

*Before Mr. Justice L. S. Jackson and Mr. Justice Markby.*

SABO BEWA AND ANOTHER (DEFENDANTS) v. NAHAGUN MAITI  
(PLAINTIFFS.)\*

1868  
April 17.

*Adoption—Ceremonies—Evidence.*

In a case to set aside an adoption, on the ground that the ceremonies had not been performed, where there was satisfactory evidence showing that the adoption had been continuously recognised for a series of years and that the party adopted had been in possession, either in person or through his guardian, of the property in dispute. See also 1  
B. L. B. 4

*Held*, that the Court may well dispense with formal proof of the performance of the ceremonies, unless it were distinctly proved, on the part of the plaintiff, that the ceremonies had not been performed.

Baboo *Ambika Charan Banerjee* for appellant.

Baboo *Nilmalhab Sen* for respondent.

JACKSON, J.—The decision of the lower Appellate Court seems to me to be a correct and sensible decision. I think no ground of special appeal has been made out. I quite agree with the Judge in thinking that when there is satisfactory evidence showing a party to have been given and received in adoption, and when the adoption has been continuously recognised for a series of years, and the party adopted is shown to have had possession, either in person or through his guardian, of property which would devolve upon him by reason of such adoption, in such a case, after the lapse of 20 years, the Court may very well dispense with formal proof of the performance of the ceremonies, and unless it were distinctly shown, on the part of the person contending against the adoption, that ceremonies had not been performed, the party adopted would be entitled to enforce all his rights as adopted son. I think, therefore, that the plaintiff in this case is fully entitled to have judgment in his favour, and that the decision of the lower Appellate Court must be affirmed with costs.

MARKBY, J.—I am of the same opinion. I think it ought not to be forgotten in this case that there is this circumstance that it was agreed on all hands that there had been an adoption, but the question was, who was the really adopted person; and whereas the plaintiff had proved that he had been recognised as the adopted son, and that possession had been held on his behalf by the widow after the death of Bhagwan, the person adopting, the other party whom the defendants set up wholly failed to prove any thing of the kind, that is, either that he was recognised, or that he had ever held possession.

\* Special Appeal, No. 2795 of 1868, from a decree of the Judge of Cuttack, dated the 1st August 1868, reversing a decree of the Moonsiff of that district, dated the 17th, of April 1868.