

*Privy Council Appeal No. 75 of 1918.*  
*Bengal Appeals Nos. 61 and 62 of 1916.*

Asita Mohan Ghosh Moulik - - - - - *Appellant*

*c.*

Nirode Mohan Roy Ghosh Moulik and others - - - *Respondents.*

Asita Mohan Ghosh Moulik - - - - - *Appellant*

*c.*

Nirode Mohan Roy Ghosh Moulik and others - - - *Respondents.*

*(Consolidated Appeals.)*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN  
BENGAL.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 3RD MARCH, 1920.

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*Present at the Hearing :*

VISCOUNT CAVE.  
LORD MOULTON.  
SIR JOHN EDGE.  
MR. AMEER ALI.

[*Delivered by* SIR JOHN EDGE.]

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These are two consolidated appeals from two decrees, dated the 8th May, 1916, of the High Court at Calcutta, in appeal from two decrees, each dated the 30th March, 1912, of the Subordinate Judge of Birbhum which were made in separate suits which had been tried together. The suits in which these appeals arose were instituted, one in the Court of the District Judge of Birbhum on the 14th April, 1909; it was subsequently transferred to the Court of the Subordinate Judge of Birbhum and was entered as No. 44 of 1909 on his file. The other suit was instituted in the Court of the Subordinate Judge of Birbhum on the 30th August, 1909, and was numbered 134 of 1909. In suit No. 44 of 1909

Nirode Mohan Ghosh Moulik, a minor, and Kirode Mohan Ghosh Moulik, a minor, through their guardian, and Sri Sri Radha Gobinda Deb Thakur, a deity, by the other plaintiffs through their next friend, the said guardians are plaintiffs and Asita Mohan Ghosh Moulik is the defendant. That suit is for a declaration of title and other relief. The plaintiffs in that suit describe themselves as by caste Kayestha. In suit No. 134 of 1909 Asita Mohun Ghosh Moulik for himself and on behalf of the Thakur, the deity, is the plaintiff, and Nirode Mohan Ghosh Moulik, Khirode Mohan Ghosh Moulik, and certain other persons are the defendants. In the plaint in the latter suit Asita Mohun Ghosh described himself as by caste a Kayestha and claimed a declaration that Sailendra Mohun (who was the father of the defendant Nirode Mohan Ghosh and Khirode Mohan Ghosh) had not been adopted as a son by Radha Mohan Ghosh, and other relief.

The properties to which the suits relate were at the time of his death vested in Radha Mohan Ghosh, a Bengali Kayestha Zamindar, and were situate in the districts of Murshidabad and Birbhum. Some of these properties were his own secular properties, others of them were *debottar* and were possessed by him as Shebait of the Thakur, the deity. One of the questions in the suits was as to whether certain villages were his secular property or *debottar*. That question is no longer in issue, it having been finally decided by the High Court. Radha Mohan Ghosh died intestate on the 2nd September, 1903. He and the plaintiffs in each suit were subject to the Dayabbaga school of Hindu law. It has been concurrently found by each Court below that on the 7th June, 1876, Radha Mohan Ghosh, being then a sonless Hindu, adopted as his son Sailendra Mohan Ghosh, a Bengali Kayestha. In February, 1878, Asita Mohan Ghosh, the natural legitimately born son of Radha Mohan Ghosh, was born. Sailendra Mohan Ghosh was the father of Nirode Mohan Ghosh and of Khirode Mohan Ghosh. The natural father of Sailendra Mohan Ghosh was Kumar Narendra Chandra Roy, who gave his son Sailendra Mohan Ghosh to Radha Mohan Ghosh in adoption.

On the death of Radha Mohan Ghosh the Revenue authorities entered in the Revenue papers the name of Sailendra Mohan Ghosh as that of the proprietor in possession of an 8 annas share in the secular properties of which Radha Mohan Ghosh had died possessed, and entered the name of Asita Mohan Ghosh as that of the proprietor in possession of the other 8 annas share in those secular properties and as the proprietor in possession of the *debottar* property of which Radha Mohan Ghosh had died possessed. Sailendra Mohan Ghosh died on the 8th October, 1905. The contention between the parties has been whether there was a valid adoption of Sailendra Mohan Ghosh, and what was the effect of it as to the rights of the parties to the properties of which Radha Mohan Ghosh died possessed and as to the right to the Shebaitship.

One contention was as to the rights of succession of persons

who were by caste Bengali Kayesthas. It has been found not on evidence, but following some decisions of the High Court at Calcutta, that Bengali Kayesthas are Sudras. Their Lordships do not think it necessary to decide whether or not Bengali Kayesthas are Sudras, or to decide as to the construction of a text of the Dattaka Chandrika which has been referred to by the Courts below as applicable to Bengali Kayesthas. Their Lordships are of opinion that the rights of the parties depend on the construction of the agreement upon which Kumar Narendra Chandra Roy gave his son Sailendra Mohan Ghosh to Radha Mohan Ghosh in adoption.

That agreement was of the 7th June, 1876, and was registered by Radha Mohan Ghosh on that day. It is as follows:—

To Kumar Narendra Chandra Roy, son of Raja Purna Chandra Roy, of Sheoraphuli, pergunnah Boro, chowki Serampur, district Hooghly.

This Ekhar Patra is executed by Radha Mohan Ghose Moulik, son of Babu Krishna Kinkar Ghosh Moulik deceased, residing at Panchthopi, pergunnah Fatehsing, district Birbhum, to the following effect:—Being without any issue, I intend to adopt a son, and as you are united to me by close ties of relationship you have, of your own free will, made a gift of your second son to me and executed a deed of gift. I also, of my own free will and in good faith, adopt the aforesaid boy according to the Shastras, and by executing this Ekhar agree as follows:—From this day the aforesaid adopted son has become entitled to all my properties; movable and immovable, and to perform the services of the Idols and all rites and ceremonies in connection with maternal and paternal ancestors. After my death, he shall perform the services of the Deities, and live in my ancestral residence at Panchthopi, and being vested with all my rights, and entitled to the ownership of those properties, he shall protect, enjoy and possess them by exercising the rights of sale and gift, and shall maintain all my rites and ceremonies. If, by the blessing of God, a son of my loins is born, both of them shall be equally entitled to all the aforesaid movable and immovable properties which may be left by me, and the son born of my loins shall not be entitled to claim a larger share in them, and if he does so it shall be rejected. I shall not have the right to do any act prejudicial to the interests of the aforesaid adopted son, and if I do so, it shall not be given effect to or entertained by Court. To this effect, I execute this Ekhar Patra, of my own free will, in sound health and without importunity, on taking the boy in adoption. Dated the 26th Jaistha 1283.

“Writer.—Dwarkanath Das, at present of Sheoraphuli.

Witnesses.

“Radhika Prashad Singh, of Sheoraphuli.

“Purna Chandra Roy.

“Rassik Lal Singh, of Sheoraphuli.

“Prasanna Chandra Ghose, of Chanchra, zillah Jessore, (now) of Sheoraphuli.

“Mahanand Das, at present of Sheoraphuli.

“Mathura Nath Singh of Bindarpur, at present of Sheoraphuli.”

The immovable property of Radha Mohan Ghosh referred to in that agreement consisted of villages which were his private or secular property, and of *debottar* villages which were in his possession as *Shebait*.

The Trial Judge found that Sailendra Mohan Ghosh had been adopted by Radha Mohan Ghosh and construed that agreement

as an agreement by which the adopted son in the event of a natural son being born to Radha Mohan Ghosh and surviving him should get a one-half share in the secular properties but should not get any share in the Shebait or in the *debottar* properties or have any right to act in Shebas and Pujas and in Deb Kirtyas and Pitri Kirtyas, and made decrees accordingly, which were respectively appealed to the High Court.

The High Court in appeal came to a construction of the agreement different from that of the Trial Judge, and held that—

“Sailendra's sons are entitled to take 8 annas in the properties found not to be *debottar*, by the Subordinate Judge and ourselves, and that they are jointly entitled to rank as Shebaits equally with Asita Mohan in respect of the properties found by both Courts as *debottar*. For convenience of the Shebas the properties are to be held under joint management, but the periods of the Shebas may be divided into six-monthly *Palas*, or annual *Palas* in alternate years, as they may arrange between themselves, failing which liberty is given to them to take the direction of the Court.”

In so construing the agreement the learned Judges of the High Court did not overlook the fact that by Hindu law the natural son could perform certain religious ceremonies which his brother by adoption could not perform, but they reasonably came to the conclusion that Radha Mohan Ghosh in not expressly dealing with that matter did not think it necessary to provide for the contingency, as the Hindu law on that subject was clear. Those learned Judges rightly held that neither Asita Mohan Ghosh nor Nirode Mohan Ghosh or his brother Khirode Mohan Ghosh had any interest in the *debottar* properties except as Shebaits.

The High Court by its decree dismissed the appeal of Asita Mohan Ghosh and made the following decree in the appeal of Nirode Mohan Ghosh, Khirode Mohan Ghosh and the Thakur, varying the decree below :—

“It is ordered and decreed that the decree of the Lower Court in so far as it dismissed the plaintiffs' suit with regard to their claim of Shebaitship of the Deities Sri Sri Radha Gobinda Deb Thakur and Sri Sri Joy Shiba Durga jointly with defendant No. 1 (Asita Mohan Ghosh) be and the same is hereby set aside, and in lieu thereof it is declared that the plaintiffs have a right of Shebaitship of the aforesaid Deities jointly with the defendant and of joint management of all the *debottar* properties with the said defendant (it being left open to the parties to arrange for their period of Shebas among themselves), and it is further ordered and decreed that the decree of the Lower Court is hereby confirmed and this appeal dismissed.”

From those decrees these consolidated appeals have been brought.

In their Lordships' opinion the High Court rightly construed the agreement of the 7th June, 1876. When Radha Mohan Ghosh made that agreement with Kumar Narendra Chandra Roy he was sonless, but it obviously was in the contemplation of the parties that Radha Mohan Ghosh might have a son of his own body born to him, and it was desirable that the agreement upon which Kumar Narendra Chandra Roy would consent to give his son Sailendra Mohan Ghosh in adoption to Radha Mohan Ghosh should provide

for the event of Radha Mohan Ghosh not having a son of his body born to him and for the alternative event, which occurred, of a son of his body being born to him after the adoption. It cannot be disputed that "all my properties, movable and immovable" in the earlier part of the agreement to which the adopted son was to become entitled included not only Radha Mohan Ghosh's secular properties but also the *debottar* properties of which he was possessed as Shebait. In the succeeding passage of the agreement the words "those properties" must have referred to "all my properties, movable and immovable" of the earlier passage. Then the agreement provides as to what should happen in the event of a son of his body being born to Radha Mohan Ghosh after the adoption of Sailendra Mohan Ghosh in the words following: "If, by the blessing of God, a son of my loins is born, both of them (his adopted son and the son of his body) shall be equally entitled to all the aforesaid movable and immovable properties which may be left by me, and the son of my loins shall not be entitled to claim a larger share in them, and if he does so, it shall be rejected." "All the aforesaid movable and immovable properties" must have reference to "all my properties, movable and immovable" of the earlier passage and must be so construed.

The words "this appeal dismissed" in the decree of the High Court in the appeal of Nirode Mohan Ghosh, Khirode Mohan Ghosh and the Thakur must have meant that except as to the variation decreed by the High Court in the decrees then under appeal that appeal was dismissed.

These consolidated appeals fail, and their Lordships will humbly advise His Majesty that they should be dismissed with costs.

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In the Privy Council.

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ASITA MOHAN GHOSH MOULIK

or,

NIRODE MOHAN ROY GHOSH MOULIK AND  
OTHERS.

ASITA MOHAN GHOSH MOULIK

or,

NIRODE MOHAN ROY GHOSH MOULIK AND  
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*(Consolidated Appeals.)*

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DELIVERED BY SIR JOHN EDGEE.