

(1904) 07 PRI CK 0005

In the Privy Council

Debi Pershad Chowdhry and Others

APPELLANT

Vs

Rani Radha Chowdhrair and others

RESPONDENT

Date of Decision : 26-07-1904

Acts Referred:

Citation : (1904) 31 IndApp 160

Hon'ble Judges : Davey, Robertson, Arthur Wilson, JJ.

Judgement

Robertson, J. 1. At the date of the suit out of which this appeal arises the respondents were in possession of the estate in dispute. Their title was a deed of gift in their favour dated July 21, 1895. This deed was executed by Rani Radha Chowdhrair, widow of Shib Nag Chandi Nath Chowdhry, to whom the estate had belonged. (This lady, who figures largely in the controversy, will be referred to as the Chowdhrair.) The validity of this deed was immediately challenged by the appellant Debi Pershad Chowdhry, who, in the suit brought on September 12, 1895, claimed a declaration that he was next reversioner, and that the Chowdhrair's gift was invalid and not binding on him. 2. Besides the Chowdhrair and her donees, the appellant Debi Pershad impleaded one Earn Nath Chowdhry, who made pretensions to the estate which have now been finally negatived, and certain relatives who make no claim. The contest in the Courts below was between the plaintiff on the one hand, and the Chowdhrair and her donees on the other. The Subordinate Judge decided in favour of the appellant Debi Pershad, but this was reversed in the High Court. After judgment had been given in the High Court the Chowdhrair died, and the respondents in the present appeal are the donees. The second and third appellants are persons to whom the first appellant has sold some part of his interest. The respondents admit that their position as donees of a widow is untenable as against an agnatic relation of the husband of their donor. The whole question is whether the appellant Debi Pershad (who may hereafter be called the appellant) has proved his pedigree as nearest agnate of Shib Nag, and has thus shewn a title to eject them. This question is still further narrowed by explaining that the disputed steps in the following pedigree are those which make Kirpa Nath, who was admittedly the

appellant's grandfather, to have been himself the great-grandson of Deo Chand, through Shanker Nath and Manik Chand. The pedigree is as follows:

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Hira      Nand      |      Kissen      Narayan      _____|
_____  |      |      Ruy  Narayan  Bhagirath  |
_____  |      |      |      |      |      |      |      |      |      |
| descendants alive) | _____ | | | | | Kamlapat
Deo Chand Paran Chan Khem Narayan | | (see page 85 Kubula) _____|
_____ | | | | | | Narayan Chand Raghbur Manik Chand Sham Narayan
_____ | | | | | | Munni Ram Ganga Ram Shanker Nath Madho
Pershad | | Bataso + Shib Nag Chandi Nath + Rani Radha Kirpa Nath
predeceased Shib | (D 1) | Nag Chandi Nath | | _____|
_____ | _____ | | | | | | Sukh Natho Deorani Koshki Nath
Gobind Mokund Jug Lal Lal + predeceased predeceased Shib | predeceased Rani
predeceased Janki Rani Radha Nag Chandi Nath | Radha Rani Radha | | | |
Harbana Debi Pershad Narayan Chand Lalaram predeceased Rani Radha (P)
predeceased Rani predeceased | Radha Jug Lal _____|_____
_____ | _____ | | | | Nunda Ananta Amika Mahabir Kishore
Kiskore Minor Minor (D 2) (D 3) 3. Before examining the evidence on this
controverted part of the pedigree it may be convenient first to mention the facts
more immediately personal to the appellant. He and his father before him
(Gobind Pershad) lived on the estate in dispute and were in the employment of,
and well known to, the Chowdhrair. Kirpa Nath, the appellant's grandfather, also
lived on the estate, and was well known to many of the witnesses, having lived
to a great age and being, probably on that account, a noted character. The
appellant's uncle, Mokund, a brother of Gobind, also lived on the estate, and,
like the others of his family, was a quite well-known man. Accordingly, on the
first view, the case of the appellant is not the case of a claimant who drops from
the skies, but of a man who and whose people were well settled in the district
and about whom everybody knew, including the people disputing their claim. The
Chowdhrair, it is true, pretended in the witness-box to ignore them; but her
denials of everybody and everything were so wholesale and indiscriminating that
the respondents did not claim credit for her as a witness of truth. Of the true
degree of intimacy between this very lady and the group of persons in question
there is a very significant indication in an episode of her deposition, for her own
pleader suggested that Gaibi Nath Panday (who married the appellant's sister
and is an important witness for him) should "repeat the exact words in cross-
examination," he being a person "before whom the witness appears." 4. Now of
this family (namely, that of the appellant) thus well known it is certain that three
times, namely, in 1812, in 1863, and in 1885, its representative for the time
being has, occasion requiring it, made public assertion of his position as an
agnate of the Chowdhrair's husband, and has never met with a denial. In 1812
Kirpa Nath, the appellant's grandfather, and in 1863 and 1885 Gobind Pershad,
the appellant's father, came into Court in the quality of agnate. These judicial
appearances have not the less significance that while Kirpa Nath came into Court

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adversely to the interests of the Chowdhrair, the intervention of the father, Gobind Pershad, was invoked by the Chowdhrair herself. 5. In face of these facts, it would be affectation to treat the thesis of the appellant as expressed in his pedigree as being in any high degree improbable; but it not the less must be adequately proved. Now the appellant brings a substantial body of evidence from his own kinsfolk, which is clearly within the Indian Evidence Act. This evidence derives special weight from the considerations explained in the following passage in the judgment of the Subordinate Judge in this case: The plaintiff himself says, that amongst others he heard the names recited by his father and uncles and Durga Dutt Chowdhry. It is well known, as has been recorded in that first volume of the fifth report from the Select Committee, that Hindu boys are taught the names of their ancestors, paternal and maternal, by their parents and other relatives while they are very young, together with their gotras and prabars, &c. These instructions are given not merely as a matter of curiosity, but as a matter of necessity; for Hindus, and specially the Brahmins, are required to perform their sradhs annually and on parbana occasions, and to offer water oblations (tarpana) for a whole fortnight, or rather fifteen days of the dark side of the moon in the month of Bhadro. Their right of inheritance depends upon such ceremonies, and their marriages are regulated according to blood relationship. This way the names of the ancestors up to the seventh degree in ascent (the Sakulyas) at the least are taught, though in most respectable families the names up to the fourteenth degree in ascent (the Samanodakas) are also taught. So, there is nothing unusual in the plaintiff's statement. 6. It cannot be doubted that, in its quality, this is admissible evidence. The singular criticism of the High Court is that it comes from relatives of the appellant; but it is difficult to see where else such evidence could be found, or that in the mouths of strangers it would have any value at all. Each of the persons who has spoken to this pedigree has been carefully cross-examined, and each proves circumstances, apart from the pedigree, which support his knowledge and credit. This is not the case of a pedigree learned by rote, but it is circumstantially Corroborated, as far as time and memory admit. 7. Their Lordships are unable to agree with the High Court in their appreciations of the evidence. For the reason already given, they do not think that the relationship of one class of the witnesses is a consideration which should inspire more than the ordinary caution with which testimony is sifted where sympathy with one side is to be taken for granted. Again the High Court discards, or at least largely discounts, the rest of the appellant's witnesses because it appears that one of them, Kartik Nath Panday, besides being a relative, was "assisting the appellant" in the case, and the others are connected with this person by blood or service. Their Lordships do not consider this to be a safe or sufficiently discriminating way of dealing with the testimony of these witnesses. They observe that the Subordinate Judge describes Kartik Nath Panday as "a very respectable zemindar of this district"; and it is at; least conceivable that he is supporting his kinsman because he knows his cause to be just. Nor do the instances in which the Subordinate Judge declined to accept specific statements of the witnesses seem to imply any reason for distrusting

their testimony generally. The matter of the *sradh*, of which the High Court makes much, involves the credit of only one witness; and the other instances in which the Subordinate Judge has not acted on the evidence do not involve more than caution on his part or inaccuracy on the part of the witness. 8. In default of more substantial topics, the learned counsel for the respondents bestowed much attention on a supposed anachronism in a pedigree which is printed in the record. It is enough to say that it is adequately proved that there were two persons of the name of Kirpa Nath; and, if this be so, the difficulty disappears. 9. Their Lordships deem it unnecessary to refer to several ephemeral arguments naturally arising out of a case so voluminous. 10. Their Lordships are satisfied that the appellant has established his claim. They will humbly advise His Majesty that the appeal ought to be allowed, the decree of the High Court discharged with costs, and the decree of the Subordinate Judge restored. The respondents will pay the costs of the appeal.