1869. *March* 31. *S. A. No.* 395 *of* 1868.

and decree of the Civil Court made known to the plaintiff in the most decided manner the fraud on which the suit is based, and more than six years from the date of that decree had elapsed when this suit was instituted. The period of limitation began to run at all events upon the passing of that decree, and no provision of the law warrants the exclusion of any portion of the subsequent time during which the plaintiff was permitted to hold possession of the property. The appeal from the decree was a voluntary proceeding taken at the plaintiff's own risk. For these reasons we are of opinion that the suit was barred by Clause 16, Section 1, of the Act of Limitation.

The decree of the Civil Court must therefore be reversed and the suit dismissed. The defendant's costs in this and the Lower Courts must be paid by the plaintiff.

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## Appellate Jurisdiction. (a)

*Regular Appeal No.* 51 *of* 1868.

N. CHANDVASEKHARUDU, and another... *Appellants.*

N. BRAMHANNA, being a minor, his father CHINNA JAGANNADHAM... } *Respondent.*

A widower can make a valid adoption according to Hindu Law.

*Semble*, the Hindu Law does not prohibit an adoption by a man who has not been married.

1869. *March* 31. *R. A. No.* 51 *of* 1868.

THIS was a Regular Appeal against the decree of E. B. Foord, the Civil Judge of Berhampore, in Original Suit No. 24 of 1867.

*Sloan*, for *Snell*, for the appellants (the 1st and 2nd defendants.)

*Sanjiva Row*, for the respondent (the plaintiff.)

The facts appear in the following

JUDGMENT:—This is an appeal from the decree of the Civil Court of Berhampore adjudging the right of the plaintiff as an adopted son to recover from the 1st and 2nd defendants possession of a portion of the land claimed in

(a) Present: Scotland, C. J. and Collett, J.

1869. *March* 31. *R. A. No.* 51 *of* 1868.

the plaint together with an amount on account of mesne profits. The grounds of objection relied upon on the part of the appellant are that the evidence is insufficient to prove that the alleged adoption of the plaintiff had taken place, but, if sufficient, then that the adoption was of no legal validity, as the adoptive father had no wife living at the time it took place. With respect to the effect of the evidence, we think the Civil Court has come to a right conclusion.

The second ground of objection has been held by the Civil Court not to be maintainable on the authority of the decision of this Court in the case of *Nagapa Udapa* v. *Subba Sastry*, (2 *Madras High Court Reports*, 367) which is in point. But it has been pressed upon us on behalf of the appellant that the decision rests on the 4th note of Mr. Sutherland to his *Synopsis of the Hindu Law of Adoption* in which he does not profess to lay down what the law is on the point of adoption by an unmarried man or widower, and that its soundness is questionable, and we have been induced to look into the works of authority referred to in order to see whether any doubt appeared which would be a ground for the reconsideration of the point by the full Court.

It is true that, in the note relied upon in the judgment, Mr. Sutherland does not express his decided opinion, but he states clearly that in his view the ancient texts on which the right of adoption is founded do not warrant the prohibition of an adoption by a man who may not have "married, or still less one whose wife may have died," and his view of the interpretation of the law of adoption is of the highest authority. But the decision does not rest on this note singly. Jagganada's commentary in *Book* 5 *Chapter* 4, *Section* 8 *of the Digest*, which is referred to both in the judgment and Mr. Sutherland's note, declares that no law is to be found which supports the contentions that "one who has no wife being consequently excluded from "the order of a householder cannot properly adopt a son." A passage is also cited in the judgment from Sir William Macnaughten's *Principles of Hindu Law*, page 66, where he adopts Mr. Sutherland's view, and in support of it refers

1869. March 31. R. A. No. 51 of 1868.

to an opinion of Pundits in favor of the validity of an adoption by person not a "Grihi," that is an unmarried man, and adds "there is certainly no authority against it." In the other passage cited from Sir Thomas Strange's Treatise to the same effect, the learned author adopts the view of Mr. Sutherland.

These authorities are strong to shew that the position they lay down is the sound view of the law unless they are at variance, as has been argued, with the true construction of the primary texts relating to the right of adoption when considered with the policy of the law in regard to marriage. It has been urged that the texts of *Manu* and *Atri* in the *Dattaka Mimansa, Section* 1, *Clause* 39, and *The Dattaka Chandrika, Section* 1, *Clause* 3, declaring that adoption must be made "by a man destitute of male "issue" together with the text of *Caunaka* which follows expressing more fully that it must by "one desti- "tute of a son or one whose son may have died having "fasted for male issue" import that the right of adoption belongs only to the man who has capacitated himself by marriage to procreate a son and also has a wife alive. To this construction all the three texts as respects the condition in marriage are open, and the same may be said of the text of *Caunaka* as respects the condition of an existing wife, but they do not necessitate either construction. Their obvious purpose was to enjoin the need of a son by adoption to every man without male issue "for "the sake of the funeral cake, water and solemn rites "and for the celebrity of his name" and while the language "a man destitute of male issue," or as the explanatory comment in *The Dattaka Chandrika* expresses it, "one to "whom no son may have been born," is applicable to a man who has not been married, a strict compliance with that added by Cannaka "or one whose son may have died "having fasted for male issue" is quite compatible with an adoption by a man who at the time has not a wife living. A sonless widower may have rigidly fasted for a son before his wife's death, and for aught that appears the plaintiff's adoptive father may have earnestly practised such self-denial. Considering the essential importance which attached to the state of marriage throughout the whole system

1869. *March* 31. *R. A. No.* 51 *of* 1868.

of Hindu Law, it is in the highest degree probable that the injunction in the texts was specially addressed to the order of "Grihi" or married men, but that is not a reason for straining the language used into prohibitions by implication of adoptions by widowers and celibates. It might have been so if celibacy, instead of being merely discouraged by the law, had been a temporal offence, or marriages had been imposed on adults as an enforceable legal obligation. But neither is the case, and as respects the need of the spiritual benefits attributed to the performance of obsequial rites by an adopted son, there appears to us to be no sound distinction between the single married man or the widower and the man whose wife is alive. We can discover no authority for the positions laid down by Mr. Strange in his *Manual of Hindu Law*, *Chapter* 3, *Sections* 60, 61, that unmarried males of whatsoever age are not in danger of "put" and hence no adoption on their account is necessary, and that adoption by a widower is not valid. According to our understanding of the Hindu system of law, it is inculcated as a fundamental precept that every man is in peril of "put" but may obtain deliverance from it through the birth or adoption of a son and the efficacy of his performance of the prescribed exequial rites. *Strange's Hindu Law*, 73, 74. Obviously, however, the ground stated is inapplicable to the position that a widower cannot adopt, and the only work cited in support of it is so far as we can ascertain unknown here.

We were referred to the *Mitacshara*, *Chapter* 2, *Section* 1, *Clause* 11, and *Manu*, *Chapter* 9, *V.* 45 *and* 106, as shewing that adoption is but the means provided of substituting a son on failure of male issue of a marriage, but the texts referred to do not carry the case any further than the authorities already observed upon. The law no doubt is that a son by adoption takes the place of a legitimate natural son, but nowhere do we find that a wife and failure to procreate a son are made indispensable conditions of the right to adopt. Apparently the only text having any strong bearing to that effect is that of Medhatiyi wherein it is stated with reference to a passage in *Manu*, *Chapter*, 9, *V.* 180, to be a peremptory precept that offspring should be produced by the house-holder, and

1869. *March* 31. *R. A. No.* 51 *of* 1868.

should a legitimate son not be acquired a son by adoption may be resorted to. But the text is combated in Section I of the *Dattaka Mimansa*, and although the reasoning upon it is in part very obscure, the conclusion arrived at is thus stated in Clause 62 " the precept to produce a son " cannot be inferred, but on the contrary funeral rites alone " must be understood on account of unity of import with " the text of Atri which expresses for the sake of the " funeral cake, water, and solemn rites." Further it is of this very text of Medhatityi that Mr. Sutherland has observed in the note before referred to that it " may be " regarded as merely enjoining the more obligatory neces- " sity for a married man having no male issue to adopt a " son" and a wider meaning the other authoritative texts do not it seems to us warrant.

On this view of the authorities, no effect can be given to the argument based on the moral ground of its being the policy of the law to encourage marriages. It is not of itself an admissible ground for invalidating the adoption, but, if it were, we should consider it unavailing, for it strikes us as very improbable that any unmarried Hindu would be induced by the knowledge of his ability to adopt a son to avoid marriage. The innate desire of every Hindu man to marry and have issue of his body is proved by experience to be too strong to admit of such a belief. The only probable effect of making the existence of a wife a necessary condition of adoption would be to coerce marriages in cases in which from age or other natural cause it was physically certain that issue could not be procreated.

For these reasons we concur in the decision of this Court that a widower can make a valid adoption, and for the same reasons we entertain a strong opinion that the law does not prohibit an adoption by a man who has not been married. The decree of the Civil Court will be affirmed with costs.