decree, in execution whereof the sale is held. In the present case the decree-holder in execution of the money decree in his favour purchased the right, title and interest of his judgment-debtor and his claim to recover possession on the strength of that title would be outside the scope of section 47 of the Code of Civil Procedure.

CRUMP, J.:—I agree with the judgment pronounced by my Lord the Chief Justice.

J. G. R.

APPELLATE CIVIL.

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

NARHAR GOVIND NAVATHE (ORIGINAL PLAINTIFF), APPELLANT *v.* BALWANT HARI NAWATHE AND OTHERS (ORIGINAL DEFENDANTS NOS. 1 TO 11), RESPONDENTS*.

1924. *April* 4.

Hindu law—Adoption—Grandmother succeeding directly to the estate of grandson—Adoption by grandmother.

Under Hindu law, a grandmother can validly adopt when the estate has passed directly from her husband to the grandson and has come back to her directly from the grandson without the intervention of any other heir.

Ramkrishna v. *Shamrao*(1), discussed and distinguished.

SECOND Appeal against the decision of W. Baker, District Judge of Satara, confirming the decree passed by V. G. Gupte, Joint Subordinate Judge at Karad.

The property in suit originally belonged to one Sakharam. His sons Govind and Hari inherited it and they became divided in interest. Govind's son Anant and Anant's wife Annapurnabai predeceased Govind. Govind died leaving his widow Parvati and a grandson Dattu and a granddaughter Anasuya. On Govind's death Dattu became the owner of the property. He died

* Second Appeal No. 465 of 1922 (with Appeal No. 546 of 1922).

(1) (1902) 26 Bom. 526.

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unmarried. His grandmother Parvati succeeded him. Parvati adopted plaintiff Narhar. Two suits were filed by Narhar to enforce his rights as the adopted son of Govind against the representatives of Hari's and Govind's branches respectively. The two suits were heard as companion suits.

The Subordinate Judge held that the adoption was proved but dismissed the suits, holding on the authority of *Ramkrishna* v. *Shamrao*, I. L. R. 26 Bom. 526 (F. B.) that Parvati had no power to adopt.

The District Judge confirmed the decree.

The plaintiff appealed to the High Court, and the appeals were heard together.

K. N. Koyajee, for the appellant (in both appeals) :— In the Full Bench case of *Ramkrishna* v. *Shamrao*[1] the son first inherited and then the grandson, and the principles laid down in *Bhoobun Moyee's* case[2] were accordingly applicable. In the present case, however, the grandson succeeded direct to the grandfather and the grandmother thereafter inherited direct from the grandson. It is, in fact, on the same footing as the case of a mother succeeding to her son and then making an adoption. See also Mulla's Hindu Law, section 386, ill. (j).

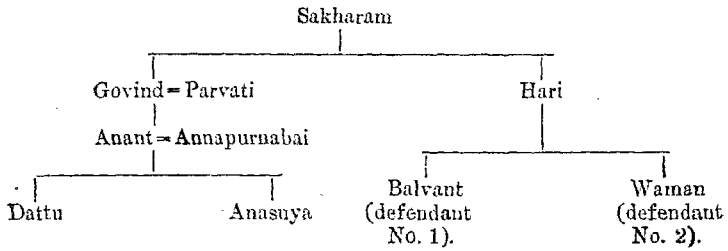
S. R. Parulekar for *A. G. Desai*, for the respondent No. 1 (in S. A. No. 465 of 1922) :—The principle as laid down in the Full Bench case of *Ramkrishna* v. *Shamrao*[1] is clear and unqualified, viz., that where a Hindu grandmother succeeds as heir to her grandson who has died unmarried her power to make an adoption is at an end. The reference to the Full Bench in that case was in these terms: " whether a grandmother, succeeding as heir to her grandson, who dies unmarried, can by Hindu law make a valid adoption, " and

[1] (1902) 26 Bom. 526. [2] (1865) 10 Moo. I. A. 279.

the question was answered in the negative. Assuming that this case is different from the one considered in the Full Bench case, the exception from the general rule of Hindu law made in the case of the mother should not be extended to the grandmother.

P. S. Bakhale for *S. R. Bakhale*, for respondents Nos. 1 to 3 (in S. A. No. 546 of 1922).

SHAH, J. :—The question of law in this Second Appeal is whether the adoption of the plaintiff by Parvatibai after the death of her grandson Dattu is valid. The relationship of the parties may be indicated by the following table :—



Govind and Hari were divided : Govind's son Anant and Anant's wife Annapurnabai predeceased Govind. Govind died leaving a widow Parvati and a grandson Dattu and a granddaughter Anasuya. On Govind's death Dattu became the owner of the property. Dattu died unmarried : and his grandmother Parvati succeeded him. She adopted the plaintiff, who has filed the suit to enforce his rights as the adopted son of Govind against the representatives of Hari's branch. The fact of the adoption was held proved by the trial Court and not challenged in the lower appellate Court. Both the lower Courts have held the adoption to be invalid on the authority of *Ramkrishna* v. *Shamrao*[1]. The lower appellate Court was of opinion that the fact that Parvati's son Anant never succeeded would not make any difference as to the applicability of the said decision.

[1] (1902) 26 Bom. 526.

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In the appeal before us the correctness of this view is questioned. It is urged that in *Ramkrishna* v. *Shamrao*[1] the grandmother adopted after the estate had vested in her son and had descended to the grandson on the death of the son, that, while the grandmother would have no authority in such a case to adopt on the death of the grandson, the present case is essentially different in so far as her position was exactly the same on Dattu's death as that of a mother who would inherit the estate on the death of her son, who has left no other nearer heirs.

There is no decided case so far as I have been able to ascertain, and none has been cited to us at the bar, dealing with the question of the power of the grandmother to adopt to her husband under circumstances such as we have in this case.

The decision in *Ramkrishna* v. *Shamrao*[1] requires to be closely examined in order to see whether it can apply to a case of this kind. In that case the essential facts were that Sitabai's husband Ramchandra died in the lifetime of his father Anandrao leaving a son Sakharam. On Anandrao's death the estate passed to his grandson Sakharam. Then Sakharam died leaving a widow Gangabai and a son Dattatraya. Then Gangabai died and subsequently Dattatraya died unmarried. On his death his grandmother Sitabai succeeded to his property. Sitabai then adopted a boy: and the question that was referred to the Full Bench was "whether a grandmother succeeding as heir to her grandson dying unmarried is entitled to adopt in the circumstances of the present case". Unfortunately the question referred to the Full Bench has not been accurately stated, and the words 'in the circumstances of the present case' have been omitted in the report at

[1] (1902) 26 Bom. 526.

p. 527. The judgment of the Full Bench delivered by Chandavarkar J. makes the position clear. After stating the case the learned Judge has pointed out as follows (p. 528):—

"The real question which we have to decide is whether, apart from the general principles of Hindu law bearing on the subject of a widow's power to adopt a son to her deceased husband, the decision of this Court in *Hasabnis's case*[1] has interpreted the law correctly as expounded by the Privy Council in *Bhooban Moyee's case*[2] and reaffirmed in their later decisions in *Pudma Coomari's case*[3] and *Thayammal's case*[4]."

These cases are then examined in the judgment and the principle deduced therefrom is stated as follows:— "Where a Hindu dies leaving a widow and a son, and that son dies leaving natural born son or adopted son or leaving no son but his own widow to continue the line by means of adoption, the power of the former widow is extinguished and can never after be revived." The argument based on the consideration that the grandmother took an absolute estate as heir of her grandson was advanced but negatived: and the basis of that argument is not well founded as it has been held by this Court in a later decision that the grandmother like the mother takes only a widow's estate: see *Dhondi* v. *Radhabai*[5]. In the result the Full Bench held that the decision of this Court in *Hasabnis's case*[1] correctly interpreted the law as laid down in the Privy Council with reference to the power of a widow to adopt and answered the question referred to that Bench in the negative. It is clear that the question of the grandmother's power to make a valid adoption when the estate has passed directly from her husband to the grandson and has come back to her directly from her grandson without the intervention of any other heir did not arise and was not considered in the case.

(1) (1892) 17 Bom. 164.
(2) (1865) 10 Moo. I. A. 279.
(3) (1881) L. R. 8 I. A. 229.
(4) (1887) L. R. 14 I. A. 67.
(5) (1912) 36 Bom. 546.

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The question that we have to decide is really one of first impression. In the very nature of things such a case could not frequently arise. It is clear that Govind's widow Parvati would have been entitled to adopt if Govind had died sonless, i. e., without a son, grandson or great-grandson. (See *Bharmappa* v. *Ujjangauda*[1].) If he had left only a son and if that son died too without leaving any heir nearer than his mother Parvati, Parvati would have been entitled to adopt according to the decisions of this Court. In the present case, however, the son and his wife predeceased Govind. When Govind died he had a grandson. So he did not die sonless. The grandson continued the line; but on the death of the grandson without leaving any son or widow behind him, i. e., without any nearer heir, the estate went to Parvati as his grandmother. The line of Govind became extinct on Dattu's death and the considerations which apply to a mother in that position in favour of letting her continue the line apply to the case of a grandmother. Mr. Justice Ranade has observed in *Gavdappa* v. *Girimallappa*[2], with reference to the case of a mother that "if a widow cannot adopt after the death of her natural or adopted son under any circumstances, half the adoptions that take place would have to be declared invalid". This observation cannot apply with the same force or anything like it to the case of a grandmother. But on principle her position is not distinguishable from that of a mother where the devolution of the estate has followed the course as in this case. On the other hand it is urged that the case of a mother is an exception to the general rule and it is not proper to extend the exception in favour of the grandmother. In this Presidency no express power enabling the widow to

[1] (1921) 46 Bom. 455 at p. 458. [2] (1894) 19 Bom. 331 at p. 337.

adopt to her husband is essential. The mother inheriting the estate of her son, who has left no son or widow is placed exactly in the same position as a widow of a Hindu who has died sonless. On the facts of the present case it seems to me that Parvati was placed on Dattu's death exactly in the same position as a mother would be on the death of her son without any nearer heir. On the whole it seems to me that it would be in keeping with the liberal interpretation of the widow's power to adopt, accepted in this Presidency, to hold that a grandmother could make a valid adoption to continue the line of her husband under circumstances such as we have in this case.

I may add that I have not been able to find anything in modern works on Hindu law which can throw any light on this question except in Mr. Justice Mulla's work on Hindu law. In the 4th Edition of this book at page 430 we find illustration (*j*), which is exactly the present case.

I may add that the Privy Council decisions, referred to in *Ramkrishna* v. *Shamrao*[1], and the later case of *Madana Mohana* v. *Purushothama*[2] in which the decision of the Full Bench is referred to with approval, all deal with the question of the power of the mother to adopt, on the death of her son, when the son has left no nearer heir than the mother. There is no decision bearing on the question that we have to decide: and I am of opinion that the view taken by Mr. Justice Mulla in his book on Hindu law accords with the powers of the widow to continue her husband's line as understood in this Presidency. If the *ratio decidendi* of *Ramkrishna* v. *Shamrao*[1] is to be applied to this case it may be stated that on the facts the stage when Parvati's powers to adopt can be held to be extinguished has not been reached. I would, therefore, allow the appeal

[1] (1902) 26 Bom. 526. [2] (1918) L. R. 45 I. A. 156.

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and decree the plaintiff's claim as prayed with costs throughout on defendants Nos. 1 and 2.

In Second Appeal No. 546 of 1922 the trial Court has not decided issue No. 7. It is necessary to have a finding on this issue before a decree could be passed. The lower appellate Court to certify its finding on that issue in three months. The parties to be at liberty to adduce evidence.

MACLEOD, C. J.:—I agree, and I should like to add a few remarks with regard to the report of the decision in *Ramkrishna* v. *Shamrao*[1] which appears to have prevented the Joint Subordinate Judge from deciding in the plaintiff's favour as he was evidently inclined to do. The pedigree in *Ramkrishna* v. *Shamrao*[1] was as follows:—

Anandrao d. 1878.
|
Ramchandra = Sitabai.
|
Sakharam d. 1886 = Gangabai.
|
Dattatraya.

Ramchandra died in the lifetime of his father leaving his widow Sitabai and a son Sakharam. When Anandrao died Sakharam succeeded to his estate. Sakharam died leaving his widow Gangabai and a son Dattatraya. Then Gangabai died and lastly Dattatraya died unmarried. His grandmother Sitabai succeeded as his heir, and she adopted the plaintiff to his husband Ramchandra. On Sitabai's death her husband's cousin took possession of the property disputing the plaintiff's status as adopted son. The plaintiff's suit was dismissed in both the lower courts. In Second Appeal the Judge as reported referred the following question for the decision of a Full Bench:—

"Whether a grandmother, suceeeding as heir to her grandson, who died unmarried, can by Hindu law make a valid adoption?"

[1] (1902) 26 Bom. 526.

It would have been impossible for the Full Bench to have attempted to answer so general a question, and as a matter of fact the question referred was "whether in the circumstances of the case (as detailed above) a grandmother succeeding as heir to her grandson dying unmarried was entitled to adopt."

Chandavarkar J. was of opinion that the answer to the question depended on whether the inheritance had vested in some heir of the son other than the mother. Her power of adoption did not depend upon the mere vesting of the estate in herself at any time. Reference was made to the three hypothetical cases put by Lord Kingsdown in *Bhoobun Moyee's case*[1]. Really there were four cases including the one actually before the Court. These may be usefully set out as follows :—

1.

A=B
|
C
|
D
|
E

If A dies leaving a widow B and a son C, and C dies leaving a son D and D dies leaving a son E, B cannot adopt to A on the death of E.

2.

A=B
|
C
|
D

If D dies B cannot adopt, as her power came to an end when the estate passed to her grandson D.

3.

A=B
|
C=D

If C dies leaving a widow D as his heir, B the widow of A cannot adopt so as to defeat the vested estate of D.

4. If, however, C dies without leaving a son or a widow, B's power to adopt has not come to an end.

(1) (1865) 10 Moo. I. A. 279.

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It is clear, therefore, that the case we have before us is not covered by the facts of the case either in *Ramkrishna* v. *Shamrao*[1] or any other reported case or by any of Lord Kingsdown's hypothetical cases in *Bhoobun Mojee's case*[2].

It does, however, appear as illustration (*j*) to section 386 of Mulla's Principles of Hindu law: "A dies leaving a widow and a grandson B. On A's death, B succeeds to the estate as A's grandson; B then dies without leaving any wife or children. On B's death, the widow succeeds to the estate as B's grandmother.... The widow may adopt a son to her husband A".

The learned author supports his opinion in this way. When a husband has left a son but the son dies leaving his mother as his nearest heir, she can adopt to her husband. 'Son' means a son, grandson or great-grandson. Accordingly if the husband dies leaving only a son, or a grandson or a great-grandson, and the son or grandson or great-grandson dies leaving the first widow his nearest heir, her power to adopt has not been extinguished. It is otherwise if any intermediate estate intervenes, as that brings the first widow's power of adoption to an end. I see no reason why we should not accept this argument.

If there are only two steps in the inheritance (1) from the husband to the grandson and (2) from the grandson to the widow grandmother, she can adopt to her husband.

In Second Appeal No. 465 of 1922 the decree of the lower appellate Court must be set aside and the plaintiff's claim decreed with costs throughout on defendants Nos. 1 and 2.

In Second Appeal No. 546 of 1922 I agree with the order mentioned in the judgment of my brother.

Appeal allowed.

J. G. R.

(1) (1902) 26 Bom. 526.

(2) (1865) 10 Moo. I. A. 279.