

1912

NARAIN DAS
v.
THE EAST
INDIAN
RAILWAY
COMPANY.

turned upon an argument as to the sufficiency of a plea. In that case the declaration alleged that the particular goods had not been delivered through the negligence of the Railway Company, but there was no allegation that the goods had been lost. A perusal of the judgement in the case clearly shows that if it had been alleged that the title deeds had been actually lost while in transit in the Railway Company, the plea of the defendants would have been a good plea.

It has also been argued that the risk note cannot save the defendants unless they show that they took proper care of the package consigned to them. In our opinion the present case does not turn upon the construction of the risk note at all. The article was clearly one of the articles mentioned in the second schedule and the consignor was bound to declare the value of the article and to pay the percentage mentioned in the section so as to hold the railway company responsible for the loss.

In our opinion the appeal fails and is dismissed with costs.

Appeal dismissed.

1912
July, 13.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Banerji

LALA (PLAINTIFF) v. NAHAR SINGH (DEFENDANT).*

Act (Local) No. II of 1901 (Agra Tenancy Act), section 22 -- "Lineal descendant" -- Adopted son.

Held, that an adopted son is a lineal descendant within the meaning of section 22 of the Agra Tenancy Act, 1901.

This was a suit to recover possession of a certain occupancy holding detailed in the plaint, left by one Siya Ram, the plaintiff's brother, who was said to have died childless about 8 months before the filing of the suit. It was alleged that, under section 22 of Local Act No. II of 1901, the said holding devolved on the plaintiff, but that the defendant, who was the daughter's son of the said Siya Ram, professing himself to be the adopted son of Siya Ram, caused his name to be recorded in the Revenue papers, and that the defendant was not in fact and could not have been legally adopted. The plaintiff, therefore, besides the holding, also asked for possession of a house which had been left by Siya Ram. It was further stated by the plaintiff that the plaintiff's objection in the Revenue Court had been summarily dismissed. The courts

* Second Appeal No. 1187 of 1911 from a decree of A. W. R. Cole, Additional Judge of Aligarh, dated the 22nd of August, 1911, confirming a decree of Suraj Narain Majju, Munsif of Bulandshahr, dated the 11th of May, 1911.

below dismissed the suit. The plaintiff appealed to the High Court.

Dr. *Tej Bahadur Sapru*, for the appellant.

The respondents were not represented.

RICHARDS, C. J., and BANERJI, J.—We think that the court was quite justified in finding that the deceased occupancy tenant, Siya Ram, was a Sudra, and could adopt a daughter's son. This being so, the only question which remains is whether or not an adopted son is a lineal descendant within section 22 of the Tenancy Act, and in our opinion he clearly is. An adopted son is in the eye of the Hindu law just the same as a natural born son. The appeal fails and is dismissed, but without costs, as no one appears on behalf of the respondents.

Appeal dismissed.

1912

LALA
v.
NAHAR
SINGH.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Banerji.

OHHOTKU RAI AND ANOTHER (PLAINTIFFS) v. BALDEO SHUKUL AND OTHERS (DEFENDANTS).*

1912
June, 21.

Mortgage—Non-payment of greater part of mortgage money—Mortgages allowed to redeem before expiry of term of mortgage.

Certain property was mortgaged by way of conditional sale for Rs. 599-15-0 for ten years. Of the mortgage money Rs. 50-15-0 only were paid, and the balance was left with the mortgagees for payment to prior incumbrancers. The mortgagees did not pay off the prior incumbrancers, and the mortgagor having meanwhile sold the mortgaged property, his assignees sued for redemption of the mortgage before the expiry of ten years. *Held* that on equitable grounds, the defendants not having performed what was a most essential part of the contract, the plaintiffs ought to be allowed to redeem before the expiration of the period of ten years.

The facts of this case were as follows :—

One Baldeo executed a mortgage by conditional sale in favour of the defendants, second party, on the 21st of August, 1905, for a term of ten years. The mortgage money was Rs. 599-15-0, out of which only Rs. 50-15-0 were paid to the mortgagor and the balance was left with the mortgagees for payment of debts due to prior creditors. This amount not having been paid, Baldeo transferred the same share to the plaintiffs on the 5th of January, 1906. The plaintiffs brought the present suit against the defendants, second party, the mortgagees, under the deed of the 21st of August, 1905, seeking to redeem the mortgage on payment of Rs. 50-15-0, on

* Appeal No. 128 of 1911 under section 10 of the Letters Patent.