

of the Reports for 1857, Munoruth Roy and others, appellants, and we fully concur in the conclusions of that decision expressed in these terms: "In fact, in an execution sale, the stipulation that something does exist is absolutely withheld. Plaintiff purchased the rights and interests of Agund Roy, whatever they might be, within a 2-anna share of Mouzah Monearpore and two other villages. Afterwards it turned out that Agund Roy held no rights and interests in those villages; but plaintiff took his chance of this. The sale did not assure him of the existence of any property; he was, on the contrary, constrained to satisfy himself in the matter, and he has no valid ground to repudiate the sale."

We, therefore, think that the special appeal in this case is untenable, and dismiss it with costs.

The 29th May 1865.

Present:

The Hon'ble G. Loch and W. S. Seton-Karr,  
Judges.

Hindoo Law—Adoption.

Case No. 393 of 1864.

Regular Appeal from a decision passed by the Judge of Mymensingh, dated the 12th April 1864.

Gobind Soonduree Debia (Plaintiff),  
Appellant,

versus

Juggodumba Debia and Bama Soonduree Debia and others (Defendants), Respondents.

Mr. G. C. Paul and Baboos Chunder Madhub Ghose and Sreenath Doss for Appellant.

Mr. R. V. Doyne and Baboos Unnoda Pershad Banerjee and Nil Madhub Sein for Respondents.

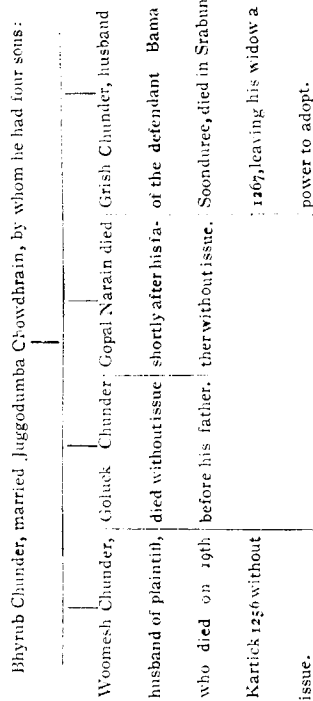
Suit laid at Rupees 49,981-11 as 4 ps.

A claim to adopt disallowed in the case of a Hindoo woman, who, so long as any male member of her husband's family was alive, took no steps to carry out her husband's permission to adopt, but who, so soon as the last male member died, and the property devolved on the last male member's widow, tried to obtain possession by the alleged dormant permission to adopt.

This suit was brought to recover possession of certain landed property mentioned in the plaint left by Bhyrub Chunder Chowdhry, the maternal grandfather of Bykunt Chun-

der, the son of the plaintiff, adopted, as is alleged by her, by permission of her deceased husband, Woomesh Chunder Chowdhry, with the consent of his father, the said Bhyrub Chunder.

The family tree is as follows:—



Bhyrub died in Assin 1265, and his property went to his surviving sons, Gopal and Grish Chunder. On the death of Gopal, his share of the property devolved on his mother Juggodumba, who made it over by gift to her sole surviving son Grish Chunder, and, in company with the plaintiff, Gobind Soonduree, proceeded in the month of Pogs 1266 to Benares, intending to spend the remainder of her life in the holy city. The death of Grish Chunder, however, in 1267, appears to have made an alteration in their plans, and they returned home in 1267, and, in the following year, plaintiff presented a petition, stating that her husband had left her permission to adopt, and in 1269 instituted the present action.

The allegation of the plaintiff is to the effect that her husband Woomesh Chunder during his last illness in Kartick 1256, gave her, with the consent of his father Bhyrub Chunder, permission to adopt five sons in succession. This permission was first given verbally in the presence of witnesses, and was reduced to writing two days after, and duly signed by Woomesh Chunder, attested

by the subscribing witnesses, among whom was Bhyrub Chunder, who affixed his seal and signature to the instrument. The document was left in the custody of Bhyrub Chunder, and, on his death, fell with his other papers into the hands of his son Grish Chunder, whose widow has failed to produce it if it be still in existence.

Abundance of oral evidence has been produced to prove the fact of the permission having been given, first verbally, and then in writing; but we entirely discredit the whole of the evidence except that of Dr. Elton, knowing how easy it is, when family disputes arise, to raise claims such as is made in the present case, and to support them with any amount of oral evidence, even that of the nearest relatives of the family who generally range themselves on one side or the other, and who cast aside all regard for truth in order to secure the success of the party, whose cause they have espoused; and our past experience tells us that such is particularly the case in suits to uphold or set aside alleged acts of adoption in zillah Mymensingh. There are, however, reasons beyond this general one, which, in our opinion, render this testimony utterly worthless, and lead us to believe that the present is merely an impudent attempt to get the property out of the possession of the widow of the youngest son of Bhyrub, the widow of the eldest brother being pitted against her by interested persons, who have their own ends to gain. We find that Woomesh Chunder died in 1256; that, from that time till 15th Assin 1268, a period of twelve years, nothing was done by the plaintiff in furtherance of the permission to adopt, which, as she alleges, she had received from her husband. No publicity was given to this instrument; no care was taken to register, nor to keep it in her own custody, and the instrument itself is not to be found. But plaintiff comes into Court with a plausible tale that she was too young to take care of the paper when her husband died, and so made it over to her father-in-law, from whose custody it passed, on his death, to that of his son, and thus on his widow she casts the *onus* of producing it, or the odium of having destroyed it. After the death of her father-in-law she allowed her brothers-in-law to take possession of the estate, made no attempt to make the adoption, an act which would have secured to her, as guardian of a minor adopted son, a large share of the family property, but she proceeded with her mother-in-law to

Benares, apparently with the purpose of spending the remainder of her life there, when the unexpected death of her youngest brother-in-law brought her back to the family residence, prepared to contest with his widow the right to the possession of the property, and to support her claim by any amount of hard swearing which unscrupulous parties about her do not hesitate to put forward in her behalf. So long as any male member of her husband's family remained alive, she took no steps to carry out her husband's permission to adopt, but no sooner has the last male member deceased, and the possession of the property devolved on his widow, than plaintiff suddenly starts up from her long sleep, and tries to get possession by an alleged dormant permission to adopt, there being no other possible means by which she or those who are acting in her interests could obtain a share in the plunder. The evidence of Dr. Elton is to the effect that, when he was Civil Surgeon of Mymensingh, some 14 or 15 years ago, he attended Woomesh Chunder in his last illness, and that his father Bhyrub Chunder told the witness that Woomesh Chunder had given his wife Gobind Soonduree a written power to adopt, which, however, he would not register, as he had then three other healthy sons by whom he hoped the family would be continued. This statement, however, made some fifteen years after the conversation took place, is after all only hearsay. The witness did not see the instrument, and it appears very improbable that, had it been in existence, and in his possession, Bhyrub would have neglected to have had it registered, or at least to have shown it to his friend, the Civil Surgeon, who was also the Registrar of Deeds. We think this adoption is entirely wanting in those marks which give validity to an adoption laid down so clearly and precisely in the judgment of the Sudder Court, in the case of Ranee Mun Mohinee, page 246 of the Reports for 1857, and again in the case of Ranee Kistomonee, page 1127 of the Reports for the same year, and, under the view of the case expressed above, we confirm the decision of the lower Court, and dismiss the appeal with costs.