PRIVY COUNCIL.

P. C.* 1879 *Dec.* 5, 6, 9, 10, *and* 11.

INDROMONI CHOWDHRANI (PLAINTIFF) *v.* BEHARILAL MULLICK, FOR HIMSELF AND AS GUARDIAN OF HARAN KRISHNA MULLICK, A MINOR (DEFENDANT).

[On Appeal from the High Court of Judicature at Fort William in Bengal.]

Hindu Law—Sudras in Bengal—Adoption.

Among persons of the Sudra caste in Bengal, no ceremonies in adoption, besides the giving and taking a child, are necessary.

Query—Whether, where the ceremonies of an adoption are not performed at the proper time, the omission can be subsequently supplied?

APPEAL from a decree of a Full Bench of the High Court of Bengal (23rd February 1874) reversing a decree of the District Judge of Murshidabad (1st February 1872).

The facts of the case, and the judgment of the Full Bench appealed from, are reported in 13 B. L. R., 401 *et seqq.*

On this appeal the same question that had been decided by the Full Bench, was raised and argued.

The respondent did not appear.

Mr. *T. H. Cowie*, Q. C., and Mr. *Doyne*, for the appellant, cited the following authorities in order to show that some ceremonies were necessary in adoption among Sudras in Bengal. It was suggested that from the authorities the necessity of the *datta-homam* was to be inferred; to be made, possibly, through an officiating Brahmin. It was contended that the text of Menu, relating to the effect of the absence of ceremonies,—cited in the Dattáka Mimansa, Sec. V, v. 45, and the explanation given in v. 46,—included Sudras. They cited Sutherlands' Synopsis, appended to his translation of the Dattaka Mimansa and Dattaka Chandrika, edition of 1825, page 228; Dattaka Mimansa, Sec. V, v. 56, and Sec. IV, vv. 50 and 51.

Reference was also made to Colebrooke's Digest, Bk. V, Chap. V, s. 15; Strange's Hindu Law, Chap. IV; Mac-

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naghten's Hindu Law, Chap. VI; Vyavashta Darpana of Shama Churn Sircar, vyavashta 567, page 871 of second edition; and to *Kerutnaraen* v. *Mussamut Bhobinesree* (1), *Dyamoye Chowdrain* v. *Rashbehari Singh* (2), *Perhaschunder Roy* v. *Dhunmonee Dasi* (3), *Bhairab Nath Sye* v. *Maheschandra Bhadury* (4), *Sayamalal Dut* v. *Saudamani Dasi* (5), *Sabo Bewa* v. *Nahaghan Maiti* (6), *Nitianand Ghose* v. *Krishna Doyal Ghose* (7), *V. Singamma* v. *Vinjamuri Venhatacharlu* (8), *Sootrugun Sutputty* v. *Sabitra Dye* (9).

The judgment of their Lordships was delivered by

SIR J. W. COLVILE. — This suit was brought by the plaintiff, the widow of one Gopal Lall Mullick, to recover possession of property which formerly belonged to his nephew, Gocool Chunder, who died in November 1841. Her case is, that, upon Goocol Chunder's death, the property claimed descended to his widow Brojosoondari, by whom it was enjoyed during her life; that, on her death on the 3rd April 1868, it devolved on Gopal Lall Mullick as the nearest collateral heir of Gocool; and that Gopal Lall Mullick, who died on the 7th October 1868, devised (for it is under a testamentary gift that she claims) all his interest in it to her. She treated Behari Lal as the principal defendant, and alleged that he was fraudulently holding the property under the false pretence that Brojosoondari had adopted his brother Haran Krishna, and that he is the guardian of her adopted son. The defendants insisted upon the adoption as valid, and the question was thus reduced to one of title between the plaintiff and Haran Krishna. In this state of things the principal questions which arise on the record are, whether the will upon which the title of the plaintiff depends was executed by her husband; and if so, whether her title was defeated by a valid adoption. This question of adoption of course involves the two issues, whether

(1) 1 Sel. Rep., 161; New Ed., 213.
(2) S. D. A. Dec., 1852, p. 1001.
(3) S. D. A. Dec., 1853, p. 96.
(4) 4 B. L. R., A. C., 162.
(5) 5 B. L. R., 366.
(6) 2 B. L. R., Ap., 51; S. C., 11 W. R., 380.
(7) 7 B. R. L., 1; S. C., 15 W. R., 300.
(8) 4 Mad. H. C. Rep., 165.
(9) 2 Knapp P. C. Cas., 287.

1879

INDROMONI CHOWDHRANI v. BEHARILAL MULLICK.

Brojosoondari had authority to adopt, and whether she had in fact exercised that authority by adopting Haran Krishna. To these issues of fact has been superadded one of law, namely, whether, supposing the adoption to have been made in fact but without certain ceremonies, those ceremonies were so essential to such an adoption that the omission to perform them invalidated that which would otherwise have been a good adoption. The lower Court found in favour of the plaintiff that the will had been executed: it found also that the authority to adopt, which it was said Brojosoondari had exercised, had been given to her by her husband; but it also found that no adoption in fact by her in exercise of that power had been established, and that if it had been established, it would have been invalid for want of the necessary ceremonies. The High Court abstained from dealing with the issue as to the will, obviously because, if the adoption were a good adoption, it would prevent any interest in the property from passing to Gopal Lall Mullick; and he therefore could have had none to dispose of in favour of the plaintiff. And taking up in the first instance the issues as to the adoption, it found that the widow had authority to adopt; that she had duly exercised that authority; and having first referred to a Full Bench the question whether ceremonies were necessary and essential to an adoption in the case of Sudras, and having received from that body a certificate that they were not essential, it adopted that finding, and so disposed of the question of law. The result was a decree dismissing the plaintiff's suit; and the present appeal is against that decree.

(The judgment, after referring to certain facts of the case, which are immaterial for the purposes of the present report, proceeded as follows:—)

The story of the adoption, as told by the defendant's witnesses, is as follows:—Brojosoondari, who had previously adopted one Romesh Chowdhry, and after his death had taken some steps to procure in adoption a son of one Mozoomdar, an adoption which it is clear on the evidence was never perfected, determined to adopt Haran Krishna, the second son of Anund Mohun Mullick, being a person answering to the description in the solenamah of the child to be taken in adoption. The

child was formally given and received in adoption at Brojosoondari's house at Neemteeta in Zilla Murshedabad on the 20th of December 1867, corresponding with the 6th of Pous, B. 1274; but no religious ceremonies were performed on that occasion. A few days afterwards she went to a place called Ashtamoonissa in Zilla Pubna, which was the home of her father, and took up her abode with Gourang Chunder Roy, her nephew or cousin, taking with her Haran Krishna, the adopted son. Three months afterwards, in the month of Cheyt, she caused the *putreshti jag* ceremonies, including the *datta-homam*, or burnt sacrifice, to be celebrated under her auspices in the house of this Gourang Chunder Roy; and on that occasion executed a wasiutnamah in favour of Behari Lall, authorising him to act as guardian of, and manager of the estate for, the adopted son during his minority. On the following day, the 31st March 1868, she further recognized the adoption by executing a perwannah to the ryots, declaring that she had adopted this child, and that they were to pay their rent to Behari Lall on his account. She died at Ashtamoonissa a few days afterwards, on the 3rd April 1868, and at her obsequies, which took place there, Haran Krishna took the part which it is usual and proper for a son of the deceased to take.

(The judgment, after dealing with the evidence as to the fact of the adoption, and finding that fact to be proved, concluded as follows:—)

The next question to be considered is the correctness of the finding of the High Court to the effect that amongst Sudras in Bengal no ceremonies are necessary in addition to the giving and taking the child in adoption. The strongest argument against this proposition is, of course, founded on the 56th sloka of the 5th section of the Dattaka Mimansa, which says: "It is therefore established that the filial relation of adopted "sons is occasioned only by the proper ceremonies, of gift, "acceptance, and burnt sacrifice, and so forth; should either "be wanting, the filial relation even fails." It is admitted that whatever may be the force of the words "so forth" in the case of Brahmins, or members of the other superior classes, the only religious ceremony that is essential to an adoption by a Sudra

1879

INDROMONI CHOWDHRANI v. BIHARILAL MULLICK.

is the *datta-homam*, or burnt sacrifice, which it is said he, though as incompetent to perform that for himself as he is to repeat the prescribed texts of the Vedas, may perform by the intervention of a Brahmin priest. The authorities, however, which have been with great candour fully cited by Mr. Cowie, show that it has long been questioned whether even the performance of the *datta-homam* was essential to a valid adoption, at all events in the case of Sudras. Jagganatha lays down (3 Digest, 244) this broad proposition: "The oblation to fire "with holy words from the Veda is an unessential part of the "ceremony; even though it be defective, the adoption is never-"theless valid," and in arguing in support of this proposition he seems to make no distinction between Sudras and the superior castes. In the case before the Privy Council, 2 Knapp, 287 (which it appears was a case between Brahmins), Lord Wynford says in his judgment: "But although neither "written acknowledgments, nor the performance of any religious "ceremonial, are essential to the validity of adoptions, such "acknowledgments are usually given, and such ceremonies "observed, and notice given of the times when adoptions are "to take place in all families of distinction, as those of zemin-"dars or opulent Brahmins; that wherever these have been "omitted, it behoves the Court to regard with extreme suspicion "the proof offered in support of an adoption." This statement of the law is perhaps of more value than it would otherwise have been, when it is considered that the case was argued on one side by Mr. Sergeant Spankie, who had great experience in India, and probably was better acquainted than English Counsel at that period generally were with questions of Hindu usage and law. It cannot, however, be considered as more than a dictum, since the decision was against the adoption as a fact. It was, nevertheless, in accordance with the law as then laid down by Sir Thomas Strange at pages 83 and 84 of the 1st Vol. of his Treatise, 1st edit., and the authorities cited by him. Then it has been more recently decided in the Madras High Court (1) that even in the case of an adoption by a Brahmini woman the ceremony is not necessary. Their Lordships intend

(1) 4 Mad. H. C. Rep., 165.

to follow the example of the High Court in this case in not considering to what extent the Madras decision is correct and how far the ceremonies may be omitted in the case of adoption by a Brahmini woman. They may, however, observe that the reasoning of the Madras Court applies even *à fortiori* to Sudras. The other Indian decisions which have been cited, and particularly those of the late Sudder Dewany Adalut, clearly show that the present question has long been treated as an open and vexed one by Pundits as well as Judges. It was so treated in a case before their Lordships in 1872, *Srinarayan Mitter* v. *Krishna Sundari Dasi* (1), but was not then decided, the suit being dismissed upon another ground. Lastly, the Full Bench in this case appears to have satisfied itself that the passage in the Dattaka Nirnaya, upon which Pundit Shama Churn Sircar in his Vyavastha Darpana relies as an answer to those who deny that the performance of the *datta-homam* is essential to an adoption by a Sudra, is in fact an authority the other way.

Upon the whole, then, their Lordships have come to the conclusion that the weight of authority is in favour of the finding of the Full Bench of the High Court.

They would have been sorry to come to a different conclusion, because although it may be true that the use of the ceremony in question on the occasion of an adoption is so general amongst Sudras that the absence of it may fairly, as Lord Wynford observed, cast suspicion upon a doubtful case of adoption, yet to hold that where the giving and taking of a child in adoption are established, the omission of the ceremony invalidates that adoption, would mischievously, as they conceive, strengthen the meshes of the purely ceremonial law, and tend to encourage suits to impeach *bonâ fide* adoptions. Their Lordships, agreeing with and adopting the finding of the Full Bench of the High Court, do not think it necessary to consider what would be the effect of the subsequent ceremonies performed at Ashtamoonissa as a remedy of any defect which up to that time may have existed in the adoption. They only observe that they have not been referred to any distinct authority that the defect may not be so supplied, particularly in cases where, as

(1) 11 B. L. R., 171.

1879

INDROMONI CHOWDHRANI v. BEHARILAL MULLICK.

here, according to the evidence, it was from the first announced that the ceremonies usually incident to an adoption would take place at a subsequent time.

The title of the defendant being established, their Lordships need not consider whether the will, which is an essential link in that of the plaintiff, has been proved, and they will humbly advise Her Majesty to affirm the decree of the High Court, and to dismiss this appeal. There will of course be no order for costs, the case having been heard *ex parte*.

Appeal dismissed.

Solicitors for the appellant: Messrs. *Watkins* and *Lattey*.

MONIRAM KOLITA (PLAINTIFF) *v.* KERI KOLITANI (DEFENDANT).

P. C.* 1879 *Nov.* 28, 29; 1880 *Mar.* 13.

[On Appeal from the High Court of Judicature at Fort William in Bengal.]

Hindu Law—Widow's Estate—Effect of Widow's Unchastity in regard to Estate vested in her.

A widow, who succeeds to the estate of her husband in default of male issue, whether she takes by inheritance or by survivorship, does not take a mere life-estate. The whole estate is, for the time, vested in her; though in some respects for only a qualified interest. She holds an estate of inheritance to herself and the heirs of her husband; and upon the termination of that estate, the property descends to those who would have been the heirs of the husband if he had lived up to and died at the moment of her death.

It has not been established that the estate of a widow forms an exception to the general rule, that the estate of a Hindu once vested by succession, or inheritance, is not divested by any act or incapacity which before succession would have formed a ground for exclusion from inheritance.

The general rule is stated in the Viramitrodaya, Chap. viii, "On exclusion from inheritance," paras. 3, 4, and 5. This work, like the Mitakshara, may be referred to in Bengal in cases in regard to which the Dayabhaga is silent. A widow, who, not having been degraded or deprived of caste, had inherited the estate of her deceased husband, *held* not liable to forfeit that estate by reason of subsequent acts of unchastity.

Query as to the effect of her being degraded or deprived of caste for unchastity?

APPEAL by special leave (13th May 1875) from a decree of a Divisional Bench (2nd June 1873), passed in accordance

* *Present:*—SIR J. W. COLVILE, SIR B. PEACOCK, SIR M. E. SMITH, and SIR R. P. COLLIER.