Privy Council Appeal No. 48 *of* 1927.

Oudh Appeal No. 17 *of* 1926.

Tewari Raghuraj Chandra and Others - - - - *Appellants*

v.

Rani Subhadra Kunwar and Others - - - - *Respondents*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 2ND FEBRUARY, 1928.

Present at the Hearing:

VISCOUNT SUMNER.
LORD ATKINSON.
LORD SINHA.
SIR JOHN WALLIS.
SIR LANCELOT SANDERSON.

[*Delivered by* VISCOUNT SUMNER.]

This appeal relates to the rules of succession laid down for certain Taluqdari estates in Oudh under Acts passed by the Legislative Council for the United Provinces, namely, Act I of 1869 (the Oudh Estates Act) and the amending Act III of 1910. The Chief Court of Oudh, affirming the decision of Ashworth, J., sitting on the original side of the same Court, decided in favour of the respondents as against the appellants' claims to a disputed succession to the Taluqa Sissendi.

Raja Chandra Shekhar, Taluqdar of Sissendi, died intestate on the 12th February, 1923, leaving a widow, the first of the present respondents, who subsequently obtained mutation of names of his properties and is in possession of them. Raja Kashi Prasad, a Hindu governed by Mitakshara law, had

been the Taluqdar when the earlier Act was passed, and his name was duly entered in respect of Sissendi in the Lists 1, 3 and 5, which were drawn up pursuant to Section 8 of the Oudh Estates Act, 1869.

In 1866 Raja Kashi Prasad, being childless, adopted Ram Krishna, the second son of his first cousin, Madho Prasad, then under five years old, and gave him the name of Chandra Shekhar. *In 1873* he executed a registered non-testamentary document, in which he gave directions for the up-bringing of the boy, and particularly laid stress on his complete separation from Madho Prasad and his descendants. He died on the 28th August, 1873, and Raja Chandra Shekhar succeeded him.

In the present suit the plaintiffs were members of the family of Madho Prasad, namely Krishna Narain, grandson of Ram Chandra, the eldest son of Madho Prasad, and two brothers of Ram Chandra, namely, the third and fourth sons of Madho Prasad. As primogeniture was the family rule of descent the appellant to whom the Taluqa would pass, if this appeal were to succeed, is Krishna Narain.

The appellants' contention is that on the death of Raja Chandra Shekhar the estate descended in default of male lineal descendants, of whom he had none, to the senior male lineal descendant of Ram Chandra, who was by birth the eldest natural brother of Raja Chandra Shekhar. This, it is said, is the effect of Section 22 (5) of the Oudh Estates Act, as amended by Section 14 of Act III of 1910.

The new Section 22, which that Act introduced into the Act of 1869 in lieu of the Section 22 originally enacted, is a list of persons, described in terms of their relationship, immediate or remote, to some predecessor, and set out in the order in which they will take the inheritance on the failure or in default of the persons previously described. It is not, like the original Section 22, confined to a list of described persons in the order of succession, but has provisos and explanations interpolated into it. The substance of both, however, is the same. For powers or obligations conferred by the Act over and above the general law applicable, one must look elsewhere.

In this sequence, the first three clauses describe "sons" and their lineal descendants, who take in the following order; (1) the eldest son of the original Taluqdar surviving his father; (2) his lineal descendant, in case he has predeceased his father; and (3), if he has died in his father's lifetime leaving no male lineal descendants, the younger sons of the original Taluqdar according to their respective seniorities. Failing all such persons, Clause 4 brings in such person as the original Taluqdar shall have adopted and his lineal male descendants.

It is to be remarked here that, unlike Clause 5 in the original Act, which the present Clause 4 replaced, Clause 4 says nothing about the mode or circumstances of the adoption, but is generally applicable to any form of adoption. In the former Act, Clause 5 simply introduced into the order of succession the Mohammedan adoptions, which by the subsequent Section 29 were

brought into existence in a statutory, documentary form, without religious or other ceremonies. Clause 4 in the new Act brings into their place in the order of succession adoptions, both Mohammedan and Hindu, for the old Section 29 is amended and enlarged and all adoptions are now required to be completed by written documents subsequently registered. Thus the reference to persons adopted in the amended Clause 4 is general and covers all adopted persons, the definition of the form, which *makes* them adopted persons, being now relegated to the altered Section 29, except that, in the case of adoption by a widow, a proviso is anomalously attached to Clause 7 of Section 22, prescribing the conditions to be observed by her, which would more regularly have formed a further addition to the altered Clause 29.

The result, however, of the alterations made by the Act of 1910 is that adopted sons, whether in Hindu families or otherwise, being now separately introduced into the succession, " sons " in Clauses 1, 2 and 3, do not include adopted sons, although a change in the general Hindu law of succession results from the change in the Act. Under the Act of 1869, Hindu adopted sons came in either as sons under the first three clauses or under Clause 11, the latter being barely credible. Under that of 1910, all sons adopted by men come under Clause 4, and by widows under Clause 7. The resultant alterations in general Hindu law are deliberate and are considerable.

The appellants have thus made good the first step in their argument, namely, that " son " used *simpliciter*, means in this legislation sons by natural generation, and means nothing more. Their second step is that " brothers " likewise in Clause 5 means, or it is better to say includes, blood brothers. The Act, they say, is expressed in English ; is its own dictionary ; and, where its prescriptions are verbally clear, is not to be explained or be clouded by any implication from personal law. Is this construction made out ?

There is here nothing corresponding to the subsections dealing with " sons " to show that the word " brothers " must have a limited meaning in Clause 5, as if brothers through adoption were, as adopted sons are, specifically dealt with, and the question in the present case is whether it can or cannot be predicated of, say, Ram Chandra, that he was a " brother " of Chandra Shekhar within the meaning of Clause 5. *Prima facie* he was, for the unqualified word " brother " would seem to include, at any rate, a brother by blood, though the context may introduce some exception or limitation upon it. With " son " the question was whether the word included a son by adoption. With " brother," the question is whether the word may not be, in certain cases, determined not by the birth relationship, but by the adoptive relationship of the taluqdar, the succession to whom is in question.

The Act, it is true, with its amending Act, applies to taluqdars of different races and religions, Hindus, Mohammedans, Sikhs and Christians. It governs the succession not to property generally,

but specifically to taluqdari estates. It lays down in Section 22 an order of succession, which is in form the same for all, but it uses words for the principal relationship, which have a different sense according as they are used of one community or another. Words of relationship in connection with a law of inheritance differ in their signification and content, according as their context is an inheritance in one community or an inheritance in another. Legitimacy, adoption, and lawful wedlock, all of which involve legal conceptions, are terms which will vary in meaning according to the law of the community, with which in the given case the Act is concerned, and although to some extent the Act lays down express prescriptions on these subjects, this is not always so. Thus, "words expressing relationship denote only legitimate relatives," irrespective of natural relationship in blood. Adoption of a son is a right conferred by the legislation on Mohammedans, in a form involving a statutory procedure, to which are added the requirements, if any, imposed by the personal law of the adopter. Wife and widow, terms which are not defined or explained, involve, of course, the relevant laws of matrimony, under which they were duly espoused, and in Section 22 the words "brother" and "male agnate" apply only to *najib-ul-Tarfain*, and the word "widow" only to a woman belonging to the *ahl-i-bradari* of her deceased husband. All these are matters of the personal law of the individual, to whom the succession is to be established, and the Act itself in some cases recognised the necessity for taking account of such personal law, as, for example, Section 13 (1) of the Act of 1869 (displaced, however, by the amending Act of 1910), where part of the limitations on a taluqdar's power of bequest is to be found in the ordinary law to which persons of the testator's tribe and religion are subject; Section 22, subsection 11, as amended in 1910, where the succession is given to "such person as would have been entitled to succeed to the estate under the ordinary law to which persons of the religion and tribe of such taluqdar are subject, and Section 31, by which a taluqdar is allowed to make a formal declaration "that he is desirous that his estate should in future be held subject to the ordinary law of succession, to which members of his tribe or religion are subject." These express references to the personal law of the taluqdar concerned cannot be read as exclusive of the implication of a reference to personal law where, as in the case of differing relationships described by the same word, the actual content of the word may vary according as the tuluqdar belongs to one tribe, community or religion or another, and they serve to show that these Acts are not designed to force one arbitrary and unnatural line of succession on all taluqdars regardless of their family law, but are meant to be adapted to the circumstances of different classes of taluqdars, except where an express deviation is made from the rules ordinarily applicable.

It is also worthy of mention that under the amended Section 22, subsection 11. the cases of descent to a single person among persons (i) some of whom are connected by blood relationship

and some by marriage, (ii) some of whom are related by the whole blood and some by the half blood, and (iii) some are related through males and some through females, are systematically provided for, but no mention is made of the case where the single person is one of several, who stand in the relation of brothers to the taluqdar, some by birth and some by adoption. Furthermore, under the head of maintenance of relations, Section 26 provides for allowances to brothers and minor sons of the deceased without any words to suggest that the estate is liable to persons outside the limits of the family in which the taluq is held, while by Section 20 the power of bequest to religious or charitable uses is restricted in words, which protect a brother and a nephew, who is the naturally born son of a brother, of the taluqdar, but, excluding as they do an adopted son of a brother, show an intention *pro tanto* to provide for family claims in preference to claims, which only arise in consequence of an adoption.

The last question is " What in truth is the rule of Hindu law—the personal law of Raja Chandra Shekhar—in its bearing on Krishna Narain's claim to inherit on his death as the senior direct descendant of Raja Chandra Shekhar's eldest-born brother. It is contended that Hindu law, properly understood, contains nothing which militates against the right of a born brother to be the brother, whose statutory right of succession is provided for by Section 22 (5) of 1910. The matter, it is said, does not depend on the rights of succession, as a member of a new family by adoption, which Raja Chandra Shekhar might have had to properties belonging to other members of the house of Sissendi, but on the survival of the blood relationship for the legal purposes of Hindu law between Raja Chandra Shekhar and his brothers born. Unless it can be said that in law the effect of the adoption of Raja Chandra Shekhar was to make Ram Chandra no longer his brother, then by the explicit words of the enactment, Ram Chandra's lineal descendant and no other was next in succession to him.

It is quite true that for certain purposes the blood relationship of an adopted Hindu remains real and binding after the adoption. For example, his born sister is within the prohibited degrees of affinity. It is true also that authoritative texts of the writings, in which the Mitakshara law was originally expressed, dwell on the matter of inheritance and succession in connection with adoption in a way that leaves some of the consequences of adoption unexpressed. They define the rights of the person adopted as a member of his adoptive family, but they do not in terms complete the matter by prescribing his entire expulsion from his original family and the severance of his born brothers from him and from the name of brother for all purposes connected with succession to property. Hindu law, however, has not stood still. Those texts have been elucidated and applied since 1869 in a great number of decisions which have authoritatively settled the law, and in construing the Acts the personal law applicable, when once it is held that the Acts

imply the application of personal law, is the personal law as it exists at the time when the question in the suit has to be decided.

It is not true to say that by Hindu law an adoptee only loses his consanguinity for purposes of succession. Adoption has been spoken of as " new birth " in many cases, a term sanctioned by the theory of Hindu law. Nor is the expression a mere figure of speech. The theory itself involves the principle " of a complete severance of the child adopted from the family in which he is born . . . and complete substitution into the adoptive family, as if he were born in it " (*Nagindas Bhugwandhas* v. *Bachoo Hurkissondas*, L.R. 43 I.A. at p. 68). " The fundamental idea is that the boy given in adoption gives up the natural family and everything connected with the family " (*Dattatraya Sakharan's* case, 40 Bomb. p. 435). As has been more than once observed, the expressions " civilly dead or as if he had never been born in the family " are not for all purposes correct or logically applicable, but they are complementary to the term " new birth." It is not merely the ceremonies for the natural father, who has given, or for the adoptive father, who has taken, a son in adoption that are involved, but those for the ritual number of ancestors in each case. " Let no man give or accept an only son, since he must remain to raise up a progeny for the obsequies of ancestors. He who means to adopt a son, . . . may receive as his son by adoption, even one remotely related. . . The class ought to be known, for through one son the adoptee rescues many ancestors " (Vasishtha, cited in Mayne's " Hindu Law," Section 107). Consideration of the intimate connection, which primitive Hindu laws established between the funeral offerings and ceremonies on behalf of the dead and the right of succession to his property, will show that ceremonially the adopted son only becomes newborn in the family of his adoptive father, so as to be qualified to provide efficaciously the offerings of which the dead have need, by first dying in the family of his birth, out of which he is given by his natural to his adoptive parent, and in which his offerings will be no longer efficacious or desired. If such a person's natural brother were to be made the heir to the taluq, how could he, still a member of the family of his birth and bound to make the necessary offerings for his own ancestors, be qualified to do the same thing for his brother and his adoptive father and that father's immediate predecessors ? If he cannot, how is the legal theory squared with the termination of the ceremonies in the family into which the son was adopted ? Their Lordships think that these considerations are conclusive.

They would add that the argument demands a construction, which it is wholly unreasonable to put upon the word " brother," having regard to the scheme and subject matter of the legislation itself. The object was to provide a fixed canon of succession, applicable indefinitely *in futuro*, and applicable also to families of different races, tribes and religions. The Act of 1869 was the result of discussions and negotiations, which took place at

Calcutta in 1868, the parties to which in general terms are known (*Pertab Narain Singh* v. *Subhao Kooer*, L.R. 4 I.A. at p. 238). For what reasons this particular sequence of successions was adopted their Lordships do not affect to know, but this at least is clear, that it was done on some definite view of sound and consistent policy. Hindu law, it is true, is in not a few instances deliberately departed from, but there could be no rational object in devising a mongrel rule of succession and construing it exclusively in the sense of the English terms used in expressing it. The section must be read, so far as its language permits, so as to be rational and orderly, not so as to be arbitrary and capricious. The appellants' interpretation would make the provision cut across the recognised principles of Hindu law on the subject without approximating to the law of any other community ; would exclude some persons by mere chance without in any way securing proprietors more competent or loyal than those, whom the regular law of succession would bring in, and would produce confusion instead of order and discontent instead of satisfaction.

Their Lordships will accordingly humbly advise His Majesty that this appeal ought to be dismissed with costs.

In the Privy Council.

TEWARI RAGHURAJ CHANDRA AND OTHERS

v.

RANI SUBHADRA KUNWAR AND OTHERS.

DELIVERED BY VISCOUNT SUMNER.

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