APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

1911. *February* 14.

BAI MACHHBAI, WIDOW OF BAPURAJ LAKHABHAI, AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, *v.* BAI HIRBAI, WIDOW OF BAPURAJ LAKHABHAI (ORIGINAL PLAINTIFF), RESPONDENT.*

Jurisdiction—Civil Court—Subordinate Judge of second class—Bombay Civil Courts Act (XIV of 1869), section 24—Suit for declaration—Declaration that an adoption was invalid—Claim valued for court-fee purposes at Rs. 130—Court Fees Act (VII of 1870), section 7, clause (IV), sub-clauses (c), (d)—Property exceeding Rs. 5,000 in value—Mahomedan Law—Converts from Hinduism—Custom of adoption—Burden of proof.

A suit to obtain a declaration that an adoption was invalid was valued for court-fee purposes at Rs. 130, though the property affected by the adoption was more than Rs. 5,000 in value. It was brought in the Court of the Subordinate Judge of the second class, whose jurisdiction extended only to suits involving claims valued under Rs. 5,000 (Bombay Civil Courts Act, 1869, section 24). It was objected that the Subordinate Judge had no jurisdiction to entertain the suit:—

Held, that the Subordinate Judge was competent to try the suit.

Sangappa v. *Shivbasava*(1) and *Bai Rewa* v. *Keshavram Dulavram*(2), followed.

The Mahomedan Law does not recognise adoption. Hence, where a Hindu is converted to Mahomedanism, the presumption is that as a necessary consequence of conversion the law of adoption recognised by Hindu Law has been abandoned by him. He who alleges that the usage and law in question had been retained must prove it.

SECOND appeal from the decision of Dayaram Gidumal, District Judge of Ahmedabad, confirming the decree passed by N. V. Desai, Subordinate Judge of Dhandhuka.

Suit for declaration.

The plaintiff, a widow of one Bapuraj Lakhabhai, sued her co-widow (the defendant) for a declaration that the adoption of a son made by the latter be declared invalid. The claim was valued for court-fee purposes at Rs. 130, though the property belonging to Bapuraj, which would be affected by the adoption, exceeded Rs. 5,000 in value.

* Second Appeal No. 697 of 1909.

(1) (1889) P. J. p. 98. (2) (1895) P. J. p. 223.

The parties to the suit were the Parmar Rajputs of Dhandhuka, who were converted to Mahomedanism nearly four hundred years ago. They retained many Hindu customs of living: and were governed in matters of succession and inheritance by Hindu Law.

It was objected to the suit that as the property exceeded Rs. 5,000 in value, the Second Class Subordinate Judge had no jurisdiction to hear the suit. This objection was overruled by both the lower Courts. They further placed the burden of proving that the custom of adoption prevailed among the caste to which the parties belonged on the defendant, and, as she failed to prove it, granted the declaration sought for by the plaintiff.

The defendant appealed to the High Court.

G. K. Parekh for the appellant.

G. S. Rao for the respondent.

CHANDAVARKAR, J.:—We agree with the District Judge in the view which he has taken both of the question of jurisdiction and of adoption. The materials both in the Court of first instance and in the appeal Court are not such as to warrant our interference with the conclusion arrived at by the District Judge on the question of jurisdiction. The case on that question resembles *Sangappa* v. *Shivbasava*[1] and *Bai Rewa* v. *Keshavram Dulavram*[2].

On the question of adoption the burden of proof lay in the first instance upon the appellant. His case is that the Girasias, when they became Mahomedans, carried with them the law of inheritance and succession, and that, as part of that law, they also retained the Hindu law and custom of adoption. But adoption is not necessarily inheritance or succession, although it leads to inheritance or succession. The Mahomedan Law does not recognize adoption. The presumption is that, as a necessary consequence of conversion to Mahomedanism, the law of adoption recognized by Hindu law and usage had been abandoned by the Girasias. Therefore those who allege that the usage and law in question had been retained must prove it. The decree must be confirmed with costs.

Decree confirmed.

R. R.

(1) (1889) P. J. p. 98.

(2) (1895) P. J. p. 228.