

Before Mr. Justice Norman and Mr. Justice E. Jackson.

1869
March 5.

SRINARAYAN MITTER (DEPONDANT) v. SRIMATI KRISHNA
SUNDARI DASI (PLAINTIFF.)*

Adoption—Dattaka Patra—Declaratory Suits.

In a suit for confirmation of a right to adopt a son and to cancel deeds of agreement to give and receive the defendants' son in adoption.

Held, that to complete an adoption, there must be an actual giving and receiving, and that the execution of the deeds was not sufficient.

Held, further, that the plaintiff was entitled to a declaration of the cancellation of the deeds, as they might hereafter cast a cloud over her title.

THE plaintiff sued for confirmation of her right to adopt a child, and to set aside and cancel two deeds of agreement, by which she and defendant had covenanted that defendant's son should be given to and received by the plaintiff in adoption. She alleged that the ceremonies necessary to adoption had never been completed, and that the child had all along remained with its natural father who had refused to give it up. The defendant denied that he had so refused, and alleged that the adoption was complete. He also urged that the plaintiff's suit would not lie.

The Principal Sudder Ameen of Bhagulpore, on 15th September 1866, decreed for the plaintiff, holding (1st) that the due fulfilment of the ceremonies was essential to adoption; (2nd) that they had not, in fact, taken place; (3rd) that there had been no giving and receiving of the child; and (4th) that, as the plaintiff's right to adopt was affected by the existence of the deeds of agreement, she was entitled to have them declared cancelled by the Court.

On appeal to the Judge of Bhagulpore, it was urged that a suit for a declaration of a right to adopt would not lie; and *Pranputtee Konwur v. Pooru Konwur* (1) was cited. The Judge ruled that the suit being for the cancellation of two deeds.

Special Appeal, No. 2153 of 1868, from a decree of the Additional Judge of Bhagulpore, dated the 27th May 1868, affirming a decree of the Principal Sudder Ameen of that district, dated the 15th September 1866.

(1) S. D. R., 1836, 194.

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which might prove injurious to plaintiff hereafter, would lie. It was then contended that parol evidence was not admissible to prove that the deeds were void owing to the non-performance of ceremonies. The Judge overruled this objection, and generally upheld the decision of the first Court.

On Special Appeal, the defendant urged that the execution of the deeds of agreement amounted to an actual giving and acceptance of the child, and that, among Sudras, nothing more was required, and that the plaintiff had in any case no cause of action.

The Advocate-General and Baboo *Upendra Chandra Bose* for appellant.

Messrs. *Paul* and *Woodroffe* and Baboos *Annada Prasad Banerjee*, *Ramesh Chandra Mitter*, and *Chandra Madhab Ghose* for respondent.

The judgment of the Court was delivered by

NORMAN, J.—We see no necessity to go into the question, whether or not a Sudra can be adopted without the performance of religious ceremonies, namely the offering of burnt sacrifice, &c. The contention of the special appellant is that, by the execution of two deeds, the one purporting to be a gift, and the other, an acceptance of the child by the several parties respectively executing the deeds, there was a valid giving and receiving of the child, so as to make him the adopted son of the person who, by these deeds, appears to have accepted him as a son.

We think there is no foundation for the argument of the special appellant; it appears to us that the giving and receiving of a son in order to constitute a valid adoption, must be an actual giving and actual receiving of the child. By the grounds of special appeal filed, the appellant does not suggest that there has been any actual giving and taking of the child, but only a constructive giving and taking by the execution of the deeds. We think, that, assuming the facts relied upon, as regards such giving and receiving to be

established, it is not shown that there was in this case any valid adoption. The change of name, supposed to be evidenced by the deeds, is not a sufficient overt act to show that the child was given and received. This case resembles in many aspects the case of *Siddessory Dossee v. Doorga Churn Sett* (1).

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There was then no adoption. The natural father of the child now refuses to carry out his intention to give his child for the purpose of adoption. But the deeds are capable of being at any time used by him or his son to prove that there was an adoption. Under such circumstances, it is clear that the plaintiff has a right to come to the Court to ask for relief, and pray to have the deeds declared void. We interfere for the protection of her right to her husband's property over which those deeds would cast a cloud, which it is necessary, for the plaintiff's security to remove.

The appeal is dismissed with costs.

Before Mr. Justice Bayley and Mr Justice Hobhouse.

RAJLAKSHI DEBI (ONE OF THE DEFENDANTS) v. TARAMANI
 CHOWDHRAIN AND ANOTHER (PLAINTIFF.)*

Contribution—Voluntary Payment.

A decree-holder, for arrears of rent against three persons jointly, placed certain sums of money in Court to the credit of one of them, *viz.* the plaintiff, who, in her capacity of guardian of her son, had a cross-decree against him, and afterwards he withdrew those sums in execution of the joint decree. Thereupon the plaintiff sued the other two joint judgment-debtors, for contribution, as she had repaid to her minor son the sum of money so taken away.

Held, that the payment by the plaintiff to her minor son was a voluntary payment, and was not, therefore, such a payment as entitled her to sue her joint debtors for contribution.

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Baboo *Ramesh Chandra Mitter* and *Nalit Chandra Sen* for appellants.

Baboo *Krishna Dayal Roy* for respondents.

* Special Appeals, Nos. 2393 and 2350 of 1868, from the decrees of the Judge of Mymensing, dated the 6th June 1868, modifying the decrees of the Principal Sudder Ameen of that district, dated the 25th April 1867.

(1) 2 I. J., N. S., 22.