

Radha Krishen Vs. Sri Krishen and Others

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Court : Privy Council

Decided On : Nov-06-1944

Reported in : AIR1945PC79

Judge : Lord Russell of Killowen, Lord Goddard & Sir Madhavan Nair

Appeal No. : Privy Council Appeal No. 43 of 1942 (From Allahabad: Allahabad Appeal No. 18 of 1939)

Appellant : Radha Krishen

Respondent : Sri Krishen and Others

Advocate for Pet/Ap. : Sir Thomas Strangman and J.M. Pringle, for Appellant; C.S. Rewcastle and S.P. Khambatta, for Respondents. Solicitors for Appellant, Hy. S.L. Polak and Co.; Solicitors for Respondents, T.L. Wilson and Co.

Judgement :

Lord Russell of Killowen:

The suit which gave rise to this appeal was brought by Radha Krishen (hereinafter called the appellant) for a declaration that he was the adopted son of one Shankar Lal deceased and for delivery of possession of the property of Shankar Lal specified and described in the schedules to the plaint. Shankar Lal (who had no issue of his own) was the great-uncle of the appellant, who was a grandson of Shankar Lal's only brother Debi Sahai. Debi Sahai had two sons Hari Krishen and

Sri Krishen. The appellant was the natural son of Hari Krishen, who had also two other natural sons by a wife whom he married after the death of the appellant's mother. The defendants to the suit were (1) Ganga Dei, the widow of Shankar Lal, (2) Sri Krishen and (3) and (4) the two other natural sons of Hari Krishen. Hari Krishen died in the year 1931. While the main issue in the suit was whether the appellant had been adopted by Shankar Lal, the decisive question in the case was, in their Lordships' opinion, whether a document dated 19th October 1924, and purporting to be a holograph will executed by Shankar Lal, and witnessed by four witnesses, is a genuine document or (as alleged by the respondent Sri Krishen) a forgery. The Subordinate Judge decreed the suit. He accepted the evidence given by and on behalf of the appellant, and held the document to be genuine and the adoption proved. The High Court rejected the evidence of the appellant's witnesses, and held that "no will was in fact executed by Shankar Lal in 1924" (i. e., that the document was a forgery) and that the adoption had not been proved. The suit was accordingly dismissed. The appellant has appealed to His Majesty in Council. Ganga Dei died pending the appeal.

There is no dispute that Shankar Lal had great affection for the appellant. He was in fact born in Shankar Lal's house in March 1917, and after the death of the appellant's mother in the year 1919 he was brought up and cared for by Shankar Lal and his wife Ganga Dei, the child's father having remarried. Further, it is common ground that Shankar Lal arranged the appellant's ear-boring ceremony in the year 1924, which was celebrated by a feast given by Shankar Lal in his own house. It is also common ground that on Shankar Lal's death in the month of January 1932, his obsequies were performed by the appellant. Affirmative evidence of the fact of adoption by four witnesses, who said they were present at the ceremony, and whose evidence was unshaken in cross-examination, was accepted as reliable by the trial Judge. One of them identified a document as being in the handwriting of one Bagwati Prasad, who was a clerk in the employ of Shankar Lal. It was a list of persons to be invited to Shankar Lal's residence for 18th March 1924, "on the occasion of the adoption and ear-boring ceremonies of Radha Krishen." This list is in some cases signed by the guests invited, presumably to acknowledge receipt of the invitation conveyed to them orally. The trial Judge, in relying on this list, erroneously referred to it as being in the

handwriting of Shankar Lal; but this error in no way affects its value as evidence, because it must obviously have been prepared by the clerk under the direction of Shankar Lal.

The High Court dismissed all this evidence (including the solemn fact that the appellant performed the obsequies) on two grounds, neither of which appears to their Lordships a justification for differing from the view adopted by the trial Judge, who had the overriding advantage of seeing the witnesses and observing their demeanour in chief and under cross-examination. They commented on the fact that no person who was a member of the family, or whose name was on the list or who was "a person of standing" was called by the appellant. This criticism appears of small weight in view of the fact that the witnesses who did testify to their presence at the ceremony of adoption were unshaken in cross-examination, and were accepted by the trial Judge as credible witnesses. Credibility in the witness-box is more valuable in assessing evidential values than kinship or "standing."

The second ground relied on by the High Court needs some preliminary explanation. When Shankar Lal died in the month of January 1932, the appellant was a boy of 14. No will of Shankar Lal was forthcoming. Upon the footing of Shankar Lal having died intestate and without issue, the persons interested in his estate would be Ganga Dei as a Hindu widow, and Debi Sahai as nearest reversioner. In between the death of Shankar Lal and the institution of the present suit, sundry differences arose between Ganga Dei and Debi Sahai in relation to the property of Shankar Lal. One example will suffice for the purpose of explaining the second ground upon which the High Court felt justified in rejecting the affirmative evidence of the appellant's adoption. On 8th March 1932, Ganga Dei applied to the District Judge for a succession certificate, alleging in her petition that as a Hindu widow she was the owner in possession of Shankar Lal's estate. To this application Debi Sahai lodged an objection, claiming to be the nearest reversioner and alleging that the widow had only a life interest, but no right in the corpus of the estate. The High Court rely upon the fact that in this proceeding (and in other matters of dispute, in relation to Shankar Lal's property between Ganga Dei, claiming the rights of a Hindu widow, and Debi Sahai claiming to be nearest reversioner) no mention is made by either of them of the appellant being the

adopted son of Shankar Lal. Their Lordships are unable to appreciate how this fact really assists the view that no adoption was made. It is not necessarily inconsistent with adoption having taken place. The disclosure of the existence of an adopted son of Shankar Lal would at once have put an end to the claims which each was asserting, a fact which, if an adoption had taken place, would account for the absence of any reference thereto. It is, however, to be observed that in the course of some arbitration proceedings between them, Debi Sahai, in his objections, did allege that in or about the year 1924 Shankar Lal adopted the appellant and performed the ceremonies relating to adoption with the permission of the appellant's father.

The witnesses on behalf of Sri Krishen consisted of himself and four persons who were not members of the family. Sri Krishen denied the adoption; he also denied, what is now admitted, that the appellant lived with and was brought up by Shankar Lal. The evidence of the other four witnesses was merely negative as to the adoption. They too denied that the appellant lived with Shankar Lal. The only other witness called by Sri Krishen produced a document to which little or no attention was paid by either Court, but upon which reliance was placed at the hearing before their Lordships' Board. It is a form of application for the admission of the appellant to a school. It is dated 13th July 1929, and is signed by Debi Sahai, and filled in by him. In it the appellant's father is stated to be Hari Krishna. To that extent it is inconsistent with adoption, but no one knows the circumstances in which Debi Sahai came to fill in and sign the form. It is incorrect in other respects, for according to its tenor Debi Sahai was the guardian of the boy, which he was not. But for what it is worth (an estimate which must remain doubtful) it is in favour of Sri Krishen.

Their Lordships having considered the relevant evidence, apart from the document of 19th October 1924, are of opinion that even upon that evidence it is difficult to see how the High Court were justified in rejecting the affirmative evidence of adoption given by the appellant's witnesses, in spite of its acceptance as truthful by the trial Judge.

They now proceed to consider the document in question. It purports to be a holograph will of Shankar Lal. It consists of a preliminary statement and seven paragraphs, and contains the following passage:

According to the desire of my father and mother and with the consent of my own brother's son, Babu Hari Krishn, Vakil for whom I, the executant, have great affection from his childhood. I, having performed the religious ceremonies relating, to kanebhedan (ear-boring), and given a feast according to the custom prevailing in the community and Hindu law, have adopted my grandson, Radha Krishna, son of Babu Hari Krishn, Vakil, Vaish Agarwal by caste, resident of Meerut, whom I have reared like my own son for five years, in order to make him my successor executed a deed-of-adoption also in his favour and made him, like myself the owner in possession of and heir to my entire house and field property as well as money in cash and house-hold goods in addition to the house and field property of my wife but as my adopted son is still a minor. I, while in a sound state of my body and mind, without any compulsion or coercion on the part of any one, of my own accord and free will and as a precautionary measure give the following instructions. After my death, my estate shall continue to be managed according to the terms laid down in this will and nothing shall be done contrary thereto.

It ends with these words - "Written on the 19th Oct. 1924, by the pen of Shanker Lal in autograph." It purports to be signed by Shanker Lal at the foot, and, in the margin, and to be witnessed by four witnesses, viz., Debi Sahai, Hari Krishen, Bhagwati Prasad and one Lekram. The document, according to the appellant, was found by him in the month of August 1935 among some papers of Ganga Dei. Having found it he, after service of a notice on Sri Krishen, commenced this suit. Sri Krishen asserts that the document is a forgery. Ganga Dei by her written statement admitted the adoption, but alleged it was made subject to an agreement in her favour, which the trial Judge found had never been made. If the document is not a forgery, but the genuine will of Shanker Lal, the case against the appellant would, in their Lordships opinion, be unarguable; and they now proceed to consider the evidence in relation thereto.

The evidence is that of witnesses familiar with the handwritings of the persons concerned, and of an expert in handwriting. Abdul Shakur was a clerk in the employ of Hari Krishen from 1921 to 1925. At the time of the trial, he was the clerk of another gentleman. He was a disinterested witness. He testified to the following facts that Shanker Lal made a will a few months after the adoption, that he was present at the time; that he and Shankar Lal prepared the draft of the will; that Shankar Lal himself "scribed" the will to the best of his knowledge and signed it in his presence; that it was attested by Hari Krishen, Debi Sahai and others; that the will was the document in question. He also verified the signatures of Debi Sahai and Hari Krishen and stated that the witnesses attested the will in the presence of Shankar Lal. He was not cross-examined on any of these statements. The trial Judge accepted him as a witness of truth. In these circumstances the evidence of this witness alone would establish the genuineness of the document. But in addition to his testimony the evidence of competent witnesses identified the signatures of three of the attesting witnesses. The fourth, Lekram, could not be traced.

Mr. Walters, the handwriting expert, was a very careful and thorough witness. He had compared enlarged specimens of admitted signatures with enlarged specimens of the disputed signatures. In his opinion the will is genuine, and he gives his reasons in a long and elaborate report which he states to be, to the best of his knowledge, correct. This evidence, even if treated merely as corroborating the other witnesses, is of great value; but it received but scant consideration at the hands of the High Court. It was brushed aside apparently because of a passage quoted from the evidence which must (their Lordships think) have been misinterpreted by the High Court, for their Lordships can find nothing in it to cast a shadow of doubt upon the competence or reliability of Mr. Walters.

Their Lordships are of opinion, after a careful consideration of all the evidence upon

the point, that the trial Judge came to a right conclusion in accepting the will as a genuine document, and that the High Court were not justified on the evidence in reversing that finding of fact. One small matter of detail should be mentioned. The

will refers to the execution of a deed of adoption. No such deed was necessary, but no such deed has been produced or found. The suggested explanation of its non-appearance is the manner of Shankar Lai's death. He was murdered by dacoits, who looted his house and destroyed a number of documents. This explanation was accepted by the trial Judge as a probable one, and their Lordships agree with this view. No reference to the matter was made in the judgment of the High Court. For the reasons which they have indicated their Lordships are of opinion that this appeal should be allowed, the decree of the High Court, set aside and the decree of the Subordinate Judge restored. They will humbly advise His Majesty accordingly. The respondents must pay the costs in the High Court and of this appeal.

Appeal allowed.

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