

Bombay High Court

Bai Machhbai vs Bai Hirbai on 1 February, 1911

Equivalent citations: (1911) 13 BOMLR 251

Author: N Chandavarkar

Bench: N Chandavarkar, Kt., Heaton

JUDGMENT N.G. Chandavarkar, J.

1. We agree with the District Judge in the view which he has taken both of the question of jurisdiction and of adoption. The materials both in the Court of first instance and in the appeal Court are not such as to warrant our interference with the conclusion arrived at by the District Judge on the question of jurisdiction. The case on that question resembles Sangappa v. Shivbasava (1889) P.J. 98 and Bai Rewa v. Keshavram Dulduram (1895) P.J. 228.

2. On the question of adoption the burden of proof lay in the first instance upon the appellant. His case is that the Girasias when they became Mahomedans carried with them the law of inheritance and succession, and that, as part of that law, they also retained the Hindu Law and custom of adoption. But adoption is not necessarily inheritance or succession although it leads to inheritance or succession. The Mahomedan Law does not recognize adoption. The presumption is that, as a necessary consequence of conversion to Mahomedanism, the law of adoption recognized by Hindu Law and usage had been abandoned by the Girasias. Therefore those who allege that the usage and law in question had been retained must prove it. The decree must be confirmed with costs.