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apply to this case, because the jurisdiction of the Political Agent to execute the decree has ceased by reason of the change of status of the heirs, but the terms of the section are general, and draw no distinction as to the nature of the cause which puts an end to the jurisdiction. We may remark that this section has already been held applicable in *Vishnu* v. *Krishnaráo*[1] to a case of this nature. As it is admitted by the pleader for the respondents that the First Class Subordinate Judge of Dhárwár would have had jurisdiction to try the suit had the deceased defendant not been a *sirdár*, we must reverse the order and send the case back for the Court below to dispose of the application for execution. Costs to abide the result.

Order reversed and case sent back.

(1) I. L. R., 11 Bom., 153.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

1892. *February* 10.

KRISHNA'RA'V TRIMBAK HASABNIS, (ORIGINAL PLAINTIFF), APPELLANT, *v.* SHANKARRA'V VINA'YAK HASABNIS AND ANOTHER, (ORIGINAL DEFENDANTS), RESPONDENTS.*

Hindu law—Adoption—Adoption by a mother who has succeeded as heir to her son after the death of his widow.

An adoption to herself and her deceased husband by a mother who has succeeded as heir to her son after his death and that of his widow is invalid according to Hindu law.

THIS was an appeal from the decision of Khán Bahádur L. G. Fernandez, First Class Subordinate Judge of Poona.

One Trimbak died leaving a widow, Gangábái, and a son, Sadáshiv, surviving him. Sadáshiv afterwards died childless, leaving a widow, Anpurnábái, who also died. Upon her death her mother-in-law, Gangábái, succeeded as Sadáshiv's heir. On the 2nd October, 1885, she adopted the plaintiff Krishnáráv to herself and her deceased husband Trimbak. Krishnáráv now sued as such adopted son to recover certain property.

* Appeal, No. 15 of 1890.

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The Court of first instance rejected his claim, holding that his adoption by Gangábái after Anpurnábái's death was invalid.

The plaintiff appealed.

Jardine (with *Mahádeo Chimnáji Apté*) for the appellant:—

The plaintiff's adoption is valid. Gangábái adopted him after her son, Sadáshiv, and his widow were both dead. She had succeeded as heir to her son Sadáshiv. The adoption, therefore, was in derogation only of her own estate, and not that of any other person. The ruling in *Thayammal* v. *Venkatarámá*[1] relied on by the lower Court is not applicable here. In that case the widow of the son was living at the time of the adoption, and consequently the adoption had the effect of divesting her of her estate. For this reason, the adoption in that case was held to be invalid. The case of *Rája Vellanki Venkata* v. *Venkata Rámá*[2] is nearer to the present case. Being a Madras case, the permission of the *sapindas* was there necessary. On this side of India neither the authority of the husband nor the permission of the *sapindas* is necessary for an adoption.

When an estate once becomes vested in any one it cannot be divested by a subsequent adoption made by another person, but a mother can divest herself of her estate by adopting a son. The case of *Keshav Rámkrishna* v. *Govind Ganesh* [3] is not applicable, because in that case there were adoptions made both by mother-in-law and daughter-in-law, and the adoption made by the daughter-in-law was held to be valid. There is no difference in the mother's right to adopt, whether she succeeds as heir directly to her son, or whether she succeeds to him after the death of his widow.

Latham (Advocate General with *Ganesh Rámchandra Kirloskar*) for the respondents:—There are two questions involved in the present case: (1) whether Gangábái had power to adopt, and (2) assuming she had, can the adoption have the effect of divesting the estate. We contend that, in the present case, Gangábái's power to adopt had become extinguished. There is a difference between

(1) L. R., 14 I. A., 67. (2) L. R., 4 I. A., 1.
(3) I. L. R., 9 Bom., 94.

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a mother adopting after her son's death and adopting after the death of that son's widow—Mayne's Hindu Law, section 104 (4th ed.). The Privy Council has ruled that when an estate returns to a widow after devolution to her grandsons and other descendants, the widow's power to adopt is gone. The power to adopt having become extinct, the adoption becomes invalid. *Rája Vellanki Venkata* v. *Venkata Ráma*(1) is not applicable, because in that case the son had died unmarried, and, therefore, the adoption by the mother was held good. We rely upon the following rulings:—*Bhoobun Moyee Debia* v. *Rám Kishore*(2); *Pudma Coomari* v. *The Court of Wards*(3); *Thayammal* v. *Venkataráma*(4); *Tárachurn Chatterji* v. *Suresh Chunder Mookerji*(5); *Chandra* v. *Gojarabái*(6); West and Bühler, (3rd Ed.), pp. 982, 983, 985.

Mahádeo Chimnáji Apté, in reply:—The decisions in *Pudma Coomari* v. *The Court of Wards*(7) and *Bhoobun Moyee Debia* v. *Rám Kishore*(8) do not lay down that an adoption by a mother, as in the present case, is invalid for all purposes. What they lay down is that those adoptions were invalid with respect to the particular points involved in them. An adoption may be invalid for the purpose of succession, yet it may be good for spiritual purposes—*Kalova* v. *Padapa*(9). The devolution of the estate on the daughter-in-law does not extinguish the power of the mother-in-law to adopt. The devolution of the estate on the daughter-in-law only suspends the power of the mother-in-law to make an adoption. If the daughter-in-law had made an adoption, there would have been no necessity for the mother-in-law to adopt, because, in that case, the daughter-in-law's son would have effectually provided for the spiritual benefit of the three immediate predecessors. Gangábái having succeeded as heir to her son, she was entitled to adopt —*Bykant Monee Roy* v. *Kisto Soonderee Roy*(10). In the original Hindu texts there is nothing to show that the power of a Hindu widow to adopt is restricted.

(1) L. R., 4 I. A., 1.
(2) 10 Moore's I. A., 279.
(3) L. R., 8 I. A., 229.
(4) I. R., 14 I A., 67.
(5) L. R., 16 I. A., 166.
(6) I. L. R., 14 Bom., 463.
(7) L. R., 8 I. A., 229.
(8) 10 Moore's I. A., 279.
(9) I. L. R., 1 Bom., 248.
(10) 7 W. R., 392.

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SARGENT, C. J.:—The plaintiff, Krishnáráv Trimbak, claims his share in the properties mentioned in the plaint as the adopted son of one Trimbak, who died, leaving a widow Gangábái and a son Sadáshiv, who subsequently died, leaving a widow Anpurnábái. Anpurnábái died childless, and her mother-in-law, Gangábái, who succeeded as Sadáshiv's heir, adopted the plaintiff for herself and her husband on the 2nd October, 1885.

The Subordinate Judge, proceeding on the assumption that Trimbak was separated from his brother, which was not disputed before us, held that the adoption was invalid, on the authority of the Privy Council decision in *Thayammal* v. *Venkatarama*[1], Their Lordships in that case held that an adoption with the permission of *sapindas* by a Hindu widow, after the husband's estate had vested in his son's widow, is invalid. This conclusion was arrived at by the Privy Council as a necessary consequence of the decision in *Pudma Coomari's* case[2], where it was decided by their Lordships, as the result of the decision in *Bhoobun Moyee Debia* v. *Rám Kishore*[3], that "by the vesting of the estate in the widow of the son the power of adoption (given by the deceased to his widow) was at an end and incapable of execution." Here, the son's widow was dead when the adoption by Gangábái took place, and such adoption would only divest Gangábái's own estate, a distinction which was made the ground of the decision in *Bykant Monee Roy* v. *Kisto Soonderee Roy*[4] in favour of the mother's adoption. But we do not think it is warranted by the language of the Privy Council in *Bhoobun Moyee Debia* v. *Rám Kishore*, as explained by the Privy Council in *Pudma Coomari's* case[5]. They say: "The substitution of a new heir for the widow was, no doubt, the question to be decided, and such substitution might have been disallowed, the adoption being valid for all other purposes, which is the view that the lower Courts have taken of the judgment, but their Lordships do not think that this was intended. They consider the decision to be that upon the vesting of the estate in the widow Bhowáni, the power of adoption was "at an end" and

(1) L. R., 14 I. A., 67.
(2) L. R., 8 I, A., 229.
(3) 10 Moore's I. A., 279.
(4) 7 C, W. R., 392.
(5) L. R., 8 I. A., 245.

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incapable of execution." Again, in *Thayammal* v. *Venkatarâma*[1], their Lordships say they "entirely concur in that view, and they are of opinion that the adoption, with the permission of *sapindas* in the present case, could have no greater effect as regards the right to property than the adoption under the deed of permission in the cases to which reference has been made." This language appears to us to be altogether inconsistent with any idea of the right to adopt being merely suspended during the widow's life. It is also to be remarked that the reasoning of the Court in *Bhoobun Moyee Debia* v. *Rám Kishore*[2] seems to allow of no such distinction being made. Their Lordships say: "The rule of the Hindu law is that in the case of inheritance the person to succeed must be the heir of the last full owner. In this case Bhowáni Kishore was the last full owner, and his wife succeeds as his heir to a widow's estate. On her death the person to succeed will again be the heir at that time of Bhowáni Kishore" —meaning, as we apprehend, that the son adopted by the mother could not succeed, as he would, as such, be primarily the heir of her husband and not of her son.

The subject of the adoption by a mother higher in the line than the son is discussed in West and Bühler, (3rd Ed., p. 984), from the ceremonial point of view, and such adopton is held invalid on the ground that the son would be placed in a worse position as regards the due performance of his *sraddhas* than if there had been no adoption—and they conclude by laying down, as a consequence of that view, that "a mother succeeding to her son after the son's investiture is not the more capable of adopting a son to him, because she devests no estate but her own." In this Presidency, doubtless, the permission of *sapindas* is not required, but that circumstance cannot affect the application of the above rule, as explained and applied in *Thayammal* v. *Venkatarâma*[3].

We have been referred to a decision of the Calcutta High Court—*Mánik Chand Golecha* v. *Jagat Settani*[4]—where the

(1) L. R., 14 I A., 67.
(2) 10 Moore's I. A., 311.
(3) L. R. 14, I. A., 67.
(4) I. L. R., 17 Calc., 518, at p. 537.

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circumstances of the case were the same as here. Mitter and Beverley, JJ., there say: "It is true that in their later judgment the Privy Council decided that upon the vesting of the estate in the widow of Bhowáni the power of adoption was "at an end" and incapable of execution, but the power in that case was a power given by the husband, and the decision referred to lays down the limit of the time within which such a power should be exercised." It is plain from this that the attention of the Court had not been directed to the decision in *Thayammal* v. *Venkatarâma*[1], that the ruling in *Bhoobun Moyee Debia* v. *Rám Kishore* was equally applicable where the adoption was made with consent of *sapindas*.

From the above Privy Council decisions, taken together, we think that the question under consideration is concluded by authority, and that the adoption by Gangábái after Anpurnábái's death was invalid; and that the decree must, therefore, be confirmed with costs.

Decree confirmed.

(1) L. R., 14 I. A., 67.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

1892. *February* 18.

JIJÁJI PRATA'PJI RA'JE AND OTHERS, (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* BA'LKRISHNA MAHÁDEO AND OTHERS, (ORIGINAL DEFENDANTS), RESPONDENTS.*

Pensions Act (XXIII of 1871), Secs. 4 and 6—Collector's certificate—Certificate not obtained when suit filed—Certificate not produced at hearing—Adjournment asked for and refused—Certificate accepted in appeal and placed on record—Procedure—Practice.

A suit under the Pensions Act XXIII of 1871 is not bad *ab initio* by reason of its being filed without a Collector's certificate.

Where at the hearing of such a suit the necessary certificate was not produced

Held, that the Judge ought to have granted the plaintiffs' application for an adjournment, in order that the certificate might be obtained and produced.

THIS was a second appeal from the decision of H. J. Parsons, District Judge of Thána.

* Second Appeal, No. 673 of 1885.