

(1928) 09 BOM CK 0017

Bombay High Court

Case No: First Appeal No. 65 of 1925

Sidramappa Baswantrao Vibhute

APPELLANT

Vs

Shidappa Virappa Umbarje

RESPONDENT

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**Date of Decision:** Sept. 3, 1928**Citation:** (1929) 31 BOMLR 461**Hon'ble Judges:** Murphy, J; Amberson Marten, J**Bench:** Division Bench**Final Decision:** Dismissed

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### Judgement

Amberson Marten, Kt., C.J.

This is an appeal heard along with the First Appeal No. 64 of 1925 in which we have already given judgment. Our previous judgment in that case disposes of all the main points in the present appeal with two exceptions. A point of law is raised in this appeal which is not raised in the Court below or in the memorandum of Appeal to the effect that the plaintiff being an assignee of the original adopted son is not in a position to sue. We think there is no substance in that objection even if it can be now raised. It is clear that by the Bale deed to the assignee the adopted son elected to treat the alienation of the widow as invalid. He accordingly transferred the property and his assignee has the right to bring any necessary suit for possession. In this connection the case in the Privy Council of [Bijoy Gopal Mukerji Vs. Srimati Krishna Mahishi](#), may be referred to in connection with the election of the reversioner to treat an alienation by the widow as void. In our opinion the alienee is not precluded from bringing the present suit.

2. Then as regards the question of improvements, it is entirely different from the other appeal. Here we are only concerned with a small sum of Rs. 175 being the value of a new staircase put into the suit house. The learned Judge thought the evidence insufficient to prove the amount of the claim and we notice the Panchnama does not specify what the value of the new staircase is. But, even if the other evidence is sufficient to establish this, we think it would be stretching our

previous decision too far to include this particular amount. As far as we can see, the house was an old one, and this repair was more in the nature of an ordinary repair than an improvement, which would raise the value of the property permanently, and fairly entitle the alienee to a refund of the cost. In the other case an uninhabitable house was very largely rebuilt; and probably this was within the knowledge of the adopted son. The present is a mere repair to the staircase and upper floor which might very well escape the notice of the adopted son.

3. Under the circumstances we cannot allow the claim of the alienee for improvements. The result will be the appeal will be dismissed with costs. The stay application is dismissed.

Murphy, J.

4. I agree with the judgment just delivered by the learned Chief Justice.