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under section 15B of the Dekkhan Agriculturists' Relief Act. In the case of *Kashinath Vinayak* v. *Rama Daji*[1], the Judges were dealing with an instalment decree and that was one of the variants permitted by section 15B. It was in fact a decree very different in substance from a decree of the kind called a decree *nisi*. Section 15B, as I understand it, refers primarily and is intended so to refer, to decrees for redemption, foreclosure or sale and in so doing I think it refers to such decrees, and primarily means such decrees as are provided for by the ordinary law, that is by the Code of Civil Procedure. But it also gives the Judge power to depart from the ordinary terms of such decrees and to make special terms and special provisions. Where, however, special terms and special provisions are not made, it seems to me that the decree, although it is made in a suit which comes under the Dekkhan Agriculturists' Relief Act, is a decree of the ordinary kind. Such appears to be the case here.

Therefore, I think the order which should be made is that which has already been stated.

Decree reversed and case remanded.

J. G. R.

[1] (1916) 40 Bom. 492.

APPELLATE CIVIL.

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

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October 10.

BASAPPA REVANSHIDAPPA (ORIGINAL DEFENDANT No. 1), APPELLANT v. SIDRAMAPPA REVANSIDAPPA DHANSHETTI AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT No. 3), RESPONDENTS.*

Hindu Law—Adoption—Adoption by two widows—Special authority—Widow married first has a preferential right to adopt—Competency of minor to adopt—Age of discretion.

* First Appeal No, 307 of 1916.

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According to the recognised law in the Bombay Presidency the senior widow, that is the widow married first, has a preferential right to adopt. She does not require any special authority from her husband or from her husband's Sapindas, but the junior widow unless the adoption by her is consented to by the elder widow does require a special authority from her husband.

A Hindu girl of fifteen years of age who has been married for two years or more, living with her husband, would be regarded as having attained the age of discretion and competent to adopt a son.

FIRST appeal against the decision of S. N. Sathaye, First Class Subordinate Judge of Sholapur, in suit No. 1175 of 1914.

Suit for a declaration and possession.

The property in suit originally belonged to two brothers Revansidappa and Malappa. Of them younger Malappa died of plague on the 18th February, 1911. On the 20th February, Revansidappa was also attacked by plague and died on the 22nd February, 1911, at 11 a.m. He was then 20 years of age. He left surviving him two widows Basava and Gaurava. Basava was married first and was the wedded wife of Revansidappa. She was a minor at her husband's death. Gaurava was married by Mohtar marriage, being already a widow. She had attained majority about a year or so before Revansidappa's death.

On the 6th November, 1911, Gaurava adopted the plaintiff as a son to Revansidappa.

On the 1st July, 1912, Basava adopted defendant No. 1.

Before defendant No. 1's adoption, Gaurava had instituted criminal proceedings against Sidappa (defendant No. 3) who was a near relation of Revansidappa and Malappa, and who had remained in possession of their property, having been appointed guardian of the property by the District Court in 1903. Sidappa

was charged with secreting a will made by Revansidappa under which it was alleged that Gaurava was given an express authority to adopt a son. In these proceedings, Sidappa was discharged on the 19th February, 1912, and the order of the Magistrate was upheld in a revisional application preferred by Gaurava.

Thereupon the present plaintiff filed a suit for a declaration that he was validly adopted by Gaurava under an express authority given to her by the will of Revansidappa; that the adoption of defendant No. 1 by Basava (defendant No. 2) was not legal and that he should be allowed possession of the property from defendents Nos. 2 and 3.

Defendants contended that the allegations about the will were false; that Revansidappa was not in a fit condition of mind to make the will; that defendant No. 2, though a minor, had the right to adopt under Hindu law and that the adoption of defendant No. 1 was legal.

The Subordinate Judge held that Basava, on account of her minority, was incompetent to adopt and therefore the adoption of defendant No. 1 by her was invalid in law. He further found that Gaurava was authorised by Revansidappa to adopt and the plaintiff being adopted by her was entitled to succeed.

Defendant No. 1 appealed to the High Court.

Coyajee, with *N. V. Gokhale* for the appellant.

Jayakar, with *P. V. Kane* for respondent No. 1.

SCOTT, C. J.:—Revansidappa died on the 22nd February, 1911, leaving two widows Basava and Gaurava. Basava was the first married, and on the evidence had attained puberty soon after the marriage of Gaurava to her husband. Gaurava was married by Mohtar marriage, being already a widow, whereas Basava was married

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by Lagan according to the approved form. The deceased left property worth about Rs. 15,000. The plaintiff claims as a son adopted to the deceased Revansidappa by his second widow Gaurava on the 6th November, 1911. The first defendant was adopted by Basava in July, 1912. According to the recognised law in this Presidency the senior widow, that is the widow married first, has a preferential right to adopt. In this Presidency she does not require any special authority from her husband or from her husband's Sapindas, but the junior widow, unless the adoption by her is consented to by the elder widow, does require a special authority from her husband. The earliest statement of the law that we can find relating to this Presidency is in Steele on Law and Custom of Hindu Castes, p. 48, where he says: "If there be two widows, they ought to adopt by mutual consent; otherwise the elder should have the preference in point of right. It is inferred that the younger may adopt by order of the elder, not without it." The meaning of the word 'elder' in this passage in Steele is not 'elder in years' necessarily, but 'elder in married life' so far as the deceased is concerned. On page 31 the following passage occurs as to precedence among wives. "Of several wives, being of the Brahman caste, the one first married enjoys the precedence; if they are of different castes, the Brahmunee is considered the elder. The elder wife sits by her husband at marriages and other religious ceremonies, is head of the family, and entitled to adopt a son on her husband's death without sons." Yajnavalkya's text (verse No. 84 in Achara Adhyaya) and Vijnanesvara's commentary thereon make it clear that the senior wife is entitled to perform all religious acts in preference to the junior wives. The seniority there referred to is not the seniority of age but seniority in marriage. (See Srisa Chandra Vidyarnava's translation of the Mitakshara,

Achara Adhyaya, recently published by the Panini Office at Allahabad, p. 177).

[His Lordship then dealt at length with the question of fact not material to this report and continued :—]

This brings me to the finding of the learned Judge upon the question whether the first defendant has been validly adopted in law. He holds that he has not been validly adopted on the ground that Basava at her age was incapable of selecting the 1st-defendant, and that he had not been selected by Revansidappa himself. The law upon this point is stated by Mr. Justice Banerjee in *Mondakini Dasi* v. *Adinath Dey*[1]. He observes: "The Indian Majority Act (IX of 1875) provides that nothing contained in that Act shall affect the capacity of a person to act in matters relating to adoption. It has been decided by this Court in the case of *Rajendro Narain Lahoree* v. *Saroda Soonduree Dabee*[2], that a minor who has arrived at the age of discretion is competent to give permission to adopt, and this decision has been approved by the Privy Council in *Jumoona Dassya* v. *Bamasoondari Dassya*[3]. What is meant by the age of discretion in these cases is not clearly stated, nor is there anything to show that at the date of the adoption in question Biraj Mohini had not attained sufficient maturity of understanding to comprehend the nature of the act. It should also be borne in mind that in this case the authority to adopt was given by a person of full age, and the validity of the adoption is questioned on the ground that the person who exercised that authority was a minor. Upon this point there is a case given in Macnaghten's Precedents of Hindu law (Chapter VI, Case V) in which the Pandit's opinion was to the effect

(1) (1890) 18 Cal. 69 at p. 72. (2) (1871) 15 W. R. 548.
(3) (1876) 1 Cal. 289.

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that the non-age of the widow is no obstacle to an adoption by her." Similarly in the present case there is nothing to show that at the date of the adoption in July 1912 Basava had not attained sufficient maturity of understanding to comprehend the nature of the act. In fact she was about fifteen years of age, and there is no reason to presume that a Hindu girl of that age who has been married for two years or more, living with her husband, does not realise what is meant by taking a son in adoption. We, therefore, cannot accept the finding of the learned Judge as to the adoption of the defendant No. 1. The result is that the decree must be reversed and the plaintiff's suit dismissed with costs throughout.

SHAH, J. :—I concur.

Decree reversed.

J. G. R.