APPELLATE CIVIL.

Before Mr. Justice Davies and Mr. Justice Benson.

SRI RAJAH VENKATA NARASIMHA APPA ROW (SECOND PLAINTIFF), APPELLANT IN APPEAL SUIT NO. 122 OF 1900,

v.

SRI RAJAH RANGAYYA APPA ROW AND OTHERS (THIRD PLAINTIFF, SECOND DEFENDANT AND FIRST DEFENDANT'S REPRESENTATIVES), RESPONDENTS IN APPEAL SUIT NO. 122 OF 1900.

SRI RAJAH RANGAYYA APPA ROW (THIRD PLAINTIFF), APPELLANT IN APPEAL SUIT NO. 123 OF 1900,

v.

SRI RAJAH VENKATA NARASIMHA APPA ROW AND OTHERS (SECOND PLAINTIFF, FIRST DEFENDANT'S REPRESENTATIVES AND SECOND DEFENDANT), RESPONDENTS IN APPEAL SUIT NO. 123 OF 1900.

SRI RAJAH RANGAYYA APPA ROW (FIRST DEFENDANT), APPELLANT IN APPEAL SUIT NO. 32 OF 1904.

v.

SRI RAJAH PARTHASARADHI APPA ROW AND ANOTHER (PLAINTIFF AND SECOND DEFENDANT), RESPONDENTS IN APPEAL SUIT NO. 32 OF 1904.

SRI RAJAH PARTHASARADHI APPA ROW (PLAINTIFF), APPELLANT IN APPEAL SUIT NO. 41 OF 1904,

v.

SRI RAJAH RANGAYYA APPA ROW AND ANOTHER (DEFENDANTS), RESPONDENTS IN APPEAL SUIT NO. 41 OF 1904.*

1905. July 24, 28 31. August 1, 4, 7, 11, 15, 18. September 25 27, 29. October 2, 5, 9, 13, 16. November 20.

Hindu Law – Character of descendibility not affected by forfeiture and re-grant to heirs-Adoption-Authority given jointly to two widows to adopt, valid, and can be exercised by one after the death of the other—Adoption made under coercion only voidable-Adoption does not divest adopted son of joint property of which he had become sole and absolute owner.

The question whether an estate is subject to the ordinary Hindu Law of succession or descends according to the rule of primogeniture must be decided in each case according to the evidence given in it.

---

* Appeal Nos. 122 and 123 of 1900, presented against the decree of M.R.Ry. P. S. Gurumurti Ayyar, Subordinate Judge of Kistna at Masulipatam, in Original Suit No. 35 of 1895 ;

Appeal Nos. 32 and 41 of 1904, presented against the decree of District Court of Godavari, in Original Suit No. 44 of 1899.

SRI RAJAH VENKATA NARASIMHA APPA ROW v. SRI RAJAH RANGAYYA APPA ROW AND OTHERS

Srimantu Raja Yarlagadda Mallikarjuna v. *Srimantu Raja Yarlagadda Durga*, (L.R., 17 I.A., 134 at p 144), referred to and followed.

Where an estate acquired by sale or forfeiture by Government is regranted to the heirs of the former owner without expressing any intention to interfere with the quality of the estate in regard to its descendibility, such regrant does not affect that quality of the estate, although it would be self-acquired property in the hands of the grantee and would devolve as such :

Held, on the evidence and the previous history of the Nidadavole estate that such estate was partible according to the ordinary Hindu Law applicable to co-parcenary property.

An authority to adopt given to two widows jointly is not invalid and may be exercised by one after the death of the other.

An adoption made under coercion is not void, but voidable, and will be valid if ratified subsequently if no one's interest is prejudicially affected by such ratification before it is made.

The adoption into another family of the only surviving member of a joint family in whom the family estate has vested solely and absolutely does not in law operate to divest him of his rights in such estate.

THE facts necessary for this report are fully set out in the judgment.

Sir *V. Bhashyam Ayyangar*, *N. Subba Rau*, The Hon. Mr. *P. S. Sivaswami Ayyar*, *S Gopalaswami Ayyangar*, *C. R. Tiruvenkatachariar*, The Hon. Mr. *L. A. Govindaraghavaiyar* and *M. Kunjunni Nair* for appellant in Appeal Suit No. 41 of 1904.

Mr. *E. Norton*, *V. Krishnaswami Ayyar*, *P. R. Sundaraiyar*, *K. Srinivasaiyangar*, *K. N. Aiya*, *K. Subrahmania Sastri* and *A. Nilakantaiyar* for first respondent in Appeal Suit No. 41 of 1904.

T. V. Seshagiri Ayyar, *P. Nagabhushanam* and *T. V. Muthukrishnaiyar* for second respondent in Appeal Suit No. 41 of 1904.

V. Krishnaswami Ayyar, *P.R. Sundaraiyar*, *K. Srinivasaiyangar*, *K. N. Aiya*, *K. Subrahmania Sastri* and *A. Nilakantaiyar* for appellant in Appeal Suit No. 32 of 1904.

Sir *V. Bhashyam Ayyangar*, *N. Subba Rau*, The Hon. Mr. *P. S. Sivaswami Ayyar*, *S. Gopalaswami Ayyangar*, *C. R. Tiruvenkatachariar*, The Hon. Mr. *L. A. Govindaraghavaiyar*, *S. Srinivasaiyangar* and *M. Kunjunni Nair* for first respondent in Appeal Suit No. 32 of 1904.

T. V. Seshagiri Ayyar and *T. V. Muthukrishnaiyar* for second respondent in Appeal Suit No. 32 of 1904.

T. V. Seshagiri Ayyar, *P. Nagabhushanam* and *T. V. Muthukrishnaiyar* for appellant in Appeal Suit No. 122 of 1900.

Sir *V. Bhashyam Ayyangar*, *N. Subba Rao*, The Hon. Mr. *P. S. Sivaswami Ayyar*, *S. Gopalaswami Ayyangar* and *C. R. Tiruvenkatachariar* for third respondent in Appeal Suit No. 122 of 1900.

V. Krishnaswami Ayyar and *P. R. Sundaraiyar* for first respondent in Appeal Suit No. 122 of 1900.

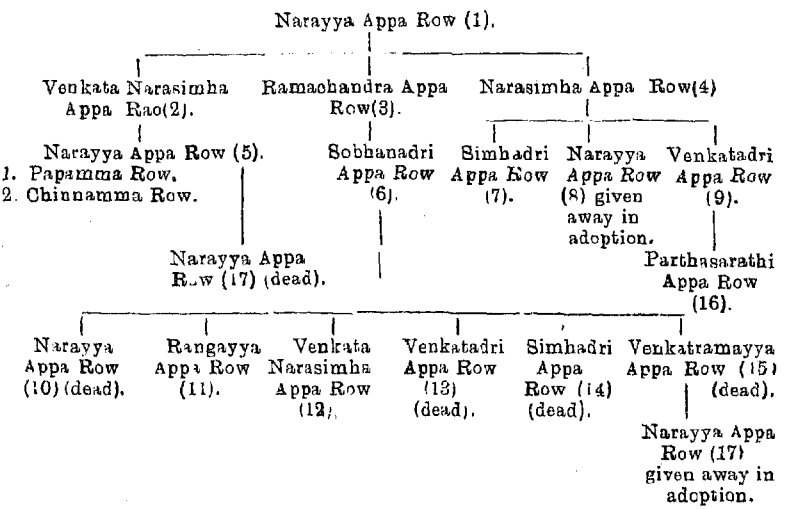
V. Krishnaswami Ayyar, *P. R. Sundaraiyar* and *K. Subrahmania Sastri* for appellant in Appeal Suit No. 123 of 1900.

Sir V. Bhashyam Ayyangar, *N. Subba Rau*, The Hon. Mr. *P. S. Sivaswami Ayyar*, *S. Gopalaswami Ayyangar* and *C. R. Tiruvenkatachariar* for third respondent in Appeal Suit No. 123 of 1900.

T.V. Seshagiri Ayyar, *P. Nagabushanam* and *T. V. Muthukrishnaiyar* for first respondent in Appeal Suit No. 129 of 1900.

JUDGMENT.—These appeals, and the suits out of which they arise, relate to the right to the permanently-settled estates of Nidadavole and Medur in the Kistna and Godavari districts.

The following genealogical tree shows the relationship of the several members of the family :—



The three brothers, Venkatanarasimha (2), Ramachandra (3) and Narasimha (4) were divided. The last admitted male owner of Nidadavole estate was Narayya Appa Row(5) who died in 1864, leaving behind him as his only heirs two widows, Papamma Row and Chinnamma Row. These widows put forward a will by their deceased husband, executed on the day before his death, which provided for the equal division of his estate between them, and authorized them to adopt a son to him. They continued in joint possession and enjoyment of the estate until the death of Chinnamma Row in 1881 or 1883, after which Papamma Row alone enjoyed the estate. In 1888 Venkataramayya (15), who was the sole owner of the Medur estate, died

SRI RAJAH VENKATA NARASIMHA APPA ROW v. SRI RAJAH RANGAYYA APPA ROW AND OTHERS

and the Court of Wards then took possession of the estate on behalf of Venkataramayya's only son, Narayya (17) who was then a child. In 1890 Papamma Row adopted this Narayya, who was then sole owner of the Medur estate. The minor, Narayya, died unmarried in August 1895, his sole heir being his adoptive mother Papamma Row. It was immediately after this that the first of the suits now before us, viz., Original Suit No. 35 of 1895, was filed before the Subordinate Judge of Masulipatam by Venkayamma, the natural mother of the minor Narayya, against Papamma Row and the Court of Wards. In this suit she sought to recover possession of the Medur estate on the ground that the adoption of Narayya by Papamma Row was invalid for various reasons, and that, even if it was not invalid, Narayya, by being adopted, was divested of all interest in the Medur estate While this suit was pending Venkayamma died, but the suit was continued by Rangayya (11) and Venkatanarasimha (12) as the reversionary heirs of her late husband, Venkataramayya (15), who was also their own divided brother. In that suit the Subordinate Judge held that the will of Narayya (5) under the authority of which Papamma Row made the adoption, was genuine, and that the adoption of the minor Narayya (17) was not invalid for any reason, and also that it did not operate to divest Narayya (17) of the estate of Medur, which therefore passed on his death to Papamma Row, as his adoptive mother. He (the Subordinate Judge) therefore dismissed the suit on the 2nd December 1899. It is against this decree that Venkatanarasimha (12) and Rangayya (11) have respectively filed the present Appeals Nos. 122 and 123 of 1900. Three days after that decree was passed, *i.e*, on the 5th December 1899, Papamma Row died and on the 14th of the same month the second of the suits now before us, viz., Original Suit No. 44 of 1899, was launched before the District Judge by Parthasarathi (16). It will be seen by a reference to the genealogical tree that this Parthasarathi (16) and Rangayya (11) and Venkatanarasimha (12) are all equally nearly related to Narayya (5), the late husband of Papamma Row, and they were, in fact, his only reversionary heirs when Papamma Row died. They were also the only reversionary heirs of the minor Narayya (17) considered as the adopted son of Narayya (5) and of Papamma Row and they were all equally nearly related to him. Parthasarathi in his

suit (Original Suit No. 44) therefore claimed, as a reversioner, to be entitled to a one-third share in the estates of Nidadavole and Medur, Rangayya and Venkatanarasimha being also each entitled to a one-third share, and he sued to recover his share from them as they had taken possession of the estates on Papamma Row's death. It will further be seen by reference to the genealogical tree that the nearest reversioners of the minor Narayya (17), considered as a member of his natural family, were his father's brothers, Rangayya (11) and Venkatanarasimha (12) and that Parthasarathi (16) was only a distant reversioner. If, therefore, the adoption of the minor Narayya (17) by Papamma Row was invalid, or if that adoption operated in law to divest the minor of the Medur estate, both of which contentions, however, Parthasarathi (16) denied, then Parthasarathi could have no right as a reversioner to a share in that estate. He, therefore, prayed that if either of those contentions were established, he might be decreed his one-third share in Nidadavole alone.

The main contentions of the defendants Rangayya (11) and Venkatanarasimha (12) were that the will of Narayya (5) was a forgery, and that for this and other reasons the adoption of Narayya (17) by Pappamma Row was invalid, and that, even if valid, it operated to divest Narayya (17) of the Medur estate to which therefore Parthasarathi could have no claim. Rangayya also contended that Nidadavole was an impartible estate and descended to him alone under the rule of primogeniture, as he was the senior of the reversioners of the last male owner, whether that owner were Narayya (5) or Narayya (17), and also that if Narayya (17) brought the estate of Medur with him into the Nidadavole family by virtue of his adoption, it became impressed with the character of impartibility and therefore passed to him alone along with Nidadavole.

The District Judge found against Rangayya's pleas founded on the alleged impartibility of Nidadavole; but he found that the alleged Will of Narayya (5) was a forgery, and that for this and various other reasons the adoption of Narayya (17) by Papamma Row was invalid. He, therefore, dismissed Parthasarathi's suit so far as the Medur estate was concerned, but gave him and second defendant [Venkatanarasimha (12)] each a decree for a one-third share of the Nidadavole estate.

SRI RAJAH VENKATA NARASIMHA APPA ROW v. SRI RAJAH RANGAYYA APPA ROW AND OTHERS

It is against this decree that Parthasarathi and Rangayya respectively have brought the present Appeals Nos. 41 and 32 of 1904.

Counsel for the appellant in Appeal No. 41 requested that that Appeal and No 32 might be tried separately from Appeals Nos. 122 and 123 of 1900, but it seems to us more convenient to deal with all four appeals in one judgment.

The main questions, then, which arise for decision are whether the Nidadavole estate is impartible, or follows the ordinary Hindu Law which governs the descent of partible estates; and whether the adoption of Narayya (17) is invalid. This latter question depends mainly on whether the will of Narayya (5) is genuine or not, whether it was a sufficient authority to Papamma Row to make the adoption, and whether the adoption is invalid by reason of Papamma Row having been coerced into making it by a threat of being criminally prosecuted if she did not do so.

[Their Lordships proceeded to state the history of the previous litigation regarding the estates.]

As observed by Sir Richard Couch in the case of *Srimantu Raja Yarlagadda Mallikarjuna* v. *Srimantu Raja Yarlagadda Durga*(1), "the question whether an estate is subject to the ordinary Hindu "Law of succession, or descends according to the rule of primo-"geniture must be decided in each case according to the evidence "given in it." This rule was lately re-affirmed by the Privy Council in the Udayarpaliam case(2).

[Their Lordships then discussed the history and origin of the Nidadavole estate.]

It has been argued that there was no forfeiture in this case, but only the removal of one member of the family for misconduct, and the substitution of another; and in support of this view reliance is placed upon the Ramnad case(3). It is clear, however, from exhibits 214 and 20 that it was a complete forfeiture, and that Government considered itself free to convert the estate into Havelly, that is, ordinary Government lands, and that it was re-granted to the son purely as an act of grace. In the previous litigation the Courts (including the Privy Council) have always

(1) L.R., 17 I. A., 134 at p. 144. (2) I. L. R., 28 Mad., 508.
(3) I.L.R., 24 Mad., 629.

referred to this transaction as a forfeiture for rebellion, and we see no reason to take any other view of its character. In making the re-grant, however, to his son the Government did not express any intention to interfere with the quality of the estate in regard to its descendibility to heirs. We take it that, in accordance with the principle laid down in the Hansapur case [*Baboo Beer Pertab Sahee* v. *Maharajah Rajender Pertab Sahee*(1)], and affirmed in the Sivaganga case [*Muttu Vaduganadha Tevar* v. *Dora Singha Tevar*(2)] the re-grant would not operate to render it partible if it was previously impartible and descendible to a single heir. It, no doubt, rendered the estate the self-acquisition of the new grantee, but that would not destroy its character of impartibility if it possessed that character before the forfeiture (Sivaganga case, page 308). On the other hand if the estate was partible, as we find it was in the present case, there is nothing in the forfeiture and re-grant to affect that quality of the estate. The only effect would be that it would devolve as self-acquired, not as ancestral, property. There is nothing in the sanad or in the correspondence at the time to suggest that Government recognized the estate as an impartible one, or gave it to the grantee with special advertence to the fact that he was the eldest son of his father.

[Their Lordships then considered the evidence as to the descendibility of the estate at great length.]

We find that the estate is not impartible and descendible to a single heir, but is partible according to the ordinary Hindu Law applicable to coparcenary property.

The next question that arises for decision is whether the will of Narayya (5) is genuine or not.

[Their Lordships discussed, at length, the evidence regarding the execution of the will.]

Looking to all the evidence in the case and the conduct of the various persons interested we have no hesitation in finding that the will of 1864 is genuine.

The authenticity of the will being thus established, it follows that the authority given in it to the widows to adopt is proved. It is then contended on behalf of the defendants that that authority was in itself invalid, because it was a power granted jointly to

(1) 12 M.I.A., 1 at p. 33. (2) I.L.R., 3 Mad., 290

SRI RAJAH VENKATA NARASIMHA APPA ROW v. SRI RAJAH RANGAYYA APPA ROW AND OTHERS

the two widows, whereas it was decided in the Uthumalai case, *Annapurni Nachiar* v. *Forbes*(1), that only one widow can make an adoption and therefore an authority given to two must be illegal.

To begin with there is no such ruling in the case referred to. All that their Lordships have done is to notice with approval a Bengal case where three widows having been authorized to make an adoption it was held that only one could take the given son in adoption so as to constitute herself the mother. But so far from the authority given to more than one widow to adopt being held *ipso facto* invalid, the adoption that was actually made in that case by one of the three widows under that authority was not disputed which it must have been if the authority to adopt was itself illegal. There is, therefore, no ground for this contention.

The next contention is that the authority in this case being to the two widows jointly could not be exercised after the death of one by the surviving widow. There is no warrant for this proposition in the will itself. It is true that no provision is made as to what is to happen if one widow dies, no adoption having been made during her lifetime. But there is no prohibition that one widow alone should not adopt after the death of the other. During the lifetime of both it might well be urged that both should combine in making the adoption. But that is no ground for holding that, when one had died, the authority given to both widows was exhausted and did not remain with the survivor. The intention of the testator clearly was that the widows should enjoy the estate so long as they liked. He required no immediate adoption, which would have ousted the widows from the enjoyment of the estate. But he leaves it to them to select their own time for making the adoption for the continuation of his line. He was, of course, anxious that, for this purpose, an adoption should ultimately be made. But this very object would have been defeated if, after the death of one widow, the other was not to exercise the power. We should not impose limits and conditions on a power which the giver of the power has not himself imposed either expressly or impliedly. A Hindu can authorize no one but his widow or widows to make an adoption. He cannot nominate any one else. He, in fact, has no choice in the matter. So that

(1) I.L.R., 23 Mad., 1.

the authority given to the widows here, could have been given to them in no other capacity than that they were his widows. It was by virtue of their *status* or position as widows that the authority was conferred, and the giving of the authority to both widows without any restrictions is tantamount to giving authority to each. The case is analogous to that of a power given to a person not in his individual capacity, but as holding a particular office such as that of an executor. And in such a case the law is that the power conferred on two is not extinguished by the death of one. The fact that the widows had a right of survivorship in regard to the property is a further good argument that the survivor of them also had the right under the husband's authority to appoint an heir to that property. This disposes of the second objection, and we hold that Papamma Row had full power to make an adoption after the death of her co-widow, Chinnamma Row.

The defendants next seek to set aside the adoption of the Medur minor, not on the ground that all due essentials and formalities were not observed in making it, but on the ground that Papamma Row and the Medur Rani were both coerced into making it, and it was therefore void.

To deal with Papamma Row's case first: The evidence is overwhelming that her consent to take the Medur minor in adoption, at the time she did, was extorted from her by a threat of criminal prosecution for the forgery of a will executed in her favour by Venkataramaya (15), the natural father of the Medur minor, whom she had at first adopted but whose adoption was afterwards set aside by the Courts as invalid. The author of this threat was one Mr. P. Subrahmanya Aiyar, an attorney, now deceased, specially employed by the Court of Wards for taking action against Papamma Row in respect to her possession of the Nidadavole estate.

[Their Lordships considered the evidence regarding coercion and the circumstances under which Papamma Row's consent to the adoption was obtained.]

That establishes the case set up that Papamma Row was coerced according to the definition of 'coercion' in the Indian Contract Act, into making the adoption, the 'coercion' here being 'criminal intimidation' as defined in section 503 of the Indian Penal Code.

SRI RAJAH VENKATA NARASIMHA APPA ROW v. SRI RAJAH RANGAYYA APPA ROW AND OTHERS

Now the question arises whether this coercion avoids the arrangement or only makes it voidable. No authority is quoted to us showing that under the 'Hindu Law' an adoption made under coercion is *ipso facto* void, and under the Law of Contracts it is only voidable. Papamma Row lived for many years after this adoption, but so far from ever seeking to set it aside, it is clearly shown, and indeed it is admitted, that she fully agreed to it and ratified it in every way she could, and for years her chief anxiety was to maintain and establish it as a valid adoption. As no one's interest was prejudcially affected by the subsequent ratification before it was made the adoption must be held to stand good.

It was urged for Rangayya (11) and Venkata Narasimha(12) that it was the stifling of a criminal prosecution that led to Papamma Row's consent and such a consideration is opposed to public policy and the adoption is thereby rendered void. There is no doubt that if such had been the case the agreement would be void. But we are unable to say that there was any stifling of a public prosecution, in other words, any compounding of a felony, for the simple reason that no felony had been committed and no prosecution had been started on the footing that a felony had been committed. All the ceremonies proper to a valid adoption were admittedly performed, and the conclusion we come to is that though the coercion to which Papamma Row was subjected might have justified her in repudiating the adoption, yet as she did not repudiate it, but always maintained its validity, the coercion does not render it invalid.

As to the alleged coercion of the Medur Rani, only a few words need be said. We find that great pressure was brought to bear upon her to give her infant son in adoption. Her sole objection, however, was that the child would be taken away from her. But when it was arranged that she should retain the custody of the child, she appears to have readily consented to give him in adoption, as it was greatly to his material advantage to be so given. So that, as regards her, there was nothing to vitiate the adoption. In conclusion we accordingly decide that the adoption was good and valid.

The adoption of Narayya (17) by Papamma Row being valid, it is next necessary to consider what was the effect of that adoption as regards the Medur estate. That estate was obtained by

Narayya's father, Venkataramayya(15), by a partition which he made with his brothers before Narayya's birth. On his birth Narayya became a co-sharer with his father in that estate. They were the only members of the joint family to which the estate belonged. Venkataramayya subsequently died, and then Narayya became the last surviving male member of the family. Under the Mitakshara law, which governs the parties, the Medur estate then vested in Narayya solely and exclusively, though his mother, Venkayamma, could claim maintenance from it. This was the state of things when Narayya was adopted by Papamma, and the question in dispute is whether Narayya continued to be the owner of the estate notwithstanding his adoption, or whether he was divested of that property by reason of his being adopted into another family. There is no question but that when one of several coparceners leaves his natural family by being adopted into another family he at once loses all his rights in the coparcenary property, and he cannot thereafter claim to inherit or succeed to any property by virtue of his relationships in his natural family. It is also conceded, on the other hand, that if he were possessed of any self-acquired property at the time of adoption, his right to it would be unaffected by the adoption. But the case with which we have to deal is one midway between these two. The Medur estate was not the self-acquired property of Narayya, nor was it, at the time of adoption, coparcenary property in which any other person had a share. It was ancestral partible property which vested solely and absolutely in him because he was the only surviving member of the joint family to which it previously belonged.

We are aware of only one case in which the question has been actually decided, and that it is the case of *Behari Lal Laha* v. *Kailas Chunder Laha*(1).

There Mr. Justice Amir Ali held that although "adoption prior to the vesting of the inheritance entails loss of the right of claiming any share in the estate of the adopted person's natural father or natural relations, yet the interest which is once vested in a son upon the death of a father is not divested by his subsequent adoption into another family."

---

(1) I. C. W. N., 121.

SRI RAJAH VENKATA NARASIMHA APPA ROW v. SRI RAJAH RANGAYYA APPA ROW AND OTHERS

It is, however, contended by some of the parties to the present suits that this view of the law is incorrect, and it is therefore necessary to examine the texts of Hindu law which refer to the matter. It must be admitted that they are by no means explicit, but we are of opinion that they do not require us to dissent from the view of the Calcutta High Court just quoted, and that we would not be justified in holding that a person adopted loses, thereby, any rights of which he is not clearly deprived by the terms of the law to which he is subject.

The texts of *Manu* which refer to the matter are verses 141 and 142 of chapter IX and are translated as follows by Buhler at page 355 of volume XXV of the 'Sacred Books of the East' edited by Max Muller:—

"141. Of the man who has an adopted (Datrima) son possessing all good qualities, that same (son) shall take the inheritance, "though brought from another family.

"142. An adopted son shall never take the family (name) and "the estate of his natural father; the funeral cake follows the "family (name) and the estate, the funeral offerings of him "who gives (his son in adoption) cease (as far as that son is "concerned)."

The texts of *Manu* are to be understood in the sense in which *they are interpreted* by the Hindu Commentators of recognized authority. The above text is quoted in the Mitakshara, chapter I, section II, verse 32, and is thus translated at page 422 of Stokes' 'Hindu Law Books'—'A given son must never claim the family and estate of his natural father. The funeral oblation follows the family and estate, but of him who has given away his son, the obsequies fail."

In the Dattaka Chandrika (Stokes' *idem*, page 640), the reference is as follows:—

"On the subject (of adoption) *Manu* says:—

"'A given son must never claim the family and estate of his "'natural father. The funeral cake follows the family and estate: "'but of him who has given away his son the obsequies fail.'

"It is declared by this, that through the extinction of his filial "relation from gift alone, the property of the son given in the "estate of the giver ceases; and his relation to the family of that "person is annulled.

"And accordingly since extinction of relation to the family "(of the natural father) and so forth is shown, and as a text "recites—'let the father initiate his own sons,'—the initiatory "rites even of the adoption, which are yet to be completed subse- "quent to adoption, are to be performed by the adopter; but "those already performed by the natural father are not to be "cancelled."

Again Madhavya's Commentary as translated by Dr. Burnell (page 24, Dayavibhaga), says "Dattaka sons do not share in the wealth of their natural father. Thus Manu says:—A Dattrima son may never share in the family or property of his natural father; the pinda follows the family and estate: the funeral offering departs from the giver (of a son)."

They are the principal ancient commentators of special authority in South India. The Dattaka Mimamsa, which is of special authority in Bengal, follows the interpretation given in the Dattaka Chandrika. See Stokes' *idem*, page 599. The same passage of Manu is referred to in the Mayukha (of special authority in Bombay) as follows:—"Therefore says Manu (chapter IX, v. 242): 'A given son shall never claim the family and estate of his natural father; the pinda (the obsequial oblation) which follows the family and the heritage, and the Shraddha and other funeral ceremonies of the giver cease.'" "*Gotra rikthanujah* (means) what goes along with the family and the inheritance, the two expressions being generally co-extensive'" (Mandlik's 'Hindu Law,' page 59).

We do not think that there is anything in these passages which necessarily carries with it the idea that the adopted son is divested of property which is his own absolutely at the time of adoption. The more correct view seems to be that by the adoption the filial relationship, as the author of the Chandrika says, is extinguished in one family and is created in the other family, and that thereafter the person adopted cannot claim or take any property in his natural family by virtue of the extinguished filial relationship therein. The fact that under the Dayabhaga law in force in Bengal a son has no vested co-parcenary interest with his father in ancestral property and that his interest in ancestral property of the father only accrues on the father's death rather favours the view that Mimamsa when adopting the interpretation of the Chandrika

SRI RAJAH VENKATA NARASIMHA APPA ROW v. SRI RAJAH RANGAYYA APPA ROW AND OTHERS

had in mind the loss of rights that might accrue after the date of adoption rather than rights to property which had already vested.

In the case of *Monirâm Kolita* v. *Keri Kolitâni*(1), the Privy Council referred to "what appears to be the general rule of Hindu Law that an estate 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" and held that it had not been established that a widow's estate formed an exception to that rule so that she should be divested of it by unchastity after it had vested in her. In the present case we must hold that it has not been established that an ancestral estate which has become vested in a person wholly and absolutely prior to his adoption is divested by reason of the adoption. We think that the general rule of Hindu Law referred to by the Privy Council applies to this case, and that we would not be justified in imposing a disability on an adopted son which is not clearly imposed by the Hindu Law. The vakil for the Medur reversioners, however, relies strongly on the opinion expressed by Mr. Sarkar at pages 119, 120 of his Hindu Law, second edition, published in 1903, in which he lays down the principle that adoption operates as the civil death of the person adopted in his natural family, and as a re-birth in his adoptive family, and he, therefore, holds that on adoption the succession opens to all the property possessed at the time by the person adopted. This view is directly opposed to Mr. Sarkar's earlier view as stated in his Tagore Lectures on adoption, 1888, published in 1891 (pages 389, 390) in which he states "that according to the Mitakshara Law, a son acquires by birth "a right to the ancestral property in the possession of the father, "and an undivided co-parcenary interest is vested in him as a "member of the family corporation. The vesting, however, is "imperfect as the interest is liable to variation and also to "extinction by reason of any subsequent disqualification. The "interest is acquired in the character of a member of the family, "and when that character is lost by adoption, the interest also "ceases. In this way you may explain as to how a Mitakshara "son on being given away by his father in adoption loses his "vested interest in the ancestral property.

(1) I.L.R., 5 Calc., 776 at p. 788.

"But the question assumes a different shape when the boy is "full owner of any property such as what was inherited by him "from his maternal grandfather or uncle before adoption. There "appears to be no reason why a child given in adoption should be "divested of property of which he is the absolute master at the "time of affiliation. An adoption does, no doubt, cause a complete "change of lineage, put an end to the status arising from the "natural relationship, and extinguish the capacity of inheritance "in the character of a relation by birth; but it is nowhere "represented to be equivalent to civil death so as to extinguish the "adopted son's existing proprietary rights."

A great deal of argument was addressed to us with reference to the exact meaning of the Sanskrit word "*haret*" in the text of Manu which is variously translated "claim," "take," "share," and which Sarkar in his latest work translates "take away." On the one side it was pointed out that in some of the *slokas* of Manu the same word is translated and can properly be translated only by the word "inherit", while, on the other side, attention is drawn to at least one passage where it cannot refer to inherited property. The arguments do not seem to bring us any nearer to the question which has to be decided.

We may, however, say that we are not prepared to accept Mr. Sarkar's present view that Manu and the commentators have hitherto not been correctly translated, and that this has led to erroneous views as to the consequences which flow from adoption.

We think too that there is great danger in speaking of adoption as civil death and a re-birth, and in attempting to enforce the consequences that might be supposed to logically flow from those conceptions.

It is clear from the passage in the Dattaka Chandrika (page 64, Stokes' 'Hindu Law Books') which we have already quoted that the idea of re-birth in the new family is only partially given effect to, for it is expressly provided that the initiatory rites which the boy has undergone in his natural family are not to be cancelled and performed afresh in his adoptive family. He is only required to perform in the new family those ceremonies which had not been performed in the old. For the purpose of these ceremonies there is no idea of death or re-birth. There is only one continuous existence. It would be easy to show that in other respects also the

SRI RAJAH VENKATA NARASIMHA APPA ROW v. SRI RAJAH RANGAYYA APPA ROW AND OTHERS

analogy is misleading. It seems to us unsafe to determine the rights of parties by a reference to any such analogies, rather than by the exact language of the texts and the general principles of the Hindu Law in cases where the texts do not definitely decide the question raised.

In this connection we may observe that the District Judge has allowed Mr. Sarkar and others to give evidence on commission as to the meaning of the various texts, and as to the correct view of the Hindu Law on the question in dispute. The question in dispute is not one of foreign law and we are not aware of any provision of the Indian Evidence Act or other law which renders such evidence admissible in a case like the present.

We are of opinion that the adoption of Narayya (17) did not operate in law to divest him of his rights in the Medur estate.

The result of our findings is that Appeals Nos. 122 and 123 of 1900 and Appeal No. 32 of 1904 must be dismissed with costs, and Appeal No. 41 of 1904 must be allowed in regard to one-third of the Medur estate including the moveables appertaining to it, and it is dismissed in other respects. Proportionate costs will be given to both sides in this Court in Appeal No. 41 of 1904 and in the lower Court in Original Suit No. 44 of 1899.