Privy Council Appeal No. 85 of 1933.

Thakor Vijaysingji Chhatrasingji - - - - - - *Appellant*

v.

Thakor Shivsangji Bhimsangji - - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 11TH MARCH, 1935.

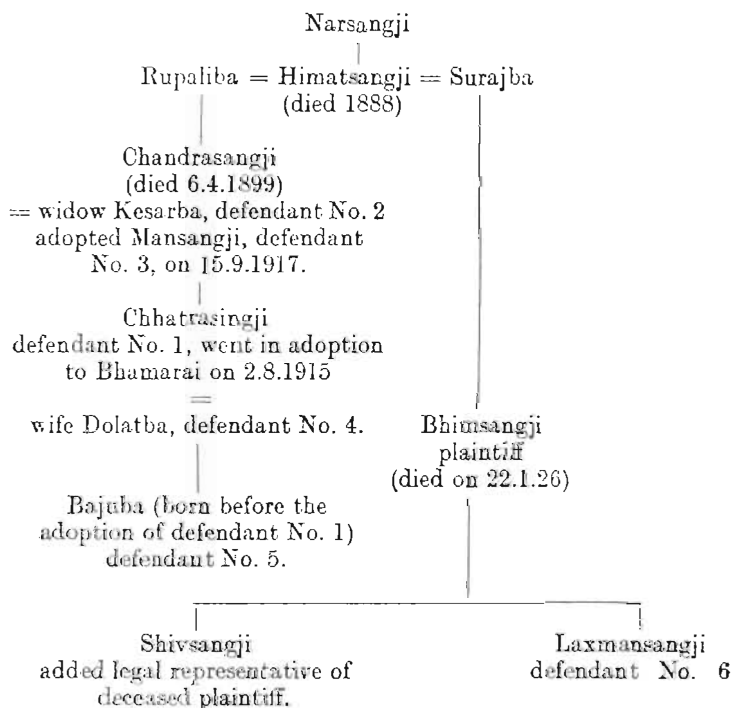
Present at the Hearing :

LORD THANKERTON.
LORD ALNESS.
SIR SHADI LAL.

[*Delivered by* SIR SHADI LAL.]

The property, which is the subject matter of the dispute in this appeal, is an impartible taluqdari estate called Ahima estate. It is situated in the Kaira district of the Bombay Presidency, and the parties are agreed that the succession to the estate is governed by the rule of lineal primogeniture, and that females are excluded from inheritance.

The relationship of the persons concerned in the dispute is shown in the following pedigree table :—



Himatsangji died in 1888, leaving him surviving two sons, Chandrasangji and Bhimsangji. The elder son, Chandrasangji, inherited the entire impartible estate, while the younger son, Bhimsangji, received only maintenance. In April, 1899, Chandrasangji died, and was succeeded by his son, Chhatrasingji.

On the 2nd August, 1915, Chhatrasingji was adopted by the widow of one Kunwarsahib Bapusahib, the proprietor of the impartible estate of Bhamaria, which is a larger estate than the Ahima estate. Though Chhatrasingji was, at that time, a married man of about 33 years of age, his adoption was in accordance with the Hindu law as recognised in the Bombay Presidency. He consequently became a member of the adoptive family.

Thereupon, Kesarba, the widow of Chandrasangji, adopted Mansangji as a son to her deceased husband; and the *factum* of this adoption, which was made on the 15th September, 1917, is no longer a matter in controversy between the parties. Its validity, however, raises an important issue which their Lordships have to determine.

The suit, which has led to the present appeal, was commenced on the 9th February, 1918, by Chhatrasingji's paternal uncle, Bhimsangji, who claimed the Ahima estate on the ground that Chhatrasingji, by reason of his adoption in the Bhamaria family, had forfeited his right in the Ahima estate, which then devolved upon the plaintiff in accordance with the rule of lineal primogeniture. The defence to this claim was twofold. It was urged that Chhatrasingji, in whom the estate had vested on the death of his natural father, was not divested of that estate when he was adopted in the other family; and that, at any rate, the plaintiff was not entitled to succeed to it in the presence of Mansangji, who, as the adopted son of Chandrasangji, had a prior right of succession.

The High Court, concurring with the Trial Court, have pronounced against the validity of the adoption of Mansangji, and also held that Chhatrasingji, owing to his adoption in the Bhamaria family, ceased to be a member of the Ahima family, and lost his right in the estate of his natural family. They have accordingly decreed the claim in respect of the properties which constitute the impartible estate of Ahima.

Both these questions are again raised on this appeal, but it is argued that, in view of the recent judgment of this Board in *Amarendra Mansingh* v. *Sanatan Singh*, 60 I.A. 242, the adoption of Mansangji should be held to be valid; and that, as he must take precedence over the plaintiff in the matter of succession, the suit brought by the latter must be dismissed. The High Court declared the adoption to be invalid upon the ground that, though Chhatrasingji with his wife went over to the adoptive family and severed all connection with the natural family, including the heritage and the *gotra* of the latter family, Kesarba could not

make an adoption which would have the effect of divesting the estate which had vested in the plaintiff. The learned Judges proceeded upon the principle that a widow cannot adopt a son to her deceased husband, if by so doing she would defeat an estate other than her own. This view cannot now be regarded as a correct exposition of the law. As observed by this Board in *Amarendra Mansingh's* case (*supra*), the power of a widow to adopt does not depend upon the question of vesting or divesting of the estate. The purpose of an adoption is to secure the continuance of the line, and when the natural son has left no son to continue the line, nor a widow to provide for its continuance by adoption, his mother can make a valid adoption to her deceased husband, although the estate is not vested in her. It was on this ground that the adoption in that case, which was made by a widow after the death of her natural son without leaving a son or a widow, was found to be valid, though the estate had vested in a collateral of the son. In the present case the natural son with his wife having ceased to exist for the purpose of continuing the line in the Ahima family, his mother was entitled to make an adoption to secure that object. The adoption of Mansangji undoubtedly served the purpose in question, and it cannot be impeached simply because it would defeat the estate which had vested in some other person.

It is, however, contended that the adoption was made by Kesarba, not for the spiritual benefit of her husband, but in order to deprive the plaintiff of his inheritance. But there is no evidence to prove any improper motive, and if the adoption causes harm to the plaintiff, it nevertheless confers spiritual benefit upon the husband. Moreover, the rule is firmly established that in the Bombay Presidency a widow, who has no authority from her deceased husband, may adopt a son to him, and that it is not necessary for her to obtain the consent of his kinsmen. It depends entirely upon her discretion whether she should or should not make an adoption, and her choice in the matter cannot be restricted.

The result is that Mansangji is the adopted son of Chandrasangji, and that his adoption is not open to any valid objection. It is clear that in his presence the plaintiff cannot inherit the estate. In view of the insurmountable obstacle created by this adoption in the way of the plaintiff, it is unnecessary to adjudicate upon the right of Chhatrasingji to retain, after his adoption in the Bhamaria family, the estate which he had inherited in the Ahima family.

Accordingly their Lordships will humbly advise His Majesty that this appeal should be allowed, and the suit dismissed with costs throughout.

In the Privy Council.

THAKOR VIJAYSINGJI CHHATRASINGJI

v.

THAKOR SHIVSANGJI BHIMSANGJI.

DELIVERED BY SIR SHADI LAL.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1935.