APPELLATE CIVIL.

Before Sir Lallubhai Shah, Kt., Acting Chief Justice, and Mr. Justice Crump.

1922.
July 17.

SHIVBASAPPA BIN LAGMAPPA MANOLI (ORIGINAL PLAINTIFF), APPELLANT *v.* NILAVA KOM SATAPA MANOLI AND OTHERS (ORIGINAL DEFENDANTS NOS. 1 TO 4), RESPONDENTS*.

Hindu law—Joint family—Adoption by widow of co-parcener who died first—Estate vested in widow of another who died later—Validity of adoption.

A joint Hindu family consisted of two brothers, one of whom died leaving a widow S. The other brother subsequently died leaving two widows L and B. Thereafter S adopted a son without the consent of L and B:—

Held, that the joint estate having vested in L and B, the widow S had no power to make an adoption which would divest the estate vested in L and B.

Effect of *Yadao* v. *Namdeo*[1], considered.

FIRST appeal from the decision of K. R. Natu, First Class Subordinate Judge at Belgaum.

Suit to recover possession of property and to obtain a declaration.

The property in dispute belonged to two brothers, Basvanta and Lagmappa, who lived together in a joint Hindu family. Lagmappa had a wife, Satava. Basvanta had two wives, Lagmava and Baslingava (defendants Nos. 2 and 3), and one son named Satu. Satu died on the 22nd October 1918; and Lagmappa also died on the same day. Basvanta died three days later.

Thereafter Satava adopted the plaintiff without the consent of Lagmava or Baslingava.

The plaintiff sued in 1919 for a declaration that he was the validly adopted son of Lagmappa and to recover possession of the family property.

* First Appeal No. 14 of 1921.

[1] (1921) L. R. 48 I. A. 513.

In the trial Court, the question whether Basvanta or Lagmappa died first was much discussed. It was held that Basvanta died after Lagmappa and that the plaintiff's adoption was invalid.

The plaintiff appealed to the High Court.

Nilkanth Atmaram, for the appellant.

Coyajee, with *D. R. Manerikar*, for respondents Nos. 1 and 2.

SHAH, AG. C. J. :—[His Lordship held after examining the evidence in the case that Basvanta died after his brother Lagmappa, and that the plaintiff's adoption was proved to have taken place. His Lordship next proceeded to deal with the question of law arising on these findings:] In the lower Court no question was raised as to the effect of the finding that Basvanta and Lagmappa were members of a joint family of whom Lagmappa died first and Basvanta afterwards. It was accepted that the result of that finding would be to negative the plaintiff's claim ; and in the memorandum of appeal before us no such point as has been raised in the course of the argument has been taken. After the filing of the appeal, however, the decision in *Yadao* v. *Namdeo*[1] has rendered it possible for the appellant to raise the contention that the adoption would have the effect of divesting the estate vested in defendants Nos. 2 and 3 on the death of Basvanta. It is urged that, though, according to the decisions of this Court, the plaintiff would have no case, in view of the observations of their Lordships of the Privy Council in *Yadao* v. *Namdeo*[1] relating to the Full Bench ruling of this Court in *Ramji* v. *Ghamau*[2], those decisions are no longer good law, and that as a logical consequence of the observations relating to the decision in

(1) (1921) L. R. 48 I. A. 513. (2) (1879) 6 Bom. 498.

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Ramji v. *Ghamau*[1], it follows that the adoption would be good even after the death of the last surviving coparcener of the joint family so as to have the effect of divesting the estate vested in the widow or widows of the last coparcener.

On behalf of the respondents it is urged that, whatever the effect of the observations in *Yadao* v. *Namdeo*[2] may be as regards the power of the widow during the continuance of the joint family, the current of decisions of this Court with regard to the inability of a widow to adopt so as to divest the estate vested in a third party is not touched in any way, and that that current of decisions cannot be treated as having been overruled by the observations which are directly made with reference to the decision in *Ramji* v. *Ghamau*[1]. The current of decisions referred to begins from the year 1871 when *Rupchand Hindumal* v. *Rakhmabai*[3] was decided ; then we have the decision in *Chandra* v. *Gojarabai*[4], which is strongly relied upon by the respondents. They also rely upon the observations in *Vasudeo* v. *Ramchandra*[5] and *Payapa* v. *Appanna*[6].

The question that arises in virtue of the observations in *Yadao* v. *Namdeo*[2] is whether, if the widow of a deceased coparcener in a joint family could adopt validly, even in the absence of any express authority from her husband, without the consent of the surviving coparceners, it is necessarily implied that that adoption, even when effected after the death of the last surviving coparcener of the joint family, and after the estate has vested in the widow or widows of that

(1) (1879) 6 Bom. 498.
(2) (1921) L. R. 48 I. A. 513.
(3) (1871) 8 Bom. H.C., A.C.J., 114.
(4) (1890) 14 Bom. 463.
(5) (1896) 22 Bom. 551.
(6) (1898) 23 Bom. 327

last deceased coparcener, would be valid or rather have the effect of divesting the estate so vested in the widows. It is not necessary for the purpose of this case to examine the point decided in *Ramji* v. *Ghamau*[1] along with the earlier and later decisions on that point in the light of the observations in *Yadao* v. *Namdeo*[2]. It is clear, however, that for a long time in this Court the rule is accepted as stated in *Tejrani* v. *Sarupchand Chhaganbhai*[3] :

"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 coparcener of a joint Hindu family cannot, in the absence of any specific authority, make an adoption subsequent to the death of a coparcener who survived her husband ; and more particularly when, as here, that later surviving coparcener left widows."

That undoubtedly was the law as understood and accepted in this Presidency before the decision in *Yadao* v. *Namdeo*[2]. In the present case, we are not directly concerned with the decision in *Ramji* v. *Ghamau*[1]. We are concerned with another current of decisions to which I have referred, and the question is whether after the death of the last surviving coparcener when the estate has vested in the widow of that coparcener the adoption effected by a widow of a predeceased coparcener could have the effect of divesting that estate. On that point it seems to me to be quite safe to say that the decision in *Yadao* v. *Namdeo*[2] is silent. It is difficult to accept that the effect of that decision is to over-rule by implication the current of decisions on that point. It is an oft-repeated caution that a decision is an authority for what it decides, and that it is not an authority for what may seem to be a logical consequence of that decision. In the present

(1) (1879) 6 Bom. 498. (2) (1921) L. R. 48 I. A. 513.
(3) (1919) 44 Bom. 483 at p. 487.

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case I am not clear at all that, because a widow of a predeceased coparcener can adopt without the consent of the surviving coparceners, even in the absence of any specific authority from her husband during the life-time of the coparcener, necessarily or logically even after the death of the last surviving coparcener when the joint family has ceased, and the property has devolved upon the heirs of the last surviving coparcener, she can make a valid adoption so as to divest the estate already vested in the heirs of the last male owner. Mr. Nilkanth has not been able to cite any authority in support of his argument for the appellant. But it is urged by Mr. Coyajee on behalf of the respondents that the decision in *Ramkrishna* v. *Shamrao*[1], which has been approved by their Lordships of the Privy Council in *Madana Mohana* v. *Purushothama*[2], has the effect of recognising this principle that the right of a widow to adopt may be extinguished owing to certain events or circumstances, and where that is the case it does not matter whether she had originally a right to make an adoption to her husband. It is urged that in the present case when the last surviving coparcener, i.e., Basvanta, died the right of the widow of Lagmappa to adopt came to an end. The application of the principle accepted in *Ramkrishna* v. *Shamrao*[1] with reference to the facts such as we have in the present case is not to be found in any reported case so far. But it is open to the respondents to urge with force that there is no reason why that principle should not be so applied as to put an end to the power of the widow to adopt, when the estate is vested already in others. Though no decision exactly bearing on the facts of the present case has been cited to show that the principle of *Ramkrishna* v. *Shamrao*[1] can apply to facts such as we have here, it may be said that the

(1) (1902) 26 Bom. 526. (2) (1918) L. R. 45 I. A. 156 at p. 160.

principle has been applied under varying circumstances; for instance, it has been applied to the case of widows who inherit property under the rule laid down in *Lallubhai Bapubhai* v. *Mankuvarbai*[1]. However that may be, I am entirely unable to give effect to the plaintiff's contention that *Yadao* v. *Namdeo*[2] must be taken as over-ruling the current of decisions to which I have referred, and of which the decision in *Chandra* v. *Gojarabai*[3] is a type.

I may mention with reference to this point that after the decision in *Yadao* v. *Namdeo*[2], I had more occasions than one to refer to that case. First it was referred to in *Bhau* v. *Narsagouda*[4] to which Mr. Justice Fawcett was a party, and then in *Dattatraya Bhimrao* v. *Gangabai*[5]. It is also referred to in *Yeknath Narayan* v. *Laxmibai*[6]. I refer to these decisions for the purpose of showing that except as to the effect of *Yadao* v. *Namdeo*[2] on the decision in *Ramji* v. *Ghamau*[7], it has not been so far accepted as over-ruling the decisions of this Court which may appear somewhat inconsistent with the view taken in that case, but which bear on a distinct point that did not arise and was not in terms considered in *Yadao* v. *Namdeo*[2]. I am fully alive to the force of the contention of the appellant that in view of the observations in *Yadao* v. *Namdeo*[2], all these decisions, not only that in *Ramji* v. *Ghamau*[7] but the others to which I have referred, should be reconsidered. But in view of the settled rule on this point and of the effect which a reconsideration of it would have upon titles to property, I do not think that it ought to be departed from by this Court in the absence of a clear ruling of the Privy Council to that effect.

(1) (1876) 2 Bom. 388.
(2) (1921) L. R. 48 I. A. 513.
(3) (1890) 14 Bom. 463.
(4) (1921) 46 Bom. 400.
(5) (1921) 46 Bom. 541.
(6) (1922) 47 Bom. 37
(7) (1879) 6 Bom. 498.

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The facts in the present case are rather peculiar, and it may appear anomalous that, though according to the observations in *Yadao* v. *Namdeo*[1] defendant No. 4 could have adopted after Lagmappa's death without Baswanta's consent during the three days that Baswanta survived Lagmappa, her power to adopt should have practically come to an end on Baswanta's death on the 25th October, or rather it should have become ineffective for the purpose of divesting the estate vested in the widows of Baswanta. But the principle and the dividing line are clear; and for the sake of a logical application of the theory of the inherent power of a widow to adopt in this Presidency which is probably a deviation from Hindu law as observed by their Lordships in *Yadao* v. *Namdeo*[2], and for which, speaking with great deference, I am unable to find any support in any text of Hindu law, I do not think that it would be right to depart from a rule which is laid down in various decisions of this Court and which is clearly understood and uniformly followed up to now. On the contrary it would be carrying the probable deviation from Hindu law distinctly a step further as affecting the devolution of property for which it would be difficult to find a justification in the principles governing the law of adoption.

The result is that the decree of the lower Court is confirmed and the appeal dismissed with costs.

CRUMP, J.:—I concur.

Decree confirmed.

R. R.

(1) (1921) L. R. 48 I. A. 513.