APPELLATE JURISDICTION. (*a*)

Special Appeal No. 38 *of* 1863.

BAWÁNI SANKARA PANDIT.....*Appellant.*

AMBABÁY AMMÁL.....*Respondent.*

The adopted son of one whose alleged adoption has been held invalid can make no claim through his adoptive father to be maintained by the alleged adopter.

The natural rights of a person adopted remain unaffected when the adoption is invalid.

Quaere, whether a right to maintenance can descend as an estate.

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THIS was a Special Appeal from the decision of E. W. Bird, the Acting Civil Judge of Negapatam, in Appeal Suit No. 467 of 1861, affirming the decree of V. Sundara Náyudu, Principal Sadr Amin of Negapatam, in Original Suit No. 16 of 1861. The plaintiff sued the defendant for Rs. 9,700 alleged to be due for the maintenance of the former and the widow of his adoptive father, Kistnaji Koneri Pandit. Kistnaji had been adopted by the defendant, a widow, but such adoption had been found invalid as the adopter had not been authorised to adopt by her deceased husband. Accordingly the Sadr Amin and, on appeal, the Civil Judge declared the plaintiff's suit unsustainable.

Sadagopacharlu for the special appellant, the plaintiff. The appellant's adoptive father was entitled to maintenance: he had a right to adopt : my client's adoption was valid ; and therefore he succeeds to his adoptive father's right to maintenance. It would have been the same had the plaintiff's adoptive father been a natural son.

[HOLLOWAY, J. :—Then the maintenance would have been given merely out of compassion. It seems absurd to contend that maintenance given from such a motive should be extended to the son of one illegally adopted. Can a right to maintenance descend as an inheritable estate ?] An adoption, though invalid, severs the person adopted from his natural family : T. L. Strange's *Manual of Hindu Law*, 2nd ed. §119. (*b*) That is the ground for holding him entitled

(*a.*) Present : Scotland, C. J. and Holloway, J.

(*b.*) " The severance of the boy from his natural family by gift made of him for adoption is so absolute that he cannot be re-attached to his natural family, or be re-admitted to his rights of property therein, *even should his adoption into the adopting family* [leg. the family of the adopter—*Rep.*] not stand good in law. Being devoid of inheritance in either family, he remains a charge upon his adopter for maintenance."

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to maintenance. *Ibid.* and sec. 197 : See Sir T. Strange's *Hindu Law*, I, 82 (*a*), *Dattaka Chandrika*, s. 1; cl. 14 (*b*). Here there must have been an acceptance of the plaintiff's father [SCOTLAND, C. J. :—Acceptance by a woman without authority is no acceptance at all. Do you contend that an invalidly adopted son loses the right to inherit from his natural father and has merely a right to be maintained by his alleged adoptive father ?

Sadagopacharlu. Yes, if there has been an adoption in fact. Strange's *Manual*, § 197 (*c*), *Dattaka Chandrika*, sec. 1, cl. 15 (*d*), and sec. 6, cl. 4 (*e*).

(*a*) " An adoption of one of a different class from the adopter has, in general, nothing but disqualifying effects. Parted with by his parents, it divests the child of his natural, without entitling him to the substituted claims, incident to an unexceptionable one. Incompetent to perform effectually those rites, on account of which adoption is resorted to, he cannot inherit to the adopter, but remains a charge upon him, entitled only to maintenance"—citing Datt. Chand. sec. i, 14. et seq.—Id. sec. vi, 4. Mit. on Inh. ch. 1, xi, 9 and note, and adding "Qu, tam. Mr. Sutherland, translator of the Treatises on Adoption, being of opinion that the adoption being void, the natural rights remain." The passage from the Mitákshará (i. xi, 9) is as follows : " He who is given by his mother with her husband's consent, while her husband is absent, [or incapable though present] or [without his assent] after her husband's decease, or who is given by his father, or by both, being of the same class with the person to whom he is given, becomes his given son (*dattaka*). So Manu declares, " He is called a son given (*dattrima*) whom his father or mother affectionately gives as a son, being alike by class] and in a time of distress ; confirming the gift with water."

(*b*) " Alike not by tribe, but by qualities, suitable to the family Accordingly a Kshatriya, or a person of any other inferior class may be the given son of a Brahmana." As for this interpretation by Medhátithi it is thus reconciled. Where, there may be no real legitimate son, although as being inferiorin class the Kshatriya and the rest are not entitled to present the oblation of food, and water ; still, their filial relation may be legally established, by reason of their being beneficial in perpetuating the name, and the like ; but, as they are beneficial in a small degree, they only receive maintenance."

(*c*) " [A man is bound to maintain his father.....] " Also one adopted by him but who may prove disqualified for adoption."

(*d*) " Kátyáyana declares this : " If they be of a different class, they are entitled to food and raiment only." Caunaka also " If one of a different class should, however, in any case, have been adopted as a son, he should not make him participator of a share : this is the doctrine of Caunaka. By Yájnavalkya also it is declared that one of the same class presents the funeral cake, and participates in a share ; but the filial relation of one of a different class is not denied ; and Yáska, explicitly declares this : 'A person of the same class must be adopted as a son.' Such a son performs the oblations and takes the estate ; on default of him one different in class who is regarded merely as prolonging the line. He receives food and raiment only, from the person succeeding to the estate."

(*e*) " It is declared, by an author in the following texts, that a son given likewise who is of a different class, does not inherit. If one of a different class, should however in any instance have been adopted as a son, he should not make him participator of a share. This is the doctrine of Caunaka."

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HOLLOWAY, J. :—How can there be an adoption in fact when that has not taken place which is necessary to constitute an adoption?

Sadagopàchàrlu : Suppose the case of an adoption of a son whose tribe is not that of the adoptive father.

HOLLOWAY, J. :—If a man marry another man's wife not knowing her to be so, is that a marriage in fact?

SCOTLAND, C. J. :—In old times when the performance of religious rites for the purpose of adoption was considered of more importance, perhaps, than it is now, maintenance may have been given to an invalidly adopted son in consequence of the effect which was attributed to those rites. In a religious point of view, he may possibly have lost rights in his natural family. But it is hard to see how a man forfeits his natural temporal rights by being adopted into another family when such adoption is invalid. You must in effect say here that though the intended adoption has never gone beyond a mere expression on the part of the natural father such as 'I will give you my son,' that destroys the son's right to inherit from him.

Sadagopàchàrlu. If the adopted son perform the funeral rites of his adoptive father, this would disentitle him to perform those of his natural father, and to inherit his estate.

SCOTLAND, C. J. :—I doubt that. Suppose a man has two sons and gives the younger son in adoption, and the adoption turns out invalid, and the elder son dies, why could not the second son bring a suit to establish his right?

Sadagopacharlu. I am not prepared to say.

HOLLOWAY, J. :—'He knoweth not the law that knoweth not the reason of the law.'

V. *Rangacharlu*, for the respondent, the defendant.

The Court delivered the following

JUDGMENT :—The plaintiff in this suit as the adopted son of Kistnaji Koneri Pandit, who it is alleged was the adopted son of the defendant, a widow seeks to recover a sum for the maintenance of himself and his adoptive mother. The defendant denies the right of the plaintiff to recover.

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No doubt exists as to the validity of the plaintiff's adoption by Kistnaji Koneri Pandit. But at the original hearing it was proved by the record of the proceedings in Original Suit No. 18 before the Subordinate Judge (the same being a suit by Kistnaji Koneri Pandit as adopted son to recover from the defendant the property left by her husband, to which the present plaintiff was a party), that the alleged adoption by the defendant of Kistnaji Koneri Pandit was, by the decree in the suit pronounced to be of no validity, on the ground that though the forms and ceremonies of an adoption appeared to have taken place after the death of the defendant's husband, the defendant had no authority whatever from her husband to adopt. The record in Appeal Suit No. 41 of 1842 before the Civil Judge in which the original decree was affirmed was also in evidence.

Upon this evidence both the Lower Courts have decreed against the plaintiff deciding that, as the adopted son of one whose alleged adoption had been held to be invalid in law, he could make no claim to maintenance from the defendant through his adoptive father. And we are of opinion that a right decision has been arrived at.

In reason and good sense it would seem hardly a matter for doubt that where no valid adoption, in another words, no adoption has taken place, no claim of right in respect of the legal relationship of adoption can properly be enforced at law. But in this case it was contended on the part of the plaintiff (the appellant) that although Kistnaji Koneri Pandit was precluded from all right to inherit in the family of the defendant's husband, yet that by reason of the forms and ceremonies attending an adoption having been gone through, the law gave him the right to claim maintenance from the defendant, and that such right passed to the plaintiff as his son by a valid adoption, just as it would have passed to his natural son. In support of this, reference was made to Mr. Strange's *Manual*, sections 120 and 197 ; Sir Thomas Strange's *Hindu Law*, I, p. 82, and to the *Dattaka Chandrika* by Sutherland, section 1, clauses 14, 15, and section 6, clause 4.

Now the passages in the two former works rest upon the authority of the *Dattaka Chandrika* and the *Mitaksha-*

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ra on inheritance, chap. I, sec. XI, clause 9 ;(*a*) and having considered what is to be found in these authorities, we are of opinion that no legal ground is afforded for the present claim to maintenance. Mr. Strange in section 119 of the second edition of his *Manual* no doubt states broadly that a boy, after a gift made for adoption, cannot be re-admitted to his family rights should his adoption "not stand good in law," and that devoid of inheritance, he has a claim to maintenance. And an observation to the same general effect occurs in a late judgment delivered by Mr. Strange, then a Judge of this Court, in the case of *Ayyavu Mappanar* v. *Niladatchi Ammal.*(*b*) But Sir Thomas Strange's observations are confined to the adoption of one of a different class from the adopter, and he puts the claim to maintenance on the ground that such an adoption, while it divests the child of his natural claims, does not entitle him to all the incidents of an unexceptionable adoption and enable him effectually to perform those rights which are essential to the right to inherit; and this in effect is supported by the *Dattaka Chandrika*, section 1, clauses 14, 15. Where however both the author and the commentators to whom he refers, make the claim of adopted sons of a different class, more expressly and distinctly to rest upon the ground, that although not qualified to present the oblations and perform the rites essential to inheritance, they acquire a filial relationship, (as is there said) "by reason of their being beneficial in perpetuating the name and the like : but as they are beneficial in a small degree, they only receive maintenance." See also the *Dattaka Mimamsa*, section 3.

The doctrine so laid down treats the adoption as one that may be made and existing, and of validity for one of the purposes of adoption according to Manu, quoted in clause 3 of the same section ; though not for the other purpose of "the funeral cake, water and solemn rites." How

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(*b*) Supra, p. 45.

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far this doctrine now holds good as law we are not called upon to consider, as it has, we think, no application to the present case. But we may observe that there appears to be nothing in the Mitákshará to the same effect, and Sir Thomas Strange in a note to the passage before referred to, questions the claim to maintenance and says, " Mr. Sutherland, translator of the Treatise on adoption, being of opinion that the adoption being void, the natural rights remain, and applied to the present case, this opinion of a very high authority upon the subject is entitled to the more weight, that it is clearly logical. If there was no adoption nothing can have been acquired and nothing lost.

In the present case the question does not turn upon any personal disqualification on the part of Kistnaji Koneri Pandit, and we think the natural rights of the plaintiff remain in law quite unaffected. In this case the authority of the defendant's husband was indispensable to the validity of the adoption relied upon by the plaintiff : without it the absolute essentials of adoption for civil purposes, the giving and receiving, could not with any legal effect taken place ; and it would be strangely inconsistent and unreasonable, if the mere formal performance of certain customary rites and ceremonies connected with adoption, which as regards the *civil* rights of the personal adopted, would probably not be treated as necessary to its legal efficacy, (I, Sir Thomas Strange's *Hindu Law*, 96 ; *Veeraperumal Pillay* v. *Narrain Pillay*,(*a*) were held to confer the right to enforce maintenance by a civil suit. We think there is nothing in Hindu law which requires or would warrant such a decision, and that as in this case there was no valid adoption by the defendant, the suit must fall.

This decision renders, it unnecessary to give any opinion upon the other question argued at the bar, whether, if the right to maintenance had existed in Kistnaji Koneri Pandit, that right would as an estate have descended to his sons natural or adopted.

Our judgment therefore is in affirmance of the decree of the Civil Court. The costs of this appeal will be borne by the appellant.

Appeal dismissed with costs.

(*a*) 1, Strange's Note of Cases, 100.