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The opinion of the Subordinate Judge was in the affirmative. He referred to *Srinivas* v. *Malayacha*(1) ; *Gujadhar Pauree* v. *Naik Pauree*(2).

Shamrav Vitthal (*amicus curiæ*), for plaintiff and defendants.

Narayan G. Chandavarkar (*amicus curiæ*) for auction-purchaser.

FARRAN, C. J.:—We answer the question in the negative. The Post Office is not a part of the Court or the agent of the Court. The purchaser, if he chooses to send the purchase-money by it, must, as in any other mode of sending the money, send it so that it shall reach the Court in time to satisfy the requirements of section 307 of the Code of Civil Procedure. He cannot treat the time of payment into the Post Office as the time of payment to the Court. In both the cases cited by the Subordinate Judge the money was actually brought to the Court within the time allowed, so that they have no application to the present case.

(1) I. L. R., 7 Mad., 211. (2) I. L. R., 8 Cal., 528.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Fulton.

1896. *August 24.*

AMAVA AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, v. MAHADGAUDA (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu law—Jains—Adoption—Death of only son leaving widows in lifetime of father—Subsequent death of father—Vesting of father's estate in son's widows—Adoption by son's senior widow without consent of junior widow—Divesting of estate.

By custom the Jains are governed in matters of adoption by the ordinary rules of Hindu law.

Where an only son has died in his father's lifetime leaving a widow, an adoption by her after the father's death, and after she has inherited the estate, is valid.

Where the son has left two widows, an adoption by the senior widow after the father's death is valid although the younger widow does not consent and although such adoption divests the estate which she has inherited from her father-in-law.

The authority of a widow to adopt is at an end when the estate after being vested in her son has passed to the son's widow.

* Second Appeal, No. 620 of 1895.

An adoption by a widow in a divided family cannot divest any estate other than her own and her co-widow's except perhaps with the consent of the heir in whom the estate has vested.

SECOND appeal from the decision of Ráo Bahádur C. N. Bhat, Joint First Class Subordinate Judge of Sátára with appellate powers, confirming the decree of Ráo Sáheb Venkatrao Pandurang Deshpande, Subordinate Judge of Tásgaon.

The plaintiff sued to recover possession of certain property, alleging that he had been adopted by Sarasvatibai, senior widow of Kalgauda, in October, 1880, and that the property was in the possession of defendant No. 1 (Amava), younger widow of Kalgauda who had predeceased his father Daulatgauda.

Amava (defendant No. 1) pleaded that the property of her father-in-law had devolved upon her and her co-widow Sarasvatibai and was now vested in them; that Sarasvatibai had no right to adopt without her (Amava's) consent, and that the plaintiff was, therefore, not validly adopted.

The defences of other defendants were immaterial.

The Subordinate Judge found that the adoption of the plaintiff by Sarasvatibai was valid, and that the consent of defendant No. 1 to the adoption was not necessary. He, therefore, awarded the plaintiff's claim subject to the maintenance due to defendant No. 1 the amount of which was to be determined in execution.

On appeal by defendant No. 1 the Judge confirmed the decree.

Defendant No. 1 preferred a second appeal.

Vasudev R. Joglekar for the appellant (defendant No. 1).

Daji A. Khare for the respondent (plaintiff).

FULTON, J.:—The parties to this appeal are Jains. The question to be decided is whether the senior widow of a son who predeceased his father can adopt after that father's death without the consent of the junior widow.

Daulatgauda, the owner of the estate, had a son Kalgauda, who died childless in his father's life-time, leaving two widows Sarasvatibai and Amava. On Daulatgauda's death, leaving neither widow nor descendants, Sarasvati and Amava inherited

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the estate as the nearest sapindas. Subsequently Sarasvati, the elder co-widow, adopted the plaintiff Mahadgauda without the consent of Amava.

That by custom Jains are governed in matters of adoption by the ordinary rules of Hindu law is established by the case of *Bhagvandas* v. *Rajmal* (1). We must, therefore, consider whether according to Hindu law the above adoption would be valid.

If Sarasvati had been a sole widow it is difficult to see on what ground the adoption could have been impugned.

By Hindu law, according to the Marátha school, a sole widow in a divided family may without express authority adopt to her deceased husband, but cannot by so doing divest any estate already vested by inheritance other than her own. In such a case the assent of kinsmen is not required. In a united family she can, if not specially authorized by her husband, adopt only with the assent of the co-parceners. In the present case, Daulatgauda and his son Kalgauda were presumably united. During Daulatgauda's life, Kalgauda's widow could have adopted with the consent of her father-in-law. After Daulatgauda's death, the widow having gained independence of control by reason of there being no other co-parcener in existence could, in conformity with the presumption of implied authority from her husband recognized by the Marátha school, have adopted a son. Thus, in the case of *Rupchand* v. *Rakhmabai* (2) it was held that the authority to adopt subsisted in the case of the widow of a predeceased co-parcener and could be exercised after the death of the last surviving member of the co-parcenery, the sanction of the last survivor's widow being required not to supplement that authority but to divest the estate which had been inherited by the last survivor's widow. This view is in no way inconsistent with the decision in *Krishnarav* v. *Shankarrav* (3), in which it was held that the authority given by implication by the deceased husband of a widow was at an end and incapable of execution

(1) 10 Bom. H. C. Rep., p. 241. See also *Chotay Lall* v. *Chunno Lall*, L. R., 6 I. A., p. 28.

(2) 8 Bom. H. C. Rep. (A. C. J.), 114.

(3) I. L. R., 17 Bom., 164.

after the estate having vested in deceased's son had passed on that son's death by inheritance to the son's widow. The principle on which this decision rests will be found explained in *Bhooban Moyee* v. *Ram Kishore* [1], in which their Lordships remarked as follow:—"How then is the deed to be construed when we regard it merely as a deed of permission to adopt? What is the intention to be collected from it, and how far will the law permit such intention to be effected? It must be admitted that it contemplates the possibility of more than one adoption; that it shows a strong desire on the part of the maker for the continuance of a person to perform his funeral rites and to succeed to his property; and that it does not in express terms assign any limits to the period within which the adoption may be made. But it is plain that some limits must be assigned. It might well have been that Bhowani had left a son, natural born or adopted, and that such son had died himself leaving a son, and that such son had attained his majority in the lifetime of Chandrabullee Debia. It could hardly have been intended that after the lapse of several successive heirs a son should be adopted to the great-grandfather of the last taker when all the spiritual purposes of a son according to the largest construction of them would have been satisfied."

In *Pudma Coomari* v. *The Court of Wards* [2] the Privy Council applying the principle of a limit of authority explained in the above passage said that upon the vesting of the estate in the son's widow the power of adoption by the son's mother (proceeding in that case from an express authority to adopt given by the husband) was at an end. In *Krishnarav* v. *Shankarrav* [3] this Court merely applied the above principle to a case governed by the law of the Marátha school in which the authority from the husband was implied instead of being express. In so doing the Court followed the decision in *Keshav* v. *Govind* [4] in which Mr. Justice West very clearly explained the doctrine of the limitation of a widow's implied authority. In the case of *Shri Dharnidhar* v. *Chinto* [5] it was held that the widow of a

(1) 10 Moo. I. A., 279 at p. 309.
(2) L. R., 8 I. A., 229.
(3) I. L. R., 17 Bom., 164.
(4) I. L. R., 9 Bom., 94.
(5) I. L. R., 20 Bom., 250.

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predeceased son could not adopt so as to divest the estate inherited by the widow of her father-in-law. This decision apparently proceeded on the principle explained in *Chandra* v. *Gojarabai* [1] that an estate which had once passed away to a separated heir could not be affected by a subsequent adoption, for it must be remembered that the widow of the last survivor of a group of co-parceners takes by inheritance as if that survivor had been a separated householder, and that consequently when the estate has been inherited by the widow of the last survivor it cannot be divested (at least without the consent of the person in whom it is vested) by an adoption made by the widow of a predeceased co-parcener. The same view was expressed in another way by the Privy Council in *Bhubaneswari* v. *Nilkomul* [2] in which their Lordships said: "An adoption after the death of a collateral does not entitle the adopted son to come in as heir of the collateral"—for this would be contrary to the rule that on the death of a separated householder or last surviving member of a co-parcenery the inheritance passes at once to the nearest heir or group of heirs and cannot be held in suspense subject to a possible adoption. In *Babu Anaji* v. *Ratnaji* [3] it was held, following *Rupchand* v. *Rakhmabai* [4], that the general rule that an adoption by a widow could not divest an estate vested by inheritance in an heir was subject to the exception that it might divest such estate if made with such heir's consent. This proposition was disputed by Mr. Justice Candy in *Vasudev* v. *Ramchandra* [5], his opinion being in accordance with the decision in *Annammah* v. *Mabbu* [6] and a dictum in *Dharaidhar* v. *Chinto* [7], but not deriving support from the case of *Krishnarao* v. *Shankarrao* [8] if our view of the principle of this decision be correct.

From the cases above referred to, it seems to us that two rules are established which govern adoptions by widows:—

First. That having regard to the doctrine of satisfaction of spiritual purposes the authority of a widow to adopt is at an

(1) I. L. R., 14 Bom., 468.
(2) L. R., 12 I. A., 137.
(3) I. L. R., 21 Bom., 319.
(4) 8 Bom. H. C. Rep. (A. C. J.), 114.
(5) P. J. for 1896, p. 299.
(6) 8 Mad. H. C. Rep., 108.
(7) I. L. R., 20 Bom., 250.
(8) I. L. R., 17 Bom., 164.

end when the estate, after being vested in her son, has passed to the son's widow.

2ndly. That an adoption by a widow in a divided family cannot divest any estate of inheritance other than her own (and her co-widow's) except perhaps with the consent of the heir in whom the estate has vested in regard to which exception the decisions are conflicting.

In the case of *Sangapa* v. *Vyasapa* (1) which came before Mr. Justice Bayley and Mr. Justice Fulton, the Court was asked to extend the first of these rules by holding that the authority of the mother was at an end when the son died unmarried after attaining full age and ceremonial competence. To this request they did not consider that the authorities justified them in acceding, but as the case is under appeal to the Privy Council, the matter cannot be treated at present as settled.

Now it seems clear that an adoption by a sole widow of a son who died childless in his father's lifetime made after that father's death and after the estate has been inherited by such widow as nearest sapinda is not inconsistent with either of these rules. It is certainly not in conflict with the second. It appears evident also that it is not at variance with the first when the reasoning on which that rule is based is borne in mind, for as the widow's husband never had a son, it cannot be contended that all (or any) of the spiritual purposes of a son have been satisfied. If it be objected that under this decision the widow of a childless separated householder however remote who may have inherited an estate as nearest sapinda will be able by adoption to divest the inheritance on her death from the next heir, the answer seems to be that during the widow's life the next heir has no vested interest in the inheritance, that the widow has a right to adopt a son to her own husband, that the right cannot be defeated by the accident of her having inherited the estate of a sapinda, and that the adoptive son will be in precisely the same position in regard to the inheritance of that estate on his adoptive mother's death as if he had been born in the family. There remains, therefore, no ground for doubting

(1) P. J., 1896, p. 528.

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the validity of an adoption by the sole widow of a son who has died in his father's lifetime after the father's death and after the estate has been inherited by the son's widow.

The next question to consider is whether the fact of there being a younger co-widow not consenting invalidates the adoption by the older widow. Amongst Hindus the question is settled by the decisions in *Rakhmabai* v. *Radhabai* (1) and *Ramji* v. *Ghaman* (2) which show that as it is the younger widow's duty to assent to the adoption in order to secure spiritual and other benefits to her husband, her omission to do so does not affect its validity notwithstanding the fact that it divests her estate. The reasoning on which the law is based is probably not wholly applicable to Jains, just as a similar objection may be urged in regard to many other rules of adoption. But as it has been decided that by general custom the Jains are governed by Hindu law in matters of adoption, and as no special custom affecting adoption by co-widows has been proved to exist among Jains, there is no ground for holding that the general law ought not to be applied. We, therefore, confirm the decree with costs.

Decree confirmed.

(1) 5 Bom. H. C. Rep. (A. C. J.), 181. (2) I. L. R., 6 Bom., 498.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Hosking.

1896. *September* 1.

BHIMAPAIYA (ORIGINAL PLAINTIFF), APPELLANT, *v.* RAMCHANDRA BHIMRAO AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Resumption — Land granted with condition of service — Land granted as remuneration for service — Service attached to grant of hereditary office — Adverse possession — Limitation.

Land granted with a condition of service attached to the grant cannot be resumed when the service is no longer required.

But land granted as remuneration for service may be resumed when the service is no longer required, except when there has been a grant of an hereditary office to those who are to perform the service. In that case the land can only be resumed when the need of such service altogether ceases. Where the

*Appeal No. 9 of 1896.