rightly dismissed the counterclaim and the High Court in appeal confirmed that decree.

Before concluding this judgment their Lordships think it right to say that they see no reason for questioning the propriety of action of the solicitor for the defendants in the suit.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed. The appellants must pay the costs of this appeal.

Solicitors for the appellants: Messrs. *Hughes & Sons.*

Solicitors for the respondents: Messrs. *E. F. Turner & Sons.*

Appeal dismissed.

J. V. W.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice and Mr. Justice Heaton.

1919.

November 10.

THAKARAMA TEJRANI, WIDOW OF THAKOR NARSINGJI HATHISANGJI AND THE MOTHER OF THE DECEASED THAKOR FULSINGJI (ORIGINAL PLAINTIFF), APPELLANT *v.* SARUPCHAND CHHAGANBHAI SETH, DECEASED, BY HIS SONS AND HEIRS (1) MANIBHAI SARUPCHAND SETH AND SIX OTHERS, AND ANOTHER (HEIRS OF ORIGINAL DEFENDANT No. 1 AND DEFENDANT No. 2), RESPONDENTS.*

Hindu law—Adoption—Joint family—Jivai grant—Impartible property—Widow of a co-parcener adopting after the death of surviving co-parcener—Absence of consent—Authority of widow to adopt.

One R, owning a *jivai* estate, died leaving a widow S and his brother's son M. S and M jointly mortgaged a part of the *jivai* estate. M died in 1882

* First Appeal No. 155 of 1917.

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leaving two widows, and in 1884 S adopted plaintiff's father. The plaintiff having sued to redeem the mortgage made by S and M,

Held, that the plaintiff could not succeed as his father was not validly adopted by S, who as the widow of a deceased co-parcener of a joint Hindu family could not in the absence of any specific authority make an adoption subsequent to the death of a co-parcener who survived her husband, although the property was impartible.

FIRST appeal against the decision of R. S. Broomfield, Joint Judge at Ahmedabad in Suit No. 5 of 1914.

Suit for redemption.

One Raisang, a *bhayat* of the Thakor of Umeta held certain lands under a *jivai* grant. Raisang died in 1847 leaving him surviving his widow Surajrani, and a brother's son, Manbhai Gawasang. Surajrani and Manbhai mortgaged a part of the *jivai* estate to the defendants' ancestors.

Manbhai died in 1882, leaving two widows Atrani and Takhatrani. In 1884, Surajrani adopted Narsingji, plaintiff's father.

On Narsingji's death, the property was inherited by his son Fulsangji (plaintiff). In 1914, the Talukdari Settlement Officer on behalf of Fulsangji Narsingji instituted a suit for redemption of the property mortgaged by Bai Surajrani and Manbhai and for accounts under the Dekkhan Agriculturists' Relief Act.

The defendants, who were heirs of the mortgagee, contended *inter alia* that Fulsangji was not the heir of the original mortgagors, and therefore not entitled to redeem.

The Joint Judge dismissed the suit on the ground that the *jivai* lands reverted to the principal estate on the death of Raisangji and Manbhai without male heirs and that the adoption of the plaintiff's father by Surajrani was not valid according to Hindu law.

The plaintiff appealed to the High Court.

N. K. Mehta for the appellant :—The lower Court has disallowed the plaintiff's suit on the ground that the property in suit being admittedly a part of a *jivai* grant it reverted on the death of Raisangji and Manbhai without male heirs, to the Chief according to the established custom and the widow of Raisangji was not competent to take in adoption a son to her husband. No doubt the law was as stated by the lower Court in respect of a *jivai* grant to a junior member of the family of a Chief : *Agarsingji* v. *Bai Naniba* [1], but that ruling has been reversed by the Privy Council in appeal : *Pratapsing Shivsing* v. *Agarsingji Raisingji* [2]. Their Lordships have held that the right of a Hindu widow to make an adoption to her husband is not dependent on her inheriting his estate ; she can exercise the power so long it is not exhausted or extinguished, even though the property is not vested in her heir. On this authority I submit, there was nothing to prevent the widow from making an adoption to her husband.

[MACLEOD C. J. :—Do not their Lordships rest the decision on the fact that the adoption was made in the period of natural gestation ?]

No. Their Lordships' decision does not rest on that fact. They lay down as a general principle that so long as the power is not exhausted or extinguished she is entitled to make an adoption ; that may be after a number of years. Their Lordships further state (p. 108) that "it was admitted that a posthumous son would prevent the revertion" and "the adoption was made within the period of natural gestation". This is in reply to the contention on behalf of the respondent that as soon as the *jivaidar* dies, the property reverts to the grantor's estate.

[1] (1914) 17 Bom. L. R. 273.

[2] (1918) L. R. 46 I. A. 97.

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Secondly, the lower Court has held that the widow was not competent to adopt as on Paisangji's death the property went to his nephew Manbhai by survivorship and Manbhai died leaving a widow. I submit that there being no dispute as to the factum of the adoption, it was necessary for the parties concerned to have the adoption set aside within the period of limitation. It is not now open to the defendants to dispute the validity of the adoption.

G. N. Thakor, for heirs Nos. 3 to 7 of the deceased respondent, not called upon.

M. B. Dave for *C. N. Pandya*, for respondent No. 2.

HEATON, J.:—In this case we have the Talukdari Settlement Officer on behalf of a person described as a Talukdar suing to redeem a mortgage. The mortgaged property, it is admitted, was part of the *jivai* estate which up to the year 1847 was vested in one Raisang, who in that year died. He left a nephew, the son of his brother, and a widow, and it was the widow and the nephew who joined in making the mortgage to redeem which this suit has been brought. The defendants opposed the claim on the ground that Narsang, the Talukdar whose estate is under the management of the Talukdari Settlement Officer, has no right to redeem the mortgage. Narsang himself is dead and was succeeded by a son Fulsangji. But the question is whether Narsang was or was not validly adopted by Surajrani, the widow of Raisang. If he was validly adopted, then the plaintiff's suit must succeed. If he was not validly adopted, the plaintiff's suit must fail, because it is brought by one who has no right to redeem the mortgage. The adoption was made by Surajrani, the widow of Raisang, after the death of Manbhai, the nephew of her husband. Manbhai or his father, it would seem had held the *jivai* subsequent to Raisang's

death in 1847. Manbhai died in 1882 and in 1881, *i.e.*, nearly forty years after her husband's death, Surajrani made the adoption. By the law, as it is understood in this Presidency, an adoption of this kind in a family which constituted a joint Hindu family, although the property was impartible, could not be validly made. We were, however, referred to a very recent case decided by the Privy Council last year, *Pratapsing Shivsing* v. *Agarsingji Raisingji*[1]. In that case, however, the facts were that the adoption had been made within the period of gestation succeeding the death of the widow's husband. Those facts were the subject of argument in the case. They were expressly mentioned in the judgment, and it appears the only thing that was decided was that in circumstances of that kind an adoption would be valid. But where the circumstances are, as they are here, it seems to me quite plain that we must follow what is well-understood as the ordinary law in this Presidency, and apply it to the facts. The widow of a deceased co-parcener of a joint Hindu family cannot, in the absence of any specific authority, make an adoption subsequent to the death of a co-parcener who survived her husband; and more particularly when, as here, that later surviving co-parcener left widows. It seems to me, therefore, quite plain that the decision of the Court below is correct and that this appeal must be dismissed with costs. One set of costs to respondent No. 1 only.

MACLEOD, C. J. :—I agree.

Decree confirmed.

J. G. R.

(1) (1918) L. R. 46 I. A. 97.