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in any way affected by the observation in *Yadao* v. *Namdeo*[1].

It cannot be said, therefore, that the decision of this Court that a widow of a *gotraja sapinda* cannot adopt *so as to defeat the rights of the reversioners* has in any way been shaken by the decision in *Yadao* v. *Namdeo*.[1]

If, therefore, Bhagirthi, though she took a life estate as a widow of a *gotraja sapinda*, had no power to adopt so as to defeat the rights of the reversioners, it equally follows that Lakshmi, who in the life time of Bhagirthi had only a right of maintenance, had no power to adopt so as to exclude the reversioners. The question whether those widows could have adopted so as to secure religious benefit to their husbands is an entirely different question from the one whether by such adoption they could defeat rights of inheritance. We think, therefore, that the appeal must be allowed and the plaintiff's suit dismissed with costs throughout.

SHAH, J. :—I concur.

Appeal allowed.

R. R.

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

APPELLATE CIVIL.

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

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MARUTI BABAJI TOTRE AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS *v.* MARTAND NARAYAN KULKARNI AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS*.

Dekkhan Agriculturists' Relief Act (XVII of 1879), section 22—Decree against an agriculturist—Execution—Attachment and sale—Death of judgment-debtor—Legal representative non-agriculturist—Property not protected from attachment—Civil Procedure Code (Act V of 1908), sections 50, 53.

The protection from attachment afforded to immoveable property belonging to an agriculturist by section 22 of the Dekkhan Agriculturists' Relief Act

* Second Appeal No. 350 of 1921.

does not continue when the agriculturist judgment-debtor dies and the property passes into the hands of his heir or legal representative who is not an agriculturist.

SECOND appeal against the decision of G. D. French, District Judge of Poona, confirming the decree passed by M. A. Bhave, Subordinate Judge of Khed.

Proceedings in execution.

One Maruti Totre and another obtained a money decree against Narayan Ballal, who was an agriculturist.

Narayan Ballal having died, his sons Martand and Pandurang were brought on the record. Both of them were non-agriculturists.

Maruti, the judgment-creditor sought to execute the decree against Martand and Pandurang (opponents) by sale of certain immoveable property belonging to the deceased Narayan Ballal in the hands of the opponents.

The Subordinate Judge dismissed the Darkhast holding that the prohibition laid down in section 22 of the Dekkhan Agriculturists' Relief Act applied to the case and the immoveable property of the deceased agriculturist defendant Narayan was not attachable in the hands of his sons.

On appeal the District Judge confirmed the decree.

The plaintiff appealed to the High Court.

A. G. Desai, for the appellants.

V. D. Limaye, for the respondents.

MACLEOD, C. J.:—The appellants obtained a money decree against one Narayan Ballal in Civil Suit No. 415 of 1911 in the Second Class Subordinate Judge's Court at Khed for Rs. 685-10-0 and proportionate costs. Narayan Ballal was described as an agriculturist, and consequently as long as he was alive his immoveable property could not be attached or sold in execution of

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that decree. On his death the plaintiffs sought to attach the property which came to his sons as the surviving members of the joint family. Under section 53 of the Civil Procedure Code the sons of Narayan Ballal must be considered to be his legal representatives, and under section 50 the decree-holder is entitled to execute his decree against the legal representatives of the deceased. But it has been urged that if the sons are not agriculturists, the property is no longer protected by section 22 of the Dekkhan Agriculturists' Relief Act.

In the trial Court the Judge found that the sons of Narayan Ballal were not agriculturists, but he held that the immoveable property was not attachable in the hands of the heirs of Narayan even if it were proved in execution of a money decree that they were not agriculturists.

In appeal unfortunately the District Judge thought it was not necessary to record a finding on the question whether the sons were agriculturists, as, in the first place, he could not do so without further inquiry which would necessitate a remand, and because, in the second place, on the other issue he agreed with the Subordinate Judge. The point is not covered by any authority to which we have been referred, therefore the matter is one of first impression. Section 22 says :—

"Immoveable property belonging to an agriculturist shall not be attached or sold in execution of any decree or order passed whether before or after this Act comes into force, unless it has been specifically mortgaged for the repayment of the debt to which such decree or order relates, and the security still subsists. For the purposes of any such attachment or sale as aforesaid standing crops shall be deemed to be moveable property."

The result of that section is that when immoveable property is sought to be attached in execution of a money decree, and it is found that at the time of attachment such property belongs to an agriculturist, then it shall be free from the attachment. But it does

not follow that such protection continues when the agriculturist to whom the property belongs dies and the property goes into the hands of his heir or legal representative who is not an agriculturist. It seems to me that the section clearly denotes that the only question to be decided when immoveable property is sought to be attached for a money decree, is whether at that time it belongs to an agriculturist or not, and we cannot read into the section any further words so as to make the section read that the property should still be protected from attachment if it once belonged to an agriculturist judgment-debtor, although it has passed by inheritance or otherwise into the hands of a person who is not an agriculturist. The object of the section was to protect in the hands of an agriculturist immoveable property belonging to him from which he derived the greater part of his income, and the necessity for such protection is at once removed when such property passes into the hands of a person who is not an agriculturist. It seems to me, therefore, that if the sons of Narayan Ballal cannot satisfy the Court that they are agriculturists, the property is liable to be attached. But as there has been no finding on this question by the District Judge, the case must go back to the District Court to record a finding on that issue, and if necessary to remand the case to the trial Court for further evidence.

SHAH, J.:—The learned District Judge in this case has acted upon the view that "in construing and applying section 22 of the Dekkhan Agriculturists' Relief Act for the present purpose, one must regard the respondents merely as representatives of Narayan's estate, and must determine the liability of the property with reference to the liability to which it was subject in the hands of Narayan." That is a view with which I am in sympathy, and it may be that the framers of the

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Act really wanted to go so far. But we have to construe the words used by the Legislature, and to determine the intention of the Legislature from the plain meaning of the words. It is clear that section 22 really provides that immoveable property belonging to an agriculturist shall not be attached or sold in execution of any decree or order passed whether before or after this Act comes into force. In the absence of any indication to the contrary that would mean that at the date of the attachment or sale the property must belong to an agriculturist. When the original defendant, who was undoubtedly an agriculturist, died, the property ceased to belong to him; and though for execution purposes it is treated as the estate of the deceased in the hands of his legal representative it must be taken to belong at the date of the attachment to the legal representative. Unless the legal representative is shown to be an agriculturist, the provisions of section 22 cannot be held to afford an answer to the application for execution against him. It is rather strange that there should be no reported decision on this point, though the Act has been in force for many years now.

Issue sent down.

J. G. R.

APPELLATE CIVIL.

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

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RAJEPPA BIN RANAPPA KUNDAGOL (ORIGINAL PLAINTIFF), APPELLANT *v.* GANGAPPA BIN JOTAPPA MANDIVE (ORIGINAL DEFENDANT No. 1), RESPONDENT *.

Hindu law—Bandhus—Atmabandhus—Mother's sister's son—Mother's brother's son—Succession—Both entitled to take equally—Test of propinquity.

* Second Appeal No. 483 of 1921.