

spiritual efficacy of the eldest son was exhausted," the adoption could be of no spiritual benefit to the adopting father. We are unable to understand what may be meant by the expression "spiritual efficacy". The importance of having a son is, as stated by Vasishta, "that he may raise up progeny for the obsequies." Whether, therefore, we regard the texts in the Hindu books of authority in this Presidency, or the reason of such qualified prohibitions as are to be found in them, there would appear to be no sufficient ground for treating the prohibition of the adoption of an eldest son as more than admonitory or as creating any legal restriction. The decree of the Court below must, therefore, be confirmed, with costs.

1883

---

 KASHIBAI  
 v.  
 TATIA.

*Decree conferred.*

---

### APPELLATE CIVIL.

---

*Before Mr. Justice Melvill and Mr. Justice Pinhey.*

JAMNABAI, WIDOW OF NAHALCHAND (ORIGINAL DEFENDANT), v.  
 RAYCHAND NAHALCHAND (ORIGINAL PLAINTIFF), RESPONDENT.\*

1883

---

 February 20.

*Hindu law—Adoption—Eldest son—Presentation by the uncle—Maintenance for widow.*

A Hindu widow, who adopts a son after the death of her natural born son, divests herself of her estate. *Vellanki Venkata Krishna v. Venkata Rama Lakshmi* (1) followed.

Where the father of a boy gave his formal consent to the adoption of his son, but was prevented by sickness from attending the adoption ceremony, and delegated to his brother the duty of making the presentation, it was held that the adoption was nevertheless valid.

Adoption of the eldest son upheld. *Kashibai v. Tatia* (2) followed.

The High Court being impressed with the propriety of not allowing the adopted son to recover the whole property from the widow—his adoptive mother—until proper provision had been made for her maintenance, added a declaration to the decree made in his favour, that he do take the property awarded to him subject to the obligation to provide a sufficient maintenance for the widow, and directed that the Court executing the decree should determine what was a proper and sufficient maintenance for the widow, and should secure the same, either by directing an investment of a sufficient part of the estate in trust for that purpose, or by such other means as it might deem sufficient.

---

\* Regular Appeal, No. 72 of 1881.

(1) I. L. R., 1 Mad., 174.

(2) *Ante*, p. 221.

1883

JAMNABAI

v.

RAYCHAND  
NAHAL-  
CHAND.

THIS was an appeal against the decree of Rav Bahadur G. G. Phatak, Subordinate Judge (First Class) of Thana at Nasik.

The plaintiff sued to recover possession of the family property in the possession of the defendant, alleging that the defendant, a sonless widow, adopted him as son and heir on the 18th of November, 1873; that since the date of the adoption he and the defendant were in the habit of managing the family affairs for some time; that after the adoption his marriage was celebrated by the defendant; that discord having since arisen between the two, the plaintiff was ejected from the family house and deprived of all the family property, and that the defendant had alienated and was alienating the family property in favour of her daughters and sons-in-law.

The defendant among other things denied the fact of the adoption, and asserted its invalidity.

The Subordinate Judge held that the adoption was proved and was valid; and awarded possession of such of the property, moveable and immoveable, as he found the defendant to be in possession of. The defendant appealed to the High Court.

*Nanabhai Haridas*, Government Pleader, for the appellant.—The adoption was not proved. In any case it took place after the death of the defendant's natural born son. This son was the last full owner, and when he died the defendant inherited from him. The defendant, therefore, could not be deprived during her life-time of the estate so inherited from her son in consequence of the subsequent adoption of the plaintiff. The adoption ceremonies were insufficient. Neither the father nor the mother of the boy was present at the adoption. The plaintiff, moreover, is the eldest son of his natural father, and, as such, his adoption is invalid. The Subordinate Judge in any case should have provided for the defendant's maintenance before making an order for the delivery of the family property to the plaintiff.

*Shantaram Narayan* for the respondent.—The adoption was fully proved. The gift and acceptance of the boy took place before the performance of the ceremonies. It was only the formal presentation which was made by the brother of the plaintiff's natural father, who was unwell. The adoption of an eldest son is

not invalid. The question whether a widow is deprived of her estate in consequence of her adoption of a son after the death of her natural born son, seems to have been decided against the widow in *Vellanki Venkata Krishna v. Venkata Rama Lakshmi* (1). The decree of the Subordinate Judge is, therefore, correct, and should be confirmed.

1883

---

JAMNABAI  
v.  
RAYCHAND  
NAHAL-  
CHAND.

MELVILL, J.—The evidence, in our opinion, is sufficient to establish the *factum* of the adoption. The witnesses for the plaintiff state that the defendant went to the plaintiff's natural father Giga, and asked him to give his eldest son in adoption—the eldest son being preferred by the defendant, because he was of an age to assist her in her business; that Giga consented; that the defendant afterwards sent for the boy; and that a ceremony of adoption was gone through in defendant's house. Defendant afterwards spent a large sum of money on plaintiff's marriage, and her own explanation of this is absurd. The only reasonable explanation is that she recognized the plaintiff as her son. Three months after the adoption we find plaintiff deposing in suits brought by the defendant that he was the defendant's adopted son. The evidence of the defendant and her witnesses on the other side, to the effect that no adoption took place, is utterly unreliable.

It is contended that even though an adoption took place, it would not have the effect of divesting defendant of her estate, because she inherited from her son, and not from her husband. But this question was considered by the Judicial Committee in *Vellanki Venkata Krishna v. Venkata Rama Lakshmi* (1), and it was evidently their Lordships' opinion that a widow, who adopted a son after the death of her natural-born son, would divest herself of her estate.

Another objection taken to the adoption is that the ceremony was invalid, because the father of the boy was not himself present, but was represented by his brother. But there had been previously a formal consent to the adoption by the father; and, in the absence of authority to the contrary, we are not disposed to differ from the opinion of the Subordinate Judge, that the

---

(1) I. L. R., 1 Mad., 174.

1883

JAMNABAI  
v.  
RAYCHAND  
NAHAL-  
CHAND.

father, being prevented by sickness from attending at the ceremony, might delegate to his brother the duty of making the formal presentation to the adoptive mother.

The last objection taken to the adoption was that the plaintiff was the eldest son of his father, and, therefore, could not be adopted. This question has been set at rest by the recent decision of this Court in *Kashibai v. Tatia* (1).

For these reasons we think the decree of the Subordinate Judge was right. But there have been several decisions of this Court which have recognized the propriety of not allowing a plaintiff to recover the whole property from a widow, until proper provision has been made for her maintenance. One of these decisions is that of *Vrandavandas v. Yamunabai* (2). In accordance with this practice we confirm the Subordinate Judge's decree in all particulars, but we add to it a declaration that the plaintiff takes the property awarded to him, subject to the obligation to provide a sufficient maintenance for the defendant; and we direct that, when executing the decree in the plaintiff's favour, the Subordinate Judge do determine what is a proper and sufficient maintenance for the defendant, and do secure the same, either by directing an investment of a sufficient part of the estate in trust for that purpose, or by such other means as he may deem sufficient.

The defendant must pay the costs of this appeal.

*Decree confirmed.*

(1) *Ante*, p. 221.

(2) 12 Bom. H. C. Rep., 229.