

APPELLATE CIVIL.

Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Parsons.

1895.
June 18.

HARISING DEVISINGRÁO (ORIGINAL APPLICANT), APPELLANT, *v.*
BHÁUSING BIN BALVANTRÁO (ORIGINAL OPPONENT), RESPONDENT.*

Regulation VIII of 1827, Sec. 4—Certificate of heirship based on adoption—Regular suit to prove adoption—Adoption—Application for certificate of heirship.

H. applied under Regulation VIII of 1827 to a District Judge for a certificate of heirship to a deceased D. under a registered deed of adoption by his widow executed nearly fifty years after D.'s death. The opponent claimed to be the heir, and denied the legality of the adoption. The District Judge referred the applicant to a regular suit to establish the validity of his adoption.

Held, in appeal, that the District Judge was bound to investigate the case, following the procedure laid down in section 4 of Regulation VIII of 1827, and had no authority to dismiss the application and refer the applicant to a regular suit to establish the validity of the adoption.

APPEAL against the decision of A. H. Unwin, District Judge of Násik, in the matter of an application for heirship under Regulation VIII of 1827.

On the 2nd September, 1865, Bháusing (the respondent) obtained a certificate of heirship to his uncle Devisingráo, who had died twenty-three years previously, *viz.*, on 26th November, 1842.

On the 5th July, 1889, Krishnábái, the widow of Devisingráo, adopted Harising (appellant), and in the year 1894 Harising applied for a certificate of heirship to Devisingráo, alleging that he was his legal heir. He further prayed that the certificate of heirship granted to Bháusing in the year 1865 might be cancelled.

The opponent Bháusing denied that the applicant had been legally adopted, and alleged that he himself was Devisingráo's heir.

The Judge dismissed the application with the following observations :—

“Nearly *half a century* having elapsed upon Devising's death before his widow Krishnábái thought proper to adopt, applicant is referred to a regular suit to establish the validity of the adoption. The question is not one to be settled in a miscellaneous proceeding on a mere 8-anna stamped petition.”

* Appeal No. 28 of 1895.

The applicant preferred an appeal.

Mánekhsháh J. Taleyárhán, for the appellant (applicant):—Our application should not have been dismissed without any inquiry. A widow is not bound to adopt till she chooses to do so. Under sections 3 and 4 of Regulation VIII of 1827 the Judge could not dismiss our application without inquiry.

There was no appearance for the opponent.

PARSONS, J.:—The District Judge had no authority to dismiss the application with costs and refer the applicant to a regular suit to establish the validity of the adoption. He was bound to investigate the case, following the procedure laid down in section 4 of Regulation VIII of 1827. We, therefore, reverse his order and remand the case for a legal inquiry. Costs to abide the result.

Order reversed and case remanded.

APPELLATE CIVIL.

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PADGAYA BIN NAGAYA, DECEASED, BY HIS SON AND HEIR, NAGAYA (ORIGINAL DEFENDANT No. 2), APPELLANT, v. BAJI BA'BAJI MOHOLKAR, DECEASED, BY HIS SON AND HEIR, GOVIND (ORIGINAL PLAINTIFF), RESPONDENT.*

1895.

June 19.

Mortgage—Sub-mortgage—Redemption—Suit by original mortgagor against mortgagee and sub-mortgagee—Death of mortgagee pending suit—Abatement—Parties—Civil Procedure Code (Act XIV of 1882), Sec. 368—Practice—Procedure.

Plaintiff sued to redeem a mortgage passed by his deceased father to defendant No. 1 and joined defendant No. 2 as being the sub-mortgagee of defendant No. 1 and in possession of the property. After suit defendant No. 1 died, and no steps were taken by the plaintiff within time to make his legal representatives parties. The suit was, however, allowed to be continued against defendant No. 2 and a redemption decree was passed in plaintiff's favour.

Held, on second appeal, that defendant No. 2 being the sub-mortgagee and not the assignee of defendant No. 1 on the death of the latter no cause of action survived to the plaintiff against defendant No. 2, and the suit abated under section 368 of the Civil Procedure Code (Act XIV of 1882).

* Second Appeal, No. 380 of 1893.