

Harigir Kisangir Gosavi and another - - - - - *Appellants*

v.

Anand Bharthi Vishnu Bharthi Gosavi - - - - - *Respondent*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER, CENTRAL
PROVINCES.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 28TH APRIL, 1925.

Present at the Hearing :

LORD PHILLIMORE.

LORD CARSON.

LORD BLANESBURGH.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by* LORD PHILLIMORE.]

The plaintiff-respondent in the present appeal sued the present appellants and other parties to recover various properties of which the only one now in dispute is included in the Izara of Naigaon. He claimed title as the reversioner to the estate of one Ram Krishna and alleged that these properties had been disposed of to the appellants by Sita, the widow of Ram Krishna, without legal necessity.

In the course of proceedings it was established that there was no legal necessity for the dispositions, but the plaintiff failed in the opinion of the Second District Judge before whom the case came on remand, to prove his title to inherit, and his suit was therefore dismissed.

On appeal to the Court of the Judicial Commissioner of the Central Provinces, this decision was reversed, and the decree was given in favour of the plaintiff.

This decision is now questioned by the present appeal, and it is also contended that the plaintiff's suit was barred by limitation.

The plaintiff deduced title as follows :—One Zingar Bharti had two sons, Ram Krishna and Jairam, and Jairam died in the lifetime of Zingar Bharti, leaving no son. It was asserted by the plaintiff that after Jairam's death his widow—with the concurrence of Zingar Bharti—adopted Vishnu, who was the plaintiff's father, as a son to Jairam. This adoption was disputed by the appellants, and upon its existence and validity or otherwise, the case mainly turns. All the parties are Gharbari Gosavis, a fraternity within the Sudra caste. Gharbari means householder, and the literal translation of the two words is “householder ascetics”—that is, they are married ascetics, having certain of the customs and practices of ascetics, necessarily modified by the fact of marriage and its consequences. Except so far as their particular customs apply, they are governed by the usual law as to Hindus, which in this province, Berar, is the same as the Hindu law in the Presidency of Bombay. See *Balwant Rao v. Baji Rao*, 47 I.A., 213.

It would appear that in this sect there may be direct inheritance, by the disciple (chela) to his preceptor (guru). If this took place without adoption it may be that it would confer upon the disciple no right of inheritance to the collaterals of his guru. This is a point, however, which it will not be necessary for their Lordships to decide, because it seems clear that this peculiar form of inheritance does not preclude the ordinary Hindu practice of adoption with its usual consequences. Adoption in the usual sense, however, may as some witnesses suggest be of recent introduction as a practice in this sect.

In the course of the case there has been a good deal of confusion of the two different matters—the initiation of a chela and the adoption of a son ; but for the purposes of the present decision their Lordships assume that the plaintiff will only succeed if he proves that his father was adopted.

This suit was begun on the 3rd August, 1910, and, as it will speedily appear, the adoption if it ever took place, was a long time previous. Vishnu was about 22 years old in 1882 and is said to have been three or four years old when he was adopted. This would put the adoption about 1864. Zingar died in 1869 or 1870. Ram Krishna died in 1885. Sita, his widow, survived him for 20 years, dying in 1904. The result is that, though oral evidence was given at the trial, it was given by persons of advanced age, whose memory as regards old matters which did not much concern them, is not altogether to be relied upon.

In 1877 Ram Krishna, as patel of a village, executed a power of attorney or parwana appointing Vishnu his deputy and describing him as son of Jairam. In 1882 some questions were raised as to the position of Vishnu in the family, and Ram Krishna claimed

to cancel the power of attorney. On that occasion Ram Krishna said that Jairam had got Vishnu shaved as his chela, or, as he states it in another document, Vishnu had been shaved in his brother's name. He proceeds, however, to say that the further ceremony of Bija Hom had not taken place, that adoption as such does not take place in his sect, and that Vishnu had not been adopted. On the other hand, in a genealogical tree which he filed, he placed Vishnu in the position which would be occupied by the son of Jairam, qualifying him, however, as a chela.

Vishnu gave evidence in support of his claim and called witnesses. He also made the point that Ram Krishna had gone out of the family, having been himself given in adoption to his uncle Mana, which Ram Krishna denied.

In the end, the Deputy Commissioner said that, as Ram Krishna was the real son of Zingar, the patelki should be recorded in Ram Krishna's name, and that, if Vishnu was the proper heir, he should get his rights established in the Civil Court. This he failed to do. Ram Krishna appears to have remained in undisturbed possession, and was succeeded by his widow, Sita. In 1886 the plaintiff claimed the patelki of a village against Sita, but failed. On that occasion Sita said that she did not know whether he had been adopted or not. Sita, in 1891, when she wished to discharge her attorney, Govind Bharti, and to appoint Vishnu in his place, described Vishnu as having been adopted by her husband's brother Jairam.

In 1898 Vishnu brought a suit against her and some alienees from her. She then gave evidence and explained her previous statements, saying that she had not said that he was the adopted son, but that he was a chela: that she did not know the ceremony of adoption, but shaving the head was not part of the ceremony. The suit which Vishnu brought against Sita and her alienees was dismissed, because in it he claimed as the adopted son of a member of an undivided family, in which case he should, as surviving coparcener, have succeeded on the death of Ram Krishna, and yet he treated Sita as lawfully in possession and only claimed as reversioner. Further, if the family was undivided, Sita by that date had been so long in adverse possession that the suit was time-barred.

The ceremonies for the creation of a full disciple are, apparently, two, the initial shaving and the subsequent ceremony performed after the lapse of a period of years, of Bija Hom. The ordinary ceremony of adoption is the giving and taking, and in the case where the adoptive father is dead, this is evidenced by placing the child on the lap of the widow. This ceremony could not be performed after the death of the widow, and the adoptive grandfather, Zingar—though he might concur with the widow—could not of himself make an adoption to his son.

The plaintiff's case was that the full ceremonies for making

his father a disciple, and the proper ceremony for adoption while the widow was alive, had taken place. The defendants admitted that the ceremony of shaving had taken place, but denied that the further ceremony of Bija Hom had ever occurred, denied that there had been any adoption and said that the widow was already dead. All these points were in controversy in the present case.

There was a further controversy as to the facts, which in the end was not determined. Both parties appear to have thought that there could be no adoption in a family where there were males, unless indeed with the consent of them all. On this supposition the plaintiff endeavoured to make out that Ram Krishna had been adopted into the family of his uncle Mana and no longer remained in the original family. But Ram Krishna had insisted that he had not been adopted by his uncle, though he had received benefits from him and as a kind of grateful recognition signed himself with the name of his uncle's family. As, however, this Board in the case of *Yadao v. Namdeo* (48 I.A., p. 513) has decided that the consent of the other males is not necessary, for this part of the case the question of the possible adoption of Ram Krishna need not be considered.

The oral evidence given on the several previous occasions and upon the hearing of the present suit was conflicting. The plaintiff's witnesses deposed to the fact that Vishnu was shaved, that he was adopted by being placed in the lap of the widow of Jairam, and that the ceremony of Bija Hom was afterwards performed. Witnesses for the defendants, while admitting the ceremony of shaving, denied that there had been the further ceremony of Bija Hom, and said that the widow of Jairam was not living and could not, therefore, have taken part in the ceremony of adoption. It was, however, agreed that from the date of the ceremony of shaving, Vishnu lived in his new family and bore a name showing that he belonged to it and had nothing to do with his former family, which, indeed, came from a different sub-division of the sect of Gharbari Gosavis. It was also proved that before the date of Vishnu's initiation, Ram Krishna had separated in estate from his father Zingar.

In these circumstances, their Lordships agree with the decision of the Judicial Commissioner and that of the First District Judge who tried the case before remand, that the proper presumption is that Vishnu, who had been styled on occasions both by Ram Krishna and by Sita as the son of Jairam, and who had lived as if he were such a son all his life, must be deemed to have been validly adopted.

For this purpose it is not necessary for their Lordships to determine whether initiation means adoption or whether in this sect the ceremony of initiation is a necessary factor in an adoption. These questions of custom, which are questions of fact, need not be concluded by the present decision, which is simply that upon the evidence in the present case it ought to be presumed that whatever was necessary was done.

Now, with regard to the point taken that the plaintiff's suit was barred by limitation, it is contended that Ram Krishna had usurped upon Vishnu and had acquired a title by adverse possession against him. But the plaintiff deduces title from Ram Krishna himself on the ground that he as the adopted son of the brother is the latter's nearest male heir. If Ram Krishna and Vishnu had been joint in estate, Vishnu ought to have succeeded to the property now in dispute as surviving co-parcener, and in that case Sita, the widow, ought not to have taken possession, and having taken possession she would have acquired for herself and for the present appellants as her alienees a title by adverse possession. But it has already been stated that Ram Krishna was not joint in estate with Vishnu, and therefore Sita as his widow rightly took possession of Ram Krishna's property for her widow's interest, and it was not till her death that the plaintiff's title accrued, and thus the suit was brought within time.

There is one remaining point to be noted. If Ram Krishna had been adopted into the family of Mana and thereby removed out of his own family, Vishnu would not be his nephew, and the plaintiff, when he sought to prove this adoption, was to some extent injuring his own cause by making his relationship more remote. But there is no finding upon this point, and none seems to have been asked for; and as Mana was brother to Zingar, it may well be that even if Ram Krishna is to be considered Mana's son, nevertheless the plaintiff would be the nearest heir. In these circumstances, their Lordships think that the judgment of the Assistant Judicial Commissioner was right; and they will humbly advise His Majesty that the appeal should be dismissed with costs.

In the Privy Council.

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DELIVERED BY LORD PHILLIMORE.

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