

**Narayan Jivaji Patil in substitution for Shankar Dyamangouda
Patil, deceased** - - - - - *Appellant*

v.

**Gurunath Khandappagouda Patil, deceased, by his Heirs,
Puttabai Kom Gurunathgouda Patil and Others** - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 15TH NOVEMBER, 1949**

Present at the Hearing:

LORD MACDERMOTT

LORD REID

SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

This is an appeal from a judgment and decree of the High Court of Judicature at Bombay, dated the 17th January, 1938, which affirmed a judgment and decree, dated the 23rd December, 1936, of the Court of the First Class Subordinate Judge of Dharwar.

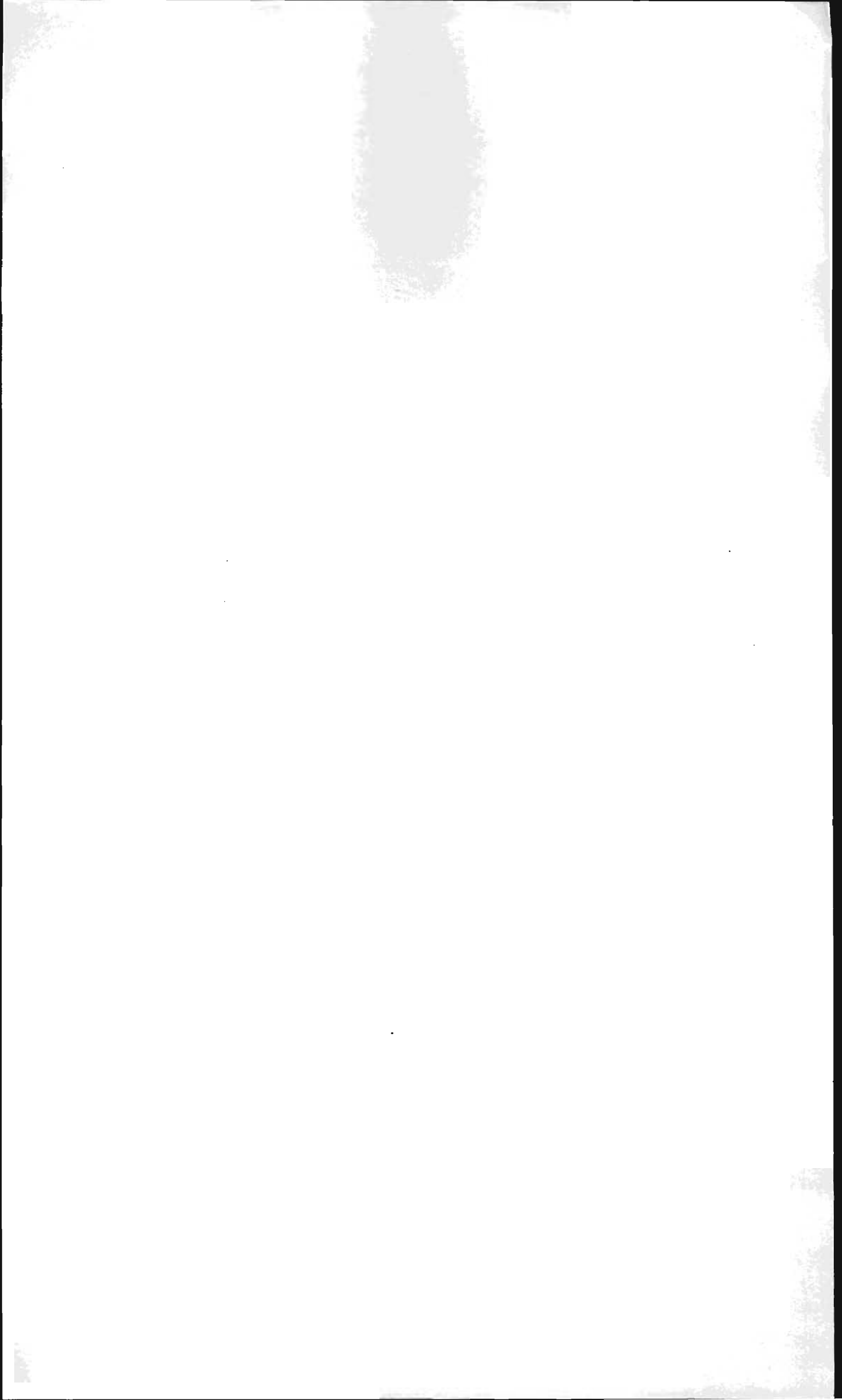
The question for determination is one of limitation and their Lordships think is governed by a decision of the Board in a kindred case. The facts can be stated very shortly. There were three brothers, Nilkanth, Khandappa and Jivan, who were members of a joint Hindu family governed by the Mayuka school of Hindu law. Khandappa separated, but Nilkanth and Jivan continued joint. Nilkanth died in 1915 leaving an adopted son who married Tungava. The adopted son died in 1919, and Tungava adopted Dattatraya, who died on the 6th February, 1920. Jivan died in 1915, and his widow in 1919 adopted Narayan, who attained his majority in March, 1920. The adoption of Narayan, as the law was then understood in Bombay, was invalid, since the adoptive mother had not obtained the consent of the coparceners. On the death of Dattatraya, Gurunath, who was the son of Khandappa, entered into possession of the coparcenary property, which was mostly watan, ignoring the adoption of Narayan. The date on which he took possession was the 24th February, 1920. Later in the year 1920 Gurunath filed suit No. 588 of 1920 in the Court of the First Class Subordinate Judge of Dharwar in which he challenged Narayan's adoption. This case was ultimately carried to the Privy Council where on the 4th November, 1932, it was held, reversing the decisions of the courts in India, that the adoption of Narayan was valid.

On the 25th November, 1932, Narayan filed a suit No. 115 of 1932 in the court of the First Class Subordinate Judge of Dharwar claiming possession of the coparcenary property from Gurunath. The First Class Subordinate Judge held that Narayan's claim was barred by limitation, and his decision was upheld by the High Court of Bombay. An appeal was lodged in the Privy Council.

Meanwhile Tungava adopted the appellant Shankar on the 9th December, 1932, and on the 16th June, 1934, Shankar filed the suit out of which this appeal arises in the court of the First Class Subordinate Judge of Dharwar against Gurunath and Tungava, Narayan and his adoptive mother being subsequently added as defendants. The learned Subordinate Judge held that Shankar's claim was barred by limitation, and in appeal the High Court at Bombay upheld this decision, following their own previous decision in Narayan's case. Since the decision in the High Court in this case the decision of that court in Narayan's case has been upheld by the Privy Council, and in their Lordships' opinion that decision governs the present case. On his adoption Narayan became a coparcener jointly with Dattatraya, and on the death of Dattatraya in February, 1920, Narayan became the sole coparcener, and was in a position to recover the property from Gurunath whose possession was wrongful. The fact that the other members of the family did not recognise Narayan's adoption is irrelevant. The Privy Council having held that Gurunath's possession for more than twelve years was adverse to Narayan, it is plain that his title is good against the coparcenary property, and the adoption of Shankar after the rights of the coparcenary had become barred by limitation can give him no right at all.

Their Lordships have nothing to add to the reasons given in the judgment of the High Court. The decision is strengthened by the subsequent approval by the Privy Council of the previous decision of such court in Narayan's case.

Their Lordships will therefore humbly advise His Majesty that this appeal be dismissed with costs.



In the Privy Council

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FOR SHANKAR DYAMANGOUDA PATIL,
DECEASED

v.

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DECEASED, BY HIS HEIRS, PUTTABAI KOM
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[DELIVERED BY SIR JOHN BEAUMONT]

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