

## APPELLATE CIVIL.

Before Sir R. S. Benson, *Officiating Chief Justice* and Mr. Justice  
Krishnaswami Ayyar.

MEENAKSHI ANNI (PLAINTIFF), APPELLANT,

v.

APPAKUTTI (DEFENDANT), RESPONDENT.\*

1909.  
October  
20, 26.

*Hindu Law—Succession—Illegitimate son succeeds as a co-heir with the widow.*

The illegitimate son of a separated Hindu, who dies without legitimate male issue, succeeds as a co-heir with the widow, daughter or daughter's son.

*Ramalinga Muppan v. Pavadai Goundan* [(1902) I.L.R. 25, Mad. 519, at p. 521], approved.

*Chinnammal v. Varadarajulu*, [(1892) I.L.R. 15, Mad. 307], followed.

SECOND APPEAL against the decree of F. D. P. Oldfield, District Judge of Tanjore, in Appeal Suit No. 417 of 1906, presented against the decree of C. S. Mahadeva Aiyar, District Munsif of Shiyali, in Original Suit No. 170 of 1905.

The facts for the purpose of this case are sufficiently stated in the judgment.

*S. Muthiah Mudaliar* for appellant.

*P. S. Subrahmania Ayyar* for *The Hon. The Advocate-General* for respondent.

JUDGMENT.—The plaintiff as the widow of Sethu Mudali claims the entire property of her deceased husband as against his illegitimate son, the defendant. The Courts below gave her a decree for one-half of the property. She appeals for the other half alleging that under the Hindu Law the widow excludes the illegitimate son altogether. We do not think this contention can be upheld. The decision in the case of *Chinnammal v. Varadarajulu*(1) is a direct authority against the appellant and though it rests upon a misapprehension of the grounds of decision in *Parvathi v. Thirumalai*(2), it is supported by the observations at page 343 of the report and also by the reasoning at page 559 of the decision in *Ranoji v. Kandoji*(3). We think the remarks of Mr. Justice Bhashyam Ayyangar in *Ramalinga Muppan v. Pavadai Goundan*(4) are correct. He says "the rights of an illegitimate son in the

\* Second Appeal No. 212 of 1907.

(1) (1892) I.L.R., 15 Mad., 307.

(2) (1887) I.L.R., 10 Mad., 334.

(3) (1885) I.L.R., 8 Mad., 557.

(4) (1902) I.L.R., 25 Mad., 519, at p. 521.

paternal estate when the father has died a separated holder have now been clearly defined by judicial decisions" and adds at page 522 "If the father left a widow, daughter or daughter's son but no legitimate male issue, the illegitimate son succeeds as a co-heir with the widow, daughter or daughter's son as the case may be, and as sole heir in default of any other heir down to a daughter's son." The *ratio decidendi* in the case of *Parvathi v. Thirumalai*(1) is not, as supposed in the case of *Chinnammal v. Varadarajulu*(2) that the widow is preferable to the illegitimate son in the case of an impartible estate though it may be supported on that ground. Reliance was then placed on the decision of Mr. Justice Holloway and Mr. Justice Innes in *Kulanthai Natchiar v. Ramamani*(3) wherein it was held that the widow excluded the illegitimate son altogether though the estate to which succession was claimed does not seem to have been impartible property. We have referred to the decision in that case which however, it must be noted in passing, was reversed by the Privy Council on another ground (See *Ramamani Ammal v. Kulanthai Natchiar*(4)). The opinion of the learned Judges in that case was based on the text of Yagnavalkya without reference to the commentary of the Mitakshara and the passage in 1 Strange's Hindu Law, III Edition, page 69, citing it. The test of Yagnavalkya simply postpones the illegitimate son till after the daughter's son. The Mitakshara however (see Chapter I, section 12, placita 1 and 2) expressly lays down that he participates for half a share with a daughter or daughter's son. The Mitakshara therefore repudiates the idea of his being postponed. We cannot therefore treat the decision in *Kulanthai Natchiar v. Ramamani*(3) or the remarks in *Parvathi v. Thirumalai*(1) at page 346, based upon it, as of binding authority. It must also be pointed out that they are opposed to the reasoning at page 559 in *Ramaji v. Kandoji*(5). As the widow excludes the daughter and as the daughter according to the express text of the Mitakshara shares with the illegitimate son, it follows that the widow cannot be excluded altogether by the illegitimate son as supposed in the earlier Bombay cases. The authority of those cases has however been doubted in *Shesgiri v. Girewa*(6) and *Ambabai v. Govindi*(7). It is not easy to explain why the

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(1) (1887) I.L.R., 10 Mad., 334.

(2) (1892) I.L.R., 15 Mad., 307.

(3) Appl. No. 86 of 1865 (unreported).

(4) (1871) 14 M.I.A., 346.

(5) (1885) I.L.R., 8 Mad., 557.

(6) (1890) I.L.R., 14 Bom., 236.

(7) (1899) I.L.R., 23 Bom., 257, at p. 535.

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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 *Manikyalu 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