Privy Council Appeal No. 24 *of* 1933
Allahabad Appeal No. 11 *of* 1932

Chauharja Singh - - - - - - - - - - *Appellant*

v.

Bhuneshwari Prasad Pal - - - - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 24TH FEBRUARY, 1936

Present at the Hearing:

LORD THANKERTON.
SIR GEORGE RANKIN.
SIR SHADI LAL.

[*Delivered by* SIR GEORGE RANKIN.]

There has been no appearance before the Board on behalf of the plaintiff respondent in this case.

The appeal is by the defendant in a suit brought by Bhuneshwari Prasad Pal on the 14th August, 1925, to establish his right to succeed to the property of one Shamsher Bahadur Singh, who died in 1901, as the son of his daughter Drigraj. The defendant is Shamsher's nephew, being the son of his deceased brother Dan Bahadur Singh. The learned Subordinate Judge on the 23rd December, 1927, dismissed the plaintiff's suit, but the High Court at Allahabad reversed that decision and made a decree in favour of the plaintiff for possession of the property left by Shamsher Bahadur and other relief.

The sole question for decision is whether the plaintiff respondent has proved that he is the daughter's son of Shamsher Bahadur Singh. It is upon this question of fact that the courts in India have differed.

When Shamsher died in 1901 he left two widows, Dilraj and Dhanraj. Dilraj survived him for a few months only, and thereafter Dhanraj, until her death in 1923, was recorded as in possession of Shamsher's property. Upon her death the defendant appellant took possession thereof as the next heir of Shamsher. The plaintiff respondent contested his claim and upon the Revenue Officer in 1924 deciding in favour of the appellant the respondent brought the present suit.

The appellant in the High Court was constrained to abandon several contentions which in the trial Court he had supported by his own evidence and the evidence of witnesses. He had contended at first that Shamsher at the date of his death in 1901 was joint with himself, that all Shamsher's property then came to himself by survivorship, and that Dhanraj had between 1902 and 1923 been recorded as the owner only by his consent and to please her. He had contended also that Shamsher never had a daughter and that the plaintiff's father Ram Bahadur Pal had as his second wife married another lady. On these points the defendant before the High Court was constrained to admit that his case and his evidence was untrue and that Shamsher's daughter Drigraj was married to the plaintiff's father. A sale deed of 1885 fixes the date of that marriage as in that year. By this time Ram Bahadur Pal's first wife had died, leaving a son Dukha, who at the date of the trial was alive but was not called as a witness.

The date of Ram Bahadur Pal's third marriage is now the subject of controversy. His third wife's name was Baboona. The controversy upon this appeal is whether, it being admitted that Ram Bahadur Pal was the plaintiff's father, the plaintiff has given sufficient proof that he was born of Drigraj and not of Baboona. Baboona admittedly had a son called Dhumun Pal who died when about five or six years of age. It is not suggested that Drigraj had any child other than the plaintiff.

At the trial the plaintiff called 26 witnesses and the defendant 12. [The evidence given before the Revenue Officer in 1924 was also considered.] The defendant's own evidence and that of several of his witnesses is of no use to him. He cannot contend that any court of law can place reliance upon the oath of people who have admittedly given false evidence upon the other branches of the case. The view taken of the evidence by the learned Subordinate Judge was that Shamsher Bahadur Singh was proved to have been separate from the appellant and the appellant's father, that Drigraj was Shamsher's daughter, that she was married to the plaintiff's father, Ram Bahadur Pal in 1885, and that she had died before Ram Bahadur married Baboona. For this last finding the learned Subordinate Judge proceeded upon a balance of probabilities. He thought it proved that Ram Bahadur's second marriage was only after the death of his first wife, that other members of his family with certain exceptions " re-married again and again only on the death of " their previous wives," that if the plaintiff was his son by the second wife there was no occasion for him to take a third. This conclusion, however, is as he noticed contradicted by two documents which came into existence so long ago as 1902. Shamsher Bahadur Singh having died in 1901, his widow, Dhanraj, on the 30th November, 1901, filed a petition in the Revenue Office claiming to succeed in his

property as his widow. Her co-widow, Dilraj, in January, 1902, also filed a petition objecting to Dhanraj being recorded as the sole heir of Shamsher and claiming to be co-heir with Dhanraj. But on the 11th April, 1902, another petition was filed on behalf of Drigraj and Bhuneshwari, the present plaintiff, then a minor. This petition stated that Dilraj had died and asked that the names of Drigraj and the present plaintiff should be entered on the record. This petition was really filed in duplicate, one having reference to the mutation case of mauza Chhapia Aganda, and the other having reference to mauza Mendawal. One petition purports to be signed as follows:—

> (Sd.) Musammat Drigraj Kunwari, mother and guardian of B. Bhuwaneshwari Prasad Pal, by the pen of Babu Ram Bahadur Pal.

and the other :—

> (Sd.) Musammat Drigraj Kunwar, mother and guardian of Babu Bhuwaneshri Prasad Pal:—the contents of the objection are true—by the pen of Babu Brij Bahadur Pal.

Now the plaintiff-respondent's case is that his father's marriage with Baboona was not until 1898 or thereabouts. The defendant's contention is that it may have been as early as 1890. That duplicate petitions representing Drigraj to have been alive in April, 1902, should be forthcoming, is strong evidence against the view of the Subordinate Judge that Drigraj was dead before the plaintiff's father married Baboona. The learned Judge thought, however, that the plaintiff's father, in causing these petitions to be filed, was with a long-sighted view to the plaintiff's interest deliberately manufacturing false evidence for use after the lapse of a number of years. He emphasises the fact that no very good purpose could be served by these petitions since on any view of the case the widow Dhanraj for her lifetime was the proper person to be recorded as the heir to Shamsher. Dilraj's claim that she was a co-heir had on her death come to an end. The learned Judge therefore thinks that these petitions were put upon the file merely for fabricating evidence. He comments upon the fact that a copy of the order passed by the Revenue Officer was not preserved but only four copies of petitions. He thinks it probable that the presentation of these two petitions in the name of Drigraj and the plaintiff would never come to the notice of the present defendant.

It is upon this point that the learned Judges of the High Court have felt obliged to differ from the learned Subordinate Judge. While it is clear enough that no very useful purpose could be served in the lifetime of Dhanraj by putting forward the names of Drigraj and the plaintiff after Dilraj had died, the learned Judges of the High Court think that it was not

an unnatural thing to do. Dhanraj having claimed to be entered as sole heiress and Dilraj having contested that claim, the learned Judges think that " on the death of Musammat Dilraj Kunwar the ordinary spirit of litigation would no doubt inspire her daughter and daughter's son to continue the contest although in fact they had no legal right to do so during her lifetime ". They think it very improbable that the father of the plaintiff, if Drigraj had been dead for a number of years, would have put forward such a petition with the view of making a false claim upon which his son in after years might succeed. They find that certain matters which the Subordinate Judge had regarded as suspicious are without significance. He had commented that Dilraj's signature or thumb impression was not on the petition but the method employed was, it appears, quite the usual method, there being a number of applications by other persons similarly expressed to be " by the pen of " so and so. They do not attach any importance to the fact that no copy of the orders passed on these applications was obtained at the time.

Upon this controversy their Lordships are of opinion that the learned Judges of the High Court were justified in the view which they took. They do not consider that the learned Subordinate Judge had sufficient reason to hold that Drigraj was dead before Baboona's marriage. He had arrived at this conclusion upon a precarious balance of probabilities, omitting to notice that whether or not the plaintiff's father married again in the lifetime of his second wife, is not to be regarded as a matter governed by any uniform practice or principle, but is a matter of inclination as to which personal considerations play the greatest part. His criticisms as to the absence of thumb impressions and on similar points come in their Lordships' opinion to very little. The more usual and more safe method of approach upon such a question is in the first instance to pay due regard to the documentary evidence. The petitions in question were quite unlikely to escape the notice of the defendant. He was as he tells us claiming to have been joint with Shamsher. He says that it was by his good pleasure only that Dhanraj was recorded as the owner. Even if these statements and claims be false he had every motive and would have every chance to know what was taking place in connection with the proceedings before the Revenue Officer in 1901 and 1902. For Ram Bahadur Pal to have put forward a petition purporting to be by a woman who was dead with the ultimate object of supporting a false claim would have been to risk criminal proceedings of a serious character and the present defendant would have been little likely to permit such conduct to go without challenge.

For these reasons it is clear to their Lordships that the High Court were justified in coming to an independent view upon the evidence in this case, the view taken by the trial

Judge being rightly considered as displaced. The learned Subordinate Judge has not in his judgment given much assistance as regards the impression made upon him by the different witnesses, though it is clear enough that, speaking generally, the defendant's evidence is unreliable. The plaintiff has called witnesses from among the family and acquaintances of Shamsher, from the family and acquaintances of his own father, and from the family of Baboona. It does not appear to their Lordships that the discrepancies between one witness and another are of a character to throw doubt upon their evidence that the plaintiff was the son of Drigraj.

The plaintiff in the mutation proceedings in 1924 declared his age to be 29, that is, that he was born in 1895. In his evidence at the trial he gave his age as 34, which means that he was born in 1893. He did not produce his horoscope, giving an excuse which might or might not have substance. The learned Subordinate Judge thought that he was born in 1894 or 1895. In the High Court the learned Judges who saw him in 1932 considered that he might have been born as much as 40 years before, that is, in 1892 or 1893. On the date of the marriage of the plaintiff's father with Baboona, the chief and most reliable piece of evidence is a sale deed executed in 1895 whereby Baboona's younger sister Raja was given a piece of land by her grandfather Bhairon Bakhsh Pal with a recital stating that " her marriage has now been settled to be celebrated with Babu Makund Pal ". There is some probability that the elder girl Baboona would have been married first. On the other hand there is the evidence rejected by the Trial Judge, to the effect that Raja's marriage did not take place until some years later than 1895 and also some evidence that the marriages of the two girls took place at a short interval, one after the other. The sale deed cannot be said to prove with certainty that Baboona's marriage was prior to 1895, but it renders this fact quite probable, and there is no great certainty that the plaintiff was born before 1895. The observation of the learned High Court Judges that " it must be admitted that it is a difficult proposition to establish in India of which wife a particular son is born ", is fully justified in the present case.

The High Court, however, have dealt most fully and reasonably with all the criticisms made by the Subordinate Judge upon the plaintiff's witnesses. They took note of the fact that the plaintiff did not call his half brother, Dukha Pal, the son of his father's first wife. They examined, and as their Lordships think rightly discountenanced, the theory that the plaintiff had been put forward by certain " Pattidars " who were on bad terms with the defendant. Upon a review of the whole evidence they came to the conclusion that upon the question whether Drigraj or Baboona was the

plaintiff's mother, the plaintiff should be held to have proved his case, and their Lordships have reached the conclusion that this finding must be affirmed.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed with such costs as the Respondents are entitled to.

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In the Privy Council.

CHAUHARJA SINGH

v.

BHUNESHWARI PRASAD PAL

DELIVERED BY SIR GEORGE RANKIN.

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