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and the judgment-creditor did not, by taking part of what was due to him as he could get it, forfeit or postpone his right to the residue.

We therefore reverse the decree in appeal and restore that of the Court of first instance with all costs on the respondent.

Decree reversed.

12 B. 326.

12 B. 329.

[329] APPELLATE CIVIL.

Before Mr. Justice Nanabhai Haridas and Mr. Justice Jardine.

GOPAL ANANT (*Original Defendant*), *Appellant v.* NARAYAN GANESH (*Original Plaintiff*), *Respondent.**

[2nd February, 1888.]

Hindu Law—Adoption by an unmarried man.

Adoption by an unmarried man is not invalid.

SECOND appeal from a decision of F. C. O. Beaman, Acting Assistant Judge of Satara.

This was a suit brought by the plaintiff to have it declared that he was the adopted son of one Ganesh, who was a vatandar kulkarni of the village of Angapur in the Satara District, and that as such he was entitled to a one-half share in the vatan.

The defendants, who were co-sharers with Ganesh, denied the fact of the plaintiff's adoption, and also contended that Ganesh being an unmarried man could not adopt.

The Court of first instance rejected the plaintiff's suit on the ground that the fact of adoption was not proved.

The plaintiff appealed to the Assistant Judge, who reversed the lower Court's decision with the following remarks :—

" I consider it constructively certain that the plaintiff was adopted in proper form and given in adoption by his natural father. We are in no doubt as to the intention of the adopter ; we have on the record a letter written by him to the Deshpande concordantly with customary usage stating that the adoption took place on a certain date. * * *"

Defendant Gopal preferred a second appeal to the High Court.

Ganesh Ramchandra Kirloskar, for the appellant :—Ganesh, the adoptive father of the plaintiff, being unmarried could not effect a valid adoption. The Hindu law permits adoption when the possibility of issue is extinct, and until a man marries he cannot be said to be hopeless of issue. A Grihasta, *i.e.*, a married man, alone can adopt. Reference was made to West and Buhler, pp. 918 and 919, 905 ; Steel (new ed.), 182 ; *Ibid*, p. 43, ch. IV and V, pl. 36 ; Vy. Mayukha, sl. 45 and 70.

[330] *Shamrav Vithal*, for the respondent :—The Hindu law does not prohibit adoption by an unmarried man. The only condition is that the adopter should be without a son. A bachelor is capable of adopting : see Mayne's Hindu Law, s. 96. Marriage is a mere Sanskar. A Brahmachari can adopt, see West and Buhler, 943, 3rd Ed. A sonless man (Aputra) includes an unmarried man : Strange's Hindu Law, pp. 65-66.

* Second Appeal, No. 557 of 1885.

A widower can adopt, see *N. Chandvasekharudu* v. *N. Bramhanna* (1), and the same argument must apply in the case of an unmarried man.

JUDGMENT.

NANABHAI HARIDAS, J.—The fact of the plaintiff's adoption by the deceased Ganesh Gopal is held proved by the lower Court. The only question we have to determine, therefore, is its validity. It is urged on behalf of the appellant that it is not valid because, Ganesh Gopal was not a married man at the time of the adoption. No authority is shown to us in support of the contention that an adoption by an unmarried man is invalid, nor are we aware of any such. The Hindu law lays down generally that one who is sonless may adopt; and, in the absence of any text or judicial decision to the contrary, we do not think we should be justified in putting any restriction upon the power so generally given. The argument pressed upon us in support of the invalidity of the adoption is very much the same as that unsuccessfully urged in *N. Chandvasekharudu* v. *N. Bramhanna* (1); and we agree in the view taken of the Hindu law by the learned Judges who decided that case. It is true that that was the case of a widower, and not of an unmarried man as here; but we think the reasoning adopted there applies as well to the present case.

We must therefore confirm the decree of the lower Court with costs.

Decree confirmed.

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12 B. 331=12 Ind. Jur. 430.

[331] APPELLATE CIVIL.

Before Mr. Justice Nanabhai Haridas and Mr. Justice Jardine.

NANABHAI AND FOUR OTHERS (*Original defendants*), *Appellants v.* SHRIMAN GOSWAMI GIRDHARIJI (*Original Plaintiff*), *Respondent.**
[13th February, 1888.]

Hindu Law - Property dedicated to idol—Trustee—Primogeniture—Takait Maharaj, office of—Deposition from office by Sovereign Prince—Effect of order of deposition—Jurisdiction.

By the custom of primogeniture obtaining in his family, the plaintiff succeeded to the office of Takait Maharaj, and came into possession of all the property dedicated to the family idol of Shri Nathji. He resided at Nathdwar within the territories of the Rana of Udepur in Mewar. Part of the dedicated property was at Poona. The first four defendants managed this portion of the property for the plaintiff. They collected the rents and transmitted them to him from time to time. In 1876 the Rana deposed the plaintiff for alleged misconduct, deported him from his territories, and proclaimed the plaintiff's son (defendant No. 5) as Takait Maharaj. The defendants having refused to pay over the rents and to deliver the Poona property to the plaintiff, the plaintiff brought the present suit to recover possession. The plaintiff's son was made a co-defendant on his own application. The defendants denied the plaintiff's right to the property on the ground that he had been deposed and banished by the Rana, and the fifth defendant (the plaintiff's son) claimed to be Takait Maharaj, and as such to be entitled to all the Devasthan property. The lower Court made a decree in favour of the plaintiff. On appeal by the defendants to the High Court.

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* Appeal No. 27 of 1885.

(1) 4 M. H. C. R. 270.