A

BANWARI LAL

v.

TIRLOK CHAND & OTHERS

(AND *vice versa*)

October 23, 1979

B

[N. L. UNTWALIA & A. D. KOSHAL, JJ.]

Hindu Law—Adoption—A statement in a will that certain person was adopted son, if enough proof of adoption—Tests of adoption—What are.

G and J were the sons of S son of M. The plaintiff was the grandson of another son of M.

C

In a document purporting to have been executed by G it was stated that defendant No. 1 was his (G's) adopted son and heir and that C (his younger brother J's widow) and defendant No. 1 had rendered services to him, in recognition of which he bequeathed properties detailed in the will to C to be enjoyed by her during her life time and that on her death defendant No. 1 shall be their owner.

D

The plaintiff in his suit for partition claimed that the properties detailed in Schedule A to the plaint had been acquired by his great grandfather M, those in Schedule B were jointly acquired by G and J, both of whom constituted a joint Hindu family, and those in Schedule C which once belonged exclusively to J descended on his death to his widow C. The plaintiff also challenged the adoption of defendant No. 1.

E

Defendant No. 1 on the other hand claimed that since he was the adopted son of G the properties bequeathed to him by G's will were his exclusive properties. He also claimed that the properties in Schedule C were purchased by J's widow C with her stridhana, that by reason of her will he was entitled exclusively to those properties and that they never belonged to her late husband.

F

The trial court held that adoption had not been proved and that the motive for the execution of the will was not merely the recognition by the testator of his relationship through adoption with the devisee but mainly the existence of feelings of love and affection for him. The first appellate court held that the recital in G's will that defendant No. 1 was his adopted son was sufficient to prove the fact of adoption.

G

The High Court on the other hand was of the opinion that the recital in G's will that defendant No. 1 was his adopted son was not sufficient to prove the adopted and that the reference to adoption had been made merely as a description of the devisee and not as a motivation for the execution of the will.

H

HELD : Defendant No. 1 had not been successful in establishing the alleged adoption. [1005 F]

A

1. (a) It is well-established that evidence in support of an adoption must be sufficient to satisfy the very grave and serious onus that rests upon any person who seeks to displace the natural succession by alleging an adoption. [1005 D-E]

B

(b) The burden of proof of adoption in this case lay heavily on defendant No. 1 which he has not discharged satisfactorily. This is not a case in which the adoption had taken place a very long time the suit was filed. It had in fact taken place within about a decade immediately preceding the suit when witnesses who were present at the ceremony and who had seen the giving and taking would normally have been available. He did not explain why no such witness was forthcoming. [1005 A-B]

C

(c) The relationship mentioned in the will that defendant No. 1 was his adopted son and heir was merely a description of the devisee as understood by the testator. The will was executed not because that relationship was brought about by adoption but by reason of feelings of affection which the devisee had earned by his association with and the assistance rendered to the testator. [1003 H-1004 A]

D

2. There is no force in the contention of the plaintiff that the will executed by C must be held to be wholly inoperative in so far as properties detailed in Schedules A and B were concerned because one half of the properties mentioned in these schedules had vested in C under the will of G which itself declared that she would hold them merely as a life-tenant and that thereafter they would devolve on defendant No. 1. In devising the properties to defendant No. 1, C did no more than carry out the behest of her own testator, which behest was good in law. [1004 A-C]

E

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1742-1743 of 1969.

F

Appeals by Special Leave from the Judgment and Order dated 12-12-1968 of the Allahabad High Court in R.S.A. No. 2777 of 1972.

G

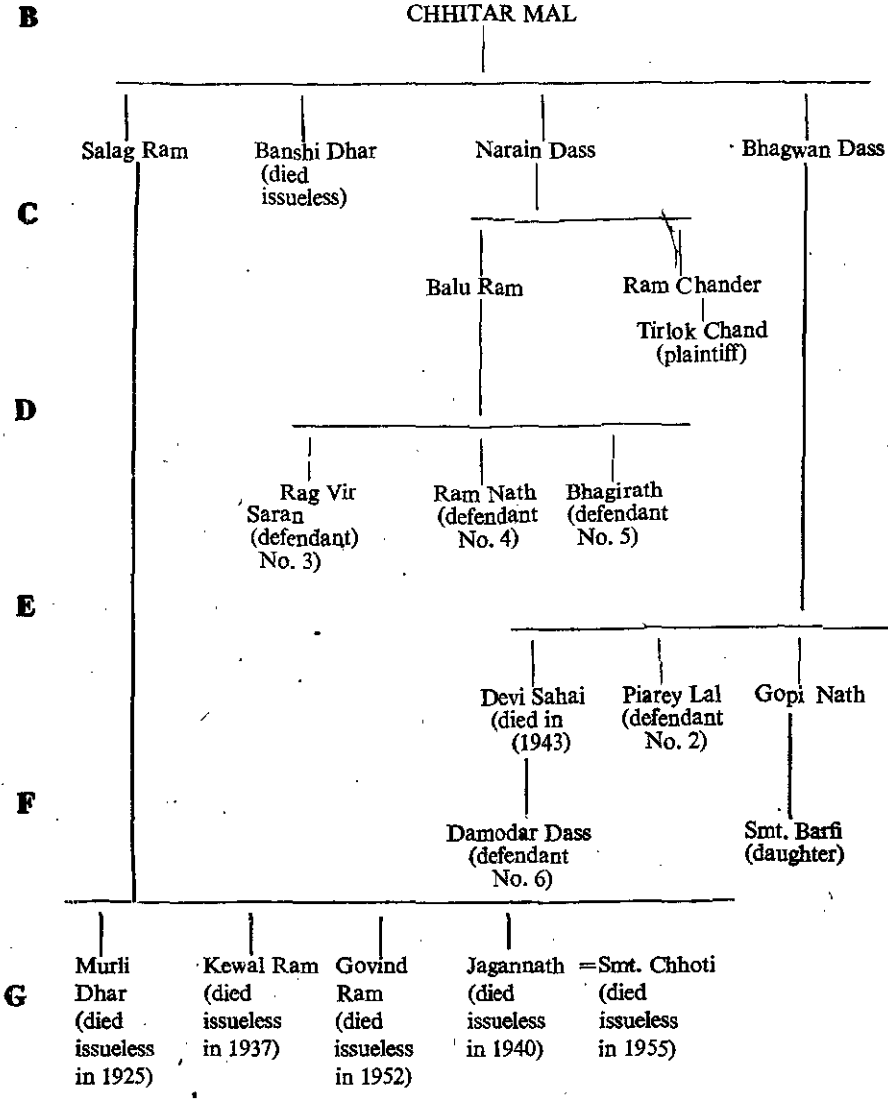
S. N. Andley, Uma Datta and *T. C. Sharma* for the Appellant in CA 1742/69.

H

A. P. S. Chauhan and *N. N. Sharma* for Respondent No. 1 in CA 1742/69 and for the Appellant in CA 1743/69.

A The Judgment of the Court was delivered by

KOSHAL, J.—The facts giving rise to these two cross appeals by special leave may, with advantage, be stated with reference to the following pedigree-table :



H The litigation between the parties started with suit No. 1912 of 1958 instituted by Tirlok Chand for partition of properties detailed in schedules A, B and C forming part of the plaint. His case was that

the property described in schedule A had been acquired by his great-grand-father Chhitar Mal, that the property detailed in schedule B was jointly acquired by Salag Ram's sons Jagannath and Govind Ram, the two of whom constituted a joint Hindu family, and that the property specified in schedule C had once belonged exclusively to Jagannath, son of Salag Ram and that it was from him that it had descended to his widow Smt. Chhoti.

Apart from defendants Nos. 2 to 6 whose names appear in the pedigree-table, Banwari Lal [who is the appellant before us in Civil Appeal No. 1742(N) of 1969] was arrayed as defendant No. 1 and he has been the real contesting defendant whose claim was based on his adoption by Govind Ram, grandson of Chhitar Mal and on two registered wills, both dated the 25th of September, 1950, purporting to have been executed by Govind Ram and Smt. Chhoti respectively. He claimed that the two testators had bequeathed their entire property to him, that the property covered by schedule A was acquired not by Chhitar Mal but by Salag Ram and that the one embraced by schedule C had been purchased by Smt. Chhoti with her *stridhana* and was never the property of her husband Jagannath. He therefore claimed to be entitled to all the properties in suit exclusively for himself, it being common ground between the parties that those properties were the subject-matter of the two wills.

The plantiff denied the adoption set up by defendant No. 1 and challenged the two wills as forgeries.

The trial court and the first appellate court found that the property covered by schedule A had been acquired not by Chhitar Mal but by his son Salag Ram. There was no contest in relation to the property embraced by schedule B which was therefore treated to have been acquired jointly by Govind Ram and Jagannath as part of their joint Hindu family assets. In relation to the property detailed in schedule C, the trial Court held that it had been acquired by Jagannath but the finding was reversed by the first appellate court which found that the acquisition was made by Smt. Chhoti with funds of her own, her husband Jagannath having no interest therein.

On behalf of defendant No. 1 no evidence was led to prove that he had been given or taken in adoption. The trial court therefore held that the adoption had not been proved. In the will of Govind Ram however, there was a recital that defendant No. 1 was his adopted son and this recital was considered by the first appellate court to be sufficient to prove the adoption. Both the wills were held to be genuine

A and legally valid and the suit was therefore dismissed by the trial court and the first appellate court *in toto*.

In second appeal the High Court upheld all the findings of fact arrived it by the first appellate court except the one relating to adoption. The High Court was of the opinion that the recital in the will B of Govind Ram about defendant No. 1 being his adopted son was not sufficient to prove the adoption which therefore was held not to have been established. It was further held by the High Court that a half share in the property specified in schedules A and B having descended from Jagannath to Smt. Chhoti as a life-tenant only, she was not competent to will it away and that the plaintiff, along with other members C of the family, was entitled to succeed to that half share.

It was vehemently contended before the High Court that even if the wills be taken to be genuine, they would operate only if defendant No. 1 was shown to have been validly adopted by Govind Ram because both Govind Ram and Smt. Chhoti had described him as D Govind Ram's adopted son and must therefore be presumed to have executed the wills in favour of defendant No. 1 by reason of his being the adopted son of Govind Ram. The contention was repelled by the High Court (as it had also been by the trial court) on the ground that the mention of defendant No. 1 as the adopted son of Govind Ram in each of the two wills had been made merely as a description of the E devisee and not as a motivation for the execution of either will. Support was found for this view from *Ranganathan Chattiar and Another* v. *Periskaruppan and Another.*(1)

In the result the High Court accepted the appeal of the plaintiff in part, set aside the dismissal of the suit and remitted the case to the F trial court for declaring the shares of the parties in the property which descended to Smt. Chhoti from her husband, in the light of its (the High Court's) judgment and for partition of the property accordingly thereafter.

2. Both the contesting parties feel aggrieved by the judgment of the G High Court. While defendant No. 1 claims in Civil Appeal No. 1742 of 1969 the entire property covered by schedules A, B and C, the plaintiff has filed a cross appeal (Civil Appeal No. 1743 of 1969) seeking to defeat *in toto* the claim of defendant No. 1.

3. We have heard learned counsel for the parties at length. In so H far as the findings of fact are concerned they are not open to challenge before us. The first question which learned counsel for the plaintiffs

(1) A.I.R. 1957 S.C 815.

has re-opened before us is whether the two wills were rightly held to be operative in favour of defendant No. 1 inspite of the fact that he was found not to have established his character as an adopted son which was the description given to him in both the wills. To this question also we think the High Court gave the correct answer. In this connection reference may be made to the relevant part of Govind Ram's will and the same is extracted below :

> "Shri Banwarilal is the adopted son and heir of the executant. Shrimati Chhoti is the widow of Jagannath Prasad, resident of Pilkhuwa, Pargana Dasna, Tahsil Ghaziabad. Both the persons live along with the executant and render all due service to the executant. Therefore, I make the following will : That after the death of the executant all my estate, movable and immovable, with all other goods and household property along with Dharamshala No. 1/60 and one-storeyed shop No. 1/57 bounded as given below shall be owned by Shrimati Chhoti widow of Jagannath Prasad, occupation shopkeeper, resident of Pilkhuwa, who shall have no right to sell the estate. She shall have the right to spend for the Dharamshala the income of shop No. 1/57 connected with the Dharamshala. After the death of Smt. Chhoti, Banwarilal, adopted son and heir of the executant, shall be the owner......"

Interpreting this document and considering the surrounding circumstances of the case, the trial court found that the motive for the execution of the will was not merely the recognition by the testator of his relationship through adoption with the devisee but mainly the existence of feelings of love and affection for him. It was found as a fact that Banwari Lal was living with Govind Ram and Smt. Chhoti, that he had served them during their illness and that he was affectionately attached to them so that at the time when the wills were executed there was no one nearer or dearer to Govind Ram and Smt. Chhoti than Banwari Lal. In this view of the matter, the failure to establish the stated relationship is not decisive of the point under consideration, and as remarked by the High Court, it appears that the testator made the will not for the reason that he had in fact and lawfully adopted Banwari Lal but for the reason that he treated Banwari Lal as an adopted son and was moved really by the service which the latter had rendered to him. The relationship mentioned in the will was merely a description of the devisee as understood by the testator who executed the will in favour of the devisee not because of the relationship

A brought about by the adoption but by reason of feelings of affection which the devisee had earned by his association and assistance.

4. The only other noticeable point raised on behalf of the plaintiff was that the will executed by Smt. Chhoti must be held to be wholly inoperative in so far as properties detained in schedules A and B are B concerned. There is no force in that contention either. One half of the properties mentioned in those two schedules had vested in Smt. Chhoti under the will of Govind Ram which itself declared that Smt. Chhoti would hold them merely as a life-tenant and that thereafter they would devolve on defendant No. 1. In devising those properties to defendant No. 1 Smt. Chhoti did nothing more than carry out C the behest of her own testator, which behest was good in law and would have been effective even if Smt. Chhoti had made no will in favour of defendant No. 1 in respect of the properties acquired by her under Govind Ram's will.

5. On behalf of defendant No. 1 the only submission made was D that the two wills must be given effect to not only with regard to the properties received by Smt. Chhoti from Govind Ram but also in respect of those which devolved on her as a successor to her husband Jagannath. This submission is also without substance. Jagannath died in 1940 when Smt. Chhoti came into his property on the usual life-tenure without any right of a alienation (except for necessity) or E of devise. To the extent that she overstepped her rights in devising Jagannath's property the will transgressed the law and has been rightly held to be inoperative, the result being that her reversioners and not her devisee would succeed to Jagannath's share in the properties covered by schedules A and B. The situation would certainly have been different if the adoption had been proved; for, in that case, defendant F No. 1 would have succeeded as the sole reversioner to the estate left by Smt. Chhoti, being her husband's brother's son and therefore his nearest and sole heir. And that is why a contention was raised on behalf of defendant No. 1 that a valid adoption had been proved and that the finding to the contrary arrived at by two of the courts below was G unsupportable. Reference in this connection was made to the recital in the will executed by Govind Ram about defendant No. 1 being the adopted son of the devisor and to the oral evidence of Raj Pāl, DW-2 who attested that will and deposed that defendant No. 1 had been adopted by the testator. These two pieces of evidence were considered by the trial court as well as the High Court, both of whom regarded H the material as insufficient to hold that a valid adoption was proved. The finding in relation to the adoption is a finding of fact which we see no reason to interfere with in the circumstances of the case. The

adoption is alleged to have taken place within about a decade immediately preceding the suit between the parties so that evidence of witnesses who were present at the actual adoption and had seen the 'giving and taking' would normally have been available. However, no attempt was made to produce any such witness nor to explain why no such witness was forthcoming. Different considerations may have prevailed if proof of adoption was required to be submitted to court after a very long period of its having taken place, which is not the case here. The statement made by the testator in the will about the adoption is certainly a piece of admissible evidence as observed in *Chandreshwar Prasad Narain Singh* v. *Bisheshwar Pratap Narain Singh*(1) cited by learned counsel for defendant No. 1 but there is no rule of law or prudence laying down the principle that such a statement must be regarded as conclusive, and this was also the view taken in that case. And the burden of proof of adoption was heavy on the defendant. In this connection we may refer to the following passage in Article 512 of Mulla's Hindu Law (14th edition) :

> ".....But the evidence in support of an adoption must be sufficient to satisfy the very grave and serious onus that rests upon any person who seeks to displace the natural succession by alleging an adoption. That onus is particularly heavy where the adoption is made a long time after the date of the alleged authority to adopt...."

It is true, as pointed out by Mulla in a later passage occurring in the same article that when there is a lapse of a very long period between the adoption and its being questioned, every allowance for the absence of evidence to prove the factum of adoption must be favourably entertained; but then that is not the situation here as we have already pointed out. We are therefore one with the High Court in holding that on the evidence adduced, defendant No. 1 has not been successful in establishing the alleged adoption.

6. In the result both the appeals fail and are dismissed with no order as to costs.

P.B.R. *Appeals dismissed.*

(1) A.I.R. 1927 Patna 61.