APPELLATE CIVIL.

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

MURGEPPA BIN BASSAPPA GAVANNAVAR (ORIGINAL PLAINTIFF), APPELLANT *v.* KALAWA KOM GOLAPPA TOTAD ALIAS MANKANI HEIR OF THE DECEASED SANTANNAPPA AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

1919. *September 9.*

Hindu law—Adoption—Adoption by a widow of twelve years of age—Adoption invalid—Age of discretion.

A Hindu widow of twelve years of age, who has not reached puberty, cannot make a valid adoption.

SECOND appeal against the decision of A. C. Wild, District Judge of Bijapur, confirming the decree passed by S. R. Baindur, Subordinate Judge at Bagalkot.

Suit to recover possession.

The property in suit originally belonged to one Basappa. On Basappa's death, his widow became the owner of the property. She adopted plaintiff in 1904. In 1910 the plaintiff and his adoptive mother let out the plaint house to the defendants on an oral lease for one year. The defendants having failed to deliver possession after the expiry of the lease, the plaintiff filed the present suit.

The defendants denied the lease and contended that the plaintiff was not the adopted son of Basappa, and even if the adoption was held proved, it was invalid as the adoptive mother was minor at the date of adoption.

The Subordinate Judge dismissed the suit holding that though the plaintiff's adoption was proved, it was invalid. His reasons were as follows :—

The adoptive mother was undisputedly a minor on the occasion when the adoption in question was made. There is no rule of Hindu law which

* Second Appeal No. 1052 of 1917.

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expressly prohibits adoption by a minor widow. But it appears to have been laid down by decided cases that the widow must have reached the age of discretion. What this age of discretion is it is nowhere defined. Mr. J. C. Ghose in his book "Principles of Hindu Law" (2nd Edition, page 584) refers to a text of Narada, and says that under Hindu law one who has not attained the 16th year is incapable of making an adoption. The reason that he gives is that adoption is not only a religious act but a legal transaction (*vevahar*); hence the person entering into it must be one of 16 years. Mr. J. W. Mayne in his book "Hindu Law and Usage" (7th Edition, page 157) quotes from West and Buhler and says that in Western India a widow under the age of puberty cannot adopt. ° ° ° At the date of adoption the adoptive mother must have been twelve years of age. This age cannot in my opinion be said to be an age of discretion either in the case of a boy or girl."

On appeal, the District Judge confirmed the decree.

The plaintiff appealed to the High Court.

G. S. Mulgaonkar, for the appellant :—I submit that the adoption is valid. The widow executes a delegated authority, *i.e.*, the choice of a boy would not be her own but her husband's; assuming it does depend on her discretion then what is the age for it? The case of *Rajendro Narain Lahoree* v. *Saroda Soondaree Dabee*[1] lays down a rough and ready rule, viz., "when obligation to perform religious ceremonies arises an adoption is a religious act." The limit laid down there is below fifteen years: see also, Trevelyan's Hindu Law, page 103; Mayne's Hindu Law, 8th Edition, page 137, para. 111.

Adoption before puberty is ratified after puberty by performance of ceremonies. Steele's Law and Custom of Hindu Castes, page 187.

Hindu notion of infancy is 1 to 4 years; boyhood 5 years; adolescence 10 to 16 years and majority from 16th year.

Indian Majority Act, section 2, does not touch adoption.

[1] (1871) 15 W. R. 548.

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Besides, adoption is a question of status not of contract: *Vyasacharya* v. *Venkubai*[1]; *Basappa* v. *Sidramappa*[2]; West and Buhler's Hindu Law, page 998.

Assuming, for want of discretion the choice could be said to be not well thought out, can we not say that having lived with the son for a long time after adoption and associated him with herself in all her transactions of the estate, the widow has ratified the adoption, however defective?

H. B. Gumaste, for respondent No. 2, not called upon.

MACLEOD., C. J.:—The only question in this appeal is whether a girl, a Hindu widow, of the age of twelve, who has not reached puberty, could make a valid adoption. Both Courts have held that the adoption in those circumstances was invalid. As an authority para. 117 of Mr. Mayne's Work, 8th Edition, has been cited. There Mr. Mayne says: "in Western India it is stated that a widow under the age of puberty cannot adopt." (The authority for that is Steele page 48 West and Buhler 998.) The author continues, "I suppose the reason for the difference is that there the adoption is the act of the widow, for which no authority, or consent, is required." It seems to us that considering the importance of the act of adoption, it should be necessary that the adopting widow must have reached such an age of discretion that she must be able to realise the importance of her act, to make up her own mind as to the person she ought to adopt. There may be circumstances which will enable the Court to consider whether a widow has reached the age of discretion. That she has attained to puberty may be one circumstance but in this country not necessarily the only one. The actual age of the widow may be another test and probably the most important one. In this case I think

(1) (1912) 37 Bom. 251. (2) (1918) 43 Bom. 481.

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both the tender age of the widow, and the fact that she has not reached the age of puberty, make it perfectly clear that she was not competent to know what she was doing. If we were to hold that such a person could adopt, we should open the door to all sorts of intrigue, so that the elder members of the family might be able to induce widows of tender age to make adoptions in the interests of those persons. If the adoption is invalid, as I think it is, in this case from the commencement, then the mere fact that afterwards when the adopting mother grew older she raised no objection to the adoption cannot in any way validate what was invalid *ab initio*. Therefore I agree with the opinion which has been expressed by the lower Courts, and think that the appeal should be dismissed with costs.

Since this judgment was delivered my attention has been drawn to the case of *Basappa* v. *Sidramappa*[1] and the cases therein cited which are in accord with the conclusion at which we arrived.

HEATON, J.:—I am of the same opinion. In our Courts we deal with adoptions, not as matters of religion, but as they affect property. If an adoption were a matter of religion and nothing more, it may be that a child would be capable of performing the adoption validly as soon as she was big enough and strong enough to take the adopted child in her lap. But if we come to look upon adoptions, as we do, not merely as matters of religion, but as matters affecting property, then we must consider, as my Lord the Chief Justice has said, whether a person making an adoption is capable of volition of his or her own. Certainly no ordinary child of twelve years of age is capable of volition of the kind here required unless he or she is a very

[1] (1918) 43 Bom. 481.

exceptional person. There is nothing in this case to suggest that the young girl involved possessed such exceptional powers as that. I think, therefore, that the appeal must be dismissed.

Decree confirmed.

J. G. R

APPELLATE CIVIL.

Before Mr. Justice Shah and Mr. Justice Hayward.

BALKRISHNA NARAYAN SAMANT AND ANOTHER (HEIRS OF ORIGINAL PLAINTIFF), APPELLANTS *v.* JANKIBAI KOM SITARAM VITHAL SAMANT AND OTHERS* (ORIGINAL DEFENDANTS), RESPONDENTS.*

1919. *September* 16.

Court Fees Act (VII of 1870), section 7, clause IV (c)—Suits Valuation Act (VII of 1887), section 8—Suit for declaration and injunction—Valuation of claim—Valuation for purpose of Court fees—Valuation for purpose of jurisdiction.

In a suit for a declaration and for an injunction by way of consequential relief, the plaintiff has the right to value his claim for the purpose of Court fees; and the value for the purpose of jurisdiction is the same.

The plaintiff brought a suit for a declaration and injunction in the Court of the First Class Subordinate Judge under his special jurisdiction, and valued his claim for the purpose of Court fees at Rs. 135 and for the purpose of jurisdiction at Rs. 16,000. The trial Court having dismissed the suit, the plaintiff preferred an appeal to the High Court. At the hearing, he raised a preliminary point that the appeal lay to the District Court and prayed for the return of memorandum of appeal so that it could be presented to that Court:—

Held, overruling the preliminary point, that on the special facts of the case, the plaintiff should be taken to have filed the suit properly in the Court below under its special jurisdiction, and to have filed the appeal properly in the High Court.

FIRST appeal from the decision of E. F. Rego, First Class Subordinate Judge at Ratnagiri.

First Appeal No. 172 of 1916.