APPELLATE CIVIL.

FULL BENCH.

Before Sir John Beaumont, Chief Justice, Mr. Justice Broomfield and Mr. Justice Wassoodew.

KRISHNAJI RAGHUNATH VAIDYA ALIAS KRISHNAJI DAMODAR SHUKLA (ORIGINAL DEFENDANT No. 2), APPELLANT *v.* RAJARAM TRIMBAK SHUKLA (ORIGINAL PLAINTIFF), RESPONDENT.*

1937 *December* 8

Hindu law—Adoption—Death of last coparcener—Property inherited by widow of a gotraja sapinda*—Adoption by widow—Adoption valid—Devolution of property not affected by such adoption.*

Under Hindu law, a widow of a *gotraja sapinda*, who succeeds under the rule established by *Lulloobhoy Bappoobhoy* v. *Cassibai*,[1] cannot by adoption alter, after her own death, the devolution of property to which she is entitled as such widow.

Datto Govind v. *Pandurang Vinayak*,[2] *Dattatraya Bhimrao* v. *Gangabai*,[3] and *Yeknath Narayan* v. *Laxmibai*,[4] explained and affirmed.

On the death of the last coparcener in a joint Hindu family, the widow of his paternal uncle succeeded to the family property as the widow of a *gotraja sapinda*. She made an adoption. In a suit by the plaintiff as a reversionary heir for a declaration that the adoption was invalid and that the adopted son got no title to the property by virtue of the adoption:

Held, that the adoption though valid had no effect on the devolution of the property as against the plaintiff.

FIRST APPEAL against the decision of D. T. Chaubal, First Class Subordinate Judge at Nasik.

Suit for declaration.

* First Appeal No. 167 of 1933.

(1) (1880) L. R. 7 I. A. 212, s. c. 5 Bom. 110.
(2) (1908) 32 Bom. 499.
(3) (1921) 46 Bom. 541.
(4) (1922) 47 Bom. 37.

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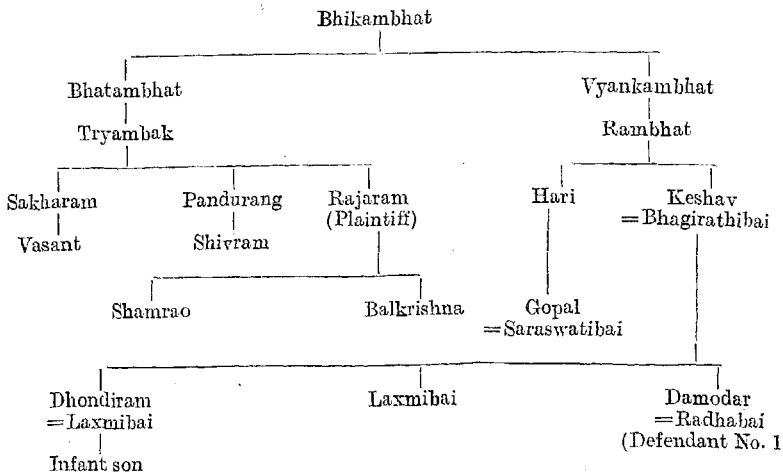
The parties to the litigation were related to one Keshav as shown in the following pedigree of the family :—



The branches of Keshav, Hari and Rajaram (plaintiff) were divided.

The suit property excepting house No. 2008 originally belonged to Keshav. House No. 2008 belonged to Hari and was inherited by his son Gopal. On the death of Gopal and then of his widow Saraswatibai, the house was claimed by the plaintiff as a reversioner. On the death of Keshav, the property was inherited by his sons Dhondiram and Damodar. Damodar having died leaving him surviving his widow, Radhabai, the whole property was taken by Dhondiram. Dhondiram died in 1899 leaving a widow Laxmibai, and an infant son. On the infant son's death in 1900, the property passed to his mother Laxmibai. Laxmibai died in 1901 and thereupon the property passed to the mother of Dhondiram, Bhagirthibai. She died in 1908 and the property then passed to Radhabai (defendant No. 1).

On December 7, 1929, Radhabai adopted Krishnaji (defendant No. 2).

On August 19, 1932, the plaintiff as the reversionary heir of Dhondiram's infant son and Gopal Hari sued for a declaration that the adoption of defendant No. 2 made by defendant No. 1 was illegal and void and that Krishnaji had no title to the property in suit by virtue of his adoption.

The Subordinate Judge held that the adoption of defendant No. 2 by defendant No. 1 was invalid. He, therefore, decreed the plaintiff's suit by declaring that the adoption of defendant No. 2 by defendant No. 1 was not binding on the plaintiff and other reversioners of Dhondiram's son and Gopal and that defendant No. 2 had no right to the suit property on the strength of that adoption.

The defendants appealed to the High Court. The appeal was heard by Rangnekar and Macklin JJ. on April 16, 1937, when a reference was made to the Full Bench. The referring order was as follows :—

MACKLIN J. The plaintiff, a reversioner of defendant No. 1, has sued for a declaration that her adoption of defendant No. 2 is invalid and cannot prevent the plaintiff from succeeding to the property. At the time of the adoption the coparcenary was already extinct. Defendant No. 1 is herself now dead, but at the time of the suit she was the widow of a *gotraja sapinda* of the last male holder. The last male holder died in infancy, and defendant No. 1 was the widow of his father's brother. The lower Court has held that the adoption is invalid and that defendant No. 2 has no right to the property on the strength of that adoption. Defendant No. 2 now comes in appeal and relies upon the full bench case of *Balu Sakharam* v. *Lahoo Sambhaji*.[1] He contends that the present situation is covered by that case. For the other side it is contended that the full bench decision does not cover the

[1] [1937] Bom. 508, F. B.

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facts of the present case, since, upon the strict wording of question No. 1 then referred to the full bench, what the full bench was deciding was whether an adoption made when the coparcenary was extinct is invalidated merely upon that ground; and the full bench did not in terms decide that the adoption, even if not invalidated upon that ground, might not be invalidated upon other grounds. The general trend of recent decisions suggests that adoptions in general are valid. There is, however, a series of decisions, of which *Datto Govind* v. *Pandurang Vinayak*[1] is an example, which have not in terms been overruled by the recent decisions. The matter is one of some difficulty and by no means free from doubt, and we think it advisable to refer this appeal to a full bench for decision.

RANGNEKAR J. I agree.

The reference was heard on December 8, 1937, by the Full Bench consisting of *Beaumont C. J.*, *Broomfield* and *Wassoodew JJ.*

G. C. O'Gorman and *P. M. Purandare,* with *L. P. Pendse* and *K. B. Bengeri*, for the appellant. In this case, the adopting widow Radhabai was in possession of the property at the time when she adopted Krishnaji (defendant No. 2). By making the adoption she divested no property but her own. The questions that arise are, firstly, can Radhabai adopt to her husband; and, secondly, can such adoption validly pass the property ?

The full bench case of *Balu Sakharam* v. *Lahoo Sambhaji*[2] covers this case. That case approved of the case of *Shankar Vinayak* v. *Ramrao Sahebrao.*[3] In the full bench case, even the dissenting judgment of Rangnekar J. only decides that if the adoption is valid it must be valid for all purposes. In *Shankar Vinayak's* case[3] it was held that the adoption was valid. The case of *Chandra* v. *Gojarabai*[4] was relied

[1] (1908) 32 Bom. 499.
[2] [1937] Bom. 508, F. B.
[3] (1935) 60 Bom. 89.
[4] (1890) 14 Bom. 463.

upon. The person in possession of the property at the date of adoption was a step-brother. It was held that such possession was not affected by the adoption.

P. V. Kane with *P. S. Joshi*, for the respondent. It is a settled rule in the Bombay School of Hindu law that all females who enter into a family by marriage take only a limited estate: Mulla's Hindu Law, 8th Ed., p. 164. The last male owner in the present case was an infant son, to whom the succession has to be traced. Radhabai is the widow of the paternal uncle of the infant son. She comes in as the widow of a *gotraja sapinda*. Such a widow was let in as an heir owing to the ruling of the Privy Council in *Lulloobhoy Bapoobhoy* v. *Cassibai*.[1] The judgment of the High Court is reported in *Lallubhai Bapubhai* v. *Mankuvarbai*[2] where it was laid down that a wife becomes by her marriage a *gotraja sapinda* of her husband. She succeeds in that capacity as a widow to property which he would have taken as a *sapinda* before the male representative of a remoter branch. There is no text either in the Mitakshara or the Mayukha on the point. The only widows mentioned in them as capable of inheriting are mother, grandmother and greatgrandmother. The other widows are interposed in the line of succession as a special case. The Privy Council (p. 237) rested their right mainly "on the ground of positive acceptance and usage". They have indeed secured a right to succeed only as a special case; but their right to make adoption has been looked upon with disfavour by a long chain of decisions.

The full bench case of *Balu Sakharam* v. *Lahoo Sambhaji*[3] is not against me. It does not cover the present case. The decision there should be restricted to the narrow point that when the estate has gone to the sister, the widow of a coparcener cannot adopt a son. In *Balu Sakharam's* case[3] the first point decided is that the adoption was valid,

[1] (1800) L. R. 7 I. A. 212, s. c. 5 Bom. 110.

[2] (1876) 2 Bom. 388.

[3] [1937] Bom. 508, F. B.

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though the coparcenary had come to an end. In the present case there is no question of coparcenary. The estate has vested in a woman. The question is, can she make an adoption and so change the order of succession to the male whose estate she has inherited by a special rule so as to affect the contingent rights of reversioners. It is conceded that the adoption is valid. The question then arises whether the contingent rights of the reversioners are affected by such an adoption. It is open to a widow succeeding as a *gotraja sapinda* to make an adoption, which would operate on her husband's estate; but, I submit, an adoption by her cannot affect the property which she takes as a limited owner in the capacity of the widow of a *gotraja sapinda*. The adoption is no doubt good, but it cannot affect property in another family. She takes the property as a special case under the ruling in *Lulloobhoy Bapoobhoy's* case.[1]

I rely on four Bombay cases, viz. *Datto Govind* v. *Pandurang Vinayak*,[2] *Dattatraya Bhimrao* v. *Gangabai*,[3] *Yeknath Narayan* v. *Laxmibai*,[4] and *Bassangowda* v. *Rudrappa*.[5] These cases are not referred to in any of the Privy Council cases or in the full bench case of *Balu Sakharam* v. *Lahoo Sambhaji*.[6] Are they then to be treated as impliedly overruled by the Privy Council or the full bench?

On the facts in *Datto Govind* v. *Pandurang Vinayak*,[2] an adoption by the widow was in the circumstances held invalid. The decision in this case rests on the full bench ruling in *Ramkrishna* v. *Shamrao*[7] which is approved of by the Privy Council in *Amarendra Mansingh* v. *Sanatan Singh*.[8] It is not open to a widow to make an adoption so as to alter the line of succession.

(1) (1860) L. R. 7 I. A. 212, s. c. 5 Bom. 110.
(2) (1908) 32 Bom. 499.
(3) (1921) 46 Bom. 541.
(4) (1922) 47 Bom. 37.
(5) (1928) 52 Bom. 393.
(6) [1937] Bom. 508, F. B.
(7) (1902) 26 Bom. 526, F. B.
(8) (1933) 60 I. A. 242, s. c. 12 Pat. 642.

In the second case, *Dattatraya Bhimrao* v. *Gangabai*[1] Shah J. said (p. 547): "In the present case the daughter-in-law succeeded as a *gotraja sapinda* of the last male owner in the absence of any nearer heir . . . . It is clear that Venkawa could not adopt to her husband so as to affect the devolution of the estate inherited by her as a *gotraja sapinda*."

The cases of *Datto Govind* v. *Pandurang Vinayak*[2] and *Dattatraya Bhimrao* v. *Gangabai*[1] stand apart from the case of *Yadao* v. *Namdeo*[3] which was a case of coparceners. Where one coparcener is living the widow of another coparcener can adopt. In the present case we are dealing with the estate of a collateral.

In the third case, *Yeknath Narayan* v. *Laxmibai*[4] where the adoption made was held to be invalid it was observed that the decision of the Bombay High Court that a widow of a *gotraja sapinda* cannot adopt so as to defeat the rights of the reversioners has not in any way been shaken by the decision in *Yadao* v. *Namdeo*.[3]

The facts in the fourth case, *Bassangowda* v. *Rudrappa*,[5] were that one Gundappagowda had two wives: Chanbasawa and Somawa. By the former he had a son Mudigowda. Mudigowda died; and Somawa succeeded to the property as step-mother. Thereafter Somawa adopted one Ishwargowda. The question arose whether the adoption was valid. In deciding against the validity of the adoption, Patkar J. said (p. 398): "In the present case if Gundapagowda's mother had been living, she would have inherited the estate in preference to Somawa, the step-mother, and she could not have made a valid adoption according to the decision of the Full Bench in *Ramkrishna* v. *Shamrao*[6] which has been

[1] (1921) 46 Bom. 541.
[2] (1908) 32 Bom. 499.
[3] (1921) L. R. 48 I. A. 513, s. c. 49 Cal. 1.
[4] (1922) 47 Bom. 37.
[5] (1928) 52 Bom. 393.
[6] (1902) 26 Bom. 526, F. B.

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approved by the Privy Council in *Madana Mohana* v. *Purushothama*.[1] It would, therefore, follow, from the decision in *Datto Govind* v. *Pandurang Vinayak*,[2] that Somawa, the step-mother, coming in as an heir as a *gotraja sapinda*, would be incapable of making a valid adoption."

Thus we have a line of four cases, to which the principle of *stare decisis* should apply.

In the Privy Council case of *Bhimabai* v. *Gurunathgowda Khandappagouda*[3] the case of *Chandra* v. *Gojarabai*[4] is referred to. The full bench in *Balu Sakharam* v. *Lahoo Sambhaji*[5] has said that the ultimate decision in *Chandra* v. *Gojarabai*[4] is good. At p. 540, the recent cases of *Vishnu* v. *Lakshmi*,[6] *Shankar Vinayak* v. *Ramrao Sahebrao*,[7] *Dhondi Dnyanoo* v. *Rama Bala*[8] and *Umabai* v. *Nani*[9] are referred to. All that these cases decide is that a widow by making an adoption cannot divest any estate which she has not taken as the widow of the propositus. See also Mulla's Hindu Law, 8th Ed., s. 502 (p. 553) and s. 473 (p. 536). Sir Dinshah Mulla did not think that the above cases were overruled by the Privy Council. See also Mulla's Hindu Law, s. 471 (p. 530).

In *Ramkrishna* v. *Shamrao*[10] the grandmother was held not entitled to adopt. The contrary was the case in *Narhar Govind* v. *Balwant Hari*[11] where the grandmother was allowed to adopt in the peculiar circumstances of that case.

I submit the adoption is good so far as the property of herself or her husband is concerned; but it cannot affect the property that has come to her by collateral succession.

The case of *Shankar Vinayak* v. *Ramrao Sahebrao*[7] is not against me. The adoption was held valid, but it was held

(1) (1915) 45 I. A. 156, s. c. 41 Mad. 855.
(2) (1908) 32 Bom. 499.
(3) (1932) L. R. 60 I. A. 25 at p. 40.
(4) (1890) 14 Bom. 463.
(5) [1937] Bom. 508, F.B.
(6) (1933) 37 Bom. L. R. 193.
(7) (1935) 60 Bom. 89.
(8) (1935) 60 Bom. 83.
(9) (1935) 60 Bom. 102.
(10) (1902) 26 Bom. 526.
(11) (1924) 48 Bom. 559.

not to affect property which had already vested in the divided step-brother. This case is referred to with approval at p. 540 in *Balu Sakharam's* case.[1]

The present suit is one for declaration. It is governed by s. 42 of the Specific Relief Act, 1877. Illustrations (*e*) and (*f*) are pertinent; and ill. (*f*) is just like the case here. It is competent to the Court to grant a declaration that the adoption is valid, but hold at the same time that the adoption does not affect the property which the adopting widow took as the widow of a *gotraja sapinda*.

All I am asking for here is extension of the principle to the contingent interest taken by a reversioner. The estate is vested in the widow and contingent in the reversioner. Although the reasoning in the four cases may not be entirely acceptable the result of the decisions must be allowed to stand. The adoption here is valid according to the prevailing view, but it can only affect the widow's estate or her husband's estate, and not the estate which she has taken as the widow of a *gotraja sapinda*.

O'Gorman, in reply. The four Bombay cases relied on by the other side follow the full bench case of *Ramkrishna* v. *Shamrao*.[2] The decision in the full bench case is perfectly clear. Where a grandmother succeeds as heir to her grandson who dies unmarried, her power to make an adoption is at an end. In *Datto Govind* v. *Pandurang Vinayak*[3] the Judges thought that the full bench case laid down a definite proposition that a grandmother as such could not adopt. The Court said (p. 503): " . . . it would be absurd to hold that while a mother or grandmother could not have adopted, a more distant female coming in as a *sapinda* can validly adopt." The case of *Dattatraya Bhimrao* v. *Gangabai*[4] is to the same effect.

(1) [1937] Bom. 508, F. B.
(2) (1902) 26 Bom. 526.
(3) (1908) 32 Bom. 499.
(4) (1921) 46 Bom. 541.

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If defendant No. 2 is validly adopted, he is the nearest relation to the propositus, and is therefore entitled to succeed to his property. The position is this. The reversioner has only got a *spes successionis*. If the son is validly adopted he comes into the family as the nearest heir. The plaintiff here belongs to an entirely different branch of the family.

The case of *Yeknath Narayan* v. *Laxmibai*[1] merely rests on the dictum of Macleod C. J. in *Dattatraya Bhimrao's* case.[2] Both the cases were decided by the same Judges.

The rule of *stare decisis* applies only where the decisions are of long-standing. *Datto Govind's* case[3] was not very long ago. *Yeknath Narayan's* case[1] was decided in 1922. *Bassangowda* v. *Rudrappa*[4] was decided as late as 1928.

In *Narhar Govind* v. *Balwant Hari*[5] the adoption was by a grandmother; and in *Bassangowda* v. *Rudrappa*[4] the adoption was by a step-mother.

The recent full bench case of *Balu Sakharam* v. *Lahoo Sambhaji*[6] decides that an adoption will not divest an estate which has vested in a third person. Here the property is vested in the adopting widow and no one else. Defendant No. 2 is the son by adoption, and is the nearer heir than any other collateral. The plaintiff is related to the propositus in the tenth degree, whereas by his adoption defendant No. 2 is in the fourth degree.

BEAUMONT C. J. This is an appeal from a decision of the First Class Subordinate Judge of Nasik. The plaintiff sued to obtain a declaration that the adoption of defendant No. 2 made by defendant No. 1 on December 7, 1929, is illegal and void and not binding on him and other reversionary heirs who are in the same category as himself. Admittedly on the arguments on this appeal it may be

[1] (1922) 47 Bom. 37.
[2] (1921) 46 Bom. 541.
[3] (1908) 32 Bom. 499.
[4] (1928) 52 Bom. 393.
[5] (1924) 48 Bom. 559.
[6] [1937] Bom. 508, F. B.

necessary to extend that declaration by declaring that the adoption, if valid, does not affect the devolution of the property which defendant No. 1 had inherited.

The material facts are these. One Keshav was the owner of the suit property. He died leaving a widow Bhagirathibai, a son named Dhondiram, a daughter whose existence is not I think material, and the widow of a deceased son, who is defendant No. 1. Dhondiram died in 1899 leaving a widow, Laxmibai, and an infant son who died in 1900, and thereupon the property passed to the mother of the infant son, Laxmibai. Laxmibai died in 1901 and thereupon the property passed to the mother of Dhondiram, Bhagirathibai. She died in 1908 and the property then passed to defendant No. 1. Her claim is made through the last male holder, i.e. the infant son of Dhondiram, and she takes as the widow of the paternal uncle of the last male-holder. In the lower Court part of the suit property was said to have descended to defendant No. 1 through Gopal, who was a nephew of Keshav, but it is admitted that defendant No. 1's power of adoption and the effect of that power on the devolution of the property is the same whether the estate devolved upon her through the infant son of Dhondiram, or through Gopal.

Defendant No. 1 adopted defendant No. 2 in the year 1929, and the questions which arise are, first, whether that adoption is valid, and, secondly, if it is, what effect, if any, does it have on the devolution of property after the death of defendant No. 1. She has in fact died pending the suit. The plaintiff claims through a collateral branch of the family, and it is not disputed that he is one of the reversioners entitled to the property on the death of defendant No. 1, if the adoption of defendant No. 2 did not affect the devolution of the property. The right of a widow of a *gotraja sapinda* like defendant No. 1 to inherit was established by the decision of the Privy Council, affirming the decision

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of this Court, in *Lulloobhoy Bappoobhoy* v. *Cassibai*,[1] and it is not disputed that defendant No. 1's interest was a limited estate similar to the ordinary widow's estate.

The law relating to powers of adoption in this Presidency by widows and the effect of such adoptions on the devolution of property was considered recently by a full bench of this Court in *Balu Sakharam* v. *Lahoo Sambhaji*.[2] The majority of the Court in that case held that having regard to recent decisions of the Privy Council, and particularly *Amarendra Mansingh* v. *Sanatan Singh*[3] it must be taken as established that the power of a widow to adopt depends on considerations of a religious character, and that any widow of a Hindu can adopt to her husband so long as she is the person entitled to carry on the line. But it was held that an adoption by a widow, where the coparcenary is at an end, does not operate to divest property vested in or through the heir of the last holder. So long as that decision stands it must be taken as settled that in this Presidency you may have an adoption by a widow which is valid, but which does not place the adopted son in the same position in regard to property as a natural born son would have been in.

The actual decision in that case was that the adoption by a widow did not divest the estate previously vested in the heir of the last holder, and Mr. O'Gorman for the plaintiff maintains that that case has no application to the facts of the present case, because at the date of the adoption defendant No. 1 was the holder of the property. It was vested in her for a widow's estate. The interest of the reversioners was not a vested interest, because Hindu law does not recognise vested remainders. It was no more than a *spes successionis*, and Mr. O'Gorman contends that there is nothing in the full bench decision which shows that an adoption made by a widow cannot operate to affect

[1] (1880) L. R. 7 I. A. 212, s. c. 5 Bom. 110.
[2] [1937] Bom. 508, F. B.
[3] (1933) L. R. 60 I. A. 242, s. c. 12 Pat. 642.

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the contingent interests of possible reversioners. I agree with him that the point which arises here is not covered by the full bench decision.

But Mr. Kane relies on certain decisions of division benches of this Court and he maintains that the effect of those decisions is to show that the widow of a *gotraja sapinda* is not entitled to adopt so as to alter the devolution of the property after her death. It would certainly seem in accordance with sound common sense, or to use the more resounding phrase, to be consonant with principles of justice, equity and good conscience, to hold that a woman who inherits property in the family of her husband, but which had never vested in him, for an estate terminable on her death, is not entitled by means of adoption to determine the destination of the property after her death. The first case on which Mr. Kane relies is *Datto Govind* v. *Pandurang Vinayak*.[1] It was there held that a Hindu widow who succeeds to an estate not her husband's but as widow of a *gotraja sapinda* of the last male holder under the rule established by *Lulloobhoy Bappoobhoy* v. *Cassibai*[2] and in consequence of the absence of nearer heirs, cannot make a valid adoption. The reasoning in that case is certainly not convincing. The Court seemed to consider that it was bound by the decision of a full bench of this Court, which was afterwards approved by the Privy Council, in *Ramkrishna* v. *Shamrao*.[3] But all that that case decided was that where a Hindu dies, leaving a widow and a son, and the son subsequently dies leaving a widow, the son's widow is the person to continue the line, and in those events the power of adoption of the widow of the original holder has come to an end and cannot be revived. Applying that principle to the facts of the present case, it would show that Bhagirathibai was not entitled to adopt because her husband had been survived by a son who died leaving

[1] (1908) 32 Bom. 499. [2] (1880) L. R. 7 I. A. 212, s. c. 5 Bom. 110.
[3] (1902) 26 Bom. 526.

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a widow and a son. But it does not follow that defendant No. 1 cannot adopt because, although she inherits after Bhagirathibai, she does not claim through Bhagirathibai, and her husband did not die leaving a son. So that I think that the reasoning in *Datto Govind* v. *Pandurang Vinayak*[1] cannot be supported, and it is moreover admitted by Mr. Kane for the respondent that in view of the Privy Council cases and the recent full bench case of *Balu Sakharam* v. *Lahoo Sambhaji*[2] it is impossible to contend that adoption by a widow of a *gotraja sapinda* is invalid.

The next case is *Dattatraya Bhimrao* v. *Gangabai*.[3] The judgment in that case was delivered by Mr. Justice Shah who was a learned Hindu lawyer. I think that the decision again was that the adoption by the widow of a *gotraja sapinda* was invalid, but Mr. Justice Shah does say that it is clear that the adopting widow could not adopt to her husband so as to affect the devolution of the estate inherited by her as a *gotraja sapinda*. So that he seems to recognise at any rate that an adoption by a widow of a *gotraja sapinda* could not affect the devolution of property after her death.

The third case is *Yeknath Narayan* v. *Laxmibai*.[4] In that case the actual decision of the Court was that the husband of the adopting widow was the last male holder, and, if that were so, there would be no question of the widow's right to adopt and vest the property in the adopted son. But a question had arisen as to whether the husband of the adopting widow had or had not survived his paternal uncle Ramchandra, and the Court discussed the question whether on the assumption that they were wrong in holding that the husband had survived, nevertheless the adoption by the widow would be good, and the Court expressed the view that the widow could not adopt so as to alter the devolution of the property. Sir Norman Macleod at

[1] (1908) 32 Bom. 499.
[2] [1937] Bom. 508, F. B.
[3] (1921) 46 Bom. 541.
[4] (1922) 47 Bom. 37.

the conclusion of his judgment says this (p. 44): "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." So that he foreshadowed the distinction on which *Balu Sakharam's* case[1] rests.

In that state of the authorities the first question which arises, namely, whether the adoption in this case was valid must, in my opinion, be answered in the affirmative. The question then arises whether such adoption had the effect of vesting the property, which defendant No. 1 had inherited from her nephew, in defendant No. 2 or whether the adoption had no operation upon the devolution of the property after her death. I think that it would be possible to answer that question in either sense without offending against any Hindu text, and without disregarding any decision which we ought to follow. In my view the answer to the question must depend mainly on considerations of expediency with particular regard to the danger of upsetting titles. There is no doubt that the three cases, *Datto Govind* v. *Pandurang Vinayak*,[2] *Dattatraya Bhimrao* v. *Gangabai*,[3] and *Yeknath Narayan* v. *Laxmibai*,[4] which have stood for a good many years, whether or not the actual decisions were correct and whether the reasoning on which they were based is sound, do recognise that the widow of a *gotraja sapinda* cannot by adoption alter the devolution of the property to which she is entitled as such widow after her own death. These cases have not been expressly overruled and many titles must depend on the law which they lay down. The cases are cited in paragraph 473 of the last edition of Mulla's Principles of Hindu Law, which was published after the recent decisions of the Privy Council, for the proposition that "A widow in Bombay who succeeds

[1] [1937] Bom. 508, F. B.
[2] (1908) 32 Bom. 499.
[3] (1921) 46 Bom. 541.
[4] (1922) 47 Bom. 37.

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to an estate not her husband's but as a *gotraja sapinda* of the last male holder, cannot make a valid adoption to her husband". The proposition may be too widely stated in relation to the validity of such an adoption, but can in my opinion be supported in its practical effect upon the devolution of property. In my judgment the correct answer to the question before us is that the adoption of defendant No. 2 by defendant No. 1 was legal but had no effect on the devolution of property as against the plaintiff. The appeal, therefore, should be dismissed with costs.

BROOMFIELD J. In view of *Amarendra Mansingh* v. *Sanatan Singh*[1] and the recent full bench decision in *Balu Sakharam* v. *Lahoo Sambhaji*,[2] it is I think clear that the question of a widow's power to adopt a son to her husband and the question of the effect of the adoption on the devolution of property are distinct questions which depend on different considerations. If the widow's power to adopt has not been extinguished, according to the principles laid down by the Judicial Committee, the adoption is valid irrespective of any question of the vesting or divesting of property. On the other hand because an adoption is valid on religious grounds, it does not follow that the adopted son acquires all the rights of a natural son in respect of property or that the adoption necessarily has any effect on the devolution of property.

In the recent full bench case it has been held that if the property in dispute has vested in anybody except the mother herself, whether in a nearer heir or a remoter heir than the adopted son would be, the adoption will not divest the estate. It is no doubt an extension, but I think on the whole a reasonable extension of that principle to hold that in the case of an adoption by the widow of a *gotraja sapinda* the adoption does not affect either vested or contingent interests in the estate. So that on the death of the widow

[1] (1933) L. R. 60 I. A. 242, s. c. 12 Pat. 642.
[2] [1937] Bom. 508, F. B.

the property will in spite of the adoption go to the reversioners.

There is a strong current of authority in this Presidency to the effect that the widow of a *gotraja sapinda* cannot adopt so as to defeat the rights of the reversioners. The authority of these cases should not be disturbed unless it is necessary to do so. It is quite true that what the Courts actually decided in those cases was that the adoptions themselves were invalid, and so far it must now be held that they were wrong. But there are indications in the judgments that the learned Judges were more concerned to prevent any interference with the devolution of property by adoptions of that kind than to hold that the adoptions themselves were not valid for religious purposes. The widow of a *gotraja sapinda* was only admitted into the list of heirs reluctantly and with hesitation and the special rule admitting her is confined to this Presidency. There may be many such widows and they may easily be very remote from the last male holder of the property. The view that an adoption by such a widow should not in any way affect the devolution of property belonging to the family is not, therefore, an unreasonable one. The cases relied on by the plaintiff are not overruled so far as they deal with the effect of an adoption by such a widow, and I agree with my Lord the Chief Justice that in that respect these authorities should be affirmed. I agree also that this appeal should be dismissed with costs.

WASSOODEW J. I agree and have nothing to add.

Per Curiam. We modify the declaration by declaring that the adoption is valid but does not affect the devolution of the property inherited by defendant No. 1 as the widow of a *gotraja sapinda* as against the plaintiff. Appeal dismissed with costs.

Appeal dismissed.

J. G. R.