

Privy Council Appeal No. 70 of 1923.

Patna Appeal No. 8 of 1922.

Ramdahin Singh and others - - - - - *Appellants*

v.

Musammat Chandrama Kuer and another - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 13TH NOVEMBER, 1924.

Present at the Hearing :

LORD DUNEDIN.

LORD ATKINSON.

MR. AMEER ALI.

LORD SALVESEN.

[*Delivered by* LORD DUNEDIN.]

This case depends upon two questions of fact : (1) Was the adoption of the child effected by the first respondent ? (2) Had that respondent authority from her late husband to make such adoption ? The trial Judge held both of these questions to be answered in the negative. The High Court reversed that. As to the first question, their Lordships have no doubt that the High Court was right. That on the day stated there was a great gathering of people is undoubted, there being the independent testimony of the police inspector. There is ample testimony as to the ceremony. The appellants' witnesses, who say there was no adoption, merely asseverate the fact, and in saying they never heard of the assembly of the people, a most unusual thing in a small village, they do nothing but throw doubts on their own veracity.

The other question is attended with more difficulty, and for that difficulty the respondents have, in a great measure, themselves to thank. In the end their Lordships do not find that there is evidence of sufficient cogency to make them disagree with the judgment of the High Court. The story is, that three days before the death of the deceased he asked some friends to come in ; then summoned his second wife, and, in the presence of his friends and his second wife, orally gave permission to adopt. There is, as might be expected, no direct contradiction available to the evidence of the various witnesses who speak to this occasion, but the appellants say that the whole story is a mere fabrication *ex post facto* when the first respondent, having got fond of the child, who was her husband's grand-nephew, wished to adopt him. Here comes the unsatisfactory nature of the evidence brought forward on both sides which it is more than easy to criticise. The chief point of contention is as to the duration of the illness from which the deceased husband died. It is said that three days before his death he gave this permission to adopt. The appellants say that he died of a sudden seizure. In the plaint they say that he had some food at 10 o'clock, became unconscious, and died within half an hour. Some of the appellants' witnesses saw the man on the day of his death, but none of them, with one exception, saw him except in a state of unconsciousness. The story of the respondents is that he was ill with an illness for a period from twenty-one to twenty-four days. It is quite obvious that this is a very crucial point, because whether he died suddenly or died after an illness is a matter that has a great bearing upon the probability of the adoption, as he was a man of only thirty years of age, and, therefore, had he not been stricken with illness, unlikely, with a young wife, to whom he had only been married three years, to have given up all hopes of having a son himself. Both sides tried to help their case with documentary evidence. There is, on the one side, a diary of expenses which points to an illness going on for about twenty days. On the other hand, there is a certificate by the Chowkidar of a death, in which occurs the entry of "epopegsi," which is supposed to represent apoplexy. Their Lordships can only say that, in their view, these documents point very strongly to fabrication on the one side and interpolation on the other, and they cannot put any weight upon either of them. Then the appellants say that a doctor was summoned from a neighbouring village on the night of the death. He might have been able to tell something as to how the death occurred. He is not produced. On the other hand, the respondents say that during this illness of twenty-one days the deceased was attended by a native doctor. He is not produced. Both of those men are alive. One circumstance which, in this unsatisfactory state of affairs, affects their Lordships' minds is that it would have been more than easy, if the man had not been ill during the twenty-one days, to prove that he had been seen going about the village and engaged on his ordinary

avocations. There is no evidence of that sort brought by the appellants at all. Upon the whole matter, although feeling that it is not possible to say with certainty where the truth lies, their Lordships, as they have already indicated, have not seen evidence of sufficient cogency to interfere with the judgment of the High Court. They will, therefore, humbly advise His Majesty to dismiss the appeal, but, in view of the unsatisfactory state of the case on both sides, there will be no costs of the appeal to either party.

In the Privy Council.

RAMDAHIN SINGH AND OTHERS

v.

MUSAMMAT CHANDRAMA KUER AND
ANOTHER.

DELIVERED BY LORD DUNEDIN.

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