by the Municipality concerned and whatever compensation has been awarded the person whose land has thus been compulsorily acquired has also got to be paid by the Municipality concerned. The Municipalities are statutory bodies constituted under the Bombay Municipal Boroughs Act and but for such a provision contained in s. 52 of the Bombay Municipal Boroughs Act, it may not be possible for the Municipalties to sanction the payment of any such compensation moneys or the costs incurred by the Provincial Government in the matter of the land acquisition proceedings. There is, therefore, a purpose behind the enactment of this s. 52 of the Bombay Municipal Boroughs Act. It is not superfluous. It is not meaningless. But it only gives one illustration of the exercise of the powers by the Provincial Government for compulsory acquisition of land under the provisions of the Land Acquisition Act, 1894, and the consequences of such compulsory acquisition of land are worked out therein. We do not read in the enactment of s. 52 of the Bombay Municipal Boroughs Act any limitation or restriction on the powers of the Provincial Government to compulsorily acquire the land for the public purpose within the meaning of the Land Acquisition Act, 1894. We have, therefore, come to the conclusion that the argument which found favour with the learned Assistant Judge and which was advanced also before us is not sound. The notifications which were issued by the Provincial Government on December 12, 1939, and November 24, 1941, were valid and the plaintiff is not entitled to any relief against the Provincial Government as asked for.

The result, therefore, is that the appeal will be allowed. The decree passed by the learned Assistant Judge against the Provincial Government, defendant No. 2, will be set aside. The order for dismissal which was passed by the learned trial Judge will be restored and the suit will be dismissed with costs throughout.

Appeal allowed.

M. W. P.

APPELLATE CIVIL

Before Mr. Justice Bhagwati and Mr. Justice Chainani.

BHALCHANDRA LAXMAN POTNIS AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS *v.* BALKRISHNA MADHAV POTNIS (ORIGINAL PLAINTIFF), RESPONDENT.*

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Jan. 19

* First Appeal No. 356 of 1949 with First Appeal No. 373 of 1949.

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BHALCHANDRA LAXMAN v. BALKRISHNA MADHAV

Bhagwati J.

Hindu Law—Digest of Hindu Law, Kolhapur, 1920, ss. 6, 7, 8, 9 and 13 —Scope of—Widow succeeding to estate as widow of Gotraja Sapinda —Adoption by—Validity of.

Whatever may have been the position of the subjects of the Province of Bombay with regard to the application of the general principles of Hindu Law, the rights and obligations of the Hindu subjects of the Kolhapur State under their personal law were governed only by the Digest of Hindu Law, Kolhapur, 1920.

On the interpretation of s. 7 of the Digest of Hindu Law, Kolhapur, 1920, a widow succeeding as an heir to the estate in her capacity as the widow of a Gotraja Sapinda, can make a valid adoption.

Appeal from the decision of V. V. Ghotage, second Joint First Class Sub-Judge, Kolhapur.

One Madhav Narayan Potnis died in 1904 leaving two widows Radhabai and Gangabai. Radhabai, the senior widow, adopted one Chandrashekhar. Radhabai died in 1927. Chandrashekhar died unmarried in 1929. Gangabai in her turn adopted Balkrishna, the plaintiff on February 14, 1933. Balkrishna filed the present suit on March 23, 1942 for possession of the properties belonging to the estate of Madhav.

The defendants contended, *inter alia*, that Gangabai had no authority to adopt the plaintiff as a son to her deceased husband and therefore the plaintiff's adoption was not valid.

The trial Court held that the plaintiff was the validly adopted son of Madhav. The defendants appealed to the High Court.

G. R. Madbhavi, for appellants Nos. 1 and 3.

R. G. Samant, for appellant No. 4.

A. A. Adarkar and *H. S. Nandrekar*, for the respondents.

BHAGWATI J. These two first appeals are filed against the judgment of the learned 2nd Joint First Class Subordinate Judge of Kolhapur who decreed the plaintiff's suit. One Madhav Narayan Potnis died in the year 1904 leaving him surviving his two widows, one Radhabai and one Gangabai. Radhabai was the senior widow. Prior to her death in 1927, Radhabai adopted one Chandrashekhar as a son to her husband, Madhav. Chandrashekhar also died unmarried in the year 1929. The estate of Madhav thereupon devolved upon Gangabai, the junior widow, not as the mother of the deceased Chandrashekhar but as the widow of a *gotraja sapinda*, she being in the position of the step mother of Chandrashekhar. Gangabai in her turn adopted Balkrishna, the plaintiff, on February 14, 1933, as a son to her deceased husband Madhav. This suit was filed on March 23, 1942, by the plaintiff. Balkrishna, for possession of

the properties belonging to the estate of Madhav and for future mesne profits and costs of the suit.

There were various defences taken up including those whether Chandrashekhar had been validly adopted by Radhabai, whether Balkrishna himself was validly adopted by Gangabai and whether the defendants had become the owners of the suit properties by adverse possession. The learned trial Judge held that Radhabai had validly adopted Chandrashekhar and that Gangabai had validly adopted Balkrishna, the plaintiff. He negatived the contention of the defendants, that they had become the owners of the suit properties by adverse possession, and accordingly passed in favour of the plaintiff the decree from which these first appeals have been filed. Defendants Nos. 2,3,5 and 6 who were the real contesting defendants filed First Appeal No. 356 of 1949 from the judgment of the learned trial Judge, contending that Gangabai had no authority to adopt Balkrishna the plaintiff, as a son to her deceased husband, Madhav, and that, therefore, the plaintiff's adoption was not valid. It may be noted in passing that the factum of the adoption was not disputed before us. The only question which was canvassed before us was the validity of the adoption. The plaintiff also filed an appeal against the judgment of the learned trial Judge, being First Appeal No. 373 of 1949, contending that the exception made in regard to certain Revenue S. Nos. and certain Vaphas from other Revenue S. Nos. was not justified. These are the appeals which have come for hearing and final disposal before us.

The main contest between the parties is as to whether there was a valid adoption of Balkrishna, the plaintiff, by Gangabai. The validity or otherwise of the adoption falls to be determined on a true construction of the relevant provisions of the Digest of Hindu Law, Kolhapur, 1920. It is well-known that this Digest of Hindu Law was taken bodily from Sir Dinshah Mulla's Hindu Law, 1919 edition. The parties at Kolhapur were governed by the provisions of this Digest of Hindu Law styled "Hindu Kayadyache Nibandh, Kolhapur." This is the digest of Hindu law which has got to be referred to in order to determine whether the adoption of Balkrishna, the plaintiff, by Gangabai was valid. We would not be justified in travelling beyond the scope of this Digest. Our attention has not been drawn to any authority which has laid down that over and above this Digest we have also got to be guided by the general principles of Hindu law as administered in the Province of Bombay. Whatever *may*

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have been the position as it obtained in the Province of Bombay after 1920 did not affect the Kolhapur State. The subjects of the Kolhapur State continued to be governed by the Digest of Hindu Law which was adopted by the Kolhapur State in 1920. Whatever may have been the position of the subjects of the Province of Bombay with regard to the application of the general principles of Hindu law did not avail the subjects of the Kolhapur State. Their rights and obligations under this personal law were governed by the Hindu Kayadyache Nibandh, Kolhapur, 1920. We shall, therefore, discard from our consideration whatever may have been stated in Sir Dinshah Mulla's Hindu Law, 1919 edition, or the decisions of our Courts here even though they might have been pronounced prior to 1920 but shall be guided only by the provisions of this Digest of Hindu Law which laid down the law as applicable to the Hindu subjects of the Kolhapur State.

The authority of a woman to adopt is contained in the caption "*Adhikar Asaleli Stree*" at page 34 of this Digest of Hindu Law of Kolhapur. Section 6 defines the authority of a woman to adopt a son to her husband during coverture. It talks of a *vivahit stree* and the word "*vivahit stree*" is to be understood with reference to the context and having regard to the expressions which are used in ss. 7 and 8 and which refer to the *vidhava* or the widow of a *vibhakta pati* or the divided husband and the *vidhava* or the widow of an *avibhakta pati*, that is, an undivided husband respectively. It, therefore, follows that s. 6 refers to a married woman during coverture; s. 7 refers to the widow of a divided husband and s. 8 refers to the widow of an undivided husband. In this case, we are not concerned either with s. 6 or s. 8, but we are concerned with s. 7. Section 7 lays down that in the case of a widow who has not got a son and whose husband has separated from his family or who is herself the heir being the widow of such a divided husband, she would have the authority to adopt a son to her husband provided her husband had not expressly or impliedly prohibited her from taking a son in adoption. The section, therefore, shows that the widow who is adopting should have no son and should be the widow of a divided husband or should be herself the heir being the widow of such a divided husband. In such a case she could have the authority to adopt a son to her deceased husband provided of course that there is no express or implied prohibition from the husband against taking a son in adoption. The question, therefore, arises as to what is

the interpretation to be put on the words "if she is herself the heir being the widow of such a divided husband." Has she got to be a direct heir of her deceased husband or has she, being the widow of a divided husband, to be merely an heir in her own right, that is, should she be a direct heir of her husband or should she be the heir to the estate even in her capacity as a widow of a *gotraja sapinda*? If the latter is the true interpretation, Gangabai had the authority to adopt. In this case we have no plea taken that Gangabai had been expressly or impliedly prohibited against taking a son in adoption to her deceased husband. She was the widow of a divided husband. She was, however, not the direct heir of her husband, but she got into the inheritance as a widow of a *gotraja sapinda*, being the stepmother of her deceased son, Chandrashekhara. The very words which are used in s. 7 and which we have reproduced above do not impose any limitation on the manner in which the widow of such a divided husband becomes *varas* or the heir to the estate, and without anything more, we would be inclined to say that there is no justification for limiting these words in the manner suggested, namely, that she should be the direct heir of her deceased husband. The whole idea is that when she comes to adopt a son to her deceased husband, she should, if at all, divest the estate which had vested in her and should not divest an estate which had vested in somebody else. If the estate had vested in her, she can do anything she likes with it. It is only in the case where the estate is vested in somebody else that as laid down in s. 9 the consent of such other person would be necessary before making a valid adoption to her deceased husband. In the absence of such a consent of the person in whom the estate is thus vested, the adoption would be invalid. That is, however, the only limitation to be found in s. 9 to this authority of the widow to adopt to her deceased husband. Section 13 prescribes the condition in which the authority which a widow has got is extinguished, and that is the case where the estate has devolved on the death of the son on some person other than the adopting widow. In that case, the authority of the widow to adopt is extinguished, and even though thereafter the estate may devolve on her under the law of inheritance, that authority to adopt which is once extinguished cannot be revived. It is extinguished for ever. The words used are "*Adhikar Kayamacha Nashta Hoto.*" Illustration 2 to s. 13 makes the whole position clear and it illustrates the proposition as it has been laid down in s. 13. In that case after the death of the son without leaving any issue him surviving,

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the mother became the direct heir of the son. She had not become the direct heir of her husband. But within the term used in s. 7 she was the *swatah varas,* i. e., herself the heir, being no doubt the widow of a divided husband. This illustration really goes to support the construction which we have adopted on the terms of s. 7 and it goes to show that such a widow herself should be the Varas or the heir to the estate, not necessarily a direct heir of her deceased husband but an heir also in her capacity of the widow of a *Gotraja sapinda* as in the case before us. There was a considerable discussion before as in regard to the construction of these various sections of the Digest of the Hindu Law and we find no answer to this conclusion which we have reached, forthcoming from the learned Advocate of the appellants. The position, therefore, as laid down by the learned Judge below appears to be correct, though we need not go so far as to agree with him in the converse proposition which he laid down based on ss. 9 and 13 in the manner stated at page 10 of the print.

We have, therefore, come to the conclusion that Gangabai under the circumstances had the authority to adopt Balkrishna the plaintiff to her deceased husband Madhav. The factum of adoption is no more disputed before us and Balkrishna therefore being a validly adopted son of Madhav was entitled to the relief which the learned trial Judge granted to him in the decree which he passed in his favour. The F. A. No. 356 of 1949 will, therefore, stand dismissed with costs.

In regard to F. A. No. 373 of 1949, it was filed by the plaintiff quarrelling against the exclusion of certain Revenue S. Nos. and certain Vaphas of certain Revenue S. Nos. from the scope of the decree which the learned Trial Judge passed in his favour. Mr. Adarkar for the appellant has very frankly conceded that it is no use taking the time of the Court in arguing that contention of the plaintiff. That appeal also will, therefore, stand dismissed with costs.

C. A. No. 1424 of 1949 was for stay. The stay will be removed, the rule will be discharged and the application will be dismissed with costs.

Appeal dismissed.

K. B. S.