Hukum Tej Pratap Singh vs Collector Of Etah In Charge Of Estates Of ... on 20 March, 1950

Equivalent citations: AIR1953ALL766, AIR 1953 ALLAHABAD 766

JUDGMENT

Malik, C.J.

1. This is an appeal against an order of the learned Civil Judge of Etah dismissing the plaintiff's suit on the ground that the plaintiff's adoption was invalid inasmuch as the power to adopt given under a document dated 3-11-1909 gave that power only if Raja Sanwal Singh, the executant of the deed, had no son or daughter born to him and as Raja Sanwal Singh left a daughter his second widow could not adopt the plaintiff as she is alleged to have done on 27-4-1932.

2. The property in suit is a valuable estate and is known as Rajhore Estate. The Rajas of Rajhore claim to be direct descendants of Raja Pirthviraj of historical fame and are Chauhan Rajputs, The property appertaining to the Raj is impartible property and during the last several generations has always descended to a single male heir. The last Raja of Rajhore was Raja Sanwal Singh who died on 7-9-1918. At the time of his death he left two wives--Rani Bhagwan Kuer, the elder and Rani Gulab Kual, the younger.

3. Raja Sanwal Singh had a brother Dharam Singh. Jt was said that Dharam Singh was not quite right in his mind and about the year 1908 it was alleged that he had adopted a boy Kunwar Khiali Singh. He thereafter executed a deed of trust dated 22-8-1908, and that led to a dispute between him and Raja Sanwal Singh. It may be mentioned that at the time of the execution of this deed of trust Raja Sanwal Singh was a young man aged thirty-two and Dharam Singh was aged twenty-eight. Raja Sanwal Singh's wife had died, but he was contemplating a fresh marriage.

4. The dispute between Raja Sanwal Singh, Dharam Singh, Khiali Singh, minor, and his father Lal Gokul Singh was settled by an agreement dated 2/4-11-1909. From that agreement it is clear that Raja Sanwal Singh was anxious that Dharam Singh should not succeed him. This might have been by reason of the fact that he believed that Dharam Singh was not quite normal in his mind. He did not want that Khiali Singh should, succeed to the Rajhore Estate in any case. At the same time the Raja was anxious that a natural born son to him or to Dharam Singh must get the Rajhore Estate. That wag natural in a man who belonged to this family and knew of its antecedents.

5. This agreement provides that if male issues are born both to Raja Sanwal Singh and Kunwar Dharam Singh, the Raja's son will get the entire Rajhore Estate & Dharam Singh'g son will inherit his father's property & in such a case Khiali Singh will get an annual maintenance allowance. If, on the other hand, no son is born to Raja Sanwal Singh but a son is born to Kunwar Dharam Singh then

such a son will get the property both of the Raja as well as that of Dharam Singh. Similarly if no son is born to Kunwar Dharam Singh but the Raja leaves a son then that son will get the entire property both of the Raja as well as that of Dharam Singh. If on the other hand, neither of them begets a son then Khiali Singh would get. Dharam Singh's property but he will not get. Rajhore Raj.

6. The deed provided that if Raja Sanwal Singh had no son he would have a right to adopt and Dharam Singh can have no objection to such an adoption. Along with that document was executed a deed, interpretation of which is now in question, which is called the deed of permission for adoption and is Ext. I, dated 3-11-1909. The deed has been translated by the Official translator of this Court and has also been translated by the learned Civil Judge. It may be more convenient to give the words of the learned Civil Judge as he has quoted words as in the original, the interpretation of which is the question for consideration in this appeal. The words are:

> "I, Raja Sanwal Singh, one of the executants, have at this time no 'Aulad' male or female. Since life is unreliable. I, by way of precaution and with a view to make arrangement for the Raj, consider it meet (to provide) that if I leave no heir out of my 'Aulad Sulbi' my widow will be the owner thereof. But if Kuer Dharam Singh leaves 'Larka Sulbi' he will be the proprietor of the estate. But if none of us leaves 'Aulad Sulbi' my wedded wife, whoever she may be, shall be competent and I give her this written authority to take any boy of her choice from my family after my death in adoption according to Shastric rites and to execute a deed of adoption in his favour."

7. The question is what do the words "if none of us leaves 'aulad Sulbi' "mean. Was Raja Sanwal Singh restricting the right of his widow to adopt When no child, male or female, was born either to him or to his brother, or was this right of adoption being given and was to be exercised when no male child was born to either of them?

8. In this connection it may be useful to mention that the word 'aulad' is plural of the word 'walad' which means a son, though the plural has come to include generally both son and daughter. We are asked by learned counsel for the respondent to confine ourselves to the word 'aulad', which has come to include both son and daughter, and to hold, as the lower court has done, that the intention was that the widow could adopt only if no son or daughter was born to Raja Sanwal Singh or to his brother. On the other hand, learned counsel for the appellant has asked us to consider the circumstances under which the document came to be executed, read the two documents executed about the same time together and to interpret them in the light of the surrounding circumstances and other materials available.

9. As regards the argument of learned counsel that we should confine ourselves to the popular meaning of the word 'aulad' as including both a son and a daughter and ought not to look to the surrounding circumstances or to the whole of the document, it is sufficient to quote the observations of their Lordships of the Judicial Committee in

--'Mohammad Saadat Ali Khan v. Wiquar Ali Beg'.

AIR 1943 P. C. 115 at p. 119 (A) to the effect that:

> "The whole document should be considered, and it is from the language used therein by the parties, and not from any preconceived notion of likelihood or unlikelihood that the intention of the parties is to be ascertained. It is wrong to start with an inspired assumption, that it is unlikely that one party could or would have assented to a particular provision, and then to hold that because so unlikely a provision is not contained in the document in clear and express terms, it cannot have been intended to apply".

10. In--'Bhagwant Koer v. Dhanukdhari Prasad', AIR 1919 P. C. 75 at p. 76 (B) their Lordships again considered the document as a whole and read the first two paragraphs subject to the third paragraph of the will.

11. In--'Venkata Narasimha Appa Row v.

Parthasarathy Appa Rao', 12 All LJ 315 at p. 325 (C) their Lordships observed that: "In all cases the primary duty of a Court is to ascertain from the language of the testator what were his intentions, i.e., to construe the will. It is true that in so doing they are entitled and bound to bear in mind other matters than merely the words used. They must consider the surrounding circumstances, the position of the testator, his family relationships, the probability that he would use words in a particular sense, and many other things which are often summed up in the somewhat picturesque figure "The Court is entitled to put itself into the testator's armchair'. Among such surrounding circumstances which the Court is bound to consider none would be more important than race and religious opinions, and the Court is bound to regard as presumably (and in many cases certainly) present to the mind of the testator influences and aims arising therefrom. But all this is solely as an aid to arriving at a right construction of the will, and to ascertain the meaning of its language when used by that particular testator in that document. So soon as the construction is settled, the duty of the Court is to carry out the intentions as expressed, and none other".

12. Applying the above principle we have the fact that the testator was a Chauhan Rajput, and the owner of an impartible estate in which. daughters had no right of succession. The testator belonged to a family which was held in the high esteem on account of its decent from Raja Prithviraj and for generations the estate had decended to a single male heir. It must further be borne in mind that from the two documents, the agreement and the will, it is clear that the testator wanted to exclude from inheritance to the estate, Dharam Singh and his adopted son Khiali Singh.

13. His intentions were that after his death his son, or, if he left no son, Dharam Singh's son should get the estate, and failing them, his widow. The question is whether he intended that if he or Dharam Singh left no son, his widow should have the power to adopt or this power of adoption was to be exercised only if he and his brother died leaving no son or daughter. No explanation is forthcoming why the power to adopt should not be exercisable in the case of the existence of a daughter to him, as she had no right to inherit the property, and there seems to be still less reason why the power to adopt should be restricted in the event of even his brother dying without leaving a

daughter when that daughter had no shadow of a title to the estate.

14. The word 'aulad', though commonly used to include both son and daughter, can also be used to mean a son only. That the word 'aulad' can be used to mean a son only and was used in that sense in the agreement, Ex. D., is clear from paras. 5 and 6 of the deed. Paragraph 5 is to the effect that if no male issues were bom to Raja Sanwal Singh or to Kunwar Dharam Singh and they died childless, in that case, the property left by Kunwar Dharam Singh was to go to Khiali Singh, adopted son of Dharam Singh. It is clear that the words 'we die childless' in this paragraph must mean sonless. This is amply clear not only from this paragraph but also from the paragraphs which precede it. Paragraph 6 then provides that if Raja Sanwal Singh has no issue, he will have the right to adopt a son. The words used are "Aur bahalat lawaldi ham Raja Sanwal Singh ko yen akhtiar hoga". Here again, the word 'lawaldi' must mean Raja Sanwal Singh dying sonless. There was no reason why Raja Sanwal Singh should have intended to restrict his power of adoption and should have agreed to his being able to make an adoption in case he had not only no son, but also no daughter. Under the Hindu law the presence of a daughter is no obstacle to adoption and it is clear that the word 'lawaldi' in this paragraph must mean without a son.

15. In the deed of permission for adoption the word 'aulad' has been used in three places and not always in the same sense. In the first sentence a statement of fact is made that Raja Sanwal Singh has no 'aulad' meaning son or daughter. In the second sentence it is said that if he dies without leaving 'aulad sulbi' who is capable of inheriting his property, his widow will be the owner thereof. It is admitted by learned counsel for the respondent that the words 'who is capable of inheriting his property' restrict the meaning of the word 'aulad', and from the word 'aulad' here a son was meant. As regards Kunwar Dharam Singh, the document proceeds that if he leaves a son, that son will be the owner of the estate. The next sentence is to the effect that if neither of them, that is Raja Sanwal Singh or Dharam Singh, leaves 'aulad sulbi' his widow will be entitled to adopt. The daughter being no heir and the document having provided for the inheritance by the Raja's son, by Dharam Singh's son and by the widow, the provision as regards adoption must relate to the contingency when there is no son. The daughter being no heir to the impartible estate and being also excluded by custom there was no reason why the power of adoption should be exercisable only if there was no daughter born either to the Raja or to Dharam Singh. If the Raja had intended that there should be no adoption, in case he or his brother left a daughter, it would be natural to expect that some provision would have been made either in the agreement or in this document 'giving the estate to such a daughter. The word 'aulad' here must be read subject to the context and it must mean a son born of Raja Sanwal Singh or of Kunwar Dharam Singh. The Raja knew that daughters had no right to succeed to the joint family impartible estate. His statement made a few months before, on 22-7-1909, clearly shows that. There being no provision made for the estate going to the Raja's daughter or to his brother's daughter, and the-daughter being no heir to the estate, there appears to be no reason why the power to adopt should be exercisable only if there was no daughter. The agreement and the deed of permission read together make it amply clear that the Raja intended that the estate should first go to his own son, then to his brother's son, and failing them to his widow, and then to the adopted son, and it was on that account that he gave the widow the power to adopt. In the view that the lower Court has taken this object would be defeated and on the Raja dying without a son, or his brother dying without a son, but either of them leaving a daughter, his brother

or Khiali Singh could get the property on the death of the widow. I have no doubt that the learned Judge misled himself by placing too great a reliance on the word 'aulad' and not considering the document as a whole in the light of the surrounding circumstances.

16. In -- 'Indar Kunwar v. Jaipal Kunwar', 15 Cal 725 (PC) (D), their Lordships pointed out at p. 749 that "the construction which bespeaks a reasonable and probable intention" should be accepted and that "which would indicate an intention unreasonable, capricious and inconsistent with the testator's views, as evidenced by his conduct and by the dispositions of his will which are not open to controversy" should be rejected.

17. It is a pity that the learned Judge took upon himself the responsibility of dismissing the suit on this one point without recording any finding on the other issues that had been raised before him. The result has been unnecessary delay, but as the other issues were not decided the case must go back to the Court of the Civil Judge, who should now proceed to decide the other issues as expeditiously as possible.

18. The appeal is allowed and the case is sent back to the Court below with the directions given above. The costs will be costs in the cause.

19. As the case is remanded under Order 41, Rule 23, C. P. C., the appellant is entitled to a refund of the court-fees.

Mushtaq Ahmad, J.

20. This is a plaintiff's appeal in a suit for possession over the estate known as the Rajhore Raj in district Etah. There was also an alternative prayer for a declaration that, if the widows of the late Raja were held entitled to any life estate, the plaintiff was entitled to recover the property after their deaths.

21. The suit was dismissed by the learned Civil Judge on the solitary ground that the plaintiff's adoption by Rani Gulab Kuar, the second widow of the late Raja Sanwal Singh, was invalid, as the authority conferred by the Raja under a will on his widow was contingent on his not leaving any issue, son or daughter, and as he had actually left a daughter, Mst. Keshwar Kuar. This ground to negative the plaintiff's claim had actually not been taken by the defendants, although they had resisted the claim on a number of other pleas in their defence. The learned Judge, while recording a finding on one of those pleas, namely, that the plaintiff was a minor on the date of his alleged adoption, against the defendants, dismissed the suit on the new ground which I have just mentioned.

22. Raja Sanwal Singh and Kunwar Dharam Singh were brothers. On 3-11-1909, the Raja executed a registered document of will by which he conferred a life estate on his widow, that there might be on his death, the same being terminable on her adopting a son to her deceased husband. It is with the interpretation of a particular passage in this will that we are concerned, the same affecting the right of the plaintiff to claim the estate as the adopted son of Raja Sanwal Singh. That passage was quoted

by the learned Civil Judge in his judgment and it runs as follows: "I, Raja Sanwal Singh, one of the executants have at this time no 'Aulad' male or female. Since life is unreliable, I, by way of precaution and with a view to make arrangement for the Raj, consider it meet (to provide) that if I leave no heir out of my 'Aulad Sulbi' my widow will be the owner thereof. But if Kuer Dharam Singh leaves 'Larka Sulbi' he will be the proprietor of the estate. But if none of us leaves 'Aulad Sulbi' my wedded wife, whoever she may be, shall be competent and I give her this written authority to take any boy of her choice from my family after my death in adoption according to Shastric rites and to execute a deed of adoption in his favour."

23. There is no question that the above is the correct rendering of the will which is in the Urdu language. The only dispute between the parties is with regard to the meaning of the word 'Aulad' at the various places in the above quotation. The plaintiff's case was that the word had reference only to sons, whereas the defendants contended that it also included daughters. Admittedly, Raja Sanwal Singh at the time of his death did leave a daughter, named Keshwar Kuar, in addition to his two widows, Rani Bhagwan Kuar, the senior, and Rani Gulab Kuar, the junior. The plaintiff contended that the Raja not having left a son, it was open to the Ranis, or either of them, to adopt a son. This was denied by the defendants, who stressed that the Raja having admittedly left Keshwar Kuar as his daughter, neither of his widows acquired any authority under the will to make an adoption. This means that, according to the defendants, the authority to adopt could be exercised only if the Raja had left neither a son nor a daughter and that, he having left a daughter, neither of his widows had any power to adopt the plaintiff.

24. It may incidentally be mentioned that Raja Sanwal Singh, who died in 1918, had married Rani Bhagwan Kuar in 1911 and Rani Gulab Kuar in 1912 and that, on his death, the name of the former was mutated in respect of the Rajhore Estate as a successor to the Raja. The plaintiff claimed that he had been adopted by Rani Gulab Kuar on 27-4-1932, and he brought the suit on the basis of that adoption.

25. Defendant 1 was the Collector, Etah, in charge of the estate of Rani Bhagwan Kuar on behalf of the U.P. Court of Wards, which was in possession of that estate, and defendant 2 was Rani Gulab Kuar, who died during the pendency of the suit. While defendant 2 naturally supported the plaintiff's case of adoption, it was controverted by defendant 1. The number of pleas taken in defence covered rather a wide range, but, as I have mentioned, the learned Civil Judge proposed, in the first instance, to take up the question of the validity of the plaintiff's adoption, and finding it against him. dismissed the suit. This appeal is directed against that decree.

26. The only question raised in the appeal is whether the alleged adoption was validly made by defendant 2, the same depending on the meaning of the word 'Aulad' in the context in which it was used in the will in question.

27. Before I enter into this question of the interpretation of the will, I may mention a few events which took place in the family and which provide a background for the determination of that question. On 22-8-1908, Kunwar Dharam Singh, the brother of Raja Sanwal Singh, executed a deed of trust in regard to his own property in favour of a relation of his, Khiali Singh, and made himself

and Lal Gokul Singh, father of Khiali Singh, trustees of that property. He earmarked Rs. 120/- as annual allowance to be paid out of the profits of that property to Khiali Singh, and, in the body of the document, provided that after his (Dharam Singh's) death Khiali Singh would be the owner of his entire movable and immovable properties. This led to a dispute between Dharam Singh and Raja Sanwal Singh, which appears to have been resolved by a deed of settlement being executed on the 2nd (4th) November, 1909 jointly by them and Lal Gokul Singh. It is not necessary to refer to the details of this settlement, and its only bearing on this case is that it provided an occasion for the Raja to authorise his widow or widows to make an adoption after his death. In para. 3 of the document, it was provided that, in case ho and his brother Dharam Singh left each a son, the son would be entitled to the property of his own father but that, if either of them did not leave a son, and the other did, the latter's son would be entitled to the property of both the brothers. Paragraph 5 laid down that, if no 'Aulad Sulbi' were left by either of the brothers and they both died childless, Khiali Singh 'the adopted son of Kunwar Dharam Singh' would be the owner of the property of his adoptive father. Paragraph 6 of the document provided:

> "If I, Raja Sanwal Singh, have no issue, I shall have power to make any one whom I like out of my family, as my son and 'heir', and he alone shall be the owner of the property of me, Raja Sanwal Singh. I, Kunwar Dharam Singh, shall have no claim or objection to the same."

28. This leaves no doubt that the Raja had provided for the contingency of adopting a son as his 'heir' in case he left no issue. The words 'have no issue' correspond in the original with the words 'ba halat la-waldi'. I would hereafter Indicate the sense in which the Raja intended to use these words here, consistently with his desire to have a son by adoption who could be his 'heir' in respect of his property.

29. Now coming to the will itself, the relevant paragraph of which I have already quoted earlier from its English translation in the judgment of the Court below. The words "Since life is unreliable, J, by way of precaution and with a view to make arrangement for the Raj, consider it meet (to provide) that if I leave no heir out of my 'Aulad Sulbi' my widow will be the owner thereof. But if Kunwar Dharam Singh leaves 'larka sulbi' he will be the proprietor of the estate,"

> are very significant. The idea uppermost in the mind of the testator seems to be to provide for the management of the estate, and he declared his wish that the same should vest,' in the first instance, in a son born to himself, his widow taking only if he left no such son, and he attached so much importance to the estate vesting in a male incumbent that he allowed even a son born to his brother, in case he himself had none, to succeed to the same, even to the exclusion of his own widow. In the sentence following: "But if none of us leaves 'Aulad Sulbi', my wedded Wife, whoever she may be, shall be competent, and I give her this written authority, to take any boy of her choice from my family after my death in adoption according to Shastric rites and to execute a deed of adoption in his favour," provision was made for a contingency in which neither of the brothers left 'Aulad Sulbi', and it was recited that the widow could in that event adopt a boy from the Raja's family.

30. In the first place, there seems to be no reason why the testator, when referring to Dharam Singh, should have intended to use the words 'Larka Sulbi' but when referring to him again along with himself, he should have intended to use the words 'Aulad Sulbi' in different senses. There being no ambiguity about the first expression none should be assigned to the second. Besides, if the latter expression, used in our opinion as synonymous with the former, were to be given its literal generic sense it will involve the absurdity that the Raja's widow could not adopt a son, even if Dharam Singh had left a daughter. Nothing could be farther from his mind as a normal being, anxious to provide for the management of his Raj by having an 'heir' to himself.

31. Now the question is what was meant by the words 'Aulad Sulbi' in these clauses. For the plaintiff-appellant it was argued that the expression referred only to sons, while the defendant-respondent urged that it included both, sons and daughters, so that the Raja having left a daughter neither of his widows was entitled to make an adoption after his death. This is precisely the controversy which we have to decide in this appeal.

32. The word 'Aulad' being the plural of the Persian word 'Walad' literally means 'sons'. In. the popular sense, however, it has come to mean 'issues', including sons and daughters, and its derivations such as 'la-walad' or 'be aulad' mean 'issueless' or 'childless' and not merely 'sonless'. This was pointed out in -- 'Nirman Bahadur v. Pateh Bahadur', AIR 1929 All 963 at p. 969 (E); -- 'Mst. Bibi Alimun-nisa v. Sh. Abdul Aziz', AIR 1936 Pat 527 (P) and -- 'Bhaiya Ajodhya Baksh Singh v. Mst. Muna Kuar', AIR 1926 Oudh 467 (G). In the last case, it was nonetheless observed that:

> "It is a well-known fact that frequently in deeds and other documents the word 'Aulad' is confined to male issues and that in each instance it is a question of interpretation."

33. If it was intended to lay down that the word meant only a 'male issue' whenever it occurred in a document, I should have much difficulty in accepting this. But I entirely agree that in every case it is a question of interpretation which must be determined in the light of certain well-recognised rules, furnishing an aid in the discovery of the real intentions of the testator. We have to construe the word in the present case in accordance with those rules.

34. It cannot be denied that the object of adopting a son in Hindu Law is both secular and spiritual. It is secular in so far as the testator desires the preservation of his estate by providing for its continuance in the family through a ceremony sanctioned by his personal law of vesting the same in an individual as if the latter was his own son, and thereby propagating his line with all its concomitant benefits of the material world. It is spiritual inasmuch as the testator appoints another to carry out the pious duty of "making those oblations and religious sacrifies which would permit the soul of the deceased passing from Hades into Paradise", as observed by Lord Shaw in -- 'B. G. Tilak v. Shrinivas', AIR, 1915 PC 7 (H).

35. Now it is conceded by the learned counsel for the defendant-respondent that the estate of Rajhore which is the subject-matter of this litigation, is an impartible Raj. As such it is governed, in the matter of inheritance, by the law of primogeniture in the absence of a custom to the contrary. No

such custom was suggested to exist in this case. It is also not denied that legally the late Raja Sanwal Singh was entitled to make a bequest of the estate, there being again no custom to the contrary.

36. Assuming that the will propounded by the plaintiff was made by the Raja with all the dispositions it contains, the question is, what was the real object of the testator for which he made it. That he should have expressed concern in the deed for a proper management of the Raj after his death provides a clue into the real motive and genesis of the will. That he should have also expressed an anxiety to have an 'heir' to himself for the same object, through whom alone he aimed at the preservation of the estate cannot also be denied. These two factors, the anxiety of the Raja for the future management of the estate and the achievement of that end through an 'heir' furnish a valuable guide in finding out the actual contingency in which the Raja's widow, whoever she might be, was authorised to make an adoption in obedience to her husband's wishes.

37. Looking at the question from a purely secular standpoint, it is not likely that any one would prefer a female successor to a large estate, having "regard to his desire to conserve the integrity of the estate and also the social status of his family. The late Raja could not be an exception to this most natural wish and outlook. But this essential object could be ill-served if we held that the widows or either of them could not make an adoption, if the Raja left a daughter. Indeed, nothing in answer to this anomaly was suggested by the learned counsel for the defendant-respondent. The position, in fact, becomes all the more patent when we take into account the reference in the will to the Raja's anxiety to have an 'heir', a word which was repeated in para. 6 of the contemporaneous deed of settlement, to which we have already referred earlier.

38. It was of course admitted on behalf of the defendant-respondent that the Raja's daughter could not be his 'heir' in respect of the property in dispute, which admittedly is an impartible estate. This is apart from the question whether there was also a custom among the Chauhan Rajputs, as claimed by the plaintiffs-appellants, which altogether excluded a daughter from inheritance to all kinds of property. Her disqualification by sex rendered the eligibility of the Raja's daughter to claim the estate as his 'heir' a legal impossibility. And none could have been more conscious of this than the Raja himself, who wanted an 'heir', as, I have said, for a two-fold purpose. He must have further desired to ensure the performance of those funeral and other 'postmortem' services to which a father, for the good of his soul, was entitled from his son and which a daughter was religiously incompetent to carry out.

39. These, in my opinion, present a fundamental criterion for judging the intention of the testator as regards the circumstances in which his widow or widows could adopt a son. It is obvious that if this depended on the testator not leaving even a daughter, his essential object in authorising an adoption could not be fulfilled. The daughter, according to the defendants, being an obstacle to the adoption, she herself at the same time not being an 'heir' to her father, nor qualified to perform the usual services for his spiritual salvation, the entire scheme and motive underlying the will was defeated. It is interesting to note the reaction of the learned Civil Judge to this vital aspect of the case in his own words: "But it must be pointed out that there is intrinsic evidence in the document itself that Raja Sanwal Singh was not moved by any such consideration. He was bequeathing the entire estate to his widow. Therefore not only was he not influenced by any such custom but he was deliberately doing

the very contrary of it. Since he was giving the estate by will to the widow there was a likelihood of the estate ceasing to be joint family estate. It could be treated as a separate or self-acquired property of the widow. I do not wish to express any final opinion on that point because that question may arise hereafter on widow's death. What I mean to point out is that there was a possibility of such a contingency arising and the surviving daughter claiming property as an heir to her mother. Whatever preference the late Raja might have given to his own son over his own daughter, he never wanted a daughter born of his own loins to be superseded by an adopted son imported from remoter branches of the family."

40. The above, in my opinion, hardly meets the points I have noticed as evolving the real intention and object of Raja Sanwal Singh in making the will with an authority to his widows to adopt a son after his death. It must be remembered that the bequest to the widow in certain circumstances could possibly prove only a temporary phase, liable to be terminated by Dharam Singh, the Raja's brother, having a son, if no son was born to the Raja himself, as mentioned both in the will and in para. 3 of the deed of settlement dated the 2nd (4th) November, 1909. No explanation was suggested here of the incongruity resulting from a daughter born to the Raja being allowed to hold the estate, thereby preventing his widow to adopt a son and the Raja's intense wish, to provide for the preservation of the estate by good management, and that by none except an 'heir' to himself, that heir being, of course, determined by the rules of his personal law and by the nature of the property devolving on him under that law. Indeed, the observations quoted, assume that even a daughter could be such an 'heir', a supposition not warranted by the Hindu Law.

41. Our attention was called in the course of the arguments to two judgments of this Court, one dated 16-4-1934 in a suit brought by Rani Gulab Kuar against the U. P. Courts of Wards, in charge of the estate of Rani Bhagwaa Kuar, and the other dated 15-9-1935 in a suit brought by one Har Govind Singh, a collateral in the next senior line, against the Court of Wards. There is nothing in the former having any direct bearing on the question now in hand, but in the latter the following remark by the Bench appears with regard to the meaning of the relevant clause in the will of Raja Sanwal Singh:

> "We think that it was the intention of Raja Sanwal Singh to devise the estate to his widow until such time, if any, as either Dharam Singh begot a son or she took a boy in adoption."

42. The judgment does not snow that it had ever been suggested that the Raja's widow or widows could make an adoption only if he had not left either a son or a daughter. Indeed, the observation is explicit on the point that such an adoption could be made if he did not leave a soil. No doubt, it is not binding on the defendant-respondent but we have mentioned it only to illustrate the attitude of the parties to that case on this matter of the meaning of the will, as also its approval by this Court on an earlier occasion.

43. A large number of cases appear to have been Cited by the parties in the Court below and many were referred to before us also by their learned counsel. On behalf of the plaintiff-appellant, it was urged that, where the terms of the disposition were ambiguous, so as to be consistent equally with two alternative positions, it was open to a party to invoke the aid of the surrounding circumstances

in order to discover the real intention of the testator. He conceded that, if those terms were absolutely clear & admitted of no difficulty in their application in a particular case, they had to be taken in their literal sense and the conditions in the bequest could then be strictly enforced. This latter aspect appears to have occupied the learned Civil Judge a little too much, and he chose to cite and discuss a number of cases emphasising the same. There was, in fact, no dispute so far as the strict enforcement of the conditions of a will, clearly and unambiguously expressed, were concerned. The real question in the case was: what were actually the intentions of the testator, when he had used words which were of a generic connotation, applicable equally to two alternative situations. Once the words used in the bequest were clear and definite, they had, of course, to be interpreted in their natural sense, and no departure from that principle could be allowed, so as to give them a meaning which they did not literally bear. This was an elementary rule of interpretation, on which both the parties are agreed, and, in my opinion, there was no occasion, for the learned Judge to emphasise this rule by citing numerous decisions in his judgment. Now to construe a will embodied in words, more or less of an ambiguous or dubious nature, the most salutary medium of construction available is that the Court can consider the same in the light of all the incidental aspects which are presented by a particular case. The circumstances of a testator, his personal outlook, the custom and practices prevailing among the people of his class and his anxiety to preserve the status and dignity of his house are the usual factors that explain not only the necessity but also the cause of the bequest.

44. The above would appear as an established rule of interpretation of wills from judicial decisions. Lord Cranworth in -- 'Abbott v. Middleton', (1355) 7 H L C 6S at p. 89 (I) observed:

> "Where by acting on one interpretation of the words used we are driven to the conclusion, that the person using them is acting capriciously, without any intelligible motive, contrary to the ordinary mode in which men in general act in similar cases, then, if the language admits of two constructions, we may reasonably and properly adopt that which avoids these anomalies, even though the construction, adopted is not the most obvious, or the most grammatically accurate."

45. This dictum was followed by the Judicial Committee in -- '15 Cal 725 (PC) (D)' at p. 749, where their Lordships remarked: "It is rather a case in which the difficulty created by the particular expression ought to be solved by adopting the construction which bespeaks a reasonable and proper intention and rejecting that which would indicate an intention unreasonable, capricious and inconsistent with the testator's view."

46. Again, in -- 12 All L J 315 at p. 325 (C)', the same authority laid down: "In all cases the primary duty of a Court is to ascertain from the language of the testator what were his intentions, i.e., to construe the will. It is true that in so doing they are entitled and bound to bear in mind other matters than merely the words used. They must consider the surrounding circumstances, the position of the testator, his family relationships, the probability that he would use words in a particular sense and many other things which are often summed up in the somewhat picturesque figure. 'The Court is entitled to put itself into the testator's armchair'. Among such surrounding circumstances which the Court is bound to consider none would be more important than race and

religious opinions, and the Court is bound to regard as presumably (and in many cases certainly) present to the mind of the testator influences and aims arising therefrom. But all this is solely as an aid to arriving at a right construction of the will, and to ascertain the meaning of its language when used by that particular testator in that document."

47. In -- 'Rameshwar Baksh Singh v. Balraj Kunwar', AIR 1935 PC 187 (J), Sir Shadi Lal delivering the judgment of the Judicial Committee remarked that in interpreting a will it was the duty of the Court to find out the intention of the testator, that the intention was to be gathered from the language used by the testator, because it was the word's used in the instrument by which he had conveyed the expression of his wishes, that the meaning to be attached to the words might, however, be affected by surrounding circumstances and that, when this was the case, those circumstances should be taken into consideration.

48. Among the rulings noted by the learned Civil Judge in support of the defendant's case was the Privy Council decision in -- 'AIR 1919 PC 75 (B)', and he remarked that:

> "In that case an authority was given to a widow to make an adoption in case no child was born to her husband. A daughter was born and subsequently died. It was held that the widow could not adopt."

49. This was really misregarding the facts of that case, for, at p. 76 of the report, we find a quotation from the terms of the will there in dispute to the following effect:

> "If by the will of Providence 'no male or female child' be born to me. In that case both my wives, one after another, as provided in para. 2, shall remain, in concord, proprietors and managers and perpetuate the name and reputation of the family up to the terms of their lives."

Then followed the authority to the wives to adopt.

50. This meant that the wives of the testator could claim the property or make an adoption 'only' if "no male or female child" was born to him. A daughter having been born, the adoption was naturally held to be invalid. Before this ruling could be relied upon by the defendant-respondent, it had to be held that the words 'Aulad Sulbi' in this case did include both sons and daughters, the very question that we have to determine.

51. Learned counsel for the defendant-respondent also relied upon the case of -- 'Jiban Krishna Das v. Jitendra Nath Das', AIR 1949 FC 64 (K), in which it had only been emphasised that in construing a will, the cardinal maxim to be observed was that the Court should, in all cases, endeavour to ascertain the real intention of the testator, that meaning, the intention which the will itself by express words or by implication declares and that the primary duty of the Court was to ascertain from the language of the entire document what the intentions of the testator were.

52. There is nothing in this decision which affects the rule, which I have emphasised as determining the question of interpretation of the will in this case. Indeed, their Lordships adopted the dictum of the Privy Council, quoted by us from the case in -- '12 All L J 315 (PC) (C)', in its very terms.

53. Taking this principle into account and applying it to the facts of the present case, and particularly in the light of the considerations I have mentioned above in relation to Raja Sanwal Singh, I have come to the conclusion that his intention was to authorise his widow or widows to adopt a son only if he left no son born of his own loins and even though he left a daughter. The view taken by the learned Civil Judge to the contrary was, in my opinion, wrong, and I am not inclined to affirm it.

54. Accordingly I would allow the appeal, set aside the decree of the Court below and send the case back to that Court with a direction to try the other issues in the case and dispose of the same according to law. The costs will abide the event. The appellant will be entitled to a refund of the court-fee paid by him in this Court.