Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rani Anund Koer and another v. *The Court of Wards, on behalf of Chundra Shekhar, a minor, from the Court of the Commissioner of Seetapore, Oude, delivered 19th November* 1880.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

The suit out of which this appeal arises was instituted in the Court of the Deputy Commissioner of Lucknow, in the Province of Oudh, by the Respondent, the Superintendent of the Court of Wards, on behalf of Rajah Chundra Shekhar, a minor, against Rani Anund Kunwar and Radha Kishen, the Appellants, to set aside an adoption set up by them, by which, as they alleged the first Defendant had adopted the second Defendant as the son of her deceased husband, Shunkur Sahai.

The suit was transferred to the Court of the Deputy Commissioner of Bari Banki in the district of Sitapur.

The minor on whose behalf the suit was instituted is the Talukdar of Sessendi, the talook having descended to him as the adopted son of Rajah Kashi Pershad, the former talukdar.

By an Order of Her Majesty in Council made in the year 1873, in pursuance of a Report of the Judicial Committee in an appeal in which the

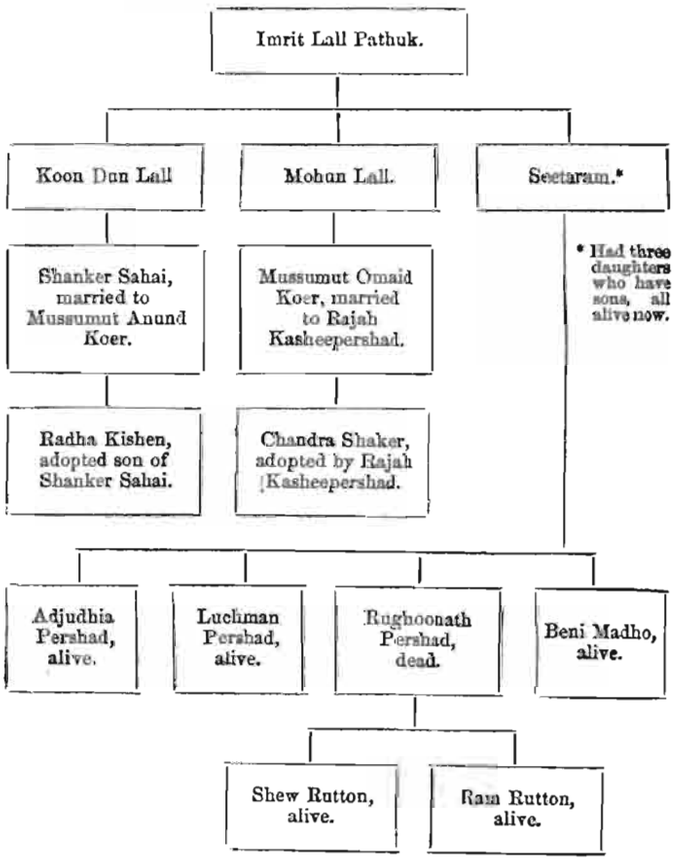
first Defendant was Appellant and the aforesaid Rajah Kashi Pershad was Respondent, the first Defendant was declared to be entitled, as the widow and heiress of the aforesaid Shunkur Sahai, to a Hindoo widow's estate of inheritance in four of the mouzahs and to a one-third share of the profits of seven others of the mouzahs comprised within the said taluk of Sessendi, and to a sub-settlement of the said four mouzahs (*see* the case of the widow of Shunkur Sahai *v.* Rajah Kashi Pershad, 4, Law Reports, Indian Appeals, p. 208).

The plaint in the present suit, which was filed on the 8th July 1875, stated that the suit was brought to set aside the so-called adoption of the second Defendant, and also to set aside a decree given under Section 15, Act VIII. of 1859, declaratory of the so-called adoption, obtained by the Defendants by fraud and collusion. It alleged that the said Rajah Chandra Shekhar was talukdar of Sessendi; that, at the time of the said decree, the Defendant No. 1 was a sub-proprietor of the said taluka, and liable to him for the Government revenue demand plus a certain per-centage; and that the effect of the so-called adoption and decree so long as they were not set aside was to put the so-called adopted son of the first Defendant in her place as sub-proprietor, and thus to thrust upon the talukdar, in a method contrary to law, an obnoxious sub-proprietor.

The plaint further stated that the said Rajah Chandra Sircar was entitled in reversion to the sub-proprietary estate so held by the Defendant No. 1, and that the effect of the so-called adoption and of the decree declaratory of it, was illegally to injure and postpone that reversion; that the said Rajah Chandra Sircar was further entitled immediately in reversion to the sub-proprietary estate so held by the

Defendant No. 1 as aforesaid, by right of purchase under a deed of sale bearing date 7th day of November 1862, and that the effect of the so-called adoption and of the decree declaratory of it was illegally to injure and postpone that reversion.

The first Defendant filed a written statement in which she set up the adoption as having been made in 1851, in pursuance of the verbal and written authority of her deceased husband. She also set out a genealogical tree of the family, which both parties admitted to be correct so far as it goes, and of which the following is a copy.



She further stated that the Plaintiff had no *locus standi*, nor had the Superintendent of the Court of Wards any right to institute the suit.

Further, she alleged that the Plaintiff had no

right to sue, because he was only her husband's uncle's daughter's son, and during the lifetime of her husband's male cousins (the sons of Seetaram Pathak) and their sons (to wit, Sheorattan and Ramrattan), and the possibility of an adoption of a son being made by any of them, the Plaintiff could not by any means be considered the nearest reversioner to her or to her husband.

The Deputy Commissioner held that the Plaintiff was not the immediate reversioner, either by right of his being the talukdar or by inheritance; but that he was a remote reversionary heir, and was kept out of his rights by virtue of the alleged adoption and declaratory decree, and that he had thereby sustained sufficient injury to entitle him to maintain the suit. Accordingly he made a decree that the alleged adoption and the decree declaratory of it be set aside so far as the Plaintiff was concerned.

Upon appeal the Commissioner affirmed the decree of the Deputy Commissioner, but on a different ground. He agreed with the Deputy Commissioner that the Plaintiff had not proved the alleged deed of purchase of the 7th November 1862 upon which he relied; he held that the Plaintiff was not a reversionary heir of Shanker Sahai, but considered that as talukdar he had a reversionary interest in the sub-proprietary estate which entitled him to maintain the suit.

Their Lordships are of opinion that the first ground upon which reliance was placed on behalf of the Plaintiff, and upon which the Commissioner decided in his favour, viz., that as talukdar he had a right to have the alleged adoption and declaratory decree set aside as against him, is wholly untenable. Indeed, the learned Counsel for the Respondent was obliged to abandon it. The last of the three grounds upon which the

Plaintiff relied in his plaint, viz., that he was entitled by purchase to the immediate reversion in the said sub-proprietary estate fails in fact, inasmuch as both the Lower Courts concurred in finding that the alleged deed of sale of the 7th November 1862 was not proved.

The only remaining question then is, Is the minor a reversionary heir of Rajah Kashi Pershad, and, if so, is he entitled to maintain the suit?

It appears from the genealogical table above set out, and it is not disputed, that the minor is the adopted son of Rajah Kashi Pershad, who was the husband of Omaid Koer, the daughter of Mohun Lall, who was a brother of Koondul Lall, the father of Shunker Sahai. It is unnecessary to determine whether he could, under any circumstances, succeed by inheritance to the property of Shunker Sahai, and their Lordships abstain from expressing any opinion upon that point. Admitting, however, for the sake of argument, and only for the sake of argument, that, as an adopted son, he had the same rights as a naturally born son, and that, as a naturally born son of Omaid Koer, he would have been entitled, in default of nearer relations, to succeed by inheritance to the property of Shunker Sahai, it could only have been in the character of a distant Bandhu. It is clear that a son of a daughter of a father's brother is much farther removed in the order of succession than a son of a father's brother, or a son of such a son. In any view of the case, the minor had not a vested, but at most a contingent, interest in the property of Shunker Sahai during the lifetime of his widow.—*See* Huridoss Dutt *v.* Rangamoni Dassi, 2, Taylor and Bell's Reports, 279.

The question then arises, Is the contingent reversionary interest which the minor has, if he

has any, sufficient to enable him to maintain the action which is brought to impeach the adoption of the second Defendant?

Their Lordships are of opinion that although a suit of this nature may be brought by a contingent reversionary heir, yet that, as a general rule, it must be brought by the presumptive reversionary heir, that is to say, by the person who would succeed if the widow were to die at that moment. They are also of opinion that such a suit may be brought by a more distant reversioner if those nearer in succession are in collusion with the widow, or have precluded themselves from interfering. They consider that the rule laid down in Brikaji Apagi *v.* Jagannah Vithal, 10, Bombay High Court Reports, 351, is correct. It cannot be the law that any one who may have a possibility of succeeding on the death of the widow can maintain a suit of the present nature, for, if so, the right to sue would belong to every one in the line of succession, however remote. The right to sue must, in their Lordships' opinion, be limited. If the nearest reversionary heir refuses, without sufficient cause, to institute proceedings, or if he has precluded himself by his own act or conduct, from suing, or has colluded with the widow, or concurred in the act alleged to be wrongful, the next presumable reversioner would be entitled to sue.—*See* Kooer Golah Sing *v.* Rao Kurim Sing, 10, Moore's Indian Appeals, 193. In such a case, upon a plaint stating the circumstances under which the more distant reversionary heir claims to sue, the Court must exercise a judicial discretion in determining whether the remote reversioner is entitled to sue, and would probably require the nearer reversioner to be made a party to the suit.

In the present case, the Superintendent of the Court of Wards claims in the plaint a right to

sue on behalf of the minor as a reversionary heir, without alleging that there are no others nearer in the line of succession, or that those who are nearer have precluded themselves from suing.

In the course of the argument before their Lordships, it was contended that Adjudhia Pershad and Luchman Pershad, two of the sons, and Sheo Rutton and Ram Rutton, the two grandsons of Seetaram, had precluded themselves from suing to set aside the adoption and declaratory decree mentioned in the plaint; but no such allegation was made in the plaint, nor does the point appear to have been taken in the Courts below.

No issue was raised, nor was there any finding of either of the Lower Courts, in support of that view of the case. The point is not even expressly alluded to in the Respondent's case or reasons. Their Lordships cannot, at this state of the case, give any effect to the contention.

Even if it were allowed to prevail, it would not apply to Beni Madho, who was stated to be alive, but not to have been heard of for some time. It does not appear that he had been unheard of for a length of time sufficient to warrant a presumption of his death. Moreover, there was no allegation of his death, and no issue whether he was alive or dead, nor any evidence of an attempt to ascertain the fact. It must, therefore, be taken that there may be a son of a brother of Shanker Sahai's father in existence who is not precluded from suing. Consequently, the minor, who is merely the son of a daughter of a brother of the father, is not, under the rule applicable to such actions as the present, entitled to maintain the present suit.

It must further be remarked that it appears from the genealogical table that Seetaram had three daughters who have sons living. They

would be as near in succession to Shunker Sahai as the minor Plaintiff would have been, even if he had been a naturally born son.

It must also be borne in mind that even if Adjudhia Pershad, Luchman Pershad, Sheo Rutton, and Ram Rutton have precluded themselves from suing to set aside the adoption, the minor Plaintiff could not, even if he were a naturally born son, and the adoption of the second Defendant should be set aside, succeed to the property of Shunker Sahai if either of the sons or grandsons of Seetaram should survive the first Defendant. The minor, admitting him to be a Bandhu, has merely a very remote possibility of ever succeeding to the property of Shunker Sahai. Their Lordships will, therefore, humbly advise Her Majesty to reverse the decisions of both the Lower Courts, and to dismiss the suit, with costs, in both the Lower Courts. The Appellants' costs of this Appeal must be paid out of the estate of the minor Chundra Shekher.

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