

1876.

IN THE MAT-
TER OF THE
PETITION OF
RUKMIN AND
ANOTHER.

under that Act to the High Court. *Sonea v. Ram Suha* (1) and *Monmohinee Dasse v. Khetter Gopaul Dey* (2) followed.

Seemle, that, in proceedings under Act XXVII of 1860, a review of judgment is admissible (3).

THIS was an application to the District Court for a certificate under Act XXVII of 1860. It was made on the ground that the applicants were the widows and sole heirs of the deceased. The debts due to the estate of the deceased were stated in the application to amount to Rs. 3,000. Notice was issued in accordance with the provisions of s. 6 of the Act, but no claimants appeared. The District Court granted the certificate, but required the applicants to furnish security under the provisions of s. 5 to the amount of Rs. 3,000.

The applicants appealed to the High Court against the District Court's order requiring security, urging that that order was unreasonable and unjust, inasmuch as they had no separate property of their own, and there were no debts due by the estate.

Mr. *Leach*, for the appellants.

The judgment of the Court was as follows :—

We must follow the ruling of this Court in *Soonea v. Ram Suha* (1), which is in accordance with a recent ruling of the Calcutta High Court in *Monmohinee Dasse v. Khetter Gopaul Dey* (2). The appeal then fails ; but if the facts are such as the petitioners assert, we consider that the appellants should apply to the Judge to reconsider the order relating to security, and that the Judge might well comply with their prayer and reduce the amount demanded.

1876
August 22.

APPELLATE CIVIL.

(*Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Oldfield.*)

HASSAN ALI (DEFENDANT) v. NAGA MAL (PLAINTIFF).*

Adoption—Hindu Law—Jain Law.

The question of the validity of an adoption, the parties between whom the ques-

* Special Appeal, No. 1035 of 1874, against a decree of the Judge of Saharanpur, dated the 21st May, 1874, affirming a decree of the Munsif of Muzaffarnagar, dated the 25th March, 1874.

(1) H. C. R., N.-W. P., 1870. p. 146.

(2) I. L. R., 1 Calc., 127 ; S. C., 24 W. R., 362 ; see also *Raj Mohinee Chowdhrai v. Dinko Bundhoo Chowdhry*, I. L.

R., 1 Calc., 128 note ; S. C., 17 W. R., 566.

(3) See *Petition of Poona Koor*, I. L. R., 1 Calc., 101 ; but see also *Siva v. Chenamma*, 5 Mad. H. C. R., 417.

tion arose being Jains, was decided in accordance with the law of that sect, and not in accordance with Hindu law. *Sheo Singh Rai v. Dakho* (1) followed.

Under Jain law the adoption of a sister's son is valid.

This was a suit in which the plaintiff claimed to be maintained in possession of a moiety of certain buildings, by partition. He sued as the adopted son of one Chunna Singh deceased. The parties to the suit were Saraogis. The defendants pleaded that the adoption of the plaintiff by Chunna Singh was invalid under Hindu law, the plaintiff being the only son of his natural father and son of Chunna Singh's sister. Both the lower Courts found that, by the custom of the sect to which the parties belonged, the adoption was valid, and held that such custom was applicable and not Hindu law.

On special appeal by one of the defendants to the High Court it was contended that the validity of the plaintiff's adoption should be decided under Hindu law.

The *Senior Government Pleader* (*Lala Juala Parshad*) and *Munshi Hanuman Parshad*, for the appellant.

Pandit Bishambar Nath, for the respondent.

The judgment of the Court, so far as it related to the above contention, was as follows :—

The plaintiff is the adopted son of one Chunna, and is at the same time Chunna's sister's son, and the material question raised in special appeal is whether, under the Jain law (the parties being Saraogis), an adoption of a sister's son is valid. Evidence on the point was given in the Court of first instance, and the lower appellate Court gave the parties opportunity of producing further evidence, which was produced, and which supports the view taken by both the lower Courts, that such an adoption is valid under Jain law. We find no reason to doubt the correctness of this decision, and find that it is quite consistent with a ruling of this Court,—*Sheo Singh Rai v. Dakho* (1), where all the authorities have been reviewed. In that case it was held that, in questions arising between parties of the Jain sect, the custom of the sect should be inquired into and given effect to, although it may be at variance with Hindu law, and it was further held that, among followers of the Jain sect, a daughter's son might be adopted. In the case before us the adoption is of a sister's son, but the principle involved in both cases is

(1) H. C. R., N.-W.P., 1874, p. 382.

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the same, and, indeed, looking to the grounds upon which the objection to such adoption is based under the Hindu law, it would have more force in the case of the adoption of a daughter's son than of a sister's son.

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 August 26.

APPELLATE CIVIL.

(*Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Oldfield.*)

JAN MUHAMMAD (DEFENDANT) v. ILAHI BAKSH (PLAINTIFF).*

Act VIII of 1859, s. 260—Certified Purchaser.

The certified purchaser of certain property at a sale in execution of decree sued to establish his right to the property and for possession thereof.

Held that the defendant in the suit was not precluded by s. 260, Act VIII of 1859, from resisting the suit on the ground that he was the actual purchaser of the property.

THIS was a suit to establish the plaintiff's right to a moiety of a house and garden, and for possession, by partition, of the same, the plaintiff claiming as certified purchaser of the property at a sale in execution of decree. The defendant urged that he was the actual purchaser of the property, relying on a petition presented by the plaintiff to the Court executing the decree in which he had stated that the defendant was the actual purchaser and had paid the purchase-money, and that he had made the purchase on behalf of the defendant, to whom he prayed the sale-certificate might be granted. The Court executing the decree refused the application and granted the certificate to the plaintiff. He further urged that the property belonged to him before the date of the sale and was not the subject of the sale. The Court of first instance gave the plaintiff a decree. The lower appellate Court found that the property belonged to the judgment-debtor and was the subject of the sale, and held that the defendant was precluded by s. 260, Act VIII of 1859, from raising the plea that he was the actual purchaser.

On special appeal to the High Court by the defendant it was contended that s. 260, Act VIII of 1859, did not apply, and the question who was the actual purchaser should have been tried and determined by the lower appellate Court on the merits.

* Special Appeal, No. 1133 of 1875, from a decree of the Subordinate Judge of Moradabad, dated the 20th July, 1875, affirming a decree of the Munsiff of Nagina, dated the 16th January, 1875.