APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

1884
September 16.

KESHAV RA'MKRISHNA (ORIGINAL DEFENDANT), APPELLANT, *v.* GOVIND GANESH (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu law—Adoption by mother-in-law—Subsequent adoption by daughter-in-law—Unchastity of widow after vesting of estate, effect of, on power of adoption—Suit to set aside adoption.

One Ganesh died, leaving him surviving his widow Yamunábái and his undivided son Rámchandra, who subsequently also died, leaving him surviving his widow Párvatibái and a son Vishnu, who died shortly afterwards. Yamunábái adopted the plaintiff, and immediately afterwards Párvatibái adopted the defendant. The plaintiff sought to set aside the adoption of the defendant, alleging that it was invalid, inasmuch as it took place subsequently to his own adoption, and because of Párvatibái being an unchaste widow. The Court of first instance rejected the plaintiff's suit, holding his adoption invalid. The lower appellate Court reversed the decree of the Court of first instance, and remanded the suit for re-trial. From this order of remand the defendant appealed. On appeal to the High Court,

Held, that the adoption of the plaintiff was invalid. After the death of Rámchandra his estate vested in his widow Párvatibái, the adoptive mother of the defendant. Her existence and the vesting in her of her husband's estate rendered the elder widow Yamunábái incapable of adopting. The estate, having thus vested in Párvatibái, would not be divested by her subsequent unchastity, and, therefore, the inquiry into her chastity was irrelevant.

THIS was an appeal from the decision of Sir W. Wedderburn, District Judge of Poona.

One Ganesh Lakshman Shintre died on 16th June, 1851, leaving him surviving his widow Yamunábái and his undivided son Rámchandra. Rámchandra married Párvatibái, and the issue of the marriage was a son named Vishnu. In 1870 Rámchandra died, and in 1874, four years after his death, his son Vishnu died while still a minor. On 14th December, 1879, Yamunábái adopted Govind, the plaintiff. On 23rd December, 1879, Párvatibái adopted Keshav, the defendant.

In 1880 the plaintiff sued to set aside the adoption of the defendant by Párvatibái, and alleged, that though Yamunábái and Párvatibái continued to live together, the latter, having been guilty of unchastity, lost her *dharma*; that he, therefore, was

* Appeal No. 29 of 1884.

adopted on the 14th December, 1879; that subsequently, *viz.*, on the 23rd December, 1879, the defendant was adopted by Párvatibái, who obtained a certificate for the defendant as heir to Rámchandra. The plaintiff contended that the defendant's adoption having taken place after his, and Párvatibái having lost her *dharma*, the defendant's adoption was invalid.

In his written statement the defendant contended that, under section 42 of the Specific Relief Act I of 1877, the plaintiff could not sue for a mere declaratory decree; that, after the death of Ganesh, his estate vested in Rámchandra, and Yamunábái, the adoptive mother of the plaintiff, had no right therein beyond a right to maintenance; that he, having been adopted by the widow of Rámchandra, became entitled to the estate of Rámchandra and Ganesh, and that the charge of unchastity against Párvatibái was false and malicious.

The Subordinate Judge of Vadgaon, in the Poona District, held that the adoption of the plaintiff was illegal and contrary to law, and that he had no right to bring the suit. He rejected the claim of the plaintiff with costs.

The plaintiff appealed, and the District Judge of Poona, reversing the decree of the Court of first instance, remanded the suit for re-trial.

From this order of remand the defendant appealed to the High Court.

Pándurang Balibhadra for the appellant.—The respondent was adopted without the consent of Párvatibái, in whom the inheritance vested after the death of her husband Rámchandra. The adoption of the plaintiff thus being *ab initio* invalid, he is a mere stranger, and, as such, has no *locus standi*. As a stranger he cannot question the adoption of the appellant—*Musst. Bhoomun Moyee Debia* v. *Rám Kishore*[1]; *Thakoorain Sahiba* v. *Mohun Lall*[2]; *Brojo Kishore* v. *Sreenath Bose*[3]; West and Bühler's Hindu Law, 992, 1224; Mayne's Hindu Law, s. 490. If as a reversioner he sets up his right to question the appellant's adoption, he is not the nearest reversioner, who alone can sue.

(1) 10 Moo. Ind. Ap., 279. (2) 11 Moo. Ind. Ap., 386.
(3) 9 Cal. W. R., 463, Civ. Rul.

1884

KESHAV RÁMKRISHNA v. GOVIND GANESH.

His paternal uncles are nearer reversioners, and may seek for such a declaration.

Mahádev Bháskar Chaubal for the respondent.—The plaintiff in this case is the presumptive reversionary heir, and, as such, may sue for a declaration that the adoption of the appellant is invalid. The law in this Presidency is that a widow may adopt without any consent—Mayne's Hindu Law, para. 99; *The Collector of Madura* v. *M. Rámalinga*(1). This rule has been qualified by *Rupchand's Case*(2), *Rámji* v. *Ghamau*(3), and *Dinkar Prabhu* v. *Ganesh Prabhu*(4), in which it was held that the assent of co-parceners is necessary where the adoption would divest the rights of such co-parceners—*The Collector of Madura* v. *M. Rámalinga*(1). Adoption without such consent in other cases, therefore, is valid. In *Padmakumari* v. *The Court of Wards*(5) the adoption had divested the estate, and the Privy Council held that the authority to adopt, given to a widow of a predeceased owner, was null and void, the estate having become vested in the widow of a son. Here the adoption had no such effect. Each of the widows had a right to adopt. The adoptive mother of the appellant being unchaste, the necessary ceremonies of adoption could not be performed by her. An unchaste widow is unfit to adopt a son—*Sayamalal* v. *Saudamini Dasi*(6) approved of in *Kery Kolitany* v. *Monirám*(7). As a reversioner the plaintiff can question the adoption—*Kalova kom Bhujangrav* v. *Paddpa Bujangrav*(8).

WEST, J.—The District Judge in this case has been influenced by the same arguments that prevailed with the High Court of Calcutta in *Padmakumari* v. *The Court of Wards*(9). There it was supposed that the adoption of a son by a widow, though it had been pronounced invalid for the purpose of divesting the estate of a deceased son's widow, might yet after the death of that widow be deemed valid or capable of validation for other purposes, and especially so as to give to the adopted son a preference as heir to the family estate over remoter descendants from

(1) 12 Moo. Ind. Ap., 397.
(2) 8 Bom. H. C. Rep., 114, A. C. J.
(3) I. L. R., 6 Bom., 498.
(4) I. L. R., 6 Bom., 505.
(5) I. L. R., 8 Cal., 302. S. C., L. R., 8 Ind. Ap., 229.
(6) 5 Beng. L. R., 362.
(7) 13 Beng. L. R., at p. 14.
(8) I. L. R., 1 Bom., 248.
(9) I. L. R., 8 Cal., 302; S. C., L. R. 8 Ind. Ap., 229.

1884

KESHAV RÁMKRISHNA v. GOVIND GANESH.

the common ancestor. But the Judicial Committee in appeal declared that the previous decision had intended to declare, not only that the adoption could not affect the estate of the deceased son's widow, but that her existence and the vesting in her of her husband's estate had made the power of adoption incapable of execution by the elder widow. Now in Western India an express power is not necessary to authorize a widow to adopt, but that is because an authority is presumed in the absence of a prohibition. The implied authority, however, would be made incapable of execution by the same circumstances that would prevent adoption under an express power. As the reason rests on the vesting of the estate in the deceased son's widow, and it is not divested by subsequent unchastity, it follows that in the present case the inquiry into Párvatibái's chastity would be irrelevant. No adoption could during her existence be made by her mother-in-law Yamunábái.

We must, accordingly, reverse the order of the District Court remanding the cause to the Subordinate Judge; and as no other point was put in issue before the District Court, we restore the decree of the Subordinate Judge with costs throughout on the respondent.

Decree restored.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

NA'NA BAYAJI AND ANOTHER (ORIGINAL APPLICANTS), APPLICANTS, *v.* PA'NDURANG VA'SUDEV (ORIGINAL OPPONENT), OPPONENT.*

September 16.

Practice—Procedure—Civil Procedure Code (Act XIV of 1882), Sec. 622—Possessory suit in a Mámlatdár's Court.

The opponents had obtained a decree for the possession of certain land against the brother and father of the applicants in the Court of the Mámlatdár at Karád, in the Sátára District. The applicants were not parties to the suit. The decree was executed and the opponents were put into possession.

Thereupon the applicants on the 19th May, 1884, presented a petition in the Mámlatdár's Court, under section 4 of Bombay Act III of 1876, alleging that they had been in actual possession of the lands, and had been ousted from them in execution of the decree, and praying that they might be again put into possession. The Mámlatdár was of opinion that the matter was *res judicata*, and dismissed the petition. He relied on a circular of the Executive Government as his author-

* Civil Application, No. 88 of 1884.