being by marriage part of the family of a descendant of the grantee, the grant should be declared to be valid during her life and liable to revert to the representative of the matam on her death. The decree of the Subordinate Judge must, therefore, be set aside so far as it declares that the plaintiff is entitled to rent and a decree be passed declaring him entitled to hold the lands on and after the demise of the first defendant.

Each party will bear his or her own costs.

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## APPELLATE CIVIL.

*Before Mr. Justice Shephard and Mr. Justice Best.*

ANNAPURNI NACHIAR (DEFENDANT No. 2), APPELLANT,

*v.*

COLLECTOR OF TINNEVELLY AND ANOTHER (PLAINTIFF AND DEFENDANT No. 1), RESPONDENTS.*

1895. March 11, 12. April 10.

*Hindu law—Inheritance—Impartible estate—Adoption by a zamindar in conjunction with one of his two wives—Right to succeed to adoptive son.*

The holder of the impartible Zamindari of Uthumalai, who married two wives, subsequently made an adoption in conjunction with his junior wife. The zamindar died in August 1891, and the adopted son died an infant without issue in December of the same year:

*Held*, that the junior wife having taken part in the adoption was entitled to the impartible estate in preference to her co-wife.

APPEAL against the decree of F. H. Hamnett, Acting District Judge of Tinnevelly, in original suit No. 15 of 1892.

This was an interpleader suit relating to the rival claims of defendants Nos. 1 and 2 to succeed to the impartible estate the property of the infant adoptive son of their late husband. The facts of the case was stated sufficiently for the purposes of this report in the judgment of BEST, J.

The *Advocate-General* (Hon. Mr. *Spring Branson*), *Ramachandra Rau Saheb*, *Gopalasami Ayyangar* and *Ranga Ramanujachariar* for appellant.

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* Appeal No. 70 of 1894.

ANNAPURNI NACHIAR v. COLLECTOR OF TINNEVELLY.

*Bhashyam Ayyangar*, *Krishnasami Ayyar*, *Ramakrishna Ayyar*, *Desikachariar*, *Seshachariar*, *Natesa Ayyar* and *Subramania Ayyar* for respondent No. 2.

BEST, J.—The question for decision in this appeal is whether the appellant (second defendant) or the second respondent (first defendant) is entitled to possession of the impartible Zamindari of Uthumalai in the Tinnevelly district. The first respondent is the Collector of the district, by whom the suit was instituted for the purpose of obtaining a decision as to which of the rival claimants was entitled to the zamindari, of which possession had been taken by him as Agent of the Court of Wards on behalf of a minor named Navanita Krishna Marudappa Tevar as adopted son of the Zamindar Irudalaya Marudappa Tevar, who died on 12th August 1891. The minor also died on 16th December 1891.

The fact and validity of the adoption of the boy Navanita Krishna by the late Zamindar Irudalaya, whose widows both appellant and the second respondent claim to be, were denied by the appellant and formed the subject of several issues (5 to 8) settled for trial in the suit. These issues are considered by the Judge in paragraphs 60 to 71 of his judgment, and the conclusions arrived at by him are stated in paragraph 72, namely, that there was in fact an adoption and that no reason appears for holding it to be other than valid.

The correctness of the finding is not disputed at the hearing of the appeal, and the evidence on record amply supports the conclusions arrived at by the Judge as to the fact of the adoption.

Another fact that is not disputed is the marriage of the appellant with the late Zamindar Irudalaya. But the fact of second respondent being also a wife was denied and formed the subject of the first issue. The Judge has found on the issue in favour of second respondent, and his finding as to the fact of second respondent being a wife of the late zamindar is supported by exhibit UUU —a statement filed by appellant's own father and brothers in criminal proceedings against the zamindar, in which second respondent is expressly spoken of as the second wife of the zamindar, and also by exhibit F which contains an admission of the fact by appellant herself. In the face of this evidence the learned Advocate-General, who appeared for the appellant, has been unable to contend that second respondent was merely a concubine and not a wife of the late zamindar. He has contended, however

that the Judge is not warranted by the evidence in finding that second respondent's marriage took place at the same time as that of appellant at the latter's village of Kurukalpatti. This was clearly not the second respondent's case—the whole of whose evidence on the point is directed to showing that second respondent's marriage took place at Virakeralampudur, some 14 miles from Kurukalpatti. The story told by second respondent's witnesses is that, after the marriage of the zamindar with second respondent in the morning at Virakeralampudur, the zamindar started off on horseback accompanied by a couple of servants on foot and proceeded to Kurukalpatti to marry appellant, then a girl aged six or seven years. On hearing of which his mother followed him in a palanquin ; and on her arrival at Kurukalpatti the zamindar hastily left, not however till after the marriage with appellant had been performed, and returning to Virakeralampudur went on with the ceremonies of the marriage with the second respondent on the next and following days. The Judge has assigned sufficient reasons for disbelieving this story of second respondent's witnesses.

The Judge's reason for finding that the marriage of second respondent must have taken place at Kurukalpatti is the statement by the zamindar in his petition, exhibit DDD, that he married both appellant and second respondent at " one and the same time." But in the same petition the zamindar has stated that he had divorced appellant, which is found by the Judge to be not true. There is thus no good reason for accepting as true the statement that the two marriages took place "at one and the same time," especially when that statement is opposed to the evidence of second respondent's own witnesses and of second respondent herself.

It being found that second respondent's marriage did not take place on the same day as that of appellant, and it not being pretended on behalf of second respondent that it took place on any previous day, the only possible conclusion is that it must have taken place on a subsequent day. From the finding that the marriage did not take place at Virakeralampudur at the time alleged by second respondent and her witnesses, it follows that there is an entire absence of evidence as to where and when it took place, and were it not for the admission contained in exhibits UUU and F, there would be no reliable evidence of second respondent being in fact a wife of the zamindar, for the statements made by

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the zamindar himself in the description of second respondent as a wife in official reports pending the dispute between the appellant and the zamindar are clearly not sufficient to place the matter beyond doubt. But the statement in exhibit UUU by appellant's father and her brothers and in exhibit F by appellant herself seem to justify the finding that second respondent was also a wife of the zamindar, but only a junior wife, *i.e.*, a subsequently married wife.

The alleged divorce of appellant is found to be untrue not only by the Judge in the present suit, but also by the Subordinate Judge in original suit No. 17 of 1889—a suit filed by the late zamindar against appellant and which is the subject of appeal suit No. 152 of 1891, which is also now before us for decision.

The evidence as to the alleged divorce has been carefully considered by the District Judge in paragraphs 46 to 49 of his judgment, and there is no reason for holding that he has come to a wrong conclusion.

As already stated, the Advocate-General no longer contests the fact or the validity of the adoption of Navanita Krishna Marudappa by the late Zamindar Irudalaya with the second respondent.

The real question for decision, therefore, is whether second respondent as the receiving mother is entitled to succeed to the estate as heir of the boy Navanita Krishna in preference to appellant, though the latter is the first married wife of Irudalaya. It is first contended on behalf of second respondent that she has a preferential right to succeed to the zamindari on the admitted fact of her seniority in age to the appellant. But as has been contended on behalf of appellant, seniority in the family of the husband must be calculated from the date of the entry of each wife into that family by marriage and so calculated the appellant is clearly the senior wife—the Dharmapatni—the wife married from a sense of duty—see 2, Colebrooke's *Digest*, page 124, and Strange's *Hindu Law*, page 137 ; *cf.* also *Padajirav* v. *Ramrav*(1). However, the question here is not as to the succession of wives to a husband, but of the mother to an adopted son.

The Judge has found that second respondent as the receiving mother is entitled to succeed in preference to the appellant. In support of this finding he has cited the case of *Kasheeshuree Debia* v. *Greesh Chunder Lahoree*(2), also a dictum in *Teencowree Chat-*

(1) I.L.R., 13 Bom., 160. (2) W.R. (1864), 71.

*terjee* v. *Dinonath Banerjee*(1), and the opinion of Sir Francis MacNaghten at page 171 of his Hindu law where he says, "the boy could not be received by three widows jointly. He must be received by one of them and would then be considered as the son of the widow by whom he had been received." See also the answer of a Pandit in the appendix to the same book, which says, "The widow adopting will be called the mother and the others the step-mothers." So also West and Bühler in Vol. 1, page 1132 (third edition) of their Hindu law say, "The importance of the right to adopt as between two or more widows becomes evident when it is borne in mind that the one taking the place of mother succeeds first to her son on his death without child or widow." No doubt the writers above referred to have cited no authority for the views expressed by them, and the rule enunciated in *Dattaka Mimamsa*, VI, V. 50, and *Dattaka Chandrika*, III, V. 17, to the effect that the "forefathers of the adoptive mother only are also the maternal grandsires of the sons given" differentiates between the adoptive and natural mothers, and not between an adoptive mother who actually joins in the ceremony of adoption and her co-wives. But if it is allowable to a Hindu to authorise one of several wives to take a child in adoption after his death, and in such case the widow so appointed can alone exercise the power as admitted by Mr. W. H. MacNaghten (see page 12 of his introduction), it is difficult to understand why he should have no discretion in selecting one of his wives to join with him in making an adoption during his life time.

The only authority cited in support of appellant's contention is the passage at page 12 of the introduction to Mr. W. H. MacNaghten's Book on Hindu Law, but he expressly states that his remarks have reference only to the rights and privileges accruing to the adopting widow "from the simple fact of her having made the adoption, independently of any intention expressed or implied by the deceased, that such widow alone should be considered as the mother of the adopted child," and adds "if he declared this explicitly, the case would be different; or if such may be reasonably gathered to have been his intention, from some unequivocal indication of his will that his other wives should have no concern with the adoption."

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(1) 3 W.R., 49.

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In the present case there can be no doubt as to the fact of the adoption of the boy Navanita Krishna Marudappa having been made by the late zamindar in association with second respondent alone. She was the wife with whom he had lived since 1866 at least, whereas (as has been rightly found by the Judge) the appellant never lived with her husband; for there can be no doubt that the evidence adduced by appellant to prove that she ever cohabited with her husband or even went to the palace prior to March 1889 has been rightly disbelieved by the Judge—see paragraphs 50 to 54 of his judgment. It is equally beyond doubt that the deceased's intention was that second respondent and not appellant should occupy the position of mother to the boy adopted, and second respondent, and not appellant, was the 'receiving' mother, which is the literal meaning of the word 'pratigrahitri' which is translated 'adoptive' in *Dattaka Mimansa* VI, 50, and *Dattaka Chandrika*, III, 17. The fact that adoptions under the Hindu law are for the benefit of the man and can be made independently of any wife, does not appear to be a circumstance from which it can be inferred that the man is not at liberty to select one of several wives to be the receiving mother of the boy to be adopted; and as to *Manu*, chapter IX, V. 183, it certainly does not prove the appellant's contention, for notwithstanding the statement there made that if among all the wives of the same husband, one bring forth a male child, they are all declared, by means of that son, to be mothers of male issue: nevertheless the actual mother succeeds to the son in preference to her co-wives. There is, therefore, no reason why the mere fact of all the wives being considered as mothers of an adopted son should preclude the wife who is actually associated in the adoption from being considered as the mother, and the other wives merely co-wife mothers (Sapatnimata).

The preponderance of authority clearly supports the Judge's finding that where only one of several wives is associated with the husband in making an adoption, she is the preferential heir to the boy.

I would therefore dismiss this appeal with costs.

SHEPHARD, J.—I concur with Mr. Justice Best in his conclusion on the facts of this case.

It being assumed then that the late zamindar died, leaving him surviving two widows and a son adopted by him in conjunc-

tion with one of them, namely, Meenakshisundara, and that son having since died, the question to be decided is whether the widow Meenakshisundara or the other widow Annapurni has a preferential right to the zamindari, which being impartible can only be enjoyed by one of them.

Meenakshisundara's claim is based on the ground that she took part in the adoption and that in point of age—whether or not she was first married—she is the eldest of the two widows. On the other hand the contention on behalf of the appellant Annapurni Nachiar is that she was the elder wife in the sense of having been first married, and that her rights in that capacity were not affected by the action of the zamindar in preferring to associate his other wife in the ceremony of adoption.

The question which arises is what is the precise relation between the co-wives of a Hindu who adopts a son and that adopted son? Are they all to be regarded as mothers of the son or does one of them only, and, if so, which of them stand in that relation?

It was conceded by Mr. Bhashyam Ayyangar, and there can be no doubt that the act of adoption inasmuch as it concerns the husband alone may be performed independently of his wife. Her consent is unnecessary. Nevertheless she, if she is the only wife, undoubtedly comes to be regarded as mother of the adopted son, and her parents come to be regarded as his maternal grandparents. (*Dattaka Mimamsa*, Sec. VI, V. 50). To those parents of the adoptive mother he presents oblations. Generally, his position in the family is assimilated to that of a natural-born son. In the case supposed, that of an adoptive father with one wife, the law itself designates the adoptive mother and no difficulty arises. Where, however, there are several wives it is said that the husband is at liberty to designate the one who shall take the place of mother, and that by this means the anomaly of assigning several mothers to the adopted son may be avoided. Otherwise, the adopted son having several mothers would have as many sets of maternal grand-parents from whom he might inherit and to whom he must offer oblations. The two chief authorities on the law of adoption throw no distinct light on the question. The expression 'adoptive mother' used in the verses cited from the *Dattaka Chandrika* and *Dattaka Mimamsa* is not used in reference to the case of several mothers; and evidently no distinction is intended to be drawn between the wife who has taken part in

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receiving the child and any other wife. It would appear however that these texts have been treated as supporting the proposition that where there are more wives than one, she who has received the boy should be regarded as his mother. In a case cited by Sir F. MacNaghten in his Considerations (page 171), published in 1824, the point is treated as beyond dispute. Authority had been given by the husband to his three wives to adopt a son, and if they could not agree he directed that a boy should be chosen by his first and second widows, or if they could not agree by his second and third widows. The widows not having agreed, the mother to whom the matter was referred selected one Taracomar, who had been nominated by the second widow. The question then arose which of the three had a right to receive him. "The law is clear and was undisputed," says the author, "the boy could not be received by the three widows jointly. He must be received by *one* of them, and would then be considered as the son of Luckinarain and the widow by whom he had been received; about this there was not, because there could not be, any dispute."

In 1864 the question was raised in Bengal in a case where, as in the present case, a claim was made by one of two widows whose husband had adopted a boy who had subsequently died. It was found as a fact that the deceased Kalee Kant had adopted the boy not as the son of the plaintiffs, but as son of his second wife Mon Mohinee. It was held that the latter was as adoptive mother the heir of the adopted son, (*Kasheeshuree Debia* v. *Greesh Chunder Lahoree*(1)).

In another Bengal case decided in the following year, it seems to have been assumed by the High Court that the co-wife would stand in the relation of step-mother to one adopted as the son of another wife. The point, it is true, did not arise for decision, and the remark upon it is only an *obiter dictum* (*Teencowree Chatterjee* v. *Dinonath Banerjee*(2)).

The opinion thus expressed in Bengal, while it does not appear to have been questioned in subsequent cases, has been adopted by commentators, (*Vyavastha Chandrika*, page 161, V. 348; West and Bühler, 1131).

(1) W.R. (1864), 71. (2) 3 W.R., 49, 50.

The rule cited by West and Bühler, "The adopted son succeeds to all his step-mothers," is not at variance with the notion that one wife only is regarded as his mother. They cite however a passage from Colebrooke's Digest, which favours the opposite contention. In that passage (page 394) it is said that "if a son be adopted by a man married to two wives, he would have two maternal grandfathers and would claim as maternal ancestry both their lines of forefathers." The writer goes on to speak of this as a *seeming* difficulty and to suggest a mode of dealing with it. Having regard to the way in which the point is raised and the absence of authority cited, I do not think that this pronouncement of Jagannatha can be allowed to weigh against the authorities already cited. Another and more distinct authority, on which the Advocate-General relies, is to be found in the preliminary remarks forming an introduction to W. MacNaghten's *Principles of Hindu Law*. Dealing with the case of a husband leaving three widows, to one of whom he has given authority to adopt, he says the three widows of the same man are held to be in a legal point of view one and the same individual. The widow to whom the permission was given may indeed have the privilege of selecting the boy to be adopted, but the adoption being once made, he necessarily holds the same relation to all the three widows of his adopting father. He goes on however to say that the case would be different, if the husband declared his intention that the other wives should have no concern with the adoption, see page XII. This latter observation supports the view advocated by Mr. Bhashyam Ayyangar. The proposition that the three widows, alike the one who has been commissioned to adopt and the other two, stand in the same relation to the adopted son is in direct contradiction of the statement made by Sir F. MacNaghten. The author does not refer to this statement, nor indeed in the body of his work does he discuss the question.

It is contended that the opinion of the Bengal lawyers in favour of allowing a husband to constitute one of his wives the mother of his adopted son, is in some way connected with the notion entertained by Sir F. MacNaghten and others that plural adoptions were permissible. I fail to see however how the weight of his opinion expressed with reference to a case where one adoption was in question is lessened by this circumstance. And seeing that the Judicial Committee pronounced against plurality of

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adoptions as early as 1846, the contention clearly does not touch the case decided by the High Court of Bengal in 1864. Moreover, the liberty of the husband to make a second adoption was not founded on any right or interest supposed to be possessed by the wife, but on the absence of authority to the contrary and on the principle that many sons are to be desired. See *Rungama* v. *Atchama*(1).

In my opinion there is no inconsistency between the recognized principles of the law with regard to adoption, and the position that one of several wives may be selected as the adoptive mother. The maintenance of this position does not militate against, but is rather in consonance with the principle that the adoption is made solely for the benefit of the husband. It is a mistake to assume that the husband in thus selecting one of two wives necessarily intends to give her any material benefit. Ordinarily it might be expected that the adopted son would survive both the wives, and the fact that, in the other event, the favoured wife would succeed on the son's death would not be taken into account. What may be supposed to be contemplated is that the son will succeed on the death of that wife. It cannot be denied that a Hindu having two wives may confer on one of them an authority to take a child in adoption after his death, nor can it be doubted that the selected widow would alone and to the exclusion of her co-widows have discretion in the matter (2, Strange's Hindu Law, page 91). What would be the relation between the co-widow and the son adopted by the other widow under the authority so given does not appear to have been decided except in the case cited by Sir F. Mac-Naghten. Indeed the question is not distinguishable from that raised in the present case. But it certainly would seem reasonable to hold that the widow, who being duly authorized, has taken a boy in adoption, and without whose act the adoption could never have taken place, is the mother of the boy rather than the others who had no concern in the matter. At any rate the case of a husband giving one of his two wives authority to adopt is an instance in which he, for his own purposes, is at liberty to give preference to one of them and thus enable her to defeat the expectations of the other.

The proposition that both wives or both widows together constitute the mother of the adopted son, notwithstanding any declara-

(1) 4 M.I.A., 1, 67-95.

tion of the husband to the contrary, gives an importance to the wives in the matter of adoption for which there is no justification. The institution of adoption requires that the son adopted should be deemed the son of the person who has taken him. It is only consistent with this theory that the wife of the adoptive father, if there happen to be one, should also be deemed the mother of the boy. But, in the case of several wives, the theory does not require that they all should be deemed to be his mother.

To hold this rather than to hold that his relation is that of step-son to the co-wives other than the one who has been associated in the act of adoption is to introduce a quite unnecessary fiction.

We are invited to consider the case in which a husband has made an adoption independently of both his wives and to answer the question which would then arise. The case is not one which is likely to happen, and it seems to me sufficient to say that, because a certain mode of designating the adoptive mother fails, it does not follow that no other exists.

In the present case it is sufficient to hold that where the husband has associated one wife with him in adopting a child, that wife is to be deemed mother of the child. This conclusion appears to me to be justified as well by principle as by authority.

It follows that the appeal must be dismissed with costs.

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## APPELLATE CIVIL.

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

SIVASUBRAMANIA NAICKER AND OTHERS (PLAINTIFFS NOS. 1 AND 3 TO 12), APPELLANTS,

1894. October 2, 4, 5. December 14.

*v.*

KRISHNAMMAL AND OTHERS (DEFENDANTS NOS. 2 TO 9), RESPONDENTS.*

*Hindu law—Impartible raj—Custom of inalienability, evidence of—Dayadi pattam.*

The holder of the impartible palayam of Ammayanayakanur transferred his estate to his wife by a deed of gift. The transferor had besides a son numerous dayadis, and some of the latter now sued for a declaration that the gift was not

* Appeal No. 29 of 1894.