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DWARKA NATH

v.

SHRI LAL CHAND AND OTHERS

February 10, 1965

B [P. B. GAJENDRAGADKAR, C.J., M. HIDAYATULLAH, J. C. SHAH AND S. M. SIKRI, JJ.]

U.P. Court of Wards Act, 1912 (*Act* 4 *of* 1912), *ss.* 37, 53—*Scope of—Consent of Court of Wards for Adoption—If adoption can be challenged in Civil Court.*

C A widow whose estate was under the charge of the Court of Wards, made an adoption and applied under s. 37 of the U.P. Court of Wards Act, 1912, for permission to make the adoption. The Collector refused the permission as the grant of authority to adopt, by the husband who died in 1901, was not proved. The 1st respondent's father, the nearest reversioner, filed a suit challenging the adoption as contrary to s. 37 of the Act and the suit was decreed. The widow, thereafter, applied to the Court of Wards for permis-
D sion to adopt the appellant. Fresh enquiries about grant of authority by the husband to adopt, were made, and permission was granted and the appellant was adopted in 1929. Immediately after the adoption of the appellant the Court of Wards, released the estate and assumed charge of it again on behalf of the appellant who was a minor. On the death of the widow in 1943, the 1st respondent's father filed a suit, challenging the validity of the appel-
E lant's adoption on the ground that the widow had no authority from her husband to adopt. The Trial Court decreed the suit and the High Court, on appeal, affirmed the decree. In appeal to this Court it was contended that the conclusion of the Court of Wards to grant permission and the reasons for the decision could not be questioned in a civil suit.

F HELD : The Civil Court was competent to reconsider the question of the authority given by the husband, even after the consent of the Court of Wards.

Section 37 of the U.P. Court of Wards Act affects the competence of the wards to make an adoption, and as the consent of the Court of Wards is a pre-requisite, any adoption made without such consent must be ineffective. The section, however, does not make the
G sanction of the Court of Wards cure illegalities or breaches of personal law. Nor does the sanction make up for incompetence arising under the personal law. Those matters would have to be determined according to the personal law in a Civil Court of competent jurisdiction. [30E-G]

Section 53 also is not a bar to such a suit. The section only provides that if the Court of Wards gave or refused its consent to a proposed adoption a suit would not lie to cancel the consent or to compel it. It does not go to the length of saying that after the consent of the Court of Wards, the adoption itself cannot be questioned at all. [30H]

In deciding the question of authority, the statements made by witnesses at the second enquiry by the Court of Wards for giving its consent to adopt, could not be considered by the Civil Court as they were not relevant or admissible either under s. 32(7) or s. 157 of the Indian Evidence Act. [32 D-F; 33 A-C]

As the 1st respondent's father never accepted the appellant's adoption it could not be said that the suit, filed more than 15 years after the adoption during which time the appellant had been considered by everyone to be legally and validly adopted, ought to be dismissed. [33E-G] A

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 195 of 1963. B

Appeal from the judgment and decree dated March 24, 1959 of the Allahabad High Court in First Appeal No. 76/47.

C. B. Agarwala and *J. P. Goyal*, for the appellant.

S. T. Desai, M. V. Goswami and *B. C. Misra*, for the respondent No. 1. C

M. V. Goswami and *B. C. Misra*, for respondents Nos. 2, 7. and 8.

R. S. Gupta, S. S. Khanduja and *Ganpat Rai*, for respondent No. 9. D

The Judgment of the Court was delivered by

Hidayatullah, J. This appeal arises from a suit filed by respondents 1 and 2 for declaration of their rights to the Phulpur Estate, for possession of properties belonging to the Estate and for mesne profits. The Phulpur Estate is situated in Allahabad District. One Rai Bahadur Rai Pratap Chand who died on January 23, 1901, was the *Zamindar* of this Estate. After his death, his widow Rani Gomti Bibi succeeded to the Estate. Rani Gomti Bibi was considerably influenced by her brother Gaya Prasad and priests belonging to some temples. In the years following the death of her husband, Rani Gomti Bibi made many endowments involving vast properties and in July 1920, the Court of Wards assumed charge of the Estate which the Rani was mismanaging. On February 21, 1923, the Rani adopted one Bindeshwari Prasad and then applied to the Court of Wards under s. 37 of the U.P. Court of Wards Act for permission to make the adoption. The Collector (Mr. Knox) made an enquiry and on April 3, 1923, made a report Ex. 79 stating that the evidence tendered before him was so conflicting and unreliable that he had come to the conclusion that the authority of Rai Pratap Chand to adoption by his widow was not proved. He, therefore, recommended that Rani Gomti Bibi be declined permission to make the adoption and the Board of Revenue accordingly refused permission. Rani Gomti Bibi, however, executed a deed of adoption on November 6, 1924 in favour of Bindeshwari Prasad. A suit was filed by Parmeshwar Dayal (who was the first plaintiff in the persent suit) in 1925 against Rani Gomti Bibi, Bindeshwari Prasad and the Court of Wards challenging the adoption made by the Rani. On August 21, 1926, the suit was decreed, and it was held that the adoption was contrary to s. 37 of the U.P. Court of Wards Act, 1912 and was thus E F G H

A invalid inasmuch as permission to take the adoption was not obtained from the Court of Wards.

Rani Gomti Bibi then applied to the Court of Wards for permission to adopt Bindeshwari Prasad's brother's son Dwarka Nath who is the present appellant. Fresh enquiries about the authority
B of the husband were made by the then Collector Mr. Thompson. He examined witnesses from a list filed by Gaya Prasad in the earlier suit of 1925. After considering the evidence, the Collector recommended grant of permission under s. 37 of the U.P. Court of Wards Act and permission was accordingly granted by the Board of Revenue. On November 28, 1929, the Rani adopted Dwarka
C Nath at Phulpur. Immediately after this adoption the Court of Wards released the Estate and assumed charge of it again on behalf of Dwarka Nath who was a minor.

On January 5, 1943, Rani Gomti Bibi died and the present suit was filed by Parmeshwar Dayal and one Amarnath Agarwal
D to whom Parmeshwar Dayal had assigned 6/16th share in the Estate. This suit was decreed by the Civil Judge of Allahabad who held *inter alia* that Parmeshwar Dayal was the nearest reversioner of Rai Partap Chand and was entitled to succeed him, and further that the adoption was invalid as there was no proof of authority given by Rai Pratap Chand to Rani Gomti Bibi to make the adop-
E tion. The suit for declaration and possession was decreed with mesne profits amounting to Rs. 88,000 against Dwarka Nath and the Collector and the Court of Wards who was also made a party to the suit. Three appeals were filed against the judgment and by a common judgment dated March 24, 1959, the High Court affirmed the decree except in respect of mesne profits. The High Court
F certified the case as fit for appeal to his Court and the present appeal results.

At the hearing, Mr. C. B. Agarwala stated on behalf of the appellant that he did not challenge that Parmeshwar Dayal was the nearest reversioner of Rai Pratap Chand. We are also not
G now concerned with the endowments. Mr. Agarwala contended that the findings about authority by Rai Pratap Chand to the adoption were erroneous an required to be reconsidered. In seeking reconsideration of this finding, Mr. Agarwala relied both on facts and law. In so far as his claim is to have the evidence reconsidered, it may be stated at once that it is not the practice
H of this Court to examine the evidence at large specially when the High Court and the Court below have drawn identical conclusion from it. In this case, the evidence about the authority, such as it was, was considered both by the Trial Judge and the High Court and they could not persuade themselves to accept it. Following the settled practice of this Court we declined to look into the evidence for the third time, but we permitted Mr. Agarwala to raise arguments of law and we shall deal with those arguments now.

Mr. Agarwala relies upon ss 37 and 53 of the U.P. Court of Wards Act, 1912 and contends that inasmuch as the Court of Wards made an enquiry into the truth of the allegations that Rai Pratap Chand had given express authority to Rani Gomti Bibi to make an adoption after his death and found in favour of authority, the conclusion of the Court of Wards to grant permission and the reasons for the decision cannot be questioned by a civil suit. This argument, in our judgment, cannot be accepted. Section 37, of the U.P. Court of Wards Act, in so far as it is material, reads as follows:—

"37. Disabilities of wards—

A ward shall not be competent—

(a) .....

(b) to adopt without the consent in writing of the Court of Wards;

(c) .....

Provided, first, that the Court of Wards shall not withhold its consent under clause (b) ..... if the adoption ..... is not contrary to the personal or special law applicable to the ward .....".

The section obviously places a hurdle in the way of adoptions by the wards which must be removed before the adoption can be valid. The section affects the competence of the Wards to make the adoption and as the consent is a pre-requisite, any adoption made without such consent must be ineffective. The section, however, does not make the sanction of the Court of Wards to cure illegalities or breaches of the personal law. Nor does the sanction make up for incompetence arising under the personal law. It is obvious that if the adoption is void by reason of the personal law of the person adopting, the consent of the Court of Wards cannot cure it. Nor would the consent take the place of the essential ceremonies or the religious observances where necessary. Those matters would have to be determined according to the personal law in civil court of competent jurisdiction.

Mr. Agarwala argues that s. 53 is a bar to any suit questioning the adoption made after the consent of the Court of Wards to the adoption has been given. That section cannot be used in this manner. It reads:

"53. (i) The exercise of any discretion conferred on the State Government or the Court of Wards by this Act shall not be questioned in any Civil Court.

(2) .....".

The section merely puts the exercise of discretion by officers acting under the Court of Wards Act beyond question. Thus if the Court of Wards gave or refused its consent to a proposed adoption a suit would not lie either to cancel the consent or to compel it. This section, however, does not go to the length that after the consent of the Court of Wards the adoption itself cannot be question-

A ed at all. There are no words in the section to this effect nor can such a result be implied. If the Court of Wards gave its concurrence to a proposed adoption, the bar created by s. 37 of the Act would be removed, but it would not make the adoption immune from attacks in a Civil Court on any ground on which adoptions are usually questioned there. Mr. Agarwala claims that the rea-
B sons for the consent of the Court of Wards are a part of the consent and are within s. 53(1). This cannot be accepted. No doubt, the Court of Wards reached its own conclusion for purpose of s. 37 that Rai Pratap Chand had accorded authority to Rani Gomti Bibi to adopt a son, but if the adoption was questioned in a civil court, the civil court would not be ousted of its jurisdiction
C to decide the question. All that the civil court would be compelled hold would be that the requirements of the Court of Wards Act as to the consent of the Court of Wards were fulfilled. In our judgment, the legal argument that after the consent of the Court of Wards the Civil Court was incompetent to reconsider the question of the authority given by the husband cannot be accepted.

D

In deciding the question of authority, the High Court rejected the oral evidence led before it and affirmed the conclusions of the trial Judge. The High Court considered this evidence both intrinsically and in the light of the attending circumstances and found it unacceptable. The trial Judge pointed out that as law-
E yers were present when Rai Pratap Chand is alleged to have given authority to his widow and as it was also suggested that that fact should be recorded, it was unbelievable, if the statements were true, that written authority would not have been prepared then and there. The High Court did not content itself with accepting the opinion of the trial Judge but discussed the evidence *de novo*
F and rejected it. The High Court pointed out that Rai Pratap Chand was only 30 years old at the time of his death and his wife was 25 years old and he could not have abandoned the hope of having an issue. Evidence shows that the writing was put off because it was not thought that Rai Pratap Chand was dying. The High Court also pointed out that Rani Gomti Bibi executed bet-
G ween November 24, 1901 and August 19, 1904 4 documents making different endowments. In none of these documents, she mentioned that she had been asked by her husband to make them. The High Court pertinently pointed out that the oral evidence showed that the declaration of the authority to his wife and the oral will to make the endowments, were made by Rai Pratap
H Chand at the same time and these facts would have figured as the reason for the endowments in these documents. Mr. Agarwala contends that even if the reasons for the endowments might be expected to be expressed, it is not logical to say that the deeds should have recited the irrelevant fact that authority was given to Rani Gomti Bibi to make the adoption. This is perhaps right, but the fact remains that the two directions of Rai Pratap Chand went hand in hand; and even if the fact of authority was not

recited in the documents, one would expect at least the oral will to make the endowments to be mentioned. This shows that the whole story about oral directions to Rani Gomti Bibi was untrue. A

Mr. Agarwala then seeks to use the statements made by Gaya Prasad and the witnesses before Mr. Thompson. In the High Court this claim was based upon ss. 11, 32 and 157 of the Indian Evidence Act. The High Court rejected these statements and declined to attach any value to them. Section 11 was not relied upon before us; but the other two sections were referred to in an effort to have that evidence read. Section 157 of the Indian Evidence Act lays down: B

> "157. Former statements of witness may be proved to corroborate later testimony as to same fact: C
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> In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved." D

Two circumstances, which are alternative, are conditions precedent to the proof of earlier statements under this section. The first is that the statements must have been made at or about the time when a fact took place. The fact here is the authority said to have been given by the husband in 1901. The statements were made on December 18, 1928, 27 years after the event. They cannot be said to have been made "at or about the time when the fact took place". Further, as rightly pointed out by the High Court, the Court of Wards was making an enquiry for the purpose of according its consent. It was not enquiring into the fact of the giving of authority as an 'authority legally competent'. That authority, as we have pointed out already, is the civil court for the civil court alone can finally decide such a question. It can do so even after the Court of Wards had reached a conclusion, and contrary to that conclusion. Section 157 therefore cannot make the statements provable. E F

Mr. Agarwala next relies on s. 32(7) of the Indian Evidence Act to introduce the earlier statements. That sub-section reads: G

> "32. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:— H
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> * * * *
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> (7) When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in s. 13, clause (a).
>
> * * *

A Clause (7) makes relevant statements made in deeds, wills and such other documents which relate to transactions by which a right or custom in question "was created, claimed, modified, recognised, asserted or denied" (to add the words of cl. (a) of s. 13). The clause does not allow introduction of parole evidence, see Field on the Law of Evidence 8th Edn. p. 202. Such parole evi-
B dence may be relevant under cl. (5) of s. 32, but that is not relied upon. We questioned Mr. Agarwala whether he wished to rely upon clause (5), but he did not wish to put his case under that clause and we need not therefore consider the application of that clause. We think Mr. Agarwala is right in taking this course, because cl. (5) requires that such a statement should have been made
C before the question in dispute was raised. The statements in question were definitely made after the question in dispute in the suit had already arisen, because one enquiry had already been made by Mr. Knox and the statements now relied upon were made in the second enquiry before Mr. Thompson.

D Mr. Agarwala next wishes to use the statements made by Gaya Prasad on March 14, 1926 "Ex. 72"; but that clearly is not admissible, because when it was made in the suit, Gaya Prasad was being examined as a party before issues were framed. In fairness to Mr. Agarwala it may be mentioned that he did not press the point after noticing the above fact.

E Mr. Agarwala contends lastly that as Dwarka Nath was adopted on November, 28, 1929 and the present suit was filed on May 21, 1945, after more than 15 years, and as during this time. Dwarka Nath had been considered by everyone to be legally and validly adopted the suit ought to have been dismissed. It may be pointed out that Parmeshwar Dayal never accepted the adoption
F of Dwarka Nath. He had filed an earlier suit and questioned the competence of Rani Gomti Bibi to make the adoption of Bindeshwari Prasad. In that suit he had denied that Rai Pratap Chand had given authority to his wife to make the adoption of a son after his death. He consistently denied the validity of the second adoption and in these circumstances, it cannot be said that he was
G concluded by any rule of law from questioning the adoption of Dwarka Nath after Rani Gomti Bibi's death.

On an examination of all the legal pleas against the judgment of the High Court we are satisfied that none of them avails the appellant. In so far as the question of fact are concerned, we have
H already stated that we do not propose to go into them as it did not appear to us that there was any legal reason for reaching a different conclusion.

We accordingly dismiss the appeal but order that the parties shall bear their own costs throughout.

Appeal dismissed.