

Privy Council Appeal No. 66 of 1917.

Allahabad Appeal No. 7 of 1915.

Chaudhri Risal Singh and Another - - *Appellants,*

v.

Balwant Singh and Others - - - *Respondents,*

FROM

**THE HIGH COURT OF JUDICATURE FOR THE NORTH-WESTERN
PROVINCES, ALLAHABAD.**

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 3RD JUNE, 1918.**

Present at the Hearing :

LORD SUMNER.

SIR JOHN EDGE.

MR. AMEER ALLI.

SIR WALTER PHILLIMORE, Bart.

[*Delivered by* SIR JOHN EDGE.]

This is an appeal from a decree, dated the 29th April, 1915, of the High Court at Allahabad, which affirmed a decree of the Additional Subordinate Judge of Saharanpur by which the suit of the plaintiffs had been dismissed. The suit was dismissed on the ground that a decision of the Board on the 23rd April, 1912, in an appeal to His Majesty in Council in a previous suit, in which Balwant Singh, the principal defendant in this suit, was the defendant, and the late Rani Dharam Kunwar was the plaintiff, operated as a bar to the maintenance of this suit, which is brought by plaintiffs who were not parties to the previous suit, and do not represent either party to the previous suit. That decision is reported in 39 I.A. 142.

In this suit the plaintiffs are Chaudhri Risal Singh and Lala Fateh Chand. The plaintiff Chaudhri Risal Singh claims in this suit possession of part of the Landhaura Raj, which is a large estate of great value ; his claim is based on an allegation that he is the heir of Raja Jagat Prakash Singh, whom he alleges to have been the last male owner of the estate. The other plaintiff, Lala Fateh Chand, alleges that before suit Chaudhri Risal Singh conveyed to him the other part of the

estate, and he claims possession of that other part of the estate as the grantee of Chaudhri Risal Singh. The plaintiffs also claim mesne profits.

The principal defendant to this suit is Balwant Singh, through whom the other defendants claim title. Balwant Singh's case is that the estate vested in him as the adopted son of the late Raja Raghbir Singh, to whom he alleges that he was validly adopted by the late Rani Dharam Kunwar, the widow of Raja Raghbir Singh, who admittedly died possessed of the estate. The factum of the adoption was denied by the plaintiffs, but it is no longer disputed, and cannot now be disputed; the plaintiffs, however, allege that Rani Dharam Kunwar had no authority to adopt a son to her husband, and further that if she ever had authority to adopt a son to her husband that authority was a limited authority, and was exhausted by previous adoptions made by her before she went through the form of adopting Balwant Singh. The decision of the Board, which has been held by the Courts below to operate as a bar to the maintenance of this suit, related to the adoption of Balwant Singh as a son to her late husband by Rani Dharam Kunwar.

The plaintiffs allege and the defendants deny that on the death of Rani Dharam Kunwar on the 12th November, 1912, the plaintiff Chaudhri Risal Singh was the next nearest reversioner, and was as such entitled to the estate of Landhaura. That issue as to the status of Chaudhri Risal Singh has not been tried, and is irrelevant if the suit is barred by the decision of the Board of the 23rd April, 1912.

There has been much litigation relating to the title to the estate of which Raja Raghbir Singh died possessed, and in order to understand the case which was before the Board in 1912 it is necessary briefly to refer to that previous litigation and to the position of the several parties to it. Raja Raghbir Singh died on the 23rd April, 1868, and at the time of his death he left no son living; his widow, Rani Dharam Kunwar, was then enceinte, and after his death she, on the 16th December, 1868, gave birth to Raja Jagat Prakash Singh, who was his posthumous child. Raja Jagat Prakash Singh died in childhood on the 31st August, 1870, and on his death Rani Dharam Kunwar succeeded to the possession of the family property in right of her interest for life in it as his mother and heiress. The fact that she alleged that she obtained title to the property under an oral will of her husband, Raghbir Singh, is immaterial. On the 4th March, 1877, Rani Dharam Kunwar adopted Tofa Singh as a son to Raja Raghbir Singh. Tofa Singh, then known as Raja Narendra Singh, died in childhood about two and a-half years after his adoption. On the 20th January, 1883, Rani Dharam Kunwar adopted another boy, named Ram Sarup, as a son to Raja Raghbir Singh. Ram Sarup, then known as Ram Padab Singh, died in June 1885. On the 13th January, 1899, Rani Dharam Kunwar adopted Balwant Singh,

the principal defendant in this suit, as a son to Raja Raghbir Singh. On the 13th January, 1899, Chaudhri Ram Niwaz, who was the father of Balwant Singh, executed a deed, by which he acknowledged that he had given his son, Balwant Singh, then 16 years old, to Rani Dharam Kunwar, widow of Raja Raghbir Singh, deceased, Rais of Landhaura, as an adopted son for her and her husband, and stated that—

“the usual religious ceremonies and those connected with the *biradri* have been performed with all publicity to-day. From to-day the said son has no connection left with his natural family. From to-day the said son will have those rights in the whole of the property left by Raja Raghbir Singh, deceased, and possessed by the said Rani, which an adopted son legally acquires. But it has been agreed between me, the executant and the said Rani, according to the provisions of the will and permission of Raja Raghbir Singh, deceased, that she shall, till the end of her life, continue to be the owner and possessor of the whole estate and property of every description belonging to the said Raja which exists at present or may be acquired in future; and as long as she lives all sorts of management and supervision of the estate shall rest with her as its owner.”

On the 1st May, 1900, one Baldeo Singh, claiming to be the reversionary heir of Raja Raghbir Singh, brought a suit in the Court of the Subordinate Judge of Saharanpur against Rani Dharam Kunwar and Balwant Singh to have the adoption of Balwant Singh set aside. In that suit evidence as to the alleged adoption was taken. The main contention of Baldeo Singh, so far as the adoption of Balwant Singh was concerned, was that Raja Raghbir Singh had not given to Rani Dharam Kunwar authority to adopt a son to him, and that any authority which Raja Raghbir Singh may have given to his wife to make an adoption was not an authority which enabled her to make successive adoptions. No oral evidence to prove that an authority to adopt had not been given to Rani Dharam Kunwar by Raja Raghbir Singh was apparently procurable; Rani Dharam Kunwar did not give evidence in that suit, but in her written statement in that suit she alleged that she had “under valid authority and after due proclamation adopted Balwant Singh, defendant No. 2, and the aforesaid adoption is every way proper.” Her pleader in that suit stated to the Court that the authority to adopt was oral, and as to the nature and scope of her authority to adopt, said that Raja Raghbir Singh’s object in giving his wife authority to adopt was that “in the event of Rani Dharam Kunwar, who was then pregnant, giving birth to a daughter, or of a son being born and dying, she should adopt, and in the event of the death of that adopted son, she should again adopt, and in the event of the last-named also dying, she had authority to adopt again, and so on.” There was documentary evidence put before the Subordinate Judge, and four witnesses were called to prove the oral authority to adopt, but the Subordinate Judge did not believe these witnesses, and he found that Rani Dharam Kunwar had not authority to adopt

Balwant Singh, as the authority was not one authorising her to make successive adoptions. Having found, however, that Baldeo Singh had failed to prove that he was a reversioner, the Subordinate Judge dismissed the suit, but in his decree he inserted his finding against the validity of the adoption. That decree came on appeal before the High Court at Allahabad, and the appeal was dismissed; but the High Court, on the application of Balwant Singh, struck out of the decree of the Subordinate Judge his finding as to the invalidity of the adoption on the ground that, Baldeo Singh having failed to prove that he was a reversioner, the issue as to authority to adopt did not arise and was irrelevant. That application was resisted by Rani Dharam Kunwar, and her advocate frankly informed the High Court that her object in wishing to have the finding as to the invalidity of the adoption retained in the decree of the Subordinate Judge was that it might be used as *res judicata* in future litigation between her and Balwant Singh.

Before Baldeo Singh's suit was dismissed Rani Dharam Kunwar and Balwant Singh had quarrelled. Balwant Singh was claiming his full rights as an adopted son and was refusing to be bound by the terms as to Rani Dharam Kunwar's position with regard to the ownership, management, and control of the property that had come from Raja Raghubir Singh, which had been agreed to by Chaudhri Ram Niwaz in the deed of the 13th January, 1899, and she determined to repudiate the adoption.

On the 7th January, 1905, Rani Dharam Kunwar brought a suit against Balwant Singh in the Court of the Subordinate Judge of Saharanpur, and in her plaint alleged that Raja Raghubir Singh had never given her authority to adopt a son, and prayed that it might be declared that she had no power to adopt Balwant Singh, and had in fact never adopted him according to any ceremony under the Hindu Law, and that a document of the 13th January, 1899, in her name as the executant which purported to be a deed of adoption in favour of Balwant Singh was void and ineffectual as against her.

The deed of adoption of the 13th January, 1899, which Rani Dharam Kunwar sought to have declared void was a registered deed in her name and under her seal in which she alleged that Raja Raghubir Singh when he became hopeless of recovery in his last illness made the following will in her favour, she being then pregnant:—

“If (God forbid!) you give birth to a daughter, or if a son be born but dies after his birth, I strictly order you to adopt some boy to me, so that he might perform my *stradh* ceremony and yours, and perpetuate my name, and after your death become the absolute owner and possessor of the whole of my estate. If (God forbid!) the son who might be adopted under this authority should die in your lifetime you will have power to adopt another boy.”

In that deed Rani Dharam Kunwar, amongst several other things, also alleged that she on the day on which the deed bears date, after performing the necessary ceremonies, adopted Balwant

Singh, son of Chaudhri Ram Niwaz, to herself and her husband in the presence of the gentry, the district authorities, and other European gentlemen, and the members of her biradri; and that Chaudhri Ram Niwaz gave Balwant Singh to her as an adopted son. That deed was on the 19th January, 1899, duly registered by the Sub-Registrar of Rurki, Rani Dharam Kunwar having first personally admitted in the presence of the Sub-Registrar its execution by her. In her plaint in her suit against Balwant Singh she endeavoured to explain away that deed by alleging that she had no knowledge of that deed before July 1904; that she had not got it registered; that it was written in her name without her knowledge on the 15th January, 1899, by one Tahauwar Ali, who was her diwan in charge of her entire business, and was her adviser, and that he had got it registered. She also alleged in her plaint that having learnt during the pendency of Baldeo Singh's suit that Tahauwar Ali was secretly in collusion with Balwant Singh she dismissed him, and she also endeavoured to explain away her written statement in the suit of Baldeo Singh, admitting the adoption of Balwant Singh, and her pleader's statement in that suit as to her authority to make an adoption, by denying that her written statement and her pleader's statement had been authorised by her.

In the suit of Rani Dharam Kunwar against Balwant Singh he in his written statement, amongst other things, alleged that Rani Dharam Kunwar had authority to adopt him to Raja Raghubir Singh and that he had been validly adopted. The Subordinate Judge held that Rani Dharam Kunwar was by her acts estopped from denying that Balwant Singh had been validly adopted to Raja Raghubir Singh, and did not try any other issue. The High Court at Allahabad, agreeing with the Subordinate Judge, dismissed the appeal of Rani Dharam Kunwar, and thereupon she appealed to His Majesty in Council and again failed. The facts which this Board has stated as to the history of the litigation and as to the positions of the parties and their acts have been derived from the record of the appeal to His Majesty in Council in which the Board gave its decision of the 23rd April, 1912. The evidence upon which that decision was arrived at was before the Board in the record of that appeal. It is said that evidence to show that Rani Dharam Kunwar had no authority to adopt Balwant Singh had been excluded in her suit, and that consequently the Board in 1912 ought not to have found that Balwant Singh had been validly adopted. It is true that Rani Dharam Kunwar applied to the Subordinate Judge that evidence should be taken, but it does not appear that she ever applied to have witnesses summoned or tendered any evidence which was rejected. It is difficult to conceive what oral evidence Rani Dharam Kunwar could have produced, except her own personal evidence, to prove that she had received from Raja Raghubir Singh no authority to adopt, and if she had given evidence that she had no authority to make the adoption such

evidence, having regard to her own acts and documentary evidence on the record, could not have been accepted as true.

Their Lordships in this appeal pressed the learned counsel who appeared for the appellants to state what oral evidence there was available to prove or to suggest that Raja Raghubir Singh had not in his final illness given to Rani Dharam Kunwar his authority to adopt, but the learned counsel was not in a position to suggest what oral evidence could have been produced to prove that Raja Raghubir Singh had not given that authority to his wife. The Board in 1912 was satisfied, and rightly satisfied, that no further evidence as to the authority or absence of authority to adopt could be expected to be produced by anybody beyond the evidence then already taken. As appears from the report of the case in 9 Allahabad Law Journal Reports 730, the learned counsel for Rani Dharam Kunwar contended in argument before the Board in 1912 that if it were held that Rani Dharam Kunwar was not estopped from denying that Balwant Singh had been validly adopted, the question arose whether she had any authority to adopt him ; and further contended that such authority as she alleged would not extend to the adoption in question. There was ample material in the Appeal Record before the Board in 1912 upon which the Board might find that Raja Raghubir Singh had given authority to Rani Dharam Kunwar to adopt a son to him, and that such authority was a general authority and was not limited to making one or more successive adoptions.

It is clear that the Board in 1912 did intend to decide the question of authority to adopt as a question of fact. In the judgment of the Board it is said :—

“The third question, viz., as to whether the Rani had authority from her husband to adopt the defendant gives rise to the point which has been argued before their Lordships.”

And then their Lordships dealt with the contentions on that subject, and found that Raja Raghubir Singh had given to Rani Dharam Kunwar a general power to adopt which justified her adoption of Balwant Singh, and said :—

“Their Lordships, in reviewing the facts of the case, are of opinion that the question may well be decided as one of fact on the Rani's own statements without recourse to the doctrine of estoppel. In their view she was speaking the truth in Baldeo Singh's action when pleading as to her authority.”

It is clear that the reasons of the Board in 1912 for deciding thus as to the facts and for not confining the decision to the question of the estoppel were to quiet any religious scruples, which might have arisen if Raja Raghubir Singh could be said to have a son only by estoppel to perform religious duties, and also to put a stop to further litigation as to the validity of the adoption of Balwant Singh.

There can be no doubt, in their Lordships' opinion, that Rani Dharam Kunwar in her suit against Balwant Singh

did, notwithstanding the personal estoppel under which she laboured, represent the estate on the question of fact as to whether Balwant Singh had or had not been validly adopted, and that she represented the estate within the meaning of the rule in *Katama Natchier v. Srimut Rajah Moottro Vijaya Razanadha Bodha Gooroo Saamy Periya Odaya Tavar* (the Shivagunga case), 9 Moore's Indian Appeals, 539. The principle of law to be applied in such cases was, their Lordships consider, correctly summarised by Mr. Justice Banerji in his judgment in this case thus: "Where the estate of a deceased Hindoo has vested in a female heir a decree fairly and properly obtained against her in regard to the estate is, in the absence of fraud or collusion, binding on the reversionary heir." It cannot be said that there had not been a fair trial by the Board in 1912 of the right in the suit of Rani Dharam Kunwar against Balwant Singh. The right in that suit was his right to the estate as a son validly adopted to Raja Raghbir Singh. It is true, as was pointed out in a judgment of the High Court in this suit, that the rule of *res judicata*, as enacted in section 11 of the Code of Civil Procedure, 1908, is not strictly applicable in this case, as the plaintiffs were not parties to the suit of Rani Dharam Kunwar against Balwant Singh, and do not claim under a party to that suit, but the principle of *res judicata* has been applied rightly by the Courts in India so as to bind reversioners by decisions in litigation, fairly and honestly conducted, given for or against Hindoo females who represented estates, as Rani Dharam Kunwar did in her suit against Balwant Singh.

It has been urged by the learned counsel for the appellants here that Rani Dharam Kunwar cannot be regarded as having represented the estate in her suit against Balwant Singh, as by her acts she was personally estopped from denying that she had validly adopted him to Raja Raghbir Singh. In the absence of all authority, their Lordships cannot decide that a Hindoo lady, otherwise qualified to represent an estate in litigation, ceases to be so qualified merely owing to personal disability or disadvantage as a litigant, although the merits are tried and the trial is fair and honest. The principle is that reversioners must risk that, so that there may be an end to litigation.

Their Lordships will humbly advise His Majesty that this appeal fails, and should be dismissed with costs.

In the Privy Council.

CHAUDHRI RISAL SINGH AND
ANOTHER

v.

BALWANT SINGH AND OTHERS.

DELIVERED BY
SIR JOHN EDGE.