APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Reilly.

V. LINGAYYA CHETTY (FIRST DEFENDANT), APPELLANT, 1924, August 28.

v.

CHENGALAMMAL AND OTHERS (PLAINTIFFS AND SECOND DEFENDANT), RESPONDENTS.*

Hindu Law—Adoption—Sudras—Adoption of a Sudra after his marriage, whether valid—Dattaka Chandrika, authority of—Reasoning on which rule is based, whether sound—Rule, acted upon for more than a century—Rule ought to be followed, though based on slender foundations.

Adoption of a Sudra, after his marriage, is invalid under the Hindu Law. [*Vythilinga* v. *Vijayathammal*, (1883) I.L.R., 6 Mad., 43; *Pichuvayyan* v. *Subbayyan*, (1890) I.L.R., 13 Mad., 128; *Janakiram Pillay* v. *Venkiah Chetty*, (1911) 10 M.L.T., 21, and other earlier cases, followed.]

This rule is based on the opinion of the Dattaka Chandrika, which is recognized as an authority in all the provinces except Bombay which follows the Mayukha, see *Arumilli Perrazu* v. *Subbarayadu*, (1921) I.L.R., 44 Mad., 656 (P.C.); 42 I.A., 280; and although this conclusion of the Dattaka Chandrika may rest on slender foundations, still the work is recognized as an authority in all the provinces outside Bombay, and the rule has been acted upon for more than a century and it is too late to question it.

APPEAL from the judgment of KUMARASWAMI SASTRI, J., passed in the exercise of the Ordinary Original Civil Jurisdiction of the High Court in Civil Suit No. 186 of 1921.

In this suit the two plaintiffs who are daughters of one V. Chengayya Chetty who died intestate leaving no son but only daughters and a widow sued, after the death of the latter, to recover possession of the properties left by their father, from the first defendant who

* Original Side Appeal No. 103 of 1922.

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was alleged to have been adopted by the widow, and the second defendant who was a donee of a portion of the property from the first defendant. The plaintiffs disputed the factum and validity of the adoption on various grounds, one of which was that the adoption, even if true, was invalid as the first defendant was a married man at the time the adoption was made. It was admitted that the parties were Sudras and that the first defendant was a married man at the date of the adoption. The learned trial Judge (KUMARASWAMI SASTRI, J.) held that the adoption was invalid on this ground and decreed the plaintiffs' suit. The material portion of the judgment of the learned Judge was as follows:—

"It is admitted that the first defendant was a married man at the date of the adoption, and so far as the authorities in Madras go, it is clear on the authorities that the adoption of a married man is invalid. The parties in this case are admittedly Sudras. The first case as regards the validity of the adoption of a married man among Sudras is the case of *Prusunna Vencatachella Reddyar* v. *Moodoo Vencatachella Reddyar*(1). The question in that case was whether the adoption of a married Sudra was valid and the Court of Sadr Adaulat held that it was invalid. This is what they state in the judgment:

"The Court of Sadr Adaulat having very maturely considered this case, are fully of opinion that the adoption of the appellant after his marriage is illegal and void under the rules and restrictions of Hindu Law."

The next case is *Vythilinga* v. *Vijayathammal*(2), where TURNER, C.J., and MUTTUSWAMI AYYAR, J., observe as follows:—

"As to the validity of the adoption the decision of this Court in the appeal of Ayyavaru is the only reported case in this

(1) (1825) 1 M.S.D., 406 at 412. (2) (1883) I.L.R., 6 Mds., 34.

Presidency which lends any colour to the opinion that even among Sudras the adoption of a married man would be regarded as valid under Hindu Law. It would certainly be invalid under the Dattaka Chandrika which declares that marriage concludes the period within which a Sudra may be adopted. In *Prusunna Vencatachella Reddyar* v. *Moodoo Vecatachella Reddiar*(1), the Sadr Court in 1823 ruled that the adoption of a Sudra after marriage was illegal and void. It will be seen that the decision of the High Court in the appeal of Ayyavaru did not proceed on the ground that the adoption was valid. The Court conceived it was precluded by the decree obtained by the appellant in the earlier litigation from examining its validity;"

so that the learned Judges were of opinion that the adoption of a married Sudra was illegal. The question was again referred to in *Pichuvayyan* v. *Subbayyan*(2). Though that case was a case between Brahmans the question was discussed as to marriage being a bar to adoption, and it was held that in all cases, whether Brahmans or Non-Brahmans, marriage would be a bar. MUTTUSWAMI AYYAR and SHEPHARD, JJ., observe:

"Apart from the Bombay cases, which proceed upon texts which have no authority in this Presidency, no text or other authority can be cited to justify an adoption taking place after marriage, notwithstanding that the person taken in adoption may belong to the same gotra as the adopter. On the other hand such authority as there is on the subject is against the respondent's contention."

In the Dattaka Chandrika, the author, treating of the rites which must be performed in the adopter's family, refers to the right of marriage as that by which the filial relationship can be completed in the case of Sudras. An adoption, therefore, in order to be valid, even among Sudras, must take place before the marriage of the adopted son. (Dattaka Chandrika, s. II—29–31, p. 643, Stoke's Hindu Law Books.) The same writer

(1) (1825) 1 M.S.D., 406. (2) (1890) I.L.R., 13 Mad., 128.

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fixed upanayanam as the rite which completes the filial relationship in the case of Brahmans, and though this rule with regard to upanayanam has been relaxed in the case of sagotras, there is no warrant for the contention that the relaxation should be extended to marriage. The rule that no one is eligible for adoption after marriage was recognized by the Sadr Adaulat in 1823—*Prusunna Vencatachella Reddyar* v. *Moodoo Vencatachella Reddyar*(1) and *Ranee Sivakamee Nachiar* v. *Mooto Vizia Raghunadha Satooputty*(2) and in 1830 Sir T. STRANGE sums up his view of the law by saying

"Upon these principles it would seem as if there could be no adoption of one who is married, marriage not being capable, like tonsure and investiture, of annulment."

Reference was made by the learned Judges to *Vythilinga* v. *Vijayathammal*(3), already referred to by me. In *Janakiram Pillay* v. *Venkiah Chetty*(4), Sir ARNOLD WHITE, C. J. and SANKARAN NAYAR, J., were of opinion that an adoption after marriage among Sudras was clearly invalid. The proposition is treated as one admitting of no doubt. The view that marriage is an absolute bar to adoption has been adopted by all the Courts where Dattaka Chandrika and Dattaka Meemamsa are accepted as authorities, and except in Bombay all the Courts have taken the view that such adoption is invalid. I may refer to the case in *Ganga Sahai* v. *Lekhraj Singh*(5), where MAHMOOD, J., in an elaborate judgment after dealing with all the authorities came to the conclusion that marriage was an absolute bar to the validity of adoption among Sudras. STRAIGHT, J., agreed with that judgment. The same view was taken in *Jhunka Prasad* v. *Nathu*(6), where the decision

(1) (1825) 1 M.S.D., 406.
(2) (1825) 1 M.S.D., 106.
(3) (1883) I.L.R., 6 Mad., 43.
(4) (1911) 10 M.L.T., 21.
(5) (1887) I.L.R., 9 All., 253.
(6) (1913) I.L.R., 35 All., 263.

in *Pichuvayyan* v. *Subbayyan*(1) was approved and followed, and in *Damodarji* v. *The Collector of Banda*(2), STANLEY, C.J., and KARAMAT HUSSAIN, J., after referring to the authorities, held that among Sudras marriage is a bar to adoption and that a boy can only be adopted till marriage and not afterwards. As they pointed out in that judgment their Lordships of the Privy Council in *Bhagavan Singh* v. *Bhaghavan Singh*(3) have referred to Dattaka Chandrika as a work of authority which Courts are bound to follow. Mayne in his Hindu Law, eighth edition, page 181, refers to the authorities in Bengal and Southern India and states that so far as Sudras are concerned adoption subsequent to the marriage would be invalid. Trevelyan in his Hindu Law at pages 146–147 also gives the result of the authorities that according to the Bengal, Benares and Madras schools of law in the case of Sudras adoption must take place before marriage. As pointed out in the Madras case, in the Bombay Presidency where the Mayukha is a paramount authority, the Bombay High Court has adopted the view of Neelakanta, the author of Mayukha, and of his father Sankarabhatta and has ruled that in all classes a married man, even if he has children, may be adopted. But in Courts where Dattaka Chandrika is an authority, the prohibition in Dattaka Chandrika has been accepted as binding.

Reference has been made by Mr. Radhakrishnayya to the view taken by Sarkar in his Law of Adoption at page 361 as to the slender foundations on which the rule in Dattaka Chandrika is based. But it seems to me that, having regard to the long catena of authorities it is not open to me to hold that the Dattaka Chandrika's view is

(1) (1890) I.L.R., 13 Mad., 128. (2) (1910) 7 A. L.J., 927.
(3) (1899) I.L.R., 21 All., 412 ; 26 I.A., 153.

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not an authority and that the decisions I have referred to are not binding on me.

In the view I take that the adoption of the first defendant is invalid, it is not necessary to go into the other reasons put forward for the invalidity of the adoption."

Against this judgment, the first defendant preferred this appeal.

V. Radhakrishnayya for appellant.

S. Rangaswamy Ayyangar for respondent.

JUDGMENT.

RAMESAM, J.

RAMESAM, J.—This is an appeal against a judgment of our brother KUMARASWAMI SASTRI, J. He decreed the plaintiffs' suit holding that the adoption of the first defendant was invalid on the ground that he had been married at the time of the adoption. Unless the appellant (first defendant) successfully challenges this conclusion, the other points in the case do not arise. It is admitted that the parties are Sudras.

Apart from Sanskrit texts, the earliest opinion available in Madras is the case No. 18 of 1814 in Vol. I of the Select Decrees of the Sadr Adaulat, page 101. The pandit's answer at page 106 runs thus:

> "Sudras may be adopted till the sixteenth year. But as it is a rule that a married boy cannot be adopted it must be understood that an unmarried boy may be adopted, till he has attained the age of sixteen. These are the rules for the Sudra caste. Thus it is declared in the Dutta Mimamsa, Dutta Chandrika and other Sastras."

The point did not arise in the case.

The point was actually decided in another case in the same volume at page 406, *Prusunna Vencatachella Reddyar* v. *Moodoo Vencatachella Reddyar*(1). The

(1) (1825) 1 M.S.D., 406.

pandit stated that the adoption was invalid (page 410) and the Court of Sadr Adaulat held (page 412) that

"the adoption of the appellant after his marriage was illegal and void under the rules and restrictions of Hindu Law."

We have next the statement of Sir T. Strange in his Hindu Law (Vol. I, page 91):

"Accordingly in a case referred to in a subsequent page (page 96, case of Raja Nobkissen) the pandits stated an assumption of the string in the higher classes and marriage in the fourth as obstacles to adoption."

After referring to the possibility of annulment of ceremonies already performed in the natural family he says,

"Upon these principles it would seem, as if there could be no adoption of one who is married; marriage not being capable, like tonsure and investiture, of annulment."

In the judgments of Sadr Court, 1861, at page 147, *Vira Kumara Servai* v. *Gopalu Servai*(1) (cited at page 1066 of West and Buhler's Hindu Law, 3rd edition), the same point arose and the District Munsif held the adoption to be illegal as at the time thereof the plaintiff was a married man. Though the case went up on appeal and second appeal, the plaintiff did not challenge the District Munsif's ruling and in second appeal the District Munsif's decision was restored.

In *Ayyavu Muppanar* v. *Niladatchi Ammal*(2), the plaintiff succeeded as adopted son on the ground that, in a previous litigation, his adoption was recognized (rightly or wrongly) and he got a decree for maintenance against his adoptive father on the footing of a validly adopted son. The matter in the second litigation was *res judicata* between the plaintiff and his adoptive father. It appears that the pandits (in the first case) declared against its validity (page 47) but the Registrar who gave

(1) (1861) 1 M.S.D., 147. (2) (1862) 1 M. H.C.R., 45.

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the decree in appeal thought that the parties were of a class not strictly bound by the requirements of the Hindu Law. There was an appeal to the Privy Council, but the matter was compromised and the appeal withdrawn. One of the terms of the compromise was that a daughter of the alleged adopted son should be married to a natural son of the adoptive father. In a later litigation, this marriage was attacked on the ground that it was invalid. The High Court in *Vythilinga* v. *Vijayathammal*(1) held that the adoption was invalid (the question of the validity of the adoption not being *res judicata*) and that the marriage was valid. TURNER, C.J., and MUTTUSWAMI AYYAR, J., said:

> "It would certainly be invalid, under the Dattaka Chandrika, which declares that marriage concludes the period within which a Sudra may be adopted."

In *Pichuvayyan* v. *Subbayyan*(2), all the above authorities were reviewed and the adoption of a boy after his marriage was held to be invalid. It is true that the parties were not Sudras, but the reasoning was general and applied to all Hindus. The respondent in it attempted to support the adoption by arguing from *Viraragava* v. *Ramalinga*(3), that, as the parties were of the same gotra, marriage was no obstacle, just as upanayanam was no obstacle. This argument was repelled. The Judges said:

> "There is no colour for the argument that this decision abrogated the *rule* according to which the previous marriage of the child is an obstacle to his adoption. There is, as we have shown, distinct authority for the rule and the recognition of it is in no way inconsistent with the decision regarding the ceremony of upanayanam. It must be borne in mind that a valid adoption presupposes a gift by the father or mother, and they have no power under the Hindu Law to give the daughter-in-law or their son's wife in adoption."

(1) (1883) I.L.R., 6 Mad., 43. (2) (1890) I.L.R., 13 Mad., 128.
(3) (1886) I.L.R., 9 Mad., 148 (F.B.).

The learned vakil for the appellant argues that, so far as the last reason is concerned, the adoption of a childless widower would be valid In the present case, the appellant was not a widower at the time of the adoption. In *Janakiram Pillay* v. *Venkiah Chetty*(1), the question was whether Gopalakrishna Pillai was validly adopted. The Court observed that there was no reliable evidence of an adoption before marriage and any adoption after marriage was invalid.

The authorities in Allahabad have been referred to by our learned brother and need not be repeated. The learned Vakil for the appellant draws our attention to a quotation by MAHMOOD, J., in *Ganga Sahai* v. *Lekhraj Singh*(2) from Dr. Jolly who says :

> "The Dattaka Tilaka does not consider marriage even as a bar to adoption, in case the person to be adopted belongs to the same *gotra* as the adopter. The Dattaka Siddhanta Manjari declares that it is not lawful to adopt a married man."

But the Dattaka Tilaka has never been used in Southern India. I doubt if its existence is known among the people and it does not appear that it has been followed in this respect in Allahabad or Bengal.

The most important argument of the vakil for the appellant is that most of the authorities against him are based on the Dattaka Chandrika and that the reasoning of the Dattaka Chandrika is not sound. There is no doubt as to the opinion of the author of the Dattaka Chandrika in verse 29 of section 11. It is true that the preceding reasoning from verse 23 relates to the question whether the performance of tonsure operates as an obstacle. Mr. Sarkar in his Hindu Law of Adoption is of opinion that the conclusion of the Dattaka Chandrika rests on slender foundation. This may be

(1) (1911) 10 M.L.T., 21. (2) (1887) I.L.R., 9 All., 253.

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so, but we have to recognize the fact that, whatever its reasoning may be, and whoever its author may be, the work is recognized as an authority in all the provinces outside Bombay. I need only refer to the latest decision of the Privy Council recognizing its authority, *Arumilli Perrazu* v. *Subbarayadu*(1).

Above all, it must be recognized that the rule has been acted upon for more than a century and it is too late to question it. The opposite rule in Bombay is based on the special authority of the Mayukha and cannot help us.

The decision of the learned Judge is right and the appeal is dismissed with costs.

The receiver will be allowed to take his costs from the estate in the first instance.

REILLY, J.

REILLY, J.—I agree. It has been contended before us for appellant that the passages of the Dattaka Chandrika, on which is based, so far as that work is concerned, the doctrine that a married Sudra cannot be adopted, have been misunderstood. But at the least it cannot be denied that it is possible to interpret the terms of verses 29 and 32 of section 11 of the Dattaka Chandrika taken together, as stating by implication that, in the author's opinion, the adoption of a married Sudra is not permissible. That interpretation, it appears, has been accepted and acted upon in this Presidency for more than a century; and there does not appear to be any reported case in which it has been decided finally that the adoption of a married Sudra is possible. That being so I do not think that we are at liberty to re-open the question.

K.R.

(1) (1921) I.L.R., 44 Mad., 656 (P.C.).