APPEAL FROM ORIGINAL CIVIL.

Before Rankin C. J. and C. C. Ghose J.

LUNKURN RAMPOORIA

v.

BIRJI.*

1930

Jan. 15, 24.

Hindu law—Mitakshara—Adoption—Cancellation—Renunciation by adopted son—Inheritance, renunciation of.

A person, who has been validly adopted, cannot renounce that state under the Mitakshara school of Hindu law.

Ruvee Bhudr Sheo Bhudr v. *Roopshunkur Shunkerjee* (1), *Lakshmappa* v. *Ramava* (2) and *Mahadu Ganu* v. *Bayaji Sidhu* (3) followed.

An adopted son, who has been validly adopted, can, however, renounce his right to the inheritance, the effect being that the inheritance would go to the next heir.

Ruvee Bhudr Sheo Bhudr v. *Roopshunkur Shunkerjee* (1) referred to.

APPEAL by the plaintiffs from a judgment of Buckland J.

The facts of the case, out of which this appeal arose, are briefly as follows:—

In 1912, Punamchand for self and as next friend of his four minor sons, brought a suit (No. 315 of 1912) in the Original Side of the Calcutta High Court, against Choutmull, his adoptive grand-father, and others, alleging that he had been adopted in 1906 by Birji, the widow of Hamirmull, Choutmull's son, this adoption having been confirmed by the Bikaneer Durbar in 1906, and seeking a declaration that he and his sons were entitled to a 5/18th share of the joint family business, purchased out of funds belonging to the joint family of which Choutmull was a member.

*Appeal from Original Civil, No. 50 of 1929, in Suit No. 998 of 1926.

(1) (1824) 2 Bor. Rep. 656.
(2) (1875) 12 Bom. H. C. R. A. C. J. 364.
(3) (1893) I. L. R. 19 Bom. 239.

Choutmull filed his written statement denying the validity of the adoption, *inter alia*, on the ground that at the time of his adoption Punamchand was about 24 years of age and had two sons. He asserted that Punamchand's adoption had been cancelled in 1912 both on the strength of a document, entitling Birji to do so on certain terms, and by custom; that Punamchand had consented to the cancellation, which had also been confirmed by the Bikaneer Durbar.

This suit ended in a consent decree dated 15th April, 1913, Hasan Imam J. certifying that the compromise was for the benefit of the minors. Under the terms of this compromise Punamchand accepted the cancellation of his adoption as well as the fact that Choutmull's property was self-acquired, and it was expressly stated that the plaintiffs had never acquired nor had now any right, title or interest in and to the estate and effects of the said Choutmull or his son. Choutmull paid to Punamchand on behalf of himself and his minor sons Rs. 1,90,000 in full satisfaction of their claims, if any, whether present or future. In 1916 Birji adopted Kanhialal and Choutmull died in 1918. Thereafter in 1926 Punamchand's four sons instituted the present suit (No. 998 of 1926) in the Calcutta High Court making their father a defendant along with Birji, Kanhialal and others. They alleged that Punamchand was not competent to renounce his adoption and that Birji and Kanhialal were in possession of Choutmull's estate and asked that they may be ordered to make over the estate to the plaintiffs and their father. Nothing was said about the previous consent decree. In her written statement Birji, *inter alia*, contended that the new suit could not be prosecuted while the previous consent decree subsisted and that it was barred by limitation. Two preliminary issues, one as to the maintainability of the suit and the other as to the plaintiffs being entitled to any relief, if the consent decree was binding on the plaintiffs, having been decided by Buckland J. against them, the plaintiffs preferred this appeal.

1930

LUNKURN RAMPOORIA v. BIRJI.

Mr. P. N. Chatterji and *Mr. B. K. Ghosh*, for the appellants.

Mr. N. N. Sircar (*Advocate-General*) and *Mr. A. K. Roy*, for the respondents.

Cur adv. vult.

After dealing with the facts of the case, the judgment continued as follows :—

RANKIN C. J. It has been contended, on behalf of the appellants, first, that it is a proposition sound according to the Mitakshara law that a person, who has been validly adopted, cannot renounce that state. That proposition appears to me to be established upon authority. The first case, in which that proposition appears to have been affirmed, is the case of *Ruvee Bhudr Sheo Bhudr* v. *Roopshunkur Shunkerjee* (1). In that case, the adopted son, at the time of the suit, was still disclaiming any desire to take or right to take the property of his adoptive father and, the property in question being separate property, it was ruled that it went to the widow as the next heir failing the adopted son, but it was held that a valid adoption having taken place, the position of the adopted son could not be renounced. In 1875, Westropp C. J. affirmed the same doctrine in *Lakshmappa* v. *Ramava* (2). It was re-affirmed in 1893 in the case of *Mahadu Ganu* v. *Bayaji Sidu* (3), a case in which the adopted son purported to renounce his adoption by an agreement with the widow in her lifetime. Now, founding upon this proposition, it was contended before us that for Punamchand to purport to cancel his adoption was to purport to do something which the law does not allow. From that proposition, it was contended that, although this settlement of disputes between several other parties—some not parties to this case—was incorporated in a decree, this Court for the purposes of the present suit was entitled to ignore not only the terms by which Punamchand accepted the

(1) (1824) 2 Bor. Rep. 656.
(2) (1875) 12 Bom. H. C. R. A. C. J. 365, 388.
(3) (1893) I. L. R. 19 Bom. 239.

cancellation of his adoption but the other terms by which the plaintiffs agreed that they never acquired nor had now any right, title or interest in and to the estate and effects of Choutmull. This latter contention was maintained by saying that, in *Mahadu Ganu's case* (1), it was laid down that, although an adopted son might disclaim the inheritance, the effect of that would merely be to operate as a transfer to the person with whom he was bargaining; and that, in this case, the position was that the consent decree must be regarded as a mere transfer back to Choutmull of the interest, which was disclaimed, with the result that, on Choutmull's death, it would come back to the plaintiffs by virtue of Punamchand's position as the adopted son. In this way, the appellants endeavoured to make out that, without returning or offering to return any part of Rs. 1,90,000 which they had received as consideration for their entering into the agreement to settle the disputes, and without bringing a suit properly constituted for the purpose of setting aside the consent decree, they could now maintain against Musammut Birji and Kanhialal that they were the persons, who were entitled to succeed to the estate and effects of Choutmull. Now, it is perfectly true, to begin with, that, if a valid adoption has taken place, the adopted son cannot renounce his status. A question was, however, in this case raised by the previous suit, as the pleadings show, whether this adoption of a person, 23 years old, married and with two sons, was a valid adoption at all—particularly in view of the fact that the adoption from the first seems to have been upon terms, which would enable the widow to cancel at any time she chose. The plaint shows that Punamchand accepted the cancellation of his adoption by Musammut Birji. The cancellation has been affirmed by the Bikaneer Raj and, as the validity of the adoption was in dispute, it by no means appears to me to be obvious that the agreement incorporated in the consent decree was an agreement to cancel an adoption admittedly valid. It would

(1) (1893) I. L. R. 19 Bom. 239.

1930

LUNKUREN RAMPOORIA v. BIRJI.

RANKIN C. J.

appear to be more reasonable to regard it as an agreement to accept the position that the adoption was not valid and consequently was rightly so treated by Musammut Birji and the Bikaneer Raj. In the second place, apart altogether from the question, whether Punamchand ever had the status of an adopted son and, if so, whether he could renounce that status, the agreement, so far as the present plaintiffs are concerned, purported to be that the plaintiffs should for ever afterwards be treated as never having acquired any interest by virtue of the adoption. "The "plaintiffs never acquired nor have now any right, title "or interest in and to the estate and effects of "Choutmull." They took their share of Rs. 1,90,000 as a consideration for agreeing to a decree in those terms. It appears to me that, while it is quite true that anything, which would invalidate an agreement, may in a suit framed for the purpose be relied upon as a ground for asking the Court to set aside a judgment by consent based upon the agreement, it is idle to say that in a case of this sort the plaintiffs can ignore this consent decree for the purpose of their present suit. According to what was laid down in the old case of *Ruvee Bhudr Sheo Bhudr* v. *Roopshunkur Shunkerjee* (1), and according to the opinion of Mr. Mayne in his well-known work on Hindu Law, an adopted son, who has been validly adopted, can renounce his right to the inheritance and the effect is that the inheritance would go to the next heir. In the present suit, we are in no way concerned with what will happen to Choutmull's estate if the plaintiffs have no claim thereto. It is idle to argue that the consent decree will operate to revest the right of inheritance from Choutmull back into Choutmull and that, although the plaintiffs under the agreement and consent decree cannot take it the first time, they can take it the second time. Such an argument appears to me to be little short of absurdity. By this consent decree, the plaintiffs agreed that they never had any interest in

(1) (1924) 2 Bor. Rep. 656.

Choutmull's estate and that is the end of the matter, so far as they are concerned, unless and until this consent decree is set aside. Now, if such a question were to arise in England, I daresay it could be put right, provided no new parties had to be introduced, by a mere amendment of the pleadings. There is no reason why a claim to set aside a consent decree should not be joined in the same suit with a claim for consequential reliefs by way of possession of the estate of Choutmull. But, in India, we have to consider not merely the question of parties but also the question of limitation.

There is another most important point to consider. These plaintiffs and their father took a large sum of money as consideration for the agreement and the consent decree. If the consent decree is to be set aside, it is not going to be set aside merely on paper, but presumably it would be set aside upon the necessary terms as to the return of the money received therefor. Now, it may well be that, in this suit, the plaintiffs could establish that they had a right upon returning the money to get the consent decree set aside altogether. In that case, they would then begin to prove all over again that the adoption of Punamchand originally was valid. They would then begin to wrestle with the question whether this property was self-acquired property and whether there was a will of Choutmull, which could validly dispose of it. It may well be that they could get the consent decree set aside upon the return of Rs. 1,90,000 and that, in the end it would be declared that the adoption of Punamchand was entirely invalid or that they did not take the property. If this was an honest suit by the plaintiffs joining their father as a plaintiff, offering to return Rs. 1,90,000, asking for the consent decree to be set aside and being content thereafter to take their chance of proving that the adoption of Punamchand was valid and that that adoption, notwithstanding the alleged will, carried the property to them, no doubt one would have every desire to see such an honest case come before the Court upon its merits and

1930

LUNKURN RAMPOORIA v. BIRJI.

RANKIN C. J.

to give these plaintiffs, who were infants at the time of the previous suit, a chance in a reasonable way to raise the question of their rights. In the present case, the plaintiffs, being faced in the Court below with the objection that, until they claimed to set aside the consent decree, their suit was in form untenable, elected before the learned Judge to stand by the form in which they brought their suit. The whole argument before the learned Judge was whether or not they could go on without amending to ask that the consent decree be set aside. They come before us on the same contention—a contention which seems to me to be entirely invalid. In these circumstances, there would be no hardship at all to the plaintiffs, if their suit, being brought in a form which could not stand, was dismissed altogether. It appears to me, however, that it is just conceivable—I do not enter into the question of probabilities—that these infants might want to bring back the money, which they obtained on this compromise decree, to get the consent decree set aside and to take their chance of showing that they have an interest in Choutmull's estate. It is impossible to allow them to do that now except by putting them on very stringent terms. I take no notice at all of the transparent device, by which it is said, that Punamchand failed to be a plaintiff to the suit and was made a defendant. In fairness to the defendants, who have succeeded before the learned Judge and rightly succeeded, it is necessary to impose very stringent terms, if the suit is to go on at all. Upon the plaintiffs within six weeks from to-day paying into Court the costs before the learned Judge and of this appeal and giving security to abide by the order of the Court in the sum of Rs. 1,90,000, the plaintiffs will be at liberty to amend their plaint so as to include a claim for setting aside the consent decree. Should they, within the time limited, fail either to pay the sums of money or to give security, this appeal will stand dismissed with costs. As the costs of this appeal cannot be taxed in time, the sum of Rs. 340 may be taken to be the costs of this appeal for the

purpose of the amount to be brought into Court on this behalf.

Mr. B. K. Ghosh having ascertained that his clients are not in a position to comply with the terms imposed, it is unnecessary to make a conditional order. The appeal will stand dismissed with costs.

GHOSE J. I agree.

Appeal dismissed.

Attorneys for the appellants: *N. C. Bural & Pyne.*

Attorneys for the respondents: *Dutt & Sen.*

G. S.