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Lala Rup Chand Vs. Jambu Parshad

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Court : Mumbai

Decided On : Mar-09-1910

Reported in : (1910)12BOMLR402

Judge : Macnaghten, ;Collins, ;Arthur Wilson and ;Ameer Ali, JJ.

Appellant : Lala Rup Chand

Respondent : Jambu Parshad

Disposition : Appeal dismissed

Judgement :

Arthur Wilson, J.

1. This is an appeal from a judgment and decree of the High Court of Allahabad, which set aside those of the Subordinate Judge of Saharanpur and dismissed the plaintiff's suit.

2. The plaintiff sued as the nearest reversionary heir of one Lala Mittar Sain, a member of the Jain Agarwala Community, who lived and died in the district of Saharanpur.

3. The defence to the plaintiff's claim was based on the allegation that the defendant Jambu Parshad was the adopted son of the deceased Lala Mittar Sain, adopted by his senior widow

4. After the death of her husband, and it was contended that the title of the adopted son excluded any right that might otherwise have existed in the plaintiff. The first Court decided against the adoption and made a decree in the plaintiff's favour. The High Court held that the adoption had taken place in fact and was valid in law, and therefore reversed the decision of the first Court. Hence the present appeal.

5. That the adoption took place in fact is no longer in dispute. The sole/question which has been seriously argued is whether the adoption was valid in law, the objection to the adoption being based upon the fact that the adopted son was already married at the time of his adoption.

6. So far as the pure law applicable to the case is concerned there is nothing in doubt. There is no longer any question that by the general Hindu law applicable to the twice born classes, a boy cannot be adopted after his marriage, and there is no doubt that the Agarwala Jains belong to one of the twice born classes.

7. To this rule there is an exception in the case of persons governed by the Mayukha, but that exception has no application to the present case. Other exceptions have been held to exist by custom. Again there is no doubt that the Agarwala Jains are governed by the ordinary Hindu law (which for the present purpose means the Mitakshara law) unless and until a custom to the contrary is established.

8. The question in the present case was, and is, whether a custom applicable to the parties concerned, and authorizing the adoption of a married boy, has been established. This is strictly speaking a pure question of fact determinable upon the evidence given in the case.

9. The custom alleged in the pleading was this: ' Among the Jains Adoption is no religious ceremony, and under the law or -? custom there is no restriction of age or marriage among them.' And that appears to be the custom found by the High Court to exist. But upon the argument before their Lordships it was strenuously contended that the evidence in the present case, limited as it is to a comparatively small number of centres of Jain population, was insufficient to establish a custom

so wide as this, and that no narrower custom was either alleged or proved.

10. In their Lordships' opinion there is great weight in these criticisms, enough to make the present case an unsatisfactory precedent if in any future instance fuller evidence regarding the alleged custom should be forthcoming.

11. But with regard to the relative rights of the parties to the present case, who have had full opportunity of producing whatever evidence they desired to produce, the case was properly dealt with by the High Court upon the evidence before it. And their Lordships are not prepared to dissent from the finding of the learned Judges of the High Court that the evidence in the case supported the custom.

12. Their Lordships will humbly advise His Majesty that this appeal should be dismissed. The appellants will pay the costs.

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