APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

1895. January 21.

ANYA'BA (ORIGINAL DEFENDANT), APPELLANT, *v.* DA'JI AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Adoption—Suit for declaration that defendant not the adopted son—Parties to suit—Reversioner—Suit for declaration when maintainable—Specific Relief Act (I of 1877), Sec. 42.

A suit by persons who are merely distant relations and not reversionary heirs for a declaration that the defendant is not the adopted son, is not maintainable under section 42 of the Specific Relief Act (I of 1877).

Every declaratory decree must be ancillary to some consequential relief obtainable thereby, and no such relief is possible in the case of distant and contingent, and not presumptive, reversionary heirs.

SECOND appeal from the decision of Ráo Bahádur R. D. Paránjpe, First Class Subordinate Judge of Sátára with appellate powers, reversing the decree of Ráo Sáheb Shivrám Sitárám Vágle, Second Class Subordinate Judge of Karhád.

This action was brought by plaintiffs against the defendant, who called himself Bápuji bin Gopálji, to obtain a declaration that he was not the legally adopted son of one Gopálji, and that his adoption, even if it took place, was null and void.

The plaint alleged that in the pátilki vatan of mauje Kále in the Sátára district the plaintiffs had $\frac{3}{4}$rds share and the deceased Gopálji had $\frac{1}{4}$th share; that Gopálji had been appointed to officiate as pátil during his lifetime; that after his death, which occurred in April, 1890, the right to officiate as pátil belonged to the plaintiffs, and that the defendant, in order to oppose the plaintiffs' right to officiate as pátils, represented himself as the adopted son of Gopálji and fraudulently got his name registered by the revenue authorities in 1891.

The defendant answered (*inter alia*) that he had been duly adopted by Gopálji's widow Mohanai; that the plaintiffs had no right to sue to set aside his adoption, inasmuch as they were not persons entitled to succeed as reversioners after Mohanai's death, nor

* Appeal from Order, No. 14 of 1894.

1895.

ANYÁBA v. DÁJI.

were they authorized by the reversioners to bring the suit; that the defendant was one of those who were entitled to succeed after Mohanai's death, and that the suit was not maintainable in the civil Court, the subject-matter thereof being within the cognizance of the revenue authorities, which had sanctioned the defendant's adoption and appointed him to officiate as pátil.

The Subordinate Judge dismissed the suit on the grounds that the plaintiffs were not entitled to sue to set aside the adoption and that the declaration asked for could not be made.

On appeal by the plaintiffs the decree was reversed, and the suit was remanded for trial on the merits.

The defendant preferred appeal.

Lang (Advocate General) with *Gangárám B. Rele*, appeared for the appellant (defendant):—It is admitted that the plaintiffs' family and Gopálji's family are quite distinct. The heir of Gopálji is to be sought for in his branch of the family. The plaintiffs do not claim to be reversioners, either presumptive or contingent, after Gopálji's widow, who is still alive. They are utter strangers to Gopálji's family, and, therefore, they have no right to challenge the defendant's adoption. A suit to set aside an adoption by a widow, is open only to reversioners and not to strangers —*Ráni A'nund* v. *The Court of Wards*[1]; *Bhikáji* v. *Jagannáth*[2]; *Ramabái* v. *Rangráv*[3]; *Kattáma* v. *Dorasinga*[4].

We do not deny that the plaintiffs are vatandárs. We only deny their right to officiate as vatandárs, a matter which is entirely in the cognizance of the Collector under the provisions of the Vatan Act (Bom. Act III of 1894).

Setlur with (*Báláji A'báji Bhagavat*) appeared for the respondents (plaintiffs):—We contend that we have an existing interest in the vatan and, therefore, we are entitled to bring the suit under section 42 *(f)* of the Specific Relief Act (I of 1877). We do not claim interest in any property other than the vatan. We simply ask for a declaration that the defendant has not become a vatandár by his adoption. The following authorities were cited during

(1) L. R., 8 I. A., 14.
(2) 10 Bom. H. C. Rep., 351.
(3) P. J., 1894, p. 287.
(4) L. R., 2 I. A., 169.

1895.

ANYA'BA v. DA'JI.

the argument:—*Ningangavda* v. *Satyangavda*[1]; *Dádáji* v. *Bháskarráv*[2]; *Yellápa* v. *The Secretary of State for India*[3]; *Rámchandra* v. *A'nant*[4]; *Govind* v. *Bápuji*[5].

RA'NADE, J.:—The only point at issue in this case is whether the suit brought by the respondents for a declaration that appellant was not the adopted son of Gopálji was or was not maintainable under section 42 of the Specific Relief Act. The record of the case, Exhibits 42, 43, 46 to 49, shows that as far back as 1858, notwithstanding the objections of respondents' ancestors, Gopálji was recognized as the sole owner of 16 annas' pátilki vatan, and his right to officiate as sole pátil was recognized by the revenue authorities. Respondents applied to the revenue authorities in 1868, and claimed to be owners of 12 annas' shares in the vatan, but they were informed that they might establish their claim when the next vacancy occurred, Exhibit 32. Gopálji died in 1890, and respondents put in their claim, but in the inquiry under the Vatandárs' Act, appellant was recognized to be Gopálj's adopted son, and sole heir to his 16 annas' vatan (Exhibits 44, 45), and respondents were directed to secure a decree setting aside appellant's adoption by Gopálji (Exhibit 33). Thereupon the present suit was brought for a declaration that appellant's adoption was not valid. Appellant replied that as he was adopted by Gopálji's widow, who was still alive, and as respondents were not her reversionary heirs, the declaratory suit was not maintainable. The Court of first instance held that the suit did not lie, but the lower Court of appeal reversed that decree, and held that the suit could be maintained, as respondents were of the vatandár family, and the declaration sought would help them in their application to the revenue authorities to have their names entered as representative vatandárs in the vatan register.

The appellant's counsel referred to the following authorities:—*Bhikáji* v. *Jagannáth*[6]; *Ráni A'nund* v. *The Court of Wards*[7];

(1) 11 Bom. H. C. Rep., 232.
(2) P. J., 1878, p. 64.
(3) P. J., 1888, p. 224
(4) I. L. R., 8 Bom., 25.
(5) I. L. R., 18 Bom., 516.
(6) 10 Bom. H. C. Rep., 351.
(7) L. R., 8 I. A., 14.

1895.

ANYA'BA v. DA'JI.

Ramábái v. *Rangráv*[1] and *Káttáma* v. *Dorásanga*[2]; and the respondents' counsel relied upon *Dádáji* v. *Bháskarráv*[3]; *Ningangavda* v. *Satyangavda*[4]; *Rámchandra* v. *A'nant*[5]; *Yellápa* v. *The Secretary of State for India in Council*[6] and *Govind* v. *Bápuji*[7] in support of his contention.

On a careful consideration of these rulings, we feel satisfied that respondents' suit in its present form was clearly not maintainable. Respondents admitted that they were distant relations, and not reversionary heirs, and not entitled to Gopálji's property (Exhibit 50). Under such circumstances, it is clear that they had no right to bring a suit to set aside appellant's adoption by Gopálji's widow. In *Bhikaji* v. *Jagannath*[8], it was ruled that a suit to set aside the adoption made by a widow could only be brought by the nearest reversioner, and that a more distant heir could only sue when the nearer heir's rights had been waived. Respondents in this case are admittedly very distant relations, and Gopálji has left nearer heirs and reversioners, one of whom appellant himself claims to be. The principle of the decision in *Bhikaji* v. *Jagannáth*[8] was approved of by their Lordships of the Privy Council in *Rání A'nund* v. *The Court of Wards*[9], where it was expressly held that a suit to set aside adoption must be brought by a presumptive reversionary heir. It is only when he colludes, or refuses without sufficient cause to sue, that more distant heirs can sue. The principle of these rulings is that every declaratory decree must be ancillary to some consequential relief obtainable thereby—*Káttáma* v. *Dorásinga*[2]—and it is plain that no such relief is possible in the case of distant and contingent, and not presumptive reversionary, heirs.

The respondents' counsel admitted the correctness of these propositions. He, however, contended that the consequential relief need not in all cases be in respect of property, and that if the declaration was likely to be of use in influencing the decision

(1) P. J. for 1894, p. 287.
(2) L. R., 2 I. A., p. 169.
(3) P. J. for 1878, p. 64.
(4) 11 Bom. H. C. Rep., 232.
(5) I. L. R., 8 Bom., 25.
(6) P. J. for 1888, p. 224.
(7) I. L. R., 18 Bom., 516.
(8) 10 Bom. H. C. Rep., 351.
(9) L. R., 8 I. A., 14; S. C. I. L. R., 6 Cal., 764.

1895.

ANYA'BA v. DA'JI.

of the revenue authorities, the suit would lie on the analogy of the principle recognized in *Kálova* v. *Pádápa*(1). It was further contended that though a suit for the declaration of a right to officiate as representative vatandár could not be maintained, as that jurisdiction was vested by law in the Collector—*Khando* v. *A'páji*(2) and *Chinto* v. *Lakshmibái*(3), yet when the entry of a name in the revenue records is the result of the recognition of a private right by a civil Court, it is competent for a civil Court to make such a declaration—*Rangráv* v. *Krishnaráv*(4). In *Yellápa* v. *The Secretary of State for India in Council*(5) it was further held that though a party may not sue for a declaration of his right as vatandár to officiate, yet he can bring a suit to have it declared that another person had not the status of a vatandár, and could not, therefore, be selected to officiate. In *Rámchandra* v. *A'nant*(6) this Court decided that the Vatandárs' Act did not take away the jurisdiction of the civil Courts to determine who was or was not entitled to have his name entered in the list of vatandárs. See also P. J. for 1874, p. 205, and *Nigangavda* v. *Satyangavda*(7) and *Govind* v. *Bápuji*(8).

It is obvious, however, that these rulings have no direct application to the suit in its present form. The suit has been admittedly brought by a distant *bhánband* to set aside appellant's adoption by Gopálji's widow, and the authorities relied upon by the respondent's pleader do not show that such a suit can be maintained, unless it is proved that nearer reversionary heirs have waived their rights. Respondents have not brought this suit to secure a declaration that the appellant is not a vatandár. He is admittedly a member of the vatandár family, and claims to be a nearer heir in his natural right to Gopláji than the respondents. Moreover, it must be noted that respondents' real object in securing the declaration is to influence the Collector to enter their names as representative vatandárs. Their names were excluded from the register so far back as 1858, more than thirty-five years ago; and even if appellant's adoption were not proved,

(1) I. L. R., 1 Bom., 248.
(2) I. L. R., 2 Bom., 370.
(3) *Ibid.* 375.
(4) P. J., 1877, p. 98.
(5) P. J. for 1888, p. 224.
(6) I. L. R., 8 Bom., 25.
(7) 11 Bom. H. C. Rep., 232.
(8) I. L. R., 18 Bom., 516.

Gopálji's widow could and would certainly adopt another son, who would have, as Gopálji's heir, a right, by reason of his father's thirty-five years of adverse enjoyment, to have his name entered in Gopálji's place. The declaration will thus be of an abstract fact which can lead to no consequential relief. A mere contingency, which confers no present or certain interest, will not suffice as a basis for such a declaration. The reply of the revenue authorities could not confer on respondent a right to bring a suit which they did not already possess. The grant of relief in declaratory suits is not a matter of right, but of discretion, and a claim so obviously stale cannot be entertained where no right to bring the suit has been clearly established.

On the whole, the authorities referred to above seem to allow no choice but to reject the claim, so far at least as the suit in its present form is concerned. We accordingly reverse the decree of the lower Court of Appeal, and restore that of the Subordinate Judge. The respondents should pay all the costs to the appellant throughout.

JARDINE, J.:—I concur. The view taken in *Bhikáji* v. *Jagannáth*[1] and approved in *Ráni A'nund* v. *The Court of Wards*[2] is also suggested by Illustration F of section 42 of the Specific Relief Act. The plaintiffs in the present suit wish to influence the Collector by showing that the defendant, though a vatandár, is not as large a sharer as he would be if his status as adopted son is admitted. There are many facts which may influence the Collector, but which are not to be ascertained by civil suits for declarations; he makes his own inquiries as to personal ability and superior fitness. The present suit is barred on the same grounds as the suits where the plaintiffs sought to be declared *vadil* mentioned in *Ningangavda* v. *Satyangavda*[3].

Decree reversed.

(1) 10 Bom. H. C. Rep., 351.
(2) L. R., 8 I. A., 14; S. C. I. L. R., 6 Cal., 764.
(3) 11 Bom. H. C. Rep., 232