widowers are permitted to adopt, and where minors also can adopt, if they have arrived at the age of discretion, and where further married men with children have been held to be fit subjects for adoption, these strict interpretations of the old texts seem to be not a little out of place—*N. Chandvasekharudu* v. *N. Bramhanna*(1); *Nagappa* v. *Subba*(2); *Jumoona* v. *Bamasoonderai*(3); *Rajendro Narain* v. *Saroda Soonduree Dabee*(4); *Dharma* v. *Ramkrishna*(5); *Nathaji* v. *Hari*(6); *Lakshmappa* v. *Ramava*(7); *Mhalsabai* v. *Vithoba*(8); *Rangubai* v. *Bhagirthibai*(9). If a male person at any time of life may adopt a man of any age, and such male person is also permitted to marry a female minor of any age, it is obvious that the rule prescribing a difference of age in favour of the adopting mother must be only regarded as a directory rule, and not a command, the infraction of which invalidates the adoption. As observed above, it is not necessary to decide this point in the present appeal. As the adoption of appellant was made by Sakubai without proper authority, and without respondent No. 2's consent, it is inoperative and invalid for the purposes of the present claim. We would, therefore, reject the appeal, and confirm the decree with costs.

*Decree confirmed.*

(1) (1869) 4 Mad. H. C. Rep., 270.
(2) (1865) 2 Mad. H. C. Rep., 357.
(3) (1876) 3 I. A., 72.
(4) (1871) 15 Cal. W. R., 548.
(5) (1885) 10 Bom., 80.
(6) (1871) 8 Bom. H. C. Rep., 67.
(7) (1875) 12 Bom. H. C. Rep., 364.
(8) (1862) 7 Bom. H. C. Rep., Appx., 26.
(9) (1877) 2 Bom., 377.

## APPELLATE CIVIL.

*Before Mr. Justice Parsons and Mr. Justice Ranade.*

AMBABAI AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* GOVIND AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

1898. *April* 12.

*Hindu law—Jains—Gujaráti Jains settled in Belgaum—Succession among Jains—Rights of illegitimate sons of a Jain—Division into four castes—Inheritance—Illegitimate sons—Ordinary Hindu law, that of Bráhmins, Kshatriyas and Vaishyas—Jains mostly Vaishyas—Four divisions of Jains—Dassa Porwad caste of Jains.*

The Courts in India have always recognized the existance of four castes, *viz.*, Bráhmins, Kshatriyas, Vaishyas and Shudras.

* Second Appeal, No. 1235 of 1879.

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Jains are dissenters and are mostly of Vaishya origin. A Jain converted into orthodox Hindu faith returns to the caste from which he traces his first descent.

The four main divisions of Jains are: Pramar, Oswal, Agarwal and Khandewal.

Unless a special custom to the contrary be established, the ordinary Hindu law governs succession among the Jains. Ordinary Hindu law is that of the three superior castes.

Under the ordinary Hindu law, illegitimate sons do not inherit, but are only entitled to maintenance.

*Held*, that a Jain of the Dassa Porwad caste was governed by the general Hindu law applicable to the three regenerate castes, being, though not a Brâhmin, certainly not a Shudra, but a Vaishya by origin, and having as such carried this law with him from Gujarát to the Belgaum District.

*Held*, therefore, that his widow was his sole heir, and that his illegitimate sons were only entitled to maintenance.

*Quære*—Whether even among Shudras the widow is altogether excluded from inheritance by illegitimate sons?

*Rahi* v. *Govinda*[1] doubted.

SECOND appeal from the decision of F. C. O. Beaman, District Judge of Belgaum.

One Bapuchand was a Gujar trader of the Dassa Porwad caste settled in the Belgaum District. This caste is one of the four main divisions of the Jain community of Gujarát, who are mostly of Vaishya origin.

After Bapuchand's death his widow, Ambabai, as his heir brought this suit against the defendants to recover Rs. 1,600, together with interest, which she alleged had been lent to them by the deceased.

Defendants denied the alleged loan, and alleged that Bapuchand was a Shudra by caste, and that they were his illegitimate sons by his concubine, and that as such they were his heirs in preference to his widow (the plaintiff).

The Court of first instance, without deciding whether the plaintiff or defendants were the heirs of the deceased Bapuchand, held that the alleged loan was a provision made by the deceased for the maintenance of the defendants, and dismissed the suit.

On appeal, the District Judge remanded the case to the first Court for a finding as to whether the plaintiff or defendants were the heirs of Bapuchand.

(1) (1875) 1 Bom., 97.

The first Court found that defendant No. 2 was an illegitimate son of Bapuchand by his concubine Jamna; and that as Bapuchand was a Vaishya belonging to one of the regenerate classes, his widow and not defendant No. 2 was his heir.

On appeal the District Judge held that Bapuchand was a Shudra and that, therefore, defendant No. 2 as his illegitimate son was his heir and not the plaintiff. The plaintiff's claim was, therefore, rejected.

His reasons were as follows:—

"There can, I think, be no reasonable doubt that Bapuchand regarded the two defendants as his sons (by his concubine Jamna), and that the second certainly was so.

"Now as Bapuchand was certainly a Shudra, no pretence being made that he was a Bráhmin, it follows that his illegitimate sons or son are or is his heir. In this Kaliyug there are according to the authorities only two classes among the Hindus, the regenerate Brahmanas and unregenerate Shudras—West and Bühler, p. 1135. Pure Kshatriyas and Vaishyas are not now recognized—Steele, 89, 90. On this broad ground alone, then, the case would be concluded against the plaintiffs. It has been pleaded that Bapuchand was a Dassa Porwad Wánia of Gujarát. And it has been argued that these are not Shudras. Now the brother-in-law of the deceased Bapuchand distinctly says and repeats that he is a Shudra, and if he is a Shudra, Bapuchand must have been a Shudra also. This is the best possible evidence, and I cannot agree with the learned Judge below in brushing it aside with the remark that 'it must have been a mistake.' It is incredible that any man who was not in fact a Shudra should have deliberately described himself as such twice over. On the other hand, it is natural enough that men who are really Shudras should affirm that they belong to a higher class, and that consideration disposes of the evidence of Bapuchand's so-called caste-fellow. It was further argued that among the Dassa Porwad Banias, *pa't* marriage was forbidden, and illegitimate sons did not succeed as heirs. Some evidence was taken on commission to prove that point. But it is insufficient. No instances are given, and that kind of proof which is required to establish a special custom according to all the authorities is not to be found here. The suit is brought by the widow of Bapuchand to recover a debt due to the estate. The second plaintiff is the brother of the first and not an heir. Obviously, then, if neither plaintiff is an heir, the suit fails. Holding that defendant No. 2 is the heir, the necessary result is that this suit must be dismissed."

Against this decision plaintiffs preferred a second appeal to the High Court.

*Branson* (with him *B. A. Bhagvat* and *S. R. Bakhle*) for appellants:—The question is, who is the heir of the deceased Bapuchand,

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—his widow or the defendants who claim to be his illegitimate sons by a concubine? The lower Court holds that the deceased was a Shudra, but the reasons given for this finding are very curious. In the opinion of the lower Court, there are only two castes among Hindus—Brâhmins and Shudras; he who is not a Brâhmin is a Shudra. There is no authority for such an opinion. On the contrary the Courts have always recognized four main divisions or castes among Hindus, of which Brâhmins, Kshatriyas and Vaishyas constitute the three superior or regenerate classes. See *Rahi* v. *Govinda*(1); *Chuoturya Run Murdan Syn* v. *Sahib Purhulad*(2). Now the deceased was a Jain of the Dassa Porwad caste. Jains are generally Vaishyas by origin and not Shudras; and though they are dissenters from the orthodox Hindu religion, they are governed by the ordinary Hindu law in matters of inheritance and succession—*Bhagvandas* v. *Rajmal*(3); *Rukhab* v. *Chunilal Ambukhet*(4); *Cholay Lall* v. *Chunno Lall*(5); *Amava* v. *Mahadyauda*(6). That being the case, the defendants, as illegitimate sons of the deceased, are only entitled to maintenance, but do not inherit—*Rahi* v. *Govinda*(1). The plaintiff, who is the widow of Bapuchand, is, therefore, his heir.

*M. V. Bhat* for respondents:—It is found as a fact that the deceased was a Shudra. It is admitted by plaintiffs' brother that he was a Shudra, and there is no evidence to the contrary. This finding is, therefore, conclusive in second appeal. If so, the illegitimate sons inherit in the absence of legitimate sons, daughters or daughters' sons—*Rahi* v. *Govinda*(1); *Sadu* v. *Baiza*(7). Defendants are, therefore, Bapuchand's heirs to the exclusion of his widow, and her suit was rightly dismissed.

RANADE, J.:—In this case, the appellant No. 1 is the widow of deceased Bapuchand, and she and her brother, appellant No. 2, who manages her affairs, brought the original suit on a book entry for 1,600 rupees signed by respondent No. 1 on 28th September, 1892, in the accounts of deceased Bapuchand. Re-

(1) (1875) 1 Bom., 97.
(2) (1857) 7 Moore I. A., 18.
(3) (1873) 10 Bom. H. C. Rep., 241.
(4) (1891) 16 Bom., 347.
(5) (1878) 6 I. A., 15.
(6) (1896) 22 Bom., 416.
(7) (1878) 4 Bom., 37.

spondent No. 1 was described in the plaint as the son of one Jamna, and his brother, respondent No. 2, was similarly described, and joined as co-defendant as living with respondent No. 1.

Both respondents denied appellant-plaintiff's right to sue, and claimed themselves to be the heirs of Bapuchand, as their mother Jamna was in Bapuchand's keeping and they were Bapuchand's illegitimate sons. They also denied that the sum of 1,600 rupees was advanced as a loan, and contended that it was a provision made by Bapuchand for their maintenance, and that the book entry was made by respondent No. 1 to protect himself from his creditors.

The Court of first instance did not at first decide the question of heirship, but dismissed the claim after finding that the book entry related to a sum which was advanced by deceased Bapuchand, not as a loan, but as a provision for the maintenance of the respondents. The District Judge, in appeal, sent down the case for a definite finding on the question of heirship, and thereupon the Court of first instance found that, as Bapuchand was of the Dassa Porwad caste, he was a Vaishya, or a member of the first three regenerate castes, and that of the two respondents, respondent No. 1 was not Bapu's son, and that respondent No. 2 was his illegitimate son but not his heir, as Bapuchand was not a Shudra. When the District Judge finally dealt with the case, he held that Bapuchand was a Shudra by caste, and that his illegitimate son, respondent No. 2, if not respondent No. 1 also, was his son and heir, and not his widow, appellant No. 1. The District Judge recorded no finding on the third issue about consideration, but expressed an opinion that, if appellant No. 1 were Bapuchand's heir, the suit in its present form would lie.

The principal point argued in second appeal relates to the question of the caste status of the deceased Bapuchand. He was admittedly a Gujaráti Jain trader of the Dassa Porwad caste settled in the Belgaum District. The chain of reasoning which led the District Judge to reverse the finding of the Court of first instance on this point appears to be based on the assumptions that there are at present only two castes, the regenerate Bráhmins and the unregenerate Shudras; pure Kshatriyas and pure Vaishyas

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are not now recognized. If, therefore, Bapuchand was not a Bráhmin, he must be regarded as a Shudra. The District Judge was also led to think that the Dassa Porwad caste to which Bapuchand belonged was a Shudra caste, chiefly because Bapuchand's brother-in-law admitted that he was a Shudra, and that the evidence of a caste custom, modifying the general rule about the succession of illegitimate sons of Shudras, was not sufficient to prove such a custom.

It appears to us that the District Judge was in error in the cardinal assumption that there are now only two principal castes, and that if a man is not shown to be a Bráhmin, he must belong to the Shudra class, as pure Kshatriyas and pure Vaishayas are not now recognized. The authorities cited in support of this view, (West and Bühler, p. 1135, and Steele, pages 89, 90) are clearly insufficient to prove any such position. Both these compilers do not state any such conclusion as their own, but only represent the opinion which Bráhmin shástris and pandits hold on the point. These latter opinions have no juridical value. As will be seen from a study of the original texts, they assume all through that there are representatives of the Kshatriya and Vaishya castes all over the country.

In both these works, elaborate lists of numerous castes are given which claim to be Kshatriyas or Vaishyas. The Kayasthas are mentioned in Steele as claiming to be Kshatriyas. The Marátha families of the Bhosles of Sátára and Kolhápur, and the Pátankars, Ghorpádes, Ghatges and Shirkes are mentioned as claiming to be Kshatriyas. Steele mentions that there are pure Vaishyas in Southern India. The Courts in India have always recognized the fourfold division. In *Rahi* v. *Govinda* [1] the three regenerate castes are specially mentioned as being distinguished from the fourth Shudra caste in respect of the rights of illegitimate sons. In his judgment in this case, Westropp, C. J., tried to explain a certain position of Lord Cairns in *Inderun Valungypooly* v. *Ramasawmy* [2] by the supposition that Padmanabha, whose property was in dispute, was not a Shudra, but a Kshatriya. In an early case relating to the Lingáyats, the marginal note describes the parties as belonging to the Vaishya

(1) (1875) 1 Bom., 97. (2) (1869) 13 M. I. A., p. 141.

caste. The leading case, however, on this part of the subject is that of *Chuoturya Run Murdun Syn* v. *Sahib Purhulad Syn* [1], where the opinion of the pandits, that Kshatriyas and Vaishyas have become extinct as castes, was discussed and negatived, and the existence of Rajputs as Kshatriyas was affirmed in the most positive manner. This ruling is of special importance, for the dispute in that case related to the claims of illegitimate sons. All these authorities make it perfectly clear that there is no foundation for the supposition that there are now only two principal caste divisions. The Kshatriyas were, according to this view of the pandits, exterminated by Parshuram, and yet in the two next incarnations of Rama and Krishna we have the solar and lunar races again in the ascendant, and the present Rájputána chiefs claim descent from them. There is no such mythical explanation even suggested for the extinction of the Vaishyas. We cannot, therefore, accept the correctness of this myth; and it must be discarded in a judicial settlement of questions relating to caste and status.

In the present case there is a further reason for setting aside such mythical considerations. Bapuchand was a Gujar trader of the Dassa Porwad caste, which caste is a sub-division of the Gujaráti Jains. The Jains are dissenters, and purely orthodox traditions about caste status can have no place when they are applied to Jains. Though settled in Belgaum, it is obvious that Bapuchand carried his personal law with him from Gujarát. The Márwádi Jains, who were parties to the case of *Bhagvandas* v. *Rajmal*[2], were similarly held to carry their own personal law with them to Ahmednagar. A series of decisions commencing with the case noted above, and coming down to the present day, have made it clear that this personal law of the Jains is the ordinary Hindu law of the place where they are settled—*Rukhab* v. *Chunilal* [3]; *Amava* v. *Mahadgauda* [4]; *Dalip* v. *Ganpat*[5]; *Lalla Mohabeer Pershad* v. *Mussamut Kundun Koowar*[6]; *Chotay Lall* v. *Chunno Lall*[7]; *Manik Chand* v.

(1) (1857) 7 M. I. A., 18.
(2) (1873) 10 Bom. H. C. Rep., 241.
(3) (1891) 16 Bom., 347.
(4) (1896) 22 Bom., 416.
(5) (1886) 8 All., 387.
(6) (1867) 8 Cal. W. R., 116.
(7) (1878) 6 I. A., 15.

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*Jagat Settani Pran Kumari Bibi*[1]. The Jains have caste divisions of their own, which exist in full force in Eastern and Southern India. A Jain converted into the orthodox Hindu faith returns back to the caste from which he traces his first descent. These extracts are taken from the judgment of Westropp, C. J., who quotes from Elphinstone, Erskine, Colebrooke, Mackenzie and Wilson. These writers state definitely that the Jains are mostly of Vaishya origin, and they employ Bráhmins in their temples and at their marriages, along with their yatis.

On the authority of these opinions, the Courts have invariably held that, unless a special custom to the contrary be established, the ordinary Hindu law governs succession disputes among the Jains—*Lalla Mohabeer Pershad* v. *Mussamut Kundun Koowar* [2]. The word "ordinary" here indicates the general or normal Hindu law, the law of the three regenerate castes. As the Jains are mostly Vaishyas, it is plain that the exceptional rules laid down for Shudras can have no place in matters relating to Jains. The ordinary Hindu law being that of the three superior castes, to the third of which division the Jains mostly belong, under that law illegitimate sons do not inherit, but are only entitled to maintenance—*Rahi* v. *Govinda*[3]; *Narayan* v. *Laving*[4]; *Chuoturya Run Murdun Syn* v. *Sahib Purhulad Syn*[5]; *Narain Dhara* v. *Rakhal Gain*[6]; *Sadu* v. *Baiza*[7]; *Jogendro Bhuputi* v. *Nittyanund*[8]; *Viravamuthi Udayan* v. *Singaravelu*[9]. The last of these cases related to parties who were Jains of the Southern Marátha Country.

The Porwad caste of Gujaráti Jains finds a place in Mr. Borradaile's Collection of Gujaráti Caste Customs. The word "Porwad" is apparently a corruption of Pramar, being one of the four main divisions of the Jain community. The other three divisions are Oswal, Agarwal and Khandewal. There are express decisions as regards the Oswal and Agarwal divisions, and

(1) (1889) 17 Cal., 518.
(2) (1867) 8 Cal. W. R., 116.
(3) (1875) 1 Bom., 97.
(4) (1877) 2 Bom., 140.
(5) (1857) 7 M. I. A., 18.
(6) (1875) 1 Cal., 1.
(7) (1878) 4 Bom., 37.
(8) (1885) 11 Cal., 702.
(9) (1877) 1 Mad., 306.

as they all belonged originally to the Vaishya caste, the Porwads must be similarly treated. The District Judge has laid too much stress on a statement of witness, Exhibit 52, who is brother of appellant No. 1. He appears to have stated that he was a Jain *Shudra*. This admission must be set down to inadvertence or ignorance. The evidence of the Dassa Porwad witnesses examined in the case, Exhibits 85, 86, 87, 88, and two examined on commission, was too summarily disposed of as being self-interested evidence. On the whole, it is quite clear, from the authorities stated above, that Bapuchand, as being a Jain of the Dassa Porwad caste, was governed by the general Hindu law applicable to the three regenerate castes, being though not Bráhmin, certainly not a Shudra, but a Vaishya by origin, and as such he carried this law with him from Gujarát to the Belgaum District.

Lastly, it may be noted that even if the view that Bapuchand was a Shudra be accepted, it does not follow that his illegitimate sons would take the whole estate to the exclusion of the widow. Illegitimate sons of Shudras are, no doubt, their heirs, taking with legitimate sons, daughters and daughters' sons only half the share of the legitimate son. The ruling in *Rahi* v. *Govinda* [1] no doubt laid it down that widows are absolutely excluded where there are only illegitimate sons, as they would be in the case of legitimate sons. But the ruling, though supported by West and Bühler, has been strongly dissented from by the Madras High Court—*Parvathi* v. *Thirumalai* [2]; *Ranoji* v. *Kandoji* [3]; and Mr. Mayne also has spoken doubtfully on the point of its correctness. In *Shesgiri* v. *Girewa* [4], Sargent, C. J., apparently thought that the widow would not be altogether excluded by illegitimate sons. It is, however, not necessary to decide the point, as we feel satisfied that in this particular case the appellant-widow alone was sole heir, and the respondents as illegitimate sons were only entitled to maintenance. It follows that the District Judge must be asked to find on the contention about the true nature of the transaction, and the liability of the

(1) (1875) 1 Bom., 97.
(2) (1886) 10 Mad., 334.
(3) (1884) 8 Mad., 557.
(4) (1889) 14 Bom., 282.

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defendants, or either of them, in respect of the same. We ask the District Judge to record findings on these issues :—

1. Whether the book entry represented a loan or a provision for maintenance ?

2. Whether the defendants, or either of them, are liable, and if so, for what amount ?

He should certify his findings on these points within two months.

*Issues sent down.*

## ORIGINAL CIVIL.

*Before Sir C. F. Farran, Kt., Chief Justice, and Mr. Justice Strachey.*

1898. *March* 25.

RAGHUNATH MUKUND (PLAINTIFF) *v.* SAROSH K. R. KAMA AND OTHERS (DEFENDANTS).*

*Civil Procedure Code (Act XIV of* 1882), *Secs.* 278-283—*Attachment of same property in execution of decrees obtained by different creditors—Claim made in one suit to attached property under section* 278—*Order made under section* 281—*Suit by claimant to establish right—All attaching creditors made defendants to suit—Parties—Practice—Civil Procedure Code (Act XIV of* 1882), *Sec.* 28—*Small Cause Court—Jurisdiction—Declaratory decree.*

The first and second defendants obtained a decree in Suit No. 1548 of 1897 against Runchordas, described as the owner of the Wahalan Mills, and attached property on the mill premises. Twelve other creditors also brought twelve other similar suits and obtained decrees against other persons who were also described as owners of the Wahalan Mills, and attached the same property. In Suit No. 1548 of 1897, Raghunath Mukund (the present plaintiff) under section 278 of the Civil Procedure Code (Act XIV of 1882) claimed the property. His claim was disallowed, and he was ordered to bring a suit under section 283. No claim or order was made in the case of the other twelve suits. Raghunath now sued, in pursuance of the above order, to recover his property, and he included as defendants not merely those (defendants Nos. 1 and 2) who had been plaintiffs in Suit No. 1548 of 1897, but also those who had been plaintiffs in the twelve other suits, and who had attached the property in execution of their decrees. It was objected that no suit would lie against the latter, as in their suits no claim had been made to the goods which they had attached and no order made under section 281 of the Civil Procedure Code (Act XIV of 1882).

* Small Cause Court Reference, No. 9585 of 1897.