**(1939) 07 BOM CK 0011**

**Bombay High Court**

**Case No:** First Appeal No. 31 of 1937

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| Haridas Kisandas Gujarati | | APPELLANT |
| | Vs | |
| Narayandas Jagmohandas Gujarati | | RESPONDENT |

Date of Decision: July 11, 1939

Acts Referred:

- Registration Act, 1908 - Section 32

Citation: AIR 1940 Bom 181 : (1940) 42 BOMLR 283

Hon'ble Judges: N.J. Wadia, J; Indarnarayen, J

**Bench:** Division Bench

**Final Decision:** Dismissed

**Judgement**

N.J. Wadia, J.

The litigation out of which this appeal arises has been caused by the adoption of plaintiff No. 1 Narayandas by plaintiff No. 2 Parwatibai, widow of one Jugmohandas Kisandas Gujarati. Jugmohandas died at the age of about fifty on January 1, 1919. He had at the time of his death an elder brother Madhavdas, and a younger brother Haridas, who was defendant No. 1 in the trial Court and who is appellant No. 1 in this Court. Defendants Nos. 2 and 3, Govinddas and Goverdhandas, are the sons of Bhikoobai, the only daughter of Madhavdas. At the time when Jugmohandas: died, the three brothers were joint, and the family continued to be joint till the date of the suit. None of the three brothers had any son. Madhavdas. had an only daughter Bhikoobai; Jugmohandas and Haridas had no children.. Madhavdas died at the age of about seventy on May 24, 1931. The plaintiffs allege that plaintiff No. 2 Parwatibai adopted Narayandas as a son to her deceased husband Jugmohandas on November 17, 1932. On that day the: formal giving and taking was done, and the actual adoption ceremonies took place on the following day, November 18. Narayandas is the son of Par-watibai''s brother Tikamdas. On the same day, November 18, Haridas, who at the time was the only surviving coparcener in the joint family, passed two

gift-deeds, exhibits 393 and 411, by which he gifted away the whole of the joint family property to Govinddas and Goverdhandas, the grandsons of his elder brother Madhavdas, and a few weeks later, on December 23, 1932, he took defendant No. 3 Goverdhandas in adoption as his own son. The plaintiffs filed the suit for a declaration that plaintiff No. 1 Narayandas had been duly adopted by plaintiff No. 2 as a son to her deceased husband Jugmohandas and that he was therefore a coparcener with defendant No. 1 Haridas in the joint family, and as such owner of the joint family property. They further prayed for a declaration that the two gift deeds passed by defendant No. 1 in favour of defendants Nos. 2 and 3 on November 18, 1932, were unenforceable, bogus and not binding on them, and that they could not affect the legal rights of plaintiff No. 1 and could not convey any title to defendants Nos. 2 and 3. Plaintiff No. 1 asked for joint possession with defendant No. 1 of the dwelling house of the family, house No. 451 situate in Raviwar Peth, Poona. They prayed for an injunction that the defendants should be enjoined not to obstruct them in the joint possession and management of the rest of the family properties mentioned in the plaint. They further prayed that if the Court thought it in the interests of the minor plaintiff No. 1 to partition the property, the estate should be divided equitably into two equal shares and plaintiff '' No. 1 should be given separate possession of his half share in the moveable and Immovable properties of the family and mesne profits.

2. The defendants denied the plaintiffs'' claim. They alleged that plaintiff No. 2 Parwatibai had been expressly prohibited by her husband Jugmohandas from making an adoption, that she was aware of the prohibition and was not, therefore, entitled to make an adoption, and further that Madhavdas and Haridas had already disposed of the family property by a document purporting to be a will, exhibit 348, executed by Madhavdas on April 21, 1931, which had been consented to by Haridas ; that there had been no giving and taking of Narayandas on the 17th as alleged in the plaint, and that the adoption on the 18th was later than the execution of the gift-deeds by defendant No. 1 in favour of defendants Nos. 2 and 3. It was, therefore, contended that the adoption of plaintiff No. 1, even if valid, could not affect the property which had already been disposed of by Haridas, the sole surviving coparcener, prior to the adoption. According to the defendants no giving and taking had taken place on November 17, 1932, and even if it had taken place, their case was that as the parties were Vaishyas, a mere giving and taking was not sufficient to constitute a valid adoption. The performance of religious ceremonies, especially the datta homam, was necessary, and as this ceremony did not take place till the following day, the 18th, there could be no valid adoption on the 17th. With regard to the will of Madhavdas by which, it is alleged, the property had been left to defendants Nos. 2 and 3 in equal portions after the death of Haridas, the defendants'' case was that the will operated as a family settlement and was as such binding on the members of the family including Parwatibai. On this ground also, even apart from the gift-deeds executed on November 18, 1932, the property had

already passed out of the joint family before the alleged adoption on the 18th, and the adoption could not, therefore, affect the property.

3. The learned trial Judge has delivered a very lengthy judgment in which he has examined the evidence at great length. He has come to the conclusion that the parties in this case, who are Vadnagari wanis of Poona, are not pure Vaishyas, that they do not perform the upanayanan and cannot, therefore, be regarded as Vaishyas, that they are Vratyas and, as he says, " almost Shudras," and that, therefore, all that was necessary to constitute a valid adopt-tion among them was the ceremony of actual giving and taking, and as this, according to the evidence of the plaintiffs which he has believed, took place on November 17, 1932, the adoption of plaintiff No. 1 had been completed a day previous to the passing of the gift-deeds in favour of defendants Nos. 2 and 3. He held that the alleged prohibition to Parwatibai to adopt a son had not been proved. He further held that the will of Madhavdas had not been proved to be a genuine will. He, therefore, held that plaintiff No. 1''s adop tion had been proved and that he was entitled to a half share in the property. Against that decree the defendants have appealed.

4. The first question that arises for consideration is, what is the caste to which the parties belong ? In my opinion, there can be no doubt on this point. The plaintiffs never alleged in the plaint that the parties were Shudras or that they were something lower than Vaishyas, and that, therefore, a mere giving and taking was sufficient in their caste to constitute a valid adoption and no religious ceremony was necessary. Although one of the plaintiffs'' witnesses, Tikamdas, has in his evidence attempted to make out some sort of a case to support the contention that the parties are not Vaishyas and no religious ceremony is necessary to constitute a valid adoption among them, that evidence is emphatically negatived by the evidence of plaintiff No. 2 herself and of the other witnesses on her side, especially of the priest Shevagaonkar, who actually performed the adoption ceremony. Shamdas, exhibit 274, who belongs to the plaintiffs'' caste and who is one of their principal witnesses, says on the question of the caste to which the parties belong, that they are Vadnagaris, who originally came from Broach, that they wear the sacred cloth, that they do not eat fish or flesh, that they do not perform re-marriages and that they are Vaishyas. He is emphatic that all the families of his community are Vaishyas and that none of them is a Shudra, that they belong to the Vadnagari sect, and that there are gotras in their caste. Tikamdas, the brother of plaintiff No. 2 and the natural father of plaintiff No. 1, who is undoubtedly keenly interested in the result of the litigation and who must have been the prime mover in bringing about the adoption, has to admit that the parties are Vaishyas. He says that his son-in-law Babushet is a Gujarati Vaishnava Vani and not a Shudra, that he himself and his father-in-law Vithaldas are also Guja-rati Vaishnava Vanis and that they are not Shudras. Shevagaonkar, the priest who performed the adoption ceremony and who is the family priest of the plaintiffs, is equally emphatic on the point. He says that the men in the family of the parties wear the sacred thread at their option, but admits

that they observe sovle as Brahmins observe it, that re-marriage of women is not practised amongst them, that they do not eat fish or flesh, and that the families have gotras. He says definitely that he knew that the families of Tikamdas and Haridas were Vaishyas, that Vaishyas come among the first three or regenerate castes, and that Vedic rites have to be observed for Vaishyas.

5. This evidence leaves no room for doubt that the parties are, and regard themselves as, Vaishyas and not Shudras, and that they observe most, if not all, of the customs and ceremonies peculiar to the three twice-born of regenerate castes. I am unable, therefore, to agree with the view taken by the learned Judge that they are not quite Vaishyas and, as he puts it, " almost Shudras." There is no authority for the view which the learned Judge has taken that because the ceremony of upanayanan is, according to some witnesses, not performed in this community, therefore they must be regarded as Vratyas and not Vaishyas.

6. There is ample authority for the view that for adoptions among the twice-born or regenerate castes the ceremony of datta homam is necessary and that there can be no valid adoption without this ceremony. The physical act of giving and taking, which is absolutely necessary for an adoption, is not among these castes by itself sufficient to constitute a valid adoption. The question came before their Lordships of the Privy Council in (1881) ILR 6 381 (Privy Council) as early as 1880. The parties in that case were Shudras, and the question was whether a mere execution of a deed of adoption without actual giving and taking would be sufficient to constitute a valid adoption. After dealing with this question, Their Lordships said (pp. 255, 256) :

The mode of giving and taking a child in adoption continues to stand on Hindu law and on Hindu usage, and it is perfectly clear that amongst the twice-born classes there could be no such adoption by deed, because certain religious ceremonies, the data homan in particular, are in their case requisite.

7. Sir Dinshah Mulla in his commentary on Hindu Law, (8th edn.), at p. 542, paragraph 490, says that datta homam is not essential in the case of an adoption in the twice-born classes when the adopted son belongs to the same gotra as the adoptive father. With regard to other cases of adoption among the twice-born classes, he says that it had been decided in a Madras case, Sing-amma v. Rammuja Charliu (1868) 4 M.H.C. 165, that neither datta homam nor any other religious ceremony was necessary even among the Brahmins ; but that decision was not followed even by the Madras High Court in a later case, and in Bombay it has been definitely held that datta homam is necessary. In Govindprasad v. Rindabai ILR (1924) 49 Bom. 515 : 27 Bom. L.R. 365, which was a case of an adoption amongst Brahmins in which datta homam had not been performed, it was held that the ceremony of datta homam was essential to validate an adoption amongst Brahmins unless the adoptive father and son belonged to the same gotra. After referring to the authorities, Macleod C.J. observed (p. 520) :-

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.

8. This case dealt, as I have pointed out, with an adoption amongst Brahmins, but the authorities make no distinction in this respect between the three regenerate classes,-Brahmins, Kshatriyas and Vaishyas, It is only in the case of Shudras that it has been held that a mere giving and taking without the religious ceremony of datta homam is sufficient to constitute a valid adoption. In the case before us, therefore, the religious ceremonies were necessary to constitute a valid adoption.

9. [His Lordship then discussed oral evidence as to the factum of adoption and continued :] The plaintiffs have proved satisfactorily that the boy was actually given in adoption by his parents and taken by Parwatibai on the 17th. The question is, what is the legal effect of such giving and taking without religious ceremonies ?

10. In dealing with the question of adoptions among Vaishyas, the class to which the parties in suit belong, I have referred to the authorities which show that among the twice-bom or regenerate castes the ceremony of datta homam is essential and that there can be no valid adoption without such ceremony. But it is not necessary that the religious ceremony should take place simultaneously with the giving and taking. It is sufficient if the religious ceremony is performed even after a considerable interval, and in such cases the subsequent religious ceremony, when it is performed, relates back to the prior giving and taking. Sarkar in his " Hindu Law of Adoption", Tagore Law Lectures, 2nd edition, p. 369, says :

... gift, acceptance and the homa or burnt-sacrifice appear to be the three essential ceremonies in the adoption of a son ; of these, the gift and acceptance must precede the homa, and may be made in the ordinary way without the Sanskrit formula, the burnt-sacrifice being performed afterwards. But the general practice appears to be that all these ceremonies are performed according to the prescribed ritual ; the secular gift and acceptance, however, must always take place first, and in some cases there may be reasons for postponing the ceremonial adoption, such as, impurity of the giver or adopter, or the inauspitiousness of the season, which may render the ceremonial gift and acceptance impossible, though there cannot be any impediment to the subsequent performance of the homa or burnt-sacrifice.

11. In Venkata v. Subhadra ILR (1884) Mad. 548 the facts were peculiar. In that case one Subhadracharyulu, who was the respondent in the appeal, was given to the

appellant Venkatacharyulu by his father in 1875. Venkatacharyulu had desired to adopt the respondent. He brought away the respondent from his father''s house and kept him under his own protection. A year later, in 1876, the respondent''s father died, but the respondent continued to live in the appellant''s house and under his protection. In 1880, five years after the appellant had taken the boy, the appellant executed a will and mentioned in it his intention to adopt the respondent and to perform the upanayanan on an auspicious day. Soon after this the appellant performed the homam ceremony prescribed for adoption and adopted the respondent and invested him with the sacred thread. Both lived together as father and son until January, 1881, when the appellant''s will was registered. In July, 1881, the appellant brought a suit to obtain a declaration that the adoption was bad in law and alleged that at the datta homam it was the respondent''s brother who had given the respondent in adoption and that one brother was not competent to give away another in adoption. Certain other objections were also raised to the adoption. The main contention was that, until the datta homam was performed in 1880, there was no actual adoption, though there was an intention to adopt from 1875, and that as the natural father of the respondent had died in 1876, there was no valid gift at the time of the adoption, the brother not being competent to give him in adoption. It was held by the High Court that the ceremony of datta homam was essential among Brahmins. With regard to the effect of the religious ceremonies and the time when the adoption could be regarded as having been completed, they said (p. 551):-

Viewing adoption barely as a civil transaction, gift and acceptance from and by persons competent to give and take would make it complete, if the adopted boy were transferred from one family to the other. In the view that datta homam is essential among Brahmans, the civil transaction is not perfect unless it is invested with the character of a religious rite. But from the very nature of the thing, the agreement to give and to take must precede the religious rite, and the interval of time between the two is immaterial. We do not see, therefore, why a prior gift and acceptance should not be perfected by a valid Heligious rite performed on a subsequent occasion. It may be that the gift might be validly revoked during the interval, but when it lemains unrevoked, the subsequent rite, when performed, relates back to the prior agreement. In this case, the respondent was actually delivered by his father to the appellant, and the nature of the transaction was an actual gift and acceptance subject to a condition subsequent. Unless the presence of the natural father during datta homam is indispensable or his previous authorization to give is inoperative, there is no reason for saying that the datta homam is inefficacious.

12. The view that subsequent religious ceremonies would validate a giving and taking which has already taken place was again taken by the Madras High Court in a later case in Subbarayar v. Subbammal ILR (1898) 21 Mad. 497, in which the previous decision in Venkata v. Subhadra ILR (1884) Mad. 548 was referred to and followed. In Seetharmamma v. Suryanarayana ILR (1926) Mad 989 the same view was again

taken, that giving and taking of the boy is of the essence of the adoption, and if it took place in the lifetime of the adoptive father, the religious part, such as datta homam where necessary, can be deferred to a subsequent period and can be performed after his death. The decisions in Venkata v. Subhadra and Subbarayar v. Subbgmmal were referred to and followed.

13. It was next argued that even if there was a giving and taking of the boy on the 17th, that was not with any intention of effecting a valid adoption but merely a formal act intended to convince Parvatibai that the boy''s parents would not subsequently go back on their promise to give the boy in adoption.

14. [After discussing evidence the judgment proceeded :] In my opinion, therefore, there was a giving and taking of the boy in adoption on the 17th, as alleged by the plaintiffs and their witnesses, and this giving and taking was by itself sufficient to constitute a valid adoption on that day, the religious ceremonies which were necessary having been duly performed on the following day.

15. The next question is as to the time at which the religious ceremonies on the 18th were completed. The learned Judge has held that the ceremonies on the 18th were completed some time between 4 and 4-15 p.m.

16. [After dealing with evidence, the judgment went on :] There is no reason to doubt the definite statement of Shevagaonkar that the auspicious hour was between 4 and 5 p.m., and if that is so, I see no reason for doubting the evidence of the witnesses, who are all consistent on the point, that the essential ceremonies took place very soon after 4 p.m.

17. The next question is, at what time the gift deeds executed by Haridas were completed ? [His Lordship discussed the evidence on this point and continued :] I agree with the conclusion which the learned Judge, who examined the evidence on this point with great care, has come to, that the first deed, exhibit 393, must have been executed some time between 4-30 and 5 p.m. and the second deed, exhibit 411, after 5 p.m. The deeds were executed subsequent to the completion of the adoption ceremonies on the 18th, and, therefore, even if it were held that plaintiff No. 1''s adoption was not complete till after the religious ceremonies which took place on the 18th, the adoption would still be prior to the gift deeds.

18. On the law as it now stands, it is clear that Parwatibai, even though she was a widow in a joint family, was entitled to adopt, and plaintiff No. 1 would be entitled to a half share in the joint family property as it stood at the time of his adoption. The subsequent gift deeds could not deprive him of his share in the property.

19. It was argued for the plaintiffs that the presentation of one of the gift deeds, exhibit 393, for registration was not proper, as it did not comply with the requirements of Section 32 of the Indian Registration Act. That Section requires that the deed should be presented for registration by some person executing or claiming

under it. Exhibit 393 was presented for registration by defendant No. 1, Haridas, who had executed the deed. The endorsement on the deed, however, is that it was presented by " Haridas Kisandas, guardian of the minor Govinddas Samaldas." In the body of the deed " Govinddas Samaldas, minor by his guardian grand-uncle (mother''s uncle) Haridas Kisandas" is mentioned as the party in whose favour the document was passed. It is contended that as Samaldas was the father and natural guardian of the boy, Haridas could not act as guardian. In this case there is no-question that the person presenting the document for registration, namely, Haridas, was the person who had executed the document, and as such he was entitled to present it for registration. The only defect is that he is described not as the executant of the document but as the guardian of the minor Govinddas in whose favour the deed was executed. The description of Haridas as the guardian of the minor would not make him any the less the executant of the deed, and, in my opinion, the deed was properly presented.

20. The defendants contended that even if the adoption is treated as valid and as having taken place previous to the passing of the gift deeds, the adopted boy would get no share in the property, since that property had been already disposed of by a document purporting to be a will executed by Madhavdas on April 21, 1931. The document is exhibit 348. Madhavdas-died on May 24, 1931, a little over a month after the date of the will. Admittedly the family was joint at the time of his death, and Madhavdas could not dispose of his property by the will. In the will itself the testator mentions that he and his brother Haridas, defendant No. 1, were joint and that the property had been jointly acquired by the brothers. The will says that he and Haridas should enjoy the property till their deaths; that if he died, then Haridas should look after the management as he liked, and after his death the estate should be dealt with as provided in the will. Haridas, however, was not to sell or mortgage the property, and after the death of Haridas the whole estate was to be of the full ownership of his two grandsons. Govinddas and Goverdhandas, the sons of his daughter Bhikoobai, who were defendants Nos. 2 and 3 in the suit. He appointed Haridas and his son-in-law Samaldas as the executors. Below the attestations there is an endorsement of Haridas and Samaldas that they approved of and accepted the contents of the will and were willing to act as executors. The will clearly cannot be treated as a will, since a member of a joint family would have no power to dispose of the joint family property by a will. It is, however, argued that it can be regarded as a family arrangement and enforced as such. It is one of the necessary requirements of a family arrangement that it must be concluded with the object of settling some bona fide disputes arising out of conflicting claims to property either existing or likely to arise. As was pointed out in Basmtakumar Basu v. Ramshankar Ray ILR (1931) Cal. 859, in which the authorities dealing with the question of family settlements were examined at considerable length, a family arrangement " must be one concluded with the object of settling bona fide a dispute arising out of conflicting claims to property, which was either existing at the time or was likely to

arise in future. A Bona fides is the essence of its validity, and from this it follows that there must be either a dispute or at least an apprehension of a dispute, a situation of contest, which is avoided by a policy of giving and taking ; or else all transfers or surrenders will pass under the cloak of a family arrangement." In Vithal v. Yamutai (1933) 36 Bom. L.R. 144 it was held by this Court that "Even though it may not be strictly necessary that a family arrangement should involve a compromise of doubtful claims or doubtful rights, it is necessary that a family arrangement should comprise some arrangement which is brought about to preserve the peace and the property of the family." In the present case there is nothing to show that at the time when this will was made there was any dispute between the members of the family. Admittedly there was no dispute between the testator and his brother Haridas. The only other member of the family was Parwatibai herself, who, it is admitted, was living with Madhavdas and Haridas on perfectly friendly terms. There was neither any existing dispute nor any doubtful right, nor any apprehension of disputes arising between these three. Samaldas''s sons were not members of the joint family. The will, therefore, could not be regarded as a family arrangement either. It was not intended to come into operation from the date of its execution but only from the date of Madhavdas''s death. There is also another ground on which the document cannot be admitted as proving a family settlement. By the document the absolute interest which both Madhavdas and Haridas had in the property was converted into a life interest, The document, therefore, required registration and cannot be admitted in the absence of registration.

22. [His Lordship discussed evidence about the alleged will of Madhavdas and expressed his conclusion.] In these circumstances, I agree with the view which the learned trial Judge has taken that the will is an extremely suspicious document and that its execution has not been satisfactorily proved. I have already shown that even if the document were treated as genuine, it cannot operate as a will, nor can it be admitted as evidencing a family arrangement.

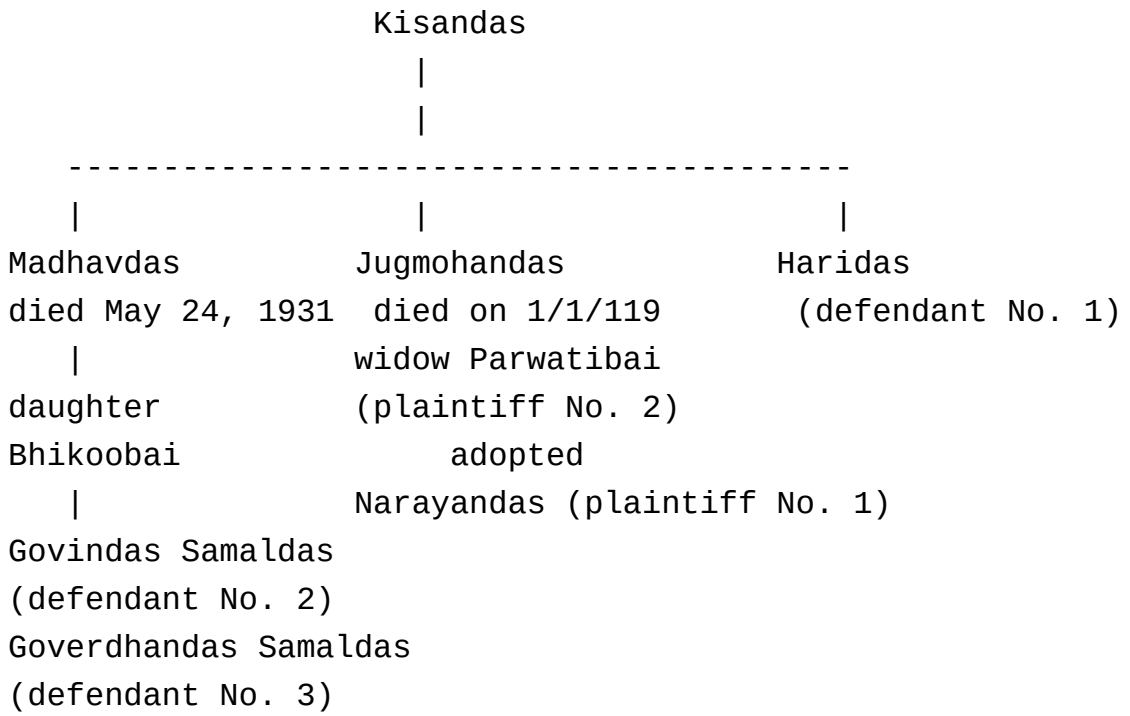
23. The plaintiffs have succeeded in showing that plaintiff No. 1 was validly adopted by plaintiff No. 2, Parvatibai, before the execution of the gift deeds by Haridas in favour of defendants Nos. 2 and 3. Parvatibai was entitled to make an adoption. The subsequent execution of the gift deeds by Haridas in favour defendants Nos. 2 and 3 would not affect the share which the first plaintiff had acquired in the joint family property from the moment of his adoption. It has not been proved that the property had been disposed of by the will of Madhavdas prior to the adoption. Plaintiff No. 1 was entitled to succceed. The decree made by the learned Judge must, therefore, be confirmed and the appeal dismissed. In the order made by the learned Judge on December 22, 1936, at page 1 of the paper book, the learned Judge has directed that the Receiver should pay to the plaintiffs Rs. 150 per mensem from the date of the suit from out of defendant No. 1''s share of the Rs. 23,000 deposited in Court. The amount of the maintenance should first be paid out of the Rs. 23,000 and the balance should be divided between plaintiff No. 1 and defendant No. 1.

24. The appeal is dismissed with costs. The cross-objections filed by the respondents have not been pressed and are dismissed with costs.

Indarnarayen, J.
This appeal from the decision of the First Class Subordinate Judge of Poona involves a question as to whether plaintiff No. 1 was validly adopted by Parwatibai, plaintiff No. 2, and on what date and at what time, and whether in consequence the adoption prevails against the two deeds of gift executed by defendant No. 1 in favour of defendants Nos. 2 and 3 on November 18, 1932.

2. My learned brother has dealt with the evidence and the case-law in detail and hence it is not necessary for me to cover the same ground at any length.

3. The genealogical table below shows the relationship of the parties :-




4. The Privy Council decision in Bhimabai v. Gurunathgouda Khandappagouda (1932) L.R. 60 IndAp 25 : ILR 57 Bom. 157 : 35 Bom. L.R. 200 appears to have been published in the Times of India on November 11, 1932-a week after it was delivered-and hence became common knowledge. It entirely changed the law of adoption by a widow under the Hindu law, as it was therein held against the course of prior decisions that a Hindu widow can, according to the law prevalent in the Mahratha country of the Bombay Presidency, validly adopt a son to her deceased husband even without the consent or permission of his surviving coparceners or the express authority of her husband. Of course this power could only be exercised by the widow if there was no express prohibition by the husband against an adoption-Bayabai v. Venklesh Ramakmt Bala (1866) 7 B.H.C.R. Appx. 1; Jagmmath Rao Dani v. Rambharosa (1932) L.R. 60 IndAp 49 : 35 Bom. L.R. 230. It is obvious that this information must have interested and reached practising lawyers before any

one else. Defendant No. 1, Haridas, the sole surviving coparcener of Parvatibai''s deceased husband, (his other brother, Madhavdas, having also predeceased him), appears to have learnt of this apparently from his general legal adviser, Mr. Karandikar, and appears to have been naturally perturbed as to what might happen in case Parvatibai, his deceased brother Jagmohandas''s widow, thought of adopting a son to her deceased husband, and he appears to have therefore discussed matters as to the best way out of the possible difficulty with Karandikar. It is in evidence that Haridas put a question to his sister-in-law, Parwatibai, in the presence of Karandikar on or about November 14, 1932, asking her as to whether she had any intention to adopt a son. Haridas has denied this, but I do not think the allegation at all improbable as the learned trial Judge seems to have thought, because acting on Karandikar''s advice and in his own interests Haridas must have been anxious to make sure of the intentions of Parwatibai. It is further stated by defendants'' witnesses that Parwatibai did not leave the family house, wherein she was all along staying, till November 17, 1932. I will refer hereafter to the allegation of the respective parties with respect to the time of her departure. But for the present suffice it to say that Parwatibai left the house on November 17, and it was the plaintiff''s case that she asked her brother Tikamdas and his wife Gopikabai to give her their son in adoption to her husband. It is stated that as the mother of the boy, Gopikabai, showed some hesitation Parwatibai was anxious that matters should be definitely and finally settled, and that ultimately Gopikabai consented to give the boy in adoption on November 17. On Parwatibai''s insistence she and Tikamdas placed the boy on the lap of Parwatibai on November 17. The priest of the family, Shivagaonkar, was called and asked to find out an auspicious day for the performance of the adoption ceremony and fixed the next day, November 18, for the same.

5. I confess I find little warrant on the record for the conclusion of the learned trial Judge that the parties were " almost Sudras." The evidence seems ail one way on both sides leading to the irresistible conclusion that the parties are " Vaishyas " and belong thus to one of the three regenerate classes.

6. It may be useful even at this stage to summarize briefly the law on the subject, because I think it will be of considerable help in appreciating the evidence and attempting to ascertain where the truth lies.

7. Though no adoption ceremonies are necessary in the case of Sudras there must be a giving and taking of the boy in adoption as a condition precedent to the completion and the validity of the adoption. An adoption by a mere deed was held to be insufficient even in the case of Sudras, cf. (1881) ILR 6 381 (Privy Council) In the case of the three regenerate classes of Hindus, including Vaishyas, there must be in addition to the giving and taking the religious ceremony of adoption, including the daita homam, except perhaps in the Punjab where the customary law prevails-Govindprasad v. Rindabai ILR (1924) 49 Bom. 515 : 27 Bom. L.R. 365. It has

however been held in more than one case that the giving and taking of the boy and the datta homam need not be simultaneous, but that after the giving and taking has been completed the datta homam may well follow later on without any limit of time as to the interval-even after the death of the natural or adoptive father-Subbarayar v. Subbammal ILR (1898) Mad. 497 and Seetharamamrria v. Suryanmayma ILR (1926) Mad. 969. Of course in a case where the datta homam has not been performed it would be open to the natural parents of the boy to revoke the gift. But if and when the datta homam ceremony has been performed, the adoption is not only complete but relates back to the date and time of the giving and taking. When once the adoption is thus complete it has been held that it relates back to the death of the adoptive father, the fiction being that the son is considered to have been conceived at or before the time of the death of the adoptive father and to have been born to him at the time of the adoption and he therefore becomes entitled to all the rights of a coparcener, including the right as such to the family property. If, however, before the adoption the surviving coparcener of the person to whom the boy is adopted by the widow divests himself of the family estate by gift or by will, the adoption subsequently made does not affect the validity and legality of such gift, with the necessary result that though the adoption may be thereafter valid and complete, the adopted boy would be entitled to no share in the property so gifted, but only to a share in what may remain of the family property, if any-Kamalabai v. Pandurang (1937) 40 Bom. L.R. 428.

8. In the very interesting facts of this case it is remarkable that every element of the law stated above has a place-whether by design or by coincidence is the question that arises for consideration before us.

9. [After dealing with questions of fact at length the judgment concluded :] I therefore agree with the finding of the learned trial Judge that the giving and taking of plaintiff No. 1 by plaintiff No. 2 in adoption was in fact completed on November 17, and that the performance of the datta komam ceremony-necessary among Vaishyas-on November 18 in any event relates back to the giving and taking on the prior day. The alleged deeds of gift which admittedly came into existence only on the 18th could therefore in no way deprive plaintiff No. 1 of his rights as an adopted son to Jugmohandas and as a coparcener coming to the joint family. I agree with the trial Judge''s finding that the datta homam was completed well before the deeds of gift exhibits 393 and 411 were executed on November 18. There is no satisfactory proof of any prohibition against adoption conveyed by Jugmohandas to Parwatibai, and the so called " will" of Madhavdas has not been satisfactorily proved by the defendants who put it forward, though it is not necessary to find that it is in fact proved to be a forgery. Even if it were genuine, it can only be treated'' as a family arrangement which required registration, and for the want of it it is ineffective in law. The learned trial Judge had the benefit of seeing at least some of the witnesses examined in the case, and though we may not agree with some of the minor conclusions of the learned Judge on the numerous points considered in his long and

able judgment, it is impossible to say that the findings of the trial Judge on the main points involved were in any way wrong in law, or based on any misappreciation of the evidence.

10. I would, therefore, dismiss the appeal with costs and agree with the order proposed by my learned brother.