at Lahore, and challenged, not only the factum

of the plaintiff's adoption, but also its validity. The appeal was heard by Harrison and Addison JJ., who accepted the appeal and dismissed the plaintiff's suit. As stated in the judgment of the High Court, which was written by Addison J., the appellants admitted before the learned Judges the adoption of Basheshar Nath by Naneh Mal, but impeached the factum as well as the validity of the adoption of the plaintiff by Basheshar Nath's widow. The Court of Appeal found in favour of the factum of his adoption, but considered the question of the validity of adoption to be a difficult one. They held that according to the directions contained in the will of Basheshar Nath, all the executors "had to concur in choosing the boy" for adoption, and as all of them had not concurred, the adoption in question "was invalid and against the authority of the deceased husband." The appeal was accordingly accepted, and the suit dismissed.

From the decree dismissing his suit the plaintiff has brought this appeal, and their Lordships, after bestowing their careful consideration upon the whole case, have reached the conclusion that the view taken by the High Court is erroneous, and that the appeal must succeed.

The fifth clause of the will, which authorizes the widow to adopt a boy, provides that after the testator's death the executors "shall be competent to select a boy of a good family in the brotherhood and have him adopted by my wife on my behalf." There may be some doubt as to the exact intention of the testator, and it is possible to contend that, thinking that his wife being young and inexperienced, would stand in need of help in finding a boy for adoption, he required the executors to assist her in choosing a boy, but did not intend to restrict her power to the adoption of a boy suggested by them. Assuming, however, that the clause in question was not dictated by a desire merely to help her in finding a boy of the qualifications mentioned by the husband, but sought to limit her choice, their Lordships do not find any express plea raised by the defendants that the plaintiff's adoption was invalid, because he was not selected by *all* the executors. As stated, the Trial Judge took the precaution of examining the pleaders for the parties in order to ascertain the points in controversy, but a perusal of the statement, made by the pleader for the defendants, does not show that he impeached the adoption on the ground decided by the High Court against the plaintiff. The dispute, as understood by the Trial Judge and embodied in the issue framed by him, was "whether the plaintiff is the adopted son of Basheshar Nath." Neither the parties, nor the Judge, in the Trial Court understood that the defendants were challenging the adoption on the ground that the plaintiff had not been chosen by all the executors. It is significant that the judgment of that Court makes no reference whatever to the alleged invalidity of the adoption, which was mentioned, apparently, for the first time in the memorandum of appeal presented by the defendants to the High Court. The validity of the adoption, as raised before the High Court,

depended upon a pure question of fact, namely, whether all the executors had agreed to the selection of the plaintiff for adoption, and it would obviously be unjust to dismiss his claim as the adopted son of Basheshar Nath without giving him an opportunity to produce evidence in support of that fact. Their Lordships do not, however, consider it necessary to remit the case for further inquiry, as they find that the evidence, adduced to establish the factum of adoption, also proves facts which justify the inference that the selection of the plaintiff was made, or agreed to, by all the executors. This evidence, as will be seen presently, shows that the executors accepted him as the proper person to be the adopted son of Basheshar Nath.

It must be remembered that of the four executors, Peare Lal was the only person who was personally interested in the welfare of the widow, and in the estate left by her husband. He was not only the natural father of Basheshar Nath, but, as the pedigree table shows, he was the nearest agnate of his adoptive father Naneh Mal. In these circumstances, he would ordinarily be expected to take a leading part in settling the affairs of the estate, and in carrying out the wishes of the testator. The evidence shows that he originally opposed the application of the other executors for a grant of the probate of the will, but, when the will was found to be valid, he joined in taking out probate, and along with his colleagues he instituted suits for the recovery of the debts due to the testator and took active steps to administer the estate. As pointed out by the High Court, the evidence of the two executors Peshi Mal and Bashambar Nath (not Basheshar Nath, as wrongly stated by the High Court) shows that the executors left the management of the estate to Peare Lal. About the selection of the plaintiff for adoption, Peshi Mal states that "according to the will Peare Lal brought a baby ten months old from Matan side, the place from which the family had originally come". It was apparently contended before the High Court that the will required the selection of the boy by all the executors, and the phrase "according to the will" used by Peshi Mal implies that the selection was made by Peare Lal after consulting the other executors. It is noteworthy that while the evidence leaves no doubt that the boy, after coming to Delhi, lived with the widow for two years and was then adopted by her in the presence of nearly a hundred persons including such executors as were present at Delhi at that time, there is no suggestion that any of the executors objected to the selection. Indeed, Peshi Mal himself was present at the adoption of the boy; and, as observed by the High Court, his implied consent to the selection of the boy "may be deduced from his presence" at the adoption. There is also the evidence of Banwari Lal, the brother of Basheshar Nath's wife, to the effect that all the executors except Bashambar Nath attended the ceremony of adoption. This evidence, which stands uncontradicted, has an important bearing upon the question, but has been overlooked by the High Court.

It appears that Bashambar Nath was not present at the time of the adoption, but he has not attempted to deny the fact deposed to by Peshi Mal that the boy was selected by Peare Lal in accordance with the provisions of the will which, as explained, implies that the selection was made after consulting all the executors. The remaining two executors, namely, Peare Lal who had brought the boy for adoption, and Mul Chand, had died before the trial of the suit, and they could not, therefore, be examined as witnesses.

In short, the evidence shows that the plaintiff Rattan Lal, who was an agnate of the deceased Basheshar Nath, was brought in 1911 from Matan to Delhi when he was only ten months old; that he was selected by Peare Lal after consulting his co-executors; and that, after he had lived for about two years with the widow, he was adopted by her in 1913 in the presence of a large number of persons including all the executors with the exception of Bashambar Nath. There is not a scintilla of evidence that any of the executors, who had deputed Peare Lal to select the boy, expressed his disapproval of the selection during the period of the boy's residence with the widow for two years prior to the performance of the ceremony of adoption, or at the time of the adoption. These facts, which are unrebutted, warrant the inference that the plaintiff was selected or adopted with the consent of all the executors, and this inference receives confirmation from the circumstance that after the adoption he was treated as the duly adopted son of Basheshar Nath by all the persons concerned in the matter. It was only after the expiry of more than fourteen years from the date of the adoption that the defendants, who are the sons of Peare Lal, challenged the adoption, when they were asked to deliver the property which belonged to the estate, and to render an account of the realisations made by them.

Upon an examination of all the material circumstances their Lordships are of opinion that the factum as well as the validity of the adoption has been established. The appeal should, therefore, be allowed, the decree of the High Court reversed, and that granted by the Subordinate Judge restored with costs here and in India. Their Lordships will humbly advise His Majesty accordingly.

RATTAN LAL

v.

BAIJ NATH AND OTHERS

DELIVERED BY SIR SHADI LAL

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