

Privy Council Appeal No. 74 of 1939

Allahabad Appeal No. 47 of 1936

Sita Ram - - - - - *Appellant*

v.

Musammat Munni Bibi - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 16TH FEBRUARY, 1942

Present at the Hearing :

LORD THANKERTON
LORD RUSSELL OF KILLOWEN
LORD MACMILLAN
SIR GEORGE RANKIN
SIR CHARLES CLAUSON

[*Delivered by* SIR CHARLES CLAUSON]

This is an appeal from a judgment of the High Court at Allahabad reversing a judgment of the District Judge of Shahjahanpur and granting the present respondent a decree for possession of certain zemindari property. The respondent who was not represented before their Lordships' Board, is the widow of one Barati Lal who died on the 27th May, 1931, having by will devised all his immoveable property to the respondent. The appellant on the death of Barati Lal took possession of the property in suit claiming that it was ancestral property of Barati Lal and that he had been adopted by Barati Lal and accordingly had become entitled to it. The respondent on the 11th August, 1932, started the present suit for possession of the property. The District Judge found that the property was ancestral property of Barati Lal and that the present appellant was his adopted son and dismissed the suit. On the appeal of the respondent the High Court allowed the Appeal, disagreeing with each of the District Judge's two findings, and held (i) that the property was self acquired property of Barati Lal and (ii) that the present appellant was not Barati Lal's adopted son, and decreed possession to the respondent. If the decision of the High Court be correct on either of these two issues the appellant must fail in his defence to the suit, and the judgment of the High Court decreeing possession to the respondent must stand.

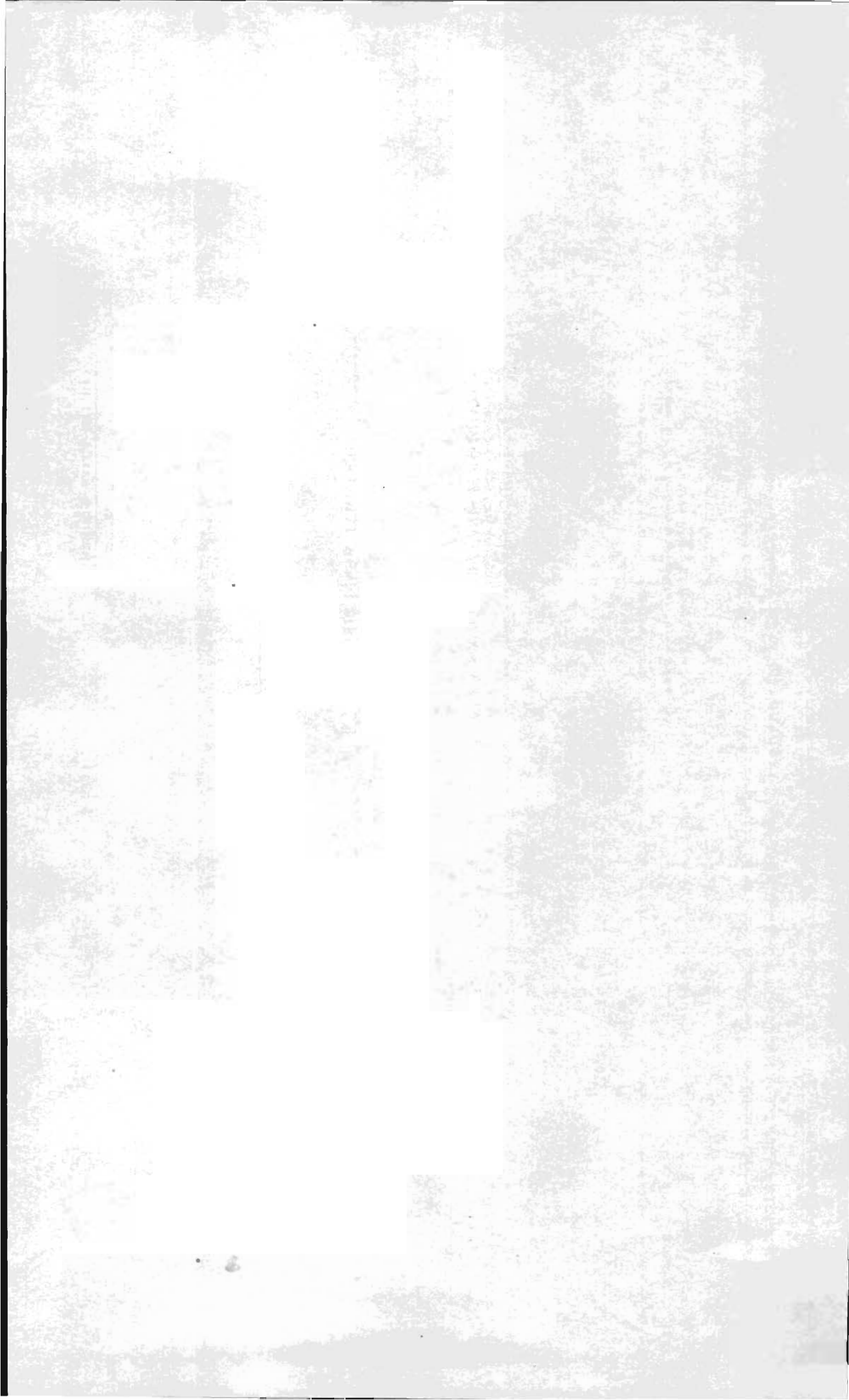
The property in question seems to have belonged originally to forebears of Barati Lal, but became (under circumstances which were not proved but do not appear to be material for the purposes of this case) the property of Musammat Mohan Dei, a first cousin of Barati Lal, subject to a claim of title by Barati Lal which he relinquished to his cousin on the 24th May, 1911, on the terms of receiving Rs.5000 as compensation for the relinquishment. Shortly afterwards Musammat Mohan Dei died and her husband Khunna Lal succeeded to the property. Barati Lal purchased the property from Khunna Lal under a sale deed of the 10th April, 1912, for Rs.12000. Of this sum Rs.3000 was represented by a temple mortgage for which Barati Lal accepted responsibility. The contest turned upon the question how the remaining Rs.9000 was provided. The present appellant's

case was that Barati Lal was in possession of ancestral property consisting of a cloth shop, and that the Rs.9000 was provided out of the assets of the shop. The respondent's case, based on her own evidence, and that of her sister's husband Joti Prasad, was that Rs.5000 were provided by the Rs.5000 which Barati Lal had received eleven months before as compensation for relinquishment of his claim, Rs.3000 were borrowed by him from Joti Prasad and Rs.1000 were obtained by pledging the ornaments of his wife the respondent. Account books of the cloth shop were produced for the years 1910 and 1911, and showed that in 1911 apart from the Rs.5000 received by Barati Lal on the relinquishment, the cash balance of the shop was at the most between Rs.2000 and 3000. The account book for 1912 was not forthcoming, and each side sought to cast the blame for its absence on the other. The fact however remains that the present appellant completely failed to prove that the property was purchased out of the income of or with the assistance of or out of the proceeds of ancestral property. On the other hand the respondent produced evidence which the High Court (correctly in their Lordships' view) accepted as satisfactory evidence of how the Rs.9000 was provided, and that it was provided entirely out of self-acquired property. The District Judge seems to have reached a contrary conclusion partly because he rejected Joti Prasad's evidence as that of a relative, and partly because he rejected suggestions made on behalf of the respondent that the ancestral business had collapsed on the death of Barati Lal's father, as to whose means at his death there was a conflict of evidence. Whatever the truth may be as to whether or not the shop carried on by Barati Lal in 1911 and 1912 was ancestral property, their Lordships agree with the High Court that the evidence given on the respondent's behalf was sufficient to establish her case that the Rs.9000 was provided entirely out of self-acquired property.

In the view thus taken by their Lordships this appeal must fail whether or not the present appellant establishes that he was adopted by Barati Lal (as he alleges) in the year 1921. On this issue the District Judge found in favour of the present appellant and the High Court found against him. Their Lordships do not propose to deal with this issue as to adoption, as, in the view they take on the point they have already dealt with, the issue as to adoption becomes immaterial for the purpose of deciding the present case.

The only further matter to be mentioned is that on the pleadings the respondent claimed under Barati Lal's will. Before the District Judge the execution of the will seems to have been proved: and although an issue as to the competency of Barati Lal to execute it was framed, no evidence was tendered bearing upon this matter, and there was no contest upon it. As the High Court found against the alleged adoption they thought it unnecessary to remit the matter of the validity of the will to the lower Court. Although their Lordships are leaving the question of the adoption open, they are not prepared to allow the appellant to continue this litigation by raising anew an issue on which there was no contest in the lower Courts.

Their Lordships will accordingly humbly advise His Majesty that the appeal should be dismissed. As the respondent has not appeared before the Board there will be no order as to costs.



In the Privy Council

SITA RAM

2.

MUSAMMAT MUNNI BIBI

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