

that it be reinstated in the file of pending applications and be disposed of according to law. The plaintiff appellant will have the costs of this appeal. All other costs will abide the event.

Appeal decreed and cause remanded.

1908

CHANDAB
SHEKHAR
v.
KUNDAN
LAL.

1908
July 24.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.
LALTA PRASAD (PLAINTIFF) v. SALIG RAM AND ANOTHER (DEFENDANTS).*

Will—Construction of document—Persona designata.

By the terms of a will the testator gave all his property to his wife for her life, and then declared that after her death Lalta Prasad, his adopted son, should be owner of the property. The testator's wife predeceased him. Held that after the death of the testator Lalta Prasad took as a *persona designata*, whether in fact his adoption was valid or not. *Nidhoomoni Debya v. Saroda Pershad Mookerjee* (1) followed.

THE facts out of which this appeal arose are as follows :—

One Kedar Nath died on the 3rd of September 1904 leaving a will, dated the 22nd of June 1888. By this will the testator gave all his property to his wife for her life, and then declared that after her death Lalta Prasad, his adopted son, should be the owner (*malik*) of the property. The testator's wife predeceased him, and upon the death of the testator his sister's sons took possession of the property. Lalta Prasad then brought the present suit to recover the estate of Kedar Nath as sole legatee thereof. The Court of first instance (Munsif of Pilibhit) held that the plaintiff was entitled as *persona designata*, whether he was or was not in fact the adopted son of Kedar Nath, and accordingly decreed the claim. This decree was, however, reversed by the Subordinate Judge of Bareilly upon the ground that the gift to the plaintiff was made to him as adopted son and that he had failed to prove his adoption. The plaintiff thereupon appealed to the High Court.

Dr. Satish Chandra Banerji, for the appellant.

Munshi Gulzari Lal, for the respondents.

STANLEY, C. J., and BANERJI, J.—The meaning of a gift in the will of one Kedar Nath is the only question in this appeal. Kedar Nath made a will on the 22nd of June 1888.

* Second Appeal No. 971 of 1907 from a decree of Giraj Kishor Datt, Subordinate Judge of Bareilly, dated the 4th of July 1907, reversing a decree of Raman Das, Munsif of Pilibhit, dated the 8th of September 1906.

1908

LALTA
PRASAD
v.
SALIG RAM.

The will is very simple in its character. By it he gave to his wife all his property for her life, and after her death he declared that Lalta Prasad, his adopted son, should be the *malik*, or owner, of the property. The testator's wife predeceased him. He died on the 3rd of September 1904, and upon his death the defendants, who are his sister's sons, took possession of his property. Thereupon the suit out of which this appeal has arisen was instituted by Lalta Prasad. He claimed the property under the gift contained in the will of Kedar Nath. The Court of first instance held that he was entitled to it as *designata persona* under the will, and that it was immaterial to find whether or not he was the adopted son of Kedar Nath. It did, however, consider that question and came to the conclusion that the adoption was proved. On appeal the lower appellate Court held that the will was genuine, but the adoption of the plaintiff was not proved, and it reversed the decision of the Court below, on the ground that the gift made to the plaintiff was so made to him not as a *persona designata* but as an adopted son, and that inasmuch as he had failed to prove his adoption, the gift failed, and it therefore dismissed the plaintiff's suit. The construction of the will appears to us to be extremely simple. After the death of the widow, the testator gave his property to Lalta Prasad by name and then described him as an adopted son. There is absolutely nothing in the will to show that the fact of the adoption of the plaintiff was the motive or reason for the gift, and, in the absence of anything of the kind, it appears to us that, interpreting the language of the gift in its ordinary meaning, we must treat it as a gift to Lalta Prasad as a *persona designata*, and that therefore the gift is valid. This case appears to resemble the case of *Nidhoomoni Debya v. Suroda Pershad Mookerjee* (1) and to be governed by the decision in that case. We therefore allow the appeal. We set aside the decree of the lower appeal Court and restore the decree of the Court of first instance with costs in all Courts.

Appeal decreed.

(1) (1876) L. R., 3 I. A., 253.