

APPELLATE CIVIL.

(65)

*Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice West.*1879
GOPAL NAR-
HAR SAFRAYv.
HANMANT
GANESH
SAFRAY AND
ANOTHER.BHAGIRTHIBAI, WIDOW (ORIGINAL PETITIONER), APPELLANT, v. RADHABAI
(ORIGINAL OPPONENT), RESPONDENT.**Hindu Law—Adoption of daughter's son—Factum valet.*

Amongst Brahmans the adoption of a daughter's son is incestuous and invalid, and cannot be supported on the authority of the maxim *factum valet quod fieri non debuit*.

Gopal Narhar Safray v. Hanmant Ganesh Safray and another(1) followed.

THIS was an application by Bhágirthibái, praying, under Act XX of 1864, for a certificate of administration to the estate of her adopted son Bhimráv. She alleged that Bhimráv was a minor, being about ten years of age; that her husband had been dead about two years; that she adopted the said Bhimráv according to the desire of her husband expressed before his death; and that the minor's property consisted of annual allowances at Pandharpur and in the Baroda State. Bhágirthibai also prayed for a certificate of the minor's guardianship. The application was opposed by Bálkrishna Annáji (who died subsequently to the order of the District Court). He alleged, among other things, that Bhimráv's adoption was invalid, because he was the son of Parashráv's daughter, and the only son of his parents. The Senior Assistant Judge, on the evidence before him, found that Bhimráv was the son of Parashráv's daughter; that he was the only son of his natural parents; and that Bhágirthibái had adopted him according to the *dattak* form. He held the adoption illegal according to the Hindu law, and rejected Bhagirthibai's application.

In appeal the only question argued was whether Bhimrav's adoption was legal or illegal.

Shántárám Náráyan appeared for the appellant.*Máneksháh Jehángirsháh* appeared for the respondent.

WESTROPP, C. J.—The petitioner Bhagirthibai, alleging that she had adopted Bhimrav, the infant son of Ramchandra Kondu, prayed for a certificate of administration of his alleged estate, viz. the estate of Bhagirthibai's deceased husband, Parashram Ramchandra Paricharak, and of guardianship of the person of Bhimrav, under Act XX of 1864, during his minority.

The deceased respondent, Balkrishna Annaji, opposed the application of Bhagirthibai for three reasons: 1st, that he and her deceased husband Parashram were united in estate, and that Bhagirthibai could not adopt without the consent of him (Balkrishna), which he had not given; 2, that Bhimrav was the son of Parashram's daughter by Bhagirthibai, and that the adoption of Bhimrav was, therefore, invalid—the parties being Brahmans, and such an adoption importing incest; and, 3rdly, that Bhimrav was an only son, and could not lawfully be given in adoption by his father Ramchandra Kondu.

*Appeal No. 16 of 1875 under Act XX of 1864.

(1) *Supra*, p. 273.

The District Judge does not appear to have decided the question whether Balkrishna and Parashram were undivided, but did hold the adoption to be invalid on the ground that Bhimrav was the son of Parashram's daughter, and because Bhimrav was an only son; and, accordingly, rejected Bhagirthibai's application.

It is unnecessary for us here to enter upon the question whether Parashram and Balkrishna were united at the death of Parashram, or whether Bhimrav was an only son, and, therefore, disqualified for adoption. It is sufficient to invalidate the adoption that he was the son of Parashram's daughter. My brother West is acquainted with and approves of the grounds on which my brother Kemball and I decided to-day in *Gopal Narhar Safray v. Hanmant Ganesh Safray* (1) that amongst Brahmans such an adoption is incestuous and invalid, and cannot be supported on the ground of *factum valet quod fieri non debuit*.

We, consequently, on these grounds, without entering upon the question whether Prashram and Balkrishna were united in estate, or whether the adoption of an only son is invalid, affirm the order of the Senior Assistant Judge with costs.

(1) *Supra*, p. 273.

ORIGINAL CIVIL.

(66)

Before Sir, C. Sargent, Justice.

IN RE THE FLEMING SPINNING AND WEAVING COMPANY (LIMITED) AND THE NEW FLEMING SPINNING AND WEAVING COMPANY (LIMITED).

April 19.

H. R. CORMACK, NOWROZJI FURDUNJI AND MICHAEL ROZARIO DE QUADROS (PETITIONERS.)

Company—Winding up—Transfer of assets to New Company—Indian Companies Act (X of 1866), Sections 149-154 and 175.—Right of creditors of transferring Company—Dissentient shareholders—Sanction of Court.

By special resolutions passed on the 3rd July 1878, and confirmed on 31st July 1878, the shareholder of the Fleming Spinning and Weaving Company (Limited) resolved that the company should be wound up voluntarily, and that all the assets of the said company should be transferred by the liquidators to a new company then intended shortly to be formed and registered in Bombay, called the New Fleming Spinning and Weaving Company (Limited), and that the liquidators should receive as the consideration for such transfer certain fully paid-up shares in the new company for distribution among the shareholders of the old company. The said transfer was to be made subject to a covenant on the part of the new company to perform all the agreements and to discharge all the debts and liabilities of the old company. The new company was duly formed and registered on the same day (31st July 1878) and the specified number of share was delivered to the liquidators of the old company for distribution among the shareholders of the old company. Two of the said shareholders, J and H,

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