Privy Council Appeal No. 80 of 1922.

Ramabai - - - - - - - - - *Appellant*

v.

Harnabai and another - - - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 1ST FEBRUARY, 1924.

Present at the Hearing:

LORD SHAW.
LORD BLANESBURGH.
SIR JOHN EDGE.

[*Delivered by* LORD SHAW.]

The case for the appellant has been stated with admirable clearness and brevity by his counsel, but their Lordships do not think it necessary to call for any argument for the respondents.

This is an appeal from a decree of the 5th December, 1918, of the High Court of Judicature at Bombay, which affirmed a decree dated the 1st November, 1916, of the Court of the Additional First Class Subordinate Judge at Poona.

The only question submitted to the Board, and now subsisting, is as to the condition of body, and possibly of mind, of one Narayan Mawal. The appellant maintains that Narayan Mawal was so afflicted with leprosy as to deprive him of the position of being joint owner of certain family property, and secondly to deprive him of the ability to make a valid adoption of a son. His natural son had died and the adoption was made a few weeks before his death. Had Narayan not been a leper, this natural and proper act could not have been challenged.

In the opinion of the Board no question of fact arises on this appeal. It appears to be definitely concluded by both of the Courts below, which both concur in their findings. The High Court in terms expresses approval of the decision of the Court of first instance : and the decision of the Court of first instance is to the effect that Narayan Mawal was not so crippled or disabled by bodily infirmity or deformity as to cease to be a useful member of society capable of holding and enjoying property. Their findings show that although he was afflicted with a certain type of leprosy it was a type not very apparent except to minute inspection, and certainly a type which did not unfit him for performing both social and religious duties in company with others.

In these circumstances the law of the case is attacked by the appellant's counsel, but the law of the case may be stated to have been well settled in India for very many years. In the case of *Kayarohana Pathan* v. *Subbaraya Thevan and another* (I.L.R. 38 Madras, 250), a joint judgment of Benson and Sundara Ayyar JJ., concludes with the following proposition :

> "Deformity and unfitness for social intercourse arising from the virulent and disgusting nature of the disease would appear to be what has been accepted in both the texts and the decisions as the most satisfactory test."

In the case of *Mohunt Bhagaban Ramanuj Das* v. *Mohunt Roghunundur Ramanuj Das* (L.R. 22 I.A. 94) Sir Richard Couch delivered a judgment of this Board which substantially agreed with that test. Sir Richard Couch was already deeply committed on the subject, for, so far back as the year 1868, in the case of *Janardhan Pandurang* v. *Gopal* (5 Bombay H.C.R. (A.C.J.) 145), he had expressed himself in nearly similar terms.

The result is that their Lordships will humbly advise His Majesty that this appeal be disallowed with costs.

In the Privy Council.

KAMABAI

v.

HARNABAI AND ANOTHER.

DELIVERED BY LORD SHAW.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1924.