APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice and Mr. Justice Seshagiri Ayyar.

1915. August 31 and September 1 and 6.

KARUTURI GOPALAM (MINOR BY HIS NEXT FRIEND ABBUR VENKATARAYUDU) (FIRST DEFENDANT), APPELLANT,

v.

KARUTURI VENKATARAGHAVULU (PLAINTIFF), RESPONDENT.*

Hindu Law—Partition between an adopted son and a subsequently born aurasa *son of a Sudra—Share of adopted son—Marriage expenses of unmarried members—Provision for, in partition-decrees.*

Among Sudras, on a division of the family properties between an adopted son and a subsequently born *aurasa* son, the adopted son is only entitled to one-fifth of the estate.

The *obiter dictum* to the contrary in *Raja* v. *Subbaraya* (1884) I.L.R., 7 Mad., 253 at p. 263, not followed.

The Dattaka Chandrika is not an authority on Inheritance or Partition.

In partition-decrees provision should be made for the marriage expenses of the unmarried members of the family. But such a provision should be made only for persons who are of the same degree of relationship as those who have been married at the expense of the family.

The decision of the majority in *Srinivasa Ayengar* v. *Thiruvengadathaiyangar* (1915) I.L.R., 38 Mad., 556, followed.

Narayana v. *Ramalinga* (1916) I.L.R., 39 Mad., 587, not followed.

APPEAL against the decree of A. SAMBAMURTHI AYYAR, the temporary Subordinate Judge of Rajahmundry, in Original Suit No. 41 of 1911.

Plaintiff was adopted in 1898 by one Venkanna, a Sudra, who died in 1902 leaving him surviving the first defendant, his *aurasa* son, born in 1901 and his widow the second defendant. During the minority of the plaintiff and the first defendant, the second defendant managed the estate. Plaintiff attained majority in 1907 and brought this suit in 1910 for partition and delivery to him of half of the family estate alleging mismanagement and misappropriation by the second defendant of portions of the family estate for the benefit of her son the first defendant. Plaintiff claimed also an account of the management of the estate

* Appeal No. 98 of 1913.

GOPALAM v. VENKATA-RAGHAVULU.

by the second defendant. The first defendant pleaded *inter alia* that the plaintiff was, as adopted son, only entitled to a fifth share of the estate, that he himself was, as *aurasa* son, entitled to the remaining four-fifths and that in addition to his four-fifths share, provision should be made in the partition-decree for the expenses of his future marriage, as the plaintiff had his marriage performed at the expense of the family. The second defendant denied mismanagement and misappropriation of the estate. The Lower Court decreed to the plaintiff a half share in all the family properties and finding malversation of the estate by the second defendant directed half of the amounts misappropriated by the second defendant to be paid to the plaintiff out of the share of her son, the first defendant. The Lower Court disallowed the first defendant's claim for a provision in the decree for his future marriage. The first defendant appealed.

V. Ramadoss for the appellant.—The main question in the appeal is what is the share of a Sudra's adopted son when a natural son is afterwards born. I submit he is entitled to only one-fifth of the estate. In *Raja* v. *Subbaraya*(1) the point did not arise at all. This is a case of Sudras, which is specifically dealt with in *Ayyavu Muppanar* v. *Nelayathakshi Ammal*(2). That case decides in favour of the position I contend for. This is followed in *Giriapa* v. *Ningapa*(3) : see also *Raghubanund Doss* v. *Sadhu Churn Doss*(4) and *Bachoo* v. *Nagindas*(5) : see Mitakshara (Setlur, page 32). Dattaka Mimamsa, in section 5, *placitum* 40, prescribes a quarter share : see also section 10, *placitum* 1; Sircar on Adoption, page 402; Macnaughten's Hindu Law, pages 120 and 233; Ghose's Hindu Law, second edition, page 612; Mayne, pages 223 and 224 and Bhattachary, pages 458–459. The Dattaka Chandrika is the only authority against my position: see section 5, paragraphs 24, 25, 29 and 32 (in Setlur, page 445). That book prescribes a half share to an adopted son of good qualities. The reasoning of the Dattaka Chandrika is that he must be likened to an illegitimate son and must hence get half the estate. This reasoning no longer applies as decisions such as *Chellammal* v. *Ranganatham Pillai*(6), have held that

(1) (1884) I.L.R., 7 Mad., 253.
(2) (1862) 1 M.H.C.R., 45.
(3) (1893) I.L.R., 17 Bom., 100 at p. 105.
(4) (1879) I.L.R., 4 Calc., 425.
(5) (1914) 16 Bom. L.R., 268.
(6) (1911) I.L.R., 34 Mad., 277.

GOPALAM v. VENKATA-RAGHAVULU.

an illegitimate son gets half of what a legitimate son would get. Secondly, provision for marriage must be made among Sudras: *Kameswara Sastri* v. *Veeracharlu*(1) and *Gopalakrishnamraju* v. *Venkatanarasaraju*(2). Even in the case of Brahmins, provision for marriage must be made: *Srinivasa Ayengar* v. *Thiruvengadathaiyangar*(3).

P. Narayanamurthi for the respondent.—Among Sudras the adopted son gets an equal share. The Dattaka Chandrika is a special treatise on Adoption and is the paramount authority in Southern India: see *The Collector of Madura* v. *Moottoo Ramalinga Sethupathy*(4).

[Court.—All the other texts are against the view taken by the Dattaka Chandrika.]

The reason is given in the Dattaka Chandrika in chapter 5, *placitum* 13 and *placitum* 42; "If an illegitimate son of a Sudra gets an equal share with a legitimate son, why not an adopted son": see also the Dattaka Mimamsa, chapter 5, *placitum* 43; Mayne on Hindu Law, pages 223 to 224 and Strange on Hindu Law, volume I, page 99. In *Ayyavu Muppanar* v. *Nelayathakshi Ammal*(5), the dispute was not between a fourth share or a half share but the adopted son himself claimed as plaintiff only a fourth share. Moreover the Dattaka Chandrika is not quoted. In *Giriappa* v. *Ningappa*(6) it is not shown that the parties were Sudras and no question arose as to whether half or a fourth share should be given: *Raja* v. *Subbaraya*(7) was relied on. No provision can be made in a partition for marriage expenses: see the latest case of *Narayana* v. *Ramalinga*(8).

V. Ramadoss in reply.—The question relates to partition, and not adoption: so the Dattaka Chandrika is no authority. In *Sri Balusu Gurulingaswami* v. *Sri Balusu Ramalakshmamma*(9), the Privy Council has observed that the Dattaka Chandrika is not to be followed when it adds to or varies from Smrithis; similar observation as to Dattaka Mimamsa is found in *Puttu*

(1) (1911) I.L.R., 34 Mad., 422.
(2) (1912) M.W.N., 903.
(3) (1915) I.L.R., 38 Mad., 556.
(4) (1868) 12 M.I.A., 436.
(5) (1862) 1 M.H.C.R., 45.
(6) (1893) I.L.R., 17 Bom., 100 at p. 105.
(7) (1884) I.L.R., 7 Mad., 253.
(8) (1916) I.L.R., 39 Mad., 587.
(9) 1899) I.L.R., 22 Mad., 398 at p. 412 (P.C.).

Lal v. *Parbati Kunwar*(1): see also Balambatta's opinion in Setlur, page 711 and Kātyāyana, at page 700.

SESHAGIRI AYYAR, J.—One Venkanna adopted the plaintiff in 1898. The first defendant was subsequently born. Venkanna died in 1902. The second defendant, the natural mother of the first defendant and the adoptive mother of the plaintiff managed the estate during the minority of the two sons. The suit is for partition for a half share in the family properties. The main contention of the first defendant is that the plaintiff is only entitled to a fifth share. The Subordinate Judge, relying on an observation in *Raja* v. *Subbaraya*(2), has held that the two sons were entitled to equal shares.

The question has been argued at great length before us. I am unable to agree with the Court below. The parties in this case are Sudras. In *Raja* v. *Subbaraya*(2) the dispute was between the natural son of a brother and the adopted son of another. It is settled law in Madras, notwithstanding *Raghubanund Doss* v. *Sadhu Churn Doss*(3) and *Giriapa* v. *Ningapa*(4) to the contrary, that by right of representation the adopted son would take the share of his father in competition with the natural son of another member of the joint family. That was the only question that arose for decision in the Madras case. At the end of the judgment, the learned Judges say:

"If there be such a special rule as is suggested, it is not applicable at all events to Sudras, among whom the adopted son is declared entitled to take an equal share with a legitimate son who is born subsequently to the adoption."

Apart from the text of Vridha Goutama commented on in the Dattaka Chandrika to which I shall presently refer, I have not been able to find any authority for this statement. On the other hand, *Ayyavu Muppanar* v. *Nilayathakshi Ammal*(5) gave the adopted son only a fifth share in the family properties. Apparently this decision was not brought to the notice of the learned Judges. In Bombay and Calcutta, subject to the special doctrine which denies the right of representation to the adopted son in a joint family, it has been held that the share of the adopted son among Sudras is only a fourth of that of the natural

(1) (1915) I.L.R., 37 All., 359 at p. 367.
(2) (1884) I.L.R., 7 Mad., 253.
(3) (1879) I.L.R., 4 Calc., 425.
(4) (1893) I.L.R., 17 Bom., 100.
(5) (1862) 1 M.H.C.R., 45.

GOPALAM v. VENKATA-RAGHAVULU.

SESHAGIRI AYYAR, J.

son: see *Raghubanund Doss* v. *Sadhu Churn Doss*(1), *Giriapa v. Ningapa*(2) and *Bachoo v. Nagindas*(3).

On the authority of the Rishis and of the Smrithi Writers, I feel no hesitation in holding that the adopted son is not entitled to share equally with the natural son. (1) The well-known text of Vasishta is in chapter XV, *sloka* 9:

"Where a son has been adopted, if a legitimate son be (afterwards) born, the adopted son shares a fourth part."

(2) Kātyāyana is quoted in the Dāyabhāga and in Colebrooke's Digest, Volume III, page 348, as saying:

"A son of the body being born, the adopted sons of the same class take one-third as their portion."

But in the Madanaparijatha and Viramitrōdaya, the sage is quoted as allotting only a fourth part. (3) Boudhāyana takes the same view as Vasishta: see Dattaka Mimamsa, section V, *slokam* 42. (4) Manu in chapter IX, *sloka* 163, says:

"The *aurasa* son alone is the sole heir of his father's wealth; but as a matter of compensation he may give maintenance to the rest."

The Mitakshara interprets this passage as applying to the other class of sons "who are devoid of good qualities" and says that the general rule as to a fourth share is not affected by Manu's text.

As against these Smrithi writers, we have the authority of Vridha Goutama, who gives an equal share to the adopted son with the natural born son. It is not necessary to consider whether this text of the sage is an interpolation as surmised by Messrs. Golap Chander Sircar and Ghose. Mr. Shyama Charan Sircar in his Vyavastha Chandrika inclines to the view that the text is obsolete. The preponderance of authority, therefore, is in favour of the view restricting the rights of the adopted son to a fourth share.

Coming next to the commentators, the majority of them enunciate the same rule. It is curious that Vignaneswara does not even mention Vridha Goutama as an authority on this subject. This marked omission is significant. He refers to a number of Smrithis and propounds the rule, that the adopted son's share is a fourth of the *aurasa* son's (Mitakshara, chapter 1, section XI, *placitum* 24 *et seq.*). Jimuta Vahana, the author

(1) (1879) I.L.R., 4 Calc., 425. (2) (1893) I.L.R., 17 Bom., 100.
(3) (1914) 16 Bom. L.R., 263.

of Dāyābhāga, in discussing the share of the adopted son in chapter X does not mention the authority of Vridha Goutama. The Madanapārijātha and the Vīramitrōdaya adopt the rule given in the Mitakshara. The Saraswatī Vilāsa after a full discussion concurs in the same view. The author does not refer to Vridha Goutama. The first note of dissent is to be found in the Dattaka Chandrika, section V, paragraphs 24 to 32. The author reconciles the text of Vridha Goutama with the others by restricting its application to Sudras alone. The text itself is general. But the commentator refers to the fact that among Sudras, illegitimate sons are given at least a third share in competition with legitimate sons, and argues that adopted sons should not be in a worse position. It is permissible to point out that whatever may be the social status of an illegitimate son, the fact that he is of the same flesh and blood as the person whose property he seeks a share in, may account for the favourable position assigned to him. The same considerations do not always apply to an adopted son. The other reason given by the author with reference to Manu's text about a man having a hundred sons, does not commend itself to me. It is curious that the Dattaka Chandrika in interpreting Vridha Goutama's text, does not properly explain the words "Yatha Jathe." The author of Dattaka Mimamsa translates the words as "possessing good qualities." Shyama Charan Sircar in his Vyavastha Chandrika gives the same meaning. In Ghose's Hindu Law, the quotation from Vridha Goutama contains the words "Thatha Jathe." Whatever may have been the exact words, their literal meaning is "existing as above." The reference apparently is to the quality which a person to be adopted is expected to possess. Manu in chapter IX, *sloka* 169, describes an adopted son thus: "He is considered as a son made or adopted, whom a man takes as his own son, the boy being equal in class, endued with filial virtues, acquainted with the merit of performing obsequies to his adopter, and with the sin of omitting them." That is the reason why such an erudite scholar as Nandapandita translates Vridha Goutama's text in the way I have mentioned. I am of opinion that Goutama's rule is an exception to the general law. It would be impossible to administer such a rule by Courts, as the determination whether a man . . . possesses good qualities would lead to endless conflict of views. The author of

GOPALAM v. VENKATA-RAGHAVULU. — SESHAGIRI AYYAR, J.

Dattaka Mimamsa after examining Vridha Goutama's text carefully, inclines to the view taken by Vignaneswara and the other commentators. Thus, we see that with the exception of the Dattaka Chandrika, all the commentators agree in not giving an equal share to the adopted son. Mr. Narayanamurti contended that as the Dattaka Chandrika is a special treatise on adoption, its conclusions are entitled to greater weight than those of the other commentaries; he quoted *The Collector of Madura* v. *Moottoo Ramalinga Sethupathy*(1) for this position. In the first place, the question that has to be decided does not relate to the qualification of the adopted son or to the ceremonies relating to the adoption. It is a question of inheritance. It is well settled that in matters relating to inheritance, the Mitakshara is paramount in Madras. Moreover as pointed out by Mr. Ramadoss, the authority of the Dattaka Chandrika should not outweigh the sayings of the Rishis: see *Sri Balusu Gurulingaswami* v. *Sri Balusu Ramalakshmamma*(2) and *Puttu Lal* v. *Parbati-Kunwar*(3). Further the Dattaka Mimamsa, another special authority on adoption, takes a different view. I am, therefore, of opinion that the view taken by the Dattaka Chandrika is not binding on us and that the dictum in *Raja* v. *Subbaraya*(4) based on this authority should not be followed.

Writers on Hindu Law have unanimously accepted the view taken by the Mitakshara. Messrs. Golap Chandra Sarkar, Ghose and Siromani Battacharya are unhesitatingly for a fifth share: Messrs. West and Bakler are of the same opinion. Mr. Mayne expresses no definite opinion on the question. He says that in Ceylon, the adopted son shares equally with the *aurasa* son. On the other hand the precedent quoted by Macnaughton in page 184, show that the practice is different in India. On all these grounds, I hold that the plaintiff is only entitled to a fifth share in the family properties.

Another point argued in the appeal relates to the direction in the decree that the first defendant's share should be held liable for monies not accounted for by the second defendant. This is clearly wrong. The first defendant may never benefit by the misconduct of his mother: see *Sonu* v. *Dhondu*(5).

(1) (1868) 12 M.I.A., 436. (2) (1899) I.L.R., 22 Mad., 398 at p. 411 (P.C.).
(3) (1915) I.L.R., 37 All., 359 at p. 367. (4) (1884) I.L.R., 7 Mad., 253.
(5) (1904) I.L.R., 28 Bom., 330.

GOPALAM v. VENKATA-RAGHAVULU.

SESHAGIRI AYYAR, J.

The last point relates to the provision for marriage expenses. In *Srinivasa Ayengar* v. *Thiruvengadathaiyangar*(1), SPENCER, J., agreeing with SUNDARA AYYAR, J., held that in partition-decrees, provision should be made for the marriage expenses of the unmarried members of the family. On the other hand SANKARAN NAYAR and OLDFIELD, JJ., in *Narayana* v. *Ramalinga*(2) have taken a different view. The practice in Madras seems to be in consonance with the view taken in *Srinivasa Ayengar* v. *Thiruvengadathaiyangar*(1) : see Strange's Manual of Hindu Law, pages 190 and 191. Sir Thomas Strange in chapter VIII refers to the opinion of pandits to that effect. *Jairam* v. *Nathu*(3) supports the appellant. Such a provision should be made only for persons who are of the same degree of relationship as those who have been married at the expense of the family.

In reversal of the decree of the Subordinate Judge, we direct that the plaintiff be allotted a fifth share in the properties found to belong to the family, that in passing the final decree a provision be made for the marriage expenses of the first defendant, and that that portion of the decree declaring the first defendant's share liable for malversation made by the second defendant, be omitted. Appellant is entitled to his costs from the first respondent in this appeal.

WALLIS, C.J.

WALLIS, C.J.—I agree.

N.R.

(1) (1915) I.L.R., 38 Mad., 556.
(2) (1916) I.L.R., 39 Mad., 587. (3) (1907) I.L.R., 31 Bom., 54.