APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao and Mr. Justice Pakenham Walsh.

1931, October 22.

PANYAM *alias* NARAVAJJULA SEETHARAMAYYA AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

AVADHANAM RAMALAKSHMAMMA AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Hindu Law—Adoption—Widow's power of—Limit to—Test to be applied.

B., a Hindu, died leaving him surviving his widow and a daughter R.L. After the death of the widow, R.L. succeeded to his properties. R.L. was married to R.K. who died without issue as a member of a joint family in or about 1892. Subsequently there was a partition among the other members of the joint family. In 1922, after the said partition, R.L. adopted A.I., a distant agnatic relation of her father, with the consent of all her husband's agnates. B.'s reversioners questioned the validity of this adoption on the ground that the power of R.L. to adopt came to an end with the partition and became incapable of revival with the extinction of her husband's joint family.

Held that the true test of the principle defining the limit of the widow's power of adoption is to be sought, not in the rule of divesting or otherwise of an estate, but in the rule that requires the continuance of a person to perform all the requisite religious services and the limit is reached on the happening of the event mentioned by CHANDAVARKAR J., viz., "where a Hindu dies, leaving a widow and a son, and that son himself dies leaving a natural-born or adopted son or leaving no son but his own widow to continue the line by means of adoption, the power of the former widow is extinguished and can never afterwards be revived", in *Ramkrishna* v. *Shamrao*, (1902) I.L.R. 26 Bom. 526 (F.B.).

* Appeal No. 160 of 1930.

PANYAM v. RAMA-LAKSHMAMMA.

APPEAL against the decree of the Court of the Subordinate Judge of Kurnool in Original Suit No. 25 of 1927.

B. Somayya for appellants.

W. Kothandaramayya and *N. A. Krishna Ayyar* for respondents.

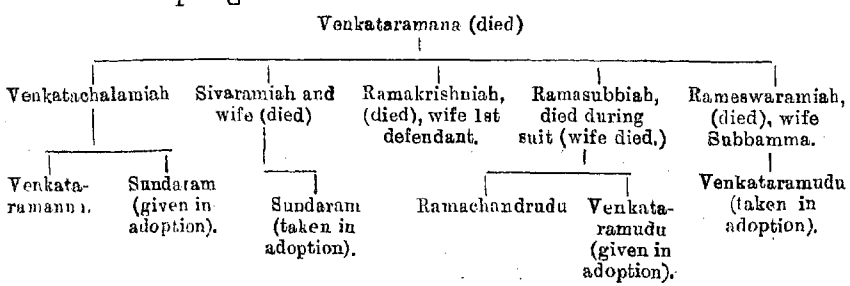
Cur. adv. vult.

VENKATA-SUBBA RAO J.

The JUDGMENT of the Court was delivered by VENKATASUBBA RAO J.—This appeal raises an important question relating to the law of adoption not covered by any direct authority. The plaintiffs are the reversioners to the estate of one Bhaskarayya. He died leaving him surviving his widow, Chidambaramma, and his only daughter, Ramalakshmamma, the first defendant. After the death of his widow, Bhaskarayya's properties devolved on the first defendant. It is stated in the plaint that soon after the latter's marriage, more than forty years ago, she became a widow, while still under age. In the year 1922 the second defendant, a distant agnatic relation of her father, was taken by her in adoption. The plaintiffs attack the adoption as being invalid and pray for a declaration that their reversionary right is not affected by it.

For understanding the objection taken to the adoption we must turn to the pedigree which sets forth her husband's relations, although the last full owner of the estate in question was her father and not her husband.

The pedigree is as follows :—



Ramakrishnayya, the husband of the first defendant, died about 1892 when the family was joint. But there was subsequently a partition among the members of the family. It is admitted that the adoption was made after that partition and the contention advanced for the plaintiffs is that, with the extinction of the joint family, the widow's power to adopt came to an end and became incapable of execution. It is worthy of note that before making the adoption she obtained the consent of all her husband's agnates. But it is argued for the plaintiffs that, the power having once come to an end, it cannot be subsequently revived by consent. The lower Court, holding that the widow's power did not become extinguished and that the adoption was therefore valid, dismissed the suit.

The question argued before us is, what is the proper limit to the exercise of the widow's power? According to the plaintiffs, the limit is reached when the adoption divests an estate vested in a third party. Thus, the widow of a separated husband can adopt either when she takes his estate from him immediately or as heiress of her son who surviving his father dies subsequently. In these two cases the adoption cannot divest any estate other than that vested in the adopting widow herself, and this is said to be the reason for the adoption being treated as valid. Applying this rule, if, on the son's death, his estate vests in his widow or his son, the original widow's power comes to an end, and, on the principle that what is gone cannot be revived, she is forbidden to adopt, even though she succeeds to the estate on the death of the son's nearer heir. So much then for an adoption to a separated Hindu.

Now turning to the case of a joint family, the widow of a deceased member can adopt, provided the family is still joint when the adoption is made; for, what is

PANYAM v. RAMA-LAKSHMAMMA. — VENKATA-SUBBA RAO J.

defeated by the adoption is not an absolute estate, the vesting in the survivors being only provisional. On this principle, it is argued that, if the co-parcenary becomes extinct either because the surviving members have come to a partition or because the joint property has passed by succession from the last survivor to his heirs, the power to adopt becomes exhausted and is incapable of execution.

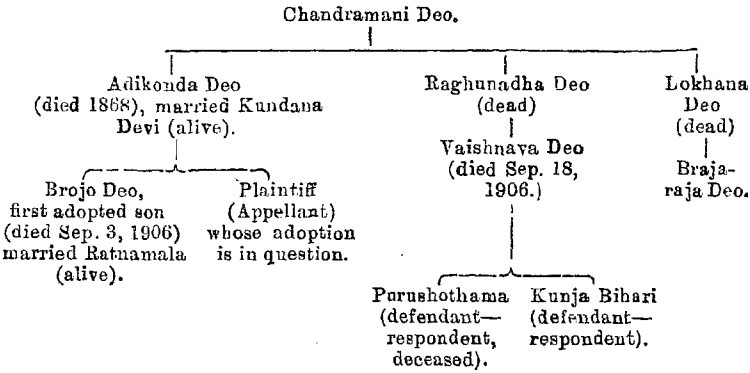
These rules, Mr. Somayya, the plaintiffs' learned Counsel, contends, are deducible from the decisions on the subject. The adoption in question, if allowed, would defeat the estate taken by the survivors absolutely on partition. On that ground, it is impeached as being invalid.

The test, then, of the principle defining the limit which Mr. Somayya deduces from the numerous cases referred to by him in his lucid and exhaustive argument, depends upon whether the adoption divests or not the estate vested in a third party. Whether a Hindu dies leaving a son or not or whether he had no son ever born to him at all (as in the present case) is, if this be the true test, an irrelevant consideration. According to Mr. Kodandaramayya, the defendants' learned Counsel, the decisive factor is not whether some estate is or is not divested, but whether, the adoption being in essence a religious act, the spiritual purposes of a son have been satisfied. He contends that, if the effect of invalidating an adoption would be to deprive a Hindu father of the services of a competent son, the result would be repugnant to the spirit of the Hindu Law. The test of the limiting principle, according to him, is that laid down by the Full Bench in the judgment of CHANDAVARKAR J. in *Ramkrishna* v. *Shamrao*(1), namely,

(1) (1902) I.L.R. 26 Bom. 526 (F.B.).

"Where a Hindu dies, leaving a widow and a son, and that son himself dies leaving a natural-born or adopted son or leaving no son but his own widow to continue the line by means of adoption, the power of the former widow is extinguished and can never afterwards be revived."

Both sides have relied upon the decisions of the Privy Council, and the question is, what is the correct test that is deducible from them? There are two cases decided by the Board relating to the same estate, which throw a good deal of light on the point. Let us take the following pedigree:—



On the death of Adikonda, a member of a joint Hindu family, his brother Raghunadha took possession of the Zemindari. Kundana Devi, acting on her husband's authority, adopted Brojo Deo. The adopted son filed a suit to recover the Zemindari from Raghunadha and the Privy Council, holding his adoption valid, upheld his claim. These are the facts of *Sri Virada Pratapa Raghunada Deo* v. *Sri Brozo Kishoro Patta Deo*(1) (the first Chinnakimedi case). Then certain further events happened and the same estate came up again before the Privy Council. Brojo, the adopted son, recovered possession and died about 30 years afterwards leaving his widow Ratnamala but no son. Possession of the Zemindari was then taken by Vaishnava Deo who

(1) (1876) I.L.R. 1 Mad. 69 (P.C.); L.R. 3 I.A. 154.

PANYAM v. RAMA-LAKSHMAMMA. — VENKATA-SUBBA RAO J.

was in his turn succeeded by his son Purushothama. The widow of Adikonda purported to make a second adoption to her husband by adopting the person shown as the plaintiff in the pedigree. The latter thereupon claiming the Zemindari filed a suit for recovering it. The Judicial Committee, holding that the adoption was bad, dismissed the suit. These are the facts of *Madana Mohana Deo* v. *Purushotthama Deo*(1) (the second Chinnakimedi case). Do these decisions support the theory put forward by Mr. Somayya? On both the occasions, the adopting widow belonged to a joint family. Her first adoption was held good, but the second bad. Mr. Somayya suggests that, in the first case the family being a joint one, the vesting of the joint family property was only provisional and that therefore the adoption was upheld. This contention is obviously wrong, for, although the family was joint, the Zemindari, being an impartible one, was held in severalty and not in coparcenary. On Adikonda's death it did not pass to the surviving members, but to a single heir, Raghunatha. His succession was no doubt in a sense provisional as stated by the Judicial Committee, but it was not provisional in the sense that a coparcener's share is liable by fluctuation to increase or diminish. The point to note is that the adoption was held valid in spite of the fact that Raghunatha was thereby divested. Now, turning to the second case, was the adoption by Kundana Devi held invalid on the ground that it would divest Purushothama? His succession, like that of his predecessor Raghunatha, was in a sense provisional, for it was "subject to defeasance by the emergence of a male heir" to the last full owner who, however, was not Adikonda but Brojo

(1) (1918) I.L.R. 41 Mad. 855 (P.C.); L.R. 45 I.A. 156.

Deo. In other words, if the adoption had been made by Ratnamala on the very grounds stated by the Privy Council it would have been upheld (granting it was otherwise valid). That this is the effect of the decision is shown by the judgments of WALLIS C.J. and SESHAGIRI IYER J. in *Ananga Bhima Deo* v. *Kunja Bihari Deo*(1), (the third Chinnakimedi case). Mr. Somayya says that the *first Chinnakimedi case*(2) was understood as validating an adoption made by the widow of an unseparated Hindu on the ground of the vesting of the coparcenary property being provisional although, in the case itself, there was no reference to the existence of any partible property. If that be so, in the *second Chinnakimedi case*(3) also the adoption should have been held valid; but he suggests that this case is generally regarded as having established a new principle. He is constrained to put forward this argument, as otherwise, his theory that the divesting rule furnishes the limiting principle must fall to the ground. If, on the other hand, the principle contended for by Mr. Kodandaramayya is accepted, these two decisions become perfectly reconcilable. What distinguishes the first from the second case is, that, in the latter, Brojo died "after attaining full legal capacity to continue the line either by the birth of a natural-born son or by the adoption to him of a son by his own widow." It must not be forgotten that, in the passage immediately preceding these words, their Lordships expressly affirm and approve the principle enunciated by CHANDAVARKAR J. in *Ramkrishna* v. *Shamrao*(4). These words, therefore, mean neither more nor less than the passage already quoted by us from CHANDAVARKAR J.'s judgment.

(1) (1918) 25 M.L.T. 204.
(2) (1876) I.L.R. 1 Mad. 69 (P.C.); L.R. 3 I.A. 154.
(3) (1918) I.L.R. 41 Mad. 855 (P.C.); L.R. 45 I.A. 156.
(4) (1902) I.L.R. 26 Bom. 526 (F.B.).

PANYAM v. RAMA-LAKSHMAMMA. VENKATA-SUBBA RAO J.

Madana Mohana Deo v. *Purushotthama Deo*(1) (the second Chinnakimedi case) bears a close resemblance to *Mussumat Bhoobun Moyee Debia* v. *Ram Kishore Acharj Chowdhry*(2), which is referred to and followed in the previous case. Gaur Kishore died leaving Bhavani Kishore, his only son, and his widow Chandraboli. On Bhavani Kishore's death leaving Bhooban Moyee as his widow, Chandraboli purported to take in adoption Ram Kishore. The Judicial Committee held that adoption bad. The only difference (and that is immaterial) between this and *Madana Mohana Deo* v. *Purushotthama Deo*(1) is, that, whereas in the first case the son (Bhavani Kishore) was a natural-born son, in the second he (Brojo Deo) was an adopted son. In both the cases, as we have pointed out, the adoption was declared invalid. We have examined the grounds of the decision in the second case. Let us now turn to the first. Their Lordships refer to "all the spiritual purposes of a son" which would, in a certain event, have been satisfied and to "all the religious services, which a son could perform for a father." The true test, therefore, of the principle defining the limit, is to be sought not in the rule of divesting or otherwise of an estate, but in the rule that requires the continuance of a person to perform all the requisite religious services. The line must be drawn somewhere in applying this principle and it must be taken as established that the limit is reached on the happening of the event mentioned in the judgment of CHANDAVARKAR J. In some decisions of the Judicial Committee, such as *Bhoobun Moyee's Case*(2), already cited, and *Vellanki Venkata Krishna Rao* v. *Venkata Rama Lakshmi*(3), there are no doubt observations adverting to the divesting

(1) (1918) I.L.R. 41 Mad. 855 (P.C.); L.R. 45 I.A. 156.
(2) (1865) 10 M.I.A. 279.
(3) (1876) I.L.R. 1 Mad. 174 (P.C.); L.R. 4 I.A. 1.

rule; but the principle of divesting must not be taken as having furnished the ground of decision, but the divesting or otherwise of the estate must be understood as having been referred to as the result of the adoption being held either good or bad. That their Lordships always laid stress on the religious aspect of the act of adoption appears from several cases. In the *Ramnad Case*(1) their Lordships describe it as a meritorious act and refer to "the existence of a direct line competent to the full performance of religious duties" and to the "religious obligation to adopt a son in order to complete or fulfil defective religious rites." The following observations of their Lordships in the *first Chinnakimedi Case*(2) are pertinent to the matter in hand.

"They may, however, observe that a distinction which is founded on the nature of property seems to belong to the law of property, and to militate against the principle which Mr. Justice HOLLOWAY has himself strenuously insisted upon elsewhere, viz., that the validity of an adoption is to be determined by spiritual rather than temporal considerations; that the substitution of a son of the deceased for spiritual reasons is the essence of the thing, and the consequent devolution of property a mere accessory to it."

It is unnecessary to refer to the more recent Privy Council cases beyond stating that in *Pratab Singh* v. *Agar Singh*(3) the principle laid down in *Bhoobun Moyee's Case*(4) and *Madana Mohana Deo* v. *Purushotthama Deo*(5) has been re-affirmed. Incidentally, it may be remarked that in that case, *Pratab Singh* v. *Agar Singh*(3), the fact that the adoption would detract from the plaintiff's right did not stand in the way of the adoption being held valid on the ground that the power

(1) (1868) 12 M.I.A. 397.
(2) (1876) I.L.R. 1 Mad. 69 (P.C.); L.R. 3 I.A. 154.
(3) (1918) I.L.R. 43 Bom. 778 (P.C.); L.R. 46 I.A. 97.
(4) (1865) 10 M.I.A. 279.
(5) (1918) I.L.R. 41 Mad. 855 (P.C.); L.R. 45 I.A. 156.

PANYAM v. RAMA-LAKSHMAMMA. — VENKATA-SUBBA RAO J.

had not become exhausted. The result, then, of this examination of the Privy Council cases is that, when properly understood, they do not bear out Mr. Somayya's contention. See the judgments of REILLY J. in *Sukdevdoss Ramprasad* v. *Musamat Choti Bai*(1), of OLDFIELD J. in *Venkataramier* v. *Gopalan*(2), and of KUMARASWAMI SASTRI J. in *Maharaja of Kolhapur* v. *Sundaram Ayyar*(3).

Mr. Somayya has referred us to numerous decisions of the Indian Courts where the adoption by a widow was held invalid, although the result of so holding would be that her deceased husband would never have had any male issue to continue his line. As typical of these cases may be mentioned *Adivi Suryaprakasa Rao* v. *Nidamarty Gangaraju*(4), *Chandra* v. *Gojarabai*(5) and *Shri Dharnidhar* v. *Chinto*(6). These are cases where the widow's deceased husband was an unseparated Hindu, but by the time she made the adoption the joint property had passed by succession from the last survivor to his heirs. The reason for holding the adoption invalid was that when the estate vested in the heir the power of the widow came to an end. Whether these decisions, though in conflict with the principle affirmed by the Judicial Committee, will, so far as they go, be followed or not on the ground of *stare decisis*, is a point on which we need express no opinion; but there is no warrant for extending the rule beyond the facts of those cases. As we have said, those facts are that the co-parcenary became extinct by the death of the last survivor and his property thereupon devolved on his heir. The facts in the present case are different. The co-parcenary became extinct not in that

(1) (1927) 27 L.W. 145.
(2) (1918) 35 M.L.J. 698.
(3) (1924) I.L.R. 48 Mad. 1, 209, 214.
(4) (1909) I.L.R. 33 Mad. 228.
(5) (1890) I.L.R. 14 Bom. 463.
(6) (1895) I.L.R. 20 Bom. 250.

manner, but by the survivors having come to a partition of the joint family property. We are not prepared to hold that in such a case the widow's power comes to an end.

There is no reported decision on the actual point raised in the appeal. But the opinion of Mr. Sirkar Sastry supports the plaintiffs' contention. According to that learned author "the power of adoption cannot be exercised after a partition of the family property takes place" and this view is based on grounds of supposed convenience. Says Sirkar Sastry :

"To re-open the partition for giving a share to the adopted son, would lead to great difficulties, for one of the co-sharers might alienate his share to a purchaser for valuable consideration without notice."

But he goes on to observe that the point is not free from difficulty and refers to some conflict, which he supposes to exist between the two Privy Council decisions ; *Bhoobun Moyee's case*(1) and the *first Chinnakimedi case*(2) ; (Sarkar's Hindu Law of Adoption, 1891 Edition, pages 253 and 254). In *Krishna* v. *Sami*(3) a Full Bench of five Judges deduces from the Hindu Law a principle which is the exact opposite of that stated by Mr. Sirkar Sastry. The following passage contains the relevant observation :

"Again, let C have died before partition, leaving a widow and having given her power to adopt which she does not exercise till after a partition has been made by B, D and E. When she exercises her power we apprehend that the adopted son would be entitled to call upon his uncles to make over to him a portion of the wealth equal to that which would have been taken by his father—*Sri Virada Pratapa Raghunada Deo* v. *Sri Brozo Kishoro Patta Deo*(2)."

(1) (1865) 10 M.I.A. 279.
(2) (1876) I.L.R. 1 Mad. 69 (P.C.); L.R. 3 I.A. 154.
(3) (1885) I.L.R. 9 Mad. 64 (F.B.).

PANYAM v. RAMA-LAKSHMAMMA.

VENKATA-SUBBA RAO J.

If these observations were not merely *obiter*, the case would have been a direct authority in favour of the respondents.

We shall now examine the matter on principle. What does the statement, that, when the rights acquired by third parties are defeated, the widow's power comes to an end, imply? That the object of assigning a limit to the widow's power is to safeguard the rights of such third parties. If this be the true view to take, why should it be held that the adoption is bad when the adopting widow, as in *Ramkrishna* v. *Shamrao*(1), is the very person whose estate is thereby defeated? Again, why should the adoption be held invalid not only as against the person whom it divests, but even as against, as held in *Padma Kumari Debi Chowdrani* v. *Court of Wards*(2) and *Thayammal* v. *Venkatarama*(3), distant reversioners? Mr. Somayya's answer is that the power having come to an end cannot be revived. This is merely arguing in a circle. Why should it be held at all on *his* theory that the power came to an end? The object being the safeguarding of other peoples' rights (as his argument assumes), it would be sufficient for achieving that end to hold that the power is in abeyance ready to revive on the removal of the obstruction. If, on the other hand, the test of the limiting principle is what we have stated above, it stands to reason that, when once the spiritual purposes are satisfied, the power to adopt finally and for ever comes to an end.

Again, the validity of an adoption must be judged intrinsically on its own merits and not with reference to considerations extraneous to it. The facts of the present case which are somewhat unusual serve forcibly

(1) (1902) I.L.R. 26 Bom. 526 (F.B.).
(2) (1881) I.L.R. 8 Calc. 302 (P.C.); L.R. 8 I.A. 229.
(3) (1887) I.L.R. 10 Mad. 205 (P.C.); L.R. 14 I.A. 67.

to illustrate the incongruity of the position taken up by the plaintiffs. The suit relates to the estate not of the adopting widow's husband but of her father. The plaintiffs are not interested in the rights which are said to be defeated, nor are the husband's agnates interested in the estate which the plaintiffs represent. The adoption in this case having been made with the consent of these agnates, no question of the safeguarding of their rights can arise. The test suggested by the plaintiffs is altogether unsatisfactory and cannot furnish the true criterion.

Mr. Somayya advances an alternative contention. He puts his case thus: Rameswaramayya died after the partition and the properties allotted to him vested on his death in his widow Subbamma. The argument is that, whether or not the widow's power became extinct on the partition, it came to an end, at any rate, on Subbamma succeeding to her husband. The plaint proceeds on an altogether different assumption. It is stated in paragraph 3 that the joint family consisted only of four brothers, the name of Rameswaramayya being omitted. Then the plaint goes on to say that Ramakrishniah (the first defendant's husband) died first and then Sivaramiah and that the two remaining brothers (Venkatachalamiah and Ramasubbiah) entered into a partition. There is thus no mention of Rameswaramayya. Nor have the defendants alleged in their written statement that he also was a party to the partition. The parties thus, when they went to trial, entirely ignored Rameswaramayya. But the alternative contention not only assumes that he was a party to the partition, but that, on his death, his property vested in his widow. Even the lower Court's judgment does not contain any reference to this argument. But the plaintiffs point to some statements made by the defence

PANYAM v. RAMA-LAKSHMAMMA. VENKATA-SUBBA RAO J.

witnesses, which we are asked to treat as admissions. We do not think that a point of this importance, not raised in the pleadings and not referred to in the lower Court's judgment, should be allowed to be raised.

In the result, we hold that the adoption made by the first defendant is valid and, confirming the decision of the lower Court, dismiss the appeal with costs.

The memorandum of objections is allowed with costs.

G.R.

APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao and Mr. Justice Pakenham Walsh.

1931, October 29.

K. M. PARTHASARATHI CHETTI (SECOND RESPONDENT-TRANSFEREE-DECREE-HOLDER), APPELLANT,

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND ANOTHER (APPELLANT AND FIRST RESPONDENT, DEFENDANT AND PLAINTIFF), RESPONDENTS.*

Madras Salt Act (IV of 1889), sec. 84—Purchaser of salt removing salt purchased from factory on payment of salt duty then thought to be correct—Enhancement of duty prior to removal, enhanced duty, however, not being collected from purchaser—Personal liability for enhanced duty—Purchaser not under.

A purchaser of salt from a salt licensee applied for and obtained permission to remove the salt from the licensee's factory but could not do so until after some time. In the interval the salt-tax had been increased but the enhanced duty was not collected from the purchaser and the salt was taken away by him.

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* Letters Patent Appeal No. 119 of 1927.