APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

1888. July 20. 1889. January 21. March 4.

MUTTUKANNU (PLAINTIFF No. 2), APPELLANT,

v.

PARAMASAMI AND OTHERS (DEFENDANTS), RESPONDENTS.*

Hindu law—Dancing girl caste—Adoption—Plurality of adoptions—Immoral or illegal purpose of adoption.

As a matter of private law, the class of dancing women being recognised by Hindu law as a separate class having a legal status, the usage of that class in the absence of positive legislation to the contrary regulates rights of status and of inheritance, adoption and survivorship.

A dancing woman adopted two daughters, of whom the latter was adopted in the year 1854. It was found that the custom obtaining among dancing women in Southern India permits plurality of adoptions:

Held in second appeal, that the daughter subsequently adopted succeeded to the adoptive mother in preference to the son of the daughter previously adopted.

SECOND APPEAL against the decree of C. Venkobacharyar, Subordinate Judge of Madura (West), in appeal suit No. 439 of 1886 reversing the decree of V. Kuppusami Ayyar, Additional District Munsif of Madura, in original suit No. 531 of 1885.

A dancing woman named Minal hypothecated her house to defendant No. 1, who, having sued and obtained a decree on the hypothecation deed, brought the house to sale in execution, and became the purchaser. He subsequently sold one moiety of the house under exhibit A to Minal herself and the other moiety under exhibit IV to defendant No. 2, who was the son of a deceased daughter by adoption of Minal. Exhibits A and IV were executed on the same day.

This suit was brought by Minal against the three defendants (of whom the third was asserted to have joined with the second in obstructing Minal in the exercise of her rights) to establish, *inter alia*, her right to have access to the room set apart for the worship of the family idol in the moiety of the house which was in the possession of defendant No. 2, and to obtain a decree directing defendants Nos. 2 and 3 not to interfere with such right, and to

* Second Appeal No. 838 of 1887.

remove the obstruction caused by them to its exercise. Defendant No. 1 was *ex parte*.

During the progress of the suit Minal died, and both defendant No. 2 and one Muttukannu claimed to be her legal representatives, the former by reason of the relationship referred to above, and the latter as being herself an adoptive daughter of the deceased plaintiff. Both the District Munsif and the Subordinate Judge held that Muttukannu's claim to represent Minal was superior to that of defendant No. 2, but they differed on the construction of the sale deeds exhibits A and IV. The District Munsif considered these documents reserved to Minal the right claimed by her and provided for her having access to the room set apart for worship: and he was also of opinion that on Minal's death the right devolved on her legal representative. On appeal, however, the Subordinate Judge decided that the right of worship and of access to the room in question was personal to Minal and dismissed the suit.

This second appeal was preferred by Muttukannu, for whom it was contended that the Subordinate Judge has misconstrued exhibits A and IV. On the other hand it was *inter alia* argued for defendant No. 2 that the appellant was not the legal representative of the deceased Minal.

Parthasaradhi Ayyangar and *Rama Rau* for appellant.

Subramanya Ayyar and *Bhashyam Ayyangar* for respondents.

The High Court (Muttusami Ayyar and Parker, JJ.), held that on the true construction of exhibits A and IV, the right claimed was heritable; but as to the objection to the admission of the appellant on to the record, the Court remitted the three following issues for trial:—

(1) Was it the appellant or the second defendant's mother that was first adopted by Minal?

(2) If the latter was first adopted, was the appellant adopted during the life-time of the second respondent's mother or after her death?

(3) If the former, when was the adoption made, and whether it was warranted by the custom of the caste, and whether such custom, if true, is valid?

Upon these issues the Subordinate Judge recorded findings to the effect that the mother of defendant No. 2 was first adopted, and that during her life-time the appellant was adopted in 1854;

MUTTUKANNU v. PARAMASAMI.

and that the appellant's adoption was warranted by the custom of the caste. He also recorded a finding that this custom was valid observing :—

"The word 'dasi' in its ordinary and accepted signification means a dancing girl in a pagoda. The Tamil expression means 'the slave of devas (gods).' The dancing girls are admitted as dasis after a certain ceremony in the temple called the tying of bottu or thali. This has been put a stop to since the passing of the Indian Penal Code. Defendant's vakil contends that those who are not so admitted cannot be dancing girls in the real sense of the term 'dasi.' In the circumstances of this case, I thought the question who are or who are not strictly dasis was not relevant. Plaintiff is a dasi admittedly and therefore the only point for consideration is whether the custom of plurality of adoptions is legal and valid in the class of dancing girls. Considering that the primary object of such adoptions is the gaining of wealth, naturally enough, plurality of adoptions came into vogue among the class, and indeed it seems to have found great favor and came to be recognized as a usage. This usage having been accepted by the community of dancing girls, and acted upon, and it not being repugnant to the feelings of the class, but one bringing wealth, it became a valid custom. The instances shown in the evidence and the consciousness of the class seem to prove clearly the existence of the custom and its validity. The documents D and E also support this conclusion. The custom, according to the evidence in the case seems to have been an ancient and uniform one. It has all the essentials to make it valid. I therefore find the third issue in the affirmative."

On the return of these findings the case came on for re-hearing before Muttusami Ayyar and Parker, JJ., from whose judgment the arguments adduced on either side appear sufficiently for the purpose of this report.

JUDGMENT.—This second appeal comes on for disposal upon findings on issues remitted for trial. The first plaintiff, it has been found, adopted the second defendant's mother, and during her life-time adopted again the second plaintiff. It has also been found that the custom obtaining among dancing girls in Southern India permits plurality of adoptions. The question arising for decision is whether the custom ought to be recognized as having the force of law in the class in which it obtains. We are referred

to no decided case in which a second adoption was recognized among dancing girls, though it was made during the life-time of the first adopted daughter. There is also no foundation for it in the analogies of the ordinary Hindu law of adoption. According to it, it is only a son that can be adopted, and he can only be adopted when there is no aurasa or adopted son or such son's son or grandson alive. Though the question now raised was also raised in *Venku* v. *Mahalinga*(1), yet it was not there necessary to decide it as it was a case from South Canara where the custom was not shown to prevail. The first adoption was however considered to be valid, but the ground of decision was that the adoption was made primarily for the purpose of securing an heir competent to offer funeral oblations, and that if the adopted child after attaining her age followed the profession of her prostitute mother, the prostitution which she practised was rather an incident than the object of the adoption. The evidence in the case before us shows however that when several adoptions are made during the life-time of the first daughter, they are made presumably for the purpose of adding to the gains of the adoptive mother by employing them when they attain their age for purposes of prostitution. We see no reason to doubt that such adoptions are made for an immoral purpose and that their recognition would in one sense be contrary to good morals. It is then urged for the appellant that Hindu law recognizes dancing girls as forming a separate class, that though prostitution is their ordinary profession in life, their civil rights ought to be respected, that in adjudicating upon them, the profession which they follow must be excluded from consideration, and that questions of status and of successions to property must be determined according to the custom of the caste, even if the persons claiming such adjudication are prostitutes, and the property in regard to which rights are asserted is derived from an immoral source. It is further argued that when only one adoption is made, the adopted daughter ordinarily follows the profession of her adoptive mother, and if its immoral character is ignored in regard to the first adoption, there is no reason for insisting upon it in the case of other adoptions. It is then contended that the class being recognized by Hindu law, its usage must be upheld subject to the rule that when it is necessary to prove the immoral practice

(1) I.L.R., 11 Mad., 393.

MUTTUKANNU v. PARAMASAMI.

as part of the transaction sought to be enforced for the purpose of establishing the claim founded upon it, as in a suit for the wages of prostitution, the claim is invalid. The decisions cited in *Venku* v. *Mahalinga*(1) are relied on in support of this contention. In *Chalakonda Alasani* v. *Chalakonda Ratnachalam*(2) it was held that a dancing girl and her adopted daughter constituted together a joint Hindu family, and that the rule of Hindu law applicable to ordinary gains of science was applicable to them. The Court adjudicated upon the claim though the gains were derived from an immoral source. Again, in *Kamakshi* v. *Nagarathnam*(3) it was held that the right of survivorship among male co-parceners of an ordinary Hindu family was applicable to a dancing girl and her sister's adopted daughter. The Court observed in that case "our view of the law is that in absence of a further positive rule, daughters must be regarded as sons and take estates of inheritance from their mother similarly to sons under the general law of inheritance." Though the right of survivorship recognized in that case was one known to ordinary Hindu law, yet the usage of the caste was upheld so far as it related to the adoption of daughters and gave them the status of male co-parceners in an ordinary Hindu family though such daughters ordinarily practised prostitution, and co-parcenery among them might be regarded as an association for an immoral purpose. Further, in *Mayna Bai* v. *Uttaram*(4) the Court held that though the rival claimants were the issue of an adulterous intercourse, their rights of inheritance and their rights *inter se* must be determined with reference to some local custom or usage or the analogies of Hindu law. We consider therefore that as a matter of private law it must be taken, the class of dancing women being recognized by Hindu law as a separate class having a legal status, that the usage of that class in the absence of positive legislation to the contrary regulates rights of status and of inheritance, adoption and survivorship. Although a rule of public law may supersede that of private law, yet it was pointed out in *Venku* v. *Mahalinga*(5) that the Indian Penal Code prohibited only the employment of *minors* for purposes of prostitution and any disposition which might have such employment for its object. In the case before us, the appellant

(1) I.L.R., 11 Mad., 393. (2) 2 M.H.C.R., 56. (3) 5 M.H.C.R., 161.
(4) 2 M.H.C.R., 196. (5) I.L.R., 1 Mad., 396.

was adopted in 1854 in accordance with the custom of the caste, and before the Indian Penal Code came into operation, she had acquired the status of an adopted daughter. We are therefore of opinon that the adoption is valid as being in accordance with the custom of the caste which is recognized as a section of Hindus by Hindu law, and as contravening no rule of public law in force at the time. We set aside the decree of the Subordinate Judge and restore that of the District Munsif. Under all circumstances we direct that each party do bear her or their own costs in this and in the lower appellate Court.

APPELLATE CIVIL.

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

CHAPPAN NAYAR (DEFENDANT No. 3), APPELLANT,

v.

ASSEN KUTTI (PLAINTIFF), RESPONDENT.*

1889. Jan. 11. Feb. 8.

Malabar law—Powers of karnavan—Delegation of powers of karnavan to his son, ultra vires.

The karnavan of a Malabar tarwad having been sentenced to a term of imprisonment delegated to his son all his powers as karnavan pending the expiry of his sentence:

Held, that the delegation was *ultra vires* and void.

SECOND APPEAL against the decree of A. F. Cox, Acting District Judge of North Malabar, in appeal suit No. 139 of 1887, modifying the decree of A. Annasami Ayyar, District Munsif of Pynad, in original suit No. 205 of 1886.

Suit to eject defendants Nos. 2 and 3 from certain land. Defendant No. 1, who was karnavan of the tarwad, of which defendants Nos. 2 and 3 were members, having been sentenced to three years' imprisonment, executed a document in favor of his son, defendant No. 4, delegating to him all his powers as karnavan. Defendant No. 4 purporting to act under this document (exhibit B, of which the terms are given in the judgment of the High Court) demised the land in question to the plaintiff

---

*Second Appeal No. 845 of 1888.