for support of the family or relief from distress, which are specified in the Mitakshara (ch. I, s. I., s. 27) as gifts which a father has power to make. I am not prepared to say that the gift of Rs. 600 for a silver Vrishabhavahanam was a gift for a religious purpose. It is evident from the form of the plaint and from exhibit B that the Rs. 600 had been received by the testator in the year Yuva on a promise to repay it in four months' time, and that the bequest was, in truth, made with the intention of repaying a barred debt.

The decrees of the Lower Courts must be reversed and the plaintiff's suit dismissed with costs throughout.

MUTTUSAMI AYYAR, J.—I am also of the same opinion. The averment in the plaint that the money sought to be recovered was a debt due by defendant's adoptive father has since been abandoned. The claim that it was a legacy to the temple is untenable. For the reasons and on the authorities mentioned by my learned colleague, the defendant's father had no testamentary power over family property common to himself and his adopted son for any purpose. The contention that the legacy can be treated as an executory gift made for religious uses is not tenable, inasmuch as the defendant's father had no testamentary power at all either to give legacies or make gifts out of joint property.

APPELLATE CIVIL.

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

ABBU (PLAINTIFF), APPELLANT,

v.

KUPPAMMAL (DEFENDANT), RESPONDENT.*

1892. Dec. 15, 21.

Hindu law—Bequest to a boy directed by the testator to be adopted by his widow—Direction for the boy's maintenance—Rights of the legatee—No adoption having been made.

A Hindu made his will whereby he provided that his property should be enjoyed by his widow, who should maintain certain persons, including the plaintiff, whom she was thereby directed to take in adoption, and added: "my aforesaid wife "shall enjoy all my abovementioned properties in every way as long as she may be

* Appeal No. 13 of 1892.

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alive; and after her death the same shall be taken possession of by the aforesaid adopted son." The testator died, not having taken the plaintiff in adoption, and his widow did not adopt him. In a suit by the plaintiff for maintenance and for the declaration of his title under the will:

Held, that all the provisions of the will relating to the plaintiff were intended by the testator to come into effect only in the event the adoption being made, and consequently that the plaintiff had no right to the family property or to maintenance in the family.

APPEAL against the judgment of WILKINSON, J., sitting on the original side of the High Court in civil suit No. 327 of 1890.

Plaintiff sued for a declaration that he was entitled to certain properties in reversion after the death of the defendant, who was the widow of K. Narain Chetti deceased, and for a declaration that certain alienations of property made by her were not binding on him. He also sought a decree for maintenance.

The plaintiff's claim was founded upon a will left by the defendant's husband, of which the material portion was as follows:

"As I think that my death is approaching, therefore all the "immovable and movable properties, consisting of ancestral and "self-acquired jewels, &c., of gold, silver and precious stones, "brass and wooden articles, houses, gardens and lands, &c., which "are my own shall be enjoyed in every way by my wife Kuppam-"mal, otherwise called Theroomalaiammal, herself. Besides, my "aforesaid wife Kuppammal, otherwise called Theroomalaiam-"mal, shall support and maintain these three persons, namely, "my mother Audiammal, my younger aunt Tulasiammal and "my younger sister Choodiammal's son Abbu Chetty, who is "about 14 years old, so that they may not be in want of any "thing. Besides with regard to taking in adoption the child "named Abbu Chetty, my above-named younger sister's son, "whom I have been bringing up, his father is not in this place at "present, therefore my aforesaid wife shall, after his return, keep "him by and take the aforesaid boy in adoption. Besides, my "aforesaid wife shall enjoy all my above-mentioned properties in "every way as long as she may be alive, and after her death the "same shall be taken possession of by the aforesaid adopted son "Abbu Chetty, with regard to the business of broker in pearls "and corals, which has been carried on in my family from gener-"ation to generation and which has been carried on by me also, "a person in whom my wife may have confidence shall, until the

" aforesaid child attains proper age, be with the aforesaid child " and conduct the aforesaid business in a respectable manner."

It appeared that the plaintiff, Abbu Chetti, had not been taken in adoption either by the testator or by the widow.

Balajee Rau for plaintiff.

Ananda Charlu for respondent.

WILKINSON, J.—The question in this case is as to the correct interpretation of a will. The plaintiff's case is that under the terms of the will he is entitled to maintenance and to succeed to the property of the deceased on the death of the widow, and is therefore, as presumptive heir, entitled to question the alienations made by the widow. On behalf of the defendant it is contended that the plaintiff has no *locus standi*, that his adoption is made a condition precedent to his title as heir, and that as he has not been adopted, he cannot question the alienations made by the defendant.

The plaintiff relies upon *Jhivan Bhai* v. *Jivu Bhai*(1) in which it was held that if the language of the testator sufficiently indicates the person who is to be the object of his bounty, the person so indicated will not be prevented from taking, because the testator conceived him to possess a character which in point of law cannot be sustained. But that case has been virtually overruled by a decision of the Privy Council in the case of *Fanindra Deb Raikat* v. *Rajeswar Das*(2). Their Lordships say: " We feel no " difficulty about Rajeswar being sufficiently designated as the " object of the gift. They think that the question is whether the " mention of him as an adopted son is merely descriptive of the " person to take under the gift, or whether the assumed fact of his " adoption is not the reason and motive of the gift, and indeed a " condition of it." After distinguishing the case of *Nidhoomoni Debya* v. *Saroda Pershad Mookerjee*(3), their Lordships say: " Their Lordships are of opinion that it was Jogendra's intention " to give his property to Rajeswar as his adopted son, capable of " inheriting by virtue of the adoption, and the rule that it is not " essential to the validity of a devise or bequest that all the par- " ticulars of the subject or object of the gift should be accurate, " is not applicable."

(1) 2 M.H.C.R., 462. (2) I.L.R., 11 Cal., 463. (3) L.R., 3 I.A., 253.

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I think these remarks are pertinent in the present case. The testator by his will devised all his property, movable and immovable, to his wife to be "enjoyed by her in every way." He then directed her to support and maintain Appu Chetty (the plaintiff) and two others, and went on to intimate that he wished her to take Appu Chetty in adoption, and after specifying that his wife "shall enjoy all my properties in every way as long as she "may be alive," directed that after her death it should "be taken "possession of by the aforesaid adopted son Appu Chetty." The intention of the testator clearly was that Appu Chetty should, if adopted, succeed to the property. He did not know at the time he made the will whether Appu Chetty's father, who was then absent, would consent to give his son in adoption, and he evidently did not intend that Appu Chetty should inherit all his property if not adopted. The *persona designata* is not Appu Chetty, but "the adopted son Appu Chetty." Until adoption, therefore, plaintiff has no *locus standi* under the will and cannot question the alienations made by the widow.

Nor do I think that, according to the true construction of the will, plaintiff has any right to be maintained by the defendant. It is argued that the bequest to defendant is subject to the condition that she should maintain the plaintiff. I do not think so. If the testator had intended to make the bequest to defendant subject to the maintenance, he would have made provision for the devolution of the property in case his wife failed to carry out his directions. The question is one of intention to be gathered from the language of the will. The intention of the testator to bequeath the whole of his property to his wife for her life is unquestionable. I look upon the clause as to maintenance as the mere expression of a wish on the part of the testator that his wife should maintain certain persons. He wished her to adopt Appu Chetti, but can it be said that if Appu Chetty's father refused to give his son in adoption, it was the intention of the testator that defendant should continue to maintain Appu Chetty so long as she lived? I think not.

The plaintiff is not entitled to maintain the suit, which, therefore, fails and is dismissed with costs.

Plaintiff preferred this appeal.

Balajee Rau for appellant.

Ananda Charlu and *Varadayya* for respondent.

JUDGMENT.—In our opinion the learned Judge in the Court below was right in holding that on the true construction of the will of K. Naraina Chetty the gift of his estate to plaintiff on the death of testator's widow was contingent on his being adopted by the widow, and that not having been so adopted, he cannot maintain this suit. The question in such cases is, as pointed out by the Judicial Committee in *Fanindra Deb Raikat* v. *Rajeswar Das*(1), one of intention, and reading the whole will we have no doubt that the gift to plaintiff was made in contemplation of his adoption, and with the intention that he should take as the adopted son, and was, therefore, conditional on his being adopted. The arrangement made by the will is that after the return of plaintiff's natural father the widow shall take the boy in adoption, then that the widow shall enjoy the estate during her life and after her death "the same shall be taken possession of by the aforesaid adopted son." The adoption is an integral part of the arrangement, and, failing the adoption, the arrangement, so far as regards the designated adopted son, falls through. The case of *Nidhoomoni Debya* v. *Saroda Pershad Mookerjee*(2) is distinguishable from the present case. There the testator declared that he had adopted the object of the gift, and it was held that the omission by the widows to perform certain ceremonies which might be essential to complete the validity of the adoption could not operate to invalidate the gift. Here there is a direction to adopt and a gift to the boy to be adopted, and it appears to us that the testator had no intention to give the estate to the boy irrespective of the adoption to be made by the widow in accordance with the direction. It is argued for appellant that the widow is put to her election and cannot take the estate for her life unless she adopts plaintiff. That question is not in issue in this suit. The only question here is whether plaintiff can sue as reversioner under the will on the death of the widow. Even if the argument as to election were well founded, it would not follow that because the widow could not take under the will, therefore plaintiff is entitled to maintain this suit. Whatever are the consequences of the widow's not complying with the direction in the will to adopt plaintiff, it is clear to our minds that plaintiff has no right under the will unless and until he is adopted. It is

(1) I.L.R., 11 Cal., 463. (2) L.R., 3 I.A., 253.

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stated by respondent's vakil that one reason why plaintiff was not adopted was that his natural father would not give his consent. Of this there is no evidence before us, and we conceive that we are not concerned in this appeal with the reasons why the adoption has not been made. The fact remains that it has not been made, and that is a sufficient answer to plaintiff's claim to the estate under the will. Appellant's vakil states that plaintiff as sister's son of testator is his nearest heir. This is denied on the other side, and it is asserted that he is only the son of a distant female relative of testator. However this may be, and no evidence upon the point has been taken, the question is irrelevant in this suit. Plaintiff sues for a declaration of his title under the will, and, for the reasons given above, we hold he has no title.

Lastly it is argued for appellant that at least he is entitled under the will to maintenance, as the direction to maintain him does not refer to him as the adopted son. We think the arrangement made by the will as to plaintiff must be taken as a whole, and that the part relating to plaintiff's maintenance, equally with the other arrangements for his benefit, has reference to the adoption, and was intended by the testator to come into effect only in the event of the adoption being made. Not having been adopted, plaintiff has no more right to be maintained in the family during the widow's lifetime than he has to succeed to the estate after her death.

We confirm the decree of the lower Court and dismiss this appeal with costs.