

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
Chandi Din v. Rani Naraini Kuar, from the  
High Court of Judicature for the North-Western  
Provinces, Allahabad ; delivered March 25th,  
1892.*

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Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD HANNEN.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

IN this case their Lordships understand that no question is raised for the purposes of this appeal as to the correctness of the findings of the High Court either in law or in fact, but the objection is one preliminary to those findings, and consists of a suggestion that the High Court have committed improprieties in point of procedure by which the Appellant has been prejudiced. The first impropriety alleged is the remand to the District Judge in order to try the issue whether the Plaintiff Chandi Din is the nearest heir under the Hindoo law to the estate left by Naubat Ram. It is contended that inasmuch as the Defendant Naraini Kuar had not raised that issue in her written statement, and as the issue had not been tried by the District Judge, she was debarred from raising it. Their Lordships think that there is no ground for that contention. When the suit was first instituted against Naraini she claimed under an alleged adoption of the deceased husband by Naubat Ram, and she disputed the title of the two rival sets of alleged heirs who brought suits against her. The title of Piyare

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Lal and others was established against her by decree; and although that decree was not affirmed by the High Court, but was the subject of compromise between her and others, she then had a perfect right to say: "That title which I "disputed or ignored before has been established "against me by a decree, and I now claim to set "it up in order to defeat the claim made by "persons who allege that they are heirs of "Naubat Ram." She had a right to have that question tried, and the High Court directed it to be tried.

The next objection is that a quantity of evidence has been improperly admitted; and in order to see exactly how that stands, their Lordships will take notice of the state of the litigation.

Two suits were brought against Naraini Kuar in the year 1879, one by Chandi Din, the present Appellant, who claimed to be the heir of Naubat Ram, and the other by Piyare Lal and others, who also claimed to be heirs of Naubat Ram. The District Judge attempted to consolidate those suits so as to settle the question *uno flatu* between the various litigant parties, but, no doubt for good technical reasons, that well-meant attempt was defeated, and the two suits had each to go on independently of the other. But in point of fact there were issues in those suits which were identical with one another, and they went on *pari passu*, and were tried simultaneously before the District Judge.

There was one question—a material one—which was not common to the two suits, and that was the question whether Piyare Lal and his faction, as they are called—his co-Plaintiffs—were of kin to Naubat Ram. That question did not arise in Chandi Din's suit, but it was certainly a most reasonable course that the evidence taken in one suit should be admitted in the other; and the parties came to an agree-

ment on the 12th January 1881 that the evidence adduced in the case of Piyare Lal should be accepted also in the case of Chandi Din. There was no limit then put as to the kind of evidence that was to be adduced. The agreement extends to the whole evidence, and the whole evidence in Piyare Lal's suit was imported into that of Chandi Din. When the remand took place, a further agreement was come to between the parties on the 19th January 1886, by which it was agreed that the evidence recorded by the Sub-Judge in a subsequent suit that was brought by the co-Plaintiffs of Piyare Lal should be admitted for the determination of the issues in the present case; and subsequently to that, viz., on the 15th February 1886, an application was made that the original papers contained in the record of the case of *Chaudhri Shib Lal and others v. Chandi Din*, and those in the case of *Chaudhri Shib Lal and Piyare Lal and others v. Naraini Kuar*, decided on the 20th June 1881, should be perused, and on that day an order was made, which is at page 179 of the record, that the list of documents produced in Piyare Lal's suit should be put up with the record. All that list appears to have been treated as evidence upon the trial of the issue ordered by the remand.

It is objected that the agreement of 1881 should be limited, by confining it to that evidence which related to the issues common to the two suits; and it is alleged that the District Judge erred in admitting for the trial of the issue on remand the whole of the evidence which was admitted under the order of 1881. But their Lordships find that there was ample opportunity for considering the effect of the evidence admitted by the order of the 15th February 1886. The evidence appears to have been taken into consideration on the 19th, 20th,

and 22nd February 1886. The 10th March was fixed for the hearing, and in fact the case was heard from the 1st to the 3rd of April 1886. There seems to have been some discussion as to the admission of particular documents; it does not matter exactly what the discussion was, but it shows that the attention of the parties was called to the state of the evidence; and there does not appear to have been any objection made then to the admission of this evidence in bulk. The District Judge, in his judgment, refers to the agreement to take the evidence in the second suit of Piyare Lal's party, and then he states this: "Of the evidence adduced on behalf of the Appellant Rani Naraini Kuar, a great portion consists of that adduced by Piyare Lal and others in their former suit against her;" but he does not go on to say that any objection was taken. It is apparent that no objection was taken; but an objection was founded upon that evidence to the effect, as has been already referred to, that Naraini Kuar was by her conduct in Piyare Lal's suit estopped from raising the issue which the District Judge had to try between her and Chandi Din.

Now it appears to their Lordships that if there was any objection to the admission of this evidence it should have been made at that time. Either there should have been an objection that the agreement of 1881 did not apply to it, and that it should be rejected *in toto* until proved independently; or some application should have been made providing that Chandi Din should be placed in as favourable a position as if the evidence had been originally adduced against him by Naraini Kuar, instead of being adduced by Piyare Lal. But nothing of the kind took place.

On appeal to the High Court some objection was made, which it is not very easy to construe,

to the effect that the District Judge had misapprehended the consent as to reading the evidence on the record of the cases pending in the Sub-Judge's Court; but even then no objection was raised that the District Judge was wrong in admitting the evidence adduced in the case of *Piyare Lal v. Naraini Kuar*. Therefore it is very difficult for the Appellant to make anything of that written objection upon the appeal. Before the High Court it appears that certain specific objections were made to a large number of documents. In the first place an objection was made to the whole, as not coming from proper custody. But that is not an objection that they were not properly admitted, excepting on that one ground that they did not come from the proper custody.

There are a number of specific objections on other grounds, but no trace of an objection that the District Judge was wrong in admitting the evidence in bulk as given in the suit of Piyare Lal.

Their Lordships are clear that the parties really intended that the evidence should be admitted; and probably it was the most reasonable course to take. There is no reason to suppose that if any objection had been taken by Chandi Din the whole of this evidence could not have been proved against him; and the parties took a shorter and a cheaper course by admitting it in bulk, as it was given in the suit of Piyare Lal.

In the result their Lordships will humbly advise Her Majesty that the judgment appealed against ought to stand, and the appeal must be dismissed with costs.

