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of by him according to law. We are indebted to Mr. Manubhai for having argued the reference on behalf of the accused at our request.

HEATON, J. :—I concur. I do not feel any doubt now (at one time I did) that section 349 confers special powers, or, what may be called, a special jurisdiction, and confers it only on District and Sub-Divisional Magistrates. That being so, every case which is referred under section 349 must be disposed of by a Magistrate who has that special jurisdiction. In this particular case the matter was disposed of by a Magistrate who had not this jurisdiction, and I concur in the proposed order.

*Order set aside.*

R. R.

## APPELLATE CIVIL.

*Before Mr. Justice Heaton and Mr. Justice Shah.*

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*July* 29.

SIDDAPPA BIN BAPU BIRADUR AND ANOTHER (ORIGINAL DEFENDANTS NOS. 1 AND 3), APPELLANTS, *v.* NINGANGAVDA BIN SIDDANGAVDA AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT NO. 2), RESPONDENTS.*

*Hindu law—Adoption—Adoption made by widow of predeceased son—Contemporaneous consent of her mother-in-law in whom estate vested as heir.*

Under Hindu Law, the widow of a predeceased son can make a valid adoption with the contemporaneous consent of her mother-in-law in whom the estate of the last full owner is vested as an heir.

*Payapa* v. *Appanna*[1], followed.

SECOND appeal from the decision of F. K. Boyd, District Judge of Bijapur, confirming the decree passed by V. R. Kulkarni, Subordinate Judge at Muddebihal.

Suit for declaration that certain lands belonged to the plaintiff,

* Second Appeal No. 103 of 1913.

[1] (1898) 23 Bom. 327.

The lands in dispute belonged originally to Ramangavda, who died in 1877 leaving him surviving his widow Avabai, and Shidava, the widow of his predeceased son. In 1878, Shidava adopted Shidappa with the consent of Avabai. Both Avabai and Shidava died about the year 1904.

On Shidappa's death, his widow adopted the plaintiff in 1906. The defendants, who were the reversionary heirs of Ramangavda, claimed the lands.

The plaintiff sued in 1908 for a declaration that the lands belonged to him. The defendants contended *inter alia* that Shidappa's adoption was invalid.

The Subordinate Judge granted the declaration sought holding that the adoption was valid on the following grounds :—

The question is whether the consent of this Avabai will make the adoption valid which was otherwise invalid. In my former judgment I have relied upon *Payapa* v. *Appanna*(1), and have held that the adoption in question was valid under the peculiar circumstances of the present case. The facts of the present case are on all fours with the facts of the ruling *Payapa* v. *Appanna*(1) quoted above. The defendants rely upon some subsequent rulings, viz., *Venkappa Bapu* v. *Jivaji Krishna*(2), *Ramkrishna* v. *Shamrao*(3), *Anandibai* v. *Kashibai*(4) and *Datto Govind* v. *Pandurang Vinayak*(5), and urge that the ruling *Payapa* v. *Appanna*(1) is no longer good law and that therefore the adoption of Shidappa by Shidava in 1878 was invalid under Hindu Law. After carefully going through the rulings quoted by the defendants I find that the ruling I rely upon (*Payapa* v. *Appanna*(1)) has not been overruled or even dissented from. All that the subsequent rulings say is that certain propositions laid down in the ruling in question were rather too general and that same therefore cannot be accepted as a safe guide in determining all possible points of law which arise when the adoption in dispute is by a female not the widow of the last holder. It was held in *Payapa* v. *Appanna*(1) that the adoption by a daughter-in-law with the assent of the mother-in-law (in whom the estate was vested on the death of the last holder) was valid under Hindu Law. This proposition of law has not been

(1) (1898) 23 Bom. 327.
(2) (1900) 25 Bom. 306.
(3) (1902) 26 Bom. 526.
(4) (1904) 28 Bom. 461.
(5) (1908) 32 Bom. 499.

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overruled, dissented from or even doubted in any of the recent rulings. Hence I think that the ruling *Payapa* v. *Appanna*[1] is still good law and relying upon the same I hold that the adoption of Shidappa by Shidaya in 1878 was valid under Hindu Law.

On appeal, this decree was confirmed by the District Judge on the following grounds :—

The only point in appeal is whether this adoption was valid. As Ningangavda predeceased his father, Shidava was not the widow of the last male holder. That *status* was held by Avabai. Shidava was, therefore, not competent to adopt : and the issue is thus narrowed to the question whether the assent of Avabai validates the adoption.

The learned Sub-Judge has found this question in the affirmative, relying on *Payapa* v. *Appanna*[1], a finding in which I concur.

It is admitted for appellants, and it is perfectly clear, that the present case is exactly parallel to that of *Payapa* v. *Appanna*. It is, however, contended that that ruling can no longer be held good law, having been doubted in *Datto Govind* v. *Pandurang Vinayak*[2]. Reference was also made to an article by Mr. Justice Candy at pages 1-19 of Volume IX of the Bom. L. R. Journal and to various other rulings not directly in point.

Now, in my opinion, *Datto's case* is easily distinguishable from the present case, and of course the article I have quoted, though entitled to the greatest respect, is not authoritative, The only question, so far as this Court is concerned, is whether *Datto* v. *Pandurang*[2] (the only case in which there is any hint even of doubt) actually overrules *Payapa* v. *Appanna*[1]. There can be no doubt that it does not. I have, therefore, only to follow the latter ruling, and I do so with a humble expression of my agreement with it.

The defendants Nos. 1 and 3 appealed to the High Court.

*Nilkantha Atmaram*, for the appellant :—The adoption of Shidappa is invalid because it is not to the last full owner Ramangavda. The case of *Payapa* v. *Appanna*[1] is against my contention ; but the *ratio* of the case is inconsistent with *Ramkrishna* v. *Shamrao*[3] and *Datto Govind* v. *Pandurang Vinayak*[2]. The question as to the validity of an adoption must be determined by the capacity of the adopting widow

(1) (1898) 23 Bom. 327. (2) (1908) 32 Bom. 499.
(3) (1902) 26 Bom. 526.

herself, and if that capacity is wanting in her, no amount of consent by others can make good what was intrinsically invalid.

*Setlur*, with *P. D. Bhide*, for respondent No. 1 (plaintiff) :—The ruling in *Payapa's case*[1] is entirely unaffected by what was said in subsequent cases. The decision is in complete accord with the Hindu sentiment and ought not to be interfered with at this distance of time.

C. A. V.

SHAH, J. :—The facts out of which this Second Appeal arises are few and undisputed. One Ramangavda had a son Ningangavda, who died during his life-time leaving a widow Shidava. Thereafter Ramangavda died leaving a widow Avabai, who inherited the property of her husband. In 1878 Shidava adopted Shidappa with the consent of Avabai in whom the estate was vested at the time as the heir of the last full owner. Shidava died in 1904. Avabai apparently had predeceased Shidava. The present plaintiff who is the adopted son of Shidappa claims to be the owner of the property in suit, while the defendants claim the property as the reversioners of Ramangavda. It is common ground that the plaintiff is entitled to succeed, if the adoption of Shidappa by Shidava is valid. The lower Courts have held the adoption to be valid mainly relying upon the case of *Payapa* v *Appanna*[1].

In the appeal before us the same question has been raised, and it is argued on behalf of the defendants that the adoption by Shidava is invalid as the adoption is not to the last full owner, and that the consent of Avabai cannot validate it. In other words it is contended that the case of *Payapa* v. *Appanna*[1] which is admittedly on all fours with the present case is not correctly decided. It

[1] (1898) 23 Bom. 327.

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is conceded—and I think rightly conceded—that there is no decision of this Court or of the Privy Council which is in conflict with *Payapa's* case. But Mr. Nilkanth has relied upon certain dicta in (1) *Shri Dharnidhar* v. *Chinto*[1]; (2) *Ramchandra* v. *Mulji Nanabhai*[2]; (3) *Ramkrishna* v. *Shamrao*[3]; and (4) *Datto Govind* v. *Pandurang Vinayak*[4], as showing that the decision in *Payapa's* case cannot now be accepted as a binding authority. He has also drawn our attention to the criticism on these cases in paragraphs 194 and 195 of Mayne's Hindu Law (8th Edn.), pp. 255-258.

In dealing with these cases it is necessary to bear in mind the particular facts of each case, and the point for decision with reference to which the observations must be deemed to have been made. It is also necessary to remember that a case is only an authority for what it actually decides, and that it cannot be quoted for a proposition which may seem to follow logically from it. Viewed in this light it is clear that *Payapa's* case is an authority for the proposition that a widowed daughter-in-law (I mean the widow of a predeceased son) can make a valid adoption with the contemporaneous consent of her mother-in-law, in whom the estate of the last full owner is vested as an heir. We are not concerned in this case with the exact scope of the general propositions enunciated in the case as third and fourth exceptions to the rule by Ranade J. The observations in the two earlier cases were *obiter dicta* and considered by the Court which decided *Payapa's* case. The Full Bench ruling in *Ramkrishna* v. *Shamrao*[3] does not touch the point actually decided in *Payapa's* case. The Full Bench considered the question of the power of the grandmother to make a valid adoption and held that her power

(1) (1895) 20 Bom. 250 at p. 258.
(2) (1896) 22 Bom. 558
(3) (1902) 26 Bom. 526.
(4) (1908) 32 Bom. 499.

adopt was at an end, when her son died leaving a grandson as his heir.

The considerations, which would apply to the limited propositions with which we are concerned in this appeal and with which the learned Judges in *Payapa's* case were concerned, would be quite different, and so far as I can see there is nothing in the Full Bench case, which is in conflict with the main ground of *Payapa's* decision. The same may be said of the case of *Datto Govind* v. *Pandurang Vinayak*[1], in which as I read the observations of Chaubal, J., it was merely suggested that the general propositions stated as the third and fourth exceptions to the ordinary rule were not universally true and could not apply to certain widows adopting under certain conditions. In any case I see nothing in these two cases which is in conflict with the decision in *Payapa's* case. On a careful consideration of the arguments urged by Mr. Nilkanth, I am unable to see any reason to dissent from the decision in *Payapa's* case.

I consider it essential that a rule affecting the devolution of property after it is laid down definitely and clearly should not be lightly disturbed unless there are clear and cogent reasons to do so. *Payapa's* case was decided in 1898. Mr. Justice Ranade then observed as follows :—"Nothing is more common in this country than to find parents, when they grow old, and have the misfortune of losing an only son in their old age, leaving a young widow behind, think it their duty to console that widow for the loss she has suffered by permitting her to adopt a son in preference to adopting a son themselves." To adopt any other view now would have the effect of unsettling many titles settled on the footing of *Payapa's* case. I would, therefore, follow the decision in *Payapa's* case.

Apart altogether from *Payapa's* case, I see nothing in such an adoption as we have in this case, which is,

(1) (1908) 32 Bom. 499.

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opposed to the Hindu sentiment or Hindu usage or any specific and inflexible rule of Hindu Law. In this case Avabai was unquestionably competent to adopt to Ramangavda at the time when she consented to Shidappa's adoption by Shidava and to defeat the rights of the reversioners. Instead of following that method of doing so, she allowed her daughter-in-law to do so by giving her consent to the adoption at the time. It matters nothing to the reversioners whether their rights are defeated by the adopted son of the last full owner or of a predeceased son of the last full owner. The rule as to the adoption being to the last full owner for the purposes of inheritance is subject to certain exceptions. For instance a mother is allowed to adopt, though her adoption is not to the last full owner, so as to enable the adopted son to inherit the property of her son. An exception in favour of the widow of a predeceased son when she adopts with the contemporaneous consent of her mother-in-law seems to be just and in accordance with Hindu Law. The result, therefore, is that the decree of the lower appellate Court is confirmed with costs.

HEATON, J. :—I concur. I do not wish to express any opinion at all on the general principles which were discussed and which it is far from easy to determine, but I am quite satisfied that in this case we should decide as was done in *Payapa's* case.

*Decree confirmed.*

R. R.