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[312] APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Candy.

YASHVANT PUTTU SHENVI (*Original Defendant*), *Appellant* v. RADHABAI AND ANOTHER (*Original Plaintiffs*), *Respondents*.*
[2nd October, 1889.]

Estoppel—Admissions—Indian Evidence Act (1 of 1872), ss. 31 and 115.

A., a Hindu, died, leaving him surviving a mother B. and three sisters. A. had a brother P., who had been given in adoption to his maternal uncle R. On A's death his property devolved on his mother B. B mortgaged the property to the defendant. The mortgage bond was attested by P., who described himself as the adopted son of R. The defendant obtained a decree on the mortgage, and himself became the auction-purchaser at the execution sale. Thereupon A's sisters sued, as reversionary heirs, for a declaration that the sale to the defendant was valid only to the extent of B.'s life-interest in the property sold. The defendant pleaded that P's adoption was invalid, that on A's death the property vested in P., and that the plaintiffs had, therefore, no interest in the property in dispute. The Court of first instance allowed these pleas and dismissed the suit. The appellate Court held that the description in the mortgage-bond that P. was the adopted son of R., amounted to an admission of the adoption by the defendant (mortgagee), and that he was, therefore, estopped from contesting the adoption.

Held, that the defendant was not estopped. The mere fact that P. was described in the mortgage-bond as R 's adopted son, was not any evidence of an admission; and even if it were, it was not conclusive proof of the adoption (s. 31 of the Indian Evidence Act I of 1872.)

Held, further, that the fact treated by the lower appellate Court as an estoppel had no such effect, as it had not caused or permitted the plaintiffs to believe the adoption to be valid, and to act upon such belief.

THIS was a second appeal from the decision of Arthur H. Unwin, acting District Judge of Kanara, in appeal No. 207 of 1885 of the District File.

The property in dispute originally belonged to one Mangba Shenvi. He died, leaving him surviving a son Subraya, a widow Parvatibai, and three daughters—Radhabai and Lakshmibai (plaintiffs) and Annapurnabai (defendant No. 5).

Mangba had another son, Pundlik, who was given in adoption to his maternal uncle Raghunath.

[313] Subraya died soon after his father, leaving neither widow nor any child. The property in dispute thereupon devolved on his mother Parvatibai.

On the 8th January, 1877, Parvatibai mortgaged the property in dispute to the defendant No. 1.

The mortgage-bond was attested by Pundlik, who described himself as the adopted son of Raghunath.

Defendant No. 1 obtained a decree on this mortgage against Parvatibai, and at the Court sale held in execution of this decree himself became the purchaser of the mortgaged property.

Thereupon the present suit was filed by Radhabai and Lakshmibai as reversionary heirs of Subraya, praying that the sale to the defendant No. 1 might be declared void after the death of the widow Parvatibai.

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* cond Appeal No. 425 of 1888.

The defendant No. 1 pleaded that the plaintiffs had no interest in the property in dispute, that Pundlik's adoption was invalid under the Hindu law, and that, therefore, on Subraya's death the property in dispute passed by right of survivorship to Pundlik, that Pundlik had acquiesced in the mortgage effected by Parvatibai in 1877, and that the execution-sale was valid and binding on the family.

The Subordinate Judge held that Pundlik's adoption was invalid, on the ground that a sister's son could not be validly adopted under the Hindu law, that at the date of the mortgage-bond executed by Parvatibai in favour of defendant No. 1 the property was vested in Pundlik, that he had ratified and acquiesced in the mortgage, and that the sale to the defendant No. 1 was valid. On these grounds the suit was dismissed.

On appeal, the District Judge held that the mortgage-debt was not contracted for the benefit of the family, and that the defendant No. 1 was estopped from disputing Pundlik's adoption. The following extract from his judgment gives his reasons :—

"Dealing then, as he did, with a Hindu widow, it behoved defendant No. 1 to be circumspect, and to inquire beforehand into the exact nature of her title, and the whole onus is on him to show that he did so, and that the debt which he enabled her **[314]** to discharge was a family debt. Now I hold, with appellant's pleader, that defendant No. 1 is estopped from denying the validity of Parvati's son Pundlik's adoption by Raghunath, his maternal uncle, inasmuch as the mortgage-deed attested by "Pundlik, son of Raghunath" as it is, in effect very clearly informs the mortgagee that Parvati borrows the money from him out of natural affection for, and in order to free her son Pundlik, though he had become a member of *another* family. The mortgagee must be presumed to know the law, and to contemplate the risk he incurred. There is no reason, then, to go into the facts, or inquire into the validity, according to any caste custom, of Pundlik's adoption."

For these reasons the District Judge reversed the decision of the Subordinate Judge and passed a decree in plaintiff's favour, declaring that the mortgage-deed and sale certificate held by defendant No. 1 were valid as far as Parvati's right, title and interest in the property were concerned, and for the term of her life only.

Against this decree defendant No. 1 preferred a second appeal to the High Court.

Ghanasham Nilkant, for appellant :—The lower Court has completely misunderstood the law of estoppel. There can be no estoppel in a case like this. The defendant No. 1 never made any representation to the plaintiffs, nor did any other act so as to lead them to believe that the adoption was valid, and to act upon such belief. The mere description in the mortgage-deed that Pundlik was adopted, does not amount to an admission on our part of his adoption. Refers to s. 115 of the Evidence Act (I of 1872) ; *Kuvarbai* v. *Mir Alam Khan* (1) ; *Vishnu* v. *Krishnan* (2) ; *Rajnarain Bose* v. *Universal Life Assurance Co.* (3).

Pandurang Balibhadra, for respondent :—The defendant is estopped by his conduct from disputing Pundlik's adoption. He dealt with the widow, not as mother and guardian of Pundlik, but as proprietor of the estate. He treated Pundlik as the adopted son of Raghunath, and as

(1) 7 B. 170. (2) 7 M. 3. (3) 7 C. 594.

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having no interest whatsoever [315] in his natural father's property. The mortgage-bond bears Pundlik's attestation as adopted son, and the mortgagee raises no objection to it. He cannot now turn round and contest the adoption. Assuming that the defendant is not estopped, still the lower Court ought to have considered whether the adoption was not valid according to the custom of the caste to which the parties belonged, or the usage of the district—*Vayidinada* v. *Appu* (1).

JUDGMENT.

JARDINE, J.—We are of opinion that the District Judge has, as is admitted by Mr. Pandurang for the respondents, relied on the fact that in the mortgage-deed executed by the widow Parvatibai, her son Pundlik, for whom the loan was incurred, is described as the son of one Raghunath, who is said to have adopted him. The District Judge has assumed upon this fact that the third defendant Lakshman, the mortgagee, must have admitted the adoption: and treating this as an estoppel, he has reversed the Subordinate Court's decree without deciding upon the merits.

We are of opinion that in so doing he has committed an error of law which requires us to remand the cause. Even if we assume, for the purpose of argument, that the fact is any evidence of an admission, we must remember that, under s. 31 of the Indian Evidence Act, admissions are not conclusive proof. But under any circumstances the fact treated by the District Judge as an estoppel has no such effect, unless it has caused or permitted the other person to believe a thing to be true and to act upon such belief. This is expressly stated in s. 115 of the Evidence Act and expounded in the cases of *Vishnu* v. *Krishnan* (2), *Rajnarain Bose* v. *Universal Life Assurance Co.* (3) and *Kuvarbai* v. *Mir Alam Khan* (4). The District Judge has, in our opinion, failed to perceive the difference between an estoppel and a fact which may or may not be evidence of an admission.

We now remand the cause to the District Court to a re-hearing on the merits. Costs to follow the final decree.

Decree reversed and case remanded.

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14 B. 316.

[316] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Scott, and Mr. Justice Candy.

HEPTULA SHEKH ADAM AND COMPANY, *Executants*; ESAFALI ABDUL ALI, *Executee.** [2nd December, 1889.]

Stamp Act I of 1879, sch. I, art. 5 - Document acknowledging receipt of money for future sale of shares of a company and promising to execute a packa *document of sale—Construction.*

A document whereby the party executing it purported to sell his right, title and interest in certain receipts for shares, and to execute in future a *packa* document of sale thereof, and acknowledged the receipt of Rs. 10,001.

Held, to be an agreement, and, as such, liable to a stamp duty of 8 annas under sch. I, art. 5, of the Stamp Act I of 1879, the property in the receipt not being intended to pass forthwith.

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* Civil Reference, No. 20 of 1889.

(1) 9 M. 44. (2) 7 M. 3. (3) 7 C. 594. (4) 7 B. 170.