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B. B. & C. I. RAILWAY COMPANY v. RANCHHODLAL CHHOTALAL & Co.

We set aside the decree and dismiss the suit with all costs on the plaintiffs.

Decree reversed.

J. G. R.

APPELLATE CIVIL.

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

1919. *April* 8.

RAMCHANDRA SWAMINAIK JORAPUR (ORIGINAL JUDGMENT—DEBTOR No. 3), APPELLANT *v.* MANUBAI KOM RAMDAS GUJJAR, WIDOW OF DECEASED RAMDAS NARSIDAS GUJJAR (ORIGINAL DECREE-HOLDER), RESPONDENT.*

Hindu Law—Adoption—Adopted son treated as having been from his birth in adoptive father's family—Adopted son cannot acquire a vested interest in the property of his natural father.

Under Hindu law, an adopted son is treated as having been from his birth in the family of his adoptive father and therefore he cannot for any purpose be regarded as having existed so as to acquire a vested interest in the property of his natural father.

The applicant having applied after the date of his adoption to execute a decree which was obtained by his natural father when the applicant was a member of the natural family,

Held, that he could not execute the decree as by reason of his adoption he must be treated as non-existent for the purpose of the execution of the decree.

SECOND appeal against the decision of A. C. Wild, District Judge of Bijapur, confirming the decree passed by V. V. Kamat, Subordinate Judge at Bagalkot.

Proceedings in execution.

In 1908, one Narsidas obtained a decree in Suit No. 262 of 1905, which gave him a right to open a new door in the southern wall of his house. After the said decree

* Second Appeal No. 250 of 1917.

was passed Ramdas, the son of Narsidas, was given in adoption to one Bhagwandas, the first cousin of Narsidas.

In 1914, Ramdas applied for execution of the decree in Suit No. 262 of 1905. The opponents judgment-debtors contended that by his adoption Ramdas lost all his rights in the natural family and was, therefore, not entitled to execute the decree.

The Subordinate Judge allowed execution to proceed. His reasons were as follows:—

"It is contended for the opponent that the effect of his adoption is to deprive the applicant of his rights in the natural family. I cannot accede to this contention. For though the general proposition as contended for by the opponent holds good, yet when an estate has already vested in a person, his subsequent adoption cannot divest it: see Mulla's Hindu law, page 371; 29 Mad. 437; 1 C. W. N. 121.

"In the present case the decree having already vested the estate in the applicant, the fact of his subsequent adoption is powerless to deprive him of that estate."

The District Judge confirmed the decree.

The original judgment-debtor No. 3 appealed to the High Court.

Nilkant Atmaram, for the appellant:—In this case the question is whether the decree-holder Ramdas is entitled to execute the decree. I submit not. By his adoption, he lost all rights of inheritance in his natural family as if he had never been born: see Mayne's Hindu Law, 8th edition para 172; Gharpure's Hindu Law, 1st edition, page 70. The opinion of Mayne is based upon the following: Manu, IX, 142; Dattaka Mimansa, VI, sections 6-8; Stoke's Hindu Law Books, 599; Dattaka Chandrika, II, sections 18-20; Stoke's Hindu Law Books 640; Vyavahara Mayukh, IV, 5, section 21; Stoke's 65.

That being the case, succession should be traced to his natural father Narsidas, and his daughter's sons who

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are alive are his heirs. These are to be preferred to Bhagvandas or his son who comes in only as a Sapinda.

[SCOTT C. J. referred to *Nagindas Bhugwandas* v. *Bachoo Hurkissondas*[1].]

G. S. Mulgaonkar, for the respondent:—By his adoption Ramdas no doubt became civilly dead to his natural family, but that is from the date of his adoption. The texts referred to by Mayne do not admit absolutely of the construction sought to be placed upon them, viz., that he should be regarded as not having been born at all. For example his blood relationship continues; he cannot marry within the prohibited degrees in his natural family: see Mayne's Hindu Law, 8th edition, para. 164. He can retain the inheritance in his natural family from collaterals taken before adoption: see *Behari Lal Laha* v. *Kailas Chunder Laha*[2]; *Sri Rajah Venkata Narasimha Appa Row* v. *Sri Rajah Rangayya Appa Row*[3]. By adoption he merely vacates his place as a natural son in his own family with all the adjuncts in that capacity and nothing else; so that, thereafter the property devolves as his, he being considered civilly dead. By adoption Ramdas became reborn in his adoptive family, but his birth in his natural family did not thereby become obliterated.

SCOTT, C. J.:—This is an application in execution which gives rise to a rather original position. It was presented by the decree-holder in a suit in which it had been decreed that the applicant might open a new door in the southern wall of his house. The person against whom the decree was passed opposes the application on the ground that the applicant having been given in adoption since the date of the decree has no right to take out execution. The decree presumably

(1) (1915) L. R. 43 I. A. 56. (2) (1896) 1 C. W. N. 121.

(3) (1905) 29 Mad. 437.

was in respect of his natural father's house and for the benefit of that house. It was passed in 1908. The decree-holder was subsequently adopted, and after his adoption sought to execute the decree. It is contended that he by his adoption had lost his rights in his natural family, and the only person entitled to execute the decree was the person entitled to the house, and that person must be the heir of Narsidas, the natural father of the applicant. Now the applicant was adopted by his natural father's first cousin Bhagwandas. Therefore his relation to his natural father was no higher than that of Bhagwandas. Narsidas, however, had left a daughter who has a son, and the daughter's son is to be preferred to a first cousin in the Western India. The only ground in which the applicant after his adoption could be entitled to execute the decree in respect of property inherited from his natural father would be on the theory that he lived in his natural family until his adoption and then died, having acquired a vested interest descendible to his heir. The daughter's son of Narsidas would then be the sister's son of the applicant, and the son of Bhagwandas, i.e., the applicant himself, would be a preferential heir. Any such fiction, however, appears to be untenable having regard to the definite pronouncement of the Privy Council in *Nagindas Bhugwandas* v. *Bachoo Hurkissondas*[1]. At the close of the judgment is cited a passage from a judgment of Mr. Justice Mitter in which it is stated that the theory of adoption involves the principle of a complete severance of the child adopted from the family in which he is born, both in respect to the paternal and the maternal line, and his complete substitution into the adopter's family as if he were born in it. Then the Privy Council observes that with that statement as to the Hindu law of adoption

(1) (1915) L. R. 43 I. A. 56.

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their Lordships agree. The result is that the fiction goes the length of treating the adopted son as having been from his birth in the family of his adoptive father, and therefore, he cannot for any purpose be regarded as having existed so as to acquire a vested interest in the property of his natural father. The consequence is that he must be treated as non-existent for the purpose of the execution of the decree, and the nearest heir of Narsidas will be the daughter's son. For these reasons the objection to the application appears to be a good one. We must set aside the decree of the District Court and dismiss the Darkhast. As it is a very novel and technical point, we think that each party should bear his own costs.

Decree reversed.

J. G. R.

PRIVY COUNCIL.*

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July 8, 9, 11, 12, 15; *December* 13.

PRATAPSINGH SHIVSINGH AND ANOTHER (DEFENDANTS No. 2 AND 3) *v.* THAKOR SHRI AGARSINGJI RAJASANGJI (PLAINTIFF).

[On appeal from the High Court of Judicature at Bombay.]

Hindu law—Adoption—Powers of Hindu widow to adopt—Custom excluding widow from inheriting—Adopted son has all the rights of a natural born son—Retrospective effect of adoption—Grant of part of estate for jivai *or maintenance of junior member of family reverting to grantor on failure of grantee's male heirs—Words in deed conveying an absolute estate.*

Unless there is a time limit imposed in the authority which empowers a Hindu widow to adopt, or she is directed to adopt promptly, she may make the adoption so long as the power is not extinguished or exhausted. Her right to make an adoption is not dependent on her inheriting, as a Hindu female owner, her husband's estate; she can exercise the power even though the property is not vested in her.

* *Present*:—Lord Shaw, Lord Phillimore, Sir John Edge and Mr. Ameer Ali.