APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.

1889. October 14, 24.

PICHUVAYYAN (DEFENDANT), APPELLANT,

v.

SUBBAYYAN (PLAINTIFF), RESPONDENT.*

Hindu law—Adoption among Brahmans—Ceremony of adoption after marriage of person to be adopted.

Suit for partition of family property. The plaintiff sued as the adopted son of defendant, who had, after performing the usual ceremony of adoption, long treated him as his adopted son. The defendant denied that the plaintiff was his adopted son on the ground (which was established by the evidence) that the plaintiff was married at the date of the ceremony of adoption. The parties were Brahmans and members of the same gotra by birth:

Held (1) the adoption set up was invalid;

(2) the defendant was not estopped by his conduct from denying the validity of the adoption.

SECOND APPEAL against the decree of W. M. Thorburn, Acting District Judge of Trichinopoly, in appeal suit No 240 of 1887, reversing the decree of P. Dorasami Ayyar, Principal District Munsif of Trichinopoly, in original suit No. 11 of 1887.

Suit by the plaintiff as adopted son of defendant for partition of the family property.

The District Munsif dismissed the suit, holding, on the evidence as to the ceremony of adoption, that the adoption set up was not established.

The District Judge found that the ceremony of adoption had been sufficient, regard being had to the fact that the parties were Brahmans, and by birth members of the same gotra; and ruled on the authority of *Dharmadagu* v. *Ramkrishna Chimnaji*(1), *Sadashiv Moreshvar Ghate* v. *Hari Moreshvar Ghate*(2), and *Lakshmappa* v. *Ramava*(3) that the alleged adoption was not invalid by reason of the previous marriage of the plaintiff. He accordingly passed a decree for the plaintiff.

Both Courts found that the defendant had recognised the plaintiff as his adopted son.

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* Second Appeal No. 130 of 1889.

(1) I.L.R., 10 Bom., 80.

(2) 11 Bom. H.C.R., 190.

(3) 12 Bom. H.C.R., 364.

The defendant preferred this appeal.

Sadagopa Chary for appellant.

Krishnasami Ayyar for respondent.

The arguments adduced on this second appeal appear sufficiently for the purpose of this report from the judgment.

JUDGMENT :—The principal question argued in this appeal is whether the plaintiff was validly adopted by his uncle, the defendant. The parties are Brahmans, and, when the adoption took place, the plaintiff was married. The District Judge, on the authority of rulings in the High Court of Bombay, has held that, notwithstanding his marriage, the plaintiff was lawfully adopted by the defendant. We are of opinion that this judgment cannot be supported. Apart from the Bombay cases, which proceed upon texts which have no authority in this Presidency, no text or other authority can be cited to justify an adoption taking place after marriage, notwithstanding that the person taken in adoption may belong to the same *gotra* as the adopter. On the other hand such authority as there is on the subject is against the respondent's contention. In the Dattaka Chandrika, the author, treating of the rites which must be performed in the adopter's family, refers to the rite of marriage as that by which the filial relation can be completed in the case of Sudras. An adoption, therefore, in order to be valid, even among Sudras, must take place before the marriage of the adopted son (Dattaka Chandrika, s. II— § 29–31, p. 643, Stokes' Hindu Law Books). The same writer fixed upanayanam as the rite which completes the filial relationship in the case of Brahmans, and though this rule, with regard to upanayanam has been relaxed in the case of *sagotras*, there is no warrant for the contention that the relaxation should be extended to marriage.

The rule that no one is eligible for adoption after marriage was recognised by the Sadr Adawlut in 1823—*Chetty Colum Prusumna Vencatachella Reddyar* v. *Chetty Colum Moodoo Vencatachella Reddyar*(1) and *Ranee Sevagamy Nachiar* v. *Mooto Vizia Raghoonadha Satooputty*(2)—and in 1830 Sir T. Strange sums up his view of the law by saying " upon these principles it would seem as if there could be no adoption of one who is married, marriage not being capable, like tonsure and investiture, of

(1) Madras Sudder Decisions, 406. (2) *Ib.*, p. 101.

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annulment"—Strange's Hindu Law, Vol. I, p. 79, and see West and Bühler, 1063, &c. In the case of *Vythilinga* v. *Vijayathanumal*(1) the parties were Sudras. The Court referred, with approval, to the decision of the Sadr Court in 1823, and held the adoption made at a time when he was a married man and father of three children invalid. The respondent's vakil relied on the Full Bench decision in *Viraraghava* v. *Ramalinga*(2), in which it was held that among Brahmans, in Southern India, the adoption after upanayanam of a boy of the same *gotra* with the adoptive father was permissible. For this exception, from what is admitted to be the general rule, in favor of the adoption of a *sagotra*, authority was found as well in the books as in the evidence of usage adduced in the case. There is no colour for the argument that this decision abrogated the rule according to which the previous marriage of the child is an obstacle to his adoption. There is, as we have shown, distinct authority for the rule, and the recognition of it is in no way inconsistent with the decision regarding the ceremony of upanayanam. It must be borne in mind that a valid adoption presupposes a gift by the father or mother, and they have no power under Hindu law to give their daughter-in-law or son's wife in adoption. For these reasons we must hold that the adoption of the plaintiff was invalid and of no effect. Failing the validity of the adoption, it was urged on the respondent's behalf that he was nevertheless entitled to a decree, inasmuch as the appellant was estopped from denying the adoption. This point was not raised in the issues settled between the parties, and though it did form one of the grounds of appeal to the District Court, no facts such as are required to support it are found or even alleged. The mere fact that the appellant recognized the respondent as his adopted son is clearly insufficient to raise a case of estoppel, for such recognition may be, and probably was, due to a mistake on the part of the appellant, a mistake in law, which also was probably shared by the respondent. In order to avail himself of the doctrine of estoppel, the respondent would have had to prove that the appellant by a representation which he knew to be unfounded intentionally misled the respondent into a position prejudicial to the interests which he would otherwise have possessed. There is no trace of any evidence to show that there

(1) I.L.R., 6 Mad., 43. (2) I.L.R., 9 Mad., 148.

was any intentional deceit on the appellant's part or that the respondent has by his adoption been deprived of any rights in his natural family—*Vishnu* v. *Krishnan*(1).

We must reverse the decree of the District Judge and restore that of the District Munsif.

The appellant is entitled to his costs in this and in the Lower Appellate Courts.

APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.

QUEEN-EMPRESS

v.

RAMASAMI.*

1889. August 21.

Penal Code, s. 353—*Public servant—District Municipalities Act (Madras Act IV of 1884)*, s. 41.

A Municipal Inspector is a public servant within the meaning of s. 41 of the Madras District Municipalities Act.

CASE reported for the orders of the High Court under section 438 of the Code of Criminal Procedure by G. W. Fawcett, Acting District Magistrate of Trichinopoly.

Kallaya Pillai, the occupier of a certain house in Trichinopoly, was called on by the Municipal Council to remove an obstruction in the public street. He neglected to do so, and was served with a notice under section 264 of the District Municipalities Act (Madras Act IV of 1884) to the effect that if he did not remove the obstruction as required, the municipal council would have it removed and would recover from him the cost of its removal. The notice having been disregarded, the council removed the obstruction and demanded the cost (Rs. 7-0-7) from him. This demand also was unheeded, and the chairman accordingly issued a warrant of distress on him. When the Municipal Inspector came to levy the distress, Ramasami Pillai, the father of Kallaya Pillai, who had

(1) I.L.R., 7 Mad., 3.

* Criminal Revision Case No. 286 of 1889.