*Special Appeal No. 373 of 1863.*

1863.
Nov. 16.

ANANDRA'V SIVA'JI *et al.* .....*Appellants.*
GANESH ESHVANT BOKI'L .....*Respondent.*

*Adoption—Acquiescence for a lengthened period—Presumption.*

Where an adoption had been acquiesced in for a period of thirty-three years, it was presumed that the necessary consent of some person competent to give away the adopted son had been obtained.

THIS was a special appeal from a decision by Baron De H. Larpent, Judge of the Puṇá District.

Ganesh was the plaintiff, and brought this action in the Court of the Munsif of Tallegám against Anandráv and Trimbak, setting forth that as the son of one Eshvant A'ko Bokíl, he was his heir, and, as such, was in possession of his real and personal property; that his deceased father was, during his lifetime, entitled to certain annual payments from the Treasury of the Collector of Puṇá, to which the plaintiff on his father's death ought to have succeeded, but which the Collector declined to pay to him until he should produce a certificate of heirship to his deceased father; that on applying for this certificate in the usual form he was opposed by the defendants, and that the Judge, declining to issue the certificate of heirship, referred both parties to a civil action; that the plaintiff, accordingly, brought the present action to receive a sum of Rs. 706, being the amount then outstanding, to obtain a declaratory order affirming his right to the aforesaid certificate of heirship, and to receive the amount then to the credit of his deceased father in the Collector's books.

The defendants contended that the plaintiff was the son of Eshvant, a man given in adoption, but born six or seven years before the adoption of his father was alleged to have been made, and, therefore, not entitled by right of inheritance to the pension of Eshvant; that Eshvant's adoption into the family of A'ko Sakhárám was not a valid adoption; that the defendant Anandráv was the nearest heir to the deceased; and that for these reasons the plaintiff was not entitled to the declaratory order he sought.

The Munsif of Tallegám gave judgment in favour of the plaintiff, on the ground that the objections urged to the adoption of Eshvant by Godubái, the widow of A'ko Sakhárám—namely, that there was no one to give him away in adoption, and that the person adopted had issue of his own at the time of adoption—were not such as, under

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the rulings of the Sadr Adálat, should be allowed to invalidate an adoption; that no objection was taken with respect to Eshvant's adoption until his death; and that, the adoption being valid, the plaintiff, though born to Eshvant prior to Eshvant's adoption by A'ko, was nevertheless by Hindú law as much a member of A'ko's family as Eshvant himself.

An appeal was preferred from this decision to the Judge of the District of Puná, who on the hearing of the appeal decided as follows, confirming the decree of the Munsif:—

"The Court finds that the questions for decision are—

1*st*—"Whether the adoption being informal, it is, therefore, null.

2*nd*—"If not, whether the respondent is the heir of the deceased Eshvant."

"In regard to the first question, the Sadr Adálat has decided that no point of Hindú law is more firmly decided than that an adoption made in proper form cannot be set aside, though both the giver and receiver in adoption may have committed sin in allowing it.

"It appears that on the 17th of June 1825 Mr. Chaplin wrote that if there be no objection on the part of the relatives the adoption may be permitted.

"In 1858 Eshvant died, and for a period of about thirty years was recognised as the adopted son of Godubái, and lived in the same village as the appellant Anandráv, who was perfectly aware of the fact.

"By exhibit No. 59 it appears that both defendants admitted that Eshvant was the adopted son of Godubái, for in this document, which is a *yád* in which the division of a (family) *vahivat* at Sásur is agreed on, Eshvant, deceased, is one of the contracting parties and styled Eshvant A'ko.

"The evidence to be drawn from exhibit No. 60 is of the same import. By exhibit No. 4 it appears that Anandráv stated that Eshvant had been informally adopted by Godubái; and exhibit No. 5 shows that Trimbak Govind stated the same thing.

"The evidence proves that the relatives of the deceased Godubái have tacitly consented for a period of about thirty-three years to the adoption of Eshvant, now deceased. After a period of thirty years, therefore, the son of the present respondent is called upon by the relatives of Godubái to prove that his deceased father was formally adopted. Witness No. 134 proves that the religious ceremonies were performed on the occasion, and although it appears that Go-

dubái died before the formal consent of Government was obtained; yet this fact cannot be held to invalidate the adoption.

"The Court finds that the adoption of the deceased Eshvant was valid.

"In regard to the second point, the Shástri has stated (exhibit 160, 37) that a son born previous to adoption enters the family with his father, and is, therefore, his heir.

"The Munsif's decree is confirmed, with costs on the appellant."

From this decree a special appeal was preferred by the original defendants to the High Court, on the ground among others that the Judge erred in confirming an adoption which was invalid by reason of the adoptee being an only son, of mature age, married, and having a large family, and by reason of the adoptee having given himself away in adoption; but at the hearing all the points except the last were abandoned, and the appellant took his stand on the ground that, the adoptee having given himself away in adoption, the adoption was invalid: gift, by some one other than the person being adopted, and acceptance were essentials to the validity of an adoption.

The appeal was argued before NEWTON and TUCKER, JJ.

*Vishnu Moreshvar*, for the appellants, argued that under the circumstances the adoption was invalid.

*Dhirajlál Mathurádás*, for the respondent, contended that, more than thirty years having elapsed since the adoption was said to have taken place without its being objected to, its validity could not be called in question.

PER CURIAM:—The Court considers that as the adoption has been acquiesced in, as found by the court below, for a period of thirty-three years, it must be presumed that the necessary consent of some person competent to give away the adopted son had been obtained, and that the adoption should, therefore, be upheld.

*Decree confirmed.*