

1907
January 31.

Before Mr. Justice Banerji.

DAULAT RAM (PLAINTIFF) v. RAM LAL (DEFENDANT).*

Hindu Law—Adoption—Adoption during wife's pregnancy.

Held that the fact that at the time of making an adoption the wife of the adopting father is pregnant does not affect the validity of the adoption. *Nagabhushanam v. Seshammagaru* (1) and *Hammant Ramchandra v. Bhimacharya* (2) followed. *Narayana Reddi v. Vardachala Reddi* (3) dissented from.

THE plaintiff in this case sued for a declaration that the defendant's alleged adoption by one Murli was invalid and for recovery of possession of certain land. The Court of first instance (Munsif of Koil) decreed the claim, finding as to the adoption that it was invalid because at the time the wife of the plaintiff's adoptive father was pregnant. On appeal this decree was reversed by the Additional Subordinate Judge of Aligarh, who found the adoption to be valid. The plaintiff thereupon appealed to the High Court.

Babu *Satya Chandra Mukerji*, for the appellant.

Babu *Jogindro Nath Chaudhri*, for the respondent.

BANERJI, J.—The only question in this case is whether the pregnancy of his wife is a bar to the right of a Hindu to adopt a son. The suit in which this question has arisen was brought by the appellant for a declaration that the respondent Ram Lal was not the adopted son of one Murli. The Court below has found that Murli did adopt Ram Lal, but it seems to be of opinion that at the time of adoption Murli's wife was pregnant. It has, however, held that the existence of pregnancy did not invalidate the adoption. The learned vakil for the appellant contends that this view is erroneous and in support of his contention has referred to an old ruling of the Madras Sudder Court in *Narayana Reddi v. Vardachala Reddi* (3) in which it was held that an adoption is invalid if at the time of the adoption the adoptor's wife is pregnant. This ruling was considered by that Court in the later case of *Nagabhushanam v. Seshammagaru* (1) and was dissented from. The learned Judges after referring to the authorities on the subject came to the conclusion that an adoption by a

*Second Appeal No. 474 of 1905 from a decree of Maulvi Mauli Bakhsh, Additional Subordinate Judge of Aligarh, dated the 8th of March 1905, reversing a decree of Babu Jagat Narain, Munsif of Aligarh, dated the 17th of November 1904.

(1) (1881) I. L. R., 3 Mad., 180. (2) (1887) I. L. R., 12 Bom., 105.

(3) M. S. D., 1859, 97.

Hindu with knowledge of his wife's pregnancy was not invalid. The same view was held by the Bombay High Court in *Hanmant Ramchandra v. Bhimacharya* (1). I may also refer to Mayne's Hindu Law, 7th Edition, p. 137, and Sircar's Tagore Law Lectures, 1891, p. 190. No original authority of Hindu law has been cited on behalf of the appellant in support of the contrary view, which seems to be opposed to general principles. I accordingly dismiss the appeal with costs.

Appeal dismissed.

1907

DAULAT
RAM
v.
RAM LAL.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

1907
February 2.

SHAMRATHI SINGH AND OTHERS (DEFENDANTS) v. KISHAN PRASAD AND OTHERS (PLAINTIFFS).*

Hindu law—Joint Hindu family—Family business—Suit to recover a debt due to the firm—Parties to such suit.

Held that the managing members of a joint Hindu family carrying on a joint family business are not entitled to maintain a suit in their own names against debtors of the family without joining with them in the suit either as plaintiffs or defendants all the other members of the family. *K. P. Kanna Pisharody v. V. M. Narayanan Somayajipad* (2), *Balkrishna Moreswar Kunte v. The Municipality of Mahad* (3), *Ramseduk v. Ramlal Koon-doo* (4), *Katidas Kovaldas v. Nathu Bhagvan* (5), *Imam ud-din v. Liladhar* (6), *Alayappa Chetti v. Vallian Chetti* (7) and *Angamuthu Pillai v. Kolandavelu Pillai* (8) referred to. *Patoshri Partap Narain Singh v. Eudra Narain Singh* (9) distinguished.

THIS was a suit to recover a sum of Rs. 9,240-7-0 alleged to be due to the plaintiffs by the defendants on an account stated on the 9th of August 1901. The plaintiffs, Kishan Prasad, Bishan Prasad and Jamna Prasad, sued as managers of a joint family business styled Manorath Bhagat Dhana Ram carried on in the District of Ballia. The suit was filed on the 3rd of June 1904. The debt sought to be recovered represented, according to the plaintiffs, the balance upon various money dealings between them and the defendants, and it was alleged that the account

* First Appeal No. 31 of 1905 from a decree of Maulvi Syed Muhammad Tajammul Husain, Subordinate Judge of Ghazipur, dated the 24th of September 1904.

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| (1) (1887) I. L. R., 12 Bom., 105. | (5) (1883) I. L. R., 7 Bom., 217. |
| (2) (1881) I. L. R., 3 Mad., 234. | (6) (1892) I. L. R., 14 All., 524. |
| (3) (1885) I. L. R., 10 Bom., 32. | (7) (1894) I. L. R., 18 Mad., 33. |
| (4) (1881) I. L. R., 6 Cal., 815. | (8) (1899) I. L. R., 23 Mad., 190. |
| | (9) (1904) I. L. R., 26 All., 528. |