

MUSSUMAUT RUNNO, *Appellant* v. JEO RANEE, *Respondent*.

(1795. April 8th.)

Property, real and personal, having been given by a Hindoo to his concubine, and descended at her death to two surviving daughters; on the demise of one daughter, the sister takes her share; the lawful wife of the father has no claim.

JEO RANEE, the original plaintiff in this case, was the widow of Raja Moorleedhur: and Runnoo, the defendant, was one of two daughters of Moorleedhur, by Munuk, a concubine. Moorleedhur, during his life, had given to Munuk certain lands and personal property; to which, on her death, her two daughters Sukhoo and Runnoo succeeded; and, on a dispute with the Ranee, had a judgment in their favour, from the Patna Council, for their mother's property. Afterwards Sukhoo died, without issue. Her share of the property of her mother was the property now in contest; which was claimed by the father's widow on the ground (as insisted by the plaintiff) that, after the death of Sukhoo, she, as the lawful wife of the Raja, was entitled to the reversion of the property. And judgment appears to have gone in her favour in the Patna Court: [11] But in appeal to the Sudder Dewanny Adawlut, after an opinion had been taken from the pundits, according to which it appeared, that the property given by Raja to Munuk, as a voluntary donation, descended at her demise to her daughters; and the moiety of it, now in question, before appertaining to Sukhoo, was inheritable at her demise by Runnoo, as the heir at law; the Court determined, that the respondent had no title to this property, given voluntarily by the Raja without any stipulation of reversion; and inherited by Sukhoo from her mother. The Sudder Dewanny Adawlut therefore (present F. Speke) gave judgment against the claimant, reversing the decree of the Patna Court (a).

KULLEAN SING, (ATTORNEY FOR THE WIDOWS OF SOODEE SING), *Appellant* v. KIRPA SING and BHOLEE SING, *Respondents*. (1795. April 23rd.)

A zemindar adopted one of his kindred, by a verbal declaration in the presence of witnesses, but without any religious rite or ceremony; and the person so adopted was acknowledged after the zemindar's death as his heir, at the obsequies. Held, that this adoption was good; and the son adopted (*Kurta Pootr*) takes the inheritance exclusively property real and personal, hereditary and acquired.

THIS was a suit brought on the part of the widows of Soodee Sing, in the Dewanny Adawlut of Tirhoot, against Kirpa Sing and Bholee Sing, for certain villages, the landed estate of Soodee Sing, by right of succession to him

share to the person by whom an acquisition is made, with aid however from the joint funds. (*Jimuta Vahana*, Ch. 6, Sec. 1, § 28). 2d, Equal participation of sons succeeding to their father. (Ch. 3, Sec. 2, § 27). 3d, The mother's succession to her son leaving no widow, nor issue male or female. (Ch. 11, Sec. 4). 4th, The daughter's succession to one leaving neither male issue, nor a widow; provided such daughter be mother of a son, or likely to become so. (Ch. 11, Sec. 2, § 3). 5th, The full brother's inheritance from his brother. (Sec. 5). 6th, The uncle's succession on failure of nearer heirs. (Sec. 6, § 5, 8, 9).

[11] (a) The property had been alienated by gift; and the widow of the giver, as his heir, had no legal pretension to the succession or reversion of such property on the death of a daughter of the person to whom it had been given. Her claim was therefore very rightly rejected. But in failure of what heirs, or in preference to what other successors, a sister inherits, is a question on which a difference of doctrine exists. *Mitacsha* on Inheritance, Ch. 2, Sect. 4, § 1, in the notes).

on his demise without issue. The defendant Bholee Sing (for the other did not appear throughout the cause) pleaded a title to the estate, as adopted son of the deceased; and evidence was gone into as to the fact of the adoption: by which it appeared to be proved, that Soodee Sing, a short time before his death, made a verbal declaration, in the presence of several persons, that he adopted the defendant: but without any religious ceremony or observance; that, after Soodee Sing's demise, the defendant performed the obsequies, and was acknowledged as the heir; and that a turban, in token of his succession, was bound round his head, by direction of the [12] elder widow.—On this evidence to the adoption, judgment went for the defendant in the Zillah Court.

In the Provincial Court of Patna, three further witnesses were examined, whose evidence went to confirm that before given. The Court put a question to their pundit, relative to the adoption; and to the forms generally required by law to be observed in making such adoptions: so as to establish the fact of adoption having duly taken place. On the latter point, the answer of the pundit recited as follows:—Let the person (intending to adopt) first consult a Brahmin, and, having discovered a propitious moment, let him, in the presence of the Brahmin, and of some friends or relatives, place something in the hand of the person to be adopted, and say to him "be thou my adopted son—my goods and effects shall become thy property:" the person adopted will reply, "I agree to become thy son." By the *Shaster* it is essential, that the transaction be with the free will and consent of the adopter and adopted. The ceremony of placing something in the hand of the adopted, and it being done in the presence of a Brahmin, is observed merely for outward form, and in compliance with custom. Should this be omitted, and the consent of the adopter and adopted be nevertheless manifest, the adoption is good.—The Provincial Court affirmed the Zillah decree.

In appeal to the Sudder Dewanny Adawlut, it was still insisted, that sufficient form to constitute adoption had not been observed; that, at all events, an adopted son would not take both the hereditary and acquired property of the adopter; that, besides, there must be some provision for the widows.—The Court applied to their pundits for an opinion, whether, under the facts in evidence, adoption was proved; whether an adopted son was entitled to the exclusive inheritance, or to what particular property of the adopter; and in what manner the law required that the widows should be provided for: to which the pundits replied, that the adoption was valid: that whatever property Soodee Sing left, hereditary or acquired, real or personal, devolved exclusively on Bholee Sing; but that it was incumbent on Bholee Sing to furnish the widow of Soodee Sing with the means of performing religious acts, and likewise to provide her with a maintenance, and cherish her like his own mother.

The Sudder Dewanny Adawlut (present Sir J. Shore and Council) affirmed the decrees of the lower Courts, as far as [13] concerned the landed estate for which the suit was brought; but did not, in the present judgment, pass any decision as to the maintenance of the widows (a).

[13] (a) This was an adoption of a *Kritrima* son (vulg. *Kurta Pootr*), a form of adoption in use throughout *Mithila*, which comprehends Tirhoot and the adjoining districts. The