

## APPELLATE CIVIL.

*Before Mr. Justice Farran and Mr. Justice Candy.*

1891.  
August 21.

RÁJI JA'DAV (ORIGINAL DEFENDANT), APPELLANT, v. BA'I MATHURA  
AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.\*

*Hindu law—Adoption—Only son.*

The adoption of a person who at the time of his adoption is an only son, is invalid. The fact that other sons are afterwards born to his parents, does not validate his adoption.

FIRST appeal from the decision of Ráo Bahádur Lálshankar Umiáshankar, First Class Subordinate Judge of Ahmedabad.

The plaintiff Báí Mathura was the mother of one Jádav Sobháram, who died on the 16th June, 1879. He left a widow Lalita, who was then pregnant. She subsequently gave birth to a son, who died the day after his birth.

On the 7th April, 1890, Lalita adopted the first defendant Ráiji, a minor, who was then the only son of one Nahálchand Mohanlál and whose mother was then pregnant.

Lalita died on the 8th April, 1890, and on her death Báí Mathura brought the present suit to establish her right to, and recover possession of, the property left by her deceased son Jádav Sobháram and for a declaration that the adoption of Ráiji and a will alleged to have been made by Lalita were invalid.

The defendant Ráiji pleaded that the adoption was legal; that his mother, who was pregnant at the time of adoption, had afterwards given birth to a son who was still alive, and that the will and a deed of adoption executed by Lalita were valid, &c.

The Subordinate Judge found that the adoption of Ráiji, who was the only son at the time of adoption, was invalid; that the will relied on by the defendants was genuine, but that it gave no property to the minor defendant, and that the plaintiff was entitled to the property.

The defendants appealed. Pending appeal, the plaintiff Báí Mathura having died, her daughters were joined as respondents.

\* Appeal, No. 154 of 1892.

*Branson* with *Nagindás T. Marphatia*, for the appellants (defendants):—The Judge was wrong in holding that the adoption of Ráiji was the adoption of an only son. Ráiji's mother was pregnant at the time of the adoption and she gave birth to a son who is living. Therefore, Ráiji was not the only son of his parents, and his adoption cannot be impeached on that ground. Various adoptions of this kind have taken place, and they have not been set aside. The adoption of an only son has been upheld by the Allahabad High Court—*Beni Prasad v. Hardai Bibi*<sup>(1)</sup>.

*Inverarity* with *Gokuldás K. Párekhh*, for the respondent (plaintiff):—Ráiji had no brother in existence at the time of his adoption. The fact that his mother subsequently gave birth to a son cannot make the adoption valid, which was invalid when it was made. It was an accident that Ráiji's mother subsequently gave birth to a son and not to a daughter. Though Ráiji's mother was pregnant at the time of the adoption, and afterwards gave birth to a son, still Ráiji was none the less an only son at the time of the adoption. The adoption of an only son is invalid—*Wáman Raghupati v. Krishnáji*<sup>(2)</sup>; *Lakshmáppa v. Rámava*<sup>(3)</sup>; *Hanmanta v. Bhimácharya*<sup>(4)</sup>; *Nagabhushanam v. Sheshammaguru*<sup>(5)</sup>.

FARRAN, J.:—Although we may be permitted to doubt whether the judgment in *Lakshmáppa v. Rámava*<sup>(3)</sup>, which most probably formed the basis of the Full Bench decision in Appeal No. 1 of 1879, followed by the Full Bench in *Wáman Raghupati v. Krishnáji*<sup>(2)</sup>, took sufficiently into account the altered sense of the Hindu community evinced by the frequency of the adoption of only sons, we are bound to follow the Full Bench decision (unless the Privy Council has otherwise decided) to its logical conclusion. It decides that the adoption of an only son is invalid, inasmuch as such an adoption contravenes the directions in the ancient text against the giving or accepting an only son in adoption. Having regard to the decisions in *Nagabhushanam v. Sheshammaguru*<sup>(5)</sup> and *Hanmanta Rámchandra v. Bhimacharya*<sup>(4)</sup>, we must hold that the defendant Ráiji was an

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(1) I. L. R., 14 All., 67.

(3) 12 Bom. H. C. R., 364.

(2) I. L. R., 14 Bom., 249.

(4) I. L. R., 12 Bom., 105.

(5) I. L. R., 3 Mad., 180.

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only son at the time of his adoption, which adoption was, therefore, (if it took place, as to which the Subordinate Court has recorded no finding) invalid. To hold otherwise would be without warrant derived from the texts to graft an anomalous exception upon an established general rule. We must, therefore, confirm the finding of the Subordinate Judge on the first issue. (The rest of the judgment is not material to this report.)

*Decree substituted.*

## APPELLATE CIVIL.

*Before Mr. Justice Farran and Mr. Justice Candy.*

1894.  
August 22.

BA'LÁJI NA'RA'YAN PATVARDHAN (ORIGINAL DEFENDANT), APPELLANT, v. RAMCHANDRA GOVIND KANADE (ORIGINAL PLAINTIFF), RESPONDENT.\*

*Receiver—Duties and liability of—Civil Procedure Code (Act XIV of 1882),  
Sec. 503.*

A receiver appointed under section 503 of the Civil Procedure Code (Act XIV of 1882) to collect the rents of an estate, is bound to make good a loss caused to it by a breach of his duties.

A receiver is not justified in delegating or entrusting to another a duty entrusted to him by the Court. He should in all important matters apply for and obtain the direction of the Judge who appoints him.

A receiver is entitled to his costs, charges and expenses properly incurred in the discharge of his duties.

APPEAL from the decision of Ráo Bahádur Chunílál Maneklál, First Class Subordinate Judge of Poona, in Suit No. 442 of 1891.

The defendant, a kárkún in the First Class Subordinate Judge's Court at Poona, was appointed a receiver under section 503 of the Code of Civil Procedure (Act XIV of 1882) in Suit No. 315 of 1887, to collect the rents of an estate consisting of moveable and immoveable property. He employed three successive kárkúns and left to each of them the absolute and uncontrolled management of the estate and the custody of its funds without obtaining any security from them. One of the kárkúns made use of the whole

\* First Appeal, No. 165 of 1892.