

that if the Code printed in Rampur is simply a copy of our Code and contains the same definition of "foreign judgement" and "foreign court" it is difficult to see how section 13 applies at all. We would be inclined, if such be the case, to infer that the Code was only printed as a guide to judicial officers in Rampur when dealing with cases in the *ilaga*. For these reasons we are of opinion that the plaintiffs are not entitled to the declaration they ask for. If they are not, they clearly are not entitled to the injunction claimed.

It is unnecessary to express any opinion on the other questions raised. In conclusion we wish to say that we have no reason for thinking that the suit will not be fairly and honestly tried out in Rampur on the evidence.

The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.

1914

MAQBUL
FATIMA
V.
AMIR HAJAN
KHAN.

1914
July. 4.

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

THAMMAN SINGH (DEFENDANT) v. DAL SINGH AND OTHERS (PLAINTIFFS)*
Act (Local) No. II of 1901 (Agra Tenancy Act), section 22—Occupancy holding—Succession—"Lineal descendant"—Hindu law—Adoption.

Held that, as regards the right of succession to an occupancy holding, a Hindu who has been adopted ceases to be the lineal descendant of his natural father for the purposes of section 22 of the Agra Tenancy Act, 1901. *Lala v. Nahar Singh* (1) followed *Nandan Tiwari v. Raj Kishore Rai* (2) approved. *Ali Balhsh v. Barkat-ullah* (3) distinguished.

THIS was a suit for possession of an occupancy holding on the allegation that Kewal Singh, the plaintiff, was the heir of Hansi, being a brother, and that Thamman Singh, defendant, was no heir, being the illegitimate son of Hansi, the original tenant. The court of first instance dismissed the claim. On appeal the learned District Judge reversed the decree of the court of first instance, holding that an illegitimate son was no heir within the meaning of section 22 of the Tenancy Act, and he further held that Kewal had been adopted in another family, but, as he was a brother, he had a preferential title. The defendants appealed.

* Second Appeal No. 165 of 1913 from a decree of F. S. Tabor, District Judge of Shahjahanpur, dated the 5th of December, 1912, reversing a decree of Gauri Shankar Tiwari, Munsif of Sahaswan, dated the 27th of June, 1912.

(1) (1912) I. L. R., 34 All., 658. (2) Select Decisions, 1904, No. 5.

(3) (1912) I. L. R. 34 All., 419.

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THAMMAN
SINGH
v.
DAL SINGH.

Pandit *Mohan Lal Sandal* (with him Mr. *Ibn Ahmad*):—

An adopted son is not a lineal male descendant of his natural father within the meaning of section 22 of the Agra Tenancy Act; *Lala v. Nahar Singh* (1), *Nandan Tiwari v. Raj Kishore Rai* (2). When a person is adopted in another family he is cut off from the natural family and does not inherit in that family. See Mayne's Hindu Law, 8th edition, para. 172, p. 229. Kewal is therefore not the brother of Hansi.

Mr. *E. A. Howard*, for the respondents:—

The personal law of parties does not apply; there is a special law of inheritance provided for by section 22 of the Agra Tenancy Act, which alone applies to the present case; *Ali Baksh v. Barkat-ullah* (3).

Pandit *Mohan Lal Sandal*, was not heard in reply.

RICHARDS, C.J., and TUDBALL, J.—This appeal arises out of a suit brought by one Kewal Singh to recover possession of certain immovable property comprising an occupancy holding. The occupancy holding belonged at one time to Puhap Singh. Puhap Singh had a son Hansi and a son Kewal, the plaintiff. On the death of Puhap Singh, Hansi became the occupancy tenant. Kewal had been adopted into another family. On the death of Hansi the defendant Thamman Singh entered into possession. Kewal Singh then brought the present suit alleging that he was entitled under section 22 (c) of the Tenancy Act to the occupancy holding. He also alleged that Thamman Singh was illegitimate.

The court of first instance dismissed the suit. The lower appellate court reversed the decision of the court of first instance and decreed the plaintiff's suit. Hence the present appeal.

In our opinion the decree of the court of first instance is correct and must be restored. Unless Kewal Singh can be said to be the brother by the same father as Hansi's, he has no right to the occupancy holding, even on the assumption that Thamman Singh is illegitimate. In our opinion once a boy has been adopted into another family he ceases to be a "lineal descendant" of his natural father. This was expressly held by a Bench of this Court in the case of *Lala v. Nahar Singh* (1). In principle exactly the same view was taken in the case of *Nandan Tiwari v. Raj Kishore Rai* (2). We agree with both these authorities.

(1) (1912) I. L. R., 34 All., 658. (2) Select Decisions, 1904, No. 5.

(3) (1912) I. L. R., 34 All., 419.

The respondents rely upon the case of *Ali Bakhsb v. Barkatullah* (1), and quote the following passage from the judgement: "In our opinion the personal law of the parties has nothing to do with the rule of succession which is laid down by section 22 of the Tenancy Act." In our opinion this remark of the Judges must be read in connection with the particular facts of the case before them.

The result is that the appeal is allowed, the decree of the court below set is aside and the decree of the court of first instance is restored with costs in all courts.

Appeal decreed.

*Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice
Tribhull.*

MUNICIPAL BOARD OF AGRA AND ANOTHER (DEFENDANTS) v.
SUDARSHAN DAS SEASTRI (PLAINTIFF).*

*Public road—Metalled and unmetalled portions equally part of road—
Right of public way.*

Where the question is as to the breadth of a public road, it must be taken that all the ground over which the public have a right of way is part of the road; the mere fact that part of the road may be metalled for the greater convenience of the traffic will not render the unmetalled portion on each side any the less a public road or street.

THIS was a suit to recover from (1) the Municipal Board of Agra and (2) the Secretary of State for India in Council damages for alleged trespass in respect of certain land. The plaintiff alleged that he was the zamindar of mauza Basai, a suburb of Agra, including a large portion of the abadi of Tajganj, which mauza included many roads, streets and markets and in particular two places, known as Nanda Bazar and Tulshi Chabutra, where hawkers used to sell their wares by permission of the plaintiff who derived an income from them of some Rs. 265 per annum. The plaintiff stated that the Joint Magistrate of Agra, either as Magistrate or as Vice-Chairman of the Municipal Board, had prohibited the hawkers from selling their wares at the places where they had been accustomed to do so; and further

* First Appeal No. 268 of 1912 from a decree of Baijnath Das, Subordinate Judge of Agra, dated the 20th of March, 1912.

(1) (1912), I. L. R., 34 All., 419.

1914

THAMMAN
SINGH
v.
DAL SINGH.

1914
July, 6.