

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

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JUDGMENT.

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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.

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—Takaik 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 Takaik 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 Takaik 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 Takaik 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.

* Appeal No. 27 of 1885.

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

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Held, that the plaintiff was entitled to the property in dispute. The order of the Rana could not be regarded as a foreign judgment between the parties. That order, whatever its effect might be within the territories of the Rana, could not affect the property situated in Poona beyond his jurisdiction. It has descended to the plaintiff on the death of his father in virtue of the custom of primogeniture obtaining in his family. Whether he took it as owner or as trustee for the idol and shrine was immaterial, for in either case he had a right to possession. If he took it as owner he had not in law lost his right as such in consequence of the Rana's act. If he held merely as a trustee he had not yet been removed from his office by any competent tribunal.

[R., 17 B. 600 (612) ; D., 20 B. 495 (500).]

APPEAL from a decision of Khan Bahadur M. N. Nanavati, First Class Subordinate Judge at Poona.

The office of high priest (Takait Maharaj) of the idol Shri Nathji was held for generations by the eldest son of the eldest branch of the plaintiff's family. The plaintiff as eldest son succeeded to the office, and obtained possession of the idol and [332] of all the property dedicated to it. Part of the property was situated in Poona. The plaintiff resided at Nathdwar within the territories of the Rana of Udepur in Mewar, and he employed the first four defendants to manage the property at Poona, to receive the rents &c., and transmit them to him. He held the office of high priest and received the income of the property until the year 1876, in which year certain disputes of a political character arose between himself and the Rana, the result of which was that the Rana deposed and banished him from Udepur and proclaimed his (the plaintiff's) son Shri Goverdhan (defendant No. 5) as Takait Maharaj.

The first four defendants thereupon ceased to pay over the rents of the Poona property to the plaintiff. In 1880 he filed this suit against them to recover possession of the property.

The plaintiff's son Shri Goverdhanlalji (defendant No. 5) was made a co-defendant on his own application. He denied the plaintiff's right to recover on the ground that he had been deposed and banished by the Rana, who had made over the property to him (the defendant).

The Subordinate Judge of Poona made a decree in favour of the plaintiff.

The defendants appealed to the High Court.

Jardine (instructed by Bhaishankar of Messrs. Jefferson, Bhaishankar, and Dinsha), for the appellants:—The income of the property must be applied to the use of the idol Shri Nathji, and the plaintiff having been deposed is no longer entitled to receive it. The Rana had full power to depose the plaintiff for his conduct and he is no longer the Takait Maharaj. It was only in virtue of holding that office that he received the income of the dedicated property. The fifth defendant has been declared the Takait Maharaj by the Rana, whose order cannot be questioned.

Latham (Advocate-General) instructed by Messrs. Hore, Conroy, and Brown, for the respondent:—The plaintiff succeeded to the property in virtue of his office and by the custom of primogeniture. The Rana had no power to depose him from the office. There is no precedent for such an act. The property [333] dedicated to the idol came into the plaintiff's hands on his succession either as his own private property or as trustee. In neither case can the Rana of Udepur deprive him of the property at Poona. If the plaintiff held it merely as trustee he is entitled to retain it until removed from office by the proper tribunal, *viz.*, a British Court. The plaintiff's banishment from the territories of Udepur does not

deprive him of his trusteeship or of the office of Takait Maharaj. So long as he is living his son (defendant No. 5) has no right to that office.

JUDGMENT.

NANABHAI HARIDAS, J.—We are of opinion that this appeal should be dismissed with costs. It is established, and indeed was never denied, that the plaintiff, as the Takait Maharaj, by right of primogeniture obtaining in his family for generations past, was in possession of the idol of Shri Nathji belonging to the family and inherited from his ancestor Vithalnathji, with all the property dedicated to that idol, till 8th May, 1876. The property now in dispute is admittedly a part of such property; and the Subordinate Judge has found, and we think rightly, upon the evidence, that all the defendants except the defendant No. 5, were holding the same as his agents, the same having been made over to them for management as the plaintiff was residing at Nathdwar within the territory of the Rana of Udepur in Mewar. In this suit by the plaintiff to recover such property from them, the defendant No. 5, who is his son, was made a party-defendant on his own application, in order to enable him to contest the plaintiff's right if he could. The son put in a written statement denying that the plaintiff had now any right to recover. He urged that the Rana had deposed the plaintiff from the *gadi* of Takait Maharaj and deported him from his territory; that he himself had been placed on such *gadi* by the Rana in 1876; and that, therefore, he was entitled to possess and manage all the property belonging to the idol. The fight is thus one really between the father and the son. The fact of such deposition and deportation is not denied by the plaintiff. It was in consequence of some disputes of a political character between the Rana on the one side and the plaintiff on the other that the deposition and deportation took place. What those [334] disputes were it is not necessary for us to enquire. It is enough for us to say that the Rana's order cannot be regarded as a foreign judgment between the parties. Being an independent prince within his own territory we are not called upon to pronounce any opinion as to the propriety of his act or as to its effect within such territory. But the property in dispute in this case is situated in the Poona district, beyond his jurisdiction, and is governed by the law obtaining there. That property descended to the plaintiff on the death of his father several years ago, and, as found by the Subordinate Judge, was held by him through his agents, defendants Nos. 1 to 4, until his son, defendant No. 5, asserted his own right to it under the Rana's order. It has not been shown to us that the Rana has ever before deposed a high priest from his office on any ground whatever. The right of primogeniture obtaining in the family, the son has no right to it during the father's lifetime. The Subordinate Judge is therefore right in awarding possession to the plaintiff. Whether the plaintiff is the owner of it as well as of the idol and the shrine, or merely a trustee for the idol and the shrine, is a question which does not really arise in this case, for in either case he is entitled to recover possession. If he is the owner of the idol and of all the property dedicated to it by his followers from time to time, as he alleges he is, he has not, we think, in law lost his right as such in consequence of the Rana's act. If he is merely a trustee, he has not yet been removed from his office by any competent tribunal. Such being the case, we must confirm the decree of the Subordinate Judge and dismiss the appeal with costs.

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Decree confirmed.