APPELLATE CIVIL.

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

BALABAI TUKARAM BALUR (ORIGINAL DEFENDANT No. 1), APPELLANT *v.* MAHADU KRISHNA BALUR (ORIGINAL PLAINTIFF), RESPONDENT*.

1924.

January 7.

Hindu law—Adoption—Adopted need not be younger than adoptive father.

Under Hindu law, it is permissible to a person to adopt a son older than himself.

SECOND appeal from the decision of J. T. Lawrence, Assistant Judge of Belgaum, reversing the decree passed by N. K. Pandit, Subordinate Judge at Athni.

One Krishna was born on May 10, 1887. He died on March 15, 1909, leaving him surviving a widow Putlabai (defendant No. 4) and a mother Balabai (defendant No. 2). In July 1909 Balabai alienated a portion of the property of Krishna to defendant No. 3.

Putlabai adopted Mahadu (plaintiff) in January 1914. He was born on April 6, 1887.

Mahadu sued, as the adopted son of Krishna, to recover possession of Krishna's property.

The trial Court dismissed the suit on the ground that Mahadu being older than Krishna his adoption was invalid.

On appeal, the Assistant Judge held that plaintiff's adoption was valid and decreed the plaintiff's claim.

Defendant No. 1 appealed to the High Court.

H. C. Coyajee, with *A. G. Desai*, for the appellant.

K. H. Kelkar, for respondent No. 1.

MACLEOD, C. J. :—The only question of law that arises in this second appeal is whether the adoption of plaintiff No. 1 by Putlabai, the widow of Krishna, is valid. Its validity is questioned by defendant No. 1, the mother of Krishna, on the ground that the age of the

* Second Appeal No. 95 of 1922.

1924.

BALABAI TUKARAM v. MAHADU KRISHNA.

adopted boy is greater than the age of the adoptive father Krishna. The adoption was effected by Putlabai, the widow of Krishna. But that circumstance does not affect the question of the validity of the adoption. She could not validly adopt, if Krishna could not have made the adoption on account of the plaintiff No. 1 being older than himself.

The trial Court in this case has taken the view that such an adoption is invalid, while the lower appellate Court has accepted the view that the adoption is not invalid though it is opposed to the Hindu sentiment, and to a rule which, though it has not the force of law, is recommendatory as to the propriety of the adoption. There is no express text directly bearing on this point, at any rate none has been cited to us. But it is urged on behalf of the appellant that it is a necessary inference from the provision that the adopted boy should be the reflection of a natural son. That no doubt is true, and the inference which is suggested also is undoubtedly a fair inference. But the question is whether it has the force of law in the sense that if that condition is not fulfilled, the adoption becomes invalid.

No decision is cited in support of this contention; and according to the observations in different cases, of which *Mallappa Parappa* v. *Gangava*[1] is only an example, these various rules, which are deducible from the expression that the adopted son should be the reflection of a natural son, including the rule as to the age of the adopted boy, have been treated as recommendatory and not mandatory. The observations of Ranade J. in *Gopal* v. *Vishnu*[2], which have been referred to in the judgments of the lower Courts, do not directly bear on this point, though the inference which is suggested on behalf of the appellant is referred to.

[1] (1918) 43 Bom. 209.

[2] (1898) 23 Bom. 250.

It would appear, however, from the observations taken as a whole that the consideration as to the age limit would be a matter of recommendation, and not a positive rule of law.

It is quite true that the adoption of a boy who is older than the adoptive father is contrary to the recognised notions of Hindus as to adoptions, and to the fundamental idea of an adopted son. That is the reason why such adoptions are very rare. But having regard to the lines on which these rules relating to adoption have been interpreted by the Courts, it is difficult to hold that the consideration that the adopted boy should not be older than his adoptive father, can be treated as having the force of a prohibitive rule. We think that the learned Assistant Judge has taken a correct view as to the validity of this adoption, and that the contention of defendant No. 1 on this point must be disallowed. [The rest of the judgment is not material for this report.]

Appeal dismissed.

R. R.

APPELLATE CIVIL.

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

IN RE THE RAJA GOKALDAS MILLS, LIMITED.*

1924.

January 25.

Indian Income Tax Act (XI of 1922), sections 3, 10 (2) (VI) (c)—Indian Income Tax Act (VII of 1918)—Super Tax Act (XIX of 1920)—Profit and gains of a Company—Assessment based on previous year—Deduction from the profits for obsolete machinery—Basis of taxation.

The respondent company earned a profit of Rs. 3,42,683 odd for the year ending June 30, 1921. From this amount it deducted Rs. 72,460 for obsolescence of machinery and calculated its net profit at Rs. 2,70,223. This

Civil Reference No. 15 of 1923 (with Civil Reference No. 16 of 1923).