

**Mitar Saln and anr. Vs. Data Ram**

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**Court :** Allahabad

**Decided On :** Jan-07-1925

**Reported in :** AIR1926All7; 87Ind.Cas.724

**Appellant :** Mitar Saln and anr.

**Respondent :** Data Ram

**Judgement :**

**Mukerji, J.**

1. These two appeals arise out of the same suit instituted by two persons, Mitter Sen and Gurusaran Das, against one Data Ram. It appears that one Dalip Singh, deceased, a Jain Agarwal, died some years ago and was succeeded by his wife Mt. Manohri. Mt. Manohri, shortly before her death, adopted Data Ram. The adoption took place on 27th October 1918. The plaintiffs are Manohri's brothers. On 12th December 1918 Mt. Manohri executed a document which is described in the document itself as a will and a deed of adoption. By this document she declared that she had taken Data Ram, a near relation of hers, as her adopted son and that on her death he would be the absolute owner of the entire property. She however directed by this document Data Ram to make certain payments. Among these directions one was to the effect that Data Ram was to pay a sum of Rs. 15,000 to the plaintiffs, her brothers, within a period of 15 years. At about the end of the document Mt. Manohri declared that in case Data Ram refused to pay the

various sums directed by her to be paid, the money might be realized from her estate, if necessary, by auction sale of the property. Two days later, viz., on 14th December 1918, Data Ram himself executed a document which is described as an agreement. He recited that he had been adopted in pursuance of instructions from Dalip Singh and that Mt. Manohri had made certain arrangements of her property according to the directions of the said Dalip Singh. By this document, Data Ram declared that he would abide by all the conditions laid down in the two documents executed by Mt. Manohri (one dated 12th December 1918 and the other said to be dated 13th December 1918, but not forthcoming), and further declared that his adoption was conditional on his acceptance of the stipulations contained in the said documents. He bound himself to carry out those terms and added that in the case of his failure the conditions might be enforced in Court.

2. The plaintiffs brought the suit with the allegation that in spite of the execution of the documents Data Ram had denied the plaintiffs' right to receive the sum of Rs. 15,000 and accordingly they had asked for a declaration that they were entitled to that sum of money and they further prayed that a charge might be declared to exist over the entire property of Mt. Manohri in the hands of Data Ram. Data Ram's defence was that he had executed the document dated 14th December 1918 while he was yet a minor, that it was void for want of consideration, that it was executed under undue pressure, that the suit was premature, and that the plaintiffs had no right of action. The learned Subordinate Judge found in favour of the plaintiffs except in this: that he found that there was no charge on the property. The learned Subordinate Judge accordingly decreed the suit for a declaration of Data Ram's liability only. In this Court both the parties have appealed. The contention of Mitter Sen and Gurusaran Das is that a charge ought to have been declared over the entire property in the hands of Data Ram. The contentions of Data Ram are several, but only the following have been urged before us:

(1) The documents dated 12th and 14th December 1918 were executed after the adoption and were, therefore, not binding on the defendant.

(2) The conditions laid down in the documents are void in law.

(3) The plaintiffs have no right to sue. The question of defendant's minority was raised, but was not argued upon. When the appeals came for hearing before this Court two issues were remanded. They were directed towards the nature of the estate held by Mt. Manohri. The findings of the learned Subordinate Judges on those issues are to the effect that Mt. Manohri held only a life interest in the property of her husband which was ancestral in the latter's hand and that she was not competent to make any Will with respect to the said property. The learned Counsel for the parties have accepted the correctness of these findings, although the plaintiffs filed objections to the findings. We have now to take it that the property was inalienable in the hands of Mt. Manohri.

3. The questions for determination in these two appeals therefore are:

(1) Whether it was agreed at the time of the adoption, and as a condition precedent to the adoption, that Data Ram would make the several payments he was directed to make by Mt. Manohri's document dated the 12th of December 1918.

(2) Whether if such was not the case the agreement of Data Ram is void for want of consideration.

(3) Whether the plaintiffs are competent to maintain the suit although they were no parties to the documents of the 12th and 14th of December 1918.

(4) Whether the plaintiffs have any charge over the property in Data Ram's possession.

4. Point No. 1.-It is expressly stated in the deed executed by Data Ram that his adoption was made conditional on his acceptance of the term enunciated in the deed of the 12th of December 1918 and another deed of the 13th of December 1918 which is not forthcoming. It is common ground that the adoption was effected on the 27th of October 1918 and not exactly 2 1/2 months before the 12th of December 1918 as stated in the document executed by Mt. Manohri on that date. A deed of adoption is more often than not executed after the ceremony of adoption has taken place. The law does not require that an adoption should be evidenced

by a registered deed. But as a precautionary measure, people do execute such deeds. In the circumstances any agreement that may have taken place before and as a consideration of the adoption of Data Ram would find place in the deed of adoption and in any deed that the adopted son may himself execute. There can be no doubt that the two documents of the 12th and 14th of December 1918 together form one document and are complementary of each other. Although Mt. Manohri's document purports to have been executed on the 12th of December it was not registered till after the deed executed by Data Ram had been registered. The two documents were registered on one and the same date, viz., on the 14th of December 1918, But the deed executed by Data Ram was registered at the Sub-Registrar's office between 4 and 5 p.m., while the deed executed by Mt. Manohri was registered at her house between 6 and 7 p.m., on the 14th of December. Thus, we find that in a written agreement between the two parties, viz., Mt. Manohari and Data Ram certain terms were recorded. Under the circumstances, the burden of proving that the agreement does not recite the true state of things must lie heavily on the party who so alleges.

5. The small amount of oral evidence that has been adduced does not satisfy me that it is untrue that before the adoption, the defendant, who was an adult at the date of adoption, had not agreed that he would make certain payments desired by Manohri, as a condition precedent to his adoption. I hold therefore that it was agreed at the time of adoption and as a condition precedent to the adoption that Data Ram would make the several payments he was directed to make by the deed of the 12th of December 1918.

6. Point No. 2.-From my finding on point No. 1, it follows that the agreement executed by Data Ram is supported by consideration. But it has been urged that the consideration is void and repugnant to law. In support of this argument two cases have been relied upon by the learned Counsel for Data Ram. These cases are Bhaiya Rabidat Singh v. Indar Kunwar (1889) 16 Cal 556 and Balkrishna Motiram Gujar v. Shri Uttar Narayandev AIR 1919 Bom 101.

7. These cases and several other cases see for example Vyasacharya v. Venkubai (1913) 37 Bom 251, Visalakshi Ammal v. Sivaramien (1904) 27 Mad 577

and *Ravji v. Lakshmibai* (1887) 11 Bom 381] deal with cases in which the agreements for the Court's consideration were those made by the natural guardian of a minor who was adopted by the widow. The ratio decidendi of these cases is that where the condition imposed by the natural guardian of the minor was to his entire disadvantage and to the advantage of the widow or a third party, the condition was ultra vires of the natural guardian and could not be enforced in a Court of law. It was held that a widow could stipulate that she should be in possession of the property of her husband during her lifetime. But it was held that if she wanted that a portion of her husband's property should go to her daughter who has no right to inherit, the adopted son could repudiate the arrangement. This last-mentioned proposition was laid down in the case of *Vyasacharya v. Venkubai* (1913) 37 Bom 251. None of these cases deals with the circumstances in which an adult person is adopted and he agrees to a loss of a portion of the property that would go to him except for the agreement. Such a case arose in *Kashibai Ramchandra v. Tatya Genu* AIR 1916 Bom 312. In this case the last owner of the property left him surviving a widow and a predeceased son's daughter. The widow made an adoption and executed a deed of adoption and also a will. By this will she gave a portion of the property to her deceased son's daughter. It was held that the deed of adoption and the will were to be read together, and so read they constituted a single family arrangement. It was further held that the adopted son, being of full age, and having deliberately accepted the family arrangement and its advantages, must be held to it. It was further held that the disposition in favour of the grand daughter was good, not because it was a bequest by the widow, but because it was a part of the single family arrangement which all parties accepted. This case in *Kashibai Ramchandra v. Tatya Genu* AIR 1916 Bom 312 is on all fours with the case before me. According to the arrangement arrived at by means of the two documents dated respectively the 12th and the 14th of December 1918, as a condition precedent to his adoption, Data Ram agreed that he would make certain payments to certain persons. By executing the agreement Data Ram took the advantage of obtaining property which has been valued by himself, at something between two and three lakhs of rupees and laid himself under an obligation to pay a sum of a little over Rs. 20,000 to different persons. Even this comparatively small sum was not to be paid at once but gradually and in the

course of a long number of years. The question under the circumstances is whether Data Ram can now resile from the agreement into which he deliberately entered and the full advantage of which he has taken. He has admitted in his deposition that his father and brother are insolvents and that he does not possess any property on the face of the earth beyond what he got as the adopted son of Mt. Manohri. The plea taken of undue influence and pressure have been abandoned and for the simple and sure reason that there was no evidence to substantiate it. In my opinion it would be highly improper on the part of Data Ram to repudiate the transaction altogether, he having had the full advantage of it. It must be remembered that the parties are Jains and adoption among them is more a matter of custom than of spiritual necessity. Even a married man may be adopted among them. I hold therefore that the agreement is not void for want of consideration and the consideration is good and enforceable in a Court of law.

8. Coming to the third point: The argument on this point is that if there was an agreement it was between Mt. Manohri and Data Ram, that the plaintiffs were no parties to the agreement and that therefore they were not entitled to sue for the specific performance of the same. If we regard the case as a family arrangement as the transactions before their Lordships in the Bombay case [*Kashibai Ramchandra v. Tatyia Genu* AIR 1916 Bom 312] were regarded, the case would come directly within Section 23 of the Specific Relief Act and the plaintiffs would be entitled to sue as being beneficially entitled under the arrangement. If however the case cannot be brought within Clause (c) of Section 23 of the Specific Relief Act, it appears to me that S, 23 of the Specific Act does not purport to be and is not exhaustive of the cases in which specific performance of a contract may be granted in favour of a person. The section itself simply says that specific performance of a contract may be obtained by the persons mentioned therein. It does not say that specific performance of a contract cannot; be obtained by any person other than those mentioned in the section. The law laid down in *Tweddle v. Atkinson* (1861) 1 B & S 393 has not been followed as lawfully applicable to India, in the case of *Khwaja Muhammad Khan v. Husaini Begum* (1910) 32 All 410. The case before their Lordships of the Privy Council might possibly be brought within Clause (c) of Section 23 of the Specific Relief Act as being the case of a contract in settlement on marriage. But it is significant that their Lordships did not refer to

this provision of the Indian law. The lead of the Privy Council which established in effect the list of parties who are entitled to sue for a specific performance of a contract as given in Section 23 of the Specific Relief Act was not exhaustive, was followed in Calcutta in the case of Deb Narain Dutt v. Ram Sadhan Mandal AIR 1914 Cal 129, which again was followed in this High Court in Nehal Singh v. Fateh Chand AIR 1922 All 426. In the two last mentioned cases the persons who sued to enforce the contract were no parties to them. The case of Shuppa Ammal v. Subramaniam (1910) 33 Mad 238 may also be cited. No doubt a contrary opinion was expressed in Iswaram Pillai v. Taregan AIR 1914 Mad 701, but there it was laid down (at p. 761) that in certain cases a stranger could sue. Some of these cases were enumerated as creation of a trust in favour of the plaintiff, the creation of a charge on immovable property in favour of the plaintiff, where the promisor is estopped owing to transactions between the plaintiff and the promisor and where there is a settlement on marriage in which the plaintiff is beneficially entitled.

9. Assuming that the present case is one in which the plaintiffs are not directly entitled to sue to enforce the specific performance of the contract executed by Data Ram, I should think that the present case easily falls within the first two conditions laid down in the case of Iswaram Pillai v. Taregan AIR 1914 Mad 701 just quoted. I will now show how such is the case.

10. Data Ram by the document executed by him said: 'As regards the said documents I declare that I shall abide by all the conditions laid down therein.... I, therefore, covenant and bind myself that should I deviate from fulfilling any of the terms when the person in whose favour the said condition might be deemed may have it enforced by the Court.' The conditions are recorded in Mt. Manohri's document dated the 12th of December 1918 and one of the conditions is that a sum of Rs. 15,000 would be paid to the plaintiffs in the course of 15 years. Under Section 3 of the Indian Trusts Act (Act II of 1882): 'A trust is an obligation annexed to the ownership of property,... declared and accepted by him (owner) for the benefit of another or of another and the owner.' The declaration that Data Ram expressly made was to the effect that his adoption was conditional on his accepting the stipulation mentioned in Mt. Manohri's deed and further that he would abide by the conditions. There is, therefore, a declaration of an obligation in

favour of certain persons and that obligation is annexed to the ownership of Data Ram's property. The document executed by Data Ram being a registered one all the requirements of law are fulfilled and the document would operate as a deed of trust binding on Data Ram. It will be noticed that Data Ram expressly gives to the persons mentioned in the document executed by Mt. Manohri an authority to sue him in a Court of law in case of any deviation by him from the terms of it. Even if Data Ram had not granted such authority to enforce the obligation against him, the obligation could be enforced against him under Section 56 of the Indian Trusts Act. There can, therefore, be no doubt that even if we accept the statement of law as made in the case of *Iswaram Pillai v. Taregan* AIR 1914 Mad 701, the present case fully falls within the scope of it. Further, it appears to me that the plaintiffs are entitled to have a charge on Data Ram's property. This point will be discussed under Issue No. 4. If this be the case the plaintiffs will have an additional title to maintain the suit.

11. Point No. 4: I have already stated as my opinion that the two documents of the 12th and 14th of December 1918 should be treated as one transaction entered into by two persons. Mt. Manohri expressly declared that the moneys which Data Ram was to pay on her death would be recovered from her estate in case of non-payment. This would evidence an intention to create a charge over the estate of Mt. Manohri. Data Ram in the deed executed by himself accepts these terms and says that the terms could be enforced against him in a Court of law. It is true he does not say that the moneys payable by him could be recovered from the estate in possession, but the intention is clear. It is to be noted that the main document is the one executed by Mt. Manohri and it alone contains all the stipulations entered into between the mother and the son. The deed executed by Data Ram is a short one and it was found unnecessary to repeat all the conditions already put into the deed executed by Mt. Manohri. I am of opinion that Data Ram did charge the entire estate in his hands with the payment of the several items enumerated in Mt. Manohri's deed. The plaintiffs are therefore, entitled to a declaration of the charge they ask for.

12. The result is that I would dismiss the defendant's appeal with costs including counsel's fee in this Court on the higher scale and would allow the plaintiffs'

appeal with costs granting them a declaration that they have charge for the sum of Rs. 15,000 over the entire property owned by Data Ram as the adopted son of Dalip Singh. The costs due to the plaintiffs-appellants would include counsel's fees in this Court on the higher scale.

**Lindsay, J.**

13. I regret that I am unable to concur in the judgment of my learned brother. In my opinion the plaintiffs are not entitled to any relief and I hold that their suit should have been dismissed by the Court below.

14. The main facts of the case have been set out in the judgment of my learned colleague and need not be recapitulated here. I proceed at once to an examination of the case disclosed in the plaint. It is alleged in the first place that Mt. Manohri was the own sister of the plaintiffs and that at the time of her death she was full owner and in possession of considerable property both movable and immovable.

15. It was next asserted that by means of a document executed on the 12th December 1918, and which is described as a combination of a will and a deed of adoption, Mt. Manohri bequeathed her estate to the defendant Data Ram, her adopted son, subject to certain conditions and provisions, one of which was that a sum of Rs. 15,000 was to be paid to the plaintiffs out of the estate.

16. It was then stated that by a deed executed on the 14th December 1918 the defendant Data Ram accepted all the conditions and provisions referred to above and that he was bound to discharge them.

17. It was pleaded that the defendant had come into possession of the property on the death of Mt. Manohri which took place on the 15th December 1918, and that on various dates subsequent he had repudiated his liability to pay the sum of Rs. 15,000 to the plaintiffs.

18. The reliefs which the plaintiffs claimed on these allegations were:

(1) a declaration of the defendant's liability to pay them Rs. 15,000; and

(2) a declaration that the entire property of Mt. Manohri in the hands of the defendant or his transferees was subject to a charge to the extent indicated.

19. It is clear then that the case for the plaintiffs was that Mt. Manohri being full owner of the property had bequeathed it to the defendant subject to a charge in their favour and that by reason of the agreement between Mt. Manohri and the defendant constituted by the deeds executed on the 12th and 14th December 1918 respectively the plaintiffs were entitled to enforce the charge.

20. It is to be observed here that the plaintiffs were no parties to the agreement just mentioned nor is it pleaded, nor could it be pleaded that any consideration for the agreement moved from them. They are strangers alike to the consideration and the contract and have no right of suit unless they can establish that there was over and above a mere contract a conveyance of some interest in their favour which they are entitled to enforce either in law or equity.

21. While it is true that the doctrine in *Tweddle v. Atkinson* (1861) 1 B & S 393 has been held not to apply in India, it is not to be inferred from the judgment in which this principle was laid down that there is any rule of general application in India which enables persons to bring suits upon contracts to which they are no parties. That is so is apparent from the judgment of Lord Macnaghten in the case of *Jamna Das v. Ram Autar* [1912] 34 All. 63. The earlier case decided by their Lordships of the Privy Council in which the dictum regarding the rule in *Tweddle v. Atkinson* (1861) 1 B & S 393 occurs is *Khwaja Muhammad Khan v. Husaini Begum* (1910) 32 All 410 and a reference to the judgment shows that the right of suit accorded to a third party in that case was granted on the ground that a charge upon specific immovable property had been by the agreement created in her favour. It was held in the circumstances that the plaintiff was entitled to proceed in equity to enforce her claim.

22. The whole law on this subject has been discussed by a Bench of the Madras High Court in *Iswaram Pillai v. Taregam* AIR 1914 Mad 701 and I agree with the view which is there taken.

23. There can in my opinion, be no right of suit by a stranger to the agreement unless it can be shown that there has been a charge created in his favour or that under the agreement he is entitled to some beneficial interest as a cestui que trust.

24. To return now to the case set out in the plaint, it has been pointed out by my learned brother that when these appeals first came up for hearing it was found necessary to remit two issues to the Court below in order to have it ascertained (1) whether the property which was in Mt. Manohri's possession when she died, or any portion of it, belonged to her absolutely or whether it was in part or in whole the ancestral property of her husband Dalip Singh, and (2) whether Mt. Manohri was competent to make a Will so as to bind the defendant by its terms. The Court below has found that the entire property which was in Mt. Manohri's possession was ancestral property in the hands of her husband and that accordingly she had under the Hindu Law no power to dispose of it by Will so as to bind the defendant. She had nothing more than the limited estate of a Hindu female which determined as soon as the adoption was made, and the whole of the property vested in Data Ram by reason of his adoption.

25. The plaintiffs, as my learned colleague has pointed out, have not been able to controvert the finding that the property was the ancestral property of Dalip Singh and in these circumstances it is obvious that the case set up in the plaint has collapsed entirely. The document executed by Mt. Manohri on 12th December 1918 in so far as it purports to be a will, is altogether void for the purpose of creating any interest to take effect subsequent to her death, and the plaintiffs can derive no benefit from it. Data Ram, the defendant, has not come into the estate of Dalip Singh under this document. He is in by adoption as the heir of Dalip Singh.

26. In this state of things the plaintiffs have been driven to advance a case different from that with which they started in the Court below and it is now argued that as the adoption of Data Ram was made subject to certain conditions which he, being a person of full age (as he is found to be), accepted by the declarations contained in the document executed by him on the 14th December 1918, he is bound to fulfil the conditions, one of which was the payment of Rupees 15,000 to the plaintiffs.

27. In the 5th paragraph of the additional pleas set out in the defendant's written statement it was pleaded that the conditions referred to were unlawful as being contrary to the Hindu Law, and that the defendant was not bound by them. In my opinion the defendant had the right to raise this defence as against the plaintiffs who, as I have already pointed out, are strangers to the agreement and from whom no consideration has proceeded. They are not the 'promisees' under the agreement evidenced by the two documents. Nor has it been pleaded, nor was it possible for been plaintiffs to plead an estoppel against Data Ram. Their position has not in any way been altered by any declaration or conduct on the part of the defendant.

28. We have then to examine the validity of these conditions sought to be imposed upon Data Ram in connexion with his adoption. Pausing here it may be noted that the conditions first appear in these two documents which on the finding of the Court below were executed about 1 1/2 months after Data Ram was taken in adoption. It is to be noted that in the plaint nothing was said as to these conditions having been imposed or accepted, before or at the time of the adoption. But on the 14th June 1921, the plaintiffs' pleader put in an application to be found at page 17 of our printed record in which it was stated that it was the plaintiffs' case that the conditions had been settled before the adoption took place. The defendant in para. 10 of the further pleas in the written statement had denied that the adoption had been made subject to any conditions and in para. 11 it was further set out that the so called conditions had been put forward about 2 1/2 months after adoption had taken place.

29. The plaintiffs by their petition just mentioned asked for amendment of the issues in order to have the date of the conditions settled but the Subordinate Judge refused this prayer being of opinion that the issues had been adequately drawn. He did not shut out any evidence regarding this point in controversy, and the defendant himself and three witnesses (two of whom were not cross-examined) deposed that no conditions had been put forward and accepted prior to or at the time of adoption. The plaintiffs were allowed to call evidence in rebuttal, but their pleader informed the Court (see p. 27 of the printed record) that he would not call any evidence to show that the conditions had been accepted at or before

the time of adoption and the only evidence in favour of the plaintiffs on this point is to be found in a declaration contained in the deed executed by Data Ram on 14th December 1918 in which he says that Mt. Manohri had made 'some arrangements of the property at that time, i.e., the time of the adoption.' In the document executed by Mt. Manohri herself on 12th December 1918 there is no mention of any conditions having been put forward when the adoption took place 2 1/2 months before (as she says).

30. My learned colleague is, apparently satisfied that the conditions were offered and accepted at or before the time of the adoption. The matter is not so clear to me as it is to him; but there is, at any rate, the admission contained in the defendant's own deed and I am not, therefore, prepared to differ as regards this matter. To return to the question of the validity of these conditions, can a Hindu widow about to make an adoption to her husband, stipulate for gifts of her husband's estate to be made to her relations and to strangers by the adopted son after he is taken in adoption? Can she make the adoption conditional upon the adopted son's agreeing to carry out her directions to make such gifts? In my opinion she cannot. To allow an arrangement of this nature to be carried out would be to allow the Hindu widow to do indirectly what the Hindu law forbids her to do directly and I hold that no such arrangement can be enforced. Any attempt to bind the adopted son by such conditions must fail: the conditions are void and the son takes the estate free from them.

31. It is undoubtedly true that conditional adoptions are not unknown to the Hindu law as administered in our Courts, and there are numerous instances of adoptions in which conditions laid down by the adoptive father or adoptive mother have been enforced.

32. As regards conditions made by the adoptive father there is no need to consider them for if an adoptive father can dispose of his property before adoption as he chooses, he can at the time of adopting a son impose such conditions as he thinks fit upon the enjoyment of his property by the adopted son. A widow, however, stands in a very different position.

33. Most, if not all, of the cases relating to conditional adoptions made by widows have arisen in connexion with agreements made at the time of adoption between the adoptive mother and one or other of the natural parents of the child who, save in exceptional cases like the present where the parties are Jains, is a minor.

34. It has been held legitimate for a widow on such occasions to impose conditions for her own benefit provided they are reasonably designed for her own protection. The widow although the estate is divested from her by the act of adoption is nevertheless entitled to maintenance and may for that purpose make provision for the protection of the estate in her own interest.

35. The law on this subject has been discussed in a number of rulings of the Bombay and Madras High Courts and I may refer here to a judgment of the former Court reported as *Ravji v. Lakhshmibai* (1887) 11 Bom 381. In the course of the judgment the learned Judge referring to West and Buhler remarks that agreements depriving an adopted son of his immediate right of inheritance are inadmissible in accordance with strict Hindu law, but are not uncommon in practice and have been upheld by the Courts, custom and practice have moulded the law and fair arrangements for the protection of the widow's interest during her life are allowed. The question in all cases is whether the stipulations are reasonable. If they are unreasonable, such as giving the widow absolute powers of disposition over the property, they should be rejected. As an instance in which a condition imposed by the widow was rejected as unreasonable, I may refer to the case of *Venkappa v. Fakir Gowda* (1906) 8 Bom LR 346. There the agreement made by the adoptive mother with the natural parent was one by which she took power to give away a portion of her husband's estate to her own brother. It was held that the condition was unreasonable and the gift void and the adopted son was held entitled to recover the property. There are not many cases of this description to be found in the reports of the Courts of these Provinces. There is one in *Kali Das v. Bijai Shankar* (1891) 13 All 391 in which an arrangement by the widow that she should remain as manager of the estate for her life was upheld.

36. The question of the validity of conditions made by a widow at the time of adoption was raised in another case which went up from Oudh to the Privy

Council, Bhaiya Rabidat Singh v. Indar Kunwar (1889) 16 Cal 556. The question was not actually decided for it was held that, as a matter of fact, no condition has been attached to the adoption. But it was remarked in the concluding portion of the judgment that had it been otherwise, the analogy, such as it is, presented by the doctrines of Courts of Equity in England relating to the execution of powers of appointment would rather suggest that, even in that case the adoption would have been valid and the condition void. The learned Judge was here no doubt referring to the rule by which a corrupt bargain made by the donee of a special power to appoint to a certain person or class with such person or a person of such class is deemed to be void and the doctrine would, I take it, extend to a case where the bargain was made not for the benefit of the holder of the power but for the benefit of his relations and friends.

37. I would here observe with reference to the decisions of the Bombay Courts that the powers of the widow in Western India to take in adoption are more extensive than those which a widow possesses in these territories. In Bombay the widow can adopt without any consent from her husband. In these Provinces the consent of the husband is essential and while it might be conceded that consent so given would justify the widow in imposing reasonable conditions for the protection of herself and the estate from which she is entitled to draw maintenance it would not be readily assumed that the husband consented to arrangements made by the widow at the time of adoption whereby extensive portions of his estate could be transferred by way of gift to the members of his wife's family.

38. In the document executed by Mt. Manohri on the 12th December 1918 it is nowhere stated that the gift which she was purporting to make had been sanctioned by her husband. There is indeed a statement to that effect made in the subsequent deed executed by the defendant on the 14th December 1918, but it would require better evidence than this to convince me that the widow had been authorized by her husband to make these gifts and no such evidence is forthcoming.

39. In my opinion Mt. Manohri had under the Hindu Law no authority to make these gifts or to impose upon the defendant Data Ram any condition that he

should make them after adoption. The invalidity of such conditions cannot, in my opinion, be cured by showing that the adopted son, a person of full age, assented to them. The invalidity arises out of the inherent disability of the widow under the Hindu Law to give away portions of her husband's estate and an attempt to impose conditions which would lead indirectly to such alienations being made is, in my opinion, absolutely void as being ultra vires. I hold, therefore, that the defendant being entitled as against the plaintiffs to raise the plea that the conditions are invalid is also entitled to a judgment that they are invalid and are not binding upon him.

40. I cannot agree that as the result of the two documents under consideration the defendant has constituted himself a trustee for the plaintiffs and is bound in that capacity to pay them this sum of Rs. 15,000.

41. It is clear for the reasons given above that Mt. Manohri was not competent to create any trust over the estate of her husband nor has she transferred any property to the defendant with a trust attached. The defendant has taken the property as the result of his adoption; he has not taken it under the so-called will executed by Mt. Manohri. Nor am I able to spell out of the language of the document which the defendant executed on 14th December 1918 any such declaration of confidence as would place him in the position of a trustee for the plaintiffs. He has expressed his assent to certain conditions offered him by the widow and those conditions are, according to my opinion, void in law. He stands free of them, and is under no legal obligation to carry them out as effecting the property in his possession.

42. Further, even if it can be deduced from the language of these two deeds that all the formalities necessary to the execution of a deed of trust had been carried out, I should still be of opinion that the purpose of the trust being unlawful the trust could not be enforced. I have touched upon this matter already. There can be no doubt what the purpose intended by these two documents was. Mt. Manohri, had either by herself or with the assistance of members of her own family made up her mind that her relations and other friends were to be handsomely provided for out of her husband's estate and as that end could not be achieved by direct action on

her part forbidden by the Hindu law it was considered that the same end might be attained indirectly by having these deeds executed. The purpose being, in my opinion, unlawful as in contravention of the Hindu law the trust, if there is one, cannot be enforced.

43. There remains only one other matter for discussion. My learned brother following the judgment in the case reported as *Kashibai Ramchandra v. Genu* AIR 1916 Bom 312 is of opinion that the transaction evidenced by the two deeds of 12th and 14th December 1918 should be enforced as a family settlement. He also refers in this connexion to Section 23, Specific Relief Act, with this I cannot agree.

44. The facts of the Bombay case to which he refers are, in my judgment, very different 'from those with which we are concerned here.

45. A Hindu, Bapurao died leaving a widow, his son's widow and his son's minor daughter. Before his death he recommended his wife to adopt the defendant Anna who was his own brother's son. This she did by executing a deed of adoption on the 10th June 1895, and by a second deed of even date which purported to be a Will she made a bequest in favour of her deceased son's minor daughter. This Will was attested by the adopted son (who was of full age) and by his father and his brother, the latter being a qualified pleader.

46. The daughter sued for possession of the property bequeathed to her. It was held that although the disposition by Will in the plaintiffs' favour was bad she was entitled to succeed on the ground that there had been a family arrangement to which the adopted son was a party and which he deliberately accepted.

47. One thing at least is apparent from this statement of the facts and that is that all the persons concerned were members of the same family, i.e., the family to which Bapurao belonged, and in that sense it may be said that the transactions entered into were between members of the same family and related to property belonging to that family concerning which there was some dispute.

48. But I am quite unable to discern any case of a family arrangement in the present suit. I have always understood that the arrangements which go by this

name are arrangements arrived at by members of the same family in settlement of doubtful claims, cases in which there being uncertainty as to the rights of the various claimants, the dispute is composed by a settlement based upon the acknowledgment of pre-existing title in the parties concerned. There must be a dispute that the parties must belong to the same family and the property which constitutes the subject-matter of the dispute must be the property of the family to which the parties belong.

49. In the case which is now before me we are concerned with property belonging to Dalip Singh. His widow adopted a relation of her own and thereby made him a member of Dalip's family: up to the time of his adoption he was not a member of that family, but belonged to the family of his adoptive mother. So that any arrangement arrived at between him and her before the adoption took place or at that very time cannot be said to have been an arrangement between members of the same family.

50. Nor again is it apparent that there was any dispute for the settlement of which this arrangement was necessary. There could in fact have been no dispute, no agitation, of doubtful claims, and there was no distribution of Dalip Singh's property between the widow and Data Ram, each party acknowledging the title of the other. Nor can it be said that there was any family settlement embracing the plaintiffs and other persons named in the document executed by Mt. Manohri; for these persons who were outside Dalip Singh's family had no shadow of a claim to any portion of the estate belonging to Dalip Singh. The arrangements made for their benefit were not come to by way of settling any doubtful rights; for they had no rights, doubtful or otherwise, but were merely candidates for favours from Mt. Manohri. The principles of the family arrangement or settlement cannot be invoked in support of the plaintiffs' case and the judgment in *Kashibai Ramchandra v. Tatya Genu* AIR 1916 Bom 312, assuming it to be a correct judgment on the facts of that case, cannot afford any guide to the disposal of the present suit. With regard to the provisions of Section 23 of the Specific Relief Act, what I have already said serves to show that the plaintiffs cannot ground on this provision of the law. Clause (c) of the section to which my learned colleague refers relates to contracts of settlement on marriage and compromises of doubtful rights between members of the same

family and gives a right of action to persons who are beneficially entitled thereunder. Neither case has arisen here; there is no question of any marriage settlement. Nor for the reasons I have given above is there any case of a compromise of doubtful rights between members of the same family. The result of all this is that in my opinion, the suit of the plaintiffs should have been dismissed in toto.

51. First Appeal No. 485 of 1921 should, therefore, be allowed with costs to the defendant Data Ram in both Courts including in this Court fees on the higher scale. The plaintiffs' appeal First Appeal No. 443 of 1921, in my opinion, fails and should be dismissed with costs including fees here on the higher scale.

52. As we are divided in opinion regarding the proper decision of both these appeals the result is that both appeals are dismissed with costs including fees in each case on the higher scale.

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