

Keolapati and Another Vs. Raja Amar Krishna Narain Singh and Another

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Court : Privy Council

Decided On : Jul-11-1939

Judge : Lord Macmillan, Sir George Rankin & Mr. Jayakar

Appeal No. : Privy Council Appeal No. 77 of 1938 (From Oudh: Oudh Appeal No. 12 of 1936)

Appellant : Keolapati and Another

Respondent : Raja Amar Krishna Narain Singh and Another

Advocate for Pet/Ap. : D.N. Pritt, Sir Sultan Ahmad and L.S. Misra, for Appellants ; Sir Thomas Strangman, W. Wallach and Peary Lal Banerji, and Siraj Husain, for Respondents 1, and 2, respectively. Solicitors for Appellants, Hy. S.L. Polak and Co., Solicitors for Respondents,

Judgement :

Sir George Rankin:

Their Lordships have already intimated in their opinion that the questions for decision upon this appeal are concluded by concurrent findings of fact on the part of the Courts in India. They have reported accordingly to His Majesty in Council advising that the appeal should be dismissed and they have directed the appellants to pay the respondents' costs of the appeal. It remains to state the reasons for their report. The claim is to the taluqdari estate of Ramnagar in the district of Bara-Banki in the province of Oudh and to other property, moveable and

immovable, left by Raja Sarabjit Singh, who died on 20th December 1899. The claimant is Kurshed Jahan Begum, who will herein be referred to as "the plaintiff" though her financier has joined with her as co-plaintiff: her suit was brought on 7th February 1931, in the Chief Court of Oudh. It has been dismissed by the trial Judge whose decree has been affirmed by an appellate Bench, and she now appeals. The defendants (respondents before the Board) may be shortly described as representatives of Udit Narain Singh, who had obtained possession of the properties in suit soon after the death of Raja Sarabjit Singh as being his only son and who died in 1927.

The matters in issue between these parties may be simply stated as two. First, whether a certain document bearing date 1st July 1898, and purporting to be a will made by Raja Sarabjit Singh in favour of the plaintiff's mother, Qadir Jahan Begum, is a valid testamentary instrument. Secondly, whether the plaintiff, whose father was Raja Sarabjit Singh, was the legitimate daughter and heir of her mother, Qadir Jahan, who died in 1909. A third contention was advanced before the Courts in Oudh and before their Lordships. It was based on a passage (para. 10) in a deed of sale dated 7th November 1902 executed by Qadir Jahan, which was said to have effect as a devise or bequest of the taluqdari estate to the plaintiff. The Courts in India have rejected this contention: their Lordships intimated at the hearing that it cannot be accepted and it need not be further noticed. There is no other testamentary disposition of the property in suit made by her mother in the plaintiff's favour and it is not contended that the plaintiff (unless she be legitimate) can inherit from her mother according to the Shia school of Mahomedan law. It is essential to the plaintiff's case that she should establish the marriage of her parents.

The case made by the plaintiff is that Raja Sarabjit Singh was converted to Islam about 1852-4, before the annexation of Oudh by the British; and that he married Qadir Jahan, a Muslim lady, on 25th November 1872. In proof of the marriage the plaintiff relies upon a deed (nikahnama) which bears that date. It is in Persian with Arabic quotations. It refers to the bridegroom as " Ghulam Mohammad alias Raja Munwa Sarabjit Singh." It stipulates for Rs. 75,000 as prompt dower and half of Ramnagar Dhameri estate as deferred dower. It has two seals purporting to be

those of the moulvis acting for each party. It bears what purports to be the signature in Hindi of the Raja and the signatures of four other witnesses.

The genuineness of this deed may be regarded as the crux of the case. Mention was made of such a deed in the course of the mutation proceedings which in 1990 followed upon the Raja's death. The deed was produced by Qadir Jahan in suit No. 72 of 1901 brought by her as hereafter mentioned and was then stated to have been kept in the custody of her mother until 1894 or thereabouts and to have been returned to Qadir Jahan shortly before her mother's death. As a Rajput and a Kshatriya, Sarabjit Singh could not in law be validly married to a Muslim woman. Hence the plaintiff, if she establishes the nikahnama as a genuine document, would go far to establish the Rajah's conversion to Islam: on the other hand to disprove the alleged conversion is to dislodge the nikahnama. As the conversion, according to the plaintiff's case was not a secret or esoteric matter, the long period between the fifties and the nineties of last century might be expected to afford convincing evidence one way or the other. This aspect of the case is deeply coloured by the fact that in 1888 the Raja's estate was taken over by the Court of Wards under cl. (e) of S. 162 of Act 17 of 1876-that is on the ground that he was, in the opinion of the Chief Commissioner, rendered incapable of managing his estate by physical defects or infirmities. The estate was never released in the Raja's lifetime and there was before the Courts in India a body of evidence as to his feebleness in mind and body at various dates. Indeed there is direct evidence which, if believed, would establish that for some time before his death he had reached a state of imbecility. In these circumstances the production after his death of documents bearing his signature does not of itself have conclusive force. The nikahnama is however by no means the only document relied upon by the plaintiff and purporting to bear the Raja's signature. In particular a will of 1896 refers to Qadir Jahan as his wedded wife and a will of 1898 contains assertions that Udit Narain was not his son, and that he had been converted to Islam before the British occupation and had married Qadir Jahan. Raja Sarabjit Singh was born in 1829 and died aged 70 years in 1899. He was the son of Raja Gur Bux Singh, head of the Raikwar clan of Rajputs and taluqdar of Ramnagar and Bitauli. In 1844 Sarabjit Singh was allowed in his father's lifetime to succeed to Ramnagar and upon the annexation of Oudh by the British he obtained a primogeniture sanad and his

name was entered Lists I and II under S. 8 of Act 1 of 1869. He married about 1844 Rani Raj Koer who was childless but survived him, dying in 1900. About 1852, he married a second wife Rani Gulab Koer who predeceased him, dying in 1893. By her, as the Courts below have found, he had a son, born in 1861, and called Udit Narain Singh. The plaintiff alleges that Udit Narain was a Hindu boy of low caste (ahir) who was brought up-apparently from the time when he was a few months old - by the Raja and Gulab Koer with a view to adoption but never adopted. Why the Raja, if he were a Muslim of 32 years of age should so act and why his Hindu wife should claim Udit Narain as her own son, are matters which have not been made wholly intelligible to their Lordships, but however that may be, Udit Narain succeeded to the taluqa of Ramnagar on the death of his father and lived till 1927. His son Raja Harnam Singh succeeded him: in the present suit of 1931 he was the original defendant 1, but he died pending the suit and is now represented by his nephew, Raja Amar Krishna Narain Singh. There seems to be no room for doubt that Udit Narain and his children were received by and married into respectable Rajput families. At some date, probably in the seventies, Qadir Jahan Begum, whether wife or concubine, began to live with Raja Sarabjit Singh at his headquarters at Suratganj, and in 1877 the plaintiff, Kurshed Jahan Begum, was born to them. She was married to a Moslem named Mir Wajid Ali and had a son born in 1895. This son is the beneficiary under an alleged will which purports to have been executed by Raja Sarabjit Singh on 14th May 1896, but later in that year the child died.

In the mutation proceedings which ensued upon the death of Raja Sarabjit Singh (20th December 1899), Qadir Jahan, Udit Narain, Raj Koer (widow) and another, laid claim to the taluqa. Udit Narain was successful and in 1901 the estate was released to him by the Court of Wards. Thereupon (30th August 1901), Qadir Jahan filed suit No. 72 of 1901 before the subordinate Judge of Bara-Banki laying claim to the estate against Udit Narain. She alleged the conversion of Raja Sarabjit Singh to Islam and his marriage to herself: she denied that Udit Narain was his son, and she set up a will in her own favour dated 1st July 1898, as the last will of the Raja. The trial of her suit began in August, 1903 and the witnesses for the plaintiff having been examined and some witnesses for the defendant, Udit Narain, the suit was compromised on 7th December 1904, on the terms that Udit

Narain should pay Qadir Jahan Rs. 10,000 and a monthly allowance of Rs. 1200 - also a monthly allowance to the present plaintiff, Kurshed Jahan, of Rs. 300. It has been proved to the satisfaction of both Courts in India that the bringing of this suit and the compromise were procured by the fraud of Udit Narain; that Qadir's mukhtar-i-am was in his pay; that Udit Narain interfered with certain of her witnesses; that he brought about the compromise by causing her to succumb to an unfounded fear of arrest and prosecution. In 1906 the present plaintiff, Kurshed Jahan, brought suit No. 58 of 1906 against Udit Narain claiming the estate in preference to her mother, Qadir Jahan, as daughter of Raja Sarabjit Singh under S. 22 (cl. 11) of Act 1 of 1869. In 1909 Qadir Jahan died and Kurshed sought in suit No. 58 of 1906 to amend so as to include a claim by her to derive title to the estate through her mother and under the will of 1898. This application having been refused she withdrew her suit which was dismissed by consent on 4th August 1909. The bringing and the withdrawal of this suit have likewise been held by both Courts in India to have been contrived by the fraud of Udit Narain, the persons entrusted by Kurshed as mukhtar-i-am being creatures of his. The fraud of Udit Narain in respect of those suits having come to the knowledge of Kurshed Jahan in 1928, she filed the present suit in 1931 on the original side of the Chief Court.

The trial of the suit began in May 1931, before Nanavutty J. The whole file of suit No. 72 of 1901 was printed and used as evidence in the present suit, and similar use was made of materials from the file of suit No. 58 of 1906: to this some of action has been taken before the Board. When the witnesses for the plaintiff (71 in all) had been called and 18 witnesses for the defendant, the learned Chief Justice, Sir Wazir Hasan, on 7th November 1932, for administrative reasons of which their Lordships have no knowledge, directed the further hearing to take place before himself. Sixteen more witnesses for the defendant were then examined and the learned Chief Judge gave judgment on 15th February 1933. He found fraud on the part of Udit Narain in connexion with the previous suits No. 72 of 1901 and No. 58 of 1906. But he held that Udit Narain was the son of Raja Sarabjit Singh, that the Raja had not been converted to Islam and had not married Qadir Jahan, that the will of 1898 was not valid, the Raja not being of sound disposing mind and being under undue influence by Qadir Jahan. An Appellate Bench (King C. J. and Zia-ul-Hasan, J.) upheld these findings (18th March 1936).

Before arriving at these findings both Courts in India have subjected to a painstaking and as their Lordships think a minute and accurate scrutiny the voluminous and contradictory evidence bearing upon the personal history of Raja Sarabjit Singh. It is true that many of the witnesses had not been seen by the learned Chief Judge. But at the root of the case lies the Question, whether this Rajput Chief, head of a Kshatriya clan, taluqdar of Oudh and the owner of a large estate was from 1854 or thereabouts until his death in 1899 a Mahomedan or a Hindu. Much must depend on the view taken as to such a man's conversion to Islam, openly avowed and followed by marriage to a Muslim lady, being a matter of intense public interest, considerable importance in the view of the authorities, and wide notoriety. The opinion of the learned Judges of the province upon such a matter is not lightly to be disregarded-all the less so that two of them are Muslims. The learned Judges were in a specially favourable position to know whether the Raja if a Muslim would have conferred a grant upon a mahant under the solemn obligation of the Hindu ceremonial of "Sankalpa" in 1874 or written to the mahant as he did in 1888 or to the Court of Wards in the terms of his letters of 1891 and 1893; whether he would have described himself in the witness-box in 1895 as a "Chhatri"; whether he would have referred to Qadir Jahan as his lawful wife in the terms of the deed of 22nd October 1884 ; whether the terms of the inscription on a stone in the Idgah are fanciful praise or are to be taken to some extent as serious statements of fact; whether the stipulation for dower in the alleged deed of 1872 (Rs. 75,000 as prompt and half the Ramnagar Dhamen estate as deferred dower) is in the circumstances credible. There is strong reason in the present case why their Lordships should be slow to depart from the rule of practice which, though not a rule of law nor a rigid rule, plays an important part in the exercise of the prerogative- that concurrent findings of fact will not be disturbed.

Mr. Pritt has contended for the plaintiff that in the present case this rule should not be allowed to stand in his way; and he has subjected the record to a careful scrutiny with a view to establishing that the Courts in India proceeded upon inadmissible evidence, and that they adopted an erroneous attitude towards the evidence which was produced in the previous suits of 1901 and 1906.

The first question is whether in the present case the evidence given in these suits was admissible at all. Their Lordships are of opinion that the statement signed by Mr. Hassan Imam, leading counsel for the plaintiff, on 13th October 1932, which was accepted by counsel on both sides and adopted by order of the Court on 17th October 1932, puts beyond controversy the agreement that the evidence in Suit No. 72 of 1901 should be treated as substantive evidence in the present suit. As regards the evidence in Suit No. 58 of 1906 there is not the same careful record of an agreement, but the Chief Judge states in his judgment that the same agreement applied to it. He might not be in a good position to say what had taken place before Nanavutty J. at a previous stage of the hearing, but he heard the arguments at the end of the trial and could not well be under any mistake on the question whether materials from Suit No. 58 were objected to or used without objection by arrangement. In any view, the trial Judge having made use of them and having stated that they were evidence in the case, the memorandum of appeal to the appellate Bench is found to contain no objection on this score and the learned Judges on appeal say: "some evidence produced in the mutation case and in the plaintiff's suit, No. 58 of 1906, has also been produced as evidence in this suit": they too must have known whether the materials to which they refer had been treated without objection as being before them at the time of the argument. No objection was taken in the petition for a certificate that the case was fit to be taken on appeal to His Majesty under Ss. 109 and 110. Civil PC., and at the hearing of the application the objection on the ground of inadmissible evidence was expressly based on other grounds. Their Lordships are for these reasons unable to accept this objection now and consider that the evidence in both of the previous suits is available by arrangement made between the parties.

The admissibility of certain particular documents has been challenged on this appeal : the main point being that the Courts in India should not have admitted or relied upon reports and correspondence of officials, such documents not being within S. 33, Evidence Act. Upon the question whether the taluqdar was a convert to Islam or was the Chief of a Rajput clan their Lordships are clearly of opinion that it was permissible and important to prove that the fact of such conversion was unknown to the district and local officers and was not ascertainable from anything to be found in official publications. They think it to be of the utmost relevance and

importance to learn from the conduct and statements of his Hindu wife Rani Gulab Koer whether she thought herself to be the wife of a Rajput Chief or of a Mahomedan. Such matters however must be proved in manner permitted by the Evidence Act and learned counsel has specifically objected to the admissibility of three exhibits, A 47, A 49 and A 265. Their Lordships do not see any sufficient basis in this criticism, even if it were made good, for a refusal to accept the concurrent findings of fact in the present case : the findings cannot on any reasonable review of the case be regarded as based upon these documents or dependent upon them. A 47 is a letter dated 8th July 1882, some 50 years before the trial of the present suit. It is from Major Hastings who was at that time acting as Deputy Commissioner of Bara Banki to Major Forbes the officiating Commissioner of the Lucknow Division. Its purpose is to report that the estate of Sarabjit Singh should be taken under the Court of Wards and to ask that the orders of the Lieutenant-Governor and Chief Commissioner should be taken on the matter under cl. (e) of S. 162 of Act 17 of 1876. As reasons for the recommendation it states that the Raja is weak mentally and physically, almost blind, and with seven or eight lacs of debt; and it adds, were for a mushroom taluqdar I would look on at his ruin with no particular concern. But he is the head of the Raikwar clan and the Raj has a history of its own.

It is true that the action recommended was not in fact taken until 1888, and their Lordships agree that the letter is not such an entry as is referred to in S. 35, Evidence Act. On the question of conversion it would seem difficult in all the circumstances to refuse admission to the document under S.32, sub-s. (2), but in their Lordships' judgment little is done by rejecting this letter having regard to the other evidence. Thus the oral evidence of Tudball J., given in the suit of 1906, is in their Lordships' view receivable as already mentioned: he was Deputy Commissioner of Bara Banki in 1892 and his evidence covers the same ground completely and is to the same effect. Ex. A-49 is another letter from the Deputy Commissioner to the Commissioner. The date is 1883 and the writer a Major Noble: it refers to the Raja's blindness and indebtedness and to his being "weak and capricious as a spoilt child" and to his repudiation of Udit Narain. It is of less importance than Ex. A-47 and whether it be admitted or not it can make no difference upon the question of concurrent findings. Ex. A-265, dated 20th October

1893, is a report from the Deputy Commissioner to the Commissioner which was called for by the Board of Revenue in connexion with a petition by the Raja (5th May 1893) for release of his estate. Objection is taken that a printed copy and not the original was put in, but the plaintiff put in evidence a continuation of this report dated 25th October 1893 (Ex. 43), and their Lordships think that this ends all difficulty about the admission of the document. They are of opinion that the concurrent findings of the Indian Courts cannot be disturbed on the ground that they are based upon inadmissible evidence.

Nor are their Lordships satisfied that either Court in India has made mistakes in method or in principle in its treatment of the evidence adduced in the previous suits. It was contended in the appellants' case and by learned counsel that the plaintiff could rely upon such evidence but not the defendants, since it was all to be regarded as the product of a fraudulent conspiracy by Udit Narain. Their Lordships have no difficulty in rejecting this line of argument. In the previous suits some witnesses were called of undoubted position and respectability and it is not proved that all those engaged professionally on the side of the plaintiffs therein (Qadir and Khurshed) were acting fraudulently. No doubt had the Court in the present case rejected documents or other evidence produced before them on the mere ground that they had not been produced in the previous suits and without further consideration of any of the circumstances their decision so far as dependent upon this course would have been open to comment. But their judgments in the opinion of their Lordships are not fairly open to any such charge and their Lordships see no reason to be dissatisfied with their method of approach. In their Lordships' opinion the Chief Court has dealt with a difficult and in some respects a lamentable case with fairness and thoroughness in very able judgments, and their Lordships have seen no reason to depart from the concurrent findings so arrived at.

Appeal dismissed.

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