

## [APPELLATE CIVIL JURISDICTION.]

1874.  
Sept. 21.

*Regular Appeal No. 72 of 1873.*

SADA'SHIV MORESHVAR GHA'TE. *Defendant and Appellant.*

HARI MORESHVAR GHA'TE,

deceased, by his adopted

son and heir GANESH..... *Plaintiff and Respondent.*

*Adoption—Acquiescence—Estoppel—Hindu Law.*

Where the defendant actively participated in the adoption of the plaintiff by the defendant's brother, and by many acts signified to the plaintiff and to his adopting father the defendant's complete acquiescence in the adoption, and thereby encouraged the plaintiff, who was an adult, to assent to such adoption, and allowed the adopting father to die in the belief that the adoption was valid, and finally concurred in the performance, by the plaintiff, of the funeral ceremonies of his adopting father :

*Held* that the defendant was estopped from disputing the validity of the adoption.

*Quære.*—Whether a Brahmin adult whose "Upanayana" and marriage ceremonies have already been performed in the family of his natural father, can be adopted into another family according to Hindu Law.

**T**HIS was a regular appeal from the decision of Vishnu Moreshtar Bhidé, First Class Subordinate Judge at Násik.

The plaintiff, Ganesh, brought this suit for a partition of the family property, moveable and immoveable, which jointly belonged to the defendant Sadáshiv Moreshtar Gháte and his deceased brother, Hari Moreshtar Gháte, on the ground that he (plaintiff) was the adopted son of the latter. The defendant, among other objections, pleaded that the "Upanayana" and marriage ceremonies of the plaintiff having taken place in the family of his natural father, before the alleged adoption, the adoption was invalid. The Subordinate Judge held the plaintiff's adoption valid, partly on the ground that an adoption once made with the necessary ceremonies cannot be set aside on such objections as those urged by the

defendant, and partly on the ground of active participation on defendant's part in the plaintiff's adoption. On the latter point, he observed :—

“Again, it has been most clearly established that the defendant has been acquainted with the fact of the plaintiff's adoption by his brother, Hari Moreshvar, ever since the day the adoption took place ; that the plaintiff had been living for several years as a member of the defendant's family ; that the ‘Munja’ of the plaintiff's son and the marriages of his two daughters took place in the defendant's family and *Gotra*, and that the plaintiff performed the obsequies of his adoptive father with his knowledge and, I may say, with the consent of the defendant. These circumstances show that the defendant has consented to the adoption of the plaintiff.”

The Subordinate Judge, accordingly, decreed in favour of the plaintiff's claim. In appeal, the defendant again took exception to the validity of the plaintiff's adoption, but was held estopped from doing so, by his long and active acquiescence in it.

The appeal was heard by WESTROPP, C.J., and KEMBALL, J., on the 21st September 1874.

*Shántárám Náráyan* (with him *Vishnu Ghanashám*) for the appellant.

*Vishvanáth Náráyan Mandlik* for the respondent.

WESTROPP, C.J. :—On the ground that the defendant was an active participator in the adoption, which he now disputes, and by many acts, mentioned in the evidence and noticed by the Subordinate Judge, signified to his deceased brother Hari Moreshvar, the adopting father, and to the plaintiff, the adoptee, his, the defendant's, complete concurrence in the adoption of the plaintiff, and thereby encouraged the plaintiff, who was an adult, to assent to such adoption, and allowed his (the defendant's) brother Hari Moreshvar to die in the firm belief that such adoption was valid, and finally concurred in the performance of the funeral ceremonies of Hari Moreshvar by the plaintiff, this Court holds the de-

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pendant to have estopped himself from disputing the validity of the adoption (see Special Appeal 50 of 1873, decided on the 6th August 1873) (a), and on this ground affirms with costs the decree of the Subordinate Judge. On the point as to the validity of the adoption, this Court deems it unnecessary to express any opinion, and the other points have not been now relied upon for the appellant.

(a) S. A. 50 of 1873 (*Chintu v. Dhondu*) was heard and decided by Westropp, C.J., and Nánábhái Haridás, J., on the 6th August 1873. The following is the judgment :—

WESTROPP, C.J.—This Court is of opinion that the defendants are prevented from questioning in this case the validity of the adoption of the plaintiff Chintu Bháskar. It is found by the District Judge that the defendants' father Dhondu Bábáji, was present at the ceremony. That adoption, whether valid or invalid, took place upwards of twenty years before the institution of this suit. The father of the defendants acquiesced in it, and showed that acquiescence conclusively by associating Chintu Bháskar with him as a co-plaintiff in a suit brought against Vithu Bál Pátel to recover this very land. In that suit, Dhondu Bábáji (the defendants' father) and Chintu Bháskar obtained a decree under which Dhondu Bábáji was put into possession of the land, he giving security to the Court to put Chintu Bháskar into possession of his share.

Under these circumstances, it is impossible, so far as regards this piece of land, to allow the defendants, whose only title is through Dhondu Bábáji, to dispute Chintu Bháskar's right to a third share in the land and to a third share of the net profits thereof from the date at which Dhondu Bábáji was put into possession up to the present day.

We decline, therefore, to enter into the question as to whether or not Bháskar could make a valid adoption. The conduct of the defendants' father renders it unnecessary and improper to entertain any such question in this suit.

We reverse the decrees of the courts below with costs of the suit and of both appeals, and decree that the plaintiff is entitled to a one-third share of the land in dispute, and that he be put into possession thereof by partition, and that the defendants do pay to him out of the property of their late father, Dhondu Bábáji, one-third portion of the net profits of the said land received by the said Dhondu Bábáji from the date at which he was put into possession of the said land under the decree against Vithu Bál Pátel until this 6th day of August 1873. The amount of such profits to be determined by the Court executing this decree.

See also *Anandráo Sivájee v. Ganesh Eshvant Bokil*, 7 Bom. H. C. Rep. Appx. xxxiii., *Gooroo Prosunno Singh v. Nil Madhub Singh*, 21 Calc. W. Rep. Civ. Rul. 84.