APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

SANTAPPAYYA (DEFENDANT No. 1), APPELLANT,

1894. Dec. 4, 20.

v.

RANGAPPAYYA (PLAINTIFF), RESPONDENT.*

Hindu law—Adoption—Adoptive mother under pollution—Subsequent datta homam——Absence of natural father at datta homam—Natural father and adoptive mother, members of the same gotram—Saraswati Brahmans—Estoppel.

In a suit to recover possession of certain land to which the plaintiff claimed title as the adopted son of a deceased Saraswati Brahman, it appeared that he had been taken in adoption by the widow of the deceased acting on the authority of her late husband, that datta homam was performed subsequently, and that the plaintiff had since been recognized as the adoptive son of the deceased, and had acted accordingly during a period of twenty-five years. The defendant was in possession under a claim of title as a reversionary heir, the widow having died shortly before suit. It appeared further (i) that the widow was under pollution at the time of the plaintiff's adoption, but the pollution had ceased at the time of the datta homam; (ii) that the natural father was not present at the time of the datta homam, but his wife took part in the ceremony with his consent:

Semble: neither of the last-mentioned circumstances invalidated the adoption, but *quære*: whether the adoption was not invalid for the reason that the plaintiff's adoptive mother was by birth a member of the same gotram as his natural father:

Held on the evidence, that the defendant was estopped from denying the validity of the adoption.

SECOND APPEAL against the decree of O. Chandu Menon, Subordinate Judge of South Canara, in appeal suit No. 60 of 1893, affirming the decree of M. Mundappa Bangera, District Munsif of Mangalore, in original suit No. 251 of 1891.

The plaintiff sued to recover possession of certain land as the property of his adoptive father, Venkataramanayya deceased. The defendant denied that the plaintiff had been adopted as alleged, and claimed to be the lawful reversionary heir to the estate of the deceased, and averred that he had taken possession of the land in question lawfully on the death of Manjamma, the widow of the deceased. It appeared that Manjamma had taken the plaintiff in adoption in April 1867 under an authority conferred on her by her husband since deceased; that the adoptive mother was under

* Second Appeal No. 1034 of 1894.

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pollution at the time of the adoption; that after the period of pollution was over, the ceremony of datta homam was performed in the absence of the natural father whose wife however took part in it with his consent; and that the adoptive mother belonged by birth to the same gotram as the natural father. The District Munsif in paragraphs 9 to 16 of his judgment set out the evidence, on which he found that the plaintiff had since his adoption been treated as the adopted son of Venkataramanayya: it was to the effect that he lived with Manjamma until 1880; that his upanayanam and marriage had been performed in her house and at her charges in the presence of the members of the family; that he was in possession of the family idol and performed the shraddhas of the deceased members of the family; that he had been appointed as his adoptive son to succeed Venkataramanayya in a caste office, and that his adoption had been asserted in previous litigation. Both of the Lower Courts decreed in favour of the plaintiff.

The defendant preferred this second appeal.

Narayana Rau for appellant.

Sankaran Nayar for respondent.

JUDGMENT.—The question which arises for determination in this appeal is whether respondent's adoption can be upheld. Both the Courts below have found that the adoption is proved, and that Manjamma had her husband's permission to make the adoption. These findings of fact, we must accept in second appeal.

As regards appellant's contention that Manjamma was under pollution when she adopted respondent, the Subordinate Judge has found that, when the pollution was over, the datta homam was performed, and the defect was cured. As to this, it is urged by appellant's pleader that, unless the gift and acceptance and the datta homam take place at the same time, there can be no valid adoption. To this contention, however, we are unable to accede. The learned pleader overlooks the fact that during the ceremony a formal gift and acceptance are repeated and they are then consecrated by sacrifice by fire or homam. If, therefore, the first gift was invalid as a religious act, because there was pollution, the second was perfectly valid. Pollution is only a bar to a religious act and renders religious ceremonies inefficacious, but a gift and an acceptance are secular acts and they may therefore be supple-

mented by datta homam after the expiration of the period of pollution. It was held in *Venkata* v. *Subhadra*(1) that a datta homam performed subsequent to the gift and acceptance validates the adoption.

It is then said that the plaintiff's natural father was absent when the datta homam was performed, and that his absence invalidated the ceremony. It must here be observed that it was Manjamma who received respondent in adoption, and it was some male proxy on her behalf that should perform the ceremony according to Hindu usage. Such being the case, the absence of plaintiff's natural father is immaterial. Respondent's mother was present on the occasion and made the gift with her husband's consent, and a gift so made by a wife is as valid as if her husband was present.

The next contention urged on appellant's behalf is that Manjamma's father and respondent's natural father being of the same gotram, no legal marriage was possible between the former in her maiden state and the latter, and consequently, the adoption was invalid. The Courts below have overruled this objection, on the ground that marriage is forbidden only among sapindas but not among sagotras. This view is no doubt at variance with the Hindu law as explained by this Court in *Minakshi* v. *Ramanada*(2). But the parties in this case are Saraswati Brahmans, and one instance is mentioned by the Subordinate Judge of a marriage between persons of the same gotram. If it were necessary to determine this question for the purposes of this appeal, we should remit for trial an issue, viz., whether among Saraswati Brahmans in South Canara, marriage is permitted by usage between persons of the same gotram. But having regard to the special circumstances of this case, it appears to us that the adoption should prevail by reason of the doctrine of estoppel. These circumstances are set forth in paragraphs 9 to 16 of the original judgment and in paragraph 7 of the appeal judgment. In *Parvatibayamma* v. *Ramakrishna Rau*(3) this Court discussed the limitation subject to which the doctrine of estoppel is to be applied in the case of invalid adoptions. In the case before us the adoption took place in 1867, a quarter of a century ago, and respondent has ever since been

(1) I.L.R., 7 Mad., 548. (2) I.L.R., 11 Mad., 49.
(3) I.L.R., 18 Mad., 145.

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recognized as adopted son. He was aged four or five years when he was adopted and he is now 29 years old. His upanayanam and marriage were performed in the adoptive family, and he is no longer in a position to resume his rights in his natural family. During this long period, respondent performed the shraddhas and other ceremonies in the adoptive family, and a cousin of his adoptive father presided on the occasion of his upanayanam. Thus, the course of conduct of Manjamma and others in the adoptive family was such as to inspire the belief that the communion, which a valid adoption creates and is intended to create, existed. Again, the adoption was made in April 1867, and in the same year Manjamma applied for an heirship certificate on behalf of her minor adopted son. Though appellant and his brothers were then aware of the adoption, they did not then oppose it. It was in 1879 that they instituted original suit No. 402 of 1879 on the ground that respondent's father and they were undivided, but this suit failed, as the Appellate Court found that the properties in dispute were the self-acquired properties of Pandit Venkataramanaya. In 1883 appellant's brother brought original suit No. 269 of 1883 to set aside the adoption, and it was finally dismissed as barred. Though this suit was brought by one brother only, yet it appears that appellant actively co-operated with him in conducting that suit, and did not join it, in order that he might institute separate legal proceedings if that suit failed. After that suit was dismissed, it appears that appellant gained over some of the tenants and procured attornments from them in collusion. Under these circumstances, we think that the doctrine of estoppel applies, and that appellant must be held not to be at liberty to impugn the adoption at this distance of time.

We dismiss this second appeal with costs.