PRIVY COUNCIL.

P. C.* 1912 January, 30, 31, April 23.

DHARAM KUNWAR (PLAINTIFF) v. BALWANT SINGH (DEFENDANT).

[On appeal from the High Court at Allahabad.]

Estoppel Estoppel by conduct—Hindu Law—Adoption by Hindu widow under authority of her husband—Subsequent suit to set aside adoption as invalid—Denial of any valid authority to adopt—Adopted son having on faith of representations by widow married, performed shradh of adoptive father and incurred heavy liabilities in maintaining his change of status and privileges.

In this case, which was an appeal from the decision of the High Court in *Dharam Kunwar* v. *Balwant Singh*, I. L. R., 30 All., 549, their Lordships of the Judicial Committee, while expressing their opinion that the question in the case might well be decided as one of fact on the appellant's own statements without recourse to the doctrine of estoppel, did not differ from the view of the High Court as to the applicability of that doctrine. The appellant, they hold, had asserted her authority to adopt in the most solemn manner under her hand and seal, and her conduct both before and after that assertion had been of a like unequivocal character. She could not now be allowed to change her story without grave injustice ensuing to the respondent, who had acted in reliance upon her deliberate and repeated representations. The estoppel, however, their Lordships said, must be taken as being purely personal, and did not bind any one claiming by an independent title.

Appeal from a decree (4th August, 1908) of the High Court at Allahabad, which affirmed a decree (26th February, 1906) of the Subordinate Judge of Saharanpur dismissing the appellant's suit.

The suit was brought to obtain a declaration that the plaintiff had no power to adopt the defendant (respondent), and that in fact she never did adopt him, and that a document, called a deed of adoption, was null and void. The main question for determination in this appeal was whether the appellant was, or was not, estopped from questioning the validity of the adoption, and both the Courts below decided that question against the appellant.

The facts of the case will be found sufficiently stated in the judgement of the High Court (*Sir John Stanley, C. J.*, and Mr. *Justice Banerji*) which is reported in I. L. R., 30 All., 549.

On this appeal :—

Sir R. Finlay, K. C., and *Ross*, for the appellant, contended that the Courts in India had erred in holding that the appellant was estopped from questioning the validity of the adoption; and that even if the evidence of the respondent as to the adoption were true, it did not establish an adoption according to the requirements of

* *Present*—Lord SHAW, Lord ROBSON Sir JOHN EDGE and Mr. AMEER ALI.

Hindu law. Reference was made to the Evidence Act (I of 1872) section 115; *Surat Chunder Dey* v. *Gopal Chunder Laha* (1); *Parvatibayamma* v. *Ramakrishna Rau* (2); *Ravji Vinayakrav Jaggannath Shankarsett* v. *Lakshmibai* (3); which was distinguished; *Gurulingaswami* v. *Ramalakshmamma* (4); *Durga* v. *Kushalo* (5); *Oomrao Singh* v. *Mehtab Koonwer* (6); *Sukhbasi Lal* v. *Guman Singh* (7) which was distinguished; *Gopee Lall* v. *Chundraolee Buhoojee* (8) [*De Gruyther, K. C.*, referred to *Suryanarayana* v. *Venkataramana* (9); as to the authority of the appellant to adopt] *Tulshi Ram* v. *Behari Lal* (10) [*De Gruyther, K. C.*, referred on the question of estoppel to *Surat Chunder Dey* v. *Gopal Chunder Laha* (11).] The respondent would not suffer materially in any way by the setting aside of the adoption; there was no evidence to show any prospective loss.

De Gruyther, K. C., and *B. Dube*, for the respondents, were not called upon.

1912, *April* 23*rd* :—The judgement of their Lordships was delivered by Lord ROBSON :—

The appellant is the widow of one Raja Raghubir Singh, and she sued the defendant in the Court of the Subordinate Judge of Saharanpur to obtain a declaration that she had not adopted him as a son to her deceased husband, and that if, in fact, any ceremony of adoption had been performed, it was invalid, owing to the absence of authority on her part from her husband to make such adoption. She further prayed that a document purporting to be a deed of adoption, dated the 13th of January, 1899, should be declared void as being executed by her without such authority as aforesaid.

The Subordinate Judge dismissed the suit with costs and the High Court of Allahabad confirmed his decree.

(1) (1892) I. L. R., 20 Calc., 296 : L. R., 19 I. A., 203.

(2) (1894) I. L. R., 18 Mad., 145.

(3) (1887) I. L. R., 11 Bom., 381 (396).

(4) (1894) I. L. R., 18 Mad., 53.

(5) Weekly, Notes 1882, p. 97.

(6) (1868) 3 Agra, 103 *a*.

(7) (1879) I. L. R., 2 All., 966.

(8) (1872) L. R. I. A. Sup. Vol., 131 : 11 B. L. R. 391 : 19 W. R., P. C. 12.

(9) (1906) I. L. R., 29 Mad., 382 : L. R., 33 I. A., 145.

(10) (1889) I. L. R., 12 All., 328 (338).

(11) (1892) I. L. R., 20 Calc., 296 (313 314) : L. R., 19 I. A., 203 (218).

1912

DHARAM KUNWAR v. BALWANT SINGH.

Raja Raghubir Singh was the owner of the extensive Landhaura estate or raj in the district of Saharanpur, in the United Provinces. He died on the 23rd of April, 1868, at the age of 20 years, leaving the appellant, the Rani, his widow and sole heir. She was then only 14 years old, and *enceinte*. Raghubir Singh was a religious man and was desirous of leaving behind him a son who should perform his *shradh* ceremonies and transmit to future generations the name and prestige of the Raj. When, during his last illness, he became hopeless of recovery, recognising the possibility that the child about to be born to his wife might be a girl, or might not survive, he gave formal and emphatic directions to his wife in regard to the adoption of a son. The Rani herself has pledged her word as to the nature and scope of those directions on more than one public and important occasion. She did so particularly in the deed of the 13th of January, 1899, and in her defence to the action of one Baldeo Singh, which will be hereafter referred to. In the deed, which she undoubtedly executed with full appreciation of its contents, she says:—

"He made this will to me by way of precaution. If (God forbid) you give birth to a daughter, or if a son be born but die after his birth, I strictly order you to adopt some boy to me so that he might perform my *shradh* ceremony and yours, and perpetuate my name, and after your death become the absolute owner and possessor of the whole of my estate. If (God forbid) the son who might be adopted under this authority should die in your life-time, you will have power to adopt another boy."

In her defence to Baldeo Singh's action she informed the Court that she had full oral authority from her husband, and that he had not limited her to one, two, three, or four sons.

The Rani gave birth to a son on the 16th of December, 1868. He died on the 31st of August, 1870, leaving the Rani owner of the Raj. In 1877 she adopted a boy named Tohfa Singh, declaring by deed that she did so in accordance with the will of her husband. Tohfa Singh died two years after, and the Rani thereupon, in 1883, adopted a boy named Ram Sarup, still purporting to act in accordance with her husband's will. Ram Sarup died in 1885, and in 1893 the Rani made arrangements with a view to adopting a third boy. She executed an agreement in 1893 with one Lada Singh whereby he agreed to give her his son "to comply with the will of her husband," but before the adoption was formally carried out this boy unfortunately died in 1896.

These successive deaths seriously impressed the mind of the Rani, and she consulted her priests as to how the evil spirits might best be propitiated and appeased. Acting on priestly advice she went on pilgrimages to Gaya and other places, and after making religious sacrifices she proceeded to arrange for another adoption. On the 2nd June, 1898, she entered into a written agreement with Ram Niwas, the father of the respondent, whereby he made over to her his two sons, Balwant Singh (respondent), aged 14 years, and Tungal Singh, aged 12 years:—

"In order that she may adopt any one of them she pleases having regard to their capability and her choice. Now the sons of me, the executant, shall live under the protection and custody of the said Rani Sahiba, subject to the fulfilment of the further conditions necessary for the validity of the adoption, the enforcement of which depends upon a particular time which may be considered suitable according to the rules of astrology. I shall have no claim as to their protection and guardianship."

The Rani ultimately selected the respondent, Balwant Singh, and preparations were made for his adoption on an imposing scale. The 13th of January, 1899, was appointed for the ceremony, and on that day a great entertainment was given by the Rani. The European and Indian officials of the district, together with hundreds of friends, relations, and caste-fellows, were present at the invitation of the Rani, and were hospitably regaled by her. The religious ceremonies proper to an adoption were all carried out and the newly adopted son was conducted to the *gaddi*, or throne, where he was formally installed.

The Rani next proceeded to bring about the marriage of the respondent, and that ceremony was celebrated at her expense and in a manner befitting his new rank. In fact the respondent was thenceforth treated as a member of the Rani's family and cut off altogether from the family of his natural father.

In the following year Baldeo Singh, claiming as reversionary heir, instituted a suit against the Rani and the respondent, in which he sought to have it declared that he was entitled to the property on the death of the Rani, and that the adoption of Balwant Singh was invalid. The Rani defended that suit, and, acting upon her instructions, her pleader made the statement as to her authority before mentioned, and she herself executed and filed a written statement alleging that she had in fact adopted the respondent, and that the adoption was valid in every respect.

1912

DHARAM KUNWAR v. BALWANT SINGH.

Baldeo Singh failed in that suit on the ground that he was not a reversioner and had no *locus standi* to impeach the adoption in question, but the allegations of fact by the Rani in regard to the adoption are now very properly pressed against her.

The adopted son and the Rani have since quarrelled, and in this action she seeks to get rid of the adoption altogether.

At one time she stated that the seal affixed to the deed of adoption was not her seal, but she did not attempt to support this allegation by production of the seal regularly used by her, saying that she had mislaid it somewhere. However, documents admittedly executed by her and bearing seal impressions identical with that in dispute were produced and the genuineness of the seal on the deed of adoption was placed beyond doubt.

The learned Subordinate Judge stated the issue or questions arising in the case as follows :—

"1. Whether the plaintiff had knowledge of the contents of the deed of adoption when she executed it and got it registered or whether she had no knowledge of them?

"2. Was or was not the defendant adopted by the plaintiff?

"3. Had or had not the plaintiff any authority from her husband to adopt the defendant?

"4. If the first and second issues be decided against the plaintiff, how will it affect the claim?"

With regard to the first of these questions, the Rani pleaded that she was a *parda nashin* lady, and had never understood the contents of the document, or had even known what it was; but the learned Subordinate Judge formed the opinion that the long examinations to which she had, on different occasions been subjected, and the extreme shrewdness which she displayed in dealing with the questions, showed that she was an acute and intelligent lady, and that her only difficulties arose from the impossibility of making her statements fit with undoubted facts. The deed was executed by her under circumstances of the greatest publicity, and with the assistance of competent and independent advice from many quarters. It was attested by no less than 28 witnesses. It was subsequently registered (on her own admission of execution) and was frequently and openly referred to by the Rani as a deed of adoption. The Trial Judge therefore found that she executed the deed with full knowledge and understanding of its contents, and the High Court agreed with him.

The Rani next denies that the adoption was in fact carried out. The great entertainment of the 13th January, 1899, was, according to her, only an intimation to the public that she meant at some further time to carry the adoption into effect. On this point, except for the allegations of the Rani herself, the only evidence worth considering was practically all one way, and as to the Rani's testimony, the learned Judge says, in plain terms, that she had made so many untrue statements that it was impossible to believe her, while the evidence produced on her behalf was utterly unreliable and untrue. The High Court agree with this finding, as to the justice of which there can be no doubt.

The third question, viz. as to whether the Rani had authority from her husband to adopt the defendant, gives rise to the point which has been argued before their Lordships. The Rani contends that the authority conferred upon her by her husband did not extend, according to its strict wording, beyond the adoption of a second boy in case the first adopted son should die, and that such authority was therefore exhausted by the adoption of Ram Sarup. Their Lordships are of opinion that this was not the true effect of the authority, in fact, conferred upon the Rani. She may not have remembered with precision the words used by her husband on his death-bed, but whatever the exact words may have been, undoubtedly the effect they then produced on her mind, and on the minds of those about her, was that which she set forth in her statement in Baldeo Singh's action, viz. "that her husband had not limited the authority to make such adoption to one, two, three, or four sons."

That is the meaning on which she has consistently acted until her quarrel with the respondent, and the words ascribed to her husband, according to her recollection, in the deed of adoption, have always, until this litigation, been regarded by her, and her advisers, as intended to express a general authority. What the deceased Raja intended was that, if necessary, "some boy" should be adopted to him "so that he might perform my *shradh* ceremony, and yours, and perpetuate my name, and after your death become the absolute owner and possessor of the whole of my estate;" but in expressing this intention he saw that it might be defeated by death if construed in a restrictive sense as meaning some

1912

DHARAM KUNWAR v. BALWANT SINGH.

"one" boy, so he went on to deal with that contingency by directing, in substance, that effect was, in any event, to be given to the general intention, and if one boy died another boy was to be adopted. The Trial Judge did not expressly decide this question of fact. He found, as did the High Court, that in the circumstances of this case the Rani was estopped from alleging want of authority.

Their Lordships, in reviewing the facts of the case, are of opinion that the question may well be decided as one of fact on the Rani's own statements without recourse to the doctrine of estoppel. In their view she was speaking the truth in Baldeo Singh's action when she was pleading as to her authority. Their Lordships, however, do not differ from the Courts below in the they have taken as to the applicability of the doctrine of estoppel in this case. Of course, the estoppel pleaded against the Rani must be taken as purely personal. It does not bind any one who claims by an independent title, but, in view of the decision now given, that the respondent was, in fact, duly adopted, further litigation on the point may be taken as happily out of the question. So far as the Rani herself is concerned it would indeed be difficult to have a stronger case of estoppel. She has asserted her authority in the most solemn manner under her hand and seal, and her conduct both before and after that assertion has been of a like unequivocal character. She could not now be allowed to change her story without grave injustice ensuing to those who have acted in reliance upon her deliberate and repeated representations. The respondent is now severed from his natural family; he has undergone a change of social status which may or may not be beneficial to him, but which has certainly so altered his mode of life as to make a relapse into his former condition a grievous hardship upon him. He and his friends have been driven to expenses in the maintenance of the privileges with which the Rani purported to endow him. He married on the faith of his adoptive mother's word, and no doubt has creditors who have sold him goods or lent him money in like reliance on her good faith.

Under these circumstances the Rani's argument that the doctrine of estoppel does not apply because the defendant could show no loss or detriment, is without any substance whatever and she must be held to her word and to the results of her conduct.

Their Lordships will therefore humbly advise His Majesty that this appeal should be dismissed with costs.

Appeal dismissed.

Solicitors for the appellant :—*T. L. Wilson & Co.*

Solicitors for the respondent :—*Barrow, Rogers and Nevill.*

J. V. W.

1912

DHARAM KUNWAR v. BALWANT SINGH.

BRIJ LAL AND ANOTHER (DECREE-HOLDERS) v. SURAJ BIKRAM SINGH (REPRESENTATIVE OF DEBI BAKHSH SINGH), (JUDGEMENT-DEBTOR) *and another appeal consolidated.*

P. C.* 1912, *May*, 2.

[On appeal from the Court of the Judicial Commissioner of Oudh at Lucknow.]

Hindu Law—Will—Construction of will—Bequest to testator's daughter-in-law after death of wife—Whether it conferred an absolute or only a life estate in the property.

The will of a Hindu testator after reciting that he had no male heir, and had already provided for his widowed daughter, stated :—"I have resolved that after my death my wife, legatee No. 1, shall remain in possession and enjoyment of all my property with all powers or authority like myself; and that after the death of my wife my daughter-in-law, widow of Raghuraj Singh, legatee No. 2, shall remain in possession and enjoyment of all the properties aforesaid like myself and legatee No. 1 * * * * I therefore execute a will in favour of my daughter-in-law, so that on the demise of myself and my wife the estate and name of my ancestors may continue as before, and she in place of Raghuraj Singh shall perform my funeral ceremonies and those of my wife according to the *shashtras* and the custom of the family, and then she shall have power to nominate any one whom she may think fit as 'heir,' so that the name of the family may continue as formerly and now with honour."

Held (affirming the decision of the Court of the Judicial Commissioner) that on the true construction of the will the word "heir" meant heir to the testator, and the daughter-in-law took (as did the wife) not an absolute interest, but only a life estate in the testator's property, which was therefore on her death not liable to attachment and sale under decrees against her representative.

Two consolidated appeals from the judgements and decrees (7th August, 1907) of the Court of the Judicial Commissioner of Oudh which reversed two decrees (12th February, 1907) of the Subordinate Judge of tahsil Biswan in the district of Sitapur.

The question for decision in these appeals was whether upon the true construction of the will of one Narpat Singh, dated the 11th of July, 1893, an absolute, or merely a life, estate passed to Rani Brij Nath Kunwar (since deceased) in the village of Intgaon, which had been attached in execution of decrees.

*Present :—Lord MACNAGHTEN, Lord ATKINSON, Lord SHAW, Sir JOHN EDGE and Mr. AMEER ALI.