PRIVY COUNCIL.

SURYANARAYANA AND OTHERS, PLAINTIFFS,

v.

VENKATARAMANA AND ANOTHER, DEFENDANTS.

P.C.*
1906.
May 1, 2, 3.
June 21.

[On appeal from the High Court of Judicature at Madras.]

Hindu Law—Adoption—Authority of husband to his wife to adopt—Death of first adopted son—Second adoption, validity of—Consent of sapindas to adoption—Intention of husband as expressed in authority to adopt.

A husband verbally authorized his wife to adopt a son. The authority was in general terms requiring her to adopt so as to continue his line and to provide for his spiritual benefit; no particular person being indicated for adoption and no restriction placed on his wife's discretion. He died in 1861 and after his death the widow in 1885 adopted a son who died shortly afterwards. In 1898 she adopted another son with the consent of some of the sapindas:

Held, that the second adoption was valid, the authority to adopt not being exhausted by the first adoption.

Gournath Chowdhree v. *Arnopoorna Chowdrain*, (1852), 8 S.D.A. (Beng.), 332, dissented from.

Ram Soondur Singh v. *Surbanee Dossee*, 22 W.R., 121, approved.

In such a case the intention of the husband is to be mainly considered. Any special instructions which he may give for the guidance of his widow must be strictly followed: where no such instructions have been given, but a general intention has been expressed to be represented by a son, effect should, if possible, be given to that intention.

APPEAL from a judgment and decree (March 13th, 1903) of the High Court at Madras, which affirmed a decree (September 22nd, 1900) of the Court of the District Judge of Ganjàm, and dismissed the appellants' suit.

The suit was brought for a declaration of the invalidity of the adoption by the second respondent, Venkataratnama, of the first respondent as a son to her husband one Venkata Narasu, who died on 8th February 1861. The adoption which it was sought to set aside was made on 10th June 1898 and purported to be made with the authority of the husband. By virtue of the same authority a former adoption had been made by Venkataratnama in May 1885,

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Present,—Lord MACNAGHTEN, Sir ANDREW SCOBLE, Sir ARTHUR WILSON, and Sir ALFRED WILLS.

but the son then adopted died in February 1886, being then only about two years old.

The main questions in this appeal were (*a*) whether the power to adopt was exhausted by the first adoption, and the second adoption was consequently illegal; and (*b*) whether if it was so exhausted the consent of some of the husband's sapindas validated the second adoption.

Both Courts in India decided in favour of the defendants. The facts were not in dispute, and will be found sufficiently stated in the report of the case in the High Court in *Suryanarayana* v. *Venkataramana*(1) on this appeal.

L. DeGruyther for the appellant contended that the adoption was invalid, first, because Venkata Narasu gave no sufficient authority for such an adoption, and secondly because the authority of the sapindas did not validate the adoption. A general authority to adopt a son did not validate the adoption. A general authority to adopt a son did not authorize a second adoption in the case of the first adopted son dying. An authority to adopt must be strictly followed. A second adoption had no religious motives, for, the salvation of the ancestor, which was the object of adoption was obtained on the adoption of the first son even if he died shortly afterwards as in the present case. Reference was made to *Collector of Madura* v. *Moottoo Ramalinga Sathupathy*(2); *Mutasaddi Lal* v. *Kundan Lal*(3); *Amrito Lal Dutt* v. *Surnomoye Dasi*(4); *Surendro Keshub Roy* v. *Doorgasoondery Dossee*(5); *Chowdry Pudum Singh* v. *Koer Oodey Singh*(6); *Teeloke Chunder Raee* v. *Gyan Chunder Raee*(7); *Gournath Chowdhree* v. *Arnopoorna Chowdrain*(8); *Mohendrololl Mookerjee* v. *Rookiney Dabee*(9); *Purmanund Bhuttacharji* v. *Oomakunt Lahooree*(10); *Amirthayyan* v. *Ketharamayyan*(11); *Sri Balusu Gurulingaswami* v. *Sri Balusu Ramalakshmamma* and *Radha Mohan* v. *Hardai Bibi*(12); *Collector of Madura* v. *Moottoo Ramalinga Sathupathy*(2); 1 Strange's 'Hindu Law,'

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(1) I.L.R., 26 Mad., 681. (2) 12 M.I.A., 397 at pp. 433, 441, 443.
(3) L.R., 33 I.A., 55; I.L.R., 26 All., 377.
(4) L.R., 27 I.A., 123; I.L.R., 27 Calc., 996.
(5) L.R., 19 I.A., 108 at p. 122; I.L.R., 19 Calc., 513 at p. 525.
(6) 12 M.I.A., 350 at p. 356. (7) (1847), S.D.A. (Beng.), 554.
(8) (1852), 8 S.D.A. (Beng.), 332. (9) (1864), 1 Coryton, 43 at p. 45.
(10) (1823), 4 Sel. Rep., 318. (11) I.L.R., 14 Mad., 65 at p. 66.
(12) L.R., 26 I.A., 113 at p. 142; I.L.R., 22 Mad., 398 at p. 421; I.L.R., 21 All., 460 at p. 485).

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78, 79; Mayne's 'Hindu Law,' 6th edition, page 141, paragraph 114 and page 143; *Lakshmibai* v. *Rajaji*(1); *Sham Chunder* v. *Narayni Dibeh*(2); *Narayanasami* v. *Kuppusami*(3); *Ramaswami Aiyan* v. *Venkataramayyan*(4); *Sreemutty Dossee* v. *Tarrachurn Coondoo*(5); and *Parasara Bhattar* v. *Rangaraja Bhattar*(6).

As to the authority given by the sapindas it was contended that it was not sufficient. It was only given by a very small number of the sapindas and those not the nearest reversioners: it did not show that any discretion had been exercised in giving permission to adopt; it was in terms too general; and it was not acted on within a reasonable time after it was obtained. Reference was made to West and Bubler's 'Hindu Law,' 967: *Collector of Madura* v. *Mootoo Ramalinga Sathupathy*(7); *Sri Virada Pratapa Raghu nada Deo* v. *Sri Brozo Kishoro Patta Deo*(8); Institutes of Menu, Chapter V. section 148: *Vellanki Venkata Krishna Rao* v. *Venkata Rama Lakshmi*(9); and *Ganesa Ratnamaiyar* v. *Gopala Ratnamaiyar*(10).

W. C. Bonnerjee for the respondent contended that the authority given by Venkata Narasu was effectual to allow a second adoption; and that the adoption made with the consent of the sapindas was valid. The decision of either of these points in the respondent's favour was sufficient to enable him to succeed. Each case had to be decided on its own circumstances; in no case authority was needed: the decision should be made on the construction of the authority to adopt given by Venkata Narasu. On the words of that authority there was nothing to confine the permission to the adoption of only one son; if the first one adopted died the adoption of another was permitted. The first adoption, in other words, did not exhaust the authority to adopt. [*Sir A. Scoble* referred to *Gournath Chowdree* v. *Arnopoorna Chowdrain*(11).] In that case the direction was to adopt a particular son. Reference was made to

(1) I.L.R., 22 Bom., 996.
(2) (1807), 1 S.D.A. (Beng.), 209; 1 Morley's Digest, p. 14, note 3.
(3) I.L.R., 11 Mad., 43.
(4) L.R., 6 I.A., 196 at p. 202; I.L.R., 2 Mad., 91 at p. 96.
(5) (1865), Bourke's Rep. A.O.C., 48 at p. 55.
(6) I.L.R., 2 Mad., 202 at pp. 203, 205.
(7) 12 M.I.A., 397 at pp. 433, 441, 443.
(8) L.R., 3 I.A., 154 at pp. 188, 193; I.L.R., 1 Mad., 69 at pp. 78, 83.
(9) L.R., 4 I.A., 1; I.L.R., 1 Mad., 174.
(10) L.R., 7 I.A., 173 at p. 177; I.L.R., 2 Mad., 270 at p. 279.
(11) (1852), 8 S.D.A. (Beng.), 332 at p. 334.

the Synopsis in Stokes' 'Hindu Law Books,' 663: *Surendra Nandan* v. *Sailaja Kant Das Mahapatra*(1); and Golap Chunder Sarkar's 'Tagore Law Lectures' for 1888, p. 234: *Collector of Madura* v. *Mootoo Ramalinga Sathupathy*(2) and *Lakshmibai* v. *Rajaji*(3); that was a case from the province of Satara where the Mitakshara and not the Mayukha law prevailed. There was no law that only the immediate reversioners should give their consent to the adoption.

L. DeGruyther replied referring to Macnaghten's 'Considerations of Hindu Law,' 175, 199; and 'Dattaka Mimamsa,' section I paragraphs 15 and 19, page 534, of Stokes' 'Hindu Law Books.'

1906, *June* 21*st*.—The judgment of their Lordships was delivered by

Sir ANDREW SCOBLE.—In this case there is no dispute about the facts, but two questions of law arise, both of which are of considerable importance.

Venkata Narasu, a Brahmin landholder in the district of Ganjam in the Madras Presidency, died intestate and without issue on the 6th of February 1861, leaving the second respondent, Venkata Ratnamma, his widow and sole heiress, him surviving. Before his death he verbally authorized his wife to adopt to him, and it is found by the learned Judges of the High Court that the authority was "in general terms, requiring her to adopt so as to continue his line, and to provide for his spiritual benefit. He did not indicate any particular person for adoption, either by name or otherwise, and placed no restrictions whatever on his wife's discretion."

Twenty-four years after her husband's death, on the 1st May 1885, the widow adopted a son of one of her sisters, but this child died in February 1886, and twelve years later, on the 10th June 1898, she adopted the first respondent. Prior to making this second adoption she obtained the consent of the elder representatives of two branches of her husband's family. The representatives of two other branches refused their consent, and on the 7th October 1899 brought the present suit to set aside the second adoption, as having been neither authorized by her husband nor made with the consent of his sapindas.

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(1) I. L. R., 18 Calc., 385 at p. 392. (2) 12 M.I.A., 397 at pp. 433, 441, 443. (3) I. L. R., 22 Bom., 996.

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Upon these facts, the first question which their Lordships have to determine is whether the authority to adopt given by the husband was exhausted by the first adoption; or whether, on the death of the son first adopted, the authority of the husband survived so as to empower the widow to make a second adoption.

So far as their Lordships have been informed, there is no decisive text of the ancient Hindu lawgivers upon this point. The earlier English authorities express conflicting views. Sir F. Macnaghten, writing in 1824, at page 175 of his 'Considerations on the Hindu Law,' says:—

"If a woman be empowered by her husband to adopt a son, and if she does adopt one accordingly, it has never, I believe, been declared by any writer that this power can go beyond the adoption of one, or, without special authority from the husband, be extended to the adoption of another if the first adopted should die."

Sir William Macnaghten, writing in 1829, is less positive—

"It is a disputed point," he says, "whether a widow having, with the sanction of her husband, adopted one son, and such son dying, she is at liberty to adopt another without having received conditional permission to that effect from her husband. According to the doctrine of the Dattaka Mimamsa, the act would clearly be illegal; but Jagannatha holds that the second adoption in such case would be valid, the object of the first having been defeated." (Hindu Law, i. 86)

Sir Thomas Strange, writing in 1830 as to the law prevalent in Madras, says:—

"There exists nothing to prevent two successive adoptions, the first having failed, whether effected by a man himself, or by his widow or widows after his death, duly authorized." (Hindu Law, i. 78.)

There are not many reported cases on the point. In Morley's 'Digest' (i. 14) published in 1850, there is a note to the effect that "instances have occurred in which a widow has made a second adoption on the failure of the first by death, in fulfilment of a single injunction or authority from her husband, the object of such injunction being unattained unless the child live."

The case of *Gournath Chowdhree* v. *Annopoorna Chowdrain*(1) is a distinct authority that where a widow is directed to adopt a son, she cannot adopt a second if the first adopted son dies. This case was decided by the Bengal Sudder Court in 1852, and is cited in

(1) (1852) 78 S. D. A (Beng), 332.

modern text-books as establishing the proposition. The issue to be determined in the case is thus stated in the report:

"There being no permission in the *unoomuttee puttur*" (or deed of adoption) "to adopt (children) one after another, is it proper, according to the shaster, to adopt one (child) after the death of another?"

The *bywusta* of the pundit to whom this question was submitted by the Court, was:—

"The deed put in does not restrict the adoption to one son only, and therefore, on the death of the previous adopted son, another may be adopted."

In their judgment, the learned Judges first cite the passage from Sir William Macnaghten quoted above, omitting the last sentence relating to Jagannatha's opinion, and go on to say:—

"As it is a principle of Hindu law that, without permission, no son can be adopted, it is a fair legal inference that a second adoption on the death of the first child, when the husband is no longer alive to grant permission to adopt, cannot be valid."

Their Lordships are unable to attach much weight to this decision. It discards the opinion of the pundit, refers to no previous decisions, does not attempt to discuss the conflicting views of the vernacular authorities cited by Macnaghten, and rests upon an inference which begs the whole question. Whether, and how far, this case is still followed in Bengal, it is not necessary now to enquire. For the purposes of this appeal, it is enough to say that it is not a binding authority in Madras.

The learned Judges of the High Court, one of whom is a Hindu lawyer of great distinction, in their judgment say:—

"The cases in Calcutta to which our attention has been drawn adopt what appears to us to be too artificial a rule of construction in that they practically disregard the question of intention;"

and they hold that—

"when the general intention of a Hindu to be represented by an adopted son is clear, as in this case, there seems no reason why effect should not be given to such intention, if it is possible to do so without contravening the law."

The practice of the community, they add, has been in accordance with this view. As regards this particular case, they say:—

"The object and purpose of the authority given by the husband was to perpetuate his family as well as to secure his spiritual benefit, and it would be unreasonable to hold that an accident such as the early death of the boy first adopted should be allowed to frustrate the

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fulfilment of his object, and to preclude the widow from making another adoption in the absence of any legal impediment to her doing so."

Their Lordships agree with the learned Judges of the High Court in the opinion that the main factor for consideration in these cases is the intention of the husband. Any special instructions which he may give for the guidance of his widow must be strictly followed; where no such instructions have been given, but a general intention has been expressed to be represented by a son, their Lordships are of opinion that effect should, if possible, be given to that intention. This more liberal rule has been followed by the High Court of Bombay, as well as in Madras, and is not without support in Bengal. In a comparatively recent case [*Surendra Nandan* v. *Sailaja Kant Das Mahapatra*(1)] the learned Judges of the High Court at Calcutta say, at page 392:—

"Looking at the religious efficacy that ensues from the adoption of a son by a widow to her deceased husband, we think the Court should not be too astute to defeat an adoption, but should rather do its utmost to support it unless such adoption is clearly in excess or in breach of the power to make it."

The limitations to the application of the rule are indicated in the judgment of this Committee in *Collector of Madura* v. *Mootoo Ramalinga Sathupathy*(2), in which their Lordships say:—

"Inasmuch as the authorities in favour of the widow's power to adopt with the assent of her husband's kinsmen proceed in a great measure upon the assumption that his assent to this meritorious act is to be implied wherever he has not forbidden it, so the power cannot be inferred when a prohibition by the husband either has been directly expressed by him, or can be reasonably deduced from his disposition of his property, or the existence of a direct line competent to the full performance of religious duties, or from other circumstances of his family which afford no plea for a supersession of heirs on the ground of religious obligation to adopt a son in order to complete or fulfil defective religious rites."

In the present case it is abundantly clear that the husband desired to be represented by a son after his death, and that he placed no specific limitation on the power to adopt, which he entrusted to his widow. His object was twofold—to secure spiritual benefit to himself, and to continue his line. Both these objects

(1) I.L.R., 18 Calc., 385. (2) 12 M.I.A., 397 at p. 443.

are meritorious in the view of the Hindu law, and both are in consonance with the feelings known to prevail throughout the Hindu community. In the absence of a natural son, both can be attained only by adoption. Funeral rites may be performed, and certain spiritual advantages secured, to the deceased by a near male relative; but it is stated in the 'Dattaka Chandrika,' a work of some authority in Southern India (sec. 1, pl. 22), that—

"Although by reason of the nephew's possessing the representation of the filial relation, he may be the means of procuring exemption from exclusion from heaven, and so forth; still, as the celebration of name and the due perpetuation of lineage would not be attained, for the sake of the same, the constituting him (an adopted son) is indispensable."

In his able argument on behalf of the appellants, Mr. DeGruyther contended that, by the adoption of the first adopted son, all the spiritual benefit to be derived from the act was secured to the deceased, and that the adoption of a second boy was, therefore, supererogatory and could not be held to be justified by the husband's sanction. This contention is disposed of by the judgment of Mr. Justice Romesh Chunder Mitter in the case of *Ram Soondur Singh* v. *Surbanee Dossee*(1), in which a similar argument was put forward:—

"Is there anything," says that learned Judge, "in the general Hindu law in support of the contention . . .? No passage from any of the treatises on the Hindu law, and no texts of the Hindu shaster have been cited. As far as I am aware there is none in its support. On the other hand, the broad proposition for which the learned Counsel contends will in a great many cases defeat the essential object for which every Hindu desires to adopt, viz., the continuance of the spiritual benefit to be conferred upon him after his death. An adopted son attaining an age of sufficient maturity and by performing the religious services enjoined by the shasters, cannot exhaust the whole of the spiritual benefit which a son is capable of conferring upon the soul of his deceased father; because these services are enjoined to be repeated at certain stated intervals, and the performance of them on each successive occasion secures fresh spiritual benefit to the soul of the deceased father . . . I am, therefore, of opinion that the contention . . . is opposed to the general principles of the Hindu law."

(1) 22 W.R., 121.

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These observations apply with the greater force to the present case, as the boy first adopted died when little more than two years of age.

For the reasons stated, their Lordships agree with the High Court that the adoption of a second boy in this case was valid, and that the widow's authority to adopt was not exhausted by the first adoption. In the view which they take of the case it is not necessary for their Lordships to consider the second question raised upon this appeal, viz., whether, if the widow's authority had been held to have been exhausted, there was sufficient consent on the part of the husband's sapindas to validate the second adoption.

Their Lordships will humbly advise His Majesty that the decree of the High Court of Madras ought to be confirmed and the appeal dismissed. The appellants must pay the respondents' costs of the appeal.

Appeal dismissed.

Solicitors for the appellants—*Sanderson, Adkin, Lee & Eddis.*

Solicitor for the respondents—*Douglas Grant.*

APPELLATE CIVIL—FULL BENCH.

Before Sir Arnold White, Chief Justice, and Mr. Justice S. Subrahmania Ayyar, Mr. Justice Davies, Mr. Justice Benson and Mr. Justice Moore.

1905 July 14, 17, 18, 27. November 7, 8. 1906 February 23.

CHIRUVOLU PUNNAMMA (SECOND DEFENDANT), APPELLANT,

v.

CHIRUVOLU PERRAZU AND ANOTHER (PLAINTIFF AND FIRST DEFENDANT), RESPONDENTS.*

Hindu law—Reversioner, suit by to set aside adoption—Reversioner in such suit represents all interested in the reversion, but does not in suits questioning alienations- Alienation by limited owner gives rise to only one cause of action.

Although in suits relating to alienations by a qualified owner, the presumptive reversioner cannot, on the current of authority, be held to represent remote

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* Second Appeal No. 540 of 1903, presented against the decree of M.R.Ry. I. L. Narayana Rao, Subordinate Judge of Kistna, in Appeal Suit No. 346 of 1902, presented against the decree of M.R.Ry. S. Ramasami Ayyar, District Munsif of Masulipatam, in Original Suit No. 533 of 1898.