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The rule, therefore, may be stated in this form. The ceremony of *datta homam* is essential to validate an adoption amongst Brahmins unless the adoptive father and son belong to the same *gotra*. Apart from all the considerations there is this justification for it, that when it is sought to introduce a stranger into a family it is desirable that all the religious ceremonies should be performed so as to ensure the requisite publicity for the adoption. It may be said that there is a tendency in these days towards dispensing with religious ceremonies, but that is no reason why we should seek in this case to depart from what must be recognized as an established rule of Hindu law. The appeal is dismissed with costs.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

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

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December 5.

MANIKBAI KOM VISHNUDAS GUJJAR AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS *v.* GOKULDAS RAMDAS KARADGI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS*.

Hindu law—Adoption—Rights of daughter of adopted son on adoption.

The adoption of a married Hindu, the sole owner of ancestral property acquired by survivorship on the death of his father, does not deprive his daughter of her right of inheritance to that property.

The rights of a daughter on the adoption of her father considered.

THIS was an appeal against the decision of N. K. Bapat, First Class Subordinate Judge of Bijapur, in Suit No. 327 of 1920.

Suit to recover possession.

The suit property belonged to one Narsidas, who died in 1883, leaving him surviving his son Ramdas.

*Appeal No. 114 of 1923 from Original Decree.

Ramdas had a wife (plaintiff No. 2) and a daughter (plaintiff No. 1). On October 26, 1908, Ramdas was adopted by Dhondubai, the widow of a near relative.

In 1920, the plaintiffs sued as heirs of Ramdas to recover possession of the property from the defendants. They alleged that even after his adoption Ramdas was in possession of the property in his natural family but that defendants Nos. 1 to 5, who were children of the sisters of Ramdas, dispossessed him in 1910 and 1914.

The defendants by their written statement contended that the suit property was given in gift to the father of defendants Nos. 1 to 3 by Ramdas in 1898 and that they had become owners of it by adverse possession: that neither Ramdas nor plaintiffs Nos. 1 and 2 were the heirs to Narsidas's property but defendants were the heirs: that it was so held in previous litigation between the same parties and hence the present claim of the plaintiffs was barred as *res judicata*.

The trial Judge held *inter alia* that the defendants were the heirs of Narsidas after the adoption of Ramdas: that Ramdas had made a gift of the suit property to defendant No. 3's father: that defendants Nos. 1 to 4 were not in adverse possession for over twelve years before suit. The suit was dismissed.

The plaintiffs appealed to the High Court.

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

Nilkanth Atmaram, for the respondents.

MACLEOD, C. J.:—The plaintiffs sued to recover possession of the plaint property after a declaration that plaintiff No. 1 was the owner or, in the alternative, if plaintiff No. 1 was not an heir, that plaintiff No. 2 should be declared the owner.

It was alleged that the property originally belonged to two brothers, Narsidas and Shankerdas, but it has been found by the Court below, and that finding has

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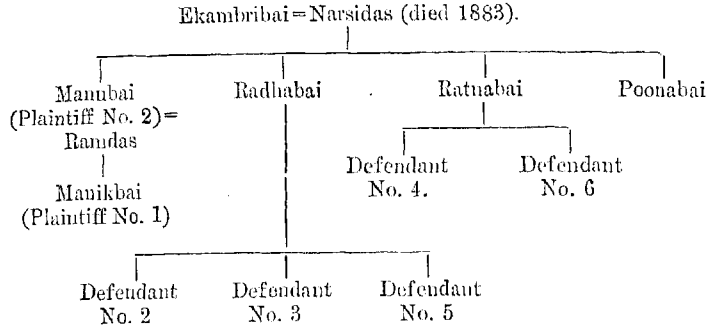
not been disputed in this Court, that the brothers were not in union, and so the following pedigree will be sufficient for the purposes of this appeal :—



The property was held jointly by Narsidas and his son Ramdas. Narsidas died in 1883. Ramdas was adopted in 1908 by one Bhagwandas, a first cousin of Narsidas. At the time of his adoption Ramdas had a wife, plaintiff No. 2, and a daughter, plaintiff No. 1.

The plaintiffs claim that they are entitled to the property originally owned jointly by Narsidas and Ramdas, as against the defendants who are the grand-children of Narsidas by his daughters, Radhabai and Ratnabai.

It was decided in *Kalgavda Tavanappa* v. *Somappa Tamangavda*[1] that when a married Hindu having a son is given in adoption, the son does not like his father lose the *gotra* and right of inheritance in the family of his birth, and does not acquire the *gotra* and right of succession to the property of the family into which his father is adopted. It was also held that when a married Hindu is given in adoption his wife passes with him into the adoptive family because according to the Shastras husband and wife form one body. The 2nd plaintiff, therefore, can in no case succeed. But the rights of a daughter in the event of her father being adopted have, as far as we can ascertain, not been considered either in the texts or reported cases, neither

[1] (1909) 33 Bom. 669.

have they been discussed by any of the writers on Hindu law. It is not surprising that the texts are silent on the question as in olden times the adoption of a married man having children would be repugnant to orthodox Hindu customs.

The trial Judge has taken it for granted that the main issue was "Who was the heir of Narsidas after the adoption of Ramdas?", and it cannot be disputed that the defendants were nearer heirs to Narsidas than plaintiff No. 1.

Para. 12 of the judgment says: "After Ramdas left the family by adoption Ekambribai was the heir of Narsidas to whom the property belonged and she lived in the house till her death which took place on September 12, 1912"; and para. 75 says: "the property in dispute belonged to Narsidas. Defendants Nos. 1, 2, 3, 4 and 6 are sons of the daughters of Narsidas and are his heirs preferably to plaintiff No. 1 or plaintiff No. 2". He had some justification for so holding, as in *Ramchandra* v. *Manubai*[1], Ramdas attempted to execute a decree obtained by his father. The case came up to the High Court when it was held that Ramdas by his adoption lost all rights in his father's estate which thereafter went to the heirs of Narsidas. The judgment-debtor was the only other party to the proceedings, and the rights of the present plaintiff No. 1 as daughter of Ramdas were never taken into consideration. It would have been sufficient for the Court to decide that Ramdas was incompetent to execute the decree without going on to say in whom the right to execute lay. In any event plaintiff No. 1 is entitled to raise the point in the present suit, the question is not *res judicata*, and the dictum of the High Court being obiter must at the best be treated with the respect usually attached to such dicta.

[1] (1919) 43 Bom. 774.

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The trial Judge says: "By his adoption Ramdas lost all rights of inheritance in his natural family as completely as if he was never born in it. Inheritance must be traced from the previous male holders".

It is true that his right to the property of his adoptive family accrued as if he had been born in it, and it is equally true that he lost all rights to the property of his natural family. But I think the Judge is led into a fallacy by using the words "rights of inheritance" without regard to the varying circumstances which may exist in different cases. If Narsidas had been alive in 1908 Ramdas would have lost all rights to the family property which he had as co-parcener, and all rights to succeed to any self-acquired property of Narsidas. The adoption would have put an end to those rights in the same way as if he had died, but it is quite unnecessary to add a further fiction "as if he had never been born in the family".

It is unfortunate that when we get within the realm of fiction the ordinary rules of logic no longer apply. If the adopted son is to be considered as having been born in his adoptive family, the ordinary result should follow that he takes the whole of his family then in existence into the adoptive family, but as I have pointed out above he does not take his sons with him, and presumably his unmarried daughters are left behind as well. There can be no difficulty with regard to the rights of the son in his father's property. If father and son are joint the son on his father's adoption succeeds by survivorship. If there are other co-parceners the result is the same. If there is a daughter unmarried she is entitled to maintenance and marriage expenses. The difficulty arises when the adopted son is the sole owner of ancestral property as Ramdas was. If he is to be treated as having civilly died in the natural

family when he was adopted, the property should go to his heirs, as he was the last male-holder and not to the heirs of his father. If in 1908 he had died a natural death, undoubtedly plaintiff No. 1 would have been his heiress, and if he is to be treated as dead by a fiction, there can be no possible reason for departing from the ordinary rule of devolution of property under the Hindu law. One result of tracing descent from the next generation above would be, that if Narsidas and his brother, Shankardas, had been joint, as the plaintiff contended, since Shankardas survived Narsidas the property would go to his heirs and not to the heirs of Narsidas, with the result that Ramdas would have become entitled to the property as son of Bhagwandas, his adoptive father, first cousin of Shankardas, in preference to his brother's son's daughter or his brother's daughter's sons. The fallacy in the passage of the judgment under review lies in the failure to recognize that Ramdas had no right of inheritance to the property of Narsidas to lose. He had already acquired it by survivorship. In *Dattatraya Sakharam* v. *Govind Sambhaji*[1] it was held on the authority of the text of Manu, Adhyaya 1, Verse No. 142, that a Hindu, the sole owner of ancestral property, lost his right to the suit property on adoption, but in the case of property acquired by partition it was held in *Mahableshwar Narayan* v. *Subramanya Shivram*[2] that the suit property was not the estate of the natural father within the meaning of the above mentioned text, and therefore the son was not divested of it on adoption. Consequently the question who would succeed to it if he were divested did not arise. But I expressed the opinion that then the heir of the defendant at the time of his adoption would have had to be ascertained as if he were dead.

(1) (1916) 40 Bom. 429. (2) (1922) 47 Bom. 542.

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In *Dattatraya Sakharam* v. *Govind Sambhaji*[1] also the question was not decided as the mother of the adopted son was the heir of her son and also of the father.

Though there is an objection to referring to an adopted son as civilly dead in his natural family (cf. *Sri Rajah Venkata Narasimha Appa Row* v. *Sri Rajah Rangayya Appa Row*[2]), I cannot see myself that there is any reason in this case for holding that the property should go to the heirs of Narsidas and not to the heirs of Ramdas.

In my opinion, therefore, plaintiff No. 1 is entitled to succeed to her father's property. There will be a decree for possession and an inquiry as to mesne profits from date of suit with costs throughout.

CRUMP, J.:—I agree.

Appeal allowed.

R. R.

[1] (1916) 40 Bom. 429. [2] (1905) 29 Mad. 437.

APPELLATE CIVIL.

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

1924.

December 5.

VISHNU RAMCHANDRA DESHPANDE (ORIGINAL PLAINTIFF), APPELLANT *v.* TUKARAM GANU BOGAR AND OTHERS (ORIGINAL DEFENDANT), RESPONDENT*.

Watan property—Permanent tenancy—Fixity of rent—Adverse possession—Bombay Land Revenue Code (Bom. Act V of 1879), section 83.

A person who is in possession of the watan lands as a tenant of the watandar cannot acquire a right by adverse possession to fixity of rent.

Madhavrao v. *Raghunath*[1], relied on.

Per MACLEOD, C. J.:—"It may be that a tenant can acquire a right of fixity of rent as against the immediate holder of the watan, but that would not prevail against the next holder, and in this case the suit having been filed within twelve years of the plaintiff succeeding to the watan, it is not barred."

* Second Appeal No. 591 of 1923.

[1] (1923) L. R. 50 I. A. 255.