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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.

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Sri Virada Pratapa Raghunada Deo v. *Sri Brozo Kishoro Patta Deo*(1) and *Bachoo* v. *Mankorebai*(2), referred to.

The rights of an adopted son, unless curtailed by express texts are in every respect the same as those of a natural born son; and an adoption, so far as the continuity of the line of inheritance is concerned, has a retrospective effect.

The respondent, the Thakor of Gamph, brought the present suit for possession of a village, which, in accordance with a family custom (the parties were Chudasama Girasias, a caste of Hindu Rajputs) had been granted for *jivai*, or maintenance, by one of his ancestors to a junior member of the family, to be held and enjoyed so long as the grantee's male line lasted, and then reverted to the Thakor. The last owner died without male issue in 1903; but he left a widow, who, though by custom not permitted to inherit her husband's estate, continued in possession of it; and on 12th March 1904 adopted the first appellant as a son to her husband:

Held (reversing the decision of the High Court) that the *jivai* grant did not revert to the Thakor, but was inherited by the adopted son.

Words in a deed executed in 1871 by the reigning Thakor in favour of a relative that "you and your vausa varas are maliks, mukhtiyars, dhanis" of a certain village confer an absolute estate on the donee.

APPEAL 110 of 1917 from a judgment and decree (9th April 1914) of the High Court at Bombay, which reversed a judgment and decree (16th March 1911) of the Subordinate Judge of Ahmedabad.

The respondent was the Thakor of Gamph in the District of Ahmedabad, a Gadi or impartible estate of the Chudasama Girasias to which the rule of primogeniture was applicable; and it was one of the customs of the Gadi to grant villages or properties out of the estate for the maintenance of younger sons and brothers, which reverted to the Gadi on failure of male issue.

Prior to 1840 the then Thakor of Gamph, one Melaji, the great-great-grandfather of the respondent, granted the village of Piperia, belonging to the estate to his younger son Rupsingji for maintenance in accordance with the above custom. Rupsingji remained in possession during his life and died in February 1865 leaving

(1) (1876) 1 Mad. 69; L. R. 3 I. A, 154. (2) (1907) 31 Bom. 373.

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two sons Kesarising, and Kaliansing, who, thereupon, took possession of the village Piperia. A dispute, however, arose as to the legitimacy of these two sons by the then Thakor, the father of the respondent, and litigation ensued which ended in a compromise carried out by the execution of two deeds, both dated 6th September 1871, under which 41 acres of the village were given up to the Thakor as his absolute property, and he acknowledged the legitimacy of the two sons of Rupsingji and confirmed them in possession of the rest of the village; and they accordingly remained in such possession during their lives. Kesarising died on 31st Janury 1881 without issue; and Kalian then succeeded to his share of the village, and on 13th October 1883 he executed a usufructuary mortgage of it in favour of one Lehra Bai, whose heir on 13th April 1906 assigned the mortgage to the second appellant Bai Shri Bajirajba. Kaliansing died in October 1903 leaving a widow Bai Devbâ, but no male issue; and the respondent then claimed the village from the widow and the mortgagee as having reverted to the Gadi according to the custom but both of them disputed his title and refused to give up possession, and on 12th March 1904 Bai Devba purported to adopt Pratapsing Shivsing, the first appellant as an heir to her husband. Thereupon, on 15th July 1907 the respondent instituted the present suit setting out the customs above mentioned and claiming possession of the village on the following grounds: (*a*) that it reverted to him as Thakor on the death of Kaliansing without issue; (*b*) that the alleged adoption of the first appellant was invalid and in any case carried with it no title to the village; and (*c*) that the mortgage was invalid and ineffectual as against him the respondent.

The defendants, the widow (who has since died) and the first and second appellants, disputed the customs

set up by the respondent and contended (*inter alia*) that the village, at any rate since the compromise in 1871, was the absolute property of Kaliansing and his brother; that on Kaliansing's death it passed to his widow, and then to the first appellant on his adoption; and that the mortgage was valid against the respondent, especially with regard to the fact that a portion of the mortgage money was applied to satisfy a claim of the then Thakor, the respondent's father against the mortgagor.

The Subordinate Judge held that the respondent was the owner of the Gadi of Gamph; that the property of the Gadi descended by the rule of primogeniture, and was impartible; that the custom of reversion obtained in the Gadi, but that it did not exclude widows, and that they were entitled to succeed to their husband's estate; that there was no custom forbidding maintenance holders to adopt; but that the appellants had failed to prove that such adoption could interfere with the reversionary rights of the owner of the Gadi; and that the respondent had failed to prove a custom by which maintenance holders could not alienate their holdings. The Subordinate Judge also held that by the compromise of 1871 the then Thakor recognised the right of Kaliansing as absolute owner of Piperia, and that it could not now be contended that the latter had only a life estate and was not entitled to mortgage or sell as he pleased; that the mortgage and the assignment of it were valid and binding on the respondent; that the adoption was valid; that the first appellant was entitled to the equity of redemption in the village; and that the respondent was not entitled to a declaration that as against him the adoption was illegal or void.

In the result the suit was dismissed.

An appeal to the High Court was heard by Scott, C. J. and Batchelor, J. who agreed with the findings

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of the Subordinate Judge as to the descent of the estate by primogeniture, its impartibility and the reversion of the villages granted for maintenance; but on the main questions (*a*) whether on the death of Kaliansing without male issue the village reverted to the respondent, and whether the first appellant was entitled to it as adopted son, and (*b*) whether the second appellant as mortgagee had any title which he could successfully assert against the respondent, they held in favour of the respondent. With regard to the compromise of 1871 they referred, as having been relied upon, to the clause of the deed executed by the Thakor of which the material portion as translated was "you and your descendants and heirs are maliks, mukhtyars, dhanis, of this village (Piperia), &c.," and pointed out that the words translated "descendants and heirs" were in the vernacular "vausa varus" which literally meant "your descendants who are heirs", the word "and" not being there; that according to the custom of inheritance among Chudasama Girasias, wives and daughters were not recognised as heirs, and that "descendants who are heirs" must, therefore, be confined to male descendants; that moreover in 1887 Kaliansing had admitted in the plainest terms in a written statement that he was only in possession of Piperia by virtue of a grant for maintenance. The High Court, therefore, held that there was no substance in the argument that the document of 1871 conferred an absolute estate or released the Thakor's right of reversion. They held also that at the time of the settlement in 1871 the whole estate of the Thakor was under the management of the Talukdari Settlement Officer, and under section 12 of the Ahmedabad Talukdars Act of 1862 any alienation by the Thakor of his reversionary right would be void as offending against the provision of that Act.

On the question of whether the widow of the last holder was entitled to succeed the High Court held that there was no custom of succession by the widow as of right, and that if it was once accepted that there was a reversion on a failure of male heirs it followed almost as a logical consequence that the reversion would not be impeded by the existence of a female.

As to the position of the first appellant as adopted son, they held that if the widow did not succeed the estate vested in the Thakor at the death of her husband and the first appellant must show that by his adoption he was entitled to divest an estate already, according to the custom, vested in the respondent, which he had failed to do.

As to the mortgagee it was held that the original mortgagor could only transfer such rights as he had, and he had no absolute right in the village; that the mere fact that some of the mortgage money was applied to satisfy a claim of the then Thakor was no reason for treating the mortgagee as entitled to anything more than the mortgagor was able to give, and that the second appellant was not, therefore, entitled to set up the mortgage as against the respondent.

The High Court accordingly reversed the decision of the Subordinate Judge, and made a decree declaring that neither of the appellants had any rights in the village and granting possession and mesne profits to the respondent with costs throughout.

On this appeal,

De. Gruyther, K. C. with *E. B. Raikes*, for the appellants contended that by reason of the transaction evidenced by the documents executed on September 6th 1871 the land in suit became, if it was not so already, the absolute property of Kaliansing and his brother,

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and as such was vested in Pratapsing, the first appellant on his adoption, subject of course to the mortgage to the second appellant. The words used in those documents are all terms which have been held to convey an absolute estate, and there was nothing in those documents from which any estate less than an absolute estate can be deduced. Reference was made to *Fateh Chand* v. *Rup Chand*[1]; *Surajmani* v. *Rabi Nath Ojha*[2]; *Thakur Harihar Baksh* v. *Thakur Uman Parshad*[3]; and *Ramlal Mookerjee* v. *Secretary of State*[4]. The transaction of compromise in 1871, it was submitted, was not an "alienation" within the meaning of Bombay Act VI of 1862, section 12, and the case of *Khunni Lal* v. *Gobind Krishna Narain*[5] was referred to. No land was transferred, but merely a reversionary interest in the estate which was a right recognised as then existing: no new right was created. The burden of proof as to the custom enabling or disabling the adopted son to succeed to *jivai* property was on the respondent as plaintiff in an ejectment suit; but both the Courts in India had wrongly applied it, and the High Court also had wrongly applied it as to the widow's right to succeed; and the evidence adduced by the respondent to establish the custom of reversion was, it was submitted, inadmissible as it did not relate to this family, but to the custom of succession and the exclusion of the widow and adopted son in other families. Reference was made to *Ram Nundun Singh* v. *Janki Koer*[6] as to *babuana* rights, it being contended that there was nothing of the *babuana* character in *jivai* grants: Prile's "Taluqdars in the Ahmedabad Zillahs," 1867 (Select

(1) (1916) 38 All. 446 (451): L. R. 43 I. A. 183 (186).

(2) (1907) 30 All. 84: L. R. 35 I. A. 17 (19).

(3) (1886) 14 Cal. 296 (307): L. R. 14 I. A. 7 (16).

(4) (1881) 7 Cal. 304 (315): L. R. 8 I. A. 46 (61).

(5) (1911) 33 All. 356: L. R. 38 I. A. 87.

(6) (1902) 29 Cal. 828 (851, 852): L.R. 29 I. A. 178 (194 to 195)

Records of the Bombay Government, pages 57, 67). Concurrent findings of the Courts in India have established that the first appellant is the duly adopted son of Kaliansing, and his right to succeed to all heritable property owned by him necessarily follows, and no custom defeating that right could be valid; as to inheritance he was in the same position as a natural born son. Reference was made to *Nagindas Bhagwandas* v. *Bachoo Hurkissondas*[1], and *Rameswar Singh* v. *Jibender Singh*[2] which was the case of a *babuana* grant and an adopted son was held entitled to it, and *Durgadut Singh* v. *Rameshwar Singh*[3]. The case of *Amarsangji Gulabsangji* v. *Dipsangji Jodhsingji*[4] was not applicable as it related to a different family. Even if a custom excluding the widow was proved that would not prevent the adopted son from inheriting, and divesting the estate from any one who had taken it. Reference was made to *Sri Virada Pratapa Raghunada Deo* v. *Sri Brozo Kishoro Patta Deo*[5]; *Madana Mohana Deo* v. *Purushotthama Deo*[6]; *Bachoo* v. *Mankorebai*[7]; Mayne's Hindu Law, 8th Edition, paras. 185, 191; *Rama Rao* v. *Rajah of Pittapur*[8]. The rule as to the divesting of an estate by adoption extends to impartible estate: *Surendra Nandan* v. *Sailaja Kant Das Mahapatra*[9]. A custom to exclude an adopted son from inheriting needs very strict proof, even if it is valid: *Verabhai Ajubhai* v. *Bai Hiraba*[10] was referred to.

(1) (1915) 40 Bom. 270 (288): L. R. 43 I. A. 56.

(2) (1905) 32 Cal. 683 (689).

(3) (1909) 36 Cal. 943: L. R. 36 I. A. 176.

(4) (1898) P. J. Bom. 60.

(5) (1876) 1 Mad. 69: L. R. 3 I. A. 154.

(6) (1918) 41 Mad. 855: L. R. 45 I. A. 156.

(7) (1907) 31 Bom. 373: L. R. 34 I. A. 107.

(8) (1918) 41 Mad. 778: L. R. 45 I. A. 148.

(9) (1891) 18 Cal. 385.

(10) (1903) 27 Bom. 492: L. R. 30 I. A. 234.

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A. M. Dunne K. C. with *Kenworthy Brown*, for the respondent (who were only called on as to the evidence of the custom and the validity and effect of the adoption) contended that on the custom which the plaintiff alleged to exist there was a reversion of a *jivai*, granted when the male descendants of the grantee failed, and both Courts in India had concurrently decided to that effect on the facts. On the death of the grantee therefore without a male heir the *jivai* came to an end, and his widow, it was submitted, could not create an heir who could take it, by the adoption of a son to her husband unless she was empowered by proof of a special custom. Reference was made to *Amarsangji Gulabsangji* v. *Dipsangji Jodhsingji*[1], a case with which the same caste as in the present case was concerned, and in which the circumstances were very similar to that now on appeal. The adopted son's right could only take effect after his adoption: *Bamundoss Mookerjea* v. *Mussamut Tarinee*[2]; *Moro Narayan Joshi* v. *Balaji Raghunath*[3]; *Bhubaneswari Debi* v. *Nilcomul Lahiri*[4]; Mayne's Hindu Law, 8th Edition para. 197: *Sri Virada Pratapa Raghunada Deo* v. *Sri Brozo Kishoro Patta Deo*[5] where, however, the property though impartible was joint, which was the case also in *Madana Mohana Deo* v. *Purushotthama Deo*[6]. But it was contended that the adoption itself was invalid as being beyond the power of the widow to make; she had no authority from her husband to make it, and she was not in possession of the estate as his heir which was essential, and reference was made

(1) (1898) P. J. Bom. 60.

(2) (1858) 7 Moo. I. A. 169.

(3) (1894) 19 Bom. 809.

(4) (1885) 12 Cal. 18: L. R. 12 I. A. 137.

(5) (1876) 1 Mad. 69: L. R. 3 I. A. 154.

(6) (1918) 41 Mad. 855: L. R. 45 I. A. 156.

to *Ramji* v. *Ghamau*[1], and *Dinkar Sitaram Prabhu* v. *Ganesh Shivram Prabhu*[2]; and Mayne's Hindu Law, 8th Edition para. 130. The evidence, moreover, showed that in the Chudasama Girasia caste to which the parties belonged adoption was not permitted, *Mohesh Chunder Dhal* v. *Satrughan Dhal*[3]; and *Ekradeshwar Singh* v. *Janeshwari Bahuasin*[4] were referred to.

Counsel for the appellant was not called on to reply.

1918 December 16th:—The judgment of their Lordships was delivered by

MR. AMEER ALI:—This is an action in ejectment brought by the Thakor of Gamph in the Court of the Subordinate Judge of the Ahmedabad District for possession of a village called Piparia. His suit is based on the ground that the village in question forms part of the estate of Gamph, that many years ago it was granted for maintenance or *jivai* by one of his ancestors to a junior member of the family to be held and enjoyed so long as the grantee's male line lasted, and that on the death of the last holder named Kaliansing in 1903 without male issue, it reverted to him as the owner of the original estate under the custom attached to such *jivai* grants.

The action was brought on the 15th July, 1907, against Bai Devla, the widow of Kaliansing, who was admittedly in possession of the village claiming to hold the same for her minor adopted son, who was also joined as defendant No. 2, whom she alleged she had taken in adoption shortly after the death of her husband. Devla has since died, and the adopted son is the present appellant before this Board. The third

(1) (1879) 6 Bom. 498.
(2) (1879) 6 Bom. 505.
(3) (1902) 29 Cal. 343 : L. R 29 I. A. 62.
(4) (1914) 42 Cal. 582 : L. R. 41 I. A. 275.

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defendant is a mortgagee claiming under a bond executed by Kaliansing.

Both the plaintiff and the defendant Shivsing are Chudasama Girasias, a caste of Hindu Rajpoots who, it is said, settled several generations ago in the Dhanduka Taluka appertaining to the Ahmedabad District. The Thakor of Gamph appears to have been one of their principal chiefs, and possessed at one time a considerable number of villages which, by successive grants to junior members of the family, have dwindled now to eight or nine, and the Thakor is naturally anxious to get back as many of these grants as possible.

The plaintiff states in his plaint that the grant in question in this case was made by one Milaji, his ancestor in the fifth degree, in favour of his third son Rupsingji; that on the death of Rupsingji it came into the possession of his two sons, Kesarising and Kaliansing; that subsequently on Kesarising's death without issue, the entire village came into the hands of Kaliansing who held it until his death in 1903; that Kalian also died without leaving any male issue and that accordingly the village reverted to the grantor's estate, but the defendants were holding the property wrongfully and illegally without any title. The relief sought was of a twofold character, viz., (1) a decree for possession and (2) a declaration that the second defendant's adoption was "void and illegal."

The widow and the adopted son, Shivsing, denied the right of reversion claimed by the plaintiff; they alleged that in 1871 there were disputes between the plaintiff's father and Kaliansing regarding his title to Piparia, which were settled by arbitration, and documents were exchanged between the parties by which the plaintiff's father acknowledged the absolute title of Kaliansing to the village in question excepting a small

area which was taken by the plaintiff's father as consideration for the settlement. They also alleged that there was no failure of Kaliansing's male line as the second defendant had been validly adopted. To this the plaintiff demurred and alleged on his side a custom among the Chudasama Girasias which precluded the widow from making an adoption to her deceased husband or inheriting a *jivai* grant. This latter allegation was evidently put forward in order to strengthen the first, for it seems to have been thought that she could not make an adoption unless she could vest the adopted son with any rights to property owned by the deceased in his lifetime, the idea apparently being that the son's right was dependent on the widow's right to inheritance.

Upon these allegations a number of issues were framed by the trial Judge, but, as usually happens in India, the case was overladen with a variety of considerations which had only an indirect bearing on the main questions for determination. The Subordinate Judge held that, although there was no definite evidence from examples within the Taluka of Gamph regarding the custom relating to the right of reversion, judging, however, from cases in neighbouring estates, the plaintiff had succeeded in establishing it. He further held that the plaintiff had failed to establish the custom debarring the widow of a *jivaidar* from inheriting his estate or from making an adoption to him. But, throwing the onus on the defendant, he also held that although the defendant was validly adopted he had not shown that his adoption affected the plaintiff's right to resume the *jivai*. And he went on to hold that the documents executed in the proceedings of 1871 amounted to an acknowledgment on the part of the plaintiff's father of an absolute title and interest in Kaliansing in the village of Piparia which

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descended to the defendant No. 2, and that the plaintiff was estopped from questioning his title. Proceeding on these grounds the learned Judge dismissed the plaintiff's claim.

On the plaintiff's appeal from this decree the learned Judges of the Bombay High Court have affirmed the finding of the First Court with regard to the factum and, as their Lordships understand the judgment of the High Court, the validity of Shivsing's adoption; they agreed with the trial Judge as to the existence of a right of reversion in the owner of the *Taluka* in respect of the *jivai* on the death of the last *jivaidar* without male issue. But they disagreed with him on the construction of the documents of 1871; they considered that the words on which the Subordinate Judge rested his judgment that the plaintiff's father acknowledged an absolute title in Kaliansing did not bear that meaning; and that even if those words did have that meaning, the agreement entered into would amount to an "alienation," and as the estate of Gamph was at the time in charge of the Talukdari Settlement Officer the transaction was inoperative under the provisions of section 12 of Bombay Act VI of 1862. Finally, they considered that although the first defendant was validly adopted and was entitled to succeed to other property left by his adoptive father, yet as his adoption took place after the reversion had taken effect and after Piparia had vested in the plaintiff which occurred immediately Kaliansing died, the plaintiff became entitled to possession of this *jivai* village free of any burden created by the *jivaidar*. They accordingly reversed the order of the Subordinate Judge and decreed the plaintiff's claim.

The present appeal to His Majesty in Council is by the defendants, and the points in issue have been elaborately argued on both sides. Their Lordships are

disposed to agree with the Subordinate Judge with regard to the intent and meaning of the documents of 1871, but in the view they take of the principal question involved in the case, they do not consider it necessary to decide whether the transaction evidenced by those documents amounted to an "alienation" within the meaning of section 12, Bombay Act VI of 1862, and was consequently invalid. They wish to deal with the case on the assumption that the nature of the grant and the status of the *jivaidar* remained unchanged since the grant, and that what took place in 1871 did not enlarge his rights. They also accept the conclusion at which the Courts in India arrived regarding the existence of a right of reversion in the holder of the Gamph estate.

Now it is to be observed that when a hereditary grant of the nature in dispute is made by a Hindu subject to the limitation that it shall be descendible in the direct male line, or, in other words, that it shall enure so long as the grantees' male line lasts, the existence of the line must be determined by the rules and provisions of the Hindu law, unless there be any custom varying those rules. The limitation itself is a variation of the Hindu law; where a further custom is alleged confining the line to natural-born issue alone, it must be proved affirmatively and conclusively, and not derived from implications. The plaintiff in order to prove this further limitation, put forward a custom among the Chudasama Girasias prohibiting widows from making an adoption—a custom wholly at variance with the Hindu law and Hindu religious conceptions. It is not necessary to determine in this case whether such a custom, even if proved to exist in certain localities, would be recognised in the British Indian Courts. But here the plaintiff has entirely failed to establish the custom alleged by him. In the case of

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Verabhai Ajubhai v. *Bai Hiraba*[1], which also arose among the Chudasama Girasias, the same custom was put forward with the same result. Both the Courts in India have in this case found that the second defendant was duly taken in adoption by Devla Bai.[2] With that conclusion their Lordships concur. Their Lordships also hold that she had the power to make the adoption, and that Shivsing has the status of a validly adopted son.

Now it is an explicit principle of the Hindu law that an adopted son becomes for all purposes, the son of his father, and that his rights unless curtailed by express texts are in every respect the same as those of a natural born son. And a learned authority on Hindu law has explained that the only express text by which the heritable rights of an adopted son are "contracted" refers to the case of his sharing the heritage with an afterborn natural (*aurasa*) son. "In every other instance the adopted son and the son of the body stand exactly in same position."[3] Again, it is to be remembered that an adopted son is the continuator of his adoptive father's line exactly as an *aurasa* son, and that an adoption, so far as the continuity of the line is concerned, has a retrospective effect; whenever the adoption may be made there is no *hiatus* in the continuity of the line. In fact, as Messrs. West and Buhler point out in their learned treatise on Hindu law, the Hindu lawyers do not regard the male line to be extinct or a Hindu to have died without male issue until the death of the widow renders the continuation of the line by adoption impossible.[3] Much reliance has been placed on behalf of the respondent on the case of *Bamundoss Mookerjea* v. *Mussamut Tarinee*.[4]

(1) (1903) 27 Bom. 492 : L. R. 30 I. A. 234.

(2) Rajkumar Sarvadhikari's "Lectures on Hindu Law," p. 557.

(3) West & Buhler's Hindu Law, p. 996.

(4) (1858) 7 Moo. I. A. 169.

The only point decided in that case was that a mere power given to a widow to adopt does not preclude her from maintaining an action in her own name and in her own right in respect of the property in her possession as her husband's widow. But it was also pointed out that there was no power under the Hindu law to compel a widow to adopt. Unless there is a time limit imposed in the authority which empowers her to adopt, or she is directed to adopt promptly, she may make the adoption so long as the power is not extinguished or exhausted. The circumstance under which her power becomes extinguished is clearly pointed out by their Lordships in *Bhoobun Moyee's case*[1], and in the judgment of this Board delivered by Lord Haldane in *Madana Mohana Deo* v. *Purushotthama Deo*[2].

The right of the widow to make an adoption is not dependent on her inheriting, as a Hindu female owner, her husband's estate. She can exercise the power, so long as it is not exhausted or extinguished, even though the property was not vested in her. In *Sri Virada Pratapa Rajunada* v. *Sri Brozo Kishoro Patta Deo*[3] on the death of an elder brother in an undivided family the estate, which was impartible, had devolved on the younger brother. Two years after the death of her husband the widow of the elder brother adopted a son to him. And this Board held that the adoption had the effect of defeating the right of the younger brother to the estate, and that the adopted son was entitled to possession. The rule enunciated in *Raghunadha's case*[3] was followed in *Bachoo* v. *Mankorebai*[4]. In this case two brothers, Harkisondas and Bhagwandas, were members of a joint undivided Hindu family. Harkisondas died on

(1) (1865) 10 Moo. I. A. 165.
(2) (1918) 41 Mad. 855: L. R. 45 I. A. 156.
(3) (1875) 1 Mad. 69: L. R. 3 I. A. 154.
(4) (1907) 31 Bom. 373

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the 14th September 1900, leaving his widow pregnant. On the 30th November following Bhagwandas made a will authorising his widow to adopt a son to him. Bhagwandas died on the 17th December 1900. Harkisondas' widow gave birth to a son Bachoo next day, and in the then state of the family Harkisondas' son became entitled to the entire family property. On the 17th February 1901, Bhagwandas' widow adopted Nagar Dass. This Board affirmed the right of the adopted son to the share of his father, holding that the case was governed by the principle laid down in *Raghunada's case*[1]. Their Lordships consider that the rule enunciated in these two cases supplies the governing principle for the determination of the present case. It was contended with considerable force and some degree of plausibility that in the case of a *jivai* grant on the death of the holder thereof there is no property left for the adopted son to take, as it reverts to the grantor's estate immediately the *jivaidar* dies. But it was admitted that a posthumous son would prevent the reversion. If the widow happened to be *enceinte* the reversion naturally would remain in suspense until the birth of the child, to see whether it was a male or a female. It is futile, therefore, to say that the property reverts to the grantor's estate immediately the breath leaves the body of the *jivaidar*. Here the adoption was made within the period of natural gestation, and the property was at the time of the adoption in the possession of the widow and still is in the possession of the adopted son. It may be that if a Hindu widow lies by for a considerable time and makes no adoption, and the property comes into the possession of some one who would take it in the absence of a son, natural or adopted, and such person were to create rights in such property within his

[1] (1876) 1 Mad. 69: L. R. 3 I. A. 154.

competency whilst in possession, in such a case totally different considerations would arise. But here there is nothing of the kind to modify the true application of the Hindu law.

Their Lordships are of opinion that this appeal should be allowed, the decree of the High Court of Bombay should be reversed, and the suit of the plaintiff dismissed with costs in all the Courts, including the costs of this appeal.

And their Lordships will humbly advise His Majesty accordingly.

Solicitors for the appellants: Messrs. *Ranken Ford & Chester.*

Solicitors for the respondent: Messrs. *Hickson, Moir & Trakes.*

Appeal allowed.

J. V. W.

ORIGINAL CIVIL.

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

MORARJI GOKULDAS & COMPANY (APPELLANTS AND PLAINTIFFS) *v.* THE ASIAN COMMERCIAL ASSURANCE COMPANY, LIMITED (RESPONDENTS AND DEFENDANTS).*

1919. *January* 9.

The Bombay Rent Act (Bom. Act II of 1918), sections 2 (c), 9—Suit in ejectment—'Landlord,' definition of, in the Rent Act—Landlord includes his lessee if entitled to recover rent—Rent Act not retrospective where tenancy determined before the Act came into force.

On the 6th of February 1918, the plaintiffs took a lease of a four-storied house from its owner. By the lease the plaintiffs became entitled to the premises for twenty years, at a rent of Rs. 6,500 per annum for the first ten years and Rs. 7,000 for the second ten years with an option of renewal for another seven years at the same rent, the plaintiffs acquiring the benefit of all subsisting tenancies. The plaintiffs' object in taking the lease was to utilise the fourth floor

*O. C. J. Suit No. 1500 of 1918; Appeal No. 14 of 1918.