

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Srimati Rani Hurripria v. Rukmini Debi, from the High Court of Judicature at Fort William in Bengal; delivered 5th March 1892.*

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Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD MORRIS.

LORD HANNEN.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

On the 5th January 1871 Raja Koer Narain Roy died without male issue, leaving a widow, the Appellant Hurripria who is Defendant in this suit, and two daughters, one of whom is Rukmini, the Respondent and Plaintiff in the suit. Hurripria therefore is his heir, and the two daughters are the reversionary heirs apparent.

On the 23rd April 1882 the Defendant adopted a son to her husband, alleging that she had authority to do so by virtue of an anumati-patra, or power, executed by the Raja on the 4th January 1871.

In March 1887 the Plaintiff brought this suit, alleging that the Defendant had no authority to adopt, and praying for a declaration that the adoption made by her is contrary to law and invalid. Setting aside an objection for want of parties which was rightly decided in the Plaintiff's favour, the defence rested on the ground that

the Raja gave a lawful authority to make the adoption which was made. That has been decided against the Defendant, on the ground that her proof is defective.

The original document said to have been executed by the Raja is not forthcoming. The Defendant sought to prove that it had been lost, and tendered what she alleged to be a copy. The Subordinate Judge considered that there had not been any such amount of search for the original as would justify the Court in admitting a copy, and therefore, there being no evidence of the power, he gave the Plaintiff a decree.

The Defendant appealed. The rejected document was added to the record, where it stands as Exhibit 9. The High Court held that the evidence did not show that it was a copy of any document to which the witnesses deposed as having been executed by the Raja; and on that ground, and also because they agreed with the Subordinate Judge that there had been no sufficient proof of search for or loss of the original, they dismissed the appeal. The present appeal is from that decree.

There is some evidence that the day before his death the Raja signed and gave to Hurripria an anumati-patra to take a son in adoption. After his death a cousin named Gojendra applied to the Civil Court for an administration certificate, and the Defendant resisted that application. In that proceeding a document, of which Exhibit 9 is alleged to be a copy, was filed by Biswa Nath the Defendant's general mokhtar on the 20th February 1871, and was taken back again by him on the 5th May 1871. It is stated that he promised to return it to the Defendant's office, but never did so. He died in March 1883. After that the search was made, the sufficiency of which is in dispute.

The evidence to prove a sufficient search has been subjected to a very careful and minute criticism at the bar. Their Lordships will make only one remark on it. The point is one which is proper to be decided by the Judge of First Instance, and is treated as depending very much on his discretion. His conclusion should not be overruled, except in a very clear case of miscarriage. But the evidence here is very far indeed from raising a case for overruling the Subordinate Judge, even if his judgment had not been supported as it has been by the Appellate Court.

That would be sufficient to dispose of the appeal on the first point, but the evidence on the second point is such as to lead their Lordships to express a clear opinion that the High Court have decided it rightly. The original document in question was not registered, and, though filed in the certificate case, it was not proved. Exhibit 9 purports to be the copy of a document filed on the 23rd January 1871, and to be issued on the 24th February 1871, with the signatures of Khetter Mohun Jana, and of Mohendra Nath Ghose, the Serishtadar of the Midnapore Court, and it bears the seal of that Court. That is the whole evidence to prove it, and in effect the Defendant claims that the document shall furnish its own proof. No evidence is produced to show how, by whom, or at whose instance the copy was made, or how it came to be in the Defendant's hands; and what is more important, no evidence to show that any one compared it with the original. The only witness who speaks to the execution of the power is Dhurjati, who was the Raja's record keeper in 1871. He says that Madhub, the Raja's dewan, had prepared a draft; that, at the request of the Raja, he read it out in the presence of many witnesses; that it was then copied fair by Soonder Narain, the

Raja's seha-nuvis, writing from Madhub's dictation, was witnessed, and kept by the Raja. Of the contents he only tells us that it was a power for the Rani to adopt a son, and that his daughters were to receive Rs. 2 per day for maintenance, a provision which does appear in Exhibit 9. He mentions eight attesting witnesses. Of these witnesses three are dead, but the other five would appear to have been living when the evidence was taken. One of them is Soonder Narain, the scribe who wrote the fair copy, another is Raghabanund, the father of the Defendant, another is a brother of the Defendant's co-wife, by name Trilochun, in whose presence she states that the Raja gave the power into her hands. Not one of the attesting witnesses is called. So that there is not an attempt to identify Exhibit 9 as being a copy of that document which Dhurjati tells us the Raja executed formally; and there is therefore no evidence at all, beyond his vague statement, from which a Court of Justice can gather its contents.

The suit wholly fails, and the appeal must be dismissed with costs. Their Lordships will humbly advise Her Majesty accordingly.

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