

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the appeal of
Zalim Singh and others v. Bal Kishan from
the High Court of Judicature for the North-
West Provinces at Allahabad ; delivered March
8th, 1887.*

Present :

LORD WATSON.

LORD FITZGERALD.

SIR BARNES PEACOCK.

THEIR Lordships do not think it necessary to call on counsel for the Respondent.

The question involved in this appeal, and the only question before their Lordships, is whether the Respondent Bal Kishan was adopted by one Bijai Singh. The relationship of the parties was that Bal Kishan was grand-nephew of Bijai Singh, being the grandson of Bijai's sister, Thunkra Kuar, and the sole question is one of fact, whether this boy was adopted by Bijai Singh.

In order to establish the adoption the oral testimony of two witnesses was adduced, one named Mudhai, and the other Adhar Bhat, and they stated very shortly that they were both present at the ceremony of adoption; that all the ceremonies that customarily accompany adoption were duly performed, and that Bal Kishan was duly adopted as the son of his grand-uncle Bijai. If he was duly adopted he became Bijai's son and heir, and succeeded to the zemindary estate. If the question stood alone upon that evidence their Lordships would have hesitated a little, and might possibly have adopted the criticisms on the evidence of those witnesses which Mr. Mayne has so well brought

before them; but it appears to their Lordships that this evidence is not only consistent with all the probabilities of the case, but furthermore, if it requires confirmation, it receives from the matters hereafter adverted to the strongest and most important confirmation Bijai Singh had, the father and mother of Bal Kishan living in his house with him and his wife. The child was born in that house. He certainly was maintained by his grand-uncle, who made him presents, and who, upon the statement of Zalim Singh, one of the Appellants himself, was not alone treating him as a son living in the house, but taking measures to provide him with a suitable marriage. Under such circumstances, living in the house of Bijai Singh, treated affectionately by him, his father and mother living in the same house, he himself born there, and being also a blood relation, it is not improbable—nay, it is very probable—that Bijai, who was himself childless, should wish to provide himself with a male heir, and it was not unreasonable that he should have selected a member of his own family. Their Lordships also do not shut out from their view that this boy was not alone a blood relation, but the nearest actual relation to Bijai, and there was no other relation to be preferred before him.

The probabilities, therefore, are in favour of the story told by these two witnesses; but in addition, the transactions which took place immediately after the death of Bijai relieve their Lordships from all doubt or hesitation on the subject. Pan Kuar, the mother of Bal Kishan, immediately after the death of Bijai, was in possession of the property. Of course, being a Purdanishin, she could not manage the property, but did so through an agent, and she managed the household, and the money that came in, and was, in fact, the director of everything there. Immediately on the death of Bijai Singh she

put those who claim to be the heirs at arm's length. She asserts in very plain and unequivocal language that her son is the adopted heir, by a short and telling expression at the earliest period: "He made him his son." He could not make him his son so as to be his heir, unless by the process of adoption. If adoption did not take place the Plaintiffs in this suit were then the male heirs, and entitled to succeed to the zemindary, and Bal Kishan was an utter stranger to the inheritance, and could not make any claim to any part of it.

Then come the proceedings. The Tahsildar is put in motion. He institutes an inquiry, and makes a remarkable report to the Collector. The statements then put forward by Zalim Singh—now claiming to be one of the heirs, and acting on behalf of himself and the other heirs—leave no doubt in their Lordships' minds that Zalim Singh did then entertain the belief—a very likely and well-grounded belief—that there had been an adoption of Bal Kishan, and that Bal Kishan was to be dealt with as the heir. Thereupon what their Lordships would call a compromise took place. The widow still holding them at arm's length, they claim to have one portion of the zemindary estate divided amongst them in four equal portions; that is to say, Bal Kishan was to have four annas, and 12 annas was to be distributed amongst the Plaintiffs, Bal Kishan getting in addition the whole residue of the property. But again the widow intervenes; she says: "I cannot agree to that; that is giving you more than you ought to get," and she insists that her son shall get half, that is, that eight annas shall be his share, and that they shall have the remaining eight annas divided in certain proportions between them. That is acceded to, and their Lordships have before them the two statements put forward by Zalim Singh at the

time in which he agrees to the whole of that. The thing is settled with the Collector that they are to have eight annas out of the 16 of a particular portion of the estate; that Bal Kishan is to have eight annas of that same thing; and all the large remainder of the immoveable property, as well as the moveable property.

Their Lordships do not find it necessary to express any opinion as to whether there was an absolute unqualified admission that could not be afterwards controverted of the fact of the legal adoption of Bal Kishan; but the compromise might have been possibly supported as an equitable family arrangement which ought not to be disturbed. The Plaintiffs, however, advised by some third party, supplied with the means of offence by some third party, broke this equitable family arrangement; they instituted this suit and insisted that this boy was not adopted, and claim the whole of the zemindary estates for themselves. Having regard to the evidence of the two witnesses which has been adverted to, and so strongly confirmed, their Lordships entirely agree with the conclusion arrived at by the High Court that the case of adoption has been made out. Their Lordships are of opinion that the Plaintiffs' case entirely fails; that the Judgement of the High Court should be affirmed; and that this appeal should be dismissed with costs. Their Lordships will therefore humbly advise Her Majesty to that effect.