

(1921) 02 CAL CK 0012
In the Calcutta High Court

Srimati Krishna Bhamini Dasi

APPELLANT

Vs

Srimati Braja Mohini Dasi and Another

RESPONDENT

Date of Decision : 07-02-1921

Acts Referred:

Citation : AIR 1921 Cal 617 : 66 Ind. Cas. 38

Hon'ble Judges : Walmsley, J; John Woodroffe, J

Bench : Division Bench

Judgement

Woodroffe, J.—The plaintiff appellant is the widow of one Hari Charan Bose, a Mukhtar, who, starting life without means, amassed at length a considerable fortune which is the subject matter of this suit. He died on the 11th April 1909 leaving another widow, the first defendant, no natural children but grand-children by the plaintiff. The first defendant, was childless. The point at issue is, whether the second defendant is the adopted son of Hari Charan Bose. If not, then the plaintiff claims possession of half the property of her late husband and, alternatively, in the event of its being held that the second defendant is the adopted son of the plaintiff's husband, then the plaintiff claims maintenance from the estate. There is no dispute that the deceased had no natural son and that the second defendant, an infant of about 1 1/2 years, was brought into the home in the beginning of Assar 1292, that is the end of June 1892, some 18 years before H. C. Bose's death and lived there all along as a foster son according to the plaintiff or since July, 1892 as an adopted son according to the defendants. There can be no question that on the 3rd July 1892 an unregistered deed of authority for adoption was executed by H. C. Bose and that a registered deed of permission to adopt was executed by H. C. Bose on the 6th August 1892. Some 12 days before the alleged adoption a registered deed of gift of his son was executed by one Abhoy Charan Bose, the natural father of the second defendant, in favour of the first defendant, Srimati Brojo Mohini Dassi. There is evidence which the Judge has accepted that the boy was given and taken in adoption on the 18th August 1892 and that homa was performed later on the 1st October 1892. There is evidence also that H. C. Bose and others treated the boy as his

son even before the date next mentioned. It is admitted that it is shown that from some six years after the date of the alleged adoption Hari Charan Bose spoke of and treated the second defendant as his adopted son: for, as regards this, we have documentary evidence. In 108 the second defendant, who was then about 17 years old, married as the adopted son of H. C. Bose. The card of invitation described him as son, On the 11th April 1910 the second defendant's adoptive father died. Not till six years later, that, is on the 10th April 1916, this suit was instituted. According to the plaintiff's evidence she had not been receiving anything from the estate from about two or three years before 1918, it must be admitted that the above mentioned facts constitute a strong case against the plaintiff.

2. The latter's case is that she and her so widow were on bad terms. The second widow, the first defendant, was childless and jealous. To satisfy her maternal cravings she took the second defendant during his infancy from his father in exchange for money (which is denied) and brought him up and introduced him into the family as a foster son. There was it is said (notwithstanding the execution of the documents above mentioned) no actual adoption though after some years H. C. Bose came to speak of the defendant No. 2 as his adopted son, possibly thinking (though he was a Mukhtar) that such admissions were sufficient to make the defendant his adopted son or would be operative in fact for that purpose. Then, after the death of the plaintiff's husband, the first defendant took advantage of the fact of the presence of the second defendant in the family and set up the alleged adoption with the object of depriving the plaintiff of her right of inheritance and her children of their reversionary interest.

3. The first defendant, on the other hand, alleges that the second defendant is the adopted son of H. C. Bose and not a mere foster son, as alleged; that the plaintiff has admitted that fact and was aware of the adoption all along. The heirship of the plaintiff is denied and as regards maintenance and residence it is said that sufficient provision has already been made. The defendant claims property No. 18 in the schedule to the plaint as her own property stating that it is no part of the estate of her husband. The written statement of the second defendant is on the same lines with greater details upon the issue of maintenance.

4. Eighteen issues were framed; but we are now concerned with four, viz., (1) Whether the defendant No. 2 was validly adopted, and if not (for otherwise the issue does not arise); (2) Is property No. 18 part of the estate of H. C. Bose, Then, if the appellant fails to show that the judgment in appeal is wrong as to the adoption then; (3) Is the plaintiff entitled to get maintenance, and (4) arrears of same.

5. No question of law arises on this issue of adoption the question being one purely of fact. It is common ground that if giving and taking is not established as a fact no amount of acknowledgment would make the second defendant an adopted son. The question is one of fact, namely, what occurred on the 18th

August and 1st October 1892, when the adoption and subsequent ceremonies were performed. There is no question here as to whether the adoption was by the first defendant and whether a wife can adopt even with permission during her husband's life time for the facts (if true) are that the taking was by H. C. Bose. The only question which arises is, whether the evidence to that effect is true. There is no question whether subsequent ceremonies were necessary. The case made is that the parties who are Kayasthas are Shudras. It is not said that religious ceremonies such as the dattaka homa were necessary but it is denied as a fact that such ceremonies were performed, it being said that the allegations made in this respect are not true. The issue of fact is, whether there was a giving and taking on the 18th August 1892 and ceremonies on the 1st October 1892 or not.

6. The learned Judge has held that the defendant No. 2 was validly adopted, that the plaintiff is entitled to maintenance at the rate of Rs. 200 a month, and that the same should be a charge upon the Immovable properties of H. C. Bose and that there are in fact no arrears due, From this decision the plaintiff appeals both on the question of adoption and maintenance and there is a cross-appeal by the respondent on the question of maintenance. As regard the probabilities, it is said that it is improbable that the defendant No. 2 should have been adopted for H. C. Bose was then rich and it is said that he asked three persons to give their sons in adoption, viz., Ackhoy Kumar Bose and Gobordhan Bose and a relative Bhuban Mohini Dasi. Yet they all refused. It is the plaintiff's case that even the natural father of the boy, a very poor man, was at first unwilling and only gave way when the boy became ill and on the terms that if the boy would be cured by H. C. Bose he would be given in adoption. The refusal is not contested, but it is asked is this likely except on the assumption that they were not asked to give their son in adoption by H. C. Bose but to give one of their children as foster son for the defendant No. 1, a very different matter. It is to be observed that Gobordhan who is alive is not called. It is said that he is a Pleader of defendant No. 2. Is it likely, it is said, that this rich man had to get a son from a poor vendor of sweetmeats, What happened, it is suggested, is that the latter made a gift of his son to the defendant No. 1 and that was all. There was no giving and taking as alleged. The Anumatipatras were given with a view to adoption after death. Then it is suggested that the defendant No. 1 worked upon the mind of her husband and got him to recognise the foster son as adopted son some six years after the date of the alleged adoption. If it is asked, how a Mukhtar who had (in whatever was consented to the defendant No. 2 being his adopted son could leave the matter in so uncertain and voidable a state as the plaintiff's story suggests, it is replied that at that time it was too late to go through a regular adoption, though it is admitted that strictly there was no impediment. It is argued that Bhadro is an unlucky month to make any gift and that it is not likely, therefore, that the giving and taking in adoption took place in that month that the persons, relations or Brahmins who might be expected to be invited on such an occasion were not present, Such as Gobordhan, Probash, Prokasb,

Mrinalini Dasi, Hemangini Dasi, Surendra, Jogendra, Upendra and Akshoy K. Bose. It is said that there is no entry of any gift to Brahmins in the account nor is the deed of gift attested by any Brahmin. In the account of 3rd Bhadra (18th August) there is no relevant entry, the only entry relevant to the alleged adoption being an entry of 23rd Sraban (6th August) touching deposit made by defendant No. 1. for the purpose of adopting a son. This, it is suggested, was owing to pressure of defendant No. 1 on H. C. Bose who may have been willing that his wife should prepare a deed of permission to adopt but it does not follow that the adoption took place. The giving and taking in adoption is spoken to by both the natural and adoptive mother of the second defendant, Srimati Padmamukhi, second wife of Bama Charan Bose, the brother of H. C. Bose, Chandra Bhusan Chaudhury the sister's son of defendant No. 1, and an employee of the second defendant, Sris Chandra Biswas.

7. It is a point worthy of consideration, in support of the contention that such giving as there may have been was only by deed, that the deed of gift of the 18th August 1892 casts doubt on the oral evidence in that, if the document was executed after the giving and taking that fact would have been recorded, but it was not, that if the taking had been as alleged by H. C. Bose, his name would have appeared as donee; that if H. C. Bose had really been present and took the shield the recital of permission having been given was unnecessary; that the deed recites that the adoption was said to be "by you," that is, the first defendant, and that the deed recites that the boy was taken in adoption after the performance of the rites and ceremonies prescribed by the Hindu Law when no such rites were performed on that day and homa is said to have been done about a month and a half after the deed. The learned Judge has dealt with these arguments; Further, it is noteworthy as regards this last allegation it was first made when the written statement was amended under order of the 3rd April 1917. It is also a substantial point that it is unlikely that H. C. Bose was driven by the refusal of his relatives to give a son in adoption, had to seek through a barber an adoptive son from a man in such a position as that of the natural father of defendant No. 2 who was a street meat vendor without position or means. This last seems established whether he was, as the plaintiff says, a street hawker or had a shop as the respondents say. This fact is really the chief basis of the attack on the defendants' case, We have, however, not thought it necessary to call upon the respondents because it seems to us that whatever ground may exist for the criticism passed by the learned Vakil for the appellant on the story of the adoption and the circumstances which led up to it, we have the fact of the adoption spoken to by the witnesses named in their evidence which the learned Judge has described of a son of a convincing character; and it is an undoubted fact that H. C. Bose declared that the second defendant was his son and treated him as such. This appears not only from documents such as the conveyance Exhibit I of the 19th February 1899 where H. C. Bose describes the second defendant, as his son, the school register, and so on, but from the evidence of reliable persons such as Sir David Yule, and Mr. McNair, to whom H. C. Bose introduced the

second defendant as his son. Babu Subodh Chandra Mitter, an Attorney of this Court, also says he knew the defendant No. 2 to be the adopted son of H. C. Bose. We have also the fact that the second defendant lived all along in the house and was treated as a son and the fact that there was a written registered permission to adopt and a registered deed of gift by the natural father. As the learned Judge says, it is natural that H. C. Bose, who was an orthodox Hindu of the old type, should adopt a son. It is not explained when the plaintiff first ascertained that the defendant No. 2 alleged himself to be the adopted son and why she took no action at an earlier date than 1916 some six years after her husband's death. I think also that there is some ground for the learned Judge's observation that the plaintiff did not call evidence available to her. Further, for what it is worth, the plaintiff appears to have admitted the defendant No. 2's title as heir. It is said that this may have been because, though not admitting his title, she may have at first desired to respect her husband's wishes---for there is no doubt that he wished the defendant No. 2 to be recognised as his son it may be she changed her mind on account of disputes as to payment of money. It is not possible, however, to say that the body of evidence is overcome by the suggestion that all that happened was that the defendant No. 2 was brought in as foster son that no actual giving took place but that about 1898, 1899 H. C. Bose determined to, regard him as his adopted son and though that an acknowledgment was sufficient to make up for the want of a proceeding of giving and taking. This is the less possible when the learned Judge who has heard the evidence has accepted it. I am of opinion, therefore, that this part, of the appellant case fails; that we should hold that there is no sufficient ground for reversing the decision of the Subordinate Judge that the second respondent is the adopted son of H. C. Bose. It is on this finding unnecessary to discuss the question whether property No. 18 is the property of the estate or of the first respondent.

8. The remaining question of maintenance divides itself into two points, viz., whether the plaintiff is entitled to maintenance, if so, what and whether any arrears are due. The respondent's cross appeal urges that as the plaintiff's husband had in her life time provided for her residence and maintenance by the setting aside of specific properties and funds she is not entitled to claim maintenance against his assets without first surrendering her interest under the card gift, it is not objected that the Judge was wrong in awarding the sum of Rs. 200 a month. At the hearing the cross-appeal was not pressed, the learned Vakil for the respondent stating that he was not opposed to the appellant receiving what the Judge has given her but to her receiving more. The question then is one of fact, namely, the amount of the maintenance to be awarded.

9. As regards the amount of maintenance it has been held that no hard and fast rule can be laid down that a widow is entitled to a particular fraction of the income. The circumstances of each case must be considered, such as, the value of the estate and its income, the position and status of the deceased husband and his widow, the expenses involved by the religious and other duties which she

has to discharge, and so forth, together with (as is here the case) that the appellant has been given a separate property for her maintenance. The Judge on a detailed examination of the facts has fixed a sum of Rs. 200 a month and held that there are in fact no arrears due.

10. It is taken as common ground (however calculated) that Rs. 32,000 is the net yearly income from Immovable property. The respondent says that from this must be deducted interest on account of loans, This the appellant does not admit. The latter under the decree gets Rs. 200 a month in addition to the sum of about Rs. 75 which she gets from Immovable property. She claims Rs. 750. The maintenance awarded is about 1/10th and it may be less of the respondent's (No. 2) income. From the evidence it appears that at one time, even during the life of her husband, the appellant got Rs. 200 a month and after his death the respondent No. 1 used to pay Rs. 200 a month over and above the income of her Immovable property. This rate appears to have been paid until shortly before the suit and by consent after the suit at the same rate. The cross appeal, as I have said, is not pressed. The learned Pleader for the respondent is only concerned to see that the plaintiff appellant does not get any more than the learned Judge has awarded her. With the Rs. 75 this makes Rs. 225 a month. Seeing that the appellant used to receive the same sum of Rs. 200 years ago and the present lowering in the value of money I think that something should be added to the sum awarded. I think that this should be Rs. 75 so that the appellant will then have, including income from Immovable property, the sum of Rs. 350 a month. With this exception, the decree is affirmed and the appeal is dismissed. As the appellant fails on the main point, the discussion of which has occupied all the days of hearing except some portion of the last, the appellant must pay the costs of the appeal.

Walmsley, J.

11. I agree.