APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Shah

DATTATRAYA SAKHARAM DEVLI (ORIGINAL PLAINTIFF), APPELLANT *v.* GOVIND SAMBHAJI KULKARNI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

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February 1.

Hindu Law—Adoption—Divesting of estate on adoption—Property of the natural father vested exclusively in the son before adoption—After adoption the property remains in the natural family.

Under Hindu Law, when a boy is given in adoption, he loses all the rights he may have acquired to the property of his natural father including the right to property which has become exclusively vested in him before the date of his adoption.

Rajah Venkata Narasimha Appa Row v. *Sri Rajah Rangayya Appa Row*[1], dissented from.

SECOND appeal from the decision of V. G. Kaduskar, Additional First Class Subordinate Judge, A. P., at Ratnagiri, confirming the decree passed by K. G. Tilak, Subordinate Judge at Devgad.

Suit to recover possession of property.

One Mahadev, who was separated in estate from his brother, Sambhaji, died leaving him surviving his wife Parvatibai, a son Ramchandra, and three daughters. Sometime after, Ramchandra was given away by Parvatibai in adoption. Parvatibai mortgaged Mahadev's estate with possession to Dattatraya (plaintiff) nearly twenty years after Mahadev's death.

The plaintiff having sued to recover possession, it was contended by Sambhaji's sons (defendants Nos. 1 and 2) that Parvatibai had no right to pass the mortgage deed. The daughters of Parvatibai supported the mortgage.

* Second Appeal No. 899 of 1913.

[1] (1905) 29 Mad. 437.

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The first Court held on the authority of the case in I. L. R. 29 Mad. 447, that Ramchandra was not, by his adoption, divested of the property already vested in him; and that, therefore, Parvatibai had no interest in the property. The suit was accordingly dismissed.

The lower appellate Court confirmed the decree on appeal.

The plaintiff appealed to the High Court.

A. G. Desai and *S. Y. Abhyankar*, for the appellant:—On Ramchandra's adoption, all his rights to the property of his natural father which devolved on him came to an end. The verse in Adhyaya IX, verse 142, of Manu clearly shows that the adopted boy loses the *gotra* and the *riktha* of his natural father. The verse must be construed according to the spirit of Hindu Law: *vide* also the Dattaka Chandrika, Stokes' Hindu Law, p. 640 and the Dattaka Mimamsa, Stokes' Hindu Law, p. 599. The construction placed on the verse in *Sri Rajah Venkata Narasimha Appa Row* v. *Sri Rajah Rangayya Appa Row*,[1] is not proper. There is nothing to show that the verse applies only to *claims* arising *after* adoption. The decision in *Behari Lal Laha* v. *Kailas Chunder Laha*[2] is a decision under the Dayabhaga and cannot be applied to the present case. The other texts of Hindu Law, cited above, do not lead to the conclusion arrived at by the learned Judges who decided it. A reference may be made to the case of *Birbhadra Rath* v. *Kalpataru Panda*,[3] and it will be seen that the decision supports my contention.

The proper view of law will be that adoption operates as the civil death of the person adopted in his natural family and as a re-birth in his adoptive family.

(1) (1905) 29 Mad. 437. (2) (1896) 1 C. W. N. 121.
(3) (1905) 1 C. L. J. 388.

The interest acquired by the person adopted accrues to him in the character of a member of the family and when that character is lost by adoption, the interest also ceases: *vide* Sarkar's Hindu Law, pp. 119, 120, 2nd Edition.

P. B. Shingne, for the respondent:—Adoption does not sever the tie of blood in the natural family for all purposes. He has to observe mourning for the loss of his natural parents. He has to observe some restrictions as to marriage with a girl from his natural family. It is also clear from the passage in the Dattaka Chandrika, referred to on behalf of the appellant, that the idea of re-birth in the new family is only partially given effect to, for it is expressly provided that the initiatory rites which the boy has undergone in his natural family are not to be cancelled and performed afresh in his adoptive family. This shows that there is no idea of death or re-birth. There is only one continuous existence.

The verses from Manu cited on behalf of the appellant should be confined to cases of *inheritance* and *claims* arising sometime after the adoption, but should not be applied to determine the effect of adoption on the property *already* inherited prior to adoption. Having regard to the mode of living existing in ancient times, there was no reason to provide for a case of the type now before the Court.

There is nothing in the above texts of Hindu Law cited on behalf of the appellant or in any other text which necessarily carries with it the idea that the adopted son is divested of property which is his own at the date of adoption.

Property vested cannot be divested by any act or incapacity which before succession would have formed a ground for exclusion from inheritance, e.g., a widow

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does not forfeit her estate inherited by her on her husband's death, in case she becomes unchaste *after* the vesting of the estate in her: *Moniram Kolita* v. *Keri Kolitani*.[1]

SHAH, J.:—The facts, which have given rise to this second appeal, are briefly these: One Mahadev and his brother, Sambhaji, were divided in interest. Mahadev died more than twenty years ago, leaving a widow Parvatibai, a son Ramchandra, and daughters. After Mahadev's death Ramchandra was given in adoption to a different family at Gwalior. The properties in suit, which were originally assigned to the share of Mahadev, and which were vested in Ramchandra alone after Mahadev's death, were mortgaged by Parvatibai in 1909 to one Dattatraya, long after Ramchandra's adoption. Dattatraya filed the present suit in the Court of the Second Class Subordinate Judge at Devgad to enforce his mortgage, to recover possession and to obtain an injunction. It was filed against Sambhaji's sons, who were defendants Nos. 1 and 2, and Parvatibai represented by her heirs and daughters as defendant No. 3. Defendants Nos. 1 and 2 contested the plaintiff's claim, and urged, among other things, that the property being vested in Ramchandra at the time of his adoption remained vested in him even after he was given in adoption, and that Parvatibai had no right to mortgage the property, as Ramchandra was alive.

The trial Court as well as the lower appellate Court have allowed this contention with the result that the plaintiff's suit is dismissed with costs.

Mr. Desai for the appellant (plaintiff) has questioned the correctness of this view, and has urged in support of the appeal that on Ramchandra's adoption, all his

[1] (1880) 5 Cal. 776 at p. 788.

rights to the property of his natural father which devolved on him on his father's death, came to an end, that his connection with the family of his birth ceased, and that Parvatibai inherited the property as the next heir of Ramchandra or Mahadev, when Ramchandra was given away in adoption. The question of law that arises is whether or not according to Hindu Law a boy given in adoption loses after adoption all his rights which he may have acquired to the property of his natural father before the date of the adoption. The parties are governed by the Mitakshara; and it is conceded, indeed it seems to me to be indisputable, that if a boy is given in adoption during his father's life time, he would lose all the rights to the property of his natural father, even though he may have, as under the Mitakshara law he would have, a vested interest in that property from the date of his birth. That is, in the present case if Ramchandra had been given in adoption during Mahadev's life time he would have lost all vested interest in the property in dispute, and it would have devolved on Parvatibai on Mahadev's death. The point is, therefore, limited to a case, in which the property has become exclusively vested in the boy before the date of his adoption.

This is apparently a point of first impression so far as this Presidency is concerned; and apart from certain decisions of other High Courts to which I shall refer later, the point does not appear to me to present any difficulty. The text of Manu (Adhyaya IX, verse 142) bearing on this point is clear. It is translated in Vol. XXV of the "Sacred Books of the East" at p. 355 as follows:—"An adopted son shall never take the family (name) and the estate of his natural father; the funeral cake follows the family (name) and the estate, the funeral offerings of him who gives (his son in adoption) cease (as far as that son is concerned)."

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There are two readings of this verse; in the one which is adopted in the different modern editions of the Manusmriti (such as the Nirnaya-Sagar Press edition and the Manava-Dharma Sastra edited by Mr. Mandlik) the words *haret* (हरेत्) and *kwachit* (क्वचित्) are used, whereas in the other, which is adopted by Vijnanes'wara and Nilkantha in quoting the verse in the Mitakshara and the Vyavahara Mayukha, the words used instead are *bhajet* (भजेत्) and *sutah* (सुतः) respectively.

In my opinion it makes no difference in the result whichever reading be adopted. Mr. Shingne has, however, relied upon the second reading as favouring his contention. If it were necessary to make a choice between the two readings, I should certainly prefer the reading adopted in all the modern editions of the Manusmriti to that adopted by Vijnanes'wara and Nilkantha in quoting the verse.

The meaning of the verse is clear. The son given in adoption is not to take the *gotra* or the *riktha* of his natural father. His dissociation from the family (*gotra*) as well as the estate is insisted upon in unequivocal terms. There is no room for the distinction sought to be made by Mr. Shingne that the prohibition against taking is confined to the inheritance after the adoption, and does not extend to what is already inherited before the adoption. The text generally prohibits the taking by the adopted son and does not restrict the taking to that which would devolve on him after the adoption. It lays down that the adopted son shall never take or claim the estate of his natural father. The words are wide enough to include the estate vested in him at the time of adoption, provided it is the estate of his natural father. In my opinion, the text should be so read as to give effect to the fundamental idea

underlying an adoption, viz., that the boy given in adoption gives up the natural family and everything connected with the family and takes his place in the adoptive family, as if he had been born there, as far as possible.

It was urged by Mr. Shingne that there was no provision in the text as to divesting an estate once vested in a person, and that the person leaving the family of his birth cannot be divested of property exclusively vested in him before adoption. But this argument ignores the essential idea of an adoption. There is a change in the position of the boy, and this divesting of the estate of the natural father is an incident, and, in my opinion, a necessary incident, of that change. The boy given in adoption gives up the rights, which may be vested in him by birth, to the property of his natural father, if the adoption takes place in his father's life-time. To that extent the rights vested in him are divested after adoption. If the divesting of a vested interest so far is to be allowed, I do not see any difficulty in holding that even if the estate of the natural father be wholly vested in the boy before adoption, he is divested of it when he is given in adoption. It seems to me that there is nothing repugnant to Hindu Law in thus insisting upon what is a necessary incident of an adoption and in preventing an adopted son from taking away with him to his adoptive family the property, which may have devolved upon him in the family of his birth. The divesting of vested estates is by no means an uncommon incident of adoptions under certain circumstances, and seems to me to be quite consistent with the Hindu Law.

It has been urged by Mr. Shingne that if the adopted boy can take his self-acquired property with him and is under no obligation to leave it in the family of his birth, there is no reason why he should be treated

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differently with reference to the property, which has vested in him exclusively on the death of his father before the adoption. But this argument ignores the difference between his self-acquired property and the estate which has become vested in him exclusively on his father's death. In one case the property is his own, and in the other it is the property of his natural father. The text of Manu refers to the estate of the natural father, and the mere fact that he is dead at the time of adoption and that it has become the property of his son at the time does not change the character of the property for the purposes of the rule laid down by the text, and it cannot be treated as his self-acquired property.

This conclusion is in consonance with the Mitakshara and the Vyavahara Mayukha, wherein the text of Manu is referred to with approval: see Mitakshara, Ch. I, Section XI, para. 32 in Stokes' Hindu Law Books at pp. 422-423, and Mandlik's Hindu Law, p. 59. I quite recognise, as pointed out by Mr. Shingne, that in neither of these works is the case, such as we have here, specifically provided for. But neither the Smriti-writers nor the commentators contemplated the case of an only son being given in adoption after his father's death, and naturally did not advert to such a case. But a general rule is laid down which is comprehensive enough to include the present case.

I do not desire to place any great reliance upon the Dattaka Mimansa and the Dattaka Chandrika; but my conclusion is consistent with the view taken of Manu's verse in both these works: see Stokes' Hindu Law Books at pp. 599 and 640.

It is necessary to note briefly the decisions, in which a contrary view is taken, and which have enabled Mr. Shingne to raise the various contentions already dealt with. The case of *Behari Lal Laha* v. *Kailas*

Chunder Laha [1] is a decision under the Dayabhaga Law, and the text of Manu has not been referred to in the judgment. Besides a different view is taken by at least one of the learned Judges who decided the case of *Birbhadra Rath* v. *Kalpataru Panda*.[2] I am unable, therefore, to accept this decision as a guide in deciding the present case under the Mitakshara. I desire to point out with reference to the passage quoted by Ameer Ali J. in *Behari Lal's case* [1] from the well known case of *Mussumat Bhoobun Moyee Debia* v. *Ram Kishore Acharj Chowdhry* [3] that it has no bearing on the present question. Their Lordships of the Privy Council point out that by the mere gift of a power of adoption to a widow the estate of the heir of a deceased son vested in possession cannot be defeated and divested. But here we are concerned with the effect of adoption on the property vested in the boy given in adoption at the time, and which originally formed part of the estate of his natural father. With reference to it we have a text of Manu, which has been referred to in the Mitakshara and the Vyavahara Mayukha and which has to be construed, and an intelligible principle underlying it, which has to be considered and applied. I feel quite clear that the observations in *Bhoobum Moyee's case* [3] do not touch the present point.

The decision of the Madras High Court in *Sri Rajah Venkata Narasimha Appa Row* v. *Sri Rajah Rangayya Appa Row* [4] is directly in point and undoubtedly conflicts with the view I take of the Hindu Law on this point. I have already stated some of the reasons for not adopting the view, which has found favour with the Madras High Court, in dealing with Mr. Shingne's contentions. I need hardly add that I have considered the judgment with care and respect, to which it is

(1) (1896) 1 C. W. N. 121.
(2) (1905) 1 C. L. J. 388 at p. 400.
(3) (1865) 10 Moo. I. A. 279.
(4) (1905) 29 Mad. 437 at p. 452.

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undoubtedly entitled. But unfortunately I am unable to agree with it, and it is plainly my duty to give effect to my view, as the decision is not binding upon this Court. It is clear from the judgment that the learned Judges were influenced by the decision in *Behari Lal Laha's case*[1] and that they did not consider the texts to be explicit enough to require them to dissent from that view. As regards the observations of the Privy Council quoted and relied upon at p. 450 of the report, I do not think that they bear upon the present point. The general rule stated by their Lordships of the Privy Council must be taken with reference to the point, which had to be considered and decided in the case: see *Moniram Kolita* v. *Keri Kolitani*[2]. Its application in the Madras case seems to me to be far-fetched. Here we have to consider the case of an adoption, and a particular text bearing upon the point arising in the case.

On all these grounds it seems to me that the lower Courts are wrong in holding that the property in suit is still vested in Ramchandra. On his adoption, the property went to the next heir in the family of his birth and therefore Parvatibai was competent to mortgage it. In this case it is not necessary to consider whether on Ramchandra's adoption the property would go to his heirs or to his father's heirs, as in any view of the matter Parvatibai would be the next heir.

It is satisfactory to find that this decision avoids the obvious anomaly of allowing defendants Nos. 1 and 2, who belong to the natural family of Ramchandra, and who are more distant relations than Parvatibai, to hold the property to the exclusion of the next heir (Parvatibai) on the footing that the property still belongs to Ramchandra, who has left their family.

(1) (1896) 1 C. W. N. 121.

(2) (1880) 5 Cal. 776 at p. 788; L. R. 7 I. A. 115 at p. 153.

The result, therefore, is that the decree of the lower appellate Court is set aside, and the suit remanded to the trial Court for disposal on the merits. All costs up to date to be costs in the suit.

BATCHELOR, J. :—I am of the same opinion.

With great respect to the learned Judges who decided the case of *Sri Rajah Venkata Narasimha Appa Row* v. *Sri Rajah Rangayya Appa Row* [1] I am unable to doubt that the texts are in favour of the appellant's contention ; and on the question of principle, apart from the texts, I see no difficulty in holding that property which vested in A as being the son of B becomes divested when A ceases to bear that character.

Decree set aside,

R. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice Heaton.

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February 14.

BAPUJI JAGANNATH (ORIGINAL DEFENDANT), APPELLANT *v.* GOVINDLAL KASANDAS SHAH (ORIGINAL PLAINTIFF) RESPONDENT.*

Civil Procedure Code (Act V of 1908), section 92—Suit by a trustee against a co-trustee—Administration suit—Will—Charitable or religious trusts—Jurisdiction—Practice.

The plaintiff as one of the two surviving executors of the will of one Harjivandas Purshottam dated the 15th June 1892 sued the defendant executor in the First Class Subordinate Judge's Court at Ahmedabad—(*a*) for accounts of the property of the deceased from 1899 and onwards, (*b*) for an injunction restraining the defendant from further management of the estate without plaintiff's consent, and (*c*) for an injunction restraining the defendant from interfering with the plaintiff's management of the said estate. The

[1] (1905) 29 Mad. 437.

* Appeal No. 47 of 1915 from Order.