

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Spencer.

SOORATHA SINGA (PLAINTIFF), APPELLANT,

v.

KANAKA SINGA (DEFENDANT), RESPONDENT.*

1919,
August 5,
1920,
March 26.

Hindu Law—Adoption—Brother's daughter's son, adoption of, whether valid—Custom—South Kanara—Kshatriyas—Custom whether established.

Adoption of a brother's daughter's son is allowed by custom which has been proved to exist among a community of Rajputs of the Kshatriya caste settled in South Kanara.

SECOND APPEAL against the decree of L. G. MOORE, District Judge of South Kanara, in Appeal Suit No. 189 of 1915, preferred against the decree of V. KUNHI RAMAN NAYAR, District Munsif of Kasaragod, in Original Suit No. 7 of 1914.

This Second Appeal arises out of a suit by the plaintiff for a declaration that a deed of adoption, Exhibit A, executed by him by which he adopted the defendant as his son was invalid and inoperative. The defendant was the plaintiff's brother's daughter's son. The parties belonged to a community of Rajputs of the Kshatriya caste, who had migrated from Rajputana and long settled in South Kanara. The Lower Courts dismissed the suit. On Second Appeal, the High Court remanded the case for finding on the issue as to custom among the parties to the suit. The other facts are set out in the judgment.

S. Srinivasa Ayyangar and *K. P. Lakshmana Rao* for the appellant.

K. Sadasiva Rao and *K. Sundara Rao* for the respondent.

The case came on for hearing before BAKEWELL and ODGERS, JJ., and the JUDGMENT of the Court was delivered by

BAKEWELL, J.—The general rule of Hindu Law is against the validity of the adoption in this case: *Minaskhi v. Ramanada* (1); but this rule may be varied by custom, and such a custom has been held to obtain in the southern districts of the Madras Presidency [*Vayidinada v. Appu*(2), *Appaya Bhattar v. Vengu*

* Second Appeal No. 1129 of 1918.

(1) (1888) I.L.R., 11 Mad., 49 (F.B.). (2) (1866) I.L.R., 9 Mad., 44 (F.B.).

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Bhatlar(1)]. The Lower Appellate Court has not found upon the evidence whether such a custom exists in the caste of the plaintiff and defendant, or in South Kanara, which does not form part of the southern districts. The appellant is responsible for all the costs of this litigation, and we direct him to pay all costs incurred up to this day, before the 15th September 1919. Upon payment of the costs before that day, we direct the District Judge to record a finding upon the following issue:—

Is the adoption in this case valid according to the customs observed by the parties?

No additional evidence will be taken. In default of payment the appeal will stand dismissed with costs.

The finding is to be returned before the 15th of October 1919, and seven days will be allowed for filing objections.

[The District Judge of South Kanara accordingly submitted a finding that the adoption was “valid according to the custom observed by the parties.” The JUDGMENT of the Court was delivered by—

SADASIVA
AYYAR, J.

SADASIVA AYYAR, J.—We think that the plaintiff's admission in Exhibit A was an admission both of the fact and of the validity of the defendant's adoption [see *Ramainga Pillai v. Sadasiva Pillai*(2)]. The burden of proving that it was not valid was therefore shifted on to the plaintiff's shoulders. Even if it is not so, the custom against the supposed rule, based on the text relating to the reflection of a son is so widespread that very little evidence will turn the scale against that rule. The plaintiff admitted in his evidence that the usages of his community did not differ from those of the Gowd Saraswat Brahmans. He being a Kshatriya (presumably not very pure in extraction, clans of pure Kshatriyas being very rare), the customs of his community could not be more strict than those of Saraswat Brahmans. In *Manjunath v. Kaveri-bai*(3) it was held that the custom among Gowd Saraswat Brahmans of Kanara (both north and south which were situated near the Dravida country) allowed the adoption of a sister's son [see as regards Dravida custom, *Vayidinada v. Appu*(4)]. The case of a

(1) (1905) 15 M.L.J., 211.

(2) (1884) 9 M.I.A., 510.

(3) (1902) 4 Bom. L.R., 140.

(4) (1886) I.L.R., 9 Mad., 44 (F.B.).

brother's daughter's son (against whose adoption there is no direct text as in the case of a daughter's son, sister's son and mother's sister's son) stands on a more favourable footing. The community of the parties to the suit migrated from Rajputana and have settled in South Kanara for long. The law which they brought with them did not evidently prohibit the adoption of a brother's daughter's son [see *Biswanath v. Kalicharan*(1) and *Yamnara v. Lazman Bhimrao*(2)].

Though the oral evidence on defendant's side in this case is meagre, we think that that evidence being corroborated by the probabilities, by *Manjunath v. Kaveri-bai*(3), and by the admission of the plaintiff as to the customs and usages of his community not differing from those of Saraswat Brahmans, can be treated as sufficient under the circumstances to establish the custom which allows the adoption of a brother's daughter's son.

In the result, we accept the finding and dismiss the Second Appeal with costs.

K.R.

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APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Seshagiri Ayyar.

MUTHUSWAMI SWAMIAR (PLAINTIFF), APPELLANT,

v.

1920,
April 8.

SOMOO KANDIAR AND THREE OTHERS (DEFENDANTS),
RESPONDENTS.*

*Provincial Insolvency Act (III of 1907), ss. 16 (2), 18 (2) and 19 (2)—
Adjudication of a person as insolvent—Necessity of an order appointing a
person as Receiver of the insolvent's estate.*

Section 18 (2) of the Provincial Insolvency Act (III of 1907) contemplates on every adjudication of insolvency an order by the Court appointing Receiver for the insolvent's estate and without such an order the estate does not vest in the Official Receiver under section 19 (2). Hence a sale of the estate by the Official Receiver without such an order does not give the vendee any title.

Official Receiver of Trichinopoly v. Somasundaram Chettiar, (1916) 30 M.L.J. 415, followed.

(1) (1918) 27 C.L.J., 119. (2) (1912) I.L.B., 38 Bom., 533.
(3) (1902) 4 Bom. L.R., 140.

* Second Appeal No. 604 of 1918.