1896.

MAHABLESHVAR v. DURGABAI.

to est … se or for a purpose foreign to the … Ov. *Indar*[1] and *Chitko* v. *Janaki*[2]. That is, however, … the evidence in this case in the judgment of the District Judge establishes. He finds that unless she had been assured that she would have received the Rs. 4,000 she would not have adopted Fondba's son —possibly (it may be) would not have adopted at all; but he does not find that she had not the spiritual benefit of her deceased husband in view when she made the adoption. The presumption that she made the adoption from motives of duty is not, therefore, rebutted, and that presumption should, in our opinion, have been allowed to prevail.

We reverse the decree of the District Court and restore that of the Subordinate Judge, with costs throughout on respondents.

Decree reversed.

(1) I. L. R., 16 Calc., 556. (2) 11 Bom. H. C. Rep., 199.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1896. *July* 13.

BHIMAWA AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, *v.* SANGAWA (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu law—Adoption—Motive in adopting—Adoption made by a widow to defeat the claim of her co-widow to a share in her husband's estate—Validity of such adoption.

An adoption made by a Hindu widow is not invalid merely because it is made with the object of defeating the claim of a co-widow to a share in her husband's property.

SECOND appeal from the decision of R. Knight, Assistant Judge, F. P., at Bijápur.

Suit to set aside an adoption.

One Ramangavda died in 1886, leaving three childless widows, Hanmawa, Bhimawa and Sangawa.

On the 27th June, 1890, Sangawa applied for leave to sue as a pauper to recover her share of her husband's estate.

* Second Appeal, No. 706 of 1895.

On [illegible] with t[illegible] eldest widow Hanmawa, took Bhimapa in adoption.

On the 3rd January, 1891, Sangawa's application for leave to sue as a pauper was granted, and registered as a plaint.

Bhimapa was added as a party to the suit, and an issue was raised,—whether his adoption was valid.

On this issue the Subordinate Judge held that the adoption was valid, though it was made with the object of defeating Sangawa's right to obtain a third share of her husband's estate. Sangawa's suit was, therefore, dismissed.

On appeal the Assistant Judge reversed the decree of the Subordinate Judge and awarded the plaintiff's (Sangawa's) claim. He held that the adoption of Bhimapa was invalid on the ground that it was made from corrupt and malicious motives, with the manifest object of defeating the plaintiff's claim for partition of her husband's property. The following extract from his judgment gives his reasons:—

"Taking all these circumstances together we see that defendant No. 2 did not think of adopting a son until plaintiff began to press her claim; that she opposed her application for permission to sue in *formâ pauperis*; that as soon as that permission was obtained, she hurriedly alienated nearly the whole of the joint property; that she speedily married the adopted son to a near relative of her; that the adoption-deed contains gratuitous and palpable lies introduced with the obvious design of fortifying the adoption; that a similar design is in the construction of the mortgage-deeds; and that the application of the money derived from the mortgages is not satisfactorily proved. If facts can speak, these facts unhesitatingly testify to the corruption of defendant No. 2's motives. The Subordinate Judge, while suspecting that the adoption was made from corrupt and malicious motives, thought that it was not clearly enough established to warrant him in setting aside the deed. I differ from him in his view of the strength of the inferences suggested. For acting on the presumption that defendant No. 2 was actuated by proper and laudable motives, I am wholly unable to account for her actions. Coincidences are very well in their own way, but multiplication is fatal to them. On the first issue I, therefore, find that the adoption is proved, but that it is not valid."

Against this decision the defendants appealed to the High Court.

Macpherson (with *M. B. Chaubal*) for appellants.

1896.

BHIMAWA v. SANGAWA.

Branson ... ...ment :—

The following authorities were refer... *Vithoba* v. ... *Patel Vandravan Jekisan* v. *Patel Manilal Chunilal* ... *Bapu*[2]; *Collector of Madura* v. *Mootloo Ramalinga*[3]; *Rama* v. *Radhabai*[4]; *Mahableshvar* v. *Durgabai*[5]; *Sri Raghunandha* ... *Sri Brozo Kishoro*[6].

PARSONS, J. :—The facts of this case are not disputed. Ramangavda died childless in or about the year 1886, leaving three widows, 1 Hannawa, 2 Bhimawa (defendant No. 2), and 3 Sangawa (plaintiff). He had not prohibited his widows from adopting a son to him. In 1887 Hannawa consented to the adoption by Bhimawa of any one she would like to adopt (Exhibit 92). On the 27th June, 1890, Sangawa applied for leave to sue as a pauper to obtain her share of her husband's estate. The application was enquired into and was ordered to be registered as a plaint on the 3rd January, 1891. On the 23rd October, 1890, Bhimawa took Bhimapa (defendant No. 7) in adoption. The Court of first instance thought that the adoption was made with the object of not allowing the immoveable property of her husband to the extent of a third to go into the hands of Sangawa, but found that there was no corrupt motive for the adoption, and held it valid. The appellate Court found that the adoption was made from corrupt and malicious motives, and, therefore, held that it was not valid. The corrupt and malicious motives by which the Assistant Judge found that Bhimawa was actuated were, as clearly appears from his judgment, nothing more than a desire to defeat the claim of Sangawa to a share in her husband's property.

The point of law before us is whether an adoption effected with that motive is invalid. In determining that point we have been very greatly assisted by the able and exhaustive judgment of the Chief Justice in *Mahableshvar* v. *Durgabai*[5]. It is clearly laid down in that judgment that an adoption to be invalid must be shown to have been made from sinful and corrupt motives, and not in the performance of a religious duty. Read in connection with the cases cited, that must mean that the widow must

(2) I. L. R., 15 Bom., 535.
(3) I. L. R., 15 Bom., 110.
(4) 12 M. I. A., 397.
(4) 5 Bom. H. C. Rep., 181, A. C. J.
(5) *Ante* p. 199.
(6) L. R. 3 I. A., 154.

be shown ... utter disregard for the spiritual benefit of her deceased husband and solely for her own self-interests and her own future well-being. Such a motive would be material. Cases may no doubt arise in which that motive may be capable of proof, but it is impossible to say that the present falls within that category. The immediate and necessary effect of any adoption by Bhimawa would be to divest Sangawa of her estate. To take effect for cause or motive as the Assistant Judge has done would be to place a bar upon Bhimawa's ever exercising the right of adoption that she possessed. Such a motive is clearly immaterial.

If the Assistant Judge had found that Bhimawa had adopted capriciously, corruptly, and with an utter disregard of her husband's spiritual benefit, we might then have had to inquire whether under the law in force in this Presidency these motives were in any way material. We need not do that now, for taking his finding as it stands, it merely amounts to a finding that Bhimawa intended to do exactly what she had a perfect right to do at any time she chose, namely, adopt a son and so divest Sangawa of her inheritance. He does not find that the assent of Hanmawa was in any way tainted, or that Bhimawa herself gained anything by the adoption, or that she was not acting from motives of duty. We cannot, therefore, agree with him in holding the adoption invalid, and we reverse his decree, and restore that of the Subordinate Judge with costs in this and lower appellate Court on the respondent.

RANADE, J.:—The Assistant Judge in this case has held that the *factum* of adoption was proved, but he set it aside on the ground that it was invalid by reason of its having been effected from corrupt and malicious motives. The respondent, original plaintiff, was the youngest of three widows, and it was found in this case that the appellant No. 1, the second widow, with the assent of the eldest widow, adopted appellant No. 4 after the respondent had instituted proceedings in *formâ pauperis* to obtain a partition of her share. It has been further found that this adoption was effected to defeat the respondent's claim. From this circumstance, as also from the delay of four years allowed to intervene, and the registration of the adoption-deed and of other

documents (executed by appell... ...
otherwise alienating without proper considerat...
perty to the other appellants) on the same day that resp...
application to sue as a pauper was granted, and the marriage of appellant No. 4 to a near relation of appellant No. 1, the Assistant Judge has inferred that the motives which prompted appellant No. 1 to adopt appellant No. 4 were corrupt and malicious, and that she was not actuated by a due sense of pure religious duty.

We may at once dispose of the alleged acts of waste and improvidence, and the suspicions about the marriage, and the registration of the adoption-deed. They have no bearing either way, as they are subsequent in date to the adoption, which took place in October, 1890, while the documents were all executed in January, 1891, and the marriage took place in March, 1891. The rights of the parties *inter se* cannot be seriously affected by these subsequent acts, and they may, therefore, be safely left out of account, except as indirect corroborations of the original motive which dictated the adoption.

There can be no doubt, on the facts found, that the adoption was effected with a view to defeat the respondent's claim for partition, and we have, therefore, to see how far such a motive can be regarded as sufficiently establishing the elements of corruption and malice in a manner to invalidate the adoption. In none of the authorities relied upon by the counsel on both sides, has any reference been made to any express ancient texts of Hindu law which bear upon this point. The doctrine is entirely a creation of general equity as formulated in recent judicial decisions.

The proposition was first laid down in a ruling of the Privy Council in the case of *The Collector of Madura* v. *Mootoo Rama linga*[1], where it was observed that the evidence about the assent of the kinsmen should be such as suffices to show that the act of adoption was done in the proper and *bonâ-fide* performance of a religious duty, and neither capriciously, nor from corrupt motive. The context, however, shows that their Lordships had chiefly in view the corruption represented by the kinsmen giving their consent from mercenary motives, and not from a *bonâ-fide*

(1) 12 M. I. A., 397.

sense of ... not alleged in this case that the eldest widow ...ent was purchased in this way. This decision, therefore, does not support the view taken by the Assistant Judge as to the motives of appellant No. 1 being corrupt. The next case in order of time is that of *Rakhmabai* v. *Radhabai*[1]. It is of special value as an authority in this case, because the contest there, as here, was between co-widows, and there was considerable delay in making the adoption. The right of the elder widow to adopt without the consent of the younger widow, even though such adoption deprived her of her own rights, was there upheld, and the Judges further held that the interest of the younger widow could not be regarded in the same light as that of other members of an undivided family. See also on this point *Keshav* v. *Govind*[2]. This distinction between a co-widow and other heirs was re-affirmed in *Ramji* v. *Ghaman*[3] and *Rupchand* v. *Rakhmabai*[4]. In the last of these cases, it was held that the younger widow was equally interested with the elder widow in securing the husband's future beatitude, which consideration had no force in regard to other heirs, who could not, without their consent, be deprived of any rights which may have become vested in them.

These decisions show that, though the adoption of appellant No. 4 by appellant No. 1 had the effect of defeating the respondent's rights as co-widow, yet as the law gave the power to appellant No. 1, her exercise of that power cannot be regarded as capricious or malicious, merely because she exercised it after respondent instituted her suit in *formâ pauperis*. The right of the elder widow to exercise her power cannot properly be made dependent upon the consent of the younger co-widow, whose interest would in many cases be opposed to its exercise—*Bhagubai* v. *Kalo*[5]. The exercise of a valid power by a properly authorized person cannot be held to be capricious or malicious in law solely because it defeated the expectations of others.

In the case of *Vithoba* v. *Bapu*[6] the adoption was admittedly effected pending legal proceedings with a view to defeat

(1) 5 Bom. H. C. Rep., 181, A. C. J.
(2) I. L. R., 9 Bom., 94.
(3) I. L. R., 6 Bom., 498.
(4) 8 Bom. H. C. Rep., 114, A. C. J.
(5) P. J. for 1875, p. 45.
(6) I. L. R., 15 Bom., 110.

1896.

BHIMAWA v. SANGAWA.

those proceedings of the rival [illegible] stance was not held sufficient to vitiate the ground of caprice or malice, when it had been made assent of the head of the family. The next case reported in the same volume—*Patel Vandravan Jekisan* v. *Patel Manilal Chunilal*[1]—further shows that the mere existence of alleged ill-will is not by itself sufficient to prove corruption and malice. It was held in this last case that when a widow adopts with the consent of the nearest sapinda, in this case the eldest widow, there is a presumption that she has performed the act from proper motives, and the burden of proving corrupt motives lies heavily on the other side. This qualification of the rather general terms used in the *Ramnad Case* was made on the authority of two later decisions of their Lordships in which the passage was more fully explained—*Sri Raghunadha* v. *Sri Brozo Kishoro*[2]; *Rajah Vellanki Venkata Krishna Row* v. *Venkata Rama Lakshmi Narsayya*[3]. In the last of these cases, their Lordships observed that it would be dangerous to introduce into the consideration of these adoption cases nice questions as to the particular motives operating on the mind of the widow, and that all that their Lordships meant to lay down was that there should be such evidence of the assent of the nearest sapinda as would suffice to prove that the adoption was not made from capricious or corrupt motives. When such assent is secured, it must be presumed that the widow acted from proper motives until the contrary was shown.

All these authorities were referred to in a recent decision—*Mahabaleshvar* v. *Durgabai*[4]—passed on 13th April, 1896, by the Chief Justice and Fulton, J. In that case, the question at issue was approached from the point of view of what circumstances must be proved to show corrupt motives on the part of the adopting widow, and it was held that the agreement of the natural father to pay Rs. 4,000 to the adopting widow, did not vitiate the adoption, as it did not rebut the presumption that she acted from a proper sense of her duty towards her husband. In the present case there is no question of corruption. The same act

(1) I. L. R., 15 Bom., 565.
(2) L. R., 3 I. A., 154.
(3) L. R., 4 I. A., 1.
(4) *Ante* p. 159.

sense of [illegible] respondent's rights as a widow was eldest widow [illegible] the personal interests of the appellant No. 1. sion, therefore regard that the breaking up of the family by partition was undesirable. The eldest widow's claims were somehow settled, and her assent was secured to the adoption several years before the respondent had any open differences with appellant No. 1. Under these circumstances, it is plain that the mere delay in giving effect to the legitimate power possessed by her, and her resorting to its exercise when the respondent threatened to break up the joint family, would not make the act either capricious or malicious, solely because it was effected after the institution of the application to sue in *formâ pauperis*. The presumption in favour of the *bona fides* of the act would not be rebutted by this circumstance, or by the subsequent acts of alleged waste.

For these reasons we reverse the decree of the Assistant Judge, and restore that of the Subordinate Judge with costs on respondent.

Decree reversed.

APPELLATE CIVIL.

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

1896.
April 17.

CHUNILAL PREMJI MARWADI AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* RAMCHANDRA AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Registration—Registration Act (III of 1877), *Sec.* 50—*Notice—Registration is notice only of registered documents, not of unregistered documents under which holders of registered documents derive their title—Priority.*

The plaintiffs sued to recover possession from the defendants of certain land which they had purchased from one Ran by a registered deed of sale dated the 22nd August, 1882.

Ran had been given the land by one Harichand by a registered deed of gift dated 15th November, 1881.

Harichand, however, had purchased the land from one Vithoba on the 22nd March, 1876, and the deed of conveyance to him of that date was not registered.

* Second Appeal, No. 651 of 1895.