

## [APPELLATE CIVIL JURISDICTION.]

Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Melvill.

NARA'YAN BHAR'THI (PLAINTIFF AND APPELLANT) v. LAVING  
BHARTHI AND OTHERS (DEPENDANTS AND RESPONDENTS.)\*

*Hindu Law—Illegitimacy—Succession—Gosavis—Custom—Maintenance.*

The illegitimate son of a married woman by a *Gosavi* with whom she is living in adultery while undivorced from her lawful husband, cannot inherit his father's property.

A custom recognizing a right of heirship in an illegitimate son by an adulterous intercourse would be bad.

The right of an illegitimate son to maintenance out of his deceased father's property, cannot be decided in a suit which concerns a portion only of that property, and to which all persons in possession of the rest of the father's property are not parties.

THIS was a special appeal from the decision of J. W. Walker, Assistant Judge at Ahmedabad, reversing the decree of Motilál Lalbhái, 2nd Class Subordinate Judge at Borsad.

The plaintiff, Náráyan phárthi, sued to recover possession of a house, as the son and heir of Lilá Bhárthi, a *Gosávi*, to whom the plaintiff alleged the house to have belonged. The defence among other things was that the plaintiff, being illegitimate, was not entitled to inherit from Lilá Bhárthi. The court of first instance awarded the plaintiff's claim. In appeal, however, the Assistant Judge reversed that decree on the ground that the plaintiff was not Lilá Bhárthi's heir. He observed:—

“The judgment of the lower court shows that plaintiff's mother was not married to his father Lilá Bhárthi, and that at the time of his birth his mother was a married woman, living in adultery with Lilá Bhárthi, as she had not obtained a divorce from her husband. This finding is fully supported by the evidence, and is not, in fact, appealed against. Such being the case, the decision in *Rahi v. Govind*<sup>(1)</sup> exactly applies, and it must be held, in accordance with that decision, that the plaintiff, the child of an adulterous intercourse, cannot succeed as heir of Lilá Bhárthi his father.”

\* Special Appeal No. 124 of 1877.

(1) I. L. R., 1 Bom. 97.

*Shántarám Náráyan* for the appellant :—The Assistant Judge is wrong in deciding the present case on the authority of *Rahi v. Govind*.<sup>(1)</sup> That case, no doubt, lays down the law which governs the Hindus generally, but does not apply to the case of Gosávis like the present. The right of inheritance and succession among the members of this religious sect, is subject to special usages and customs, as appears from 1 West and Bühler, pp. 257—269, and Steele's Law and Customs of Hindu castes. App. tit. Gosávis, Secs. 20, 29, 40, 49.

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*Nánabhái Haridás*, Government Pleader, for the respondents, was not called upon.

WESTROPP, C.J. :—We concur with Mr. Walker in thinking that the principle decided in *Rahi v. Govind*<sup>(2)</sup> is applicable to Gosávis. None of the passages from Steel or 1 West and Bühler, cited by the learned pleader of the plaintiff, show the contrary. The alleged custom amongst Gosávis to recognize a right of heirship in the son of a Gosávi by a woman, who, in the lifetime of a previous husband, and without his consent, has married the Gosávi, would be a bad custom, and such as could not be treated by courts of justice as valid—*Reg. v. Karson Goja*.<sup>(3)</sup> The plaintiff, although the son of Lílá Bhárthi, being the offspring of an adulterous intercourse, cannot inherit from Lílá Bhárthi.

The Assistant Judge has found that the plaintiff was not initiated as a 'chelé' or disciple of Lílá Bhárthi: so on this ground also the plaintiff fails.

We cannot—in this suit, which concerns only one portion of Lílá Bhárthi's property, and to which all persons in possession of the rest of his property are not parties—decide whether, or to what extent, the plaintiff is entitled to maintenance.

We affirm the decree of the Assistant Judge with costs.

*Decree affirmed.*

(1) I. L. R. 1 Bom. 97.

(2) I. L. R. 1 Bom. 97.

(3) 2 Bom. H. C. Rep. 117.