1894.

QUEEN-EMPRESS v. RA'GHO MAHÁDU.

public officer doing such things as belong to his duty, and there is danger if a practice grows up whereby any officer shifts his peculiar duty on to some other officer. We will send a copy of this judgment to the District Magistrate.

APPELLATE CIVIL.

Before Mr. Justice Farran and Mr. Justice Candy.

1894. *August* 3.

RAMA'BA'I AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, *v.* RANGRA'V AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

RANGRA'V AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* RAMA'BA'I AND ANOTHER.†

Adoption—Reversioner, suit by, to set aside an adoption by a Hindu widow—Right of suit—Remote reversioners—Watan property—Bombay Act V of 1886, *Sec.* 2(1).

The right to sue to set aside an adoption by a Hindu widow is, as a general rule, limited to the nearest reversionary heir, and if he without sufficient cause refuses to institute proceedings, or if he has precluded himself by his own act and conduct from so doing, or has colluded with the widow, or concurred in the alleged wrongful act, the next presumable reversioner will be entitled to sue. In such a case, upon a plaint stating the circumstances under which the more distant reversioner claims to sue, the Court must exercise a judicial discretion in determining whether the remote reversioner is entitled to sue, and should require the nearer reversioner to be made a party to the suit.

Raghunáth, a separated Hindu, died possessed of certain property, a portion of which was watan land, and left him surviving a widow Ramábái, a daughter Manubái and the plaintiffs, who were his brother's sons. Subsequently Ramábái adopted Vishvanáth as a son. Manubái (the daughter), who lived with Ramábái and Vishvanáth, did not take any steps to dispute the alleged adoption. The plaintiffs now sued for a declaration that the adoption, if made in fact, was invalid, and that they were entitled to succeed to the property of Raghunáth on the death of his widow Ramábái.

Held, that as the plaintiffs were entitled under section 2 of Bombay Act V of 1886 to succeed to the watan property in preference to Manubái after the death of Ramábái,

* Appeal No. 105 of 1892. † Appeal No. 118 of 1892.

(1) Section 2 of the Watan Act (Bombay Act V of 1886) :—

2. Every female member of a watan family other than the widow of the last male owner, and every person claiming through a female, shall be postponed, in the order of succession to any watan, or part thereof, or interest therein, devolving by inheritance after the date when this Act comes into force, to every male member of the family qualified to inherit such watan, or part thereof, or interest therein.

The interest of a widow in any watan or part thereof shall be for the term of her life or until her marriage only.

and were the presumptive reversionary heirs after Ramábái to the *watan* property; and the only persons interested in disputing the adoption so far as the *watan* property was concerned, the lower Court exercised a proper discretion in allowing the suit to be maintained by the plaintiffs.

Ráni Anund v. *The Court of Wards*(1) and *Kooer Gulab Singh* v. *Rav Kurun Sing*(2) referred to and followed.

THESE were cross appeals from the decision of Ráo Bahádur Chunilál Máneklál, First Class Subordinate Judge of Poona.

One Raghunáth Shripat Chandrachud died on the 11th January, 1888, leaving him surviving his widow Ramábái and a daughter Manubái. On the 16th May, 1890, Ramábái adopted a son called Vishvanáth. In 1892 the plaintiffs Rangráv Krishna Chandrachud and four others, who were the nephews (brother's sons) of the deceased Raghunáth, brought the present suit against Ramábái and Vishvanáth to set aside the adoption and to establish their right to succeed to Raghunáth's property, a portion of which was service watan. The plaintiffs contended that Ramábái had only a life-interest in the property of her deceased husband; that the adoption of Vishvanáth had not, as a matter of fact, taken place; but that, even supposing that it had taken place, it was invalid, inasmuch as (1) Vishvanáth was not a *sagotra* and had been married before the date of the alleged adoption. and (2) the deceased Raghunáth had prohibited Ramábái from adopting a son. They claimed to be entitled to succeed to the property on the death of Ramábái.

The defendants denied the alleged prohibition, and contended that Vishvanáth had been validly adopted.

The Judge found that the adoption of Vishvanáth would not have been invalid on the grounds alleged in the plaint if it had been proved to have taken place, but that the fact of the adoption had not been proved; that the deceased being admittedly a separated Hindu, his daughter was entitled to succeed to his property except the watan property which could not be inherited by a female other than the widow of the deceased; that the plaintiffs being divided members of the family of the deceased were entitled to bring the suit to set aside Vishvanáth's adoption only as to the watan property, and that a certain will which the plaintiffs

(1) L. R., 8 Ind. Ap., 22. (2) L. R., 14 Moo., Ind. Ap., 193.

1894.

RAMA'BA'I v. RANGRA'V.

had produced at the trial in support of their allegation that Ramábái was prohibited from adopting, was not proved. He, therefore, held that the adoption of Vishvanáth was invalid so far as the watan property was concerned, but rejected the rest of the plaintiffs' claim.

The parties preferred cross appeals.

Mahádev Chimnáji Apte for the appellants (original defendants) in Appeal No. 105 :—The Judge was wrong in allowing the plaintiffs' claim with respect to the watan property. His decree has the effect of partially setting aside Vishvanáth's adoption. An adoption cannot be partially held to be good and partially set aside. If the adoption is good with respect to one kind of property, it is good with respect to the other property also. Next, we contend that the plaintiffs are not reversioners, because Manubái, the daughter of the deceased, is alive and she will succeed as the heiress of her father Raghunáth after the death of his widow Ramábái. Manubái ought to have been joined as a party to the suit. It is true that she being a female cannot succeed to the watan property. The plaintiffs, as reversioners, are entitled to succeed to that property if the adoption of Vishvanáth be held not proved. If, however, the adoption be held proved, then the plaintiffs would neither be presumptive nor contingent reversioners, and the suit must fail. (Evidence in support of the adoption was referred to and the case was argued on the facts.)

Bálkrishna N. Bhájekar for the respondents (original plaintiffs) in Appeal No. 105 :—We are the nearest reversioners after the daughter, and are, therefore, entitled to bring the present suit. The daughter has a right to bring a suit to set aside Vishvanáth's adoption, but as she does not choose to do so, we are entitled to sue in order to preserve our interest in the property—*Bhikáji Apáji* v. *Jagannáth Vithal*[1]; *Ráni Anund* v. *The Court of Wards*[2]; *Kooer Golab Sing* v. *Ráo Kurun Sing*[3].

FARRAN, J. :—The first question which presents itself for determination is as to the right of the plaintiffs to maintain this suit, for a declaration that the defendant Vishvanáth was not adopted

(1) 10 Bom. H. C. R., 351. (2) L. R. 8 I. A., 14.
(3) 14 Moo. I. A., 176.

in fact by Ramábái to her husband Raghunáth, and that, if adopted in fact, he was not validly adopted.

Raghunáth died on the 11th January, 1888, without male issue, but leaving his widow Ramábái and his daughter Manubái. He was a separated Hindu. The plaintiffs, his brother's sons, in the absence of Manubái, would be Raghunáth's nearest heirs after Raghunáth's widow. The allegation of the defendants is that Vishvanáth was adopted by Ramábái on the 16th May, 1890. This adoption the plaintiffs contest in fact and in law.

Manubái, it is admitted, lives with the defendant Ramábái and the alleged adopted son. She has taken no steps to dispute the alleged adoption, and presumably does not intend to take any. Portion of the property left by the deceased is watan land, and under section 2 of Bombay Act V of 1886 every female member of a watan family other than the widow of the last male owner shall be postponed to the male members of the family.

The law upon this subject is laid down in *Ráni A'nund* v. *The Court of Wards*[1] in the following terms:—"Their Lordships are of opinion that although a suit of this nature may be brought by a contingent reversionary heir, yet that, as a general rule, it must be brought by the presumptive reversionary heir, that is to say, by the person who would succeed if the widow were to die at that moment. They are also of opinion that such a suit may be brought by a more distant reversioner if those nearer in succession are in collusion with the widow, or have precluded themselves from interfering. They consider that the rule laid down in *Bhikáji Apáji* v. *Jagannáth Vithal*[2] is correct. It cannot be the law that any one who may have a possibility of succeeding on the death of the widow can maintain a suit of the present nature; for, if so, the right to sue would belong to every one in the line of succession, however remote. The right to sue must, in their Lordships' opinion, be limited. If the nearest reversionary heir refuses, without sufficient cause, to institute proceedings, or if he has precluded himself by his own act or conduct from suing, or has colluded with the widow, or concurred in the act alleged to be wrongful, the next presumable reversioner would be

(1) L. R., 8 I. A., 14, at p. 22. (2) 10 Bom. H. C. R., 351.

1894.

RAMÁBÁI v. RANGRÁV.

entitled to sue: see *Kooer Goláb Sing* v. *Ráo Kurun Sing* (1). In such a case, upon a plaint stating the circumstances under which the more distant reversionary heir claims to sue, the Court must exercise a judicial discretion in determining whether the remote reversioner is entitled to sue, and would probably require the nearer reversioner to be made a party to the suit."

Adopting, as we are bound to do, the principles thus pointed out, we think that the lower Court has exercised a proper discretion in allowing the plaintiffs, the presumptive reversionary heirs after the widow to the watan property, and the only persons at present interested, in so far as the watan is concerned, in disputing the adoption, to maintain this suit. We think, however, that that Court would have exercised a still more full discretion if it had directed the plaintiffs to add a paragraph to their plaint as to the facts stated in the preceding paragraph of this judgment and caused Manubái to be added as a defendant to the suit. We shall not, however, at this stage direct these amendments.

Reluctant though we are to differ from the Court below on a question of fact, we feel unable to accept the conclusion that the adoption of Vishvanáth by Ramábái did not take place. Exhibit 48 (as well as other evidence) proves that she before the date of the alleged adoption was anxious, even eager, to adopt the defendant Vishvanáth as her son, and that she went on or about the 15th May, 1890, to Poona in order to adopt him. While there she undoubtedly had an adoption paper drawn out, which in the most careful language recites the fact of the adoption having taken place. She went to the trouble of having this witnessed by some twelve persons, some of them well known residents of Poona. This deed she subsequently got registered. Under these circumstances it would require very slight evidence to prove that she actually performed the simple act or ceremony of adoption which she had taken such pains to authenticate. Why she should not have performed it, seems inexplicable, if she did not do so. She affirms that she did. She can have no motive for saying that she did adopt the defendant Vishvanáth if she did not, for she

(1) 14 Moo. I. A. 176 at p. 193.

can do so now if so minded. She has called three witnesses to the *factum* of the adoption, *viz.* the priest, the writer of the adoption paper, and another man who says that he was present on the occasion. No effort is made to shake the testimony of these witnesses by cross-examination. No evidence is called to refute it. The reason why none of the *bháubands* were present, is explained by the ill-feeling between them and the lady, and their dislike to have a stranger introduced into the family while boys born in it were available for adoption. We cannot disbelieve this probable and apparently true story merely because there is a seeming contradiction between the evidence of Ramábái given in another matter before suit and that of the witnesses now called on her behalf as to the exact place where the ceremony took place. We say *seeming* contradiction, because it is open to many possible explanations, and the lady was not asked to account for it. If asked, she might have shown that it was no real contradiction at all. It was the duty of the plaintiffs' pleader if he intended to rely upon this contradiction to have called the lady's attention to it and given her the opportunity of explanation. We feel confident, in the above state of the evidence, that the adoption in fact took place, and consider that the issue should have been found in that sense. [Upon the evidence their Lordships held (agreeing with the Subordinate Judge) that the will set up by the plaintiffs to prove that the adoption was prohibited, was not proved. In the result the appeal by the defendants (No. 105) was allowed, and the plaintiffs' claim dismissed. The appeal by the plaintiffs (No. 118) was dismissed with costs.]

Claim dismissed.