

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Sumbhu Nath Santra Mahapatra and another v. Srimati Surjamoni Dei and others (four Appeals consolidated, Nos. 13 to 16 of 1891) from the High Court of Judicature at Fort William in Bengal; delivered 8th July, 1897.*

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Present:

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD MORRIS.

SIR RICHARD COUCH.

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[*Delivered by Lord Morris.*]

IN this case Appeals have been lodged on the part of the Appellants although there have been concurrent findings of two courts in India, the District Court and the High Court, on matters of fact. There were three questions submitted: first, whether the widow, Srimati Surjamoni Dei, was the donee of a power of appointment by her husband, Bonomali Mahapatra, to adopt a son; second, whether she had adopted a son (that, of course, was on the assumption that she had a power to adopt, for it must have been a valid appointment); and thirdly, whether she had treated the Appellant as her adopted son. Both courts have found there was no power of adoption granted by her husband. The alleged power to adopt was said to have been given orally, and the witnesses were examined in support of that allegation, but they were not believed; and, consequently, it must be taken that the widow had no power. The contentions Nos. 2 and 3 of themselves can give no estate to the Appellant, because if this lady had no power to adopt she could not

validly adopt. As to the further contention attempted to be raised, namely, that by the lady having treated the Appellant for a great many years as an adopted son, she is, as it is alleged, estopped from disputing that he is her adopted son, and that she had a valid power of adoption,— whatever value it may have as regards the question whether she did adopt as a matter of fact, it is no evidence at all to show that she had been entrusted by her husband with a power of adoption, that depended on evidence entirely outside the question of her acts. Otherwise, any widow could by a system of treating an alleged adopted son as such, validate a transaction which she had no power of entering into.

Now at the bar it has been urged that the widow has treated Sumbhu Nath Santra in such a manner that she should be considered during her life to have placed him in her own position as the owner of this property. Supposing it would be so considered (upon which they refrain from giving any opinion), there has been no such allegation made in the plaint. There is no such question indicated either before the District Judge or in the Court of Appeal, and therefore the question cannot be raised here.

Their Lordships must therefore humbly advise Her Majesty that these Appeals should be dismissed with the costs of the Respondent Srimati Surjamoni Dei up to and including the lodgment of the case, and the appearance of Mr. Cowell on this occasion to ask for these costs.

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