

Privy Council Appeal No. 5 of 1919.

Sitabai and another - - - - - *Appellants*

v.

Bapu Anna Patil and another - - - - - *Respondents*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER, CENTRAL PROVINCES.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 7TH MAY, 1920.

Present at the Hearing :

LORD BUCKMASTER.

LORD DUNEDIN.

SIR JOHN EDGE.

MR. AMEER ALL.

[*Delivered by* LORD BUCKMASTER.]

Their Lordships do not desire to trouble Counsel for the respondents. There is no controversy as to the facts which lie behind this dispute, and the relevant proposition of law has been accepted in both the Courts below. It is this : That according to the Bombay School of Law the duty of a Hindoo widow to obey her husband's command compels her to act upon any mandatory direction that he may give by will as to the way in which her power of adoption should be exercised.

The whole question in this case, therefore, is whether the will of one Pralhad Narayan Jog, dated the 12th June, 1901, imposed any such mandate upon his widow. The direction he gave is contained in clause 22, and it runs in these terms :—

“ If I did not adopt a son during my lifetime my wife should, as far as possible, adopt Shankar, the second son of my elder brother, Tirthoswarup Govind Narayan Jog. If he (the boy) cannot be obtained, any other boy should be adopted with the advice of the trustees.”

The point for determination, therefore, is whether those words merely appeal to the wife to exercise her discretion in the manner indicated, or whether they impose upon her a mandate so to

exercise it. The difficulty in the construction is due to the rather confused and inartistic use of words in the clause; but their Lordships, having given the most careful consideration to the arguments that have been advanced by both Counsel for the appellants, have come to the conclusion that the view expressed by the Judicial Commissioner as to its effect was correct. "Should as far as possible" means, in their Lordships' opinion, that unless there are conditions outside the will preventing the possibility of the adoption, the widow, when she does adopt, is to exercise her power in favour of Shankar; and this view is strengthened and confirmed by the final words which provide that if the boy cannot be obtained another boy should be adopted with the advice of the trustees. The boy could be obtained. The only difficulty that arose was due to an unhappy and unfortunate difference of feeling between the widow and Shankar and Shankar's family. Counsel for the appellants have suggested that this prevents the possibility of his adoption, and they point to two clauses in the will—clause 2 and clause 24—in both of which the testator in strong language directed that the adopted son should keep the widow, treat her with affection, and give her maintenance, which they say is in the circumstances impossible.

That condition is, however, subsequent to the appointment, and not a condition precedent to the exercise of the power. Their Lordships abstain from expressing any opinion as to what the effect of the will might be if the adopted son declined to exercise the duties which the will so imposes. That question does not now arise. The only question is that to which their Lordships have referred, and although the words of the will might have been expressed with greater clearness their Lordships entertain no doubt that the judgment of the Judicial Commissioner is correct, and that this appeal should be dismissed with costs, and their Lordships will therefore humbly advise His Majesty accordingly.

In the Privy Council.

SITABAI AND ANOTHER

v.

BAPU ANNA PATIL AND ANOTHER.

DELIVERED BY LORD BUCKMASTER.