

ious influences which interested advisers are too apt in India to exert over women possessed of, or capable of, exercising dominion over property. It seems, therefore, to be the duty of the Courts to keep the power strictly within the limits which the law has assigned to it."

For these reasons we concur with the District Judge in holding that the attempted adoption of the plaintiff by Kondai in this case was invalid. Kondai was not authorized by her husband to adopt, and did not hold any estate in the property or interest beyond her right to maintenance. She did not obtain the consent of the manager or other members of the undivided family to which her late husband belonged. We affirm the decree of the District Judge with costs of suit and of both appeals.

Decree affirmed.

APPELLATE CIVIL.

FULL BENCH.

*Before Sir M. R. Westropp, Kt., Chief Justice, Mr. Justice Melvill,
and Mr. Justice Kembhall.*

DINKAR SITARAM PRABHU AND OTHERS (ORIGINAL DEFENDANTS),
APPELLANTS, v. GANESH SHIVRAM PRABHU (ORIGINAL PLAINTIFF),
RESPONDENT.*

July 8.

Adoption—Undivided Hindu family—Adoption by widow without the consent of her husband or his undivided co-parceners and without the authority of her husband to adopt.

A Hindu widow, who has not the estate vested in her, is not competent to adopt a son to her husband, without his authority or the consent of his co-parceners with whom he was united in estate at the time of his death.

K. and V. were two Hindu brothers. K. had a son who died in 1849 in the life-time of his father, but who was then united in interest with him (K.) K. died in 1856, leaving him surviving his two nephews, S. and P. (the sons of his brother V.), and his daughter-in-law, Y. (the widow of his predeceased son). At the time of his death, K. was united in estate with his nephews, S. and P. In 1871, Y. adopted the plaintiff as son to her husband and herself. In 1873 the plaintiff sued P. and the sons of S. (who died in the meantime) for a share in the

* Second Appeal, No. 343 of 1877.

1879

DINKAR
SITARAM
PRABHU
v.
GANESH
SHIVRAM
PRABHU.

family estate. It was found that Y. had not the authority either of her husband or of her father-in-law, K., or of any of his co-parceners to adopt.

Held that the adoption was not valid.

Held, further, that a separated kinsman was not qualified to authorize the adoption.

Ranji Narayan Durafe v. Ghamau kom Jivaji (1) referred to.

THIS was a second appeal from the decision of C. B. Izon, Judge of the District Court of Ratnagiri, reversing the decree of G. K. Bhatavdekar, Second Class Subordinate Judge at Devgad.

The facts of the case are fully stated in the judgment of the Full Bench.

The case first came before Westropp, C. J., and Kemball, J., who referred it to a Full Bench for their consideration.

Ghanasham Nilkanth Nadkarni (with him *Manekshah Jehangirshah*) for the appellants.

The Hon. Rao Saheb *V. N. Mandlik* for the respondent.

The following is the judgment of the Full Bench:—

WESTROPP, C.J.—Krishna and Vishnu were brothers. Krishna, who died in A. D. 1856, had a son, Shivram, who died in 1849 in the life-time of his father, Krishna. Yamunabai, the widow of Shivram, in A. D. 1871 adopted the plaintiff, Ganesh, as son to Shivram and herself. At the time, however, of Shivram's decease in 1849, he and his father (Krishna) were members of a family united in estate, of which family his father continued until his own death in 1856 to be a co-parcener in estate. Krishna's brother, Vishnu, had two sons, Sitaram and the defendant Parashram, both of whom survived Krishna, and were united in estate with him at his death. His funeral ceremonies were performed by Sitaram. Sitaram has since died, and left two sons, the defendants Dinkar, and Vishvanath.

The present suit has been instituted by Ganesh, who, in virtue of his adoption by Yamunabai, claims to be son of Shivram and grandson of Krishna, and, as such, entitled to a share in the family estate. The Subordinate Judge has found that none of the co-parceners, who survived Krishna, assented to the adoption, and that Krishna had not in his life-time, as contended by Yamunabai, directed or granted permission for the adoption of the plaintiff,

(1) See *supra*, p. 498.

which was not made until fifteen years after the death of Krishna. The District Judge does not appear to quarrel with those conclusions. It has not been pretended that Shivram had granted any permission to Yamunabai to adopt. Yamunabai resides in a house which Sitaram built for her, and is treated by the District Judge as in possession of part of the family property; but this cannot be regarded as a partial partition of the family estate, or as more than an allotment to Yamunabai on account of maintenance and residence, as being the widow of a deceased co-parcener; and such house and property will, on her decease or marriage, fall again into the family estate. The defendants alleged that, by her incontinence, Yamunabai was disqualified from adopting, but both the Subordinate and District Judges held that such incontinence was unproved.

On the ground that Krishna had never authorized the adoption of the plaintiff by Yamunabai, and that Shivram, Krishna, and his nephews Sitaram and Parashram, the sons of Vishnu, formed an undivided family, and had never assented to the adoption of the plaintiff, and that Yamunabai had made the adoption from vindictive motives towards the defendants, and not on religious grounds, the Subordinate Judge dismissed the plaintiff's suit, and directed the parties respectively to bear their own costs of the suit.

The District Judge—holding the consent of relations to be unnecessary to the validity of adoption by a widow in this Presidency, and also laying some stress on the circumstance that Dhond Prabhu (the natural father of the plaintiff) was, though separated from Shivram in estate, as nearly related to him as the defendants, and had assented to the adoption, and further holding that the adoption was not from improper motives—reversed the decree of the Subordinate Judge, and remanded the cause for retrial on certain other issues, which the Subordinate Judge had not determined.

The defendants made a second appeal to the High Court, which, coming on for hearing before Westropp, C.J., and Kemball, J., was referred by them to the same Full Bench to which *Ramji v. Ghamau* (1) stood referred.

(1) *Supra*, p. 498.

1879

DINKAR
SITARAM
PRABHU
v.
GANESH
SHIVRAM
PRABHU.

1879

DINKAR
SITARAM
PRABHU
v.
GANESH
SRIVRAM
PRABHU.

The reasons for which we have to-day refused to sustain the adoption in the case of *Ramji v. Ghamau* are applicable in this case. It is, therefore, unnecessary to repeat them here. Yamunabai not having the estate vested in her, and not having the authority of her husband, Krishna, or of any of his co-parceners to adopt, and Dhond Prabhu being a separated kinsman of Krishna, and, therefore, not qualified to authorize the adoption (*Sri Raghunadha v. Sri Brozo Kishoro* (1)), it is impossible to hold the adoption of the plaintiff to be valid. We, therefore, reverse the decree of the District Judge, and restore that of the Subordinate Judge. The plaintiff must pay to the defendants their costs of the suit and of both appeals.

Decree reversed.

(1) L. R., 3 Ind. Apps., 154, 191, 593.

APPELLATE CIVIL.

Before Mr. Justice Melvill and Mr. Justice Kembell.

MORO DESAI (ORIGINAL PLAINTIFF), APPELLANT, v. RAMCHANDRA
DESAI AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Evidence—Ejectment—Burden of proof.

In an ejectment suit where the plaintiff claims land from which he alleges that he has been dispossessed, the general rule is that the burden is upon the plaintiff to show possession and dispossession within twelve years, or, at least, that the cause of action arose within twelve years; and this rule is not intended to be interfered with by the Privy Council in *Radha Gobind Roy v. Inglis* (1)

THIS was a second appeal against the decision of J. W. Walker, Acting District Judge of Ratnagiri, confirming the decree of Rao Saheb Krishnaji Bapuji Bal, Subordinate Judge of Ratnagiri.

This was a suit in the nature of an ejectment brought in September, 1869, by the plaintiff to recover possession of some lands and other immoveable property, as well as to recover damages for the removal of a certain house and the cutting-down of certain trees. The plaintiff also asked that an account might be taken as to the lands held by the defendant, Ramchandra, as a mortgagee, and that he might be allowed to redeem the said lands

* Second Appeal, No. 392 of 1891.

(1) 7 Calc. L. R. 364.

1882

February 14.