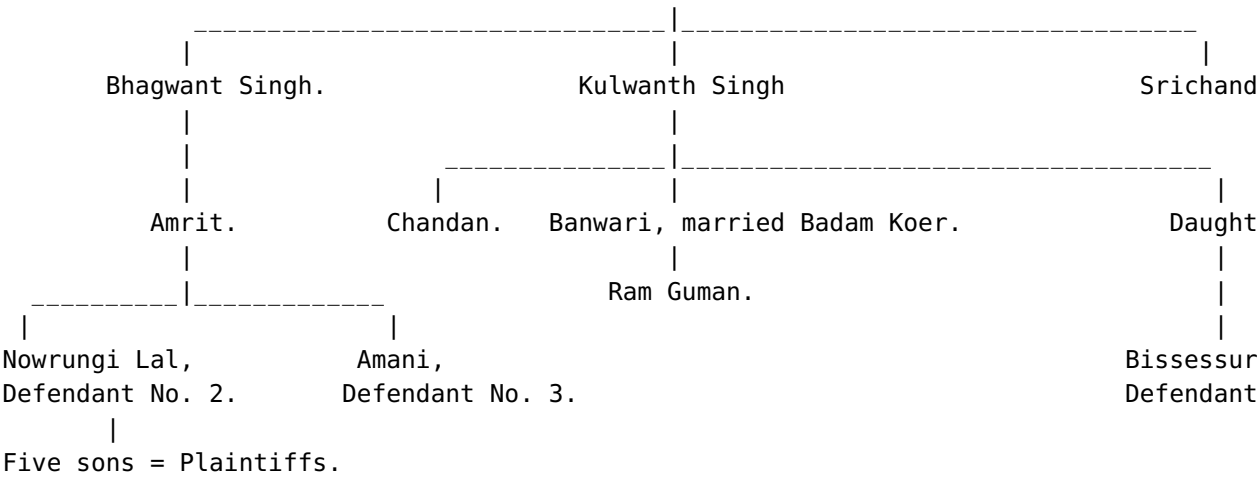
Calcutta High Court
Raj Coomar Lall And Ors. vs Bissessur Dyal And Ors. on 4 March, 1884
Equivalent citations: (1884) ILR 10 Cal 688
Author: Field
Bench: Mcdonell, Field
JUDGMENT Field, J.

1. The position of the family in this case will appear from the following genealogical tree:

PAHAR SINGH.



2. Pahar Singh had three sons--Bhagwant Singh, Kulwanth Singh and Srichand. Of these thr

Lal and Amani. Nowrungi is defendant No. 2, Amani is defendant No. 3, and is said to have been born blind and therefore incapable of inheriting. Nowrungi had five sons, who are the five plaintiffs in the present case. Kulwanth Singh had two sons, Chandan, who died in Bhadro 1276, and Banwari, who died leaving a widow, Badam Koer, since dead. Kulwanth Singh had also a daughter, and this daughter's son Bissessur Dyal is defendant No. 1.

3. The present suit arises out of certain proceedings under the Land Registration Act of 1876. The plaint, after setting out the members of the family, proceeds to allege that Chandan Lal, without the knowledge of the other members of the family, had concocted a deed of adoption; that under this deed Bissessur Dyal was adopted, and that this adoption, being that of a sister's son, was invalid. It then recites that a certain suit was brought by Nowrungi Lai and Amani as co-plaintiffs, and was terminated by a compromise on the 30th April 1866. The plaint then refers to another suit, the date of which is not given, as instituted by Nowrungi and Bissessur Dyal in collusion. It then refers to the registration proceedings: and the cause of action is dated from the 26th November 1877 when the defendant No. 1 intervened in those proceedings. The plaintiffs allege that they, being the five sons of Nowrungi, and members of a joint family governed by the Mitakshara law, cannot be affected by any of the alleged collusive proceedings of their father, Nowrungi, of Chandan Lai or Bissessur

Dayal. They ask that possession may be given to them of 13 annas 4 pie out of the 16 annas of mehal Jalwandohi, pargana Chawsa, and some other property specified in the plaint; that the fraudulent compromise of the 30th April 1866 may be set aside; and that the deed of adoption, dated 18th June 1856, may be cancelled.

4. The Munsif, who first tried the case, dismissed it. He held that the suit was barred by, limitation, that part of the property claimed, viz., Jalwandohi, was, self-acquired, that the family was not joint, and without exactly deciding the question, he intimated his opinion that the deed of adoption was good, and that the plaintiffs were not in a position to contest the validity of this adoption.

5. The case then went on appeal before the Subordinate Judge, who reversed the Munsif's decision, holding, amongst other things, that the adoption of Bissessur by Chandan, being that of a sister's son, was invalid, as the plaintiffs being Kayasthas must be deemed to rank amongst the three higher Hindu castes. A second appeal was preferred to the High Court, and on the 14th June 1881 it was heard by the learned Chief Justice and Mr. Justice McDonell, who is now a member of this Bench. The portion of their judgment with which we are concerned is as follows: "We think, therefore, that it is necessary, in order to come to a proper decision of the case, to direct a further enquiry as to whether the plaintiffs' family, who are, as we understand, admitted to be Kayasthas, do belong to either of the three higher castes, and as we think that it may be a matter of some difficulty to bring before the Court in the Mofussil such evidence and information as will enable it to decide that question satisfactorily, we think that our best course will be to remand the case to the lower Court, as a matter of form, and then to bring it up to this Court and try it as a regular suit." The case is now, therefore, before us as an appeal from an original decree.

6. On the 18th June 1883 an application was made to this Court, the purport of which was threefold: first, that as the value, of the suit was very small, the case might be heard upon the evidence taken in the vernacular, or that it might be translated by the Court without the parties being charged the expenses of such translation; secondly, that the appellants might be allowed to put in certain documents as exhibits; and thirdly, that the appellants might be examined as witnesses orally, or upon commission.

7. Upon this application it was directed, first, that the documents might be put in as exhibits subject to any objection which might be made at the hearing; secondly, that the appellants might be examined in Court; and thirdly, that the case might be heard on the evidence taken in the vernacular.

8. The hearing of the appeal has now occupied our attention for three days. No application was made to us to examine any of the parties in Court, and in reply to our question, it was intimated to us that the pleaders, who had charge of the case, did hot propose to put any of the parties into the witness-box. A considerable amount of new evidence has been taken; copies of translations of extracts from certain learned works have been put in; and we have been referred to a large mass of authorities. Three questions were at first stated by the appellants' vakil for argument; but as Mr. Twiddle intimated to us, on behalf of the defendants, that they had decided to abandon the objection of limitation, there remain two points only to be dealt with, namely: first, whether Jalwandohi was

acquired out of joint funds, and, secondly, whether the adoption is invalid. We think that the finding of the Munsif upon the first of these points ought to be confirmed.

9. There is evidence that Jalwandohi was not family property of Pahar Singh, but was acquired by Ram Guman Singh; an important portion of this evidence consists of an admission contained in a plaint in a former suit. In the second paragraph of that plaint, which was filed by Nowrungi and Amani, there is an admission that mouzah Jalwandohi was purchased by Ram Guman Singh, son of Banwari, with his exclusive funds in the name of Bani Pershad, one of the relatives. It is contended by the learned pleader for the appellants that this admission by Nowrungi cannot bind the plaintiffs, inasmuch as they, being members of a Mitakshara family, do not derive title from their father; are not privies in title with him; and therefore cannot be bound by any admission made by him. Without deciding whether this is a good objection or not (see, however, the remarks of the Privy Council in L.R. 7 I.A. 191) we think that there is another principle upon which this admission must be held to be relevant evidence, and that is the principle that it was an admission against the interest of the person making it. When Nowrungi and Amani admitted that mouzah Jalwandohi was purchased by Ram Guman Singh with his exclusive funds, they made an admission against their own interest, because the effect of that admission was that they could make no claim to a share of that property. If Amani were born blind and were therefore incapable of inheriting, the admission would not be against interest so far as he was concerned; but it was clearly against the interest of Nowrungi, the father of the plaintiffs, and as he is dead, the statement, containing the admission is good evidence. An admission against interest is relevant not only against privies by title, but also against strangers; and we think that, taking this admission along with the oral evidence, we must decide that mouzah Jalwandohi was purchased with separate funds and is not part of the joint family property.

10. We then come to the question of adoption. The plaintiffs contend that the adoption was invalid on two grounds: first, because the adoptive father being a Kayastha and in their view entitled to rank amongst the three superior classes, could not adopt a sister's son; secondly, because Bissessur Dyal was adopted by two persons, viz., Chandan and Badam Koer, and this double adoption was wholly invalid. We shall consider these two grounds of objection separately: first, as to the allegation that Chandan being a Kayastha and entitled to rank amongst the three superior classes, could not adopt a sister's son, we have to consider two points: first, whether, according to the Hindu law, it is competent to a member of the three superior classes to adopt a sister's son, and, secondly, whether a Kayastha is entitled to rank amongst the three superior classes. As to the first point, we think that there can be no doubt, and we take it to be settled law that a member of any of the three superior classes--Brahmins, Kshetrias and Vaisyas--cannot, according to Hindu law, adopt a sister's son. Abundant authority for this proposition will be found in the following works: Mayne's Hindu Law, paragraph 180; Strange's Hindu Law, edition of 1830, vol. I, p. 83; Norton's leading cases on Hindu Law, vol. I, pages 69 and 70 and the authorities there quoted; Baboo Shyama Churn Sirkar's Vyavastha Darpana, page 549, and the following pages of the third edition; and two cases to be found in I.L.R. 3 Bom. 73 and 298.

11. As to the second question, whether Kayasthas are entitled to rank amongst the three superior classes, a vast mass of authorities has been quoted to us during the hearing of this appeal. Considerable research and ingenuity of argument have been displayed in discovering these

authorities and placing them before us. The following, amongst other authorities, were referred to: Padma, Purana, Yajnavalkya, Mr. Mandlik's work on Hindu Law, Mitakshara, Viramitrodaya, Wilson's Glossary, Ward on Hindu Law, Steele on Castes, Vivada Chintamoni, Sherring on Caste, Mr. Sarradhicare's work on Hindu Law, being the Tagore Law Lectures of 1880, some census reports, and reports of local officers contained therein, Elliot's Races of British India, the Gazetteers of N.W. Provinces and Oudh; Professor Jolly's Institutes of Narada, Max Muller's Sacred Books of the East, and the Dattaka Mimansa. Many of the arguments addressed to us rested upon the somewhat doubtful legends of Hindu mythology, and although no doubt very ingenuous, were not, however, based upon modern facts, proved or undisputed; or characterized by that conclusive force, which are necessary in order to have weight with a Court of Justice in this practical age. We think that the whole question has been fairly summed up in the following passage of Babu Shyama Churn Sirkar's Vyavastha Darpana: "There is, therefore, a preponderance of authority to evince that the Kayasthas, whether of Bengal or of any other country, were Kshetrias. But since several centuries passed, the Kayasthas (at least those of Bengal) have been degenerated and degraded to Sudradom, not only by using after their proper names the surname 'Dasa' peculiar to the Sudras, and giving up their own, which is 'Barma,' but principally by omitting to perform the regenerating ceremony 'upanayana' hallowed by the Gayatri."

12. It has been contended that however valuable Babu Shyama Churn's opinion may be as regards Bengal proper, there is a difference as regards Behar, and the Kayasthas of Behar. It had been established by evidence to our satisfaction that there was a difference in respect of the questions essential to this enquiry, and that the Kayasthas of Behar, as a class, had generally performed those ceremonies which might be supposed to have the effect of retaining them in the ranks of the three upper classes. We might accept this evidence and might come to a different conclusion from that to which we feel constrained upon the authorities and the evidence. I shall, therefore, consider the evidence which has been placed before us to show that the Kayasthas of Behar are an exception to the general principle contained in the opinion which I have just extracted from the work of Shyama Churn Sirkar. First, there is a Vyavastha by 96 pundits of Benares. Two of these pundits were examined as witnesses in the case; and we are of opinion that the value which can be attached to the Vyavastha must be measured exactly by the value which can be given to the oral testimony of these two witnesses. The Vyavastha is a recent one and there is no provision of law which allows a Court of Justice to accept as evidence a written opinion delivered by persons still alive who have not been called to the witness-box. Then, as regards the testimony of the two pundits who were examined (and this is perhaps the most valuable part of the oral testimony), we have to observe that these gentlemen do not speak with direct reference to Behar, and however valuable their opinion may be, if precise upon the point, with reference to the Kayasthas of the Upper Provinces, or of Benares, we think they cannot be accepted as an authority upon the subject as regards the Kaiests of Behar.

13. The next piece of evidence consists of the decisions of the local Courts. Two cases only have been quoted. We think that these judicial instances are too few in number to establish an usage or custom such as is contended for. Were it otherwise, we think that in a matter of this sort very little weight can be given to the decision of the Subordinate Civil Courts.

14. Then we have a considerable quantity of oral evidence. This evidence, with the exception of one or two witnesses, consists of the testimony of persons who are themselves Kaiests and whose interest in the subject-matter of this proceeding is therefore considerable. Under the circumstances, we think that this evidence must be accepted with very considerable caution. But when we come to examine this evidence, we think that it does not, to any very material extent, advance the case of the plaintiff's. The examination of the witnesses was directed principally to show that, in four particulars, Kayasthas of Behar observed religious or other rules which would have the effect of giving them a title to rank amongst the three superior classes. These four particulars are-- first, wearing the sacred thread; secondly, ability to perform the homa; thirdly, the rule as to the period of impurity; and, fourthly, the rule as to the incompetence of illegitimate sons to succeed. The practice as regards adoption has also been made the subject of argument, but as this is the very point in dispute and as the instances supposed to have been established by evidence are exceedingly few, we set but little value upon this portion of the evidence. We have considered the evidence with respect to the four particulars just mentioned, and the impression which it creates on our minds is that no such uniformity has been established as amounts to legal proof of the custom or usage contended for. Some of the witnesses state, as a fact, that the sacred thread was not usually worn. As regards the period of impurity observed, there is a remarkable diversity in the practice of different persons. Taking the whole evidence together, we think that it fails to establish that the Kayasthas of Behar, as a class, have observed the four rules relied upon so uniformly and so regularly that they are entitled to say that upon the basis of these observances they must rank among the three superior classes. It must be borne in mind that what has been sought to be proved in this case is not an usage in a particular family, but the custom of a class, that is, the whole class of Behar Kayasthas: and regarding this custom as the point to be proved, we think that the evidence fails to establish it.

15. The conclusion then to which we are led upon the authorities and upon the evidence which has been submitted to us is this, that the plaintiffs have not shown that the Kayasthas of Behar rank amongst the three superior classes, and that, therefore, the adoption of a sister's son by Chandan was invalid.

16. But it is alleged that the adoption is invalid upon another ground, viz., that Bissessur Dyal was adopted by two persons--Chandan and Badam Kper. The original deed of adoption is not before us and no attempt has been made to give us secondary evidence of its contents. It is said that there was a copy in another record which was referred to by the Court below, but no steps have been taken to bring that copy or that record up to this Court. Reliance has been placed upon an admission made by Bissessur Dyal in a petition filed in Court by him. We think, however, that the statement there contained cannot be interpreted as an admission that he was doubly adopted, that is, adopted by the two persons Chandan and Badam Koer. There is no pretext that Badam Koer, the widow of Banwari, had any authority from her husband to adopt a son; and we think that we cannot say that Badam Koer should (upon the statement in the petition just referred to) be taken to have adopted Bissessur not to her husband but to herself, as was pressed upon us by the appellant's vakil. If Bissessur Dyal had been adopted by Chandan and at the same time by Badam Koer on behalf of her husband Banwari, theie can be no doubt that upon the authorities both adoptions would be invalid. But if, on the other hand, Bissessur Dyal were adopted by Chandan, and Badam Koer, being a member of that branch of the family, that is, the branch descended from Kulwanth Singh, had merely assented to

such adoption, we cannot say that the fact of Badam Koer's joining in the adoption with this object would in any respect invalidate it as an adoption by Chandan. The deed of adoption is not before us; no positive evidence has been given to show that Bissessur Dyal was adopted by two persons simultaneously. The statement in the petition cannot, in our opinion, be interpreted as an admission of such a double adoption. We cannot therefore say that Bissessur's adoption by Chandan is invalid upon this ground. The result is that the decree of the Munsif dismissing the plaintiffs' suit must be affirmed, and this appeal dismissed with costs.