

*Privy Council Appeal No. 58 of 1927.*

Balkisan Devchand and others - - - - - *Appellants*

v.

Kunjatal Hiralal Agarwalla, since deceased, and others - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 1ST NOVEMBER, 1929.

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*Present at the Hearing :*

LORD BUCKMASTER.

VISCOUNT DUNEDIN.

LORD TOMLIN.

SIR GEORGE LOWNDES.

SIR BINOD MITTER.

[*Delivered by* LORD BUCKMASTER.]

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The dispute in this case arises as to the ownership of certain lands in the East Khandesh District, within the Presidency of Bombay, and it depends upon determining whether or no a deed that was executed on the 11th August, 1911, by a widow and her adopted son was or was not valid. The suit to determine the dispute was brought by the reversioners, who would have been entitled had the deed been void, and it was brought against the purchasers, who are the present appellants.

The validity of the deed is challenged upon two distinct grounds. It is first of all alleged that the adopted son, who, with the Hindu widow, formed the vendors, had never been properly adopted, and secondly that there was no necessity that would have justified the sale by the widow alone.

The first point arises in this way. The property was, as stated, within the Presidency of Bombay, and within that Presidency it would be possible to establish adoption without proving that the widow had express authority for that purpose ;

but that would not be the case within the School of Benares, whose law was applicable in the District of Delhi, from which it is said that the ancestors of the husband of the widow originally came. In this case it is only the existence of the power and not the performance of the ceremony that is questioned and it is therefore only essential to see whether or not that statement was established. The evidence upon it is undoubtedly slight; but there is some evidence which, in their Lordships' opinion, is sufficient to show that that was the origin of the family. There is the definite statement that the old customs prevailing on the Delhi side were still good among the family, and, in their Lordships' opinion, that can only be properly referable to the fact that those customs had been introduced into their present place from Delhi, whence they had originally sprung.

If that were the case, there then was no proper adoption, and the deed would depend entirely for its validity upon the purchaser being able to establish that there was necessity that justified its execution. The burden of that lies upon him and, in their Lordships' opinion, the reasons that have been given why that burden has not been discharged are sufficient. The most notable and critical of all the points is this, that at the date when the deed was executed the widow had admittedly in her possession 1,600 rupees, and the expenses which it is alleged justified the sale on the ground that there was necessity might not even then have been in contemplation and certainly, so far as the evidence goes, had not then been incurred. Their Lordships think that the criticism of the High Court upon the facts as shown is justified and that the necessity has not been established.

It is, of course, a matter of comment that, if in fact the adoption were good, there was no need whatever to consider the question of the necessity, and that consequently the form of the deed itself shows that necessity was not the motive for its execution; but it is pointed out by Mr. Dunne, and it is a matter that deserves consideration, that it may well have been that the parties thought the adoption might be invalid and that necessity was required. However, in their Lordships' view, the proof of it has failed and this appeal must be dismissed.

Their Lordships will humbly advise His Majesty accordingly. As the respondents have not appeared, there will be no order as to costs.

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In the Privy Council.

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BALKISAN DEVCHAND AND OTHERS

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KUNJALAL HIRALAL AGARWALLA, SINCE  
DECEASED, AND OTHERS.

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DELIVERED BY LORD BUCKMASTER.

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