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BABALUDDIN MAHOMED v. DWARKA NATH SINGHA.

of *Atulya Churn Bose* v. *Tulsi Das Sarkar* (1) and *Basanta Kumar Roy Chowdhry* v. *Promotho Nath Bhuttacharjee* (2) have been cited, and we have ourselves referred to the case of *Tejendro Narain Singh* v. *Bakai Singh* (3). These cases are not strictly in point, but they relate to other sections of the Bengal Tenancy Act, which have been held not to affect contracts made before that Act. They are, therefore, not precedents and cannot guide us in this case. The learned pleader for the appellants relies upon the principle on which they have been decided. We, however, think that we are bound by the rule in the case of *Guru Dass Shut* v. *Nand Kishore Pal* (4), and the case of *Ram Kumar Jugi* v. *Jafar Ali* (5). In our opinion these cases are clearly in point. They lay down that the provisions of s. 48, cl. (*a*) are retrospective, and therefore that, although in the present case a kabuliat was executed before the passing of the Bengal Tenancy Act, the plaintiffs cannot recover rent at a rate exceeding by 50 per cent. what they themselves pay to the landlord.

That being so, these appeals fail and we dismiss them with costs.

M. N. R. *Appeals dismissed.*

Before Mr. Justice Rampini and Mr. Justice Pratt.

1900 *July* 31.

SUKUMARI BEWA, MINOR, BY HER FATHER AND GUARDIAN CHEMA MALIA (PLAINTIFF) *v.* ANANTA MALIA AND ANOTHER (DEFENDANTS).*

Hindu Law—Adoption—Validity of adoption by a Sudra leper in Bengal—Religious ceremonies, Competency to perform.

In Bengal, a Sudra leper may adopt a child.

Such an adoption was *held* valid, in the absence of any proof that the disease of the adoptive father was inexpiable or that he was in such a state as not to be able to adopt at all.

* Appeal from Appellate Decree No. 732 of 1898, against the decree of W. B. Brown, Esq., District Judge of Cuttack, dated the 21st of December, 1897, reversing the decree of Babu Kishori Lal Sen, Munsif of Puri, dated the 21st of April 1897.

(1) (1895) 2 C. W. N., 543.
(2) (1898) I. L. R., 26 Calc., 130.
(3) (1895) I. L. R., 22 Calc., 658.
(4) (1898) I. L. R., 26 Calc., 199.
(5) (1898) I. L. R., 26 Calc., 199, *note*.

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THE plaintiff alleged that the disputed land was a raiyati holding included in the properties left to her by her deceased husband, Natabar Malia, who died at the age of 22 years, and left her a childless minor widow, under the guardianship of her father Chema Malia; and that the defendant No. 1, falsely alleging that his son, the defendant No. 2, had been taken in adoption by her deceased husband, forcibly dispossessed her from the land in dispute. She, accordingly, prayed for declaration of her right to the land in dispute, for a further declaration that the defendant No. 2 was not the adopted son of her husband, for possession of the disputed land by evicting the defendants, and for other relief.

The defendant contended, *inter alia*, that, as the late Natabar Malia was suffering from leprosy and his life was in danger, the plaintiff's father wanted to marry his daughter a second time to somebody else; and that thereupon Natabar made a verbal gift of all his properties to the defendants, as being his next agnate relations, and also duly adopted the defendant No. 2 according to custom.

The Munsif disbelieved the story of the defendants as to the adoption and decreed the suit as regards the land in dispute.

On appeal by the defendants, the District Judge held that the adoption of the defendant No. 2 had been proved, and that the adoption by Natabar, who was a Sudra, although a leper, was valid in law.

The plaintiff appealed to the High Court.

1900, JULY 31. Babu *Boido Nath Dutt*, for the appellant.

Babu *Provash Chunder Mitter*, for the respondents.

[The judgment of the High Court (RAMPINI and PRATT, JJ.) was (so far as is material to this report) as follows:—

The suit out of which this appeal arises was one brought by a widow to recover possession of the property of her deceased husband, held by a person who claimed to be her husband's adopted son. The plaintiff did not appear on the day fixed for the hearing of the case and no witnesses were produced on her behalf. The Munsif, therefore, proceeded to take the evidence of the defendants' witnesses, and upon the evidence he found that the adoption had not been proved.

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On appeal to the District Judge, that officer held that the adoption had been proved, and he, therefore, dismissed the suit.

Now the plaintiff has appealed to this Court, and on her behalf two grounds have been taken : *First*, that the Court below has erred in law in holding that adoption by a leper is valid ; and secondly, that the Lower Appellate Court was wrong in not remanding the case to give the plaintiff an opportunity of examining her witnesses.

With regard to the first point we need only say that the decision of the Judge seems to be correct. He says : "The law appears to be that a leper cannot perform any religious ceremony, but, as no such ceremonies are necessary for an adoption among Sudras, a Sudra leper may adopt a child by purely civil rites." That seems to us a correct exposition of the law, and nothing has been shown to us to-day to lead us to think that the Lower Appellate Court's decision is wrong. According to Mayne's *Hindu Law and Usage*, paragraph 99, it seems as if a leper may adopt. There are certain cases in which it is laid down that his right to adopt depends upon whether his disease is such as to be inexpiable. But such a point seems not to have been raised in the Court of First Instance and there was apparently no contention in the Court of First Instance that the husband of the plaintiff was in such a state as not to be able to adopt at all. On the contrary, it was only in this Court that this contention was raised for the first time. In support of the Judge's view that the leper being a Sudra did not require to perform any religious ceremonies, we may cite the full Bench case of *Behari Lal Mullick* v. *Indramani Chowdhrani* (1), in which it is ruled that among the Sudras of Bengal no ceremonies, in addition to the giving and taking of the child, are necessary to constitute a valid adoption. * * * * * * *

The appeal is dismissed with costs.

M. N. R. *Appeal dismissed.*

(1) (1874) 13 B. L. R., 401 ; 21 W. R., 285 [affirmed on appeal by the Privy Council : See (1879) *Indromoni Chowdhrani* v. *Behari Lal Mullick* ; I. L. R., 5 Calc., 770 ; 6 C. L. R., 183 ; L. R., 7 I. A., 24.—*Rep.*]