Privy Council Appeal No. 72 of 1912.

Puttu Lal, since deceased, and others - - *Appellants,*

v.

Musammat Parbati Kunwar and another - *Respondents.*

FROM

THE HIGH COURT OF JUDICATURE FOR THE NORTH-WESTERN PROVINCES, ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 5TH MAY 1915.

Present at the Hearing:

LORD DUNEDIN. SIR GEORGE FARWELL.
LORD ATKINSON. SIR JOHN EDGE.

[*Delivered by* SIR JOHN EDGE.]

This is an appeal by the plaintiffs from a decree of the High Court of Judicature at Allahabad, dated the 15th December 1909, which reversed a decree of the Subordinate Judge of Mainpuri, and dismissed the suit with costs.

The plaintiffs brought their suit in the court of the Subordinate Judge of Mainpuri on the 15th June 1907 to have it declared that Jwala Parshad, who is a defendant and one of the respondents, was not the adopted son of one Tiwari Gandharp Singh, deceased, who had been the husband of Musammat Parbati Kunwar, who is the other defendant and respondent. The adoption which is impugned

was made by Musammat Parbati Kunwar in March 1899 to her deceased husband, Tiwari Gandharp Singh, who had died on the 9th November 1898 without issue surviving him, and had been a Brahman. Jwala Parshad was the son of a brother of Musammat Parbati Kunwar. The plaintiffs, who claimed as reversioners, denied that Jwala Parshad had been in fact adopted, and alleged that Tiwari Gandharp Singh had not given to Musammat Parbati Kunwar authority to adopt Jwala Parshad to him, and further alleged that Jwala Parshad, being a son of a brother of Musammat Parbati Kunwar, was in law ineligible for adoption by her as a son to her deceased husband.

The Subordinate Judge framed six issues; two only of the issues are now of importance. It was concurrently found by the courts below that the adoption was in fact made. The two issues which have to be decided in this appeal are as framed by the Subordinate Judge:—

"(4) Did Gandharp Singh give permission to his wife "to adopt Jwala Parshad?"

"(6) Is the adoption invalid, inasmuch as the boy is "the son of the adoptive mother's brother?"

The authority to adopt Jwala Parshad was alleged to have been given to Musammat Parbati Kunwar by an oral will of her husband, Tiwari Gandharp Singh, a few days before his death. The Subordinate Judge held that the evidence that the authority to adopt Jwala Parshad had been given was untrustworthy, and found that no authority to adopt Jwala Parshad was proved to have been given.

The High Court on appeal saw no reason whatever for doubting the trustworthiness of

the evidence of the witnesses who had deposed to the fact that Tiwari Gandharp Singh had given permission to his wife to adopt Jwala Parshad as a son to him, and after a careful consideration of the evidence and the surrounding circumstances found as a fact that the permission to adopt Jwala Parshad had been given. In their Lordships' opinion the learned judges of the High Court could have come to no other conclusion unless they had perversely disregarded the evidence and all the probabilities of the case. The direct evidence that the authority to adopt Jwala Parshad had been given by Tiwari Gandharp Singh to his wife was clear, and in their Lordships' opinion was unassailable, and other facts showed that it was probable that such an authority would be given. Tiwari Gandharp Singh was a man well advanced in years; he had been thrice married; he had no surviving issue; there was no *sagotra sapinda* in his family; he was the last male of the male line; he was a man of some considerable estate and position; and he had taken Jwala Parshad, when a child of 4 or 5 years of age, to live in his house with the object of adopting him as his son, should Jwala Parshad prove himself to be a boy worthy of adoption as his son. Their Lordships agree with the finding of the High Court that the authority to adopt Jwala Parshad had been given. That authority was not a general authority to Musammat Parbati Kunwar to adopt a son to Tiwari Gandharp Singh, it was a specific authority to her to adopt Jwala Parshad as the son to her husband.

There remains to be considered the question of law raised by the sixth issue which

had been framed by the Subordinate Judge. The court of the Subordinate Judge of Mainpuri is a court which is subordinate to the High Court at Allahabad, and the Subordinate Judge of Mainpuri is bound to follow the decision in law of a bench of the High Court to which he is subordinate unless the decision of the bench has been overruled by a decision of a full bench of that court or unless it has been overruled expressly or impliedly on an appeal to His Majesty in Council, or unless the law has been altered by a subsequent Act of the legislature. As the Subordinate Judge was well aware it had been decided five years before this suit was instituted by a bench of the High Court at Allahabad, composed of Sir John Stanley, the then Chief Justice, and Mr. Justice Banerji, in *Jai Singh Pal Singh and others* v. *Bijai Pal Singh and Another* (I.L.R. 27 All. 417), that an adoption by a Hindu widow, in virtue of an authority to adopt given to her by her deceased husband, of her brother's grandson or son is not, according to Hindu law an invalid adoption, as the adoption by the widow is not an adoption to herself but is an adoption to her deceased husband, and that the test of eligibility of the adopted son for adoption in such case must be the test which would have applied had the adoption been made by the husband himself in his lifetime.

The Subordinate Judge of Mainpuri, Chhajju Mal, professing disapproval of that decision of the High Court, which he was bound to follow, entered upon a consideration of Sanskrit texts bearing more or less upon the subject, and decided that as Musammat Parbati Kunwar could not have married her brother, the father of Jwala Parshad, the adoption of Jwala Parshad

was invalid. It is difficult to follow the arguments of the Subordinate Judge, but he does not appear to have kept clearly before his mind that the question in this case was whether a Hindu widow, acting on her husband's authority, could validly adopt as a son to him the son of her brother, and was not the question as to whether a Hindu female could validly adopt to herself a son of her brother. On appeal, Sir John Stanley, C.J., and Banerji, J., applied the decision in *Jai Singh Pal Singh* v. *Bijai Pal Singh*, which had not been overruled, and accordingly decided that the adoption of Jwala Parshad was a valid adoption, and by their decree dismissed the suit with costs. From that decree of the High Court this appeal has been brought.

The foundation of the decision of the Subordinate Judge on this question of Hindu law is the Commentary of Nanda Pandita, which is known as the "Dattaka Mimansa." The "Dattaka Mimansa" is undoubtedly a high authority on the law of Hindu adoption and is treated with respect. The authority of the "Dattaka Mimansa" was considered by this Board in *Radha Mohun* v. *Hardar Bibi* (26 I.A. 113), and in *Bhagwan Singh* v. *Bhagwan Singh* (26 I.A. 153), and the view of this Board was that the "Dattaka Mimansa" is a work which has had a high place in the estimation of Hindu lawyers in all parts of India and has become embedded in Hindu law, but that caution is required in accepting the glosses of Nanda Pandita in the "Dattaka Mimansa" where they deviate from or add to the Smritis. It was pointed out by Banerji, J., in *Jai Singh Pal Singh* v. *Bijai Pal Singh* (I.L.R. 27, All., at page 433), on this question as to whether a widow can lawfully adopt to her deceased

husband a son of her own brother, that Nanda Pandita in the "Dattaka Mimansa" extended to adoption by females the rule of Hindu law that no one can be adopted as a son whose mother the adopter could not have legally married, an extension by Nanda Pandita which is not based upon the authority of any of the Smritis or institutes of Sagas.

As Banerji, J., further pointed out in the same case the extension of the rule by Nanda Pandita is not supported by any text of the "Dattaka Chandrika," or by any of the texts of the Sagas Sannaka and Sakala from which most of the rules of the "Dattaka Mimansa" were deduced. It has not been shown to their Lordships that the extension by Nanda Pandita to which they are referring has been accepted as the law in India, at least, so far as adoptions by widows to their deceased husbands are concerned. It is true that in the case of *Musammat Battas Kuar* v. *Lachman Singh* (7 N.W.P.H.C. Reports 117) Pearson and Spankie, JJ., said :—

"No sufficient reason is shown why the doctrine of "Nanda Pandita that a woman may not affiliate a brother's "son should not be accepted as correct, and why it should "not apply to the case of a woman adopting a son with "the sanction and on behalf of her husband. Indeed, it "does not appear that the Hindu law contemplates or "provides for the adoption by a widow of a son in her "own right."

It was not necessary for these learned judges to express any opinion on the subject, nor is it clear how the case came on appeal to the High Court, as the two courts below had concurrently found that it was not proved that the husband had given his wife authority to adopt a son.

It is quite clear that Tiwari Gandharp Singh could, in his lifetime, have legally adopted Jwala Parshad, the son of his wife's brother,

and had he done so the adoption would have been a valid adoption, and their Lordships fail to see any reason why Jwala Parshad, who was legally eligible for adoption by Gandharp Singh, should have become ineligible by reason of the death of Gandharp Singh. It must be remembered that the adoption was not by the widow in her own right and to herself; the adoption was to her deceased husband and under the authority which he had given to her. In *Sviramulu* v. *Ramayya*, (I.L.R., 3 Mad. 15), the adoption of a son of a wife's brother was held to be a valid adoption, and it was rightly pointed out that the rule of Hindu law that a legal marriage must have been possible between the adopter and the mother of the adopted boy refers to their relationship prior to marriage. In *Bai Nani* v. *Chunilal* (I.L.R. 22 Bomb., 973), it was held that the adoption by a Hindu widow of her brother's son was valid. Their Lordships have not thought it necessary to discuss the texts and authorities which have been referred to, and are relevant to this question, as they have been fully and exhaustively considered by Sir John Stanley, C.J., and Banerji, J., in their judgments in *Jai Singh Pal Singh* v. *Bijai Pal Singh*.

This appeal fails, and their Lordships will humbly advise His Majesty that it should be dismissed. The appellants must pay the costs of the appeal.

In the Privy Council.

PUTTU LAL, SINCE DECEASED, AND OTHERS

v.

MUSAMMAT PARBATI KUNWAR AND ANOTHER.

JUDGMENT

DELIVERED BY SIR JOHN EDGE

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