

[15] APPELLATE CIVIL.

The 1st April, 1881.

PRESENT :

MR. JUSTICE KINDERSLEY AND MR. JUSTICE MUTTUSAMI AYYAR.

Sriramulu, Minor, by his adoptive Mother and Guardian

Sitamma.....(Plaintiff) Appellant

versus

Ramayya and others.....(Defendants) Respondents.*

Hindu Law—Adoption of son of wife's brother.

The son of a wife's brother may be adopted.

The rule of Hindu Law that a legal marriage must have been possible between the adopter and the mother of the adopted boy refers to their relationship prior to marriage.

The prohibition of the adoption of a half brother has nothing to do with the possibility of a legal marriage between the son and his step-mother in her virgin state.

THE facts and arguments in this case sufficiently appear in the following **Judgments** :—

Mr. *Subramanyam* for Appellant.

The Respondent was not represented.

Muttusami Ayyar, J.—Appellant (plaintiff) sued by his guardian to recover with mesne profits three plots of land on the ground that they belonged to his adoptive father Ramasami and that the 1st defendant, the son of Ramasami's divided brother Venkanna, dispossessed him on the 7th March 1875. The 1st defendant pleaded *inter alia* that the adoption was invalid and that the minor plaintiff was, prior to the alleged adoption, the son of Ramasami's wife's brother. The Subordinate Judge of Cocanada held that such an adoption was contrary to Hindu Law, reversed the decree of the District Munsif and dismissed the suit with costs without considering the other questions raised for decision in the suit. The only question then for decision in this appeal is whether the son of the adopter's wife's brother is not eligible for adoption. I am of opinion that the Subordinate Judge is clearly wrong. A brother-in-law's wife is no doubt in the [16] position of a sister to the adopter, but the rule that declares that a legal marriage must have been possible between the adopter and the mother of the adopted boy refers to their relationship prior to marriage. No man could lawfully marry his brother's or nephew's wife, and yet a brother's son, and in his absence, a grandnephew, are recommended both in Datta Mimamsa and Datta Chandrika as the most proper persons to be adopted. The Sub-Judge observes that if the original relationship were to be regarded, a step-son might have married his step-mother in her virgin state and that a step-brother's adoption should therefore be valid ; but he overlooks the fact that the prohibition of a half-brother's adoption has nothing whatever to do with the possibility of a legal marriage between the son and his step-mother. The restriction on the selection of a person to be adopted by reason of his mother's relationship to the adopter is derived from the texts of Caunaka and Menu cited in Datta Mimamsa, Section V, paragraph, 16, and in Datta Chandrika, Section II, paragraph 8

* Second Appeal, No. 499 of 1880, against the decree of the Subordinate Judge Cocanada reversing the decree of the District Munsif of Tanuku, dated 16th March 1880.

which prescribe that the person selected for adoption should bear the "reflection of a son" (Sadrisa). This phrase is interpreted in those treatises as meaning 'capacity to have sprung from the adopter himself through an appointment to raise up issue on another's wife and so forth,' and the phrase 'so forth' is explained to refer to a legal marriage having been possible between the adopter and the mother of the boy fixed for adoption. Under the ancient law, in the case of an appointment to beget issue on another's wife, it was the woman's relationship as another's wife at the date of the appointment that was considered before it was sanctioned, while the rule of prohibited degrees of relationship in connection with a legal marriage referred to the relationship of the parties prior to marriage. When a brother or a step-brother is about to be adopted, it is the relationship of the mother or step-mother that is looked at, and the adoption is treated as forbidden with reference to the rule of prohibited connection which prevailed before the practice of raising up issue by appointment ceased. The Subordinate Judge is therefore in error in supposing that because the adoption of a step-brother is forbidden, the rule that a legal marriage must have been possible between the adopter and the mother of the adopted boy does not refer to their original relationship. It is true that in Datta Mimamsa, [17] Section II, 33-34, a sister is said not to be competent to adopt her brother's son in the same way in which a brother is incompetent to adopt his sister's son. But this restriction is not to be found in Datta Chandrika, and as observed by Mr. Mayne in his work on Hindu Law, and as repeatedly ruled by this Court, an adoption made by a woman is made for her husband. There is, moreover, no foundation in the text for the rule that the *adopting mother* must be a person who might have legally married the natural father of the adopted boy.

I think, therefore, that the decision of the Subordinate Judge must be reversed and the suit remanded to him for disposal on the merits. The costs of this appeal will be costs in the cause.

Kindersley, J.—I agree with my learned brother in the opinion that in the Hindu Law, as current in this Presidency, there is nothing to prevent a Hindu from adopting a son of his wife's brother if the boy's natural mother was a person whom, as a virgin, the adopter might lawfully have married.

The decision of the Acting Subordinate Judge must be reversed, and the suit remanded for disposal on the merits.

Costs to be costs in the cause.

NOTES.

[ADOPTION—WHO CAN BE ADOPTED—

(1) *The principle, viz., that the boy whose mother the adoptive father could have married, can be adopted, has been recognized in many cases subsequent to 3 Mad. 15 and affirmed by the Privy Council in Bhagwan Singh's case in (1899) 26 I. A. 153. See (1897) 22 Bom. 973; (1897) 20 Mad. 283; (1908) 32 Bom. 619.*

(2) *The converse rule that the father of the boy should be such as could have married the adoptive mother is not recognized:—(1904) 27 All. 417.*

So it was held that a widow can adopt her brother's son or grandson:—(1904) 27 All. 417.

See the complete discussion on the subject in Bhattachari's Hindu Law, 3rd Edition, p. 413 to 418.]