

1892 SEP. 2. ORIGINAL CIVIL. that "no order should be made within one month" cut down or qualified by words equally plain and unmistakeable, and that we should not have been left to extract that intention by such a laboured and difficult process of argument as with the words as they now stand is required.

17 B. 154=  
Chitty's  
S. C. C. R.  
345.

17 B. 162.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

GAUSKHA (*Original Plaintiff*), Appellant v. ABDUL ROPKHA AND ANOTHER (*Original Defendants*), Respondents.\* [4th February, 1892.]

*Decree against a sirdar—Political Agent's Court—Death of the sirdar—Application for execution against the heirs—Change of status—Jurisdiction—Civil Court—Section 649, para. 2, of the Civil Procedure Code (Act XIV of 1882).*

A *sirdar* against whom a decree was passed in the Court of the Political Agent having died, the decree-holder applied for execution against his heirs. The [163] Political Agent rejected the application, holding that he had no jurisdiction over the heirs who were not *sirdars*. The decree-holder then applied for execution to the Court of the First Class Subordinate Judge of Dharwar, who would have had jurisdiction to try the suit if the deceased defendant had not been a *sirdar*, but that Court also rejected the application on the ground that s. 649, para. 2 of the Civil Procedure Code (Act XIV of 1882) applies in cases where the territorial jurisdiction of the Court is changed, and not where the status of the parties is changed, and that the decree-holder should obtain a declaration that the decree was binding against the heirs, who were not *sirdars*.

*Held*, reversing the order, that the terms of the section are general, and draw no distinction as to the nature of the cause which puts an end to the jurisdiction.

THIS was an appeal from the decision of Rao Bahadur Kasinath Balkrishna Marathe, First Class Subordinate Judge of Dharwar.

A decree was passed in the Court of the Political Agent at Kolhapur against one Abdul Rophkha, a *sirdar* and *jaghirdar* of Bad in the Dharwar District. After the passing of the decree, Abdul Rophkha died, and the applicant Gauskha, *jaghirdar* of Bad, presented an application for execution of the decree against Hasan and Mahamadkha, sons and heirs of the judgment-debtor, Abdul Rophkha. The Political Agent rejected the application on the ground that he had no jurisdiction over the sons who were not *sirdars*. The applicant, thereupon, applied to the Court of the First Class Subordinate Judge of Dharwar, who declined to pass an order for execution, being of opinion that s. 649, para 2, of the Civil Procedure Code (Act XIV of 1882) "does not give jurisdiction in cases wherein there is a change of status of the parties to the decree. The said section has full scope in cases where the territorial jurisdiction of Court is changed, and not in cases where the status of the parties is changed. I am inclined to think that the plaintiff must obtain a declaration that his decree against the father, who was a *sirdar*, is binding on the heirs, although they are not *sirdars*." The Subordinate Judge accordingly rejected the application.

The applicant appealed to the High Court.

*Shamrav Vithal*, for the appellant.

*Mahadeo Waman Bhat*, for the respondents.

\* Appeal No. 111 of 1891.

## JUDGMENT.

SARGENT, C.J.—The Subordinate Judge considers that s. 649, para. 2, of the Civil Procedure Code Act (XIV of 1882) does not [164] apply to this case, because the jurisdiction of the Political Agent to execute the decree has ceased by reason of the change of status of the heirs, but the terms of the section are general, and draw no distinction as to the nature of the cause which puts an end to the jurisdiction. We may remark that this section has already been held applicable in *Vishnu v. Krishnarao* (1) to a case of this nature. As it is admitted by the pleader for the respondents that the First Class Subordinate Judge of Dharwar would have had jurisdiction to try the suit had the deceased defendant not been a *sirdar*, we must reverse the order and send the case back for the Court below to dispose of the application for execution. Costs to abide the result.

*Order reversed and case sent back.*

17 B. 164.

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.*

KRISHNARAV TRIMBAK HASABNIS (*Original Plaintiff*), Appellant v.  
SHANKARRAAV VINAYAK HASABNIS AND ANOTHER (*Original*  
*Defendants*), Respondents.\* [10th February, 1892.]

*Hindu law—Adoption—Adoption by a mother who has succeeded as heir to her son after the death of his widow.*

An adoption to herself and her deceased husband by a mother who has succeeded as heir to her son after his death and that of his widow is invalid according to Hindu law.

[N.F., 24 Ind. Cas. 999 = 27 M.L.J. 306 = 16 M.L.T. 413; Appr., 26 B. 526 (528, 531, 532); (F.B.); R. 17 B. 551 (554 & 556) (F.B.); 20 B. 250 (259); 22 B. 416 (418, 419, 420); 23 B. 327, (330, 331, 334); 25 B. 306 (311); 33 C. 1306 = 4 C.L.J. 357 = 11 C.W.N. 12 (18); D., 19 B. 331 (336).]

THIS was an appeal from the decision of Khan Bahadur L. G. Fernandez, First Class Subordinate Judge of Poona.

One Trimbak died, leaving a widow, Gangabai, and son, Sadashiv, surviving him. Sadashiv afterwards died childless, leaving a widow, Anpurnabai, who also died. Upon her death her mother-in-law, Gangabai, succeeded as Sadashiv's heir. On the 2nd October 1885, she adopted the plaintiff Krishnarav to herself and her deceased husband Trimbak. Krishnarav now sued as such adopted son to recover certain property.

[165] The Court of first instance rejected his claim, holding that his adoption by Gangabai after Anpurnabai's death was invalid.

The plaintiff appealed.

*Jardine* (with *Mahadeo Chimnaji Apte*), for the appellant:—

The plaintiff's adoption is valid. Gangabai adopted him after her son, Sadashiv, and his widow were both dead. She had succeeded as heir to her son Sadashiv. The adoption, therefore, was in derogation only of her own estate, and not that of any other person. The ruling in *Thayam-*

\* Appeal No. 15 of 1890.

(1) 11 B. 153.