

(1905) 12 BOM CK 0006
In the Bombay High Court
Case No : Second Appeal No. 344 of 1905

Narayan Bhagwant

APPELLANT

Vs

Shriniwas Trimbak

RESPONDENT

Date of Decision : 14-12-1905

Acts Referred:

Evidence Act, 1872 — Section 108

Citation : (1906) 8 BOMLR 226

Hon'ble Judges : Lawrence Jenkins, J;Batty, J

Bench : Division Bench

Judgement

Lawrence Jenkins, K.C.I.E., C.J.—This is a suit brought to recover two years' arrears of income, and the defence is that the plaintiff is not entitled to that income.

2. The plaintiff bases his right on an adoption by Rangoobai in 1903. Rangoobai was married to Trimbuk. Trimbuk had a brother Appa with whom he was joint. Appa died on the 12th of January 1880. Trimbuk disappeared in 1868.

3. It is therefore necessary to determine whether Trimbak predeceased Appa. For, if so, then, according to the defendants' contention, the adoption will be invalid.

4. The lower appellate Court has held that it is not proved that Trimbak did predecease Appa.

5. Exception is taken to that finding ; it is contended that it is in contravention of the provision of Section 108 of the Evidence Act, and in disregard of the evidence in the case.

6. We are clearly of opinion that it cannot be said that the Judge has disregarded any evidence. We therefore have merely to consider whether the Judge was bound, as a matter of law, by anything contained in Section 108 of the Evidence Act, to hold that Trimbak died before Appa. In our opinion he clearly was under

no such obligation. That section, according to its terms, does not require that the Court should hold the person dead at the expiration of the seven years therein indicated, but merely provides that the burden of proving that he is alive at the time of the suit is shifted to the person who affirms it.

7. Under these circumstances we are of opinion that there has been no error of law committed by the learned Judge of the lower appellate Court, and we must therefore confirm his decree with costs.