Privy Council Appeal No. 78 of 1934.
Patna Appeals Nos. 7 and 8 of 1933.

Musammat Binda Kuer and others - - - - *Appellants*

v.

Lalita Prasad Choudhary and others - - - - *Respondents*

Same - - - - - - - - *Appellants*

v.

Babu Baldeo Narain and others - - - - *Respondents*

Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE AT PATNA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 29TH JULY 1936.

Present at the Hearing:

LORD THANKERTON.

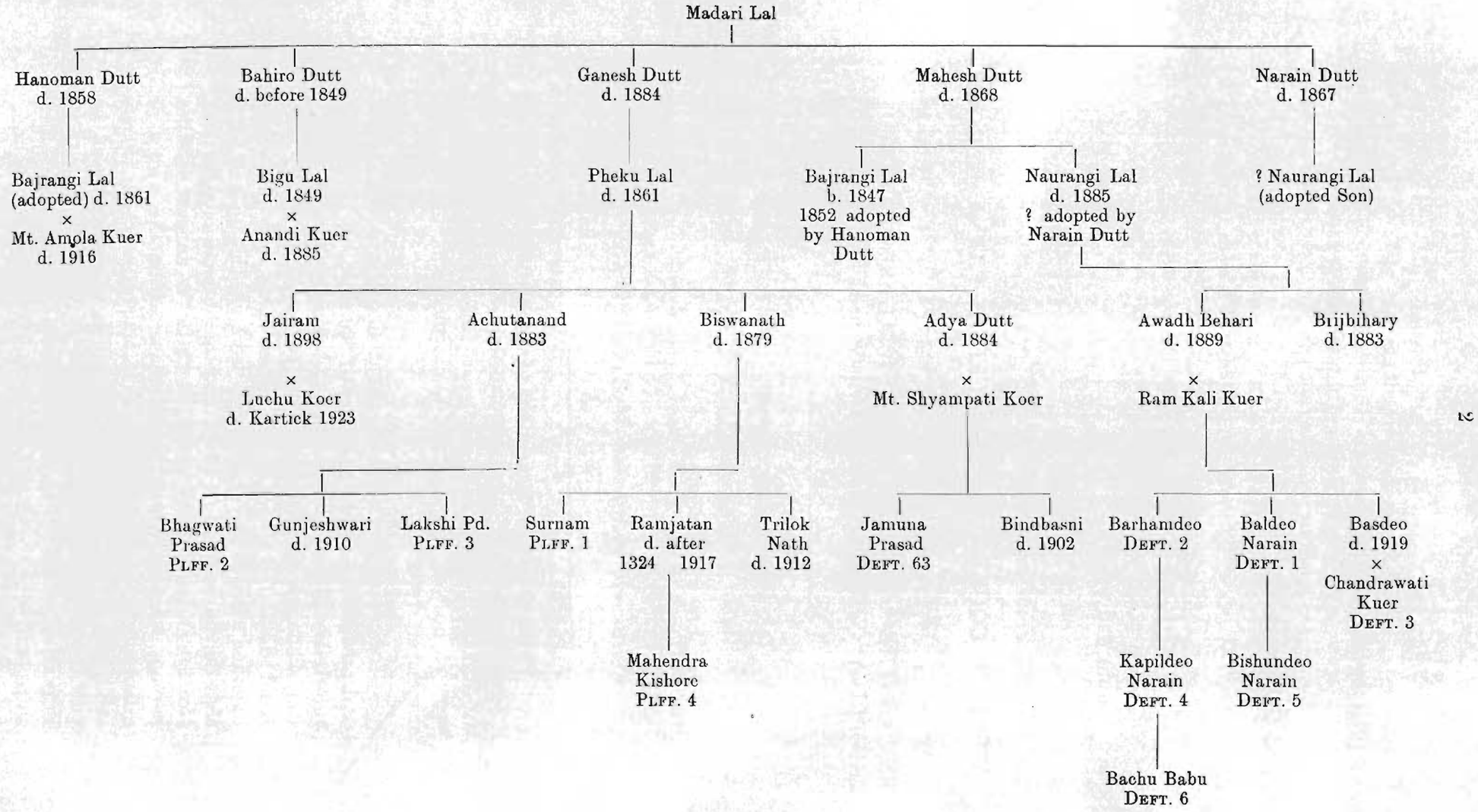
SIR SHADI LAL.

SIR GEORGE RANKIN.

[*Delivered by* SIR GEORGE RANKIN.]

These are two consolidated appeals brought by the plaintiffs whose suit was decreed by the Subordinate Judge of Muzaffarpur on the 16th August, 1928, but was dismissed by two decrees of the High Court of Patna on the 14th December, 1932.

The plaintiffs claimed declaration of their title to, and a decree for possession of, a half share of the properties referred to in the plaint as having belonged to one Bajrangi Lal, who died in 1861, and whose widow, Musammat Amola Kuer died in 1916. The plaintiffs' case was that they, together with defendant No. 63, were entitled to half, and that defendants Nos. 1 and 2 and the husband of defendant No. 3 were entitled to the other half. A number of other persons were impleaded as purchasers from the widow of different items of her husband's property, but both Courts in India have negatived the pleas of legal necessity and the purchaser respondents can make no higher case than those respondents who are members of the family. Their Lordships will use the expression "the defendants" as comprising the latter class only.


Madari Lal
Hanoman Dutt
d. 1858
Bahiro Dutt
d. before 1849
Ganesh Dutt
d. 1884
Mahesh Dutt
d. 1868
Narain Dutt
d. 1867
Bajrangi Lal
(adopted) d. 1861
×
Mt. Ampla Kuer
d. 1916
Bigu Lal
d. 1849
×
Anandi Kuer
d. 1885
Pheku Lal
d. 1861
Bajrangi Lal
b. 1847
1852 adopted
by Hanoman
Dutt
Naurangi Lal
d. 1885
? adopted by
Narain Dutt
? Naurangi Lal
(adopted Son)
Jairam
d. 1898
×
Luchu Koer
d. Kartick 1923
Achutanand
d. 1883
Biswanath
d. 1879
Adya Dutt
d. 1884
×
Mt. Shyampati Koer
Awadh Behari
d. 1889
×
Ram Kali Kuer
Brijbihary
d. 1883
Bhagwati
Prasad
PLFF. 2
Gunjeshwari
d. 1910
Lakshi Pd.
PLFF. 3
Surnam
PLFF. 1
Ramjatan
d. after
1324 1917
Trilok
Nath
d. 1912
Jamuna
Prasad
DEFT. 63
Bindbasni
d. 1902
Barhamdeo
DEFT. 2
Baldeo
Narain
DEFT. 1
Basdeo
d. 1919
×
Chandrawati
Kuer
DEFT. 3
Mahendra
Kishore
PLFF. 4
Kapildeo
Narain
DEFT. 4
Bishundeo
Narain
DEFT. 5
Bachu Babu
DEFT. 6

From the pedigree, it will be seen that the common ancestor of plaintiffs and defendants was one Madari Lal. He had five sons, Hanuman, Bhairo, Ganesh, Mahesh, and Narain. It is common ground that the sons were all divided. The plaintiffs belong to the branch of the son Ganesh, and the defendants to the branch of the son Mahesh. Mahesh had two sons, Naurangi Lal and Bajrangi Lal. Of Hanuman it is clear that in or about 1852, he adopted Bajrangi Lal; and the chief point of controversy between the parties in the present case is whether this adoption was in the Dattaka form or in the Kritrima form. Bajrangi Lal, at the time, was some 5 or 7 years old, and he appears to have died childless in or about 1861, at about 15 years of age, leaving him surviving his child widow Amola. An important document in the case is a registered will, dated the 11th May, 1857, witnessed by a considerable number of persons and executed by Hanuman. It is not quite strictly described as a will, as it purports to effect that Hanuman's property should, for the rest of his life, be in his possession as a trustee or guardian for Bajrangi Lal, but the main purpose of the instrument is to declare that Bajrangi Lal should succeed to the properties of Hanuman. Hanuman died not long after executing this instrument, namely in 1858. In 1867, his brother, Narain Dutt died, having, it would appear —although the matter is not conceded on behalf of the plaintiffs appellants in this appeal—adopted Naurangi Lal, the other son of Mohesh. Their Lordships will assume, for the purposes of the present decision, though this adoption was at one time challenged, that it was, in fact, made and was made as the defendants allege, in the Kritrima form.

Bhairo, the first to die of the sons of Madari Lal, left a son Bigu Lal, who died in 1849, leaving a widow Anandi Kuer. When she died in 1885, questions arose as to the persons entitled to succeed to the property of Bigu Lal as being his nearest reversioners. Ganesh, the head of the branch to which the plaintiffs belong, had died in 1884, having on the 6th April, 1868, entered into a compromise with his nephew Naurangi Lal, evidenced by a petition of that date in a proceeding under the Succession Certificate Act of 1860. The immediate occasion of the proceeding was the death of Narain in 1867, which raised the question whether or not Naurangi Lal was his adopted son. Ganesh claimed to be entitled to a share of Narain's property as his brother. Naurangi Lal, it would appear, based his claim on a deed called a karta putri deed. This dispute was settled by a compromise into which was brought not only the question of the succession to Narain, but questions of the prospects of succession to the property of Hanuman and Bigu Lal. Of the three annas and four gundas share of Narain in the family property, it was agreed that two annas and two gundas should go to Naurangi Lal, and one anna and two gundas to Ganesh. Of Bigu Lal's share, then in

possession of his widow, it was agreed that two annas and four gundas should, on the death of the widow, go to Ganesh, and one anna to Naurangi Lal. Of Hanuman's share, which had descended to Bajrangi Lal and was, at the time, in the possession of Amola as his widow, it was agreed that on her death, the whole should go to Naurangi Lal, and Ganesh and his heirs should have no claim thereto. This compromise was acted on by the Court, a certificate being given to the claimants for the recovery of the assets of Narain in accordance with the compromise. The agreement was expressed to be made by each of the uncle and nephew on behalf of himself and his heirs.

On the facts, the questions which arise for consideration may be stated as two. First, whether the adoption of Bajrangi Lal by Hanuman was in the Dattaka or in the Kritrima form; secondly, whether by reason of the compromise of the 6th April, 1868, and the actings of the parties thereunder the plaintiffs if *prima facie* entitled as reversioners of Bajrangi Lal have nevertheless lost their right.

On the first question, it is not in controversy that the plaintiffs are *prima facie* entitled to the share which they claim in the property of Bajrangi Lal, if his adoption is proved to have been in Dattaka form, and the plaintiffs do not dispute that if the adoption was in the Kritrima form, their claim must fail. In view of the terms of the instrument executed by Hanuman on the 11th May, 1857, it is difficult, at first sight, to find much room for controversy upon the point. The instrument reads :—

> "On account of being childless, to attend upon me and to perpetuate the line of my family and the name and memory of my ancestors, according to the permission of the Shastra, I brought into my sonship Babu Bajrangi Sahay, son of my own brother Babu Mahesh Dat as my son from his childhood on the 5th Aghan, 1259 Fasli, with the consent of his mother and father and other relations and of my own free will and my wife, and reared him as the son born of my loins in great luxury and comfort. Both the marriage and tonsure ceremonies of the said Babu were performed under my authority; and the Sradh ceremony of my wife was performed by the said Babu as a son. For this reason the said Babu Bajrangi Sahay was struck off from heirship of the said Babu Mahesh Dat and became without concern with his own brother and came into my sonship. Hence by taking into consideration the unstability of life and my old age and for avoiding disputes and troubles in future in a sound state of my body and mind, and of my own free will and accord I give out in writing and solemnly declare that save and except the said Babu, my adopted son, no one else is or shall be my heir. I put the said Babu instead of myself in possession and occupation of all the household properties, houses, shares in mauzas Bakhri Simra, tola Sekhnauna, otherwise called Sagardina, tappa Sirauna and Purani Mehsi, pargana Mehsi appertaining to district Saran, mauza Chhitarpatti, tappa Khanzadpur, mauza Kharauni, mauza Sagahri Chhitra and lands of tola Ramnagar, pargan Morwah Kalan, zillah Turki, appertaining to district Tirhut, properties in cash and kind, moveable and immoveable properties and all kinds of debts due by me and to me (illegible and unintelligible). As he is minor I have at present kept the village and court affairs in my hands as his guardian."

Apart altogether from any estimate of probability arising out of such circumstances as the age of Bajrangi Lal or the fact that Hanuman's wife's sradh ceremony was performed by Bajrangi Lal, it will be noticed that Hanuman, in this document, states expressly that Bajrangi " *was struck off from heirship of the said Babu Mahesh Dat and became without concern with his own brother and came into my sonship.*" This is equivalent to an express declaration that the adoption was in the Dattaka form and not in the Kritrima form, and as the declaration is made in the most solemn manner in a document witnessed by a large number of neighbours and friends, it would require very strong evidence indeed to cast doubt upon the nature of the adoption. Their Lordships are unable to find any force sufficient for this purpose in the considerations which have led the learned Judges of the High Court at Patna to hold that the plaintiffs have failed to prove that Bajrangi Lal was adopted in the Dattaka form, and to regard the evidence as a whole as being inconclusive and insufficient for such a finding. It seems to be altogether without point to canvass other expressions in the will on the footing that the crucial clause has been left out, and that the nature of the adoption is to be gathered from a minute or critical consideration of the language of the other clauses. The will is incapable of any other construction than that it speaks to a Dattaka adoption, and unless good reason can be shown for rejecting it altogether, it must be held to determine the point.

The leading judgment of the High Court, that of Kulwant Sahai J., says that if it can be proved that Bajrangi Lal as a result of his adoption did in fact cease to have any connection with his natural father and brothers it would no doubt be a factor in favour of the contention that the adoption was in the Dattaka form. The learned Judge goes on to say that there is no evidence that Bajrangi Lal ceased to live with his parents and brother, and that there is evidence that after his death his widow Amola was living with Naurangi Lal, her husband's kinsman. Their Lordships are at a loss to appreciate why it should be thought that these considerations displace the statements in Hanuman's will. The will itself is much more cogent evidence as to what was done at the time, than precarious inferences now drawn from inadequate materials as the result of an investigation made more than sixty years after the event.

The learned Judge thought also that the petition of Ganesh, dated 7th April, 1868, in the Succession Certificate case in respect that Ganesh agreed that Naurangi Lal should, upon the death of Amola, take the whole of Bajrangi Lal's share, proves that the adoption was not in the Dattaka form. Bajrangi Lal in the petition is described as the " beradar hakiki " of Naurangi. The learned Judge inferred that Ganesh knew that Naurangi was the nearest

reversionary heir in respect of Bajrangi Lal's share, because he remained the full brother of Naurangi; and although it was shown that in other documents Ganesh had made a clear statement that Bajrangi Lal was the " Dattaka putra " of Hanuman, he considered that it is proved that Ganesh knew that the adoption was in the Kritrima form. He referred also to a mukhtarnama of 1877, where Amola describes Bajrangi as the Kartaputra of Hanuman. It has in point of fact to be admitted that not before 1914 can any document be found stating in terms that Bajrangi Lal was the Kritrimaputra of Hanuman. It appears to their Lordships to be reasonably plain that in the Mithila country where the Kritrima form is said to be now in almost universal use—" overwhelmingly the usual form in Mithila," as Macpherson J., with his great experience doubtless correctly states—kartaputra will generally refer to a Kritrima adoption, but it seems unnecessary to doubt that it is at times used in respect of any adopted son, as one learned author, Gopalchandra Sarkar Shastri, has according to the High Court stated. There is the evidence of a witness called by the defendants (D.W. 5) that the family of the parties originated in the west, that is, that the family does not come from the Mithila country originally. This may account for the form of the transaction of 1852. Even if it be assumed upon the present question that Naurangi Lal was adopted by Narain in the Kritrima form, and that in modern times the Kritrima form is almost universal in Mithila, their Lordships see no sufficient reason to doubt that in 1852 Hanuman had done what in his will he says he had done, and they agree with the finding on this point of the trial Judge.

Upon the second point in the case it is necessary to refer to what happened in respect of the compromise entered into between Ganesh and Naurangi Lal on the 6th April, 1868.

In 1885 the death of Anandi Kuer opened up the succession to the share of Bhairo Dutt's son Bigu Lal, who had died long before, namely in 1849. At that time the *prima facie* right as next reversioner of Bigu Lal lay with Jairam of the branch of Ganesh and Awadh Behari of the branch of Mahesh. These two were entitled to equal shares, but under the compromise of 1868, two annas and four gundas were to go to the branch of Ganesh and one anna to that of Naurangi. Awadh Behari was content with his one anna, and Jairam or his creditors obtained two annas and four gundas. This means that Jairam took a benefit under the compromise.

The High Court have expressed the opinion that the plaintiffs are estopped from now challenging the validity of the transaction of 1868, but in their Lordships' view, no defence arises to the defendants either from the compromise of 1868 or from anything done by the plaintiffs thereunder.

In 1868, the plaintiffs, if any of them were born, had no interest whatever in the estate of Bajrangi Lal. Even if Ganesh had been their guardian he would not have had authority to enter into any transaction with regard to the plaintiffs' prospects of succeeding to Bajrangi Lal's estate (*Amrit Narayan* v. *Gaya* (1917) 45 I.A. 35). It may well be, especially as the Transfer of Property Act had not at that time been passed, that Ganesh and Naurangi could effectively bargain together in 1868 with reference to their own prospects of being reversioners to Bajrangi Lal. The plaintiffs, however, who have upon the death of Amola become entitled to a share of the reversion, do not take through Ganesh but take directly from the last full owner. In like manner the plaintiffs do not take through Jairam and even if it be clear that by taking a benefit under the compromise of 1868 Jairam was estopped from claiming any right as Bajrangi Lal's reversioner, this proposition does not in any way affect the plaintiffs.

The High Court referred to a number of documents in considering whether the plaintiffs were bound by the compromise of 1868. It is, however, impossible to discover anything which can defeat the plaintiffs' claim from exhibits A.2, H.1, C.1, A.1 or K. The only material document is exhibit C.2 dated 4th March, 1891, a deed of sale executed by Jairam in favour of the plaintiffs wherein the compromise of 1868 is referred to as explaining why Jairam had two annas four gundas out of the three annas four gundas share of Bigu Lal. By this instrument Jairam being in need of money sold to the plaintiffs for Rs.500 in cash 13 gundas out of the one anna 13 gundas which remained to him, from the two annas four gundas before mentioned, after Munni Ram's execution sale. In the view of the learned Judges of the High Court the plaintiffs by this purchase " ratified " the compromise of 1868 and are estopped from now claiming to be reversioners to Hanuman. Their Lordships are unable to regard this transaction as sufficient to exclude the plaintiffs from the inheritance which became theirs in 1916. To all that he got from Bigu Lal's estate in 1885 Jairam had title and good title, which he could pass to a stranger: to the bulk of it he had title independently of the compromise. His transferee, if a stranger, would stand solely upon the rights of Jairam, and it seems wrong in the present case to regard the plaintiffs, who were no parties to the bargain of 1868, as in any different position because they are descendants of Ganesh. Even if one can justly allocate that part of Jairam's two annas four gundas which depended on the compromise to the later purchase of the plaintiffs rather than to Munni Ram, whom it would not hurt; the plaintiffs by accepting Jairam's title do not undertake towards third parties to make that title good in all events. Nor does their acceptance of what title Jairam had as sufficient consideration for their purchase money mean

that the plaintiffs took a benefit under the bargain of 1868 so as to oblige them to bring under that bargain independent rights of their own. Their Lordships are aware of " the favour shown by the Courts to family arrangements " [*per* Viscount Cave in *Musammat Hardei* v. *Bhagwan Singh* (1919) 24 C.W.N. 105 at 109], and it is doubtless good that family disputes should be settled and that those who agree to settle should be held to their agreement. But Ganesh in the present case can have had little chance in ordinary course of surviving Amola and when he bargained away the chances of his descendants in general in order to obtain for himself an immediate share in the estate of Narain, he was making an agreement which calls for no special favour from the Courts. In 1885 Jairam may have had equally little difficulty in preferring the bird in the hand. The plaintiffs had neither right nor power to interfere with their kinsmen's choice. Unless the plaintiffs' individual conduct makes it unjust that they should have a place among Bajrangi Lal's reversioners their legal rights should have effect. Their Lordships do not consider that the defendants have succeeded in showing that the compromise of 1868 or the actings of the plaintiffs or their kinsmen thereunder estop the plaintiffs from asserting that they are entitled as reversioners of Bajrangi Lal.

These findings dispose of the appeal, as it was not contended before their Lordships that the Courts in India were wrong either in negativing legal necessity for Amola's transfers or in negativing the plea of estoppel, based upon the circumstance that certain of the plaintiffs had acted as attesting witnesses or scribes in connection with her transfers.

The appeal must be allowed, the two decrees of the High Court set aside and the judgment of the trial Court restored. As the plaintiffs have entered into a compromise in respect of this appeal with certain of the respondents, effect will be given thereto. Their Lordships will humbly advise His Majesty accordingly. The respondents who have not compromised must pay the costs of the plaintiffs here and in the High Court.

(37333—3A) Wt. 8136—2 180 8/36 P. St. G. 338

In the Privy Council.

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DELIVERED BY SIR GEORGE RANKIN

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
Pocock Street, S.E.1.

1936