APPELLATE CIVIL.

Before Sir Lionel Leach, Chief Justice, and Mr. Justice Patanjali Sastri.

1939, April 17.

SAMINATHA IYER (DIED) AND ANOTHER (DEFENDANTS 1 AND 2), APPELLANTS,

v.

VAGEESAN, MINOR BY GUARDIAN SIVAKAMI AMMAL (PLAINTIFF), RESPONDENT.*

Hindu law—Adoption—Datta homam *ceremony—Necessity of, in case of adoption by Brahmin of his daughter's son.*

The ceremony of *datta homam* is not essential to the validity of an adoption by a Brahmin of his daughter's son.

Texts and case-law reviewed.

APPEAL against the decree of the Court of the Subordinate Judge of Kumbakonam, dated 29th November 1933 and passed in Appeal Suit No. 28 of 1932, preferred against the decree of the Court of the District Munsif of Kumbakonam in Original Suit No. 31 of 1930.

K. S. Desikan for appellants.

K. Rajah Ayyar and *R. Viswanathan* for respondent.

Cur. adv. vult.

JUDGMENT.

LEACH C.J. LEACH C.J.—The question which falls for decision in this case is whether the performance of the *datta homam* ceremony is essential when a Brahmin adopts the son of his daughter. Natesa Ayyar, the brother of the first appellant, adopted the respondent, the son of his only daughter. Natesa Ayyar was joint

* Second Appeal No. 404 of 1934.

with his brother and his brother's son, the second appellant. Natesa Ayyar died on 23rd September 1929 and the respondent filed the suit out of which this appeal arises on 22nd January 1930 for partition of the family properties. The appellants denied the factum of adoption and advanced the alternative plea that if the respondent had been adopted, the adoption was invalid as the *datta homam* ceremony had not been performed. They also averred that if the respondent's adoption was valid, the partition of the family estate was not for his benefit. The District Munsif of Kumbakonam, who tried the suit, held that the adoption had taken place, but the *datta homam* ceremony had not been performed. As the District Munsif considered that the ceremony was not necessary for a valid adoption and was of the opinion that the suit was for the benefit of the respondent, he granted the decree prayed for. The appellants appealed to the Subordinate Judge, who concurred in all the findings of the District Munsif. The appeal to the Subordinate Judge having failed, the appellants have appealed to this Court. The findings of fact of the Subordinate Judge are conclusive and the only question which we have to decide is whether the performance of the *datta homam* ceremony was essential in this case, the family being of the Brahmin caste.

By the decision of the Privy Council in *Bal Gangadhar Tilak* v. *Shrinivas Pandit*(1) it has now been finally settled that the *datta homam* ceremony is not necessary when the adoption is of a Brahmin boy of the same *gotra*. I shall return to the judgment in that case presently; but before doing so I desire to trace the course of decisions in this Province. In *Singamma* v. *Ramanuja Charlu*(2) it was held that,

(1) (1915) I.L.R. 39 Bom. 441 (P.C.). (2) (1868) 4 M.H.C.R. 165.

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in order to establish a valid adoption in a Brahmin family, proof of the performance of *datta homam* was not essential; proof of the giving and taking was sufficient. In that case it was not known whether the adopted boy was or was not of the same *gotra* and the decision must, therefore, be taken to apply to the adoption of a boy of a different *gotra*. This decision was followed by KINDERSLEY and MUTTUSWAMI AYYAR JJ. in *Chandramala* v. *Muktamala*(1), which related to an adoption by a Kshatriya. MUTTUSWAMI AYYAR J., however, observed that, if the question whether religious ceremonies were essential to adoption were *res integra*, he would have felt considerable difficulty in holding that the ceremony of *datta homam* was not of the essence of a valid adoption among the three higher classes. The same doubt was expressed in the judgment of TURNER C.J. and MUTTUSWAMI AYYAR J. in *Venkata* v. *Subhadra*(2). In *Govindayyar* v. *Dorasami*(3) a Full Bench, consisting of COLLINS C.J. and KERNAN, MUTTUSWAMI AYYAR, BRANDT and PARKER JJ., held that the ceremony of *datta homam* was not essential to a valid adoption among Brahmins in Southern India when the adoptive father and son belonged to the same *gotra*. To that extent the Court felt it might adhere safely to the decision in *Singamma* v. *Ramanuja Charlu*(4). It did not expressly say that that decision went too far and, therefore, it cannot be said that the decision was overruled, but the doubts apparently still existed.

The case of *Bal Gangadhar Tilak* v. *Shrinivas Pandit*(5) related to an adoption from the same *gotra*

(1) (1882) I.L.R. 6 Mad. 20. (2) (1884) I.L.R. 7 Mad. 548.
(3) (1887) I.L.R. 11 Mad. 5 (F.B.). (4) (1868) 4 M.H.C.R. 165.
(5) (1915) I.L.R. 39 Bom. 441 (P.C.).

and, in delivering the judgment of the Judicial Committee, Lord SHAW observed :

"The question whether the *datta homam* is a legal requisite in Bombay for adoption among the three twice-born classes does not, however, in the view of their Lordships, broadly arise in the present case. It is in no way necessary to canvass or call in question any dicta upon that general point, nor does the question arise, whether, for instance, the principle extends to India at large of the decision of the Madras Full Bench in *Govindayyar* v. *Dorasami*(1) or of the Madras High Court in *Singamma* v. *Ramanuja Charlu*(2), both decisions being of value as containing a careful study of the authorities, and affirming that the ceremony of *datta homam* is not essential to a valid adoption among Brahmins in Southern India, for, in the opinion of the Board, the necessity does not arise where the child to be adopted belongs to the same gotra as that of the adoptive father."

In view of this statement and bearing in mind that in *Govindayyar* v. *Dorasami*(1) there was no express limitation of the decision in *Singamma* v. *Ramanuja Charlu*(2), it is certainly arguable that the latter decision still stands. If it stands, it is binding on us and provides a short answer to the appellants' case. It is, however, not necessary to come to a definite decision on the question whether it binds us or to inquire into the question whether the judgment went too far, because the appeal may be disposed of on another ground.

There is ancient authority for the proposition that the *datta homam* ceremony is not essential in the case of an adoption by a father of his daughter's son and the authority is the Yama text. The text is set out in the judgment of Sir ASUTOSH MOOKERJEE in *Retki* v. *Lak Pati Pujari*(3) and reads as follows :

"The *homa* or the like ceremony is not necessary in the case of adoption of the daughter's or the brother's son ;

(1) (1887) I.L.R. 11 Mad. 5 (F.B.). (2) (1868) 4 M.H.C.R. 165.
(3) (1914) 20 C.W.N. 19.

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by the verbal gift and acceptance alone, that is accomplished; this is declared by the Lord Yama."

LEACH C.J.

Little is known of Yama but his name appears in the list of law givers set forth in the Smriti of Yajnavalkya. Sir ASUTOSH MOOKERJEE accepted the text as of unquestionable genuineness and authority and set forth his reasons in detail. The text was accepted by the Bombay High Court in *Valubai* v. *Govind Kashinath*(1) and was accepted as authority for the proposition that the *datta homam* ceremony was not required in the case of adoption of a daughter's son in the course of the arguments in *Bal Gangadhar Tilak* v. *Shrinivas Pandit*(2). In *Bhagwan Singh* v. *Bhagwan Singh*(3) BANERJI J. did cast doubt on the authenticity of the text, but I do not consider that his criticism should outweigh its acceptance in *Retki* v. *Lak Pati Pujari*(4), *Valubai* v. *Govind Kashinath*(1) and *Bal Gangadhar Tilak* v. *Shrinivas Pandit*(2). Moreover, the case of *Bhagwan Singh* v. *Bhagwan Singh*(3) was carried to the Privy Council, *Bhagwan Singh* v. *Bhagwan Singh*(5), and there is no indication in the judgment of the Board of the acceptance of the criticism of BANERJI J. On the other hand, Lord HOBHOUSE in delivering the judgment referred to the fact that

> "one ancient sage called the holy Yama expressly asserts the right to adopt a sister's son".

It is true that the Yama text is in conflict with the Dattaka Chandrika in that the latter does not recognize the validity of the adoption of a daughter's son. The prohibition has, however, not been observed in Southern India, where a custom exists of adopting

(1) (1899) I.L.R. 24 Bom. 218. (2) (1915) I.L.R. 39 Bom. 441 (F.C.).
(3) (1895) I.L.R. 17 All. 294 (F.B.). (4) (1914) 20 C.W.N. 19.
(5) (1898) I.L.R. 21 All. 412 (P.C.).

a sister's or a daughter's son; vide *Vayidinada* v. *Appu*(1). It does not, of course, follow from the fact that there is this custom that the *datta homam* ceremony is not essential in the case of the adoption of a daughter's son, and there is no evidence that it is customary to dispense with the *datta homam* ceremony in such a case, but if the Yama text is accepted it must be held that the ceremony is not essential to a valid adoption. I see no reason why it should not be accepted and consequently I hold that the adoption in this case was valid despite the fact that the *datta homam* ceremony was not performed.

Mr. Rajah Ayyar on behalf of the respondent advanced the argument that the reason why the *datta homam* ceremony is not essential in the case of the adoption of a daughter's son is because the Hindu law regards a daughter's son as being in the same position as a son's son in regard to the performance of the obsequies and other ceremonies following the death of the grandfather. He referred in this connexion to the judgment of VENKATARAMANA RAO J. in *Panchapakesa Iyer* v. *Gopalan*(2) where the learned Judge quoted these words of Vishnu:

> "In regard to the obsequies of ancestors, daughter's sons are considered son's sons."

and the following words of Manu:

> "Between a son's son and the son of a daughter there exists in this world no difference; for even the son of a daughter saves him (who has no sons) in the next world like the son's son."

This may be the reason why Yama declared that the *datta homam* ceremony was not essential in the case of the adoption of a daughter's son, but the validity of the text does not depend on the discovery of the reason for the rule.

(1) (1885) I.L.R. 9 Mad. 44 (F.B.). (2) (1938) 48 L.W. 887.

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For the appellants it has been argued that the Yama text refers to the son of a daughter born after the daughter's appointment by the father to continue his line. The wording of the text does not support this argument and the argument is obviously fallacious because adoption is not necessary when the appointed daughter bears a son. The son is regarded from the moment of his birth as the son of the daughter's father and not as the son of her husband.

I consider that the case was rightly decided below and as my learned brother shares this opinion the appeal will be dismissed with costs.

PATANJALI SASTRI J.

PATANJALI SASTRI J.—This second appeal raises the question of Hindu law whether *datta homa* is essential to the validity of the adoption of a daughter's son by a Brahmin. The general question whether that ceremony is an essential requisite for a valid adoption among Brahmins and other twice-born classes was also raised, but it is not necessary in this case to decide it, as I am clearly of opinion that no *datta homa* is necessary even among Brahmins for the adoption of a daughter's son.

As there is no decided case on this precise question, the discussion before us had to turn to some extent on the Hindu law texts and text-books. The learned Advocate for the appellants urged that Dattaka Chandrika and Dattaka Mimamsa are works of great and unquestionable authority on Hindu law in matters relating to adoption and that both of them clearly laid down that *datta homa* is essential among the twice-born classes to the establishment of the filial relationship of the person adopted. This is no doubt the general rule according to these authorities, but an exception based on a text of Yama in the case of a brother's son's adoption has been recognised in decided

cases. If the authority of this text is to be acted upon, it concludes the question in favour of the respondent, as it excepts the adoption of a daughter's son also from the rule requiring *datta homa*. The appellants' learned Advocate therefore directed his attack against the genuineness and authority of this text, and drew our attention to the observations of BANERJI J. in *Bhagwan Singh* v. *Bhagwan Singh*(1) where that learned Judge throws doubt on the authenticity thereof. It is no doubt true that this text does not appear in Yama Smriti and Yama Dharma Sastra as they are now extant. But the authenticity and the authority of the text have been accepted in a long course of decisions in this country beginning with *Huebut Rao Mankur* v. *Govindrao Bulwant Rao Mankur*(2) of the year 1821 and Mr. Mandlik has also regarded its authenticity as beyond question. In *Retki* v. *Lak Pati Pujari*(3) MOOKERJEE J. after an elaborate examination of the authorities bearing on the point definitely accepted its authenticity and relied upon its authority in the case of the adoption of a brother's son which was there in question. It was also accepted as genuine and acted upon by the Allahabad High Court in *Atma Ram* v. *Madho Rao*(4) and by the Bombay High Court in *Valubai* v. *Govind Kashinath*(5), both cases relating to the adoption of a brother's son. In view of these decisions it seems to me that the authenticity as well as the authority of the text of Yama is no longer open to question.

The learned Advocate for the appellants further contended that even if the text is accepted as genuine, it must, on its true construction, be taken to apply

(1) (1895) I.L.R. 17 All. 294, 325 (F.B.). (2) (1821) 2 Borr. 83.
(3) (1914) 20 C.W.N. 19. (4) (1884) I.L.R. 6 All. 276 (F.B.).
(5) (1899) I.L.R 24 Bom. 218.

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only to the cases of a *putrika putra* and a *dwayamushyayana* adoption and not to a *dattaka* adoption. The text runs thus :

दौहित्रे भ्रातृपुत्रे च होमादिनियमो न हि ।
वाग्दानादेव तत्सिद्धिरित्याह भगवान् यमः ॥

"Dauhitre bhratru putre cha homadiniyamo nahi l
Vagdanadeva tatsiddih ityaha Bhagavan Yamah ll"

which may be translated as follows :

"Homa or the like is not prescribed in the case of a daughter's son or a brother's son ; by verbal gift alone that is accomplished. So declared holy Yama."

The argument is that the expression "vagdanadeva" (by verbal gift alone) cannot apply to a *dattaka* form of adoption as corporeal delivery and acceptance of the child is universally treated as the essential part of an adoption in the *dattaka* form. It seems to me that this argument proceeds on a misconception. The context makes it clear that the expression "vagdanadeva" (by mere verbal gift) is used in contradistinction to "homadiniyama" (prescription of homa or the like) to convey the meaning that no gift accompanied by the burning of the sacrificial fire and *vyahritis*, etc., is necessary, but a mere gift with a verbal declaration of intention to give is sufficient. "Dana" or gift ordinarily imports corporeal delivery and "vagdana" is used merely to make it clear that the delivery is to be made with appropriate words showing an intention to give. Moreover, in the case of a *putrika putra*, there was no adoption by the maternal grandfather at all. The daughter's son when born automatically became the son of the maternal grandfather if the latter had no male issue. He was recognised as one of the subsidiary sons in the Hindu law

not by virtue of any adoption but by mere intention on the part of the maternal grandfather and without any consent asked for or obtained (*see* Mayne's Hindu Law, Tenth Edition, page 113). The reference in the text to "vagdana" being sufficient would therefore be devoid of any meaning as applied to a *putrika putra*. Nor has the reference to a brother's son ever been understood to relate only to a *dwayamushyayana* adoption. This contention of the appellants' learned Advocate must therefore be rejected.

Apart from the text of Yama referred to above, it has been contended by the learned Advocate for the respondent that the reason of the now well-established rule, that no *datta homa* is necessary in cases where the adopted son and the adoptive father belong to the same *gotra*, would apply equally to the adoption of a daughter's son. In the Full Bench decision in *Govindayyar* v. *Dorasami*(1), which laid down this rule for this Province, it is said at page 9:

> "Both Manu and Caunakha declared that one who is eligible for adoption should be the reflection or have the resemblance of a son and the commentators apparently thought that as adoption is made partly to secure spiritual benefit arising from the performance of obsequies, the prescribed ceremony was necessary to ensure to the adopted son competency to perform those obsequies with efficacy."

If, thus, the object of the *homa* is to bring about an effective transfer of the person from his own *gotra* prior to the adoption to the *gotra* of the adopter so as to clothe him with ceremonial competency, it would seem that such a ceremony is not necessary in the case of a daughter's son who, though belonging to a different *gotra*, has always been recognised as competent to perform obsequial rites for the maternal grandfather. *See* the texts cited in *Panchapakesa*

(1) (1887) I.L.R. 11 Mad. 5 (F.B.).

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Iyer v. *Gopalan*(1) and *Narsingh Rao* v. *Maha Lakshmi Bai*(2) where their Lordships of the Privy Council point out that, according to Hindu religious ideas, a daughter's son stands in the place of a son and like a son is a liberator from *put*. The respondent's learned Advocate suggested that the special position of a daughter's son in relation to his maternal grandfather might indeed be the reason for Yama's text excepting his adoption from the rule prescribing *datta homa* and other formalities. The suggestion certainly seems plausible but it can only be a speculation, as the text itself does not give the reasons on which it is based. But, however that may be, as the Full Bench decision holding that no *datta homa* is necessary where the adopter and the person adopted belong to the same *gotra* seems to proceed upon the view that the *homa* would be necessary only to ensure the ceremonial competence of the person adopted, it would not be unreasonable to hold that such ceremony is not necessary in the case of the adoption of a daughter's son who according to the Hindu Dharma Sastras is already endowed with such ceremonial competence. On this ground also, the respondent's adoption can be upheld.

It is a matter of satisfaction that our conclusion, which is in consonance with modern ideas which tend more and more to favour the disentanglement of civil rights and obligations from the meshes of Hindu ceremonial law, could be supported on the authority of an ancient text.

I agree with my Lord that this appeal fails and should be dismissed with costs.

A.S.V.

(1) (1938) 48 L.W. 887, 891. (2) (1928) I.L.R. 50 All. 375, 390 (P.C.).