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under execution but which was connected with the decree under execution as in *Amrit Lal* v. *Murlidhar*(1), or a case where the application had been against the widow of the judgment-debtors who was not in possession of his estate and was not the right person to be proceeded against—*Ganeshwar Singh* v. *Than Mal*(2). These are cases in which relief could be given if a formally correct application was made. Here the application was for a relief which it had been decided by the High Court could not be given and which was entirely outside the law. This case falls, in my opinion, within the principle of the decisions which were cited by the appellants; and the application of the 31st of March, 1924, was not available to save limitation.

Appeals nos. 218 of 1928 and 48 of 1929 must, therefore, be allowed and the order of the Court below set aside and the execution case dismissed with costs throughout. Appeal no. 206 of 1928 is dismissed but without costs. The cross-objection is also dismissed.

CHATTERJEE, J.—I agree.

Appeal nos. 48 *and* 218 *allowed.*

Appeal no. 206 *and cross-objection dismissed.*

PRIVY COUNCIL.

RAJENDRA PRASAD BOSE

v.

GOPAL PRASAD SEN.*

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June, 26.

On Appeal from the High Court at Patna.

Hindu Law—Adoption—Authority to adopt—widow having authority to adopt with permission of husband's father —death of husband's father—construction—condition

**Present*: Lord Thankerton, Sir George Lowndes and Sir Binod Mitter.

(1) (1922) 3 Pat. L. T. 422.

(2) (1926) 8 Pat. L. T. 217.

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precedent—construction of vernacular documents—Official translation.

A Hindu governed by the Dayabhaga died in 1869 having executed a deed by which, after stating that it was necessary for him to have an adopted son to inherit his zamindaris, he authorised his wife, then thirteen or fourteen years of age, to adopt his half-brother and if there was (as was the case) an obstacle to her doing so, then to adopt whom she wanted with the permission of his (the husband's) father, and to put the adopted son into possession. The widow made an adoption in 1885 without the permission of her father-in-law, he having died in 1873.

Held, that as the paramount intention shown by the deed was not to obtain the spiritual benefits arising from an adoption but to have a son to inherit, the permission of the father was a condition precedent, and the adoption accordingly was invalid.

A power to adopt must be exercised strictly in accordance with its terms, and the rules prevailing in England as to the construction of powers are applicable thereto.

Chowdry Pudum Singh v. *Koer Oody Singh*(1), *Surendrakeshav Roy* v. *Doorgasundari Dassee*(2) and *Amrito Lall Dutt* v. *Surnomoye Dasi*(3), followed.

In construing a document, whether in English or the vernacular, the fundamental rule is to ascertain the intention from the words used; the circumstances are to be regarded but only to show the intended meaning of the words used. The outlook and social customs of an Indian, and the fact that documents in the vernacular are often expressed in loose and inaccurate language, are circumstances to be regarded for that purpose, and thus sometimes a meaning more extended or restricted than the literal meaning may have to be given to particular words in vernacular documents provided the context justifies doing so.

Narasimha v. *Parthasarathy*(4), referred to.

(1) (1869) 12 Moo. I. A. 350, 354.
(2) (1891) I. L. R. 19 Cal. 513; L. R. 19 I. A. 108, 122.
(3) (1900) I. L. R. 27 Cal. 996; L. R. 27 I. A. 128.
(4) (1913) I. L. R. 37 Mad. 199, 221 to 223; L. R. 41 I. A. 51, 70 to 72.

The practice of the Judicial Committee is to accept an official translation as correct.

Sasiman Chowdhurain v. *Shib Narayan Chowdhury*(1), followed.

Appeal (no. 112 of 1929) in forma pauperis from a decree of the High Court (December 16, 1927) affirming a decree of the Subordinate Judge of Cuttack (August 6, 1923).

The appellants instituted a suit against the respondent claiming certain property as reversionary heirs of Ram Gopal Bose, who died in 1869, upon the death of his widow in 1920. The respondent's father, since deceased, had been adopted in 1885 by the widow who purported to act under an authority to adopt executed by her husband. The property in suit had been inherited by the mother of Ram Gopal Bose and had descended from her to him. It was not disputed upon the appeal that the authority to adopt was a genuine document, and that the adoption had been made in fact, the only question now raised being whether it was a valid exercise of the power conferred.

The facts appear from the judgment of the Judicial Committee.

The Subordinate Judge dismissed the suit, holding that the adoption was valid. In his view the evidence showed that Golak Prosad was advised that there was an obstacle to the adoption of Chema, and that thereupon he gave the widow a general permission to adopt a stranger. The view that he gave a general permission, however, was disapproved on appeal by the High Court, and was not raised upon the present appeal.

The High Court affirmed the decree dismissing the suit. The learned Judges (Ross and Wort, JJ.) delivered separate judgments substantially to the same effect. They were of opinion that the question

(1) (1921) I. L. R. 1 Pat. 305; L. R. 49 I. A. 25, 32.

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whether there was an obstacle to the adoption of Chema within the meaning of the deed depended upon whether at the time there was a recognized prohibition, or at least a bona fide doubt as to its validity, and not upon later decisions, including those as to whether a Bengal Kayastha belongs to the regenerate castes. As Golak Prosad had taken legal advice and received an adverse opinion there was an obstacle within the terms of the authority. In their view the primary intention of the deed was that an adoption should be made, and that, therefore, effect should be given to the adoption of 1885 even though the permission of Golak Prosad could not be obtained as he was dead.

1930, *June* 2, 3.—*Wallach* for the appellants: The adoption of the respondent's father was invalid. There was no obstacle according to the shastras to the adoption of Chema. Hindu law permits the adoption of a half-brother; even if it does not in the case of the regenerate castes, the parties were Bengali Kayasthas, and as such were, it is submitted, Sudras. Secondly, the permission of Golak Prosad was a condition precedent to the adoption made, and it was not obtained.

[Their Lordships said that there were concurrent findings that Golak Prosad had legal advice that an adoption of Chema would be invalid, and in their view that was an "obstacle" within the meaning of the deed, whether the advice was correct or not; the only contention which could be argued was therefore that last mentioned by Counsel.]

The power to adopt was in terms restricted to an adoption with the permission of the husband's father. The Board held in *Amrito Lal Dutt* v. *Surnamoye Dasi*(1) that an authority to adopt could be restricted by requiring the consent of a particular person, and that if that consent cannot be obtained owing to the

(1) (1900) I. L. R. 27 Cal. 996, 1002; L. R. 27 I. A. 128, 134.

death of that person the authority cannot be exercised. It is well established that an authority to adopt must be strictly pursued: *Chowdhry Pudum Singh* v. *Koer Oodey Singh*(1), *Mutsaddi Lal* v. *Kundan Lal*(2), *Sitabai* v. *Bapu Anna Patil*(3). In English law the donee of a power to be exercised with the consent of a named person cannot exercise the power after that person's death. The terms of the deed did not indicate that the primary object was to secure an adoption for the spiritual benefits arising to the husband, and it in clear terms made the permission a condition. The principle applied in *Suryanarayana* v. *Ramanna*(4) consequently does not apply here.

DeGruyther, *K.C.* and *Hyam*, for the respondent: The deed should be construed according to the ordinary notions and wishes of a Hindu: *Mahomed Shumsool Hooda* v. *Shewukram*(5). The primary motive of a Hindu in giving his widow a power to adopt is to secure spiritual benefits, and the deed should not be read so as to defeat that object: *Suryanarayana* v. *Ramanna*(4). That consideration particularly applies here as the deed shows that the husband knew that he was in extremis. The permission of his father was not intended to be a condition precedent, or as necessary when owing to his death it could not be obtained. Had it been capriciously withheld during his life the widow could have adopted. The Subordinate Judge translated the important words "with the opinion (or approval) of my father;" it is submitted that that was the true intent.

Wallach replied.

June, 26.—The judgment of their Lordships was delivered by—

SIR BINOD MITTER.—This is an appeal from the decree of the High Court of Judicature at Patna,

(1) (1869) 12 Moo. I. A. 350, 354.
(2) (1906) I. L. R. 28 All. 377, 380; L. R. 33 I. A. 55, 57.
(3) (1920) I. L. R. 47 Cal. 1012; L. R. 47 I. A. 202.
(4) (1906) I. L. R. 29 Mad. 283; L. R. 33 I. A. 145.
(5) (1874) L. R. 2 I. A. 7, 14.

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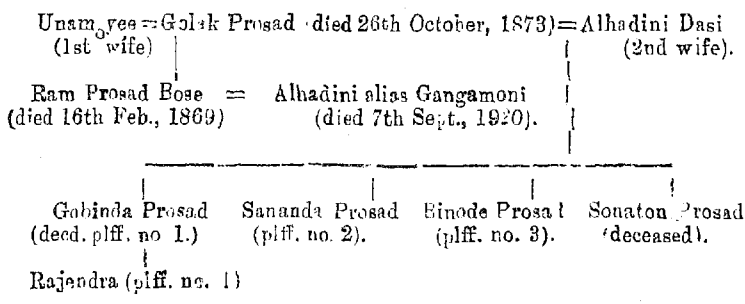
dated the 16th December, 1927, which affirmed a decree of the Subordinate Judge at Cuttack, dated the 6th August, 1923, and dismissed the plaintiffs' suit with costs.

The following is the genealogical table of the family of Ram Prosad Bose, and the parties to the litigation claim to be his heirs.



Ram Prosad Bose executed a will and also an anumatipatra in favour of his wife Alhadini Dasi on the 16th February, 1869.

Alhadini Dasi, the widow, adopted one Krishna Prosad in the year 1885, and he died in 1909 leaving the respondent his only heir in possession of the properties claimed by the appellants. Alhadini died on the 7th September, 1920, and the present suit was instituted by the appellants against the respondent on the 25th April, 1921, praying for a declaration that the adoption of Krishna Prosad was invalid, and for the recovery of the properties in possession of the respondent and other incidental reliefs.

There is no dispute now about the valid execution of the will or the anumatipatra, nor is there any dispute that Krishna Prosad was in fact adopted, and that all necessary and proper ceremonies were performed at his adoption.

Ram Prosad belonged to a Kayastha family, and was governed by the Bengal School of Hindu law, and

the widow therefore could only adopt in terms of the anumatipatra, provided the same remained effective at the date of the adoption.

The following is the official translation of the anumatipatra :—

" Anumatipatra executed by Ram Prosad Bose in favour of Alhadini Dasi.

" This anumatipatra is executed by Ram Prosad Bose of Bhogmadhab, Ph. Jajpur, district Cuttack, at present of Bichargunj, Ph. Sunhat, district Balasore, to the effect following :—

" That as I was taken ill with purging and vomiting yesterday, I found that it was not likely that should live. In the circumstances I find that it is necessary that I should have an adopted son or a snehaputra (to inherit) the zamindaries, etc., the movable and immovable properties, which I have in Balasore and Cuttack. Hence in sound mind and out of my own free will I execute this anumatipatra in favour of my wife Alhadini, alias Gangamani Dasi, to the effect that she will take an adopted son, that is, she will adopt my father's youngest son. At present he is called by the name of Chema. She will take him in adoption and deliver him possession of the aforesaid property on my death. If there be any obstacle to take him in adoption according to the Shastras, then he will be made a snehaputra or she may adopt anyone else whom she wants, with the permission of my father, and deliver him possession as written above. To the above effect I execute this anumatipatra that it may be of use when necessary. D/16-2-1869 corresponding to 7th Falgun 1276."

The learned Subordinate Judge, in his judgment, translated the vernacular word " matanusara " as " according to the opinion or advice," but the official translation of the aforesaid word is " with the permission."

Mr. Justice Ross, in his judgment, accepted the official translation in its entirety, and the other learned Judge substantially did the same. The practice of their Lordships' Board is to accept the official translation as correct [*Sasiman Chowdhurain* v. *Shib Narayan Chowdhury*(1)], and their Lordships must decide this appeal on the official translation.

(1) (1921) I. L. R. 1 Pat. 305, 311; L. R. 49 I. A. 25, 31.

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Both the Courts below have held that there was an obstacle to take Chema, the testator's step-brother, in adoption, and their Lordships see no reason to differ from that view.

The substantial question before their Lordships for decision is whether on the true construction of the anumatipatra, on the death of Golak Prosad, the power to adopt given to the widow by Ram Prosad came to an end.

In England, as also in India, even where a document is executed in vernacular, the fundamental rule of construction is the same. The duty of the Court is to ascertain the intention from the words used in the document. The Court is entitled and bound to bear in mind surrounding circumstances, but the Court does that only to ascertain the real intention of the executant from the words used by him. The surroundings of an Indian, his manners, his outlook proceeding from different religion and social customs, are often different from those of an Englishman. Ordinarily documents executed by an Indian in his own language, particularly without any professional aid, are often expressed in loose and inaccurate language. All these considerations have to be borne in mind, and sometimes by reason of these aforesaid circumstances a more extended or restricted meaning may have to be given to particular words than their exact literal meaning permits, provided always that the context justifies it. In short, the Court is entitled to "put itself into the testator's armchair." Once the construction is settled, the Court is bound to carry out the intention as expressed and no other. The rules of construction were clearly laid down by the Board in *Narasimha v. Parthasarathy*(1).

It is true that the paramount intention that often actuates a husband to empower his wife to adopt a son to him is religious, for, according to Hindu

(1) (1913) I. L. R. 37 Mad. 199, 221 to 223; L. R. 41 I. A. 51, 70 to 72.

religion, the adopted son is able to confer on him at stated intervals spiritual benefits in a much higher degree than his brothers or any other near agnatic relations. On the other hand, sometimes a husband mainly from secular motives empowers his wife to adopt a son or sons to continue his line of ancestors and to inherit his property and keep up his own name (*see* Mayne's Hindu Law, sixth edition, p. 134).

Generally both motives induce the husband to empower the wife to adopt a son to him, and whether the paramount intention is religious or secular has to be ascertained from the language of the anumatipatra bearing in mind the various facts to which their Lordships have referred.

It is well established law in England that when a power is given to be executed with the consent of a person, and that person dies before the power is executed, the power comes to an end.

Their Lordships see no reason why, *subject to what they have said*, the ordinary rule as to construction of powers which prevails in England should not be applicable to the construction of an anumatipatra executed in India. Their Lordships are fortified in their view by the observations of the Board in the case of *Amrito Lal Dutt* v. *Surnomoye Dasi*(1). Their Lordships find from the document that the paramount intention was to have an adopted son to *inherit the zamindaries*. Instructions were given that the properties not disposed of by the will should be made over to the adopted son. The anumatipatra nowhere suggests that the adoption was to secure the spiritual benefit of Ram Prosad.

It is important to bear in mind that Ram Prosad could not have been married many years before the anumatipatra was executed, and his wife was then only 13 or 14 years of age. It is unlikely that he could ever have wished that his girl wife should have an unrestricted choice in the selection of his adopted

(1) (1900) I. L. R. 27 Cal. 996, 1002; L. R. 27 I. A. 128, 134.

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son to the extent of allowing her to bring a stranger to inherit his property.

In their Lordships' opinion the words "with the permission of my father" created a condition precedent to the exercise of the power of adoption certainly during the lifetime of the father, and there is no reason for holding that the words are to have a different effect after the death of Golak. It is well established law in India that authority given to a wife to adopt has to be strictly pursued. [*Chowdhry Padum Singh* v. *Koer Oodey Singh*(1), *Surendrokeshub Roy* v. *Doorgasundery Dossee*(2)].

Their Lordships therefore hold that on the death of Golak the power to adopt came to an end.

Counsel for the respondent argued that in order to give effect to the true intention of Ram Prosad the words "if possible" should be added after the words "with the permission" in the anumatipatra. Their Lordships are unable to accept this contention, and they are of opinion that the appeal should be allowed, and there should be a decree for ejectment against the respondent with mesne profits from the death of Alhadini to the date when possession is delivered to the appellants. The plaintiffs are also entitled to the declaration that Krishna Prosad was not the adopted son of Ram Prosad.

The appellants were unsuccessful in most of the issues raised by them, and in their Lordships' opinion each party should bear his or their costs in the Courts below, but the appellants should have such costs of this appeal as they are entitled to as appealing *in forma pauperis*. They will therefore humbly advise His Majesty accordingly.

Solicitors for appellants:—*W. W. Box and Company*.

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

(1) (1869) 12 Moo. I. A. 350, 356.
(2) (1892) I. L. R. 19 Cal. 513, 525; L. R. 19 I. A. 108, 122.