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Rs. 399-12-9 will be paid to the Official Assignee, and Rs. 83-0-9, which have been ascertained as the costs of execution, will be paid to the solicitor of the attaching creditor, less the amount of poundage due to the Sheriff, and the balance of the money in the hands of the Sheriff will be returned to the garnishee.

If there are any costs of the Official Assignee, the solicitor of the attaching creditor will pay them.

Attorneys for the Applicant—*Messrs. Bhaishankar, Kanga and Girdharlal.*

W. L. W.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batty.

1905. *March 27.*

LAKSHMIBAI KOM ANANT (ORIGINAL DEFENDANT), APPELLANT, *v.* VISHNU VASUDEV BELE (ORIGINAL PLAINTIFF), RESPONDENT.*

Adoption by a widowed daughter-in-law under the direction of the father-in-law after his death—Divesting of the estate of daughters—Adoption invalid.

A Hindu testator died leaving him surviving two daughters and a widowed daughter-in-law. In his will he made the following provision:—"I wanted to dispose of the above-mentioned property myself. But as I am ill, it is not possible for me to do so. Therefore the Panch should give a boy in adoption to my daughter-in-law and (thus) keep (the doors of) my house open."

After the death of the father-in-law, the widowed daughter-in-law adopted a boy under the said provision. The adopted boy having subsequently brought a suit for a declaration of his title as the grandson of the testator, the validity of the adoption was impeached by one of the daughters of the testator, whose interest became divested by the adoption,

Held that the adoption was invalid.

From the fact that a husband's authority to his widow to adopt may be operative after his death, it does not follow that a father-in-law's assent survives beyond his life-time so as to enable his son's widow to divest an estate that had already devolved by inheritance on heirs who did not derive title through the son.

SECOND APPEAL from the decision of J. J. Heaton, District Judge of Násik, confirming the decree of P. J. Taleyarkhan, Subordinate Judge.

* Second Appeal No. 521 of 1904.

One Bapuji *alias* Ramchandra Mahadeo Bele had a son Vasudev and two daughters Bagubai *alias* Sarasvatibai and Lakshmibai. Vasudev pre-deceased his father Bapuji in or about the year 1896, leaving a widow Gangubai. Bapuji died on the 27th October 1900, after making a will dated the 24th October 1900. The will among other things provided as follows :—

The moveable and immoveable property above described is my own and none of my kinsmen or any other person has any right to any part of my estate with the exception of the Vritti at the Ganges (river). I wanted to dispose of the above-mentioned property myself, but as I am ill, it is not possible for me to do so. Therefore the Panch should give a boy in adoption to my daughter-in-law and (thus) keep (the doors of) my house open. * * * * *

In accordance with the said provision Bapuji's widowed daughter-in-law adopted the plaintiff on the 20th February 1901. Subsequently Lakshmibai having disputed the status of the plaintiff as the adopted grandson of Bapuji in a suit, No. 398 of 1895, for partition of the *Vritti* to which Bapuji was one of the parties and to which the plaintiff was joined as the representative of Bapuji on his demise, the plaintiff brought the present suit for a declaration that he was the adopted grandson of Bapuji and as such was the owner of Bapuji's share in the *Vritti*. The plaintiff further alleged that his adoption was acceptable to Bagubai, therefore, she was not joined as a party to the suit.

Defendant Lakshmibai contended *inter alia* that the will set up by the plaintiff was fabricated, that under the Hindu Law a father-in-law could not authorize his daughter-in-law to make an adoption, therefore, the plaintiff's adoption was invalid, that the adoption had not in fact taken place, and if it had, it was illegal inasmuch as the defendant had not consented to it and that the defendant was the heir to all her father's property, her sister Bagubai having relinquished all her rights over the same.

The Subordinate Judge found that the will relied on by the plaintiff was proved and that under it Bapuji had conferred on his daughter-in-law Gangubai the authority to adopt, that the plaintiff's adoption was proved and valid and that he was entitled to the declaration prayed for. He, therefore, decreed the claim.

On appeal by the defendant the Judge having confirmed the decree she preferred a second appeal.

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R. R. Desai appeared for the appellant (defendant):—The authority contained in Bapuji's will for the adoption by his widowed daughter-in-law was not a valid and proper authority. In the first place the will purports to give authority to the Panch and not to the daughter-in-law. This is clearly wrong. Even granting that the will gives authority to the daughter-in-law to adopt, it is joint with the Panch and such joint authority has been held to be invalid, *Amrito Lal Dutt* v. *Surnomoye Dasi*(1), *Beemchurn Sein* v. *Heeraloll Seal*(2). Further the authority was not validly exercised by the daughter-in-law because the consent of the Panch was not taken to the adoption, Mayne's Hindu Law, 6th edition, section 114, page 141.

Under the Hindu law, though a father-in-law can give his consent to an adoption by his daughter-in-law during his life-time, he cannot authorize her to adopt after his death. Such an authority can only be given by a deceased husband to his widow, *Karsandas Natha* v. *Ladkavahu*(3), *Gopal* v. *Vishnu*(4). In these cases there are certain dicta that such power can be given to a widowed daughter-in-law, but they were not necessary for the decision in those cases and the point was not actually raised and decided.

In *Vithoba* v. *Bapu*(5) there was an adoption by a widowed daughter-in-law, but the adoption was made during the life-time of the father-in-law with his consent as the head of the family. There is no authority for the proposition that consent given by a male member of the family, except the consent of the husband to his widow, for an adoption would survive after his death.

On the death of Bapuji, his estate vested in his two daughters. Their consent was necessary for the plaintiff's adoption and as the adoption divests them of their estate, it is invalid, *Shri Dharnidhar* v. *Chinto*(6), *Vasudeo* v. *Ramchandra*(7).

D. A. Khare appeared for the respondent (plaintiff):—A widowed daughter-in-law can, with the consent of her father-in-

(1) (1900) 27 Cal. 996 at p. 1003.
(2) (1867) 2 Ind. Jur. N. S. 225.
(3) (1887) 12 Bom. 185.
(4) (1898) 23 Bom. 250.
(5) (1890) 15 Bom. 110.
(6) (1895) 20 Bom. 250.
(7) (1896) 22 Bom. 551.

law make an adoption, *Vithoba* v. *Bapu*[1], *The Collector of Madura* v. *Moottoo Ramalinga*[2] otherwise known as the *Ramnad case*, Mayne's Hindu Law, 6th edition, section 195, page 249.

[JENKINS, C. J.:—There is a difference between consent given during life-time and the authority to be exercised after the death of the giver.]

Desai, in reply.

JENKINS, C. J.:—The plaintiff seeks a declaration that he is the grandson of Bapuji deceased, by virtue of his adoption to Vasudev, and thus the owner of Bapuji's share in certain property. Both the lower Courts have decided in his favour, and so the case comes to this Court on second appeal.

The real question in the suit is, whether the plaintiff has been validly adopted.

The case has been argued before us on the assumption that on Vasudev's death Bapuji became the sole surviving member of the joint family.

Bapuji, on the 24th of October, 1900, made a will containing a provision in the following words:—

I wanted to dispose of the above-mentioned property myself. But as I am ill, it is not possible for me to do so. Therefore the *Panch should* give a boy in adoption to my daughter-in-law and (thus) keep (the doors of) my house open.

On the 27th October 1900, Bapuji died leaving him surviving, his daughter-in-law Gangubai, and two daughters, Bagubai and the defendant Lakshmibai.

On the 20th of February 1901, Gangubai purported to adopt the plaintiff, but Lakshmibai questions the validity of the adoption.

Many objections to the adoption have been urged before us, and one is (in our opinion) fatal.

Though Bapuji made a will, he did not thereby beneficially dispose of the property vested in him as the sole surviving member of the joint family, except so far as he made provision for the maintenance of his daughter-in-law, and for certain shares for his daughters.

(1) (1890) 15 Bom. 110. (2) (1868) 12 M. I. A. 397.

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Subject, therefore, to those provisions the beneficial interest in his property devolved by inheritance on his daughters. But if the plaintiff's claim be well founded, this interest became divested by his adoption, so that we have to see whether an adoption could be made that would have this result.

In *Chandra* v. *Gojarabai*(1) it was determined that an "adoption, though authorized by the husband, cannot divest the estate which has already vested in a collateral relation of the husband in succession to some other person, who had himself become owner in the meantime."

Here the adoption was not authorized by the husband; at the most there was the father-in-law's consent, which might have been operative had the adoption been in his life-time.

But the adoption was performed after the father-in-law's death, and at a time when the estate had already vested in the sisters of the adopter's husband in succession, not to him, but to his father, who had become owner by survivorship.

In our opinion, the estate which thus passed to the sisters could not be divested—cf. *Shri Dharnidhar* v. *Chinto*(2), *Vasudeo* v. *Ramchandra*(3).

The lower Courts in coming to an opposite view have relied on what was said by Ranade J. in *Gopal* v. *Vishnu*(4). The decision itself is no authority in the plaintiff's favour, for it was there held that the adoption did not divest the inheritance; at the same time the line of reasoning adopted by the learned Judge certainly did not negative (as no doubt it might have) the view that a father-in-law's consent can operate after his death. The learned Judge based the exception he formulated in favour of a widow's adoption with her father-in-law's consent on *Vithoba* v. *Bapu*(5); and there the consenting father-in-law was alive when the adoption was made, and that constitutes an essential difference.

From the fact that a husband's authority to his widow to adopt may be operative after his death it does not follow that a father-in-law's assent survives beyond his life-time, so as to

(1) (1890) 14 Bom. 463 at p. 470.
(2) (1895) 20 Bom. 250.
(3) (1896) 22 Bom. 551.
(4) (1898) 23 Bom. 250.
(5) (1890) 15 Bom. 110.

enable his son's widow to divest an estate that had devolved by inheritance on heirs, who did not derive title through the son.

I can find no sanction in the cases for such a view; in the *Ramnad case*(1) it is the father-in-law, *if alive*, that is described as competent to give an effective assent to an adoption; while to treat his consent as operative after his death would be to extend to fresh conditions a widow's power of divesting contrary to "the general tendency of the Courts, from the Privy Council downwards, in favour of limiting the exercise of the power of adoption by women after the death of their husbands."—*Chandra* v. *Gojarabai*(2).

For these reasons, the decree of the lower appellate Court must be reversed and the suit dismissed with costs throughout.

G. B. R. *Decree reversed.*

(1) (1868) 12 M. I. A. 397 at p. 442. (2) (1890) 14 Bom. 463 at p. 472.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Aston.

RAJYA VALAD IMAM (ORIGINAL DEFENDANT), APPELLANT, v. BALKRISHNA GANGADHAR (ORIGINAL PLAINTIFF), RESPONDENT.*

1905. *March 27.*

Land Revenue Code (Bom. Act V of 1879), section 83(1)*—Inámdár—Grantee of Royal share of revenue or of soil—Mirási tenant—Enhancement of rent—Sheri lands—Contractual relation—Usage of the locality—Enhancement to be just and reasonable.*

A grant to an Inámdár may be either of the Royal share of revenue or of the soil; but ordinarily it is of the former description and the burden rests on the Inámdár to show that he is an alienee of the soil.

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* Second Appeal No. 639 of 1904.

(1) Section 83 of the Land Revenue Code (Bom. Act V of 1879):—

83. A person placed, as tenant, in possession of land by another, or in that capacity, holding, taking or retaining possession of land permissively from or by sufferance of another, shall be regarded as holding the same at the rent, or for the services, agreed upon between them; or, in the absence of satisfactory evidence of such agreement, at the rent payable or services renderable by the usage of the locality, or, if