

BENSON,
OFFG. C.J.,
AND
KRISHNA-
SWAMI
AYYAR, J.
—
MEENAKSHI
ANNI
v.
APPARUTTI.

Mitakshara while mentioning the daughter who is not named by Yagnavalkya in the text commented on does not mention the widow as well. Whatever the reason may be, the illegitimate son who is declared entitled to half the share of a legitimate son amongst Sudras cannot in reason be excluded by a widow when there is no legitimate son. The express authority of the Dattaka Chandrika, Chapter V, placita 30 and 31, is in favour of the widow sharing equally with the illegitimate son. We may add that Mr. Mayne (see Mayne's Hindu Law, 7th Edition, section 551) and Mr. Ghose (see Ghose's Hindu Law, 2nd Edition, page 656) are of the same opinion. We dismiss the second appeal with costs. The memorandum of objections is not pressed and is also dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Wallis and Mr. Justice Miller.

1908.
November 13.
December 4..
1909.
September 16.
October 5.

ADIVI SURYAPRAKASA RAO (PLAINTIFF), APPELLANT,
v.
NIDAMARTY GANGARAJU AND OTHERS (DEFENDANTS
AND SECOND AND FOURTH DEFENDANTS' LEGAL REPRESENTATIVES),
RESPONDENTS.*

Hindu Law—Adoption—Adoption by widow of predeceased coparcener after estate had vested in the widow of survivor invalid, though made with the consent of the latter.

A power given to a widow to adopt is absolutely at an end when once the estate has vested in the heir of her deceased son and is not revived even if she afterwards succeeds to the estate.

Ramakrishna v. Shamrao, [(1902) I.L.R., 26 Bom., 526], and *Manikyamalu Bose v. Nandakumar Bose* [(1903) I.L.R., 33 Calc., 1306], referred to.

Heid also that, in such a case, the consent of the son's heir in whom the estate had vested, will not validate the adoption.

WALLIS, J.—*Semle*: The same rule would apply in the case of an adoption by the widow of a coparcener who has lost her right to adopt, independently of such consent by reason of the estate having devolved on the widow of the last coparcener.

Annammah v. Mabbu Bali Reddy, [(1875) 8 M.H.C.R., 108], referred to.

SECOND APPEAL against the decree of T. Varada Row, Additional Subordinate Judge of Godavari at Rajahmundry, in Appeal Suit No. 482 of 1902, presented against the decree of P. N. Satagopa

Naidu, District Munsif of Bhimavaram, in Original Suit No. 810 of 1900.

WALLIS
AND
MILLER, JJ.

N and *L* were undivided brothers. *N* died first leaving a widow *P*. *L* who succeeded to the property died afterwards leaving a widow *R*, who died in 1897. The plaintiff alleging that he and first defendant were the next reversioners after the death of *R* sued to recover from defendants Nos. 2—4, the properties enjoyed by *R*. The second defendant resisted the suit on the ground that he was adopted by *P* after the death of *L* and was thus entitled to the property.

ADIVI
SUBBIA-
PRAKASA
RAO
v.
NIDAMARTY
GANGARAJU.

Both Courts found the adoption proved and dismissed the suit. Plaintiff appealed to the High Court.

T. V. Seshagiri Ayyar for appellant.

P. Nagabhushanam for seventh and eighth respondents.

V. Ramesam for fifth respondent.

JUDGMENT.—The plaintiff denied the alleged adoption and it was for the defendant to show that there was a valid adoption. If Lakshminarasayya did not predecease his brother, then unless the adoption by the brother's widow was made in his life-time, it was bad at any rate in the absence of the consent of Lakshminarasayya's widow. It was therefore for the defendant to show that the adoption was made at a time when the widow was competent to adopt after the death of Lakshminarasayya's widow, or that it was made with the consent of this widow and validated by such consent. We must therefore call for a finding as to whether the adoption was made after the widow's death or in her life-time, and if in her life-time whether her consent was obtained, and was sufficient to validate the adoption.

Fresh evidence may be taken.

The finding must be submitted within six weeks. Seven days will be allowed for filing objections.

This second appeal again coming for hearing on Friday the 4th day of December 1908 on receipt of a letter from the District Judge of Gódvári for the transfer of Appeal Suit No. 482 of 1902 from the file of the Additional Subordinate Judge's Court of Gódvári at Rajahmundry to that of the Subordinate Judge's Court of Kistna at Ellore, the Court made the following

ORDER.—In addition to the finding called for it should also be found whether, if the adoption took place after Lakshminarasayya's death, it took place with the consent of his widow.

WALLIS
AND
MILLER, JJ.

In compliance with the above orders the Subordinate Judge of Ellore found that the adoption took place in R's life-time and with her consent.

ADIVI
SURYA-
PRAKASA
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GANGARAJU.

This second appeal coming on for final hearing after the return of the finding on Thursday the 16th day of September 1909 and having stood over for consideration till this day, the Court delivered the following

JUDGMENTS (WALLIS, J.).—It has been held by the Privy Council in *Mussumat Bhoobum Moyce Debia v. Ram Kishore Acharj Chowdry*(1), *Velanki Venkata Krishna Rao v. Venkata Rama Lakshmi*(2), *Padmakumari Debi Chowdhrani v. The Court of Ward*(3), *Thayammal v. Venkatarama*(4) and *Manik Chand Golecha v. Jagat Settani Pran Kumari Bibi*(5), that an adoption made by a widow to her husband after their son had died leaving a widow in whom the estate had vested was void and did not take effect when, after the death of the son's widow, the estate devolved by inheritance on the adoptive widow herself. These decisions of their Lordships have been interpreted by Full Benches of the Bombay and Calcutta High Courts in *Ramakrishna v. Shamrao*(6) and *Manikyamala Bose v. Nandakumara Bose*(7) as meaning that a widow's power is absolutely at an end once the estate has vested in the heir of her deceased son, and is not revived even if the widow herself afterwards succeeds to the estate. If the widow having once lost the right to adopt when her son's inheritance devolves on another does not regain it on becoming herself the owner of the estate—if, that is to say, she cannot in these circumstances by her consent as owner validate an adoption made by her as widow, it would seem to follow that the consent of the person on whom the estate has devolved by inheritance from the son is ineffective to validate an adoption made by the widow, and this was apparently the view taken by Jenkins, C.J., in *Anandibai v. Kashibai*(8). This was expressly decided by a Full Bench of this Court in *Annamah v. Mabbu Bali Reddi*(9), where it was held that, when after the son's death the estate had vested by inheritance in his grandfather, and the grandfather signified

(1) (1865) 10 M. I.A., 279.

(2) (1876) I.L.R., 1 Mad., 174.

(3) (1882) I.L.R., 8 Calc., 302.

(4) (1887) I.L.R., 10 Mad., 205.

(5) (1890) I.L.R., 17 Calc., 518.

(6) (1902) I.L.R., 28 Bom., 526.

(7) (1908) I.L.R., 33 Calc., 1306.

(8) (1904) I.L.R., 28 Bom., 461.

(9) (1875) 8 M.H.C.R., 108.

his consent to the widow's adoption by himself giving the boy in adoption, his consent as owner did not render the adoption valid.

WALLIS
AND
MILLER, JJ.

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In the present case we have to deal with an estate which was vested in two undivided coparceners A and B, and on the death of A passed by survivorship to B, and on B's death descended to his widow; and the question is as to the effect of an adoption to A made by A's widow with the consent of the Sapindas and also, it is alleged, with the consent of B's widow. Now it is clear that A's widow might, with proper consent, have validly adopted a son to A during the life-time of his surviving coparcener B, *Sri Virada Pratapa Raghunatha Deo v. Sri Brozo Kishoro Patta Deo*(1), and *Chandra v. Gojarabai*(2), but in the last case it was held that such an adoption if made after the death of the surviving coparcener and the vesting of the estate in his widow could not divest the estate, as of course it would if valid.

Then as to the alleged consent of B's widow, the question whether the consent of the person in whom the estate had vested by inheritance would validate such an adoption was left open by a Full Bench of the Bombay High Court in *Vasudeo v. Ramchandra*(3); in *Payapa v. Appanna*(4), it was held that it would, but this was before the decision of the Full Bench in *Ramakrishna v. Shamrao*(5) that a widow cannot adopt when the estate comes to her by inheritance after it has devolved on her son's widow; and in *Anandibai v. Kashibai*(6) Jenkins, C.J., seemed to think, as already observed, that in such a case consent would be ineffective. This was also the decision in *Annamah v. Mabbu Bali Reddi*(7), by which we are bound. If in these cases consent is inoperative, there does not appear to be any sound reason for applying a different rule in the case of an adoption by the widow of a coparcener who has lost her right to adopt independently of such consent by reason of the estate having devolved on the widow of the last coparcener. In this view it is unnecessary to consider whether the evidence justifies the presumption drawn by the lower Court that the widow in whom the estate was vested duly gave her consent.

(1) (1876) I.L.R., 1 Mad., 69.

(3) (1898) I.L.R., 22 Bom., 551.

(5) (1902) I.L.R., 26 Bom., 526.

(7) (1875) 8 M.H.C.R., 103.

(2) (1890) I.L.R., 14 Bom., 463.

(4) (1899) I.L.R., 23 Bom., 327.

(6) (1904) I.L.R., 28 Bom., 461.

WALLIS
AND
MILLER, JJ.

In the result the appeal is allowed and the plaintiff's suit decreed with costs throughout.

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MILLER, J.—I do not think this is at all a clear case but I am not prepared to differ.

If the power to adopt is at an end, then on the authorities no consent can revive it, but if the only obstacle to the divesting of Ramanamma's estate is the fact that it had vested in her and was not in Peramma at the time of the adoption, the power to adopt being still alive, then I find some difficulty in seeing why the obstacle should not be removeable by consent. And it is not very clear to me that the power to adopt is at an end in this case within the meaning of the Privy Council rulings. In all the cases cited the deceased had a son natural or adopted before the proper limit was reached: nevertheless seeing that in *Rajah Vellanki Venkata Krishna Row v. Venkata Rama Lakshmi Narasayya*(1) the fact that the adoption is in derogation of another estate is stated as the feature which distinguished that case from *Mussumat Bhoobum Moyee Debia v. Ramkishore Acharj Chowdhry*(2), I cannot say that the rule which my learned brother proposes to apply could not be deduced from the decisions to which he has referred.

I therefore, though with some hesitation, agree in making the decree which he proposes to make.

APPELLATE CIVIL.

Before Mr Justice Benson, and Mr. Justice Krishnaswami Ayyar.

SUBRAMANIA IYER (DEFENDANT), APPELLANT,

v.

RUNGAPPA REDDI AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

Contract Act IX of 1872, s. 69—Interested in paying—Meaning of—When payment not voluntary.

A person is interested in making a payment within the meaning of section 69 of the Contract Act, when there is an apprehension of any loss or inconvenience or of any detriment capable of being assessed in money.

* Second Appeal No. 35 of 1907.

(1) (1876) L.R., 4 I.A., 1 at p. 9.

(2) (1865) 10M.I.A., 279.