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DEBI PRASAD (DEAD) BY L.RS.

v.

TRIBENI DEVI AND ORS.

March 18, 1970

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[J. C. SHAH AND K. S. HEGDE, JJ.]

Hindu Law—Adoption—Burden of Proof.

The appellant filed a suit in 1946 claiming to be the nearest heir to his maternal uncle—G, who died in 1934. S—defendant no. 1 (the predecessor of the respondents) resisted the suit on the ground that he had been adopted by G on the very day he was born in 1892. Close relations of the wife of G deposed that after the birth of S, the wife of G took him to her paternal home where Paon Pheri ceremony was performed, as was customary in that family. The application for admission to the school recited that S was the son of G, and it was signed by G. G deposed before courts that S was his son. S filed a nomination paper, proposed by G mentioning that his father was G. In income-tax assessment which proceeded on the basis that G and S formed a H.U.F. of which G was the *karta*, the professional income of S was added. Then there were admissions of the appellant in Courts after the death of G that S was the proprietor of the firm of G. In other application for transfers, the appellant described S as son of G. But there was a decree of a Court in 1901, where S was described as son of his natural father. The trial court decreed the suit, but the High Court reversed that decree. The High Court held on the evidence that S was validly adopted by G, though S had not been able to establish the custom pleaded by him, nor was he able to adduce any satisfactory evidence about the actual adoption but he has produced considerable documentary evidence to show that G was treating him for over a quarter of century as his son; then there was also plenty of reliable evidence to show that close relations including the appellant treated S as the son of G both during the life time of G and also thereafter till about the time the suit was instituted.

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HELD : A person who seeks to displace the natural succession to property by alleging an adoption must discharge the burden that lies upon him by proof of the *factum* of adoption and its validity. In order that an adoption may be valid under the Hindu law, there must be a formal ceremony of giving and taking. This is true of the regenerate castes as well as of the Sudras. Although no particular form is prescribed for the ceremony, the law required that the natural parent should hand over the adoptive boy and the adoptive parent must receive him, the nature of the ceremony varying according to the circumstances. [105 A-D]

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Although the person who pleads that he had been adopted is bound to prove his title as adopted son, as a fact yet from the long period during which he had been received as an adopted son, every allowance for the absence of evidence to prove such fact was to be favourably entertained. The case was analogous to that in which the legitimacy of a person in possession had been acquiesced in for a considerable time, and afterwards impeached by a party, who had a right to question the legitimacy, where the defendant, in order to defend his status, is allowed to invoke against the claimant every presumption which arises from long recognition of his

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legitimacy by members of his family. In the case of a Hindu long recognition as an adopted son, raised even a stronger presumption in favour of the validity of his adoption, arising from the possibility of the loss of his rights in his own family by being adopted in another family. In the absence of direct evidence much value has to be attached to the fact that the alleged adopted son had without controversy succeeded to his adoptive father's estate and enjoyed till his death and that documents during his life and after his death were framed upon the basis of the adoption. [106 B-F]

On the evidence, S was the adopted son of G and there was nothing to show that the said adoption was invalid for any reason. While considering the question of the proof of adoption pleaded, the fact that the suit was filed nearly 54 years after the alleged adoption had taken place must be borne in mind. Therefore, naturally it was extremely difficult for the adopted son to adduce any oral evidence in proof of that adoption.

Addagada Raghavamma and anr. v. *Addagada Chenchamma and anr.* [1964] 2 S.C.R. 933; *Lakshman Singh Kothari* v. *Smt. Rup Kanwar* [1962] 1 S.C.R. 477; applied.

Rajendrao Nath Holder v. *Jogendro Nath Banerjee and ors.* 14, Moore's Indian Appeals p. 67, approved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 707 of 1966.

Appeal by special leave from the judgment and order dated January 20, 1965 of the Allahabad High Court, Lucknow Bench in First Appeal No. 67 of 1948.

V. S. Desai and *K. P. Gupta*, for the appellant.

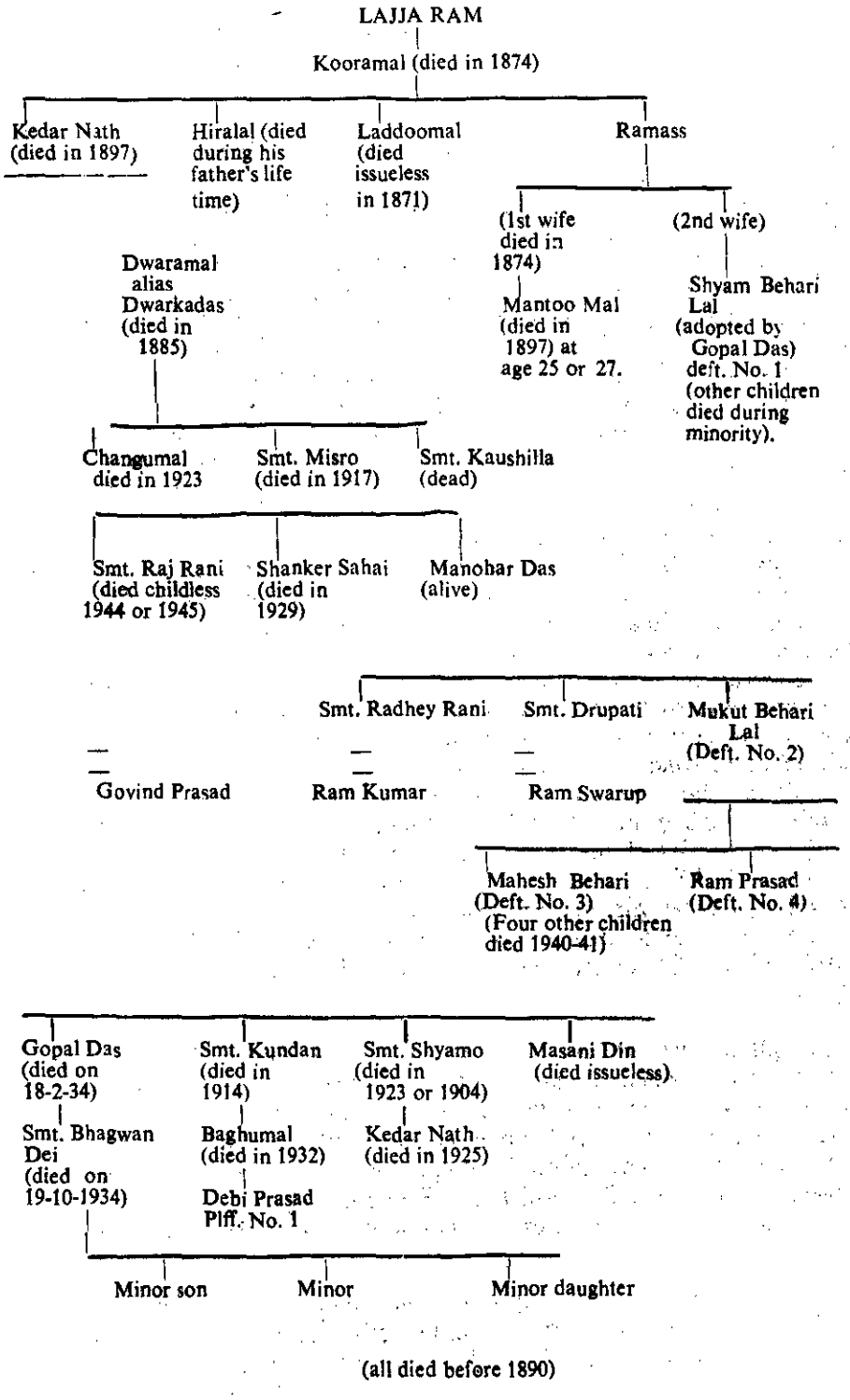
A. K. Sen, E. C. Agrawala, S. R. Agarwala and *P. C. Agarwala*, for respondent Nos. 1 to 6.

The Judgment of the Court was delivered by

Hegde, J.—In this appeal by special leave though number of contentions were taken we have not thought it necessary to go into all of them as in our judgment High Court's conclusion that Shyam Behari Lal (1st defendant) had been validly adopted by Gopal Das is well founded.

The suit from which this appeal arises is for possession of the suit properties on the basis of title. The 1st plaintiff Debi Prasad claims title to the properties as the nearest heir to Gopal Das, his maternal uncle who died in 1934. The 2nd plaintiff is an alienee from the 1st plaintiff.

In order to properly understand the controversy in the present case, it is necessary to have before us the family pedigree. The admitted pedigree is as shown below :


LAJJA RAM
Kooramal (died in 1874)
Kedar Nath (died in 1897)
Hiralal (died during his father's life time)
Laddoomal (died issueless in 1871)
Ramass
(1st wife died in 1874)
(2nd wife)
Dwaramal alias Dwarkadas (died in 1885)
Mantoo Mal (died in 1897) at age 25 or 27.
Shyam Behari Lal (adopted by Gopal Das) deft. No. 1 (other children died during minority).
Changumal died in 1923
Smt. Misro (died in 1917)
Smt. Kaushilla (dead)
Smt. Raj Rani (died childless 1944 or 1945)
Shanker Sahai (died in 1929)
Manohar Das (alive)
Smt. Radhey Rani
Smt. Drupati
Mukut Behari Lal (Deft. No. 2)
Govind Prasad
Ram Kumar
Ram Swarup
Mahesh Behari (Deft. No. 3) (Four other children died 1940-41)
Ram Prasad (Deft. No. 4)
Gopal Das (died on 18-2-34)
Smt. Kundan (died in 1914)
Smt. Shyamo (died in 1923 or 1904)
Masani Din (died issueless)
Smt. Bhagwan Dei (died on 19-10-1934)
Baghumal (died in 1932)
Kedar Nath (died in 1925)
Debi Prasad Plff. No. 1
Minor son
Minor
Minor daughter
(all died before 1890)

The common ancestor of the family was Lajja Ram who died in 1874. We are now concerned with the branch of Kedar Nath, the father of Gopal Das who died on February 18, 1934. His widow Bhagwan Dei died on October 19, 1934. The contention of Debi Prasad is that Gopal Das had separated from his family; he died intestate and, therefore, being the nearest heir of Gopal Das, he is entitled to the properties left by Gopal Das. The plaintiff's claim was resisted by the 1st defendant Shyam Behari Lal, who claimed to be the adopted son of Gopal Das. According to Shyam Behari Lal, he had been adopted by Gopal Das in about the year 1892 when he was only an infant. He also resisted the suit on the ground that Gopal Das was an undivided member of his family and therefore the 1st plaintiff in any event cannot claim any right to the suit properties. His further contention was that the 1st plaintiff was estopped from contending that he was not the adopted son of Gopal Das. Shyam Behari Lal died during the pendency of the appeal before the High Court and his legal representatives are contesting this appeal. Debi Prasad also died during the pendency of this appeal. The trial court substantially accepted the claim made in the plaint but in appeal the High Court reversed the decree of the trial court and dismissed the suit.

The principal question that we have to decide in this case is whether the adoption pleaded by Shyam Behari Lal is true and valid. According to Shyam Behari Lal, Gopal Das took him in adoption on February 8, 1892, on the very day he was born. He says that very soon after his birth, his natural parents handed him over to Gopal Das and his wife who took him over as their adopted son and thereafter performed the necessary ceremonies according to the custom of their community. He also pleaded that in the community of Gopal Das, there is a custom of taking a child in adoption on the very day of its birth. The plaintiffs have denied both the *factum* of adoption as well as the custom pleaded.

We may at the very outset mention that Shyam Behari Lal had not been able to establish the custom pleaded by him. Nor was he able to adduce any satisfactory evidence about the actual adoption but he has produced considerable documentary evidence to show that (Gopal Das) was treating him for over a quarter of century as his son. There is also plenty of reliable evidence to show that close relations of Gopal Das including Debi Prasad treated Shyam Behari Lal as the son of Gopal Das both during the life time of Gopal Das and also thereafter till about the time the suit from which this appeal arises was instituted. As mentioned earlier Gopal Das as well as his wife died in 1934 and the suit from which this appeal arises was filed in 1946.

A While considering the question of proof of the adoption pleaded, we must bear in mind the fact that the same is alleged to have taken place in 1892 nearly 54 years before the present suit was instituted. Therefore, naturally, it was extremely difficult for Shyam Behari Lal to adduce any oral evidence in proof of that adoption. All the persons who could have known about the B adoption are likely to have died. Shyam Behari Lal himself could not speak to that adoption. His evidence is at best hearsay. It is true, as observed by this Court in *Addagada Raghayamma and anr.* v. *Addagada Chenchamma and anr.* (1) that it is settled that (a person who seeks to displace the natural succession to property by alleging an adoption must discharge the burden C that lies upon him by proof of the *factum* of adoption and its validity). Again as held by this Court in *Lakshman Singh Kothari* v. *Smt. Rup Kanwar*(2) that in order that an adoption may be valid under the Hindu law, there must be a formal ceremoney of giving and taking. This is true of the regenerate castes as well as of the Sudras. Although no particular form is prescribed for the ceremony, the law requires that the natural parent D should hand over the adoptive boy and the adoptive parent must receive him, the nature of the ceremony varying according to the circumstances. In the course of the judgment Subba Rao J. (as he then was) who spoke for the Court quoted with approval the following observations of Gopalchandra Sarkar in his book on Hindu Law, 8th Edn.;

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> "The ceremonies of giving and taking are absolutely necessary in all cases. These ceremonies must be accompanied by the actual delivery of the child; symbolical or constructive delivery by the mere parol expression of intention on the part of the giver and the taker without the presence of the boy is not sufficient. F Nor are deeds of gift and acceptance executed and registered in anticipation of the intended adoption nor acklowledgment, sufficient by themselves to constitute legal adoption, in the absence of actual gift and acceptance accompanied by actual delivery; a formal ceremony being essential for that purpose."

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That is also the view expressed in Mayne's Hindu Law wherein it is observed that the giving and receiving are absolutely necessary to the validity of an adoption; they are the operative part of the ceremony, being that part of it which transfers the boy from one family to another: but the Hindu law does not require that there shall be any particular form so far as giving and H acceptance are concerned: for a valid adoption all that the law requires is that the natural father shall be asked by the adoptive

(1) [1964] 2 S.C.R. 933. (2) [1962] 1 S.C.R. 477.

parent to give his son in adoption, and that the boy shall be handed over and taken for this purpose. A

There is no doubt that the burden of proving satisfactorily that he was given by his natural father and received by Gopal Das as his adoptive son is on Shyam Behari Lal. But as observed by the Judicial Committee of the Privy Council in *Rajendrao Nath Holder* v. *Jogendro Nath Benerjee and ors.*(1); that although the person who pleads that he had been adopted is bound to prove his title as adopted son, as a fact yet from the long period during which he had been received as an adopted son, every allowance for the absence of evidence to prove such fact was to be favourably entertained, and that the case was analogous to that in which the legitimacy of a person in possession had been acquiesced in for a considerable time, and afterwards impeached by a party, who had a right to question the legitimacy, where the defendant, in order to defend his status, is allowed to invoke against the claimant every presumption which arises from long recognition of his legitimacy by members of his family; that in the case of a Hindoo, long recognition as an adopted son, raised even a stronger presumption in favour of the validity of his adoption, arising from the possibility of the loss of his rights in his own family by being adopted in another family. In *Rup Narain and anr.* v. *Mst. Gopal Devi and ors.*(2), the Judicial Committee observed, that in the absence of direct evidence much value has to be attached to the fact that the alleged adopted son had without controversy succeeded to his adoptive father's estate and enjoyed till his death and that documents during his life and after his death were framed upon the basis of the adoption. A Division Bench of the Orissa High Court in *Balinki Padhano and anr.* v. *Gopalkrishna Padhano and ors*(3); held that in the case of an ancient adoption evidence showing that the boy was treated for a long time as the adopted son at a time when there was no controversy is sufficient to prove the adoption although evidence of actual giving and taking is not forthcoming. We are in agreement with the views expressed in the decisions referred to above. B C D E F

In the case of all ancient transactions, it is but natural that positive oral evidence will be lacking. Passage of time gradually wipes out such evidence. Human affairs often have to be judged on the basis of probabilities. Rendering of justice will become impossible if a particular mode of proof is insisted upon under all circumstances. In judging whether an adoption pleaded has been satisfactorily proved or not, we have to bear in mind the lapse of time between the date of the alleged adoption and the date on which the concerned party is required to adduce proof. In the G H

(1) 14 Moore's Indian Appeals p. 67. (2) 36 I.A. p. 103.
(3) A.I.R. 1964 Orissa p. 117.

A case of an adoption said to have taken place years before the same is questioned, the most important evidence is likely to be that the alleged adoptive father held out the person claiming to have been adopted as his son; the latter treated the former as his father and their relations and friends treated them as father and son. There is no predetermined way of proving any fact. A fact B is said to have been proved where after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. Hence if after taking an overall view of the evidence adduced in the case, we are satisfied that the adoption pleaded is true, we must necessarily proceed on the basis, in the absence of C any evidence to the contrary, that it is a valid adoption as well.

As mentioned earlier Shyam Behari Lal has not been able to substantiate the custom pleaded by him; nor has he adduced any direct evidence relating to the *factum* of adoption. His case entirely rests upon the decumentary evidence that he has produced D to show that he had been consistently and continuously treated as the son of Gopal Das, by Gopal Das himself, during his life time and by all his friends and relations including Debi Prasad.

Before dealing with the evidence mentioned earlier, it is necessary to mention that the High Court has relied in proof of the adoption pleaded, on the evidence of D.W. 10 Rikhab Das E and D.W. 15 Chhotey Lal. Both of them were the close relations of the wife of Gopal Das. They are disinterested witnesses. Their evidence is to the effect that sometime after the birth of Shyam Behari Lal, the wife of Gopal Das took him to her paternal home where Paon Pheri ceremony was performed. There is satisfactory evidence to show that this ceremony is customarily performed in F the parental home of a lady who has given birth to her first child. We see no reason to disbelieve the testimony of these witnesses. Their evidence clearly indicates the fact that Shyam Behari Lal must have been taken in adoption by Gopal Das. We may also at this stage refer to another important circumstance appearing in the case. As mentioned earlier, both Gopal Das and his wife G died in the year 1934. The suit from which this appeal arises was instituted only in 1946, just a few months before the period of limitation for instituting the same expired. Debi Prasad has not given any satisfactory explanation for this inordinate delay in instituting the suit. This circumstance tends to show that the suit is likely to be speculative one.

H Now coming to the documentary evidence referred to earlier, it is proved that Shyam Behari Lal was admitted to school in 1907. Exh. A-658, is the application made for admission on December 12, 1907. That application was signed by Gopal Das.

It recites that Shyam Behari Lal is the son of Gopal Das. This admission of Gopal Das is an extremely important piece of evidence. No reason is given why Gopal Das should have made a false statement in that application. The explanation that someone must have filled in the form and Gopal Das must have signed the same in ignorance is not worthy of credence.

Exh. A-261, is the certified copy of the deposition of Gopal Das in Regular Suit No. 104 of 1917 in the court of the Subordinate Judge, Faizabad. That deposition was given on May 9, 1918. Therein Gopal Das admitted in more than one place that Shyam Behari Lal was his son. We next come to Exh. A-364, a copy of the nomination paper filed by Shyam Behari Lal for election to the municipal council. Gopal Das was one of the persons who proposed his name. Therein again Shyam Behari Lal was described as the son of Gopal Das.

Gopal Das was an income-tax assessee. He was assessed as the Karta of his Hindu Undivided Family. Exh. A-299 is the assessment order for the year 1921-22; Exh. A-300 is the assessment order for the year 1922-23; Exh. A-301 is the assessment order for the year 1923-24: Exh. A-302 is the assessment order for the year 1924-25; Exh. A-303 is the assessment order for the year 1925-26; Exh. A-304 is the assessment order for the year 1926-27: Exh. A-305 is the assessment order for the year 1927-28; Exh. A-306 is the assessment order for the year 1928-29; Exh. A-307 is the assessment order for the year 1929-30; Exh. A-309 is the assessment order for the year 1931-32 and Exh. A-313 is the assessment order for the year 1935-36. While computing the income of the H.U.F. the professional income of Shyam Behari Lal as a lawyer was taken into consideration. Those assessment orders proceed on the basis that Gopal Das and Shyam Behari Lal constituted a joint Hindu family. It may be noted that most of those assessment orders were made during the life time of Gopal Das and evidently on the basis of the returns submitted by him. If Shyam Behari Lal had not been the son of Gopal Das, he could not have been treated as a member of the coparcenary of which Gopal Das was the Karta, nor his professional income would have been added to the income of the joint family of Gopal Das. These assessment orders have considerable evidentiary value. It may be noted that these documents came into existence at a time when there was no dispute.

Next we come to the admissions made by the plaintiff himself. Exh. A-233 is the certified copy of the depositoin of the plaintiff given in Regular Suit No. 55 of 1935 in the court of Additional Subordinate Judge, Faizabad. This deposition he

A gave on May 20, 1935, nearly a year after Gopal Das died. Is that deposition he stated :

> "I am partner of the firm of Gopal Dass Chhangamal. Plaintiff No. 2 is the proprieter of the said firm".

If Debi Prasad was the rightful heir to the estate of Gopal Das, B he could not have admitted in the year 1935 that Shyam Behari Lal was the proprietor of the firm Gopal Dass Chhangamal. Debi Prasad's explanation that on the date he gave that deposition, he was unaware of the fact that he was the heir of Gopal Das, cannot be believed. In Exh. A-226, the decree in the aforesaid suit, Shyam Behari Lal was described as the son of Gopal Das. C Exh. A-274 is another certified copy of the deposition given by Debi Prasad. This was given on July 19, 1923 in a suit where Gopal Das was the plaintiff. Therein he stated in cross-examination :

> "The plaintiff No. 1 has got a son named B. Shyam Behari Lal Vakil....Our business is also ancestral D business. His son Shyam Behari and his grand son Mukut Behari are members of a joint Hindu family."

He further stated therein :

> "Lala Gopal Das, his son (referring to Shyam Behari Lal) and grand son are the sole owners of the E firm styled Kuramal Kedar Nath".

Exh. A-236 is the certified copy of the plaint filed by Shyam Behari Lal and Debi Prasad jointly in Suit No. 353 of 1935 in the court of Civil Judge, Faizabad. In paragraph 1 of the plaint, it is stated :

> F "The proprietor of the said shop was Gopal Das, father of the plaintiff No. 1 till his life time and after his death to which about a year, nine months and half have passed, the plaintiff No. 1, as survivor became and is the proprietor of the said property."

This is an extremely important admission. This admission G was made after the death of Gopal Das. Therein Debi Prasad not only admitted that Shyam Behari Lal was the son of Gopal Das, he further admitted that he became the proprietor of the concern by survivorship. This could have only happened if Shyam Behari Lal had been adopted by Gopal Das. Exhs. A-352 and 356 are two applications made for registration of a firm H under the Indian Partnership Act, 1932. The first application was made on March 26, 1936. It was returned with some objection and the second application was made on May 4, 1936. Both these applications bear the signature of Debi Pradsad as well

as Shyam Behari Lal. In those applications, it was stated that Shyam Behari Lal had succeeded as a partner of the firm whose registration was sought in the place of his father Gopal Das who had died. Exh. A-358 is an application for transfer of shares made to the Banaras Cotton & Silk Mills Ltd. by Debi Prasad. Thereunder he sought to transfer his 100 shares to Shyam Behari Lal whom he described in his application as the son of Gopal Das. Similar averments were made in Exh. A-359.

Exhs. A-262, 656, 657 and A-276 are the statements made by the relations of Shyam Behari Lal and Debi Prasad wherein Shyam Behari Lal was described as the son of Gopal Das.

A large number of documents have been produced to show that friends, relations and even strangers were treating Shyam Behari Lal as the son of Gopal Das. The documents produced before the court conclusively prove that right from 1907 till 1946, Shyam Behari Lal was treated as the son of Gopal Das. This continuous and consistent course of conduct on the part of Debi Prasad, Gopal Das and others affords a satisfactory proof of the fact that Shyam Behari Lal must have been the adopted son of Gopal Das. No other reasonable inference can be drawn from the material on record.

Mr. Desai appearing on behalf of the appellants contended that we should not accept the adoption pleaded firstly because, it was unlikely that Gopal Das would have taken a child in adoption as far back as 1892 when he was only 32 years of age; secondly the story that an one day old child was taken in adoption when the family must have been in pollution must be rejected as being repugnant to Hindu notions and lastly in a decree of 1910, Shyam Behari Lal was described as the son of Ram Das, his natural father. We are unable to accept these contentions. It is in evidence that Gopal Das had lost three children even before 1890. Evidently he had lost all hopes of getting a natural son. Further it is not necessary to speculate in the face of the documentary evidence referred to earlier why Gopal Das should have taken a son in adoption when there was every possibility for him to get a natural son. Coming to the question of adoption on the very day Shyam Behari Lal was born, that plea rests on hearsay information. There is no positive evidence before us as to when exactly Shyam Behari Lal was adopted. From the evidence of D.Ws. 10 and 15, it is clear that he must have been adopted very soon after his birth. That is the best that can be said on the basis of the evidence. That apart custom differs from place to place and from community to community. It is true that in a decree made in 1910, Shyam Behari Lal was described as the son of Ram Das. But in the very next year in another decree, he was

A described as the son of Gopal Das. We do not think that the evidence afforded by that solitary document showing Shyam Behari Lal as the son of Ram Das can outweigh the other evidence which is both satisfactory as well as voluminous.

On an appreciation of the entire evidence on record, we are
B in agreement with the High Court's conclusion that Shyam Behari Lal was the adopted son of Gopal Das and there is nothing to show that the said adoption was invalid for any reason. In view of this conclusion, it is unnecessary to consider the other contentions raised in the appeal.

In the result this appeal fails and the same is dismissed with
C costs.

Y.P. *Appeal dismissed.*