

until it was disposed of on the 12th of May 1917 was within time. In *Desaippa v. Dundappa*<sup>(1)</sup> the same question came up before Mr. Justice Heaton and myself, and following the decision of the Privy Council in *Mungul Pershad Dichit v. Grija Kant Lahiri Chowdhry*<sup>(2)</sup> we decided that if an application be admitted and proceedings taken thereunder, although as a matter of fact they would be barred by limitation if an application were made for the disposal of the application on that ground, they provide a new starting point for limitation. Following that decision it is clear that this Darkhast was within three years from the previous Darkhast. Therefore on that ground the appeal fails.

It may be noted that this question was never raised in the lower Court. The only question argued was whether the Sangli and Shahapur Courts were proper Courts.

The appeal, therefore, must be dismissed with costs.

*Appeal dismissed.*

R. R.

<sup>(1)</sup> (1919) 44 Bom. 227.

<sup>(2)</sup> (1881) L. R. 8 I. A. 123.

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## APPELLATE CIVIL.

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

BASVANT MUSHAPPA HUBLI AND ANOTHER (ORIGINAL DEFENDANTS NOS. 3 AND 4), APPELLANTS *v.* MALLAPPA KALLAPPA HUBLI (ORIGINAL PLAINTIFFS), RESPONDENTS<sup>2</sup>.

1920.

July 20.

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*Hindu Law—Adoption—Adoption by unchaste widow—Shudras.*

In the Presidency of Bombay, a Shudra widow though unchaste can make a valid adoption.

<sup>2</sup> Second Appeal No. 887 of 1919.

1920.

*Sayamalal Dutt v. Saudamini Dasi*<sup>(1)</sup>, and *Dnyanoba v. Radhabai*<sup>(2)</sup>, distinguished.

BASVANT  
MUSHAPPA

vs.  
KALLAPPA  
KALLAPPA.

SECOND appeal from the decision of F. K. Boyd, District Judge of Belgaum, confirming the decree passed by D. R. Norman, Assistant Judge of Belgaum.

Suit to recover possession of property.

The plaintiff was adopted by Dyamawa, a Shudra widow. He sued to recover possession of property which belonged to his adoptive father. His claim was resisted by Dyamawa and Kallava who were respectively the widow and daughter of the adoptive father Kallappa, and also by Kallappa's brother Basvanta and Dyamawa's father Shankareppa. They contended that the plaintiff's adoption was invalid, because Dyamawa was at its date unchaste and pregnant.

Dyamawa and Kallava, defendants Nos. 1 and 2 died during the suit.

It was held by the trial Court that the plaintiff's adoption had in fact taken place, and that the unchastity of Dyamawa at the time did not affect its validity, for among Shudras no ceremonies were necessary to effect an adoption.

This decree was, on appeal, confirmed by the District Judge.

Defendants Nos. 3 and 4 appealed to the High Court.

*D. R. Manerikar*, for the appellants:—I submit that the plaintiff having been admittedly adopted by Dyamawa while pregnant through adultery, the adoption was invalid in law: see *Sayamalal Dutt v. Saudamini Dasi*<sup>(1)</sup>.

(*J. G. Rele* referred to the criticism of the case by Trevelyan on Hindu law, 2nd edition, p. 132).

But Trevelyan admits on the same page that it is unsettled whether an unchaste widow can adopt. No

<sup>(1)</sup> (1870) 5 Beng. L. R. 362.

<sup>(2)</sup> (1894) P. J. 22.

1920.

BASVANT  
MUSHAPPA

v.

MALLAPPA  
KALLAPPA.

doubt in the case cited above the ground of the decision as pointed out by the trial Court was that the widow being in a polluted state or a state of ceremonial impurity on account of her unchastity and being therefore incompetent to perform the necessary religious ceremonies, the adoption was held invalid. Now in view of the Privy Council decision in *Indromoni Chowdhurani v. Behari Lal Mullick*<sup>(1)</sup> and *Ravji Vinayakerav Jaggannath Shankarsett v. Lakshuibai*<sup>(2)</sup>, that ground is no longer tenable.

In Western India, widows of separated Hindus are held competent to adopt to their husbands without an express authority from their husbands or without the consent of the Sapindas, on the ground of their having an implied authority from their deceased husbands. But such an implied authority cannot be presumed in the case of a widow who has sullied the bed of her late husband. It is only a virtuous widow that can be said to have the implied authority from her husband. This is the *ratio decidendi* of the case of *Dnyanoba v. Radhabai*<sup>(3)</sup>. That case is distinguished by Sir Lawrence Jenkins in *Lakshuibai v. Sarasvatibai*<sup>(4)</sup>.

[MACLEOD, C. J. :—Dyamawa had an implied authority at the time of the death of her husband. That authority could not be subsequently revoked, the husband being dead at the time, when Dyamawa began to lead an unchaste life.]

It appears in this case that within two years from the death of her husband, the widow was found advanced in pregnancy. So the presumption is that she was also unchaste at the time of the death of her husband.

<sup>(1)</sup> (1879) L. R. 7 I. A. 24.<sup>(2)</sup> (1894) P. J. 22.<sup>(3)</sup> (1887) 11 Bom. 381 at p. 396.<sup>(4)</sup> (1899) 23 Bom. 789 at pp. 795, 796.

1920.

*J. G. Rele*, for the respondent, was not called upon.

BASWANT  
MUSHAPPA  
v.  
MALLAPPA  
KALLAPPA.

MACLEOD, C. J. :—The plaintiff is the adopted son of Kallappa having been adopted after his death by his widow Dyamawa. He claims the suit property as the sole heir of Kallappa. The defendants originally were the widow Dyamawa, the minor daughter, Baswant, the brother of Kallappa and the natural father of Dyamawa. The first two died during the suit and it was alleged that the lands in suit were in the possession of Baswant and the cattle with Shankargowda, the fourth defendant. The defendants disputed the adoption. They also alleged that if the adoption had actually taken place it was invalid, because the widow Dyamawa was pregnant and in a polluted state at the time of the adoption. The trial Judge found that the adoption had taken place and he also held that the unchastity of the widow did not invalidate the adoption. The defendants relied on the authority of *Sayamahal Dutt v. Saudamini Dasi*<sup>(1)</sup> in which an adoption was declared void by reason of the unchastity of the giver, but the ground of that decision was that the widow could not perform the necessary religious ceremonies. The parties in this case are Shudras and therefore that argument does not apply.

In first appeal the only point argued was whether or not the plaintiff proved his adoption. The District Judge agreed with the decision of the trial Court that the adoption had been proved. It was not argued that the adoption having taken place it was invalid on the ground of the widow's unchastity, and we are told that as the District Judge threatened the defendants with prosecution for perjury, that legal argument was dropped. However that may be, it has been argued now that the unchastity of the widow invalidated the adoption.

<sup>(1)</sup> (1870) 5 Ben. L. R. 362.

Apparently the argument is that if the husband could have known in his life-time that his widow would not behave properly after his death, he would have expressly revoked the authority to adopt. But in this Presidency the widow has implied authority to adopt from the date of her husband's death unless it can be shown that her husband had either expressly or impliedly revoked such authority. Therefore any conduct of the widow after the husband's death cannot affect the authority which she acquired at the time of his death. The facts in the case of *Dnyanoba v. Radhabai*<sup>(1)</sup> to which we have been referred, were entirely different. The widow had been deserted by her husband for thirty years on the ground that she had misconducted herself and her husband had taken to himself another wife. It was, therefore, quite open for the Court in that case to come to the conclusion that the husband had revoked expressly any authority his wife would otherwise have to adopt after his death. In my opinion, therefore, the decision of the Court below was right and the appeal must be dismissed with costs.

*Appeal dismissed.*

R. R.

<sup>(1)</sup> (1894) P. J. 22.

## APPELLATE CIVIL.

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

IN THE MATTER OF THE BOMBAY REVENUE JURISDICTION ACT, 1876, AND IN THE MATTER OF THE ESTATE OF SHRI VASUDEV HARILAL PANDIT ALIAS BABA MAHARAJ\*. PARTIES CONCERNED: 1 HIS HIGHNESS THE MAHARAJA OF KOLHAPUR. 2 SHRI BALA MAHARAJ. 3 SHRI JAGANNATH VASUDEV PANDIT MAHARAJ. 4 THE SECRETARY OF STATE FOR INDIA IN COUNCIL.

\* Civil Reference No. 3 of 1920.

1920.

BASVANT  
MUSHAPPA  
v.  
MALLAPPA  
KALLAPPA.

1920.

July 20.