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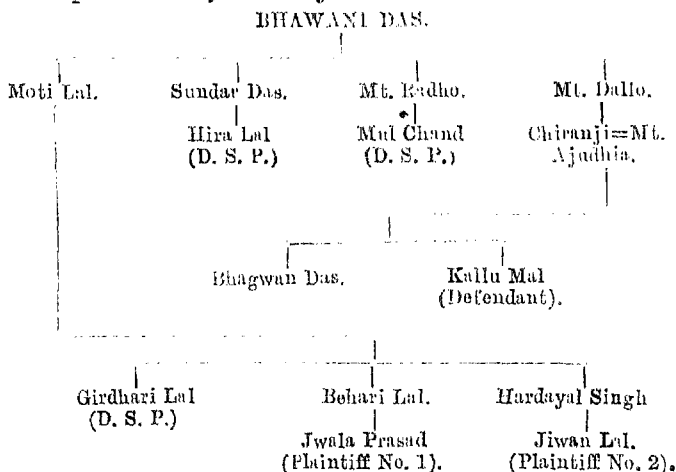
*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice
Sir William Burkill.*

JIWAN LAL (PLAINTIFF) *v.* KALLU MAL (DEFENDANT) AND JWALA
PRASAD (PLAINTIFF).*

Hindu law—Adoption—Custom—Purbia Kurmis.

Held that Purbia Kurmis, calling themselves Purbia Chattris, do not really belong to the regenerate classes and, therefore, the adoption by a member of this caste of the grandson of his father's sister is not invalid as being within the prohibited degrees of relationship.

THIS was a suit to recover one-half of the property of one Hira Lal, deceased, from the possession of his alleged adopted son, Kallu Mal. The parties were Purbia Kurmis, or, as they styled themselves, Purbia Chattris, and were related in the manner represented by the subjoined table:—



The plaintiffs denied both the factum of the adoption and its validity according to the Hindu law, alleging that the parties were Chattris, and that, therefore, the defendant could not have been adopted by the deceased, Hira Lal. The Court of first instance (Subordinate Judge of Agra) found both issues against the plaintiffs, and accordingly dismissed the suit. The plaintiff, Jiwan Lal, appealed to the High Court.

Babu *Jogindro Nath Chaudhri* and The Hon'ble Pandit *Madan Mohan Malaviya*, for the appellant.

The Hon'ble Pandit *Sundar Lal* and Pandit *Moti Lal Nehru*, for the respondent, Kallu Mal.

* First Appeal No. 331 of 193 from a decree of Babu Raj Nath Prasad, Subordinate Judge of Agra, dated the 15th of September 1903.

STANLEY, C.J. and BURKITT, J.—We have two questions to dispose of in this appeal. The first is, whether or not, as a matter of fact, the adoption of Kallu Mal by Hira Lal, his alleged adoptive father, has been established; and secondly, assuming that the adoption in fact has been established, whether that adoption was valid, having regard to the caste to which the parties belong. The parties are Purbia Kurmis, who claim to be Chattris, and the contention on behalf of the plaintiff appellant is that they belong to one of the three regenerate classes, and that, that being so, an adoption by Hira Lal of Kallu Mal, if it ever took place in fact, was not a valid adoption, Kallu Mal being within the prohibited degree, within which marriage is forbidden by the regenerate classes.

We shall first deal with the factum of the adoption. It appears to us that the evidence which was adduced on behalf of the defendant, Kallu Mal, and to which credit was given by the Court below, satisfactorily established the fact of the adoption. Two witnesses were examined, who, according to their evidence, were eye-witnesses of the adoption, and a number of other witnesses, men apparently of respectability and credit, were examined, who deposed to the fact either that they had heard from Hira Lal that Kallu Mal had been adopted by him and was his adopted son, or were able to testify to the general repute of the brotherhood that Kallu Mal was the adopted son of Hira Lal. In addition to this evidence a power-of-attorney was proved, in which Hira Lal described Kallu Mal as his adopted son. This instrument was executed in the year 1900, only two years before the death of Hira Lal, and the suggestion of the learned advocate for the appellant is that it was prepared for the purpose of making evidence which Kallu Mal could use on a future occasion. He pointed out that if on the perusal of the document two words alone, namely, "adopted son," were overlooked, or if those words had not been read to Hira Lal, who did not know Urdu, the dialect in which the document was written, Hira Lal would not have been aware that he was signing a document in which Kallu Mal was described as his adopted son. This theory is of course possible, but we do not think that in this case there is any reason to suspect that the words

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were so improperly introduced. It is admitted by the witnesses for the appellant that Kallu Mal was treated as a son by Hira Lal, and there is no doubt that the relations subsisting between them were those which would exist between an adoptive father and his adopted son. When we take this into consideration along with the evidence of the witnesses who were examined to prove the adoption, we have little hesitation in coming to the conclusion that the view accepted by the learned Subordinate Judge was correct and that in point of fact Kallu Mal was adopted by Hira Lal. As was pointed out by the learned Subordinate Judge, the two or three witnesses who were examined on behalf of the appellant in regard to the question of adoption were men who, in point of respectability, were not of the same class as the witnesses who were examined on behalf of the respondent. We, therefore, on this question hold that the view accepted by the Court below was correct and that the fact of adoption has been established.

We now come to the question of law which has been raised, namely, assuming that the adoption took place, was it invalid, having regard to the relationship subsisting between the parties? Kallu Mal is first cousin, once removed, to Hira Lal, being the grandson of Musammat Dallo, who was the aunt of Hira Lal. If the parties belong to one of the three regenerate classes, it is admitted that the adoption would not be valid, because Hira Lal could not have married Kallu Mal's mother. The question then is, do the parties belong to the class to which they claim to belong, namely, Chattris? Some of the witnesses, including the witnesses for the respondents, allege that they are Chattris, but it seems to us manifest from the evidence that they cannot properly claim to be entitled to that designation. One of the most important characteristics of Chattris is the insistence upon the performance of the *janeo* ceremony, the investiture with the sacred thread. The ceremony is performed at a time when the recipient is of tender years. The evidence of the witnesses shows that in the case of the Purbia Kurmis the *janeo* ceremony was not regarded as a necessary ceremony at all some few years back, and was not observed, and that in fact it was not known amongst them until within a period of about 10 or 12 years

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ago. It appears that of recent years the members of the caste formed aspirations of attaining to a higher social standing than they had theretofore enjoyed, and that in consequence of this a resolution was passed by the leading members of the caste that the *janeo* ceremony should be observed, and also a resolution declaring that they were Chattris. One witness stated in the course of his evidence that the investiture with the sacred thread took place in his case after he had attained the mature age of 60 years. This is not consistent with the practice of the regenerate classes. Other witnesses stated that some members of the caste received the sacred thread whilst others did not, and that there was no uniform practice in regard to it. It appears to us from the evidence that this important ceremony was not considered obligatory by the members of the caste of Purbia Kurmis, and this strongly manifests that they did not belong to one of the three regenerate classes.

The next matter which occurs to us as having a bearing on this point is that the three regenerate classes do not allow of widow re-marriages. In the case of the Purbia Kurmis, widow re-marriage is commonly recognised and practiced. A number of instances were given in which there had been such marriages amongst the members of the caste.

A third matter to which we would refer is that in cases of adoption, as the evidence shows, no ceremony was necessary. All that was required to be done was the delivery to the adoptive father by the natural father of the child and the acceptance by the adoptive father of the child. The *hom* or any other ceremony was not regarded as necessary. Now the *hom* ceremony is considered amongst the regenerate classes, according to Hindu tenets, to be necessary, though it is not in point of law regarded as absolutely essential to a valid adoption. We have further evidence to show beyond any doubt that adoptions and marriages among the Purbia Kurmis within the prohibited degrees are recognised as valid.

Taking all these facts into consideration, we think that the learned Subordinate Judge came to a right decision when he held that the parties here were not Chattris, as they claimed to be, and,

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this being so, the adoption of the respondent, Kallu Mal, by Hira Lal was not an invalid adoption. We, therefore, dismiss the appeal with costs.

Appeal dismissed.

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FULL BENCH.

Before Sir John Stanley, Knight, Chief Justice, Mr. Justice Banerji and Mr. Justice Richards.

SHEO TAHAL OJHA (PLAINTIFF) v. SHEODAN RAI AND OTHERS
(DEFENDANT).*

Act No. IV of 1882 (Transfer of Property Act), section 55—Parties to suit—Suit for foreclosure exempting part of the mortgaged property—Persons interested only in the portion exempted not necessary parties.

If a plaintiff mortgagee, suing on the basis of his mortgage for either sale or foreclosure, thinks fit to exempt from his suit some portion of the mortgaged property and to sell or to foreclose the mortgage in respect of the remainder, there is nothing in law to prevent his doing so. If such a plaintiff exempts a portion of the mortgaged property from his suit, he is not obliged to make parties to the suit the persons interested in the portion of the property so exempted. *Chandika Singh v. Pohkar Singh (1)* distinguished. *Sheo Prasad v. Bihari Lal (2)*, *Jai Gobind v. Jasram (3)* and *Nazir Husain v. Nihal Chand (4)* referred to by Banerji, J.

THIS was a suit for foreclosure of a mortgage executed in favour of the plaintiff by one Alrakh Rai and his nephew, Sheodan Rai, on the 12th of August 1889 for a sum of Rs. 432, of which sum, according to the deed, Rs. 164 was borrowed by Alrakh Rai and Rs. 268 by Sheodan Rai. The property mortgaged was a two-anna zamindari share. The plaintiff stated that the two mortgagors had executed the mortgage as heads of their respective families, and he accordingly impleaded as defendants to the suit Alrakh Rai and his sons and grandsons and Sheodan Rai and his sons, grandsons and great-grandsons. Sheodan Rai, who is the son of Ablakh Rai, a brother of Alrakh Rai, had five brothers, four of whom, namely, Beni Rai, Madho Rai, Shankar Rai, and Khedu Rai, were not joined as parties

* Second Appeal No. 831 of 1903, from a decree of L. Marshall, Esq., Officiating Judge of Ghazipur, dated the 30th of July 1903, confirming a decree of Babu Harimohan Banerji, Munsif, Ghazipur, dated the 15th of April 1903.

(1) (1880) I. L. R., 2 ALL. 906.

(2) (1902) I. L. R., 25 ALL. 79.

(3) Weekly Notes, 1898, 120.

(4) Weekly Notes, 1905, 156.