PRIVY COUNCIL.

MADANA MOHANA RANGA BHEEMA DEO (PLAINTIFF)

v.

PURUSHOTTHAMA RANGA BHEEMA DEO (DEFENDANT).

1918, March 12, 14 and April 26.

[On Appeal from the High Court of Judicature at Madras.]

Hindu Law—Adoption—Successive adoptions—Limit for exercise of power to adopt—Death of first adopted son leaving widow but no son—Second adoption by widow of previous owner of impartible Zamindari—Family governed by Mitakshara Law—Divesting of property by adoption—Rule that adoption must be made to last male owner.

A, the holder of an impartible zamindari and a member of a joint family governed by Mitakshara Law, gave authority to his wife to adopt a son to him. On *A*'s death his brother *R* took possession of the property. The widow subsequently adopted a son *B* who recovered the estate of *R* and held it until 1906, when he died leaving a widow but no son. A descendant of *R* then took possession of the property but died in the same year, and was succeeded by his son the respondent. In 1907 *A*'s widow purported to make a second adoption to *A* under the authority from him, by taking in adoption the appellant. In a suit brought by him to recover the zamindari.

Held, that the law imposed a limit within which a widow can exercise a power of adoption conferred on her and the limit to her power was reached when *B* died after attaining full legal capacity to continue the line of descent either by a natural born son, or by the adoption to him of a son by his own widow against whom it had not been established (she not being a party to the suit) that she had no power to adopt. This conclusion was in no way in conflict with the previous decision of the Board in *Raghunada Deo* v. *Brozo Kishore Patta Deo* (1876) I.L.R., 1 Mad., 69 : L.R., 3 I.A., 154.

It was therefore not necessary to decide whether the authority to adopt empowered *A*'s widow to make a second adoption.

APPEAL No. 122 of 1916 from a judgment and decree (22nd April 1914) of the High Court of Madras, which affirmed a judgment and decree (1st November 1910) of the District Judge of Ganjām.

The main question for determination in this appeal was as to the validity and effect of the appellant's adoption under the Mitakshara law.

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* *Present*.—Viscount HALDANE, Lord DUNEDIN, Lord SUMNER, Sir JOHN EDGE and Mr. AMEER ALI.

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For the purpose of the report the facts are sufficiently stated in the judgment of the Judicial Committee. They will also be found in the report of the case in the High Court (Sir CHARLES ARNOLD WHITE, C.J., and SESHAGIRI AYYAR, J.) in *Madana Mohana* v. *Purushotthama*(1).

On this appeal—

De Gruyther, K.C., and *B. Dubé* for the appellant contended that his adoption was good and valid under the Hindu Law. The widow of Adikonda could validly exercise her power to make a second adoption notwithstanding that Ratnamala, the widow of Brojo Kishore, was then alive. Under the circumstances, and on the construction of the authority to adopt, the first adoption did not exhaust the power as the intention was that a second adoption could be made if necessary. Reference was made to *Kannepalli Suryanarayana* v. *Pucha Venkataramana*(2), and *Bhagwat Pershad* v. *Murari Lall*(3). The adoption of Brojo Kishore was not made until after Adikonda's death, yet he was held to be entitled to succeed; see *Raghunada Deo* v. *Brozo Kishore Patta Deo*(4). There is no text to support the rule laid down in *Ramkrishna Ramchandra* v. *Shamrao Yeshwant*(5) as to the limit to the exercise of a power to adopt, and it does not apply to the present case as there is nothing to show that Ratnamala had authority to adopt, and as the widow herself took no estate in the joint Mitakshara family. The appellant took by survivorship, and therefore the rule that an estate once vested can only be divested by an adoption to the last holder was also not applicable. The decision of the Board in *Raghunada Deo* v. *Brozo Kishore Patta Deo*(4) shows that this family should be treated as joint, only subject to a custom that the estate descends to a single heir. The decision in *Sartaj Kuari* v. *Deoraj Kuari*(6) does not affect the decision in *Raghunada Deo* v. *Brozo Kishore Patta Deo*(4). The fact was that the allegation in the plaint that Adikonda took by

(1) (1915) I.L.R., 38 Mad., 1105.
(2) (1906) I.L.R., 29 Mad., 382: L.R., 33 I.A., 145.
(3) (1910) 15 C.W.N., 524.
(4) (1876) I.L.R., 1 Mad., 69: L.R., 3 I.A., 154.
(5) (1902) I.L.R., 26 Bom., 526.
(6) (1888) I.L.R., 10 All., 272: I.L.R., 15 I.A., 51.

survivorship was not put in issue, and Order VIII, rule 5 of the Civil Procedure Code, therefore precluded the respondent from denying that the family was joint and that the succession in it was by survivorship. A valid authority to adopt gives power to add a new co-parcener at any time. Reference was made to *Bachoo Herkissandas* v. *Mankorebai*(1). The decision in *Bhoobun Moyee Debia* v. *Ram Kishore Acharjee*(2) is not applicable because there the family was not joint, and the property had vested by inheritance.

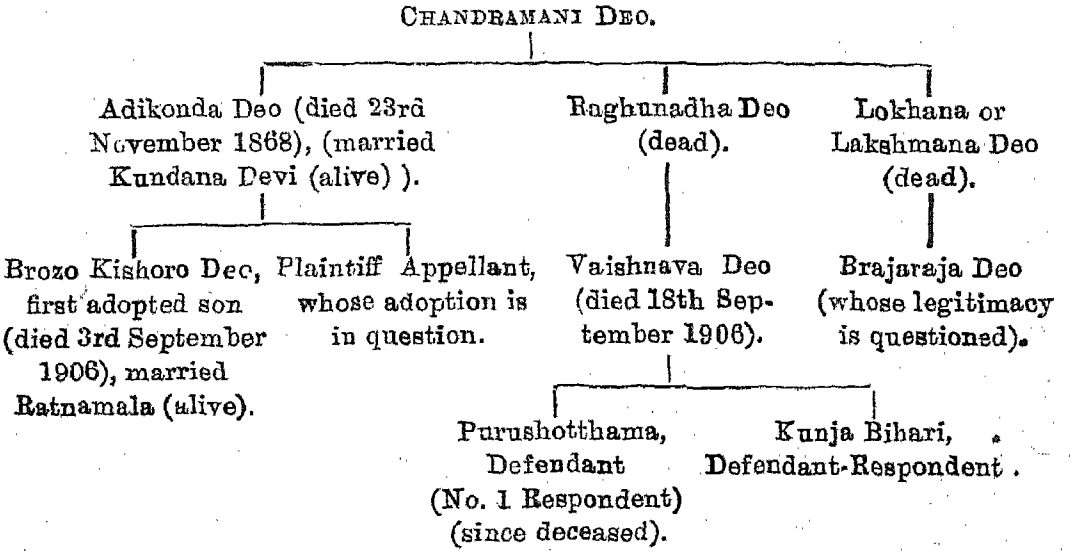
Sir H. Erle Richards, K.C., and *J. M. Parikh* for the respondent were not called upon.

The judgment of their Lordships was delivered by

VISCOUNT HALDANE.

VISCOUNT HALDANE.—This is an appeal from a decree of the High Court of Judicature at Madras which affirmed a decree of the District Judge of Ganjām. The main question to be decided relates to the validity of the appellant's adoption.

The suit is concerned with an impartible zamindari in the district of Ganjām called Chinnakimidi or Pratapgiri. In 1868 the holder of the zamindari was Raja Adikonda Deo, who was a member of a joint Hindu family subject to the Mitakshara law. The following pedigree shows the relationship of the parties to the suit to each other:—



Before his death in 1868 Adikonda Deo, the then Raja, gave to his widow, who was at that time *enceinte*, a written authority to adopt in the following terms:—

"As I know that my end, consequent upon the expiration of the terms fixed by fate, is approaching, I do hereby declare that in

(1) (1907) I.L.R., 31 Bom., 373: L.R., 34 I.A., 107. (2) (1865) 10 M.I.A., 279.

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case you, who are at present pregnant, be delivered of a male issue, the said child alone shall inherit my taluk as well as all my property both movable and immovable. Becoming the owner of movable and immovable properties, till he arrives at the proper age you will look after him; or if a daughter be the result of your present pregnancy, you, adopting a son, who may be in your opinion worthy of the throne, and making him owner of the taluk, etc., shall, pending the attainment of the said boy's majority, take care of him. This agreement is executed with my free will."

On the death of Adikonda, his brother, Raghunadha Deo, took possession of the zamindari. The widow gave birth to a daughter, and, acting on the authority, adopted to her husband a boy, Brozo Kishore Deo, in 1870. The adopted son instituted a suit to recover the zamindari from Raghunadha Deo, and this suit was decided in his favour by this Board in 1876. Having recovered possession of the zamindari, Brojo Kishore Deo held it until his death in 1906. He left a widow, Ratnamala, but no son. Possession of the zamindari was then taken by Vaishnava Deo, who died later in the same year, and was succeeded in the possession by the deceased respondent, Purushotthama Deo.

In 1907 the widow of Adikonda Deo purported to make a second adoption to her husband, under the terms of the authority already set out, by adopting the present appellant. The latter as plaintiff, subsequently instituted the present suit to recover the zamindari.

Several issues were framed, but that on which the result of the appeal must in any view turn is whether the adoption was legal. For, if this question be answered in the negative, other issues which were raised before the Courts below do not arise, and the root is cut from the appellant's case.

It is not in dispute that the zamindari was impartible and descended by the rule of primogeniture to a single heir. When Brozo Kishore was adopted, he succeeded as though he had been the actual son of Adikonda, and, as this Board decided in 1876 with reference to this very succession *Raghunada Deo* v. *Brozo Kishore Patta Deo*(1) he became entitled to oust Raghunadha, whose right to enter was only temporary, operating merely to prevent the ownership from being in abeyance pending any such succession to his elder brother as the adoption brought about.

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

But when Brozo Kishore succeeded he became himself the full owner, from whom heirship must be traced instead of as earlier from Adikonda. The widow of the latter was therefore in a different position when she endeavoured to effect the second adoption from that which she occupied on the former occasion. She could on that occasion, by exercising the power conferred on her, establish a direct succession to the estate of her husband Adikonda, which related back to his death. On the second occasion the ownership which had become vested in Brozo Kishore had intervened, and it was only to his estate that she could possibly establish a succession. The learned Judges in the Courts below have all agreed in holding that any authority she could originally be taken to have received to make a second adoption had become inoperative by reason of the changed circumstances, and their Lordships are of opinion that the conclusion so come to was right.

The Hindu Law no doubt recognizes the validity of an authority given to a Hindu widow by her deceased husband to make a second, or even a third or fourth, adoption on failure of the previous adoption to attain the object for which the power is given, viz., the perpetuation of the deceased's line to discharge the obligations that rest on a pious Hindu. When the authority to make successive adoptions is alleged, two questions arise: (1) whether it was in fact given; and (2), if so given, did it still exist in the widow when the subsequent adoption is made.

In the present case their Lordships do not consider it necessary to decide whether the document before them can be construed as by its terms enabling a second adoption to be made. For the vital question here is whether after the adoption of Brozo Kishore Deo the power still survived in the widow of Adikonda Deo.

When and under what circumstances the authority ceases to be exercisable has been considered in a number of cases both by this Board and the Courts in India. The High Court at Bombay took the view that the power must be looked on as extinguished under analogous circumstances in the case of *Ramkrishna Ramchandra* v. *Shamrao Yeshwant*(1), where CHANDAVARKAR, J., delivering the judgment of the Full Bench, examines

(1) (1902) I.L.R., 26 Bom., 526.

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the authorities closely. He interprets earlier decisions of the Judicial Committee as having established conclusively that, quite apart from any question of construction, there is a limit imposed by law to the period within which a widow can exercise a power of adoption conferred on her, and that when that limit is reached the power is at an end. That limit may arise from circumstances such as those already referred to. The authorities on which he founds are the judgment of this Board as delivered by Lord KINGSDOWN in *Bhoobun Moye Dibia* v. *Ram Kishore Acharjee*(1), and the subsequent judgments in *Padma Kumari Debi* v. *Court of Wards*(2) and *Thayammal* v. *Venkata Rama*(3).

Their Lordships are in agreement with the principle laid down in the judgment of the Full Court of Bombay as delivered by the learned Judge, and they are of opinion that on the facts of the present case, the principle must be taken as applying so as to have brought the authority to adopt conferred on Adikonda's widow to an end when Brozo Kishore, the son she originally adopted, died after attaining full legal capacity to continue the line either by the birth of a natural-born son or by the adoption to him of a son by his own widow. That widow was not a party to the suit, and, whether or not she had power to adopt to Brozo Kishore, it has not been established against her that she had no such power. Their Lordships think it right to draw attention to this circumstance, but they do not desire to be understood as saying that even in its absence the succession of Brozo Kishore and his dying after attaining full legal capacity to continue the line would not in themselves have been sufficient to bring the limiting principle into operation, and so to have so determined the authority of Adikonda's widow, who was not the widow of the last owner, and could not adopt a son to him. This conclusion is in their opinion in no way in conflict with the previous decision of this Board as to the succession to this zamindari. There the title of Adikonda's widow to displace Raghunadha's succession was recognized. But Raghunadha's succession was of a character only provisional, and subject to defeasance by the emergence of a male heir to Adikonda.

(1) (1865) 10 Moore's I.A., 279.
(2) (1881) I.L.R., 8 Calc., 302: L.R., 8 I.A., 229.
(3) (1887) I.L.R., 10 Mad., 205: L.R., 14 I.A., 67.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

Appeal dismissed.

Solicitor for the appellant : *Douglas Grant.*

Solicitors for the respondent : *Chapman-Walker and Shephard.*

J.V.W.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Sadasiva Ayyar.

SIVANARASA REDDI AND ANOTHER (PLAINTIFFS NOS. 1 AND 2), APPELLANTS

v.

DORAISAMI REDDI AND ANOTHER (DEFENDANT AND THIRD PLAINTIFF), RESPONDENTS.*

1918. February 14, 15 and 21.

Co-owner, right of, to appropriate rents collected by him towards his share—Trusts Act (II of 1882), sec. 90.

A co-owner who has collected as rent more than sufficient to pay the Government peshkash and has paid it, is not entitled to sue another co-owner for contribution to the peshkash.

Section 90 of Trusts Act (II of 1882), referred to.

SECOND APPEAL against the decree of R. ANNASWAMI AYYAR, the Temporary Subordinate Judge of Cuddalore, in Appeal No. 7 of 1915, preferred against the decree of K. L. VENKATA RAO, the Additional District Munsif of Villupuram, in Original Suit No. 15 of 1914.

The facts are given in the first paragraph of the judgment of SADASIVA AYYAR, J. The plaintiffs Nos. 1 and 2, whose suit was dismissed by the lower Appellate Court, preferred this second appeal.

T. R. Ramachandra Ayyar, T. R. Krishnaswami Ayyar and *A. Krishnaswami Ayyar* for appellants.

Hon'ble Mr. *T. Ranga Achariyar* and *C. Padmanabha Ayyangar* for respondents.

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* Second Appeal No. 372 of 1917.