PRIVY COUNCIL.

CHIMAN LAL

v.

HARI CHAND.

P.C.*
1913

April 8, 15;
May 2.

[ON APPEAL FROM THE CHIEF COURT OF THE PANJAB, AT LAHORE.]

Adoption—Agarwal Banias of Zira, Panjab—Custom—Adopted person, an orphan and married—Adoption by declaration of adoption and subsequent treatment of adoptee as adopted son—Privy Council, practice of—Concurrent decisions on fact.

In this case in which the plaintiff sued for a declaration of his adoption the parties were Agarwal Banias of Zira in the Panjab, and the plaintiff being an orphan and married, the validity of the adoption, if made, depended upon whether they were governed by custom or by the Hindu law. Their Lordships of the Judicial Committee considered that the Courts below had concurrently found that among the class to which the parties belonged the rules of Hindu law as to adoptions did not apply, and that by the custom applicable to that class an unequivocal declaration by the adopting father that a boy had been adopted, and the subsequent treatment of that boy as the adopted son, was sufficient to constitute a valid adoption ; and that, in fact, the defendant had so adopted the plaintiff and treated him as his adopted son. In accordance, therefore, with the usual practice as to such concurrent decisions :—

Held, that the adoption had been established. Owing, however, to the limited nature of the evidence as to custom among the Agarwal Banias of Zira, the effect of the decision should be confined to the particular circumstances of the case.

APPEAL from a judgment and decree (6th April, 1908) of the Chief Court of the Panjab passed on review, which affirmed the judgment and decree (14th October, 1904) of the Divisional Judge of Ferozepore,

* *Present* : LORD SHAW, LORD MOULTON, SIR JOHN EDGE AND MR. AMEER ALI.

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which had affirmed the judgment and decree (23rd March, 1903) of the District Judge, Ferozepore.

The representative of the defendant was the appellant to His Majesty in Council.

This appeal arose out of a suit instituted by Hari Chand, the respondent, against one Jiwan Mal, the predecessor-in-title of the present appellant, Chiman Lal, for a declaratary decree that the plaintiff was the adopted son of Jiwan Mal. The parties were Agarwal Banias of Zira. The plaintiff in his plaint stated that his three elder brothers separated from the rest of the family about 1894. His uncle, Jiwan Mal, then adopted him, and caused an entry of the fact to be recorded in a "bahi" or book. Up to August, 1900, Jiwan Mal had treated him as a son, but subsequently, owing to a quarrel, he turned him out of the house and repudiated the adoption.

The defendant denied the adoption, and the issue was framed,—"Has the plaintiff been adopted by the defendant, and is he, as such, his heir?"

On this issue the District Judge, on 23rd March, 1903, held that the plaintiff had been adopted by the defendant, but made no decision as to the validity of the adoption.

On appeal the Divisional Judge remanded the case under section 566 of the Civil Procedure Code, 1882, for enquiry by another District Judge on the points raised by the following issues:—"(i) whether the parties are governed by Hindu law or custom? (ii) If by custom, whether the adoption, as alleged to have taken place, was valid under the custom among the Agarwal Banias of Zira, to which class the parties belong? (iii) Whether, if there were two adoptions by one man, either of them can be held to be valid?"

The last of these issues was framed with regard to the contention of the defendant Jiwan Mal that, while

he denied having adopted any one as a son and heir, he had extended the same treatment to Chiman Lal the son of his brother Maya Mal, as he did to the plaintiff, the son of his brother Ghannu Mal, and if the Court found that such treatment amounted to an adoption, there would be a double adoption proved which would be invalid in law.

The District Judge, on the remand, finding the evidence produced by the parties insufficient, appointed a Commissioner to make a local enquiry on the above issues. The Commissioner, a Government officer (a Tahsildar), took a considerable amount of evidence, wrote a report giving his opinion—(i) that the Agarwals of Zira, including the parties to the suit were governed by Hindu law; (ii) that the plaintiff's allegation as to an adoption, and an entry thereof in a book was untrue; (iii) that Jiwan Mal treated his nephew Chiman Lal as he treated his nephew the plaintiff, but that he did not adopt either of them; and (iv) that among the Agarwals of Zira not a single case had occurred of an adoption of an orphan who was a married man. The District Judge forwarded the evidence taken by the Commissioner, with his report, to the Divisional Judge stating that he agreed substantially with the conclusions arrived at by the Commissioner.

The Divisional Judge after the remand made a decree upholding the order of the first District Judge, dated 23rd March, 1903, decreeing the plaintiff's claim for a declaration that the plaintiff was the adopted son and heir of the defendant Jiwan Mal. In effect, he held that the parties were governed by custom and not by Hindu Law, and that a custom had been proved which justified his finding. The Divisional Judge declined to consider the question of the treatment of Chiman Lal and the matters raised on remand

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by the third issue, as they were not referred to in argument, and in any view the defendant denied he had adopted Chiman Lal.

The following was the material portion of his judgment:—

"The first point for determination was whether the parties were governed by Hindu Law. So far as the usual ceremonies are concerned it is evident that the parties follow the Hindu Law, but from the evidence produced by the parties it is proved beyond a shadow of doubt that, as far as adoption is concerned, the parties do not follow the Hindu Law, but are rather governed by custom. In all the cases quoted by the parties, in not a single instance adoption was made either under the Dattaka form or under the Kritrima form, but all the adoptions were made under the customary law of the Province, *i.e.*, by declaration and the treatment of the boy as a son. Hence, I hold that the parties are governed in cases of adoption by customary law. Now the question is whether under the customary law there was a valid adoption of the plaintiff by the defendant. It is urged that, as there was no giving and taking, the adopted son being an orphan, the adoption was invalid. But in almost all the cases no ceremony of giving and taking was performed; and in some cases orphans were adopted. From the evidence produced in the case it also appears that the Agarwal Banias, who reside at Amritsar, purchase boys and adopt them. In these cases there can be no possibility of the ceremony of giving and taking being performed. It appears that among the parties' caste a mere declaration to the effect that a boy has been adopted and his subsequent treatment as a son is sufficient, for all intents and purposes, to make the adoption a valid one. The next question to be decided is whether the defendant adopted the plaintiff as his son in the manner prevalent among the Agarwal Biradari. Though the plaintiff's witnesses assert that an entry in the "bahi" was made, I am not prepared to believe it, as the "bahi" is not forthcoming, because the defendant's own witnesses admit that the defendant took the plaintiff into his house as his son and treated him as such. The fact that, until the rupture took place between the parties, the plaintiff had been living in defendant's house and taking his meals there and working in defendant's shop, and that his name appeared in the "ganesh" of the "bahis" as one of the members of the family, a fact proved most satisfactorily, is sufficient to prove the customary adoption of the plaintiff by the defendant. In addition to these, there are large numbers of powers-of-attorney in which defendant declares the plaintiff as his son. There is one more piece of evidence which leaves no doubt on the point. In 1899, the brothers of the plaintiff reported to the patwari that the land in the

village Machhian had by private partition fallen to their share, and that Jiwan Mal and Maya Mal had taken other land in exchange, and that as Hira or Hari Chand, plaintiff, had been adopted by Jiwan Mal as his son, he had given up all his rights in his natural father's property. This entry was attested by Jiwan Mal on 20th May, 1899 (*vide* copy of Mutation Register of Machhian for 1898-99 in the file). This entry proves that Jiwan Mal admitted that the plaintiff was his son and he cannot now deny the fact. For the above reasons, I hold that the plaintiff was adopted by the defendant, Jiwan Mal, as his son according to the custom prevailing among the Agarwal Banias of Zira."

From that decision the defendant appealed to the Chief Court. Although no regular appeal lay, the case was admitted under the special powers of revision conferred on the Court by section 70 (A) and (B) of the Panjab Courts Act (XVIII of 1884). On the case coming on for hearing the Court (JOHNSTONE and CHATTERJI JJ.) set aside the decree of the Divisional Judge, and made a decree (14th May, 1907) dismissing the suit on the ground that a "material irregularity" had been committed in excluding from consideration the alleged treatment of Chiman Lal by Jiwan Mal. The Chief Court came to the conclusion that that treatment had been similar to that accorded to the plaintiff, and that consequently the adoption was invalid both by law and custom.

An application by the plaintiff for a review of judgment was subsequently granted and a Divisional Bench of the Chief Court, consisting of the same Judges as before, eventually, on 6th April, 1908, reversed their former decree, and in lieu thereof directed that the decrees of the lower Courts declaring that the plaintiff was the adopted son of Jiwan Mal should be affirmed.

The material portion of their judgment was as follows:—

After referring to their former decision as to "material irregularity" and their holding that on

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the evidence there was insufficient proof of differential treatment of Chiman Lal and the plaintiff to show positively that the latter was adopted and the former was not, the Chief Court said :—

"Having came to this conclusion we did not think it necessary to go into the question of custom *versus* Hindu law, as on our finding, under neither set of rules could plaintiff be an adopted son. In arriving at this conclusion, we unfortunately fell into certain errors in regard to what evidence there was on the file. We have now heard the whole case re-argued in the light of documents, and evidence which we overlooked last year, and we have arrived at the conclusion that the decisions of the Courts below were sound and should be upheld. We found in our former judgment that there was no formal declaration of adoption before the brotherhood—see clause (*a*) in section 35, Explanation I, Rattigan's Digest—and to this view we still adhere. We also held that there was no written declaration of the adoption—see clause (*b*)—and this also we adhere to. But clause (*c*) is the important one—a long course of treatment evidencing an unequivocal intention to appoint the specified person as heir. We do not propose to go into details here. In favour of plaintiff we have a large number of documents in which Jiwan Mal described him as his adopted son : we have not only the Machhian mutation (1899), as we formerly supposed, but we have also the mutations in many other villages, virtually telling the same tale. We now have direct oral evidence to rebut the oral evidence of the similar treatment of the two boys ; and we have various public records in which such officials as the Sub-Registrar and Tahsildar described plaintiff as adopted son of defendant, and it is noticeable that the Sub-Registrar notes that he is acquainted with plaintiff."

After referring to the very long list of documents, powers-of-attorney and others, in which the plaintiff alone was called adopted son, and in most of which Chiman Lal was consistently called Jiwan Mal's nephew, the judgment of the Chief Court continued :—

"The learned Divisional Judge has held that defendant is estopped from denying his adoption of plaintiff. This finding has not been impugned in the petition before us. This may be, because the Divisional Judge does not use the word 'estoppel,' but even if we allow the point to be urged, and even if we take the case apart from estoppel, it seems to us, viewing the facts in the complete form in which they are now before us, that there is ample evidence that defendant unequivocally designated plaintiff as his

heir. The most important point is that defendant in some instances actively brought it about, and in other cases concurred in bringing it about, that plaintiff wholly lost or gave up his right to share in his natural father's property. If this is not unequivocal treatment of plaintiff as his own son we do not see what can be. Further, from 1894, and even before, plaintiff lived with his uncles and not his brothers. He began to live with them when his mother died, but had he not been adopted, at least in 1894, he would have thereafter lived with his own brothers. We may note here that the attempt to prove that in 1898 defendant turned plaintiff out and took him back fails, in view of defendant's own statement, see remand before Divisional Judge.

"The *factum* of adoption then, seems to us proved, and we turn to the question of its validity. Upon an examination of the evidence in the case we cannot hold that these Agarwals strictly follow Hindu law. Not only in other matters are they lax, but also in matters of adoption. It has been held over and over again that nowhere in the Panjab can it be said that religious rites are necessary to constitute a valid adoption, even among Hindus of non-agricultural classes. We need only refer to the very large number of rulings on the point, beginning with No. 37, Punjab Record, 1868, ending with No. 68, Punjab Record, 1904. These cases deal with Brahmins, Khatris of many *gots*, Bedis, Aroras, Kalas and so forth. The really important thing is the unequivocal intention and the treatment, and we hold both proved here."

The Chief Court granted a certificate that the case was a fit one for an appeal to His Majesty in Council. The substantial question of law which was necessary, as all the Courts had agreed in their decisions, was declared to be, "whether in matters of adoption the Agarwals of Zira were governed by Hindu law or by custom, 'which' the Chief Court said, was 'clearly one of importance' ".

On this appeal,

Sir R. Finlay, K.C. and *Ross, K.C.*, for the appellant, contended that the parties were governed by Hindu law, and not by the customary law; and no valid adoption in accordance with Hindu law had been proved. The respondent was an orphan and was

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married, and could not be validly adopted under the Hindu law: *Rupchand* v. *Jambu Parshad* (1). The alleged adoption was invalid and inoperative also under the customary law, and no such custom as alleged had been proved by the respondent, upon whom lay the onus of establishing it. The mere treatment of the respondent as a son was not sufficient in law to establish his adoption, particularly in the absence of any proof that amongst the Agarwal Banias of Zira, to which class the parties belonged, that mode of adoption was followed as a family or tribal custom. Even if an adoption could be established by proof of a long course of treatment, the period of six years of such treatment, which was alleged, was insufficient to prove the adoption. Jiwan Mal was not estopped from denying the alleged adoption, and was entitled to repudiate it, as he did, during his life-time. It was also submitted that the Chief Court had acted irregularly in setting aside its decision of 14th May, 1907, and in coming later to a contrary conclusion. That Court should have dismissed the suit.

[SIR JOHN EDGE, referred to the judgments of the Divisional Judge; and of the Chief Court on review, and to the concurrent findings there expressed as to the fact of the adoption, and the custom as to adoption by which the Agarwal Banias were found to be governed.]

The rule as to concurrent findings was confined to cases in which the concurrence was on questions of pure fact. This was a mixed question of law and fact, the substantial question of law on which the certificate of fitness for appeal was granted was the question whether the parties to this suit were governed by Hindu law or by custom.

(1) (1910) I. L. R. 32 All. 247 : L. R. 37 I. A. 93.

[LORD SHAW, referred to *Sajjad Husain* v. *Wazir Ali Khan* (1).]

Reference was made to *Karuppanan Servai* v. *Srinivasan Chetti* (2), where it was found there was no real question of law. In the present case there was, it was submitted, a question of law involved. Section 596 clause (*c*) of the Civil Procedure Code, 1882, was very wide as to the admisson of appeals: sections 598 and 600 of the same Code were also referred to:

De Gruyther K.C. and *G. C. O'Gorman*, for the respondent, contended that there were concurrent findings of fact which were binding on the Board, irrespective of the certificate of appeal. All the Courts in India had concurrently found that the respondent was in fact adopted by Jiwan Mal. The findings of the Divisional Judge, that the parties in regard to adoption were governed by custom, as opposed to Hindu law, and that the adoption of the respondent by Jiwan Mal was in accordance with that custom, were findings of fact, and as such were final and conclusive and not open to appeal. Reference was made to *Rup Chand* v. *Jambu Parshad* (3).

[LORD SHAW, said that their Lordships were bound by Lord Macnaghten's decision in *Karuppanan Servai* v. *Srinivasan Chetti* (2).]

Ross replied.

The judgment of their Lordships was delivered by

May 2.

SIR JOHN EDGE. The suit in which this appeal has arisen was brought on the 19th January, 1901, in the Court of the District Judge of Ferozepore by Hari Chand, who is the respondent here, against Jiwan Mal, now dead, who is represented by Chiman Lal, the

(1) (1912) I. L. R. 34 All. 455, 463, (2) (1901) I. L R. 25 Mad. 215: 464: L. R. 39 I. A. 156, 162. L. R. 29 I. A. 38.
(3) (1910) I. L. R. 32 All. 247: L. R. 37 I. A. 93.

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appellant. In this suit Hari Chand sought a declaration that he was the adopted son of Jiwan Mal, the then defendant. In his written statement Jiwan Mal alleged that he had never adopted Hari Chand.

Hari Chand and Jiwan Mal were Hindus, and Agarwal Banias, of Zira, in the Punjab. Hari Chand was one of the four sons of Ghannu Mal, who was a brother of Jiwan Mal. Chiman Lal, the appellant here, was a son of Maya Mal, who was another brother of Jiwan Mal. At the time of the alleged adoption Hari Chand was an orphan and was married. No issue was framed by the District Judge as to whether the parties were governed by Hindu law or by custom, or as to the validity of the adoption if it, in fact, were made. The District Judge held that in the Panjab—

"Non-agricultural Hindus do not, in matters of adoption, follow Hindu law, and there seems no reason to doubt that a declaration of adoption, together with treatment in accordance with the avowed intention, would be sufficient to establish the validity of an adoption, even though the position of the adopted son were inconsistent with the strict requirements of Hindu law."

The District Judge found that Jiwan Mal had, in fact, adopted Hari Chand, and on the 23rd March, 1903, gave the plaintiff a decree.

From the decree of the District Judge, Jiwan Mal appealed to the Court of the Divisional Judge of Ferozepore. The Divisional Judge, on the 10th July, 1903, remanded the suit to the Court of the District Judge to give the parties the opportunity of proving or disproving the validity of the adoption. On the return to the order of remand the Divisional Judge found, as a fact, that the parties were governed in cases of adoption by customary law, and that in the caste to which the parties belonged "a mere declaration to the effect that a boy has been adopted and his subsequent treatment as a son is sufficient for all intents and purposes to make the adoption a valid

one", and further found on the evidence that Hari Chand had been adopted by Jiwan Mal as his son according to the custom prevailing among the Agarwal Banias of Zira. The Divisional Judge, by his decree of the 14th October, 1904, dismissed the appeal.

From the decree of the 14th October, 1904, of the Divisional Judge, Jiwan Mal appealed to the Chief Court of the Panjab. The learned Judges of the Chief Court on Appeal carefully reviewed the evidence in the case, and holding that Jiwan Mal had unequivocally designated Hari Chand as his heir, and had treated him as his adopted son, found that the *factum* of adoption was proved. On the question of the validity of the adoption, the learned Judges found that the Agarwal Banias of Zira did not follow Hindu law in matters of adoption, and observed that "the really important thing is the unequivocal intention and treatment, and we find both proved here". The Chief Court by its decree dismissed the appeal.

From the decree of the Chief Court of the Panjab dismissing the appeal to that Court this appeal has been brought. In this appeal it has been contended on behalf of the appellant, so far as is material, that Jiwan Mal did not in fact adopt Hari Chand as his son, and that the alleged adoption was invalid according to Hindu law. Their Lordships consider that the Chief Court and the Divisional Judge have concurrently found that among the Agarwal Banias of Zira the general rules of Hindu law as to adoptions do not apply, and that by the custom applicable to the Agarwal Banias of Zira an unequivocal declaration by the adopting father that a boy has been adopted, and the subsequent treatment of that boy as the adopted son, is sufficient to constitute a valid adoption; and that in fact Jiwan Mal did unequivocally adopt Hari Chand as his son and treated him as his adopted

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son. Of the fact of the adoption and treatment there was ample evidence upon which the Judges of the Chief Court and the Divisional Judge could find as they did. The evidence upon which it was found that the Agarwal Banias of Zira do not in matters of adoption follow the general rules of Hindu law, and that by the custom applicable to them an unequivocal declaration of adoption, followed by subsequent treatment of the person as an adopted son, is sufficient to constitute a valid adoption, appears to their Lordships to have been somewhat limited, but their Lordships consider that, as between the parties to this suit and to this appeal, and those claiming through or under them, that evidence was sufficient to entitle the Chief Court and the Divisional Judge to find that the adoption was valid. Their Lordships, however, consider that the present case, owing to the limited nature of the evidence as to custom among the Agarwal Banias of Zira, would not be a satisfactory precedent if in any future instance among other parties fuller evidence regarding the alleged custom of the Agarwal Banias of Zira should be forthcoming. The contention that Chiman Lal had also been adopted by Jiwan Mal is not established by the evidence before this Board.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed and that the decree of the Chief Court of the Panjab should be affirmed. Chiman Lal, the appellant, must pay the costs of this appeal.

Appeal dismissed.

Solicitors for the appellant: *Hartcup & Davis.*

Solicitors for the respondent: *T. L. Wilson & Co.*

J. V. W.