

Order VII, Rule 14. The will was only produced on the 9th of February 1916, the day before the judgment was given and the award was not produced at all. The Judge, therefore, exercising his discretion under Rule 18 did not allow the plaintiffs to produce the material documents at that stage of the case and dismissed the claim. In appeal the Assistant Judge confirmed the decree of the lower Court. I agree with the reasons which are given by the learned Subordinate Judge. Rule 14 of Order VII was enacted in order that its provisions might be complied with, and the reasons for its enactment are very clear. It is certainly desirable that a party who sues upon a certain document should produce it at the time he files the plaint and not spring it upon the opposite party two or three years after when the suit comes on for hearing. The defendant of course has a remedy, if he chooses, to apply for discovery. But apparently the remedy by discovery is not made much use of in the Mofussil. Therefore both the lower Courts, in my opinion, were perfectly right in finding that the plaintiffs had not proved their case. Therefore the appeal must be dismissed with costs.

Appeal dismissed.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice.

BIJUJANGOURA ADGONDA PATIL (ORIGINAL DEFENDANT No. 1), APPELLANT *v.* BABU BALA BOKARE (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu law—Adoption—Adoption by widow during life time of a son adopted by her husband.

Under Hindu law, a widow cannot adopt to her husband when there is in existence a son adopted by her husband. Her right to adopt remains suspended so long as the adoption made by her husband is not set aside.

* Second Appeal No. 648 of 1918.

1919.

GANGADHAR
MAHADEV
v.
KRISHNAJI
VISHRAM.

1920.
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1919.

BHUJAN-
GOUDA
ADGONDA
v.
BABU BALA
BOKABE.

SECOND appeal from the decision of J. H. Betigiri, First Class Subordinate Judge, A. P., at Satara, confirming the decree passed by M. H. Limaye, Second Class Subordinate Judge at Tasgaon.

Suit to recover possession of property.

One Adgonda, a Jain, was the owner of the property in dispute. He had adopted a son Anna *alias* Bhujangowda (defendant No. 1) who was a son of his sister. After Adgonda's death, his widow adopted the plaintiff.

The plaintiff sued as the adopted son of Adgonda to recover possession of the property.

Both the lower Courts held that the adoption of defendant No. 1 was invalid under Hindu law and decreed the suit.

Defendant No. 1 appealed to the High Court.

K. N. Koyajee, for the appellant :—I submit that defendant No. 1's adoption was legal and valid, and that the plaintiff's adoption was invalid for the various reasons I am going to submit.

[MACLEOD, C. J. :—It is curious that neither the Courts below nor the parties have considered the point that so long as the first adopted son was living, it was not open to the widow to adopt another son. I have decided this point sometime ago in a case on the Original Side.]

I am not aware of your Lordship's decision. The Court of first instance has considered in paragraph 13 of its judgment the question whether the husband's adoption of defendant No. 1 did or did not amount to a prohibition to the widow to adopt any one else. And the lower appellate Court has also considered the point at page 9. They both came to the conclusion that the

1919.

BRUJAN-
GONDA
ADGONDA
v.
BABU BALA
BOKARE.

widow was not prohibited by the husband's illegal adoption from making another adoption. I have taken the points here in the memorandum of appeal to the effect that there was a prohibition to the widow and that the principle of *factum valet* ought to have been applied. But I am thankful to your Lordship for putting the real point in its proper form.

Y. N. Nadkarni, for the respondent:—The adoption of defendant No. 1 being invalid, there was nothing to prevent the widow from legally adopting the plaintiff.

[MACLEOD, C. J. :—Have you got any authority for the proposition that a widow can adopt another son, while the son adopted by the husband is alive?]

No.

MACLEOD, C. J. :—The plaintiff sued to recover possession of the property mentioned in the plaint on the ground that he was adopted by the widow of one Adgonda who died in 1911. The 1st defendant was adopted by Adgonda himself. The 2nd defendant, the elder brother of Adgonda, is sued on the ground that he was colluding with defendant No. 1, and had also held possession of the suit property wrongfully. The plaintiff's case depended absolutely on the question whether he could prove his title as the adopted son to Adgonda, and he contested the 1st defendant's claim to be the adopted son of Adgonda on the ground that the adoption was invalid, the adopted son being the son of Sonubai, the sister of Adgonda. Both the lower Courts have considered the question of the invalidity of the 1st defendant's adoption at great length. But the real point in the case curiously enough has not been noticed by either of the lower Courts or by the parties, although one issue, namely, whether the adoption of the 1st

1919.

BRUJAN
GONDA
ADGONDA
v.
BABU BALA
BOKARE.

defendant by Adgonda amounted to a prohibition against his widow's adopting, went somewhat near the point I am referring to. That point is, Adgonda having died leaving a son, although that was a son by adoption, the widow's right to adopt remained suspended as long as that son was in existence. If there had been a natural son, her right to adopt would not arise until the death of that son without issue, and without leaving a widow. As the son was an adopted son, the widow's right to adopt to her husband would also not arise until that adoption was set aside. It is not sufficient for her to say "in my opinion my husband's adoption is invalid, and therefore I am entitled to ignore it and adopt a son to my husband". It was not for her to judge whether the adoption by her husband was valid or invalid. In other words, as long as there is a son in existence, it must be presumed that he is the son of the husband. The plaintiff therefore in this case is out of Court on his plaint, as it is not open to him to challenge the adoption of the 1st defendant. He has got to show first that he is the adopted son properly adopted to Adgonda, and he fails in doing that, because there was an adopted son in existence at the time of his own adoption. This point arose sometime ago in a suit which I tried on the Original Side. I do not know whether it has been reported. But no authority has been cited for the proposition that a widow can adopt to her husband when there is in existence a son adopted by her husband. The appeal, therefore, must succeed and the plaintiff's suit must be dismissed with costs throughout. Same order in joint S. A. No. 418 of 1918.

Appeal allowed.

R. R.