

APPELLATE CIVIL.

*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.**

GANGABAI *alias* KRISHNABAI JOSHI (ORIGINAL PLAINTIFF), APPELLANT
v. HARI GANESH JOSHI (ORIGINAL DEFENDANT), RESPONDENT³.

1921.

 January 21.

Hindu law—Adoption—Widow making an adoption on condition that the adopted son should not claim property in which she has life-interest under her father's will—The agreement does not enlarge widow's estate—Reversioner has only contingent interest during widow's lifetime.

A Hindu widow inherited property under the will of her father, which gave her only a life-interest in it, and her son, who was then in existence, was given full interest after her death. The son having died shortly after the testator, the widow adopted the defendant on condition that he would not claim any right to the property. The widow having sued for a declaration that she had become absolute owner of the property and for an injunction to restrain the defendant from interfering with her possession and enjoyment :—

Held, that the widow was not entitled to the declaration but only to the injunction, since it was quite clear that though as soon as the defendant was adopted he would be the nearest reversioner on the death of the plaintiff, he would have no right to surrender the reversion in favour of the life-tenant and so block out the interests of any one who might at the date of the widow's death be the nearest reversioner.

During the life of a Hindu widow the reversion remains contingent, and there is no one who possesses a vested interest in the remainder which can be disposed of by any means known to the law.

FIRST appeal from the decision of G. M. Pandit, First Class Subordinate Judge at Poona.

Suit for declaration and injunction.

One Waman had a daughter (plaintiff) who had a son named Trimbak. On the 5th December 1892, Waman made a will devising his property to his daughter for her life, and after her death, to her son Trimbak and to other sons she might have. Waman died shortly afterwards; and one year later Trimbak also died.

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In 1915, the plaintiff adopted the defendant who was her husband's brother's son. The adoption was made subject to the condition that the defendant was entitled to the property left by the plaintiff's husband, but he was to have no right to the property which she received under her father's will.

After the adoption, the defendant began to molest the plaintiff in her possession and enjoyment of the property.

The plaintiff filed the present suit for a declaration that she was the absolute owner of the property and for an injunction that the defendant should not interfere with her possession.

The Subordinate Judge held that the plaintiff had not become absolute owner of the property, but granted an injunction restraining the defendant "from taking possession of the property or interfering with plaintiff's possession and enjoyment thereof during her lifetime."

The plaintiff appealed to the High Court.

Jayakar, with *W. B. Pradhan*, for the appellant.

G. S. Rao and *K. S. Parulekar*, for the respondent.

MACLEOD, C. J. :—The plaintiff sued for a declaration that the plaintiff property was of her full and absolute ownership, and that the defendant had no sort of interest in it, and for an injunction restraining him from interfering with her possession or entering upon the property. The facts are not in dispute. The suit property originally belonged to the plaintiff's father who devised it by will dated the 5th of December 1892 to the plaintiff for life, and after her death to her son Trimbak Ganesh, and any other sons that might subsequently be born to her. The testator died twenty-six

or twenty-seven years ago, and Trimbak who was then alive took a vested remainder in the suit property. When he died his mother, the plaintiff, became his heiress. Then the plaintiff determined to adopt the defendant who was a major. Before the adoption the defendant executed an agreement in favour of the plaintiff to the effect that in the event of his being adopted he would not claim any right to the suit property. After the adoption a further agreement was entered into ratifying the previous agreement. It is quite clear that as soon as the defendant was adopted he would be the nearest reversioner on the death of the plaintiff, but he would have no right to surrender the reversion in favour of the life-tenant, and so block out the interests of any one who might at the date of the widow's death be the nearest reversioner. The case does not seem to have been viewed from this aspect by the learned Judge in the Court below, who considered that although a conditional adoption was allowed by law and the rights of the adopted son could be curtailed by an agreement, it could not in any way enlarge the estate of the adoptive mother. Defendant's admission could not give the plaintiff an estate which she did not possess. Undoubtedly, if the adopted son had taken a vested remainder in this property, he could have conveyed that remainder to his adoptive mother so as to enlarge her life-estate into an absolute estate. But it makes all the difference if the defendant took only a contingent interest in the property after his adoption.

The Court was right in refusing the declaration asked for by the plaintiff that she was the absolute owner of the suit property, because undoubtedly she was only a life-tenant, and there was no one in position to make her an absolute owner. During the life of a Hindu widow the reversion remains contingent, and there is no one who possesses a vested interest in the remainder

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which can be disposed of by any means known to law. It will be sufficient for the purposes of this case if we amend the decree of the lower Court by giving the plaintiff an injunction restraining the defendant from taking possession of the property or interfering with the plaintiff's possession or enjoyment thereof during her lifetime.

Each party to bear her and his own costs.

Decree accordingly.

R. R.

APPELLATE CIVIL.

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

HIRALAL RAMNARAYAN (ORIGINAL PLAINTIFF), APPELLANT v. SILANKAR HIRACHANI (ORIGINAL DEFENDANT), RESPONDENT^a.

1921.

January, 14.

Contract—Specific performance of contract—Agreement of sale executed on an unstamped paper—Part performance by delivery of possession of part of the property and execution of stamped but unregistered sale deed of the rest of the property—Secondary evidence of the agreement of sale not permissible—Suit for specific performance competent.

The defendant agreed in writing (unstamped) to sell two of his lands and a house to the plaintiff in consideration of an adjustment of accounts between the parties. In pursuance of the agreement, the defendant handed over to the plaintiff possession of the lands, and executed a stamped but unregistered sale-deed of the house. On the plaintiff subsequently suing for specific performance, the written agreement of sale abovementioned was not forthcoming :

Held, that secondary evidence of the unstamped agreement of sale was not admissible, even on payment of penalty.

Raja of Bobbili v. Inyanti Ulina Sitaramasami Garu⁽¹⁾, followed.

Held, further on the facts, that the agreement of sale having been confessed and in part carried into execution, the matter had advanced beyond the stage of contract, and the equities which had arisen could not be administered unless the contract was regarded. Specific performance was, therefore, decreed.

^a First Appeal No. 176 of 1919.

(1) (1899) 23 Mad. 49.