

*Privy Council Appeal No. 60 of 1931.*  
*Oudh Appeal No. 16 of 1928.*

Abdul Halim Khan - - - - - *Appellant*

*v.*

Raja Saadat Ali Khan and others - - - - - *Respondents*

FROM

THE CHIEF COURT OF OUDH AT LUCKNOW.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 10TH MARCH, 1932.

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*Present at the Hearing :*

LORD BLANESBURGH.

LORD TOMLIN.

SIR GEORGE LOWNDES.

[*Delivered by* SIR GEORGE LOWNDES.]

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The appellant in this case is the claimant to a large and valuable taluqdari estate in Oudh, known as Taluqa Nanpara, the succession to which is governed by Act 1 of 1869. The 1st respondent was at the date of the suit in possession of the estate, and unless the appellant is able to show a better title in himself, it is admitted that he cannot succeed.

The last full owner was Raja Muhammad Siddiq Khan, who died without issue on the 30th December, 1907. He left four widows him surviving, and by his will gave successive authorities to each of them to adopt a son. The 1st respondent is in as the adopted son of the second widow, Rani Saltanat. The appellant claims to oust him as the adopted son of the fourth widow, Rani Champa, on the ground that his (the appellant's) adoption was the only valid one. The other respondents are in possession of parts of the estate under a compromise with the 1st respondent.

The main question in the suit was whether the adoption of the appellant, the factum of which is admitted, was

valid, and the first line of defence was that Rani Champa had been re-married to one Sher Mahomed Khan before the adoption of the appellant, and that for this reason his adoption was invalid.

The question of the re-marriage was contested at great length in the Oudh Court, as is testified by the bulky record now before the Board. The appellant, in addition to denying the re-marriage in fact, asserted that, previous to the date on which it was alleged to have taken place, Sher Mahomed Khan had been married to the sister of Rani Champa, and this was put forward as making the story of the latter's re-marriage impossible, it being admittedly contrary to the Mahomedan law for a man to be the husband of two sisters.

The trial Judge and the Court of Appeal have concurrently held that the re-marriage of Rani Champa with Sher Mahomed Khan, on a date prior to the adoption of the appellant, is established by the evidence. They are also agreed that the alleged previous marriage with the Rani's sister, the burden of proving which was clearly upon the appellant, is not established. These findings must, in accordance with the recognized practice of the Board, be held conclusive as to the fact of the re-marriage.

It only remains to consider an alternative contention of the appellant that the re-marriage did not invalidate the adoption. This again has been negatived by both the Indian Courts, mainly on the strength of clause 10 of Raja Muhammad Siddiq Khan's will. The official translation of this clause, which was before the trial Judge, was in the following terms :—

“ If any of the Ranis contract a second marriage after me she shall not be entitled to be profited by any of the paras. of this will.”

The learned Judge held that the power of adoption was on the same footing as a power of appointment and therefore “ a benefit or privilege ” conferred on the widow which she would, under the terms of this clause, forfeit upon re-marriage. He also thought that under section 29 of the Oudh Estates Act (1 of 1869), by which a conditional power of adoption is given to the widow of a Muhammadan taluqdar, the power could only be exercised by her if she were still his widow at the time of making the adoption.

In the Court of Appeal the translation of clause 10 of the will was amended by the learned Judges, and this has now come up to the Board under the official seal of the Court. The amended translation runs as follows :—

“ If any of the Ranis contract a second marriage after me she shall not be entitled to avail herself of any of the provisions of this will.”

The learned Judges thought that on this reading of the clause it was clear that Rani Champa “ on her re-marriage with Sher Mahomed Khan forfeited her power of adoption, and consequently the plaintiff's adoption made by her on the 25th July, 1914, is invalid.”

Their Lordships, while not disagreeing with the reasoning of either of the Indian Courts on this question, think that the same result is to be arrived at in another way.

The parties being Muhammadans, there is no power to adopt under their personal law, and it is only conferred by section 29 of the Act, and must be confined strictly within the limits there laid down. The section is as follows :—

“Every Muhammadan taluqdar, grantee, heir or legatee, and every widow of a Muhammadan taluqdar or grantee, heir or legatee, with the consent in writing of her deceased husband, shall, for the purposes of this Act, have power to adopt a son whenever, if he or she were a Hindu, he or she might adopt a son.”

The power is thus exercisable by the widow of the taluqdar only under such circumstances that if she were a Hindu she would be entitled to adopt. It can, their Lordships think, hardly be doubted that a Hindu widow could not, after re-marriage, make a valid adoption to her former husband. Indeed, this is conceded by Mr. Dubé, who has presented the appellant's case with ability and restraint. Their Lordships think that it necessarily follows that the widow of a Muhammadan taluqdar has, under the terms of the section, no power to adopt a son after her re-marriage, and that therefore the adoption of the appellant was invalid and conferred upon him no right to the Nanpara estate.

For these reasons their Lordships think that this appeal fails and that the appellant's suit was rightly dismissed by the trial Judge, and they will humbly advise His Majesty accordingly. The appellant must pay the costs of the appeal.

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ABDUL HALIM KHAN

v.

RAJA SAADAT ALI KHAN AND OTHERS.

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DELIVERED BY SIR GEORGE LOWNDES.

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