

1866.

Special Appeal No. 369 of 1865.

GOPA'L SHRI'DHAR DIKSHI'T PATVARDHAN, a MINOR,
 by his mother, Bhavánibái(Plaintiff) Appellant.
 NA'RO VINA'YAK DIKSHI'T PATVARDHAN, PA'NDU-
 RANG VINA'YAK DIKSHI'T PATVARDHAN, and
 others.....(Defendants) Respondents.

Adoption—Consent of Relatives of Husband.

The doctrine that the consent of all her husband's relatives is requisite to make an adoption by a Hindú widow valid is erroneous.

GOPA'L sued Pandurang and six others for one-fourth of certain family property, alleging that his grandmother Sávitri (through whom he claimed) had enjoyed the share up to 1861, when she died, and that the defendants would not put him in possession of it.

Pándurang answered that Sávitri was his great-aunt, but had never enjoyed the property; and that though her husband, Lakshuman, was entitled to a fourth share, he also had never enjoyed it, and that Sávitri, who had been maintained by him, died one and a half years ago.

The answer of Prabhákar (another defendant) was, that he had heard that the plaintiff was a fourth-sharer; that he did not object to the claim, but that the disputed property was not in his possession.

Amrit Shrípat, the Munsif of Chiplun, in whose court the suit was brought, found that Gopál's father had been adopted by Sávitri; that Sávitri's husband was admittedly a fourth-sharer; that she had had occupancy within twelve years; that the *phárkhat* (or release) which Pándurang had set up was not proved; and that, therefore, Gopál was entitled to the share which he claimed. He, accordingly, decreed for the plaintiff.

Against this decision Pándurang preferred an appeal in the Court of the Senior Assistant Judge at Ratnágiri. W. H. Newnham (the Acting Senior Assistant Judge, who heard the appeal) held that the adoption of Gopál's father by Sávitri was proved, but that it was invalid, because "the consent of Pándurang, who was the most concerned, as holding all the property now claimed, was not proved." He, therefore, reversed the Munsif's decision.

Against this decision a special appeal was preferred by the plaintiff. The appeal was argued before NEWTON and JANA'RDHAN, JJ.

Vishvanáth Náráyan Mandlik (with him *Ganpatráv Bháskar*) for the appellant, cited the following authorities in support of the

proposition that the consent of relatives was not necessary to make the adoption valid: *Bhasker Buchajee v. Narro Ragoonath* (a); *Abajee Dinkur v. Gungsdhur W. Gosavee* (b); *Vishram Baboorow v. Narainrow Kasee* (c); Strange's Manual of Hindú Law, para. 106; I. Strange's Hindú Law, 93, 97; Vyavahára Mayúkha, Ch. IV., Sec. V.; Morley's Dig., Vol. I., Tit. Adoption, pl. 68, 70, 72, 103, and 107; Steele's Summary, p. 50, para. 37.

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GOPAL S.
PATVARDHAN
v.
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PATVARDHAN
et al.

Dhirajlál Mathurádás, contra:—The adoption of Gopál's father took place after Gopál was born, and, therefore, he had no right under that adoption.

Vishvanáth N. Mandlik, in reply:—The objection does not apply to *sagotras*: Vyavahára Mayúkha, Ch. IV., Sec. V., 19, 20.

NEWTON, J.:—In this case we consider that the Senior Assistant Judge has erred in law in considering that the consent of the defendant Pándurang was necessary to make the adoption valid. The fact that Pándurang was in possession of the major portion of the disputed property did not make his consent essential. The reason of adoption is not merely the proper devolution of property. It is stated that one male relative of Sávitri's husband had consented, and if such consent were essential to the validity of the adoption—on which point we decide nothing in this case—we hold that the consent of one member, such as has been here held proved, is sufficient. It is urged by the respondent that Gopál, the plaintiff and special appellant here, gets nothing, because when his father, Shrídhár, was adopted by Sávitri, Gopál was already born. We are of opinion that this objection will not hold. The authority of the Mayúkha, cited by the special respondent's Pleader, settles that question in the special appellant's favour; and, the parties being of the same *gotra*, the adoption of Gopál's father is good in law. The previously-born son succeeds to the adopted. We must, therefore, reverse the decree of the Acting Senior Assistant Judge, and confirm that of the Munsif with costs.

Decree reversed.

(a) Selected Decisions S. D. A. (1820—1840) 25.

(b) 3 Morris' Rep. 420.

(c) 4 *Ibid.* 26.