

1887

AUTU SINGH
v.
AJUDHKA
SAMU.

Under these circumstances the appeal must be allowed and the decree of the Court of first instance confirmed with costs.

OLDFIELD, J.—I entirely concur.

Appeal allowed.

1887
January 21.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Oldfield.

PARSHOTAM LAL AND ANOTHER (DEFENDANTS) v. LACHMAN DAS
(PLAINTIFF). *

Court-fees—Suit on hundis—Distinct causes of action—Distinct subjects—Act VII of 1870 (Court-fees Act), s. 17.

In a suit upon three different *hundis* executed on the same date by one of the defendants in favour of the other three defendants and by them assigned to the plaintiff, and not paid on maturity—*held* that each *hundi* afforded a separate cause of action, that the suit embraced three separate and distinct subjects, and that the memorandum of appeal by the first defendant was chargeable with the aggregate amount of the court-fees to which the memoranda of appeal in suits embracing separately each of such subjects would be liable under the Court-fees Act.

THE facts of this case, which was referred to the Court by the Registrar under s. 5 of the Court-fees Act, are sufficiently stated in the judgment of the Chief Justice.

Mr. C. Dillon, for the appellant.

EDGE, C. J.—In this case the defendant No. 1 executed three different *hundis* on the same date, in favour of the defendants Nos. 2, 3, and 4, who constituted a firm. They were all payable at the same time. The first *hundi* was for Rs. 1,133-7, and the second and third were for Rs. 1,054-5 respectively. These three *hundis* were assigned by the defendants Nos. 2, 3, and 4 to the plaintiff, and not having been paid on maturity, the plaintiff brought this action upon them.

The defendant No. 1, who is appealing here, has paid court-fees calculated upon the total amount of the three *hundis*. The question is whether the amount of the court-fees as calculated is sufficient, or whether the defendant No. 1 is not bound, under s. 17 of the Court-fees Act, to pay a court-fee based on the amount of each of the *hundis* separately.

*Reference under s. 5 of the Court-fees Act.

Now it is argued that these three *hundis* only make one cause of action. That I cannot understand. It is admitted that the plaintiff might bring three separate actions on these *hundis*, and each *hundi* would afford a separate cause of action. The suit embraces three separate and distinct subjects, and I am of opinion that the memorandum of appeal is chargeable with the aggregate amount of the fees to which the memoranda of appeal in suits embracing separately each of such subjects would be liable under the Court-fees Act. Therefore my answer to the reference is, that as the proper amount of court-fees has not been paid in this case, the appeal cannot be admitted unless the proper fee is paid. A fortnight will be allowed for making up the deficiency.

OLDFIELD J.—I concur.

APPELLATE CIVIL.

Before Mr. Justice Striight and Mr. Justice Mahmood.

GANGA SAHAI (DEFENDANT) v. LAKHRAJ SINGH (PLAINTIFF).*

Hindu Law—Adoption—Dattaka form—Gotraja relationship—Maxim, quod fieri non debuit factum valet—Limit of age within which person may be adopted—Ceremony of upanayana—Suit for declaration that alleged adoption is invalid—Limitation—Act XV of 1877, (Limitation Act), sch. ii, No. 118—Arbitration—Civil Procedure Code, s. 521, cl. (a.)—"Misconduct" of arbitrator.

The sources of Hindu law described and their comparative authority discussed. The various schools of Hindu law, and their divisions and subdivisions, enumerated and classified.

The ruling of the Privy Council in *Mahashaya Shoshimath Ghose v. Srinati Krishna Soondari Dasi* (1), has no application to a case in which there is ample evidence, both oral and documentary, to prove the *factum* of adoption.

In a suit to obtain a declaration that an alleged adoption was null and void, the plaintiff based his own title upon an alleged adoption of himself. He was related to his alleged adoptive father as father's father's brother's son's son's son. It was contended on behalf of the defendant, who was related to the plaintiff's adoptive father as brother's son's son, that the plaintiff's relationship was too remote to admit of his being validly adopted in preference to the defendant and other near relatives.

Held that the plaintiff, by reason of his natural relationship towards his adoptive father, belonged to the same *gotra* as the latter, and although such relation-

* First Appeal No. 67 of 1885 from a decree of Maulvi Muhammad Sami-ul-lah Khan, Subordinate Judge of Aligarh, dated the 18th April, 1885.

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August 2.