Privy Council Appeal No. 78 of 1939
Patna Appeals Nos. 1 & 2 of 1938

Gadadhar Dhir Samanta

v.

Rani Labanyabati Dei and another

Gadadhar Dhir Samanta

v.

Rani Labanyabati Dei and another

Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE AT PATNA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 4TH JUNE, 1942

Present at the Hearing:
LORD ROMER
SIR GEORGE RANKIN
SIR MADHAVAN NAIR
[*Delivered by* LORD ROMER]

These are consolidated appeals from two decrees of the High Court of Judicature at Patna dated the 27th October, 1937. The question to be decided upon them is whether, as held by the High Court, there was at that date in existence an agreement binding upon the appellant and the first respondent for the compromise of two appeals that were then pending before it.

The litigation that gave rise to those appeals was concerned with the title to the impartible estate of Balarampur situate in the district of Cuttack in the Province of Orissa. The history of such litigation so far as is now material is as follows.

On the 16th March, 1930, Raja Lakshmi Narayan the proprietor of the estate died, a minor and unmarried. He was the only son of Raja Dasarathi whom he had succeeded on the death of the latter on the 22nd October, 1924. Dasarathi had also left him surviving two widows, the senior being Rani Satyabati, the junior being the first respondent Rani Labanyabati who was the mother of Lakshmi Narayan. She is hereinafter referred to as the Rani.

On the death of Lakshi Narayan four persons claimed to be entitled to succeed to the estate. They were the Rani, the appellant Gadadhar, one Raghunath now deceased, and the second respondent Radhamohan. The following genealogical table, though imperfect in that it omits some details that are now immaterial, shows accurately the relationship of these four claimants to the deceased proprietor and to one another.

The claim of the Rani was based upon her contention that the estate was the separate property of her son. The other three claimants alleged on the other hand that it was the ancestral property of the joint family to which they and Lakshi Narayan all belonged. But while Raghunath maintained that according to the custom of the family its descent was governed by the rule of lineal primogeniture, Gadadhar and Radhamohan asserted that it was governed by the rule of ordinary primogeniture. As against Gadadhar Radhamohan claimed that though belonging to a junior line his title prevailed over that of the former as he was the elder of the two. Radhamohan also sought, as did the Rani, to defeat the claims both of Raghunath and Gadadhar by the allegation, which in fact was wholly unfounded, that Jagernath and his descendants had long since ceased to be members of the joint family.

In the first instance proceedings were taken by each of the four claimants in the Land Registration Court for mutation of his or her name in place of that of Lakshmi Narayan. In these proceedings the Rani proved successful and an order was made for recording her name in place of that of her son. Upon this she entered into possession and was still in possession when in June 1931 two title suits (No. 33 and No. 36 of 1931) were filed in the Court of the Subordinate Judge of Cuttack. The former was filed by Raghunath against the Rani, the appellant, and Radhamohan; the latter by the appellant against the Rani, Raghunath and Radhamohan. In each suit the plaintiff sought a declaration of his title and possession. The usual pleadings having been filed, the two suits were heard together by the Subordinate Judge, who on the 31st August, 1933, delivered an able and careful judgment. Shortly stated it was to the effect that the estate was not the separate property of Lakshi Narayan but the ancestral property of a joint family of which Lakshi Narayan, Raghunath, the appellant, and Radhamohan were all members; that the descent of the estate was governed by the rule of lineal primogeniture; that Raghunath was the lawfully adopted son of Benudhar, and was accordingly the rightful heir to Lakshi Narayan. He also held that though Radhamohan was older than Gadadhar by a few years, yet as Gadadhar belonged to a senior branch of the family he would have prevailed over Radhamohan had the contest been between those two alone. In the result he decreed the suit of Raghunath and dismissed that of the appellant Gadadhar.

On the 15th November, 1933, the Rani filed an appeal in the High Court at Patna (No. 19 of 1933) against the decision in Ragunath's suit and on the 29th November, 1933, Gadadhar filed an appeal in the same Court (No. 20 of 1933) against the decision in his own suit. Radhamohan did not appeal and can now disappear from the story. So too as from the 7th February, 1936, can Raghunath, inasmuch as on that date he died unmarried.

By this death the position of Gadadhar had been greatly improved. Unless the Rani could make good her claim, he was bound to succeed either on his own appeal on the footing of ordinary primogeniture, or as the heir of Raghunath upon the footing of lineal primogeniture. But he was now suddenly confronted with a much more formidable danger than that occasioned by the claim of the Rani. For she was contemplating the adoption of a son to her late husband, alleging that she had received authority from him to do so. Should this adoption take place and be held to have been validly made Gadadhar's claim to the property would, for the time being at any rate, be completely defeated. It was in these circumstances that according to the contention of the Rani negotiations for a settlement of their differences took place at Cuttack between her and the appellant or their respective representatives, with the result that they arrived at the compromise which is the subject matter of these present appeals. The terms of it were set out in a memorandum purporting to be signed by the appellant and dated the 15th April, 1936.

The memorandum in question begins with a statement in these words:

> " The High Court Appeals No. 19 filed by Rani Labanyabati and No. 20 filed by me Gadadhar Dhir Samant are now pending. In the meantime my nephew Raghunath has died and the Rani

with the permission of her husband Raja Dasarathi is about to adopt the grandson of the Raja of Talcher. The result of the litigation is uncertain and in case the Rani makes the adoption it will not be of any advantage to my suit and I find that there are possibilities of much litigation again afterwards, therefore I agree to a rafa (compromise) under the conditions mentioned below.

There are then set out the terms of the compromise of which the more material are to the following effect: (1) The appellant was to be paid Rs.10.000 in cash and to be granted out of the estate lands yielding a net annual income of Rs.600, such lands to be " demarcated according to the Mouzas in which they are situated." After his death such lands were to be held by his adopted son and his daughter in equal shares. The appellant was to give up all claim to the estate as heir of Lakshi Narayan. (2) the lands which had been given to the appellant and his brothers for maintenance were to remain their property free of road cess. (4) The Rani was to pay Rs.2000 in cash for the marriage expenses of the daughter of the appellant's youngest brother Madan Mohan. (6) Rs.50.000 were to be paid by the respondent Rani to one Prandhan who had been financing Raghunath, and after the latter's death the appellant, in the litigation. (7) Each party was to bear her or his own costs of the litigation. (9) The Rani was to withdraw the Rs.9000 deposited by her in Court as security. (10) A decree in Appeal No. 19 was to be made in favour of the Rani and the Appeal No. 20 was to be dismissed. The document concludes with the date and what purports to be the signature of the appellant.

Now the appellant emphatically denies that he ever agreed to compromise the appeals on the terms set out in the memorandum or on any other terms. He says that he never signed the memorandum and that what purports to be his signature at the end of it is a forgery. Whether he did or did not agree to the compromise and sign the memorandum is, of course, a pure question of fact. In support of the Rani's case upon this question several witnesses were called whose evidence was accepted by the learned judges of the High Court at Patna. The only witness on the other side who could give direct evidence upon the matter was the appellant himself. But he was not believed. Wort, J. said of him: " There was hardly a statement this witness made which we could rely " upon. His demeanour and answers to questions put to him make it " impossible to place the least reliance upon his evidence." The other learned judge Varma, J. said that he found it difficult to disbelieve the witnesses examined on behalf of the Rani to prove that the appellant agreed to the terms of the compromise which were embodied in the memorandum which he signed; that the only important evidence on behalf of the appellant was that of the appellant himself, but that his demeanour in the witness box was quite unsatisfactory and that his statements were not to be accepted unless corroborated. These learned judges had the opportunity which their Lordships have not had of seeing the witnesses in the box and observing their demeanour. In these circumstances their Lordships would be very slow to disagree with them even if a perusal of the transcript of the evidence should raise a doubt in their Lordships' minds as to its true effect. But their Lordships have had their attention directed to the salient passages in the transcript with the result that they are left in no doubt whatsoever that the learned judges in deciding as they did this question of fact in favour of the Rani arrived at a just conclusion.

The appellant endeavoured to get some assistance out of that term of the compromise under which the Rani was to grant him lands out of Balarampur yielding a net annual income of Rs.600, which lands were to be demarcated. He contended that, even if he had signed the memorandum, yet inasmuch as the particular lands to be granted to him had not then been agreed upon or demarcated the compromise left open a material matter to be agreed upon in the future and accordingly that there was not a concluded agreement. Their Lordships are not impressed by this contention. The lands to be granted were not to be such as the appellant should agree to accept. They were to be lands to be demarcated by the Rani, and she could choose any lands in the estate for the purpose that she might think fit so long as they produced the stipulated income.

There is, however, another contention of the appellant that is more deserving of serious consideration. He says that, even assuming a compromise to have been agreed upon as recorded in the memorandum of the 15th April, 1936, the parties subsequently cancelled that compromise by mutual agreement, or must be taken to have done so, by attempting at a later date to effect a compromise on different lines, even although in the end such attempt proved unsuccessful. The facts upon which this contention is based are as follows: Shortly after the 15th April, 1936, certain representatives of the Rani and the appellant went to Patna and approached the Government advocate Sir Sultan Ahmed. There appear to have been two reasons for taking this step. In the first place the Rani wished to be advised by him whether the particular adoption that she proposed to make would be valid according to Hindu Law. In the second place the application to the Court to have the compromise recorded would have to be made in Patna, and it was thought desirable that the necessary petition for that purpose should be prepared there. On being consulted Sir Sultan Ahmed advised that it would be better if the adoption should take place before the petition was filed. The object of this was, as he stated in his evidence before the High Court, to avoid further litigation in the future. For the same reason he advised that in addition to the appellant certain other members of the joint family should be asked to acknowledge the validity of the adoption. A draft petition to the Court was accordingly drafted by one Chintamoni, a Government pleader, and was finally settled by Sir Sultan Ahmed himself. In this draft the petitioners were stated to be (1) the boy who was going to be adopted; (2) the Rani; (3) the appellant, and the following additional members of the family, viz.: (4) Bimbadhar; (5) the widow of Benudhar and (6) the son of Madan Mohan who was then dead. The draft stated the circumstances leading up to the two appeals and the death of Raghunath. It also stated that the adoption had taken place; that this had been done in the presence of the petitioners (3) (4) and (6); and that they recognised the adoption. The draft then proceeded as follows: " (11) Considering the uncertainties " of litigation and especially in view of the adoption . . . . the petitioners " at the intervention of their friends and well wishers and for the welfare " of the estate and for the welfare of the parties concerned and to avoid " further trouble and expense and to have future peace have agreed to " settle up the dispute between themselves; (12) In order to effect a valid " and binding compromise it is necessary to bring on the record the " petitioner No. 1 and the petitioners Nos. 4 to 6 as parties; (13) The " settlement has been arrived at on the following terms." The terms were then set out and were in substance the identical terms contained in the memorandum of the 15th April, 1936, with the following exceptions: (1) the lands to be given to the appellant were stated to be lands yielding a *gross* income of Rs. 600; (2) the adopted son was to be the proprietor of the estate in question " according to the rule of lineal primogeniture preva- " lent in the family " and after him his heirs and successors were to be the proprietors according to the said rule; (3) the Rani Satyabati and the Rani were stated to have no claim to the estate except the usual maintenance; (4) the petitioners Nos. 3 to 6 gave up their claim, right or interest if any to the estate except their rights to maintenance as then enjoyed by them; (5) the Court was asked to allow the appeal No. 19 of 1933 in favour of the adopted son, petitioner No. 1. Of these exceptions the first one was probably due to a clerical error, but in any case is not sufficiently material of itself to affect the matter; and the remainder did little more than make provision in express terms for what was implied in or would naturally have resulted from carrying out the terms of the memorandum of the 15th April, 1936, after the adoption mentioned in these terms as being contemplated by the Rani had been carried into effect. The little more that was in fact attempted to be brought about when preparing the draft petition was to obtain the assent of the petitioners Nos. 4 to 6 to the terms of the memorandum. But their Lordships are quite unable to find in that circumstance or in any of the proceedings in relation to the draft petition any intention of either the Rani or the appellant to resile from or abandon the

agreement that had already been arrived at and was recorded in the memorandum of the 15th April, 1936. The draft petition appears to their Lordships to have been no more than an attempt to carry the existing agreement into effect though in a way that would minimise the risk of future litigation concerning the estate. The attempt failed because the adoption could not take place as contemplated owing to the default of the appellant. But the result of this failure was in the opinion of their Lordships, as it was in the opinion of the High Court, to remit the parties to the position in which they stood immediately after the 15th April, 1936. That this would be the effect of such a failure had been pointed out to the parties' representatives by Sir Sultan Ahmed when they saw him at Patna. " I told them " he said in cross examination " that if the adoption does " not take place or there is delay, then in that case application will have " to be made here for recording the compromise on the basis of that " memorandum."

The rest of the story can be told quite shortly. In the month of May, 1936, the appellant repudiated the compromise agreement that he had signed by purporting to sell the Balarampur Estate as his own property. The Rani accordingly commenced the present proceedings on the 20th July, 1936, by filing a petition in the High Court of Patna to have the terms of the compromise recorded. The petition unfortunately was not as well drafted as could have been wished. After stating that terms of a settlement had been agreed and embodied in a memorandum signed by the appellant it went on quite unnecessarily to refer to the visit of the representatives of the parties to Patna " to settle the draft of the compromise petition " and to the fact that it had been settled by Sir Sultan Ahmed. It then purported to set out the " terms of the Compromise." But instead of setting out the terms of the memorandum word for word as it should have done it merely gave a summary though a quite accurate summary of those terms, except that there was added a term that is not to be found in the memorandum and would seem to have existed only in the imagination of the draughtsman. It was in these words: " That the petitioner would adopt Probodh " Chandra Deb son of the Patayet Sahib of Talcher and that Gadadhar " would recognise the adoption and acknowledge the adopted son as the " proprietor of the estate ". The petitioner then prayed that the Court would record the terms of compromise " as stated above ".

When the matter came before the High Court for hearing the learned judges very properly disregarded these errors in the petition. They had held as already stated that the memorandum recorded a binding agreement between the parties from which neither had ever resiled and which was still in force. They accordingly directed that the actual terms of the agreement as recorded in the memorandum should be recorded as the compromise of the two pending appeals and gave the Rani leave to amend her petition by asking that this should be done. Two decrees dated the 27th October, 1937, were thereupon drawn up giving effect to this decision of the Court though no mention is made in them of the leave to amend given to the Rani. It is from these two decrees that the present consolidated appeals are now brought before His Majesty in Council.

Their Lordships have already dealt with the main contentions of the appellant in support of his appeals. It only remains to mention another and highly technical one. It appears that the Rani did not avail herself of the leave to amend that had been given to her within the time prescribed by Order VI, r. 18. It may be that if the rule has any application to the case the Rani lost the right to do it thereafter. But their Lordships are quite unable to accept the appellant's contention that the two decrees have thereby ceased to be operative. The decrees were not expressed to be nor are they in fact conditional upon the amendment being made. As has already been observed the fact that leave was given to make the amendment is not even mentioned in the decrees. The contention is as devoid of substance as it is of merit.

For these reasons their Lordships will humbly advise His Majesty that the appeals should be dismissed.

The costs of the first respondent, who alone appeared, must be borne by the appellant.

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In the Privy Council.

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DELIVERED BY LORD ROMER

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