

THE
INDIAN LAW REPORTS.

BOMBAY SERIES.

APPELLATE CIVIL.

(1)

Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice McNeill.

1878
January 14.

KASHMIBAI, WIDOW OF JANARDAN (ORIGINAL OPPONENT), APPELLANT v.

HAR VASUDEV TAKLE (ORIGINAL APPLICANT), RESPONDENT.*

Minor's Act (XX of 1864)—Adoption—Guardianship.

The natural father of a minor who has been adopted into another family is not by Hindu law his proper guardian when either of the adoptive parents is living and willing to act as guardian. The residence of the minor with the adoptive parents, is a part of the consideration for their adoption of a son, and unless serious ill-treatment or incompetency on their part be proved, they and the survivor of them are the proper guardians.

THIS was an appeal from the order of Ráj Báhádúr Gopálráv Hari Deshmukh, Joint Judge of Tháná, at Násik.

The appellant, who was the paternal aunt of the respondent, adopted the respondent's son. The respondent applied to the Joint Judge for a certificate of administration and Guardianship of his son, who was a minor, on the ground that the appellant did not take proper care either of his person or of his property. The appellant denied these allegations, and asserted that she was the proper guardian of her adopted son.

The Joint Judge held that the natural father was by Hindu law the proper guardian of his infant son, notwithstanding his adoption into another family, and ordered the certificate to be issued to him.

* Appeal No. 7 of 1877 under Act XX of 1864.

1878

LAKSHMIBAI
v.
SHRIDHAR
VASUDEV
TAKLE.

M. C. Apte for the appellant.—The natural father is not the proper guardian of his son during the life-time of his adoptive mother, who is willing to take care of him and his property. The Judge does not find that the mother ill-treated the son, or mismanaged his property.

Shankarām Narāyan from the respondent.—The appellant was in debt when she adopted the minor, and entrusted the management of her property to the respondent by a written agreement.

WESTROPP, C.J.—There has not been any finding by the Joint Judge that the minor was ill-treated by the appellant as alleged by the respondent. The natural father is not by Hindu law the proper guardian when either of the adoptive parents is living, if such adoptive parent be willing to act as guardian. In fact, the residence of the minor with the adoptive parents is a part of the consideration for their adoption of him, and unless ill-treatment of a serious character or incompetency on their part be established, they and the survivor of them are the proper guardians. We reverse so much of the order of the Joint Judge as conferred guardianship on the respondent, Shridhar, and cancel his certificate of guardianship, and direct that a certificate of guardianship be given to the appellant Lakshmibai, and that the minor do reside with her. The District Judge, or the Joint Judge acting for him has it in his power from time to time inform himself, either personally or by inquiry through the Subordinate Judge at Nasik, as to her treatment of the minor, so as to enable him to make such orders with respect to the custody, management, and education of the minor as may be requisite. The minor should be permitted to visit occasionally his natural father and family, and this Court hopes that all unpleasant feeling between the parties to this appeal may now be allowed to subside, and strongly advises the appellant Laskhmibai, by her discretion, care, and kindness towards her adoptive son, to render his home with her such, as neither he will desire to leave, nor his natural father to remove him from. The costs of this appeal of both parties should be borne by the estate of the minor.