

Durga Devi Vs. Shambhu Nath

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Court : Mumbai

Decided On : Feb-26-1924

Reported in : (1924)26BOMLR557

Judge : Shaw, ;Phillimore, ;Blanesburgh, ;John Edge and ;Salvesen, JJ.

Appellant : Durga Devi

Respondent : Shambhu Nath

Disposition : Appeal dismissed

Judgement :

John Edge, J.

1. This is an appeal by Mussammat Durga Devi and her minor son Kali Sahai, two of the defendants to the suit, from a decree, dated March 10, 1916, of the Chief Court of the Punjab, which reversed a decree, dated July 31, 1914, of the District Judge of Amritsar, which had dismissed the suit. The respondents are Shambhu Nath, who is the plaintiff in the suit, and Arjan Singh and Nathu Mal, who are two of the defendants to the suit and have taken no part in this appeal or in the litigation.

2. The pedigree of the family to which Shambhu Nath belonged is as follows.

3. The suit was brought in the Court of the District Judge of Amritsar on October 21, 1913, for a decree for the possession of two houses, a well, a Kothri and a shop in Amritsar, of which the plaintiff alleged that he, as the adopted son of Ram Chand, was the owner. His case is that he was adopted by Pandit Ram Chand in September, 1896, who was the owner of the property in question, and died on July 13, 1897. The case of the defendants Durga Devi and Kali Sahai, her minor son, is that plaintiff was not adopted by Ram Chand and that the suit is barred by the law of limitation. The other two defendants, who have no title if the plaintiff is the adopted son of Ram Chand and is not debarred from maintaining the suit by the law of limitation, did not defend the suit and were, by an amendment of the decree of the Chief Court, made not liable for costs.

4. It will be convenient to consider whether Shambhu Nath was validly adopted by Ram Chand before considering whether Shambhu Nath's suit is barred by the law of limitation.

5. Shambhu Nath was the third son of Hari Ram, a brother of Ram Chand. They belonged to a family of Brahmins which came from Kashmir and settled in Amritsar in the Punjab, and Section 5 of Act IV of 1872, the Punjab Laws Act, 1872, as amended, applied to that family of Kashmir Brahmins. By that section it is, so far as is material to this suit and appeal, enacted as follows:--

5. In questions regarding succession,...adoption,...or any religious usage...the rule of decision shall be--

(a) any custom applicable to the parties concerned, which is not contrary to justice, equity or good conscience, and has not been by this or any other enactment altered or abolished, and has not been declared to be void by any competent authority;

(6) the Muhammadan law, in cases where the parties are Muhammadans, and the Hindu law, in cases where the parties are Hindus, except in so far as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Act, or has been modified by such custom as is above referred to.

6. The adoption alleged in this suit to have been made was an adoption applicable by custom to the family of Kashmiri Brahmins to which Ram Chand and Shambhu Nath belonged, and had not been altered or abolished or declared to be void.

7. At the date of the alleged adoption Shambhu Nath was seventeen years old and he had been invested with the sacred thread, that is the ceremony of Upanayana had already been performed upon him. There was no evidence as to what school of Hindu law Kashmiri Brahmins living in Kashmir are subject to, and it has not been suggested that this family of Kashmiri Brahmins was living in the Punjab subject to any school of Hindu law peculiar to Kashmir. They were, however, Brahmins by caste, and consequently were Hindus of a twice born class.

8. In considering whether a family custom as to adoption was proved in this suit it is advisable to bear in mind what Lord Buckmaster said in delivering the judgment of the Board in *Abdul Hussein Khan v Bibi Sona Dero* (1917) L.R. 45 IndAp 14, as to the proof of family customs in India. After pointing out that it is incumbent upon a plaintiff to allege and prove the custom upon which he relies, Lord Buckmaster said:--

Their Lordships have carefully considered the difficulty of applying all the strict rules that govern the establishment of custom in this country to circumstances which find no analogy here. Custom binding inheritance in a particular family has long been recognized in India (see *Soorendranath Roy v. Mussamut Heeramonee Burmoneah* (1868) 12 M.I.A. 91 although such a custom is unknown to the law of this country, and is foreign to its spirit. Customs affecting descent in certain areas or customs affecting rights of inhabitants of a particular district are perhaps the nearest analogies in this country. But in England, if a custom were alleged as applicable to a particular district, and the evidence tendered in its support proved that the rights claimed had been enjoyed by people outside the district, the custom would fail. This principle, however, it seems to their Lordships, ought not to be applied in considering such a custom as the one claimed here, since, if the custom were in fact well established in one particular family, whether it were enjoyed or no by another family, would not affect the question, since the custom might be independent in each case, and the evidence would not establish that the custom

failed by reason of the inability to define the exact limits within which it was to be found when once it was established that, within certain and definite limits, it undoubtedly existed

9. There are concurrent findings of the trial Judge and the Chief Court that Shambhu Nath was in fact adopted by Ram Chand, and there was evidence upon which those Courts could so find, and those findings as to the factum of the adoption must be accepted as conclusive. Each Court also found that the adoption was valid, but apparently for different reasons. The trial Judge apparently relied for his finding that the adoption was valid, not upon the evidence as to custom, but upon a judgment of the Bombay High Court in *Lakhshmappa v. Ramava* (1875) 12 B.H.C.R. 364 to which this family of Kashmiri Brahmins were not parties. He also referred to Trevelyan's *Hindu Family Law*, edition of 1908, page 148. He did not, however, express any opinion that on the evidence before him in this suit the adoption was invalid. He, however, dismissed the suit on the ground set up by Mussamat Durga Devi and her son in their written statement that the suit was barred by the law of limitation. He dismissed the suit without costs. From that decree Shambhu Nath and Mussamat Durga Devi and her son appealed. The Chief Court found on the evidence that by the custom of this family the adoption was valid, and that the suit was not barred by limitation, and decreed the suit with costs. The Chief Court dismissed the appeal of Mussammat Durga Devi and her son with costs.

10. Shambhu Nath, the plaintiff, did not in his plaint state in what particular form he had been adopted by Ram Chand, but he alleged in his plaint that he was the adopted son of Ram Chand, and that Ram Chand, son of Pandit Devi Das, by caste a Kashmiri Pandit, resident of Amritsar, had been the owner of the property, specified in his plaint, in respect of which he, Shambhu Nath, claimed a decree for possession. As Shambhu Nath had been adopted in September, 1896, openly and in the presence of many members of the brotherhood, the form of his adoption must have been perfectly well known in the family and by Mussammat Durga Devi. In the written statement which she filed in the suit on behalf of herself and her son she confined herself, so far as the question of Shambhu Nath's adoption was concerned, to a simple denial that Shambhu Nath was the adopted son of Ram

Chand. On those pleadings Shambhu Nath was, in order to succeed in his suit, bound to prove that he had been validly adopted.

11. On behalf of Shambhu Nath several witnesses were called, most of whom were members of the Biradri, and all of whom, so far as appears, were persons of respectability. Some of them who were members of the Biradri lived in Amritsar, others lived in Lahore. Ram Chand was a Guru, that is a religious teacher and spiritual guide amongst these Kashmiri Brahmins of Amritsar, and was obviously much respected, and he must have known what were the essentials to a valid adoption in the family to which he belonged. As has already been mentioned Shambhu Nath was seventeen years old when the adoption took place, and he had been then already invested with the sacred thread; those are facts which must have been known by the members of the Biradri and by other friends of the family who attended the adoption, several of whom gave evidence in support of his case. It is not suggested that any one who attended the adoption had questioned in any way the right to validly adopt in this family a boy or young man who had previously been invested with the sacred thread. Not one question was put in cross-examination of any witness for the plaintiff to suggest that Shambhu Nath could not have been validly adopted because he had been previously invested with the sacred thread, and the cross-examination of the plaintiff's witnesses was directed to make out a case that the adoption was invalid by reason of Shambhu Nath having been seventeen years old when the adoption took place. There was abundant evidence that there was no limit of age for a valid adoption in this family and the contention that there was a limit of age within which a valid adoption could be made in this family was subsequently abandoned. After the plaintiff's evidence had been closed, some witnesses were called on behalf of Musammat Durga Devi and her son, who, if their evidence was believed, proved that a boy of seventeen years of age could not be adopted.

12. One of the witnesses for the defendants appellants was Kishori Lal, a Kashmiri Pandit of Delhi. He stated that 'a boy who has gone through his janaoo ceremonies (ceremonies of investiture with the sacred thread) can never be adopted' and 'we follow Mitakshara.' It may be mentioned with regard to his evidence that the Chief Court of the Punjab had held in *Maharaj Narain v. Banoji*

(1906) 34 P.R. 147., that Kashmiri Brahmins of the Delhi District were proved to be governed in matters of adoption by custom and not by the principles of the Mitakshara form of Hindu Law.

13. Another witness for the defendants appellants was Mohan Lal, a Kashmiri Brahmin of Lahore. He stated that 'a boy who has gone through the janaoo ceremony cannot be adopted' and 'we follow Dharam Shastar in matter of janaoo and adoption'; he further stated 'according to Hindu Law janaoo ceremonies cannot be performed after the age of 11 or 12 years. I do not know whether there is any age restriction as regards adoption. I have not read the Hindu Law.' It is not necessary for their Lordships to consider what is the law of the Mitakshara or of the Dharma-Shastras, as the question on which this suit depended is one as to a custom of adoption in this family of Kashmiri Brahmins. The plaintiff was not entitled to call rebutting evidence on the question of adoption as his case as to the alleged adoption had been closed.

14. After a careful consideration of the evidence their Lordships have come to the conclusion that Shambhu Nath was validly adopted by Ram Chand. His adoption was recognised as valid by the Biradri and by the friends of the family, and so far as appears its validity was not questioned by any one from 1896 until the present dispute arose in 1913. When Ram Chand died his brother Hari Nath and two elder sons of Harinath were living, but it was Shambhu Nath who performed the funeral obsequies of Ram Chand and of Ram Chand's widow, and on Ram Chand's death Shambhu Nath succeeded him as the Guru. It was Shambhu Nath who gave Musammat Durga Devi away in marriage, and it was Shambhu Nath who paid the not inconsiderable expenses of the marriage.

15. The contention of the appellants that this suit is barred by the law of limitation on the ground that Musammat Umraoti, the widow of Ram Chand, and Musammat Indrani, and after her Musammat Durgadevi held adverse possession of the property in suit for more than twelve years was, in the circumstances of the case, in their Lordships' opinion, so impudent and unfounded contention of the appellants. The family house at Amritsar was naturally the proper place in which Umraoti, Indrani and Durga Devi until her marriage should live. Shambhu Nath

permitted them as female members of the family to live in that house. He had obtained employment at Lahore in the service of the railway company. The rents of the property at Amritsar were trifling and he allowed Umraoti, Indrani and Durga Devi to enjoy these rents for their maintenance as female members of his family. There was no twelve years' adverse possession of any of the property in suit.

16.Their Lordships will humbly advise. His Majesty that this appeal should be dismissed with costs.

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