

*Privy Council Appeal No. 30 of 1944*

*Allahabad Appeal No. 26 of 1940*

Kashi Nath - - - - - *Appellant*

*v.*

Bhagwan Das and another - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 15TH MAY, 1947

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*Present at the Hearing :*

LORD SIMONDS

LORD UTHWATT

SIR JOHN BEAUMONT

[*Delivered by LORD SIMONDS*]

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This is an appeal from a judgment of the High Court of Judicature at Allahabad modifying a Decree of the Civil Judge of Ghazipur. The question raised in the appeal is as to the validity of a marriage between Bawan Das, an Agarwala by caste, and Lachmi Kuer, a Golwara by caste. At one time an issue was raised as to whether that marriage had been duly solemnized. That is no longer an issue in the case, there being concurrent findings of fact upon that question by the High Court and by the Civil Judge.

The parties to the appeal are these. Bawan Das had a first wife, by whom he had no children. He had a second wife, Musammat Bitu Kuer, by whom he had one son, Kashi Nath, the appellant on this appeal. He then married his third wife, Lachmi Kuer, by whom he had two sons, Bhagwan Das and Bishwa Nath Prasad, who are the respondents to this appeal.

Bawan Das died on the 25th August, 1923. Some years after his death the suit in which this appeal is brought was instituted by the present respondents, the sons of his third marriage, claiming against the son of his second marriage a share in their father's estate. The question is whether that marriage between Bawan Das and Lachmi Kuer, which is now admitted to have been duly solemnized, was valid. It is conceded that the marriage was valid if the Golwaras, the caste to which the third wife belonged, was a sub-caste of the Vaishya caste, of which the Agarwalas were a sub-caste.

That concession was made in view of the decision of their Lordships' Board in the case of *Gopi Krishna Kasauhan and Musammat Jaggio and Another*, reported in 63 Indian Appeals, page 295, at page 303, where their Lordships said this: "Put briefly, the position is this. The Shastras dealing with the Hindu law of marriage do not contain any injunction forbidding marriages between persons belonging to different divisions of the same Varna; and neither any decided case, nor any general principle, can be invoked which would warrant such a prohibition".

In the view which their Lordships take of this case, it is unnecessary to express any opinion upon the difficult question which would arise if it were found that the Golwaras were not a sub-caste of the Vaishya caste, but were Sudras. That is a question upon which their Lordships do not intend to express any opinion.

The single question upon which they pronounce is whether, upon the evidence adduced in this case, it has been established that the Golwaras are a sub-caste of the Vaishya caste. In approaching that question it must be remembered that here what is being considered is the question of the validity of a marriage which has been duly solemnized.

In approaching this question, their Lordships bear in mind what was said as long ago as 1869 in the case of *Inderun Valungyooly Taver and Ramasawmy Pandia Talaver and Thungamma Nachiar*, reported in 13 Moore's Indian Appeals, page 141, at page 158, where the Board, having found that there was a marriage in fact, proceeded thus: "Then, if there was a marriage in fact, was there a marriage in law? When once you get to this, namely, that there was a marriage in fact, there would be a presumption in favour of there being a marriage in law. The Zemindar, according to the usages of his country and nation, on parting with his first wife, would be naturally desirous of marrying again, and having male issue. It would be a most unlikely thing for a person of his caste to go through the ceremony of marriage if it was known that that marriage was a marriage which was invalid in law".

The validity of this marriage, duly solemnized, being in question, that presumption attaches. It is in that light that their Lordships have to review the evidence which was given on one side and the other in this case. The whole of the documentary evidence is one way. It is in favour of the view that the Golwaras are a sub-caste of the Vaishya caste. There is no documentary evidence whatever in favour of the contrary view, nor is the affirmative evidence in favour of the Golwaras being a sub-caste by any means negligible.

Their Lordships would refer only to two documents of a different character. In the Final Report on the Seventh Settlement of the Azamgarh District of the United Provinces made in 1908 by the Settlement Officer, there are headings showing the different castes, the sub-castes and the number of persons of the several sub-castes. Included in that list is the "Trading caste", which is the Vaishya caste. Under that heading appear "Agarwala: 33,966", then certain other sub-castes and then the sub-caste with which we are concerned, "Golwara: 2,190". That is a clear recognition that the Golwaras are a sub-caste of the Vaishya caste or Trading caste.

The other document to which their Lordships would refer is of a different character. It is a paragraph dealing with Baniyas taken from the Statistical Descriptive and Historical account of the North Western Provinces of India, published in 1883. It is true that this paragraph deals with Baniyas and not with Vaishyas, but it seems clear to their Lordships that, although the two words may not always be used strictly in the same sense, yet, in the paragraph under consideration, what the learned author is dealing with is in fact the Vaishya caste, whom he calls Baniyas. In that paragraph he refers to the sub-castes or classes of the Trading caste and included amongst them are again the sub-castes with which their Lordships are concerned in this case, namely, the Agarwalas and the Golwaras.

Those are two examples of the documentary evidence which supports the view put forward by the respondents.

As to the oral evidence, very different views were taken by the Civil Judge and by the High Court upon its value. The Civil Judge expressed himself thus: "A resumé of the defendant's evidence on the point would pointedly show that the defendant's witnesses are far more respectable and men of means than those given by the plaintiffs and that the defendant's witnesses unanimously declare that under a custom prevalent in the 'baradri' no Agarwala can marry outside the community". That

sentence is not directed immediately to the point with which their Lordships are now concerned, but the passage shows the view which the Civil Judge took of the testimony.

The High Court, on the other hand, thus expressed themselves: "On comparing the plaintiffs' evidence with that of the defendant it will be found that the evidence of the defendant is very poor and unreliable. The plaintiffs' evidence receives full support from the documentary evidence whose authenticity cannot be disputed".

If their Lordships had to judge between the diverse opinions expressed by these Courts, they would unhesitatingly decide in favour of the view expressed by the High Court, for upon the analysis of the evidence which has been made it appears to them that there is more weight to be attached to the evidence given on behalf of the plaintiffs than to that given on behalf of the defendant; but, whatever view they might take upon that matter if there were no documentary evidence, it appears to them that the documentary evidence really clinches the matter and can leave them in no doubt that, so far from the appellant displacing the presumption of the validity of this marriage, the evidence that has been given strongly supports that view.

Accordingly, their Lordships sustain the opinion expressed upon this matter by the High Court and will humbly advise His Majesty accordingly. The appeal will be dismissed with costs.

In the Privy Council

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KASHI NATH

*v.*

BHAGWAN DAS AND ANOTHER

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DELIVERED BY LORD SIMONDS

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