Patna High Court
Mt. Khedia vs Mt. Turia And Ors. on 5 December, 1961
Equivalent citations: AIR 1962 Pat 420
Author: R K Prasad
Bench: R K Prasad
JUDGMENT Raj Kishore Prasad, J.

1. This appeal, by the plaintiff, arising out of a partition suit, is from a judgment of reversal, by which the suit has been dismissed on the ground that the plaintiff was not the daughter of Dipraj Mahton, the admitted owner of the land in suit.

2. Dipraj Mahto died leaving behind his widow Sankeshia and defendant 1, their admitted daughter.

3. According to the plaintiff, Sankeshia had three daughters, namely, Turia, defendant 1, mother of defendants 2 and 3; Khedia, the plaintiff; and Dagni, the deceased mother of defendants 4 and 5.

4. According to the contesting defendants 1 to 3, however, the plaintiff was not the daughter of Sankeshia and defendant 1 was her only daughter. It was admitted however that Turia had also two daughters; and one of them was married to defendant 6.

5. The trial Judge accepted the plaintiff's case and decreed the suit; but, on appeal, his judgment was reversed and the suit was dismissed.

6. The finding of the Court of appeal below that the plaintiff was not the daughter of Sankeshia has been challenged by Mr. Gorakh Nath Singh, appearing for the appellant mainly on two grounds: First, that the admission of defendant 4, as mentioned in Ext. D, that Sankeshia had three daughters including the plaintiff should have been used against defendants 1 to 3; and, secondly, that the photograph (Ext. 2) of defendant 1 and the plaintiff should also have been used for deciding whether the plaintiff was the sister of defendant 1. I will deal with these grounds of attack separately.

7. The first question, for determination therefore, is whether a recital of a relevant fact in a judgment, not inter partes, is admissible in evidence under the Evidence Act?

8. In order to decide this question, however it is necessary first to know the relevant facts. Sankeshia executed a zarpeshgi in favour of defendant 4, and, subsequently, another zarpeshgi in favour of defendant 6, a son-in-law of her admitted daughter, defendant 1. Defendant 6, therefore, as a subsequent mortgagee, brought a suit for re-demption of the earlier zarpeshgi against the prior mortgagee, present defendant 4", who is the admitted brother of defendant 5. To this suit neither the plaintiff not defendants 1 to 3 and 5 were parties. The pleadings of the parties of that suit have not been produced: but, its appellate judgment (Ext. D) is on the record. The judgment (Ext. D) contains an abstract of the pleadings of the parties, and, in paragraph 3 of the said judgment (Ext. D), an abstract of the case of the defendant, namely, present defendant 4, is stated. While summarising his defence, the learned Judge stated inter alia that;

"He (i.e. the then sole defendant and now the present defendant 4) also contended that Dipraj the husband of Sankeshia, had three daughters, namely, Dagni; Khedia (i.e. the present plaintiff); and, Turia (i.e. present defendant 1)....."

This judgment was filed by defendant 1; but the aforesaid statement of present "defendant 4 in the previous suit, as mentioned in the judgment (Ext. D), was sought to be used by the plaintiff in support of her case that Sankeshia had three daughters and the plaintiff was one of them. The sole object, therefore, for which the former judgment (Ext. D) was sought to be used by the plaintiff was to show that in another suit between present defendants 4 and 6 it was stated by defendant 4 that Sankeshia had three daughters including the plaintiff as alleged by her in the present litigation.

9. It has not been disputed, and it could not be, that the judgment (Ext. D) itself is not at all binding on defendants 1 to 3, because admittedly they were not parties to it. The crucial question, however, is, whether the above reproduced statement of present defendant 4 in his written statement in the previous suit, as stated in the judgment (Ext. D), is admissible, and, if it can be used as evidence in support of the plaintiffs case against the contesting defendants 1 to 3.

10. It is well settled that the Indian Evidence Act prohibits the employment of any kind of evidence not specifically authorised by the Act itself, and, therefore, it is unsound and not correct to say, as is attempted to be argued here, that the principle of exclusion adopted by the Indian Evidence Act shall not be applied so as to exclude matters which may be essential for the ascertainment of truth, On this subject, the observations of Lord Atkin, in Sris Chandra Nandy v. Rakhalananda, 68 Ind App 34: (AIR 1941 PC 16), are very apposite and may usefully be read here for guidance. The noble Lord, who delivered the judgment of the Board, at p. 45 (of Ind App) : (at p. 20 of AIR), observed:

"What matters should be given in evidence as essential for the ascertainment of truth it is the purpose of the law of evidence, whether at common law or by statute, to define. Once a statute is passed which purports to contain the whole law, it is imperative. It is not open to any judge to exercise a dispensing power, and admit evidence not admissible by the statute because to him if appears that the irregular evidence would throw light upon the issue. The rules of evidence, whether contained in a statute or not, are the result of long experience choosing, no doubt, to confine evidence to particular forms, and, therefore, eliminating; others which it is conceivable might assist in arriving at truth. But that which has been eliminated has been considered to be of such doubtful value, as on the whole, to be more likely to disguise truth than discover it. It is therefore discarded for all purposes and in all circumstances. To allow a judge to introduce it at his own discretion would be to destroy the whole object of the general rule."

11. There is, therefore, no such principle, as is suggested, which can make the statement relied upon admissible apart from any rule of law. The evidence in question, so far from leading to the ascertainment of truth, in fact, leads away from it for the simple reason that, in this case, it is not admitted even that Sankeshia had a daughter, named, Dagni, the deceased mother of defendants 4 and 5.

12. Sections 40 to 44 of the Evidence Act deal with the relevancy of judgments of courts of justice, and, if they do not fall within the one of the other of these sections, they will have to be held irrelevant unless they can be brought under any other provisions of the Act All judgments are conclusive of their existence as distinguished from their truth. As regards the truth of the matter decided, a judgment is not admissible against on who is a stranger to the suit. Ordinarily a judgment binds only the parties to it and such a judgment is known as a judgment in personam. Section 41 of the Act, however, deals with judgments, which are called judgments in rem, which are conclusive not only against the parties to them but also against all the world. These sections codify the law as to the admissibility of judgments in evidence. Under these sections, unless a judgment be a judgment in rem, it would not bind third parties who are not parties to the judgment or claim under those who are parties. Other judgments would be res inter alios acta and would not be admissible in evidence. Although a judgment not inter partes may be used in evidence in certain circumstances as a fact in issue or as a relevant fact or possibly as a transaction, but the recitals in the judgment cannot be used as evidence in a litigation between the parties. It is unnecessary, in this reference, to consider whether, if admissions made by parties to a suit or their predecessor-in-- title, are relevant and if the arguments containing the admissions are not forth coming, secondary evidence can be given by reference to extracts from judgments,

13. The Privy Council in Ram Prakash Das v. Anand Das, AIR 1916 PC 256: 43 Ind App 73, which was referred to subsequently in Tripurana Seethapathi Rao Dora v. Rokkam Venkanna Dora. AIR 1922 Mad 71: ILR 45 Mad 332 (FB), also took the same view. In the Privy Council case, the question was: Whether a person was disqualified from being a Mahanth by reason of his having been married? Evidence was sought to be let in of a recital in the judgment of a Magistrate of an admission of the marriage "made in the course of proceedings before him. Their Lordships of the Privy Council held that the note of the admission made to the Magistrate in the criminal case was rightly rejected as by itself evidence of the fad recorded therein.

14. In ILR 45 Mad 332: AIR 1922 Mad 71. above mentioned, a Full Bench of the Madras High Court rejected the argument that a statement of a relevant fact in a judgment, not inter partes, is admissible under Section 35 of the Evidence Act, as contended here also, and, in repelling this contention, Kumaraswami Sastri, J., who read the leading judgment of the Full Bench, held that it would be straining the language of Section 35 of the Evidence Act to hold that a Judge, when ha writes a judgment, is making entries in a public or official book, register or record and that every statement made in a judgment is an entry in such book, register or record. It was, therefore held that Section 35 has no application to such judgments, and a judgment not inter partes which would not be admissible under Sections 40 to 43 of the Evidence Act would not become relevant, merely because it contains a statement as to a fact which is in issue or relevant in the suit. The decision of the Privy Council in Natal Land Etc., Co. v. Goods, (1868) 2 PC 121 was followed.

15. A Full Bench of the Nagpur High Court in Shankar Ganesh v. Kesheo, AIR 1930 Nag 1 (FB), held that, where a judgment is not in rem nor relating to matters of public nature, nor between the parties to a subsequent suit, the fact that the Court by that judgment decides a point in a particular way is not relevant for the purpose of the decision of the same point in the subsequent suit. Their Lordships relied on a decision of the Privy Council in Gopika Raman Roy v. Atal (Singh, AIR 1929

PC 99: 56 Ind App 119, In which it was held that the Evidence Act does not make a finding of fact arrived at on the evidence before the court in one case evidence of that fact in another case.

16. In Khub Narain v. Ramchandra Narain AIR 1951 Pat 340: ILR 28 Pat 890, Narayan, J., with whom B. P. Sinha, J., as then he was agreed, held that there was nothing in the Evidence Act to warrant the view that a statement of fact in a previous judgment can be used as evidence in a subsequent case to decide the points which are in issue in that case. .

17. The same view was taken by a Division Bench of the Calcutta High Court in Ambica Charan v. Kumud Mohun, AIR 1928 Cal 893 in which Mukherji, J., with whom Cuming J., agreed, observed at page 895, relying on the Full Bench decision of the Madras High Court, referred to before, that recitals in a judgment not inter partes of a relevant fact is not admissible under Section 35 of the Evidence Act.

18. In Krishnasami Ayyangar v. Rajago-pala Ayyangar, ILR 18 Mad 73 a Division Bench of the Madras High Court, however, received in evidence a statement, amounting to an admission, which was contained in a judgment, under Section 35 of the Evidence Act, as an entry in a record made by a public servant in the course of his duty. This case was considered by the Privy Council in Collector of Gorakhpur v. Ram Sundar Mal, 61 Ind App 286 at p. 306: (AIR 1934 PC 357 at pp. 164-165) and Lord Blanesburgh, who delivered the unanimous opinion of the Board, observed: "There is much to be said for this view of Section 35".

19. The above two, just mentioned cases, however, have no application here, for the simple reason that the statement of the fact, in the Madras case, amounted to an admission of the party concerned and the statement in the decree that the pedigrees had been filed, in the Privy Council case, was treated as an admission both under Section 21 and Section 18 of the Evidence Act, and, therefore, admissible also under Section 35 of the Evidence Act. Here, admittedly the statement of fact relied upon is not an admission of defendants 1 to 3 or their pre-decessors-in-interest, against whom it is sought to be used by the plaintiff.

20. On a review of the authorities, considered above, therefore, the principles, which emerge, and, which can be extracted, therefrom, may be summarised thus:

The Evidence Act does not make a finding of fact arrived at on the evidence before the Court in one case evidence of that fact in another case.

A judgment, not inter partes, which would not be admissible under Sections 40 to 43 of the Evidence Act, would not become relevant, merely because it contains a statement as to a fact which is in issue or relevant in the suit, and to such a judgment Section 35 of the Evidence Act has no application.

Where a judgment is not in rem, nor relating to matters of public nature, nor between the parties to a subsequent suit, the fact that the Court by that judgment decides a point in a particular way is not relevant for the purpose of the decision of the same point in the subsequent suit.

Therefore, a statement of a relevant fact in a previous judgment, not inter partes, is not admissible under Section 35 of the Evidence Act.

There is, therefore, nothing in the Evidence Act to warrant the view that a statement of fact in a previous judgment, not inter partes, can be used as evidence in a subsequent suit to decide a point which is in issue in that case.

21. In the instant case, therefore, in the light of the principles stated above, although the question, whether Sankeshia had three daughters, of whom one was the plaintiff, as alleged by her, is a fact in issue, the statement of this relevant, fact in the previous judgment, to which neither the plaintiff nor the contesting defendants 1 to 3 nor their predecessors-in-interest were parties, is hot admissible in evidence under any provision of the Evidence Act, and, as such, it cannot be used by the plaintiff in support of her case against the contesting defendants 1 to 3, and, accordingly, the mere fact that this judgment, Ext. D, had been filed by defendant 1, cannot be taken advantage of by the plaintiff for using it or an extract therein against her.

22. For the reasons given above, therefore, I hold that the recital of the fact in issue in the present suit in the previous judgment (Ext. D), which is not inter partes, is not admissible in evidence, on the facts here, under any of the provisions of the Evidence Act.

23. The second question, which is a very novel and interesting point of law, is: Whether the photograph print (Ext. 2) of the plaintiff and defendant 1 is admissible in evidence under any provision of the Evidence Act for deciding the parentage of the plaintiff? There was, therefore, before the Courts below only one question--Was the plaintiff the child of Sankeshia?

24. A question of fact of that kind was usually proved by those who were present at the birth. That was the best evidence that could be obtained. Here, however, an attempt was made of give evidence as to the likeness of the plaintiff to defendant 1, the admitted daughter of Sankeshia, the alleged mother of the plaintiff. With a view to show that Khedia, the plaintiff was also a daughter of Sankeshia, and, as such she was the own sister of Turia, defendant 1, a photograph pf the pliantiff and Turia, defendant 1, the admitted daughter of Sankeshia, was taken. The negative of this photograph is Ext. 1 and the photograph print is Ext. 2. Relying on this photograph, in which the plaintiff and defendant 1, appear side by side, the trial Judge took the view that a very look at the photograph, Ext. 2, of these two ladies, who were also produced before him clearly shows that the faces of these two ladies closely resemble with each other's and, therefore the great resemblance of their facts was a circumstance which went to support the case of the plaintiff that she (the plaintiff) was the daughter of Sankeshia and that she (Sankeshia) had more than one daughter. On appeal, however, the Court of appeal below took the view that the fact that there was facial similarity between plaintiff and defendant 1, as found by the trial Court, after having a look at the photograph (Ext. 2), was not admissible in evidence, as it neither came under Section 50 nor under Section 32(5) of the Evidence Act, and, therefore, it discarded Ext. 2.

25. It was argued by Mr. Singh that the Court of appeal below has erred in law in holding that this photograph was inadmissible in evidence, in that, it was admissible to show the facial similarity

between the plaintiff and defendant 1, and, therefore, the plaintiff should be held to be the sister of defendant 1, and, as such, daughter of Sankeshia. I find, however, that there is no provision in the Evidence Act to make such photograph admissible in evidence for the purpose of showing facial similarity between two persons when the dispute is about their parentage.

26. Section 9 of the Evidence Act provides, inter alia that facts which establish the identity of any thing or person, whose identity is relevant, are relevant so far as they are necessary for that purpose. The use in evidence of photographic pictures and the limits within which they are judicially receivable by way of proof of matters of fact has often come up for consideration before English Courts, for instance, in R v. United Kingdom Electric Telegraph Co., Ltd., (1862) 3 F and F 73 : 176 ER 33 and in Hindson v. Ashby (1896) 2 Ch 1 and, these cases have been considered by their Lordships of the Privy Council in United States Shipping Board v. The Ship "St. Albans", AIR 1931 PC 189: 1931 AC 632, in which it was observed by Lord Merrivale, who delivered the opinion of the Board, at page 194, that "a photographic picture cannot be relied upon as proof in itself of the dimensions of the depicted object or objects, and, cannot be made properly available to establish the relative proportions of such objects except by evidence of personal knowledge or scientific experience to demonstrate accurately the facts sought to be established".

27. Witnesses may state their belief as to the identity of persons, whether present in Court or not, and they may also identify absent persons by photographs produced and proved by any competent testimony, not necessarily, of course, that of the photographer, to be accurate likeness. It is well settled that for certain purposes, photographs may be received in evidence, and, as is welt known, photographs are used and can properly be used in proceedings where there is a dispute about identification of a particular person and where the question of identification is a critical one.

28. To cite an instance, in R. v. Wattam, (1942) 1 All ER 178, during the cross-examination of a police constable reference was made to a photograph of the accused which the police constable had seen in a book of photographs used for the purpose of identifying the persons who had committed the crime.

29. Likewise, whenever it is important that the locus in quo should be described to the court it is competent to introduce in evidence a photographic view of it, and, therefore, in (1862) 3 F and F 73 (supra), photographs were allowed to be used, on the trial of an indictment for an obstruction to a highway, to show the nature of the locus in quo. A photograph, like a map or diagram, is a witness pictured expression of the data observed by him and therein communicated to the tribunal more accurately than by words. Its use for this purpose is sanctioned beyond question. The use of photographs as testimony to the objects represented rests fundamentally on the theory that they are the pictorial communications of a qualified witness who uses this method of communication instead of or in addition to some other method.

30. Similarly, photographs are admissible in evidence to prove also the contents of a lost do cument.

31. The question, which arises here, however, never came up for decision in any court, in the form it has arisen now, and, the learned counsel for the parties have not called to my attention either any

decided case, or, any provision of the Evidence Act, which may make such a photograph showing family likeness or resemblance, admissible in evidence for inferring therefrom parentage of the person concerned.

32. In Slingsby legitimacy suit--Slingsby v. Attorney General, decided by the House of Lords,. (1916) 33 TLR 120 Lord Shaw rejected the evidence given as to the likeness of the child to the alleged parents as worthless. The noble Lord observed, "That class of evidence, except in the case of a difference of colour, had in Scotland for more than a century been rejected, on the ground that it was loose and fanciful. In England it was open to the same objection. The proceedings in the case had been swollen, disfigured, and distorted by irrelevance, triviality, and prolixity. These things generally failed, and it was satisfactory to reflect that in this case they had not accomplished the defeat of justice",

33. The above observations a fortiori, apply to the present case also, in that, the evidence was actually given on the subject of facial resemblance, in the shape of the photograph print, Ext. 2, to show that the plaintiff bore a notable and strong resemblance to defendant 1, apart from its admissibility upon the law relating to the admissibility and the relevance of evidence of facial resemblance in deciding parentage or legitimacy and other cases, was entirely overborne by the other facts of the case, referred to and relied upon by the Court of appeal below.

34. In the Russell Divorce case--Russell v. Russell and Mayer, (1923) 129 LT 151 counsel for the respondent tendered evidence that there was a notable resemblance between photographs of the child, whose paternity was in question, and, photographs of the petitioner there, at a like age, and also tendered the infant itself for inspection by the Jury and comparison with such paotographs and with the petitioner. Hill J., who decided the case, admitted the evidence, but intimated that he considered it of little if any value. In summing up the case and in charging the Jury, Hill J., on this subject, said:

"I will say a word to you about the suggested resemblance of the child to the petitioner. You remember that photographs were called for, and you saw the photographs and saw the child. In my view any conclusion drawn from the likeness or unlikeness of the child to the petitioner, whether in general of in the shape of the ears and the colour of the eyes and so forth, would be very unsafe and conjectural.

Science is only groping to find out the laws which govern the transmission of likeness from generation to generation. But we can bring it to a much homelier test. All of you who have children must be familiar with the endless discussions which arise whether the baby is like its father or its mother, its grandfather or its grandmother. You will remember that questions were put to the respondent about photographs which were said to be photographs of babies not connected with the Russell family, and that she found resemblances to her baby in them. I cannot stop your considering this question of likeness, but I myself regard it as a dangerous guide".

35. Douglas Peerage Case (2 Hargr. Collectanea Juridica 402) is also reported in full as The 'Douglas cause in Notable British Trials (Scottish Series) Edited by A. Francis Steuart, Advocate. This book

contains also the two chief speeches delivered in the final Appeal to the House of Lords by the Lord Chancellor, Lord Camden, and, Lord Mansfield. The judgment of the Court of Session was reversed by the House of Lords and it was held that the appellant, Archibald Douglas of Douglas, who was the defendant in the court below, was the genuine son of Lady Jane Douglas. In that case, the question of parentage was under consideration. Lord Chancellor, in his speech to the House of Lords, at page 173, said:

"That he should be a weak and puny child, and exactly corresponding in age, and, above all, the very picture of Lady Jane, the very image, the most perfect resemblance? This circumstance of the likeness is sworn to in the most particular manner by above twenty witnesses, and deserves the greatest weight. This is a wonderful incident it is an impression stamped by God himself to prove the legitimacy of the child. This circumstance alone would overturn any evidence less strong than demonstration".

Lord Mansfield, in course of his speech, at pages 142 to 150 of the Book, which he prefaced by saying:

"I have slept and waked upon this subject considered it upon my pillow, to the losing of my natural rest and with all the judgment I was capable of, have considered the various articles that make up this long and voluminous cause, upon which I am now to give my opinion before your Lordships"

at pages 148-149, said:

"I have always considered likeness as an argument of a child's being the son of a parent; and the rather as this distinction between individuals in the human species is more discernible than in other animals. A man may survey ten thousand people before he sees two faces perfectly alike; and in an army of an hundred thousand men every one may be known from another. If there should be a likeness of features, there may be a discriminancy of voice, a difference in the gesture, the smile, and various other things; whereas a family likeness generally runs through all of these, for in everything there is a resemblance, as of features. size, attitude, and action ....."

It is true Lord Mansfield has certainly put the case of family likeness very high, but, in my opinion, and, I say so with the greatest respect, it is to say the least questionable whether a view so extreme-would find judicial support in the present day, though in 1889 in Burnaby v. Baillie, (1889) 42 Ch. D. 282 at p. 290 in a suit which turned on the legitimacy of a child, evidence was permitted to be given as to the resemblance of the child to the person alleged to be the father, and also rebutting evidence to show the absence of any such resemblance. No doubt, family likeness has often-been insisted upon as a reason for inferring parentage and identity, but the liability to mistake must necessarily be greater where the question of identity is matter of deduction and inference, than where it is the subject of direct evidence.

36. In Anand Bahadur Singh v. Deputy Commissioner, Barabanki, AIR 1933 Oudh 242, a Division Bench of the Oudh Chief Court, relying on the Privy Council decision in Jaswant Singhjee v. Jet Singhjee, 2 Moo Ind App 424 (PC) rejected the evidence let in on similarity of features in proof of

the plaintiff's case, there, that defendant 2 was Ram Karan, the son of Ramnath, and not Badri Narain, the son of Gajraj Singh.

In the Privy Council case of Jaswant Singhjee, 2 Moo Ind App 424 (PC) just mentioned, Lord Broughman, who delivered the opinion of the Board, held that the decision of the trial Judge upon the personal resemblance of the plaintiff to his deceased father could not be received or acted upon by a Court of appeal.

37. The position in law, therefore, as far as I have been able to ascertain from the authorities both English and Indian discussed above, although in none of them a case like the present arose, may be stated thus:

Photographs are used, and can properly be used, for identification, but they cannot be used, for showing similarity of features or perfect facial resemblance or family likeness, to prove parentage. Parentage, therefore, cannot be inferred from such a family likeness or a facial resemblance nor negatived from such want of resemblance or likeness from a photograph of the admitted person taken together and along with the disputed person.

Family likeness or facial resemblance cannot, be taken as a true guide for inferring parentage, because cases are not unknown, where two sons of the same father and mother are so much dissimilar in likeness and resemblance, that it would be difficult for a person, who has no personal knowledge, to say whether they are own brothers born of the same parents, or no. The question of such likeness, therefore, is a deceptive criterion. Evidence of personal resemblance, however, perfect and notable it may be, of the disputed person with the admitted one, cannot be received or acted upon in law to prove the supposititious character of the disputed person. Such evidence of personal resemblance is loose and fanciful, and, therefore, evidence let in on similarity of features must be rejected as worthless.

A photograph print, therefore, of the admitted person along with the disputed person taken together, or, taken separately, even when there is a striking similarity between the two, there is family likeness, there is similarity in features, and, there is facial resemblance between them is not admissible in evidence either under Section 9 or any other provision of the Evidence Act, for deciding the question of the parentage of the disputed person, and, as such, any conclusion drawn from such likeness or unlikeness of the disputed person to the admitted one would be very unsafe and conjectural. The suggested resemblance of the admitted person to the disputed person, and, as such, this question of likeness is a dangerous guide.

It would, therefore, be very unsafe for a Court to base its decision on the question of parentage of a person on a mere view of him, when he is presented in court for its inspection, or, on his mere photograph along with the admitted person, alleged to be his own brother or sister and born of the same parents.

38. In view of the above cardinal principles, in my opinion, the decision of the Court of appeal below that the photograph print, Ext. 2, cannot be admitted in evidence and acted upon, because of the

suggested personal resemblance or likeness of the plaintiff to the defendant 1, to prove that the plaintiff was the daughter of Sankeshia, is, therefore, correct.

39. I, therefore, hold that the photograph, Ext. 2, of plaintiff and defendant 1, in order to show their facial similarity, or family likeness was not admissible in evidence to prove that the plaintiff was the own sister of defendant 1, and, as such, the Court of appeal below has rightly excluded it from consideration.

40. The other points raised need not detain us long. It was contended that the evidence of P. W. 15 has not been considered. But it is not correct, because the learned Judge of the Court o£ appeal below has said that, as she was the plaintiff herself, she cannot be considered to be an independent and reliable witness, unless her evidence was corroborated by other independent witnesses, which fact was wanting in this case.

41. The further argument that the Court of appeal below has not kept in view the principles laid down by the Supreme Court in Dolgobinda Paricha v. Nimai Charan, AIR 1959 SC 914 while considering evidence of relationship, in view of Ss. 50 and 60 of the Evidence Act, in my opinion, is also not correct. The reasons given by the learned Judge of the Court of appeal below clearly go to show that the principles laid down by the Supreme Court, in the just mentioned case, have been applied, and, in the light of them, the evidence of the witnesses examined on behalf of the parties has been considered.

42. For the reasons given above, in my opinion, the question whether the plaintiff was the daughter of Sankeshia was clearly a question of fact, and, the Court of appeal below having found, on a consideration of the evidence of both sides, that she was not the daughter of Sankeshia, is a finding of fact which cannot be interfered with in second appeal, when it has not been shown that the Court of appeal below has committed any error of law in arriving at the said conclusion of fact.

43. The result, therefore, is that the appeal fails, and, is dismissed; but, in the circumstances, there will be no order for cost of this Court