1912

ANGULLIA & Co. v. SASSOON & Co.

have been granted as this was opposed to the plaintiffs' own case.

The appeal must therefore be allowed and the suit dismissed with costs throughout.

WOODROFFE J. I agree.

Appeal allowed.

Attorneys for the appellants: *Pugh & Co.*
Attorney for the respondents: *N. C. Bose.*

J. C.

APPEAL FROM ORIGINAL CIVIL.

Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Woodroffe.

1912

Feb. 14

RANJIT LAL KARMAKAR

v.

BIJOY KRISHNA KARMAKAR.*

Hindu law - Adoption - Anumatipatra, construction of—Simultaneous or successive adoption—Preferential right of adoption of senior widow.

Where a Hindu, governed by the Bengal school of Hindu law, had previous to his death executed an *anumatipatra* in these terms: "This *anumatipatra* for taking adopted son is executed to the following effect . . . in favour of first wife B. S. and second wife S. B. . . I am giving permission in writing that when I shall be no more each of my two wives shall be at liberty to adopt three sons successively, that is, one after another, and shall lead a mora life. It is also permitted that each of my wives shalll live in my ancestral dwelling house with her adopted son . . . ":—

Held, that applying the canon of construction laid down in *Akhoy Chunder Bagchi* v. *Kalapahar Haji* (1), the document did not contemplate simultaneous adoption by the widows, but successive adoption in accordance with the rule of law.

* Appeal from Original Civil, No. 41 of 1911, in suit No. 1009 of 1909.

(1) (1885) I. L. R., 12 Calc. 406; L. R. 12 I. A. 198, 202.

1912

RANJIT LAL KARMAKAR v. BIJOY KRISHNA KARMAKAR.

As between co-widows, the senior, that is to say, she, whose marriage was earlier, has in general a preferential right of adoption.

Decision of Stephen J. (1) affirmed.

APPEAL by the defendant, Ranjit Lal Karmakar from the judgment of Stephen J. (1).

One Shib Krishna Karmakar, a Hindu governed by the Bengal school of Hindu Law, died on the 29th November 1903, leaving two widows, Biraja Sundari Dassee, the senior, and Shashibala Dassee the junior widow, and no son. The day before his death he executed an *anumatipatra* or authority to adopt in favour of his two widows The authority was in these terms: "This *anumati patra* for taking adopted son is executed to the following effect by Sri Shib Krishna Karmakar father's name the late Ram Kristo Karmakar, by caste Karmakar, by occupation gold and silver-smith, inhabitant of Sabhar, thana Sabhar, district Dacca, in favour of first wife Sreemutty Biraja Sundari Dassee and second wife Sreemutty Shashibala Dassee. I am now ailing, having been attacked with cholera. There is no knowing when what may happen to the transient body I have got no son born of my loin, and, although in the hope of perpetuating the generation, I have married two wives successively, but up till now no son is born. Consequently by this *anumatipatra* I am giving permission in writing that when I shall be no more, each of my two wives shall be at liberty to adopt three sons successively, that is, one after another, and shall lead a moral life. It is also permitted that each of my wives shall live in my ancestral dwelling house with her adopted son. On the other hand, if she goes to live in another place with her

(1) (1911) I. L. R. 38 Calc. 694.

1912

RANJIT LAL KARMAKAR v. BIJOY KRISHNA KARMAKAR.

adopted son she shall not have any right to the moveable and the immoveable properties to be left behind by me."

On the 13th April 1905, the junior widow purported to adopt Ranjit Lal Karmakar without seeking the senior widow's consent, and on the 9th March 1908 the senior widow purported to adopt Bijoy Krishna Karmakar.

On the 14th September 1909, Bijoy Krishna Karmakar, through his mother as next friend, brought this suit for a declaration that the alleged adoption of Ranjit Lal Karmakar was void and inoperative in law and for a declaration that he himself had been validly adopted as a son to the deceased. The suit was heard before Stephen J., and on the 17th May 1911 his Lordship pronounced a decree in the plaintiff's favour (1).

From this judgment the defendant, Ranjit Lal Karmakar, appealed.

Mr. H. D. Bose (*Mr. I. B. Sen* with him), for the appellant. The *anumatipatra* is inoperative, as it creates a power of simultaneous adoption in favour of both the widows: the existence of two adopted sons at one and the same time is contemplated: *Surendro Keshub Roy* v. *Doorgasoondory Dassee* (2). If, however, the authority to adopt is held to be good in law, the adoption of Ranjit Lal has a preferential claim as it was chronologically first. The doctrine laid down by the Bombay Court in *Rakhambai* v *Radhabai* (3), and *Padajirav* v. *Ramrav* (4), that the senior Hindu widow has a preferential right to adopt, has no application in Bengal. In the Presidency of Bombay the senior widow has a preferential right, if not an exclusive right, to adopt, so long

(1) (1911) I. L. R. 38 Calc. 694.
(2) (1892) I. L. R. 19 Calc. 513.
(3) (1868) 5 Bom. H. C. (App.) 181.
(4) (1888) I. L. R. 13 Bom. 160.

as she is not leading an irregular life. In Bengal, where an express authority by the husband to adopt is necessary, this right has never been recognised. The question did not directly arise in *Mondakini Dasi* v. *Adinath Dey*. (1)

Mr. B. C. Mitter (*Mr. Sircar* with him), for the respondent, was not called upon.

JENKINS C.J. The plaintiff, who is the respondent before us, has brought this suit against the defendant to have it declared that the alleged adoption of the defendant is void and inoperative in law. The case was heard before Mr. Justice Stephen, who has pronounced a decree in the plaintiff's favour. From that decree the present appeal has been preferred.

The points urged on behalf of the defendant are two—*first*, he says that the document of authority under which the adoption both of the plaintiff and himself purports to have been made is bad; and, *secondly*, that if it is good, then his adoption, and not the plaintiff's, is valid, although made by the younger of the two widows of the deceased.

The facts are briefly these: one Shib Krishna Karmakar, a Hindu governed by the Bengal school of Hindu Law, died on the 29th of November 1903, leaving two widows, Biraja Sundari Dassi and Shashibala Dassi, and no son. The day before his death he executed this authority to adopt in favour of his two widows. The junior widow, Sreemutty Shashibala Dassi, purports to have adopted the defendant on the 13th of April 1905, without even seeking the elder widow's consent. The elder widow purports to have adopted the plaintiff on the

(1) (1890) I. L. R., 18 Calc., 69.

1912

RANJIT LAL KARMAKAR v. BIJOY KRISHNA KARMAKAR.

JENKINS C.J.

9th of March 1908; and it is in these circumstances that the contentions to which I have referred arise. The argument by which the defendant would annihilate his own position by contending that the deed of the power of adoption is inoperative is, in my opinion, one that cannot succeed. The document was executed under circumstances which may account for a certain degree of vagueness and uncertainty in its terms, and we are entitled to apply to it the canon of construction which has been laid down by their Lordships of the Privy Council in *Akhoy Chunder Bagchi* v. *Kalapahar Haji* (1), where it was said in construing a document then before their Lordships, that they would consider that the person giving the authority intended his widows to do that which the law allowed and not to do something which was, if not absolutely illegal, very unusual and not practised amongst Hindus. It appears to me that it is a fair and reasonable interpretation to put on this document to say that it did not contemplate simultaneous adoption by the widows, but successive adoptions in accordance with the rules of law as now established and as established at the time when this document came into existence.

Treating the document as a valid document, was the junior widow entitled to adopt without the consent of the senior widow or without even asking for that consent? Now, it is well established in the Presidency of Bombay that, as between co-widows, it is the senior, that is to say, she, whose marriage was earlier, that has the preferential right to adopt in circumstances like the present. Those decisions rest upon fundamental principles and on views of Hindu life and economy which appears to me to

(1) (1885) I. L. R. 12 Calc. 406; L. R. 12 I. A. 198, 202.

be fully applicable here. Any other view would merely lead to an unseemly scramble for the purpose of performing this solemn act. In my opinion, the decision of Mr. Justice Stephen is correct, and we must dismiss the appeal with costs. The reserved costs will be costs in the appeal.

WOODROFFE J. I agree.

Appeal dismissed.

Attorney for the appellant: *J. C. Dutt.*

Attorney for the respondent: *D. M. Ghose.*

J. C.

APPEAL FROM ORIGINAL CIVIL.

Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Woodroffe.

KHITISH CHANDRA ACHARJYA CHOWDHURY 1912

v. *Feb.* 14.

OSMOND BEEBY.*

Administrator pendente lite—Discharge, order of—Passing of accounts—Suit for account, whether subsequently maintainable—Civil Procedure Code (Act V of 1908), O. XIV, r. 6.

An order discharging an administrator *pendente lite* from further acting as such upon passing his accounts, and the consequent passing of his accounts, in the circumstances of the case, did not constitute a bar to a suit for an account brought against him.

APPEAL by the plaintiffs, Khitish Chandra Acharjya Chowdhury and Sreemutty Sindhubala Debee, from the judgment of Harington J.

This appeal arose out of a suit brought against an administrator *pendente lite* for an account and for the recovery in particular of certain specific sums alleged to have been overcharged or wrongly charged.

* Appeal from Original Civil, No. 39 of 1911.