

before him all the information and materials at their disposal. At the same time I deprecate any tendency to treat all such information produced by a claimant with suspicion, and to throw out everything which is not proved according to the rules of evidence which prevail in a Court of Justice, thus necessitating a claimant incurring heavy costs and extending the time occupied by the inquiry to an inordinate length. The Acquisition Officer is in a position to make any inquiry that he may think may help him in making his award but he can hardly expect each individual claimant to produce substantial proof to support his case in respect of details which in the opinion of the officer should be taken into account in making his award.

The claimant has been awarded Rs. 20,205-20. That must be increased by Rs. 4,794-80 to which must be added 15 per cent and interest on the whole at 6 per cent since Government took possession. The claimant must also be paid the costs of this reference.

Attorney for Government: *E. F. Nicholson*, Government Solicitor.

Attorneys for the claimant: Messrs. *Bicknell, Merwanji and Romer*.

K. McE. K.

ORIGINAL CIVIL.

Before Mr. Justice Macleod.

WALBAI, PLAINTIFF, *v.* HEERBAI AND OTHERS, DEFENDANTS.*

Hindu law—Adoption—Mother's sister's son also father's brother's son.

The adoption of a mother's sister's son is invalid, even though he may also happen to be father's brother's son.

The prohibition against the adoption of a sister's son, a daughter's son and a mother's sister's son is general, and not confined solely to persons who are neither Sapindas nor Sagotras.

Ramchandra v. Gopal⁽¹⁾, followed.

* Original Suit No. 214 of 1908.

(1) (1908) 32 Bom. 619,

1909.

IN THE
MATTER OF
LAND
ACQUISITION
ACT.

IN THE
MATTER OF
GOVERNMENT
AND
SUKHANAND.

1909.

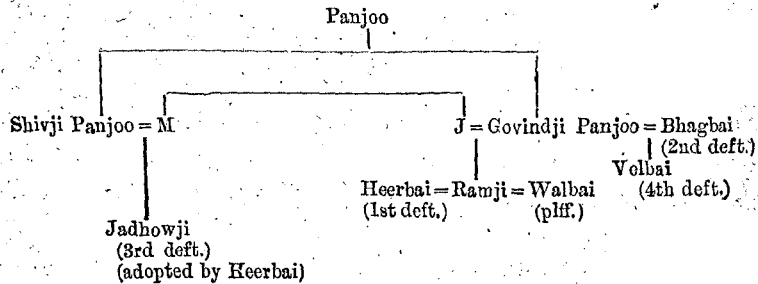
September 3.

1909.

Administration suit.

WALBAI
v.
HEERBAI.

One Ramji Govindji died in February 1908, leaving him surviving two widows, Heerbai and Walbai, and a step-mother Bhagbai. This suit was originally filed by Walbai the junior widow against Heerbai and Bhagbai, but at a later date Jadhovji, who was alleged to have been adopted by Heerbai since the filing of the suit, and Velbai, the daughter of Bhagbai, were added as 3rd and 4th defendants respectively. Jadhovji in addition to being the son of Ramji's father's brother was also the son of Ramji's mother's sister, the double relationship arising from the fact that two brothers married two sisters. The relationship of the parties is more fully shown by the following genealogical tree:—



A receiver was appointed on the application of the plaintiff.

Various issues were raised between the parties as to the property in certain ornaments and as to the effect of a consent decree in a former suit filed by Bhagbai against Ramji for maintenance; but the most important point at issue and the chief point to which the legal arguments were directed, was the validity of the above-mentioned adoption.

Strangman, Advocate-General, with *Inverarity*, *Raikes* and *Lowndes* for the plaintiff:—

The adoption is invalid. See *Stokes on Hindu Law* at pages 61 and 571. The point was decided once and for all in *Bhagwan Singh v. Bhagwan Singh*⁽¹⁾. And further discussion is in fact now purely academic. See *Sarkar's Hindu Law* at page 150.

Padsha with *Setalwad* for the 1st defendant:—

It is a mistake to lay down that the possibility of lawful marriage with the natural mother is the test. See *Mandlik's*

(1) (1898) 21 All. 412.

Hindu Law at page 479. The proper construction of the text of Sakala is to read it as directing the adoption in the first place of a Sapinda or a Sagotra, and in the second place, *failing* a Sapinda or Sagotra, of any stranger except a sister's son, etc. In the present case, Jadhovji was adopted in accordance with the directions of the first part of the text. The second part has no application at all.

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Davar with *Jinnah* appeared for the 2nd and 4th defendants.

Bhandarkar with *Desai* for the 3rd defendants supported the adoption.

Strangman in reply :—

The text does not warrant such a construction. There are no full stops. The exceptions named in the last line refer to the whole text. See *Ramchandra v. Gopal*⁽¹⁾.

MACLEOD, J.—One Ramji Govindji died in February 1908 leaving two widows Heerbai and Walbai, his step-mother Bhagbai, and her daughter Velbai him surviving. In March 1908 Walbai the junior widow, filed this suit for the administration of the estate of Ramji, making Heerbai and Bhagbai defendants. After the suit was filed, Heerbai purported to adopt one Jadhovji the son of Ramji's father's brother and mother's sister. Jadhovji and subsequently Velbai were added as party defendants to this suit. Bhagbai and Velbai thereafter filed suit 602 of 1899 against Ramji claiming maintenance and other relief. By a consent decree of the appellate Court in that suit, a house in Essaji Street was settled on Bhagbai for life in lieu of maintenance and Ramji was directed to set aside a proper sum for the marriage expenses of Velbai. No provision was made for the maintenance of Velbai should her mother die before she was married. Bhagbai was made a party to this suit merely because as the plaintiff alleged she had a life interest in a portion of Ramji's estate; but besides joining with the plaintiff in contesting the validity of the adoption of Jadhovji; she has seized the opportunity of making several claims against

(1) (1908) 32 Bom, 619 at p. 632.

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Ramji's estate on behalf of herself and Velbai, which must be disposed of before I deal with the validity of the adoption and the further questions in dispute between the plaintiff and defendants 1 and 3. In the first place Bhagbai asked the Court to construe the consent decree in suit 602 of 1899 for the purpose of ascertaining what interest she took in the house in Essaji Street. I do not think it is open to argument that she took anything more than a life interest in that house, which, on her death, will revert to Ramji's heirs. Then it was contended that Velbai's maintenance should be provided for; on the other hand the plaintiff and defendants 1 and 3 argue that as Velbai prayed for maintenance in suit 602 of 1899 and no provision was made for it in the consent decree her claim must be considered as refused. It seems more probable that the question of Velbai's maintenance was overlooked when the consent decree was passed. However it was no doubt intended that Bhagbai should maintain Velbai and if Bhagbai dies before Velbai is married, she will have to be maintained some how out of the family property. There is no necessity now to decide how her maintenance should be provided for under circumstances which may never come into existence. The question as to what is a proper sum to be set aside for the marriage expenses of Velbai and whether the sum of Rs. 3,247 is not sufficient for this purpose, must be decided by the Commissioner.

I now come to the claims of Bhagbai against the estate of Ramji for certain ornaments belonging to herself and Velbai, which, she says, she deposited with Ramji a few months before his death.

[After discussing the evidence his Lordship proceeded as follows :—]

I am satisfied that Bhagbai has not proved by direct evidence the deposit of ornaments with Ramji and that she has not proved that any of the ornaments taken possession of by the Receiver except the broken gold necklace belong to her or Velbai.

It remains for me to come to a finding on the 6th issue whether the adoption of the third defendant is invalid on the grounds that he is son of Ramji's mother's sister.

It was held by the Privy Council in *Bhagwan Singh v. Bhagwan Singh*⁽¹⁾ that the text of Sakala cited by the authors of the Dattaka Mimansa and Dattaka Chandrika on the question who can be adopted is authoritative in all parts of India. That text is as follows, according to the literal translation given to the Court during the argument :--

“A son of a Sapinda or also next a Sagotra
A sonless twice horn should adopt
In default of son of Sagotra should adopt Agotra
A daughter's son, sister's son and mother's sister's son excepting.”

But defendants 1 and 3 argue that the verse should be divided into two parts, that the first permits the adoption of all *Sapindas* and those of the same *Gotra* as the adoptive father without any restriction, and that the second confines the prohibition against the sister's sons, daughter's sons and mother's sister's sons to persons who are neither *Sapindas* nor *Sagotras*, that therefore as the third defendant is the father's brother's son of Ramji, the fact that he is also the mother's sister's son is immaterial.

I should not have been inclined myself to adopt this construction. The double upright strokes appearing at the end of the alternate lines of the text in Ghose's work on Hindu Law page 651 relied on by the 1st defendant as representing full stops, do not appear in the original.

The prohibition seems to me therefore to be general, but in any event I am precluded from holding otherwise by a decision of this Court in *Ramchandra Krishna v. Gopal Dhondo*⁽²⁾ where Chaubal J. at page 632 construes the text as follows :—

“In the order of selection for adoption the first choice is directed in favour of a Sapinda, failing him a Sagotra, and in default of these a stranger, excepting always the specific instances mentioned, viz., a daughter's son, a sister's son, and the mother's sister's son.”

I find therefore that the adoption of the third defendant is invalid. There must be a reference to the Commissioner to ascertain :—

- (1) What was the property left by Ramji Govindji ?
- (2) What were his debts ?

(1) (1898) 21 All. 412.

(2) (1908) 32 Bom. 619.

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(3) Whether the sum of Rs. 3,247 is sufficient for the betrothal and marriage expenses of Velbai, and if not, what further sum should be allowed?

(4) Which of the ornaments taken possession of by the Receiver belong to Heerbai, Walbai and Ramji's estate respectively?

Attorneys for plaintiff: Messrs. *Captain and Vaidya*.

Attorneys for defendants 1 and 3: Messrs: *Bhaisankar, Kanga and Girdharlal*.

Attorneys for defendants 2 and 4: Messrs. *Thakurdas & Co.*

K. McI, K.

ORIGINAL CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

1909.

September 23.

SIR CURRIMBOY EBRAHIM AND OTHERS, PLAINTIFFS, v. THE MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY AND OTHERS, DEFENDANTS.*

City of Bombay Municipal Act (Bom. Act III of 1888), section 251-A, clause (a)—Building—"Directly over or directly under"—Construction.

The words "directly over or directly under" in section 251-A, clause (a), of the City of Bombay Municipal Act (Bom. Act III of 1888) should be understood in the restricted sense of immediately over or immediately under, so that in effect under this section a water-closet may be built so as to be vertically over or under any part of a building provided that a bath-room intervenes.

Where it is not suggested that a word bears any technical sense in the context in which it occurs, the construction must proceed upon the general rule that statutes are presumed to use words in their popular sense.

THIS matter came before the Court as a special case stated under section 527 of the Code of Civil Procedure (Act XIV of 1882).

The plaintiffs were lessees of a plot of land in Wodchouse Road, Bombay, and, being desirous of building thereon, gave notice of their intention to the defendants in pursuance of the provisions

* Original Suit No. 709 of 1909.