

APPELLATE CIVIL.

Before Mr. Justice Nánábhái Haridás and Mr. Justice Jardine.

GOPA'L ANANT (ORIGINAL DEFENDANT), APPELLANT, v. NA'RA'YAN
GANESH (ORIGINAL PLAINTIFF), RESPONDENT.*

1888
February 2.

Hindu Law—Adoption by an unmarried man.

Adoption by an unmarried man is not invalid.

SECOND appeal from a decision of F. C. O. Beaman, Acting Assistant Judge of Sátára.

This was a suit brought by the plaintiff to have it declared that he was the adopted son of one Ganesh, who was a vatandár kulkarni of the village of Angápúr in the Sátára District, and that as such he was entitled to a one-half share in the vatan.

The defendants, who were co-sharers with Ganesh, denied the fact of the plaintiff's adoption, and also contended that Ganesh being an unmarried man could not adopt.

The Court of first instance rejected the plaintiff's suit on the ground that the fact of adoption was not proved.

The plaintiff appealed to the Assistant Judge, who reversed the lower Court's decision with the following remarks :—

“I consider it constructively certain that the plaintiff was adopted in proper form and given in adoption by his natural father. We are in no doubt as to the intention of the adopter; we have on the record a letter written by him to the Deshpande concordantly with customary usage stating that the adoption took place on a certain date. * * * ”

Defendant Gopál preferred a second appeal to the High Court.

Ganesh Rámchandra Kirtoskar for the appellant :—Ganesh, the adoptive father of the plaintiff, being unmarried could not effect a valid adoption. The Hindu law permits adoption when the possibility of issue is extinct, and until a man marries he cannot be said to be hopeless of issue. A Grihasta, *i.e.* a married man, alone can adopt. Reference was made to West and Bühler, pp. 918 and 919, 905; Steel (new ed.), 182; *Ibid*, p. 43, ch. IV and V, pl. 36; Vy. Mayukha, sl. 45 and 70.

* Second appeal No. 557 of 1885.

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Shámráv Vithal for the respondent :—The Hindu law does not prohibit adoption by an unmarried man. The only condition is that the adopter should be without a son. A bachelor is capable of adopting : see Mayne's Hindu Law, section 96. Marriage is a mere Sanskár. A Brahmachári can adopt, see West and Bühler, 943, 3rd Ed. A soulless man (*Aputra*) includes an unmarried man : Strange's Hindu Law, pp. 65-66. A widower can adopt, see *N. Chandrasekharudu v. N. Bramhanna*,⁽¹⁾ and the same argument must apply in the case of an unmarried man.

NÁNÁBHÁI HARIDÁS, J. :—The fact of the plaintiff's adoption by the deceased Ganesh Gopal is held proved by the lower Court. The only question we have to determine, therefore, is its validity. It is urged on behalf of the appellant that it is not valid because Ganesh Gopal was not a married man at the time of the adoption. No authority is shown to us in support of the contention that an adoption by an unmarried man is invalid, nor are we aware of any such. The Hindu law lays down generally that one who is sonless may adopt ; and, in the absence of any text or judicial decision to the contrary, we do not think we should be justified in putting any restriction upon the power so generally given. The argument pressed upon us in support of the invalidity of the adoption is very much the same as that unsuccessfully urged in *N. Chandrasekharudu v. N. Bramhanna*⁽¹⁾ ; and we agree in the view taken of the Hindu law by the learned Judges who decided that case. It is true that that was the case of a widower, and not of an unmarried man as here ; but we think the reasoning adopted there applies as well to the present case.

We must therefore confirm the decree of the lower Court with costs.

Decree confirmed.

(1) 4 Mad. H. C. Rep. 270.