
(1876) 06 AHC CK 0005
In the Allahabad High Court

Gaya Din and Another

APPELLANT

Vs

Sham Kuar and Others

RESPONDENT

Date of Decision : 28-06-1876

Acts Referred:

Citation : (1875) ILR (All) 255

Hon'ble Judges : Robert Stuart, C.J;Turner, J;Spankie, J;Pearson, J;Oldfield, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

1. Looking to the object of the rite of adoption, we find it to be to ensure by providing a son the spiritual benefit of the adoptive father and the perpetuation of his family name (Dattaka Mimansa, Sections 1-9), rather than to obtain any benefit for the adoptive mother, whose happiness in a future state is not so dependent on having a son to perform the funeral obsequies and can be otherwise secured (Dattaka Mimansa, Section 1., v. 29), and it is also the fact that the wife has no power to adopt on her own account, the right being absolute in the husband. Such being the case, there is no doubt at first sight much force in the contention that the adoption of a son merely affiliates him in the family of the adoptive father, and not of the adoptive mother, and that he cannot in consequence succeed by inheritance to the property which descended to his adoptive mother as heiress of her father. But on the other hand we find that the wife is associated in making the adoption with the husband, and its effect is declared to be to make the adopted child the son of the adoptive mother as well as of the adoptive father.--"By the husband's mere act of adoption the filiation of the adopted son, as son of the wife, is complete in the same manner as her property in any other thing accepted by the husband"--Dattaka Mimansa, Section 1. v. 22. Nowhere do we find it stated that there is any difference in the effect obtained by this filiation with reference to the son's position towards the adoptive father and mother or their families, while we know that in respect of the natural father and mother the effect is alike to completely sever the adopted son

from the families of both.--"A given-son must never claim the family and estate of his natural father. The funeral cake follows the family and estate, but of him who has given away his son the obsequies fail"--Dattaka Mimansa, Section 6, v. 6. "The estate of the maternal grandfather also like that of the father lapses from the son given"--Dattaka Mimansa, Section 6, v. 51. When the separation is so complete from the natural father and mother's family in the absence of texts to the contrary, it may perhaps be not assuming too much to infer that the affiliation by adoption is into both families of adoptive father and mother. But we have what seems to be an express text to that effect. Dattaka Mimansa, Section 6, v. 50 declares--"The forefathers of the adoptive mother only are also the maternal grandsires of sons given, and the rest: for the rule regarding the paternal is equally applicable to the maternal grandsires of adopted sons." There is also another fact which affords the strongest argument in favour of the adopted son's right of succession, and this is that he has the right to perform funeral obsequies to his adoptive mother's father. In Dattaka Mimansa, Section 6, vv. 52, 53, we find--"Accordingly Hemadri himself, from not being satisfied with that (just stated), has advanced the other position: "In the same manner as for the secondary father, a funeral repast must be performed in honour of the secondary maternal grandfather and the rest." And this even is proper. The adopted son as substitute for the real legitimate son being the agent of rites performed by a legitimate son, it follows that he is the performer of funeral repasts, the objects of which are the manes in honour of whom a legitimate son performs such repast." This right of performing the obsequies indicates a right of heirship in the family of the adoptive mother. We have seen the rule laid down by Manu to be--"A given-son must never claim the family and estate of his natural father," and the reason assigned is because "the funeral cake follows the family and estate," and the same reason is assigned in v. 51, Section 6, Dattaka Mimansa, why the given-son cannot claim the estate of his natural maternal grandfather--"the funeral cake follows the family and estate"; "the family and estate are declared to be the cause of performing the funeral repast." So when we find that the adopted son performs by right the obsequies of his adoptive maternal grandfather, it will follow that he does so because he is amongst the heirs, or to quote the text, because "the family and estate are the cause of performing the funeral obsequies," and this doctrine of funeral cake has been held by a high authority (Sir W. Jones) to be the key to the whole Hindu Law of inheritance.

2. Amongst decisions on the question, we find that in *Morun Moyee Debeah v. Bejoy Kishto Gossamee* W.R. F.B. 121, decided the 23rd July 1863, the High Court of Bengal held that an adopted son cannot succeed to his adoptive maternal grandfather's estate when there are collateral male heirs.

3. There is the case of *Gunga Mya v. Kishen Kishore Chowdhry* 3 S.D.A. Rep. L.P. 128 decided the 17th December 1821, in which a vyavastha was delivered to the effect that a son adopted with the permission of her husband by a woman on whom her father's estate had devolved will not be entitled to such estate on his

adoptive mother's death, but such estate will go to her father's brother's son in default of nearer heirs. This opinion was based on an interpretation given by the Dayabhaga to the text of Manu by which the adopted son's right of succession collaterally was confined to succession to property of persons belonging to the same family as the adopting father. But that dictum was accepted by one Judge only, and the majority of the Court expressed no opinion on it, as the point did not arise in the case. The dictum has, however, been accepted by Mr. Macnaghten--Hindu Law, vol. ii., 187. Then there is the case of Gungapersad Roy v. Brijessuree Chowdhraïn 15 S.D.A. Rep. L.P. part ii p. 1091, decided by the High Court of Bengal on the 30th July 1859, in which the learned Judges considered that the doctrine laid down in the case of Gunga Mya v. Krishen Kishore Chowdhry stood merely as the dictum of the Pandit who gave it, and had not been conclusively adopted by the Court and could not be said to have acquired all the authority of a recognised principle of Hindu Law to which the Sudder Court had intended to give effect, and the Court proceeded to decide the question before them, which was the converse of that before us, and held that the relations of the adoptive mother inherit the property of her adopted son just as they would inherit the property of her natural son.

4. In another case, Teencowree Ghattarjee v. Dinnonath Banerjee 3 W.R. 49 the right of inheritance by the adopted son was held to be limited to the adoptive mother's stridhan, and did not extend to the property she had inherited from her father and paternal ancestors, but this limitation of the succession proceeded on the ground that the adopted son cannot perform the shradh of the adoptive mother's father, in which view the Court appears to have been mistaken.

5. Referring again to the decision in Morun Moyee Debeah v. Bijoy Kristo Gossamee, it should be noticed that in that case the Pandits of Moorshedabad and the Sudder Court gave their opinion that a legally adopted son can inherit the property of the adopting mother's father. They thus differed from the dictum, given in 1821, and it should be also noticed that this vyavastha of 1821, on which the Judges in Morun Moyee Debeah v. Bijoy Kristo Gossamee principally relied, has special reference to the Dayabhaga law, and will not have equal weight in deciding the question before us, which must be governed by the Dattaka Mimansa and Mitakshara.

6. On a full consideration of the question there seems no valid reason to doubt that the adopted son does succeed to property which descended to his adoptive mother as heiress of her father.