
(1933) 01 MAD CK 0059
In the Madras High Court

Sountharapandian Aiyangar (deceased) and Others	APPELLANT
Vs	
Periaveeru Thevan and Others	RESPONDENT

Date of Decision : 17-01-1933

Acts Referred:

Citation : AIR 1933 Mad 550 : (1933) ILR (Mad) 759 : 145 Ind. Cas. 534 : (1933) 38 LW 45 : (1933) 65 MLJ 58

Hon'ble Judges : Ramesam, J;Cornish, J;Anantakrishna Aiyar, J

Bench : Full Bench

Judgement

Ramesam, J.—The facts of the case are simple. One Pandi Aiyangar died in 1890 leaving his widow Pichai Ammal and daughter Kothai Animal. Kothai Ammal was married to one Doraiswami Aiyangar. She pre-deceased her mother in 1900 leaving a male child who died shortly after. Pichai Ammal died in 1923. Meanwhile, on the 26th May, 1910, Doraiswami Aiyangar adopted the 2nd defendant Alwar Aiyangar. The 2nd defendant claims to succeed to the property of Pandi Aiyangar on the death of Pichai Ammal on the ground of his being related as daughter's son to Pandi Aiyangar by reason of his adoption. The plaintiffs are persons who would be reversioners to the estate of Pandi Aiyangar if the 2nd defendant cannot claim by reason of his adoption. Both the lower Courts found in favour of the adoption and dismissed the plaintiff's suit. When the case came on before our learned brother Sundaram Chetty, J., he referred the case to a Bench of two Judges noting that the decision in Sundaramma v. Venkatasubba Ayyar I.L.R.(1926) Mad. 941 : 51 M.L.J. 545 is in favour of the respondent but the view of Devadoss, J., in Venkatasubba Aiyar v. Sundaramma (1924) 48 M.L.J. 126 which was reversed in that decision on Letters Patent Appeal, is in favour of the appellant. He also referred to Veeranna v. Sayamma I.L.R.(1928) Mad. 398 : 56 M.L.J. 401 as possibly against the suggestion that the adoption will relate back to Kothai Ammal's lifetime. He referred the case to a Bench of two Judges who referred to a Full Bench.

2. The decision in Veeranna v. Sayamma I.L.R.(1928) Mad. 398 : 56 M.L.J. 401

in my opinion does not give any trouble; nor is there any need to rely on any theory of the adoption relating back to Kothai Ammal's lifetime. When Pichai Ammal died in 1923 and when succession to the estate of Pandi Aiyangar opened the 2nd defendant was in existence. If he can be regarded as the daughter's son of Pandi Aiyangar at that time, he can succeed to the property; if he cannot be so regarded his claim has to be negated. I do not see any need to date the adoption back to any earlier period.

3. The learned Advocate-General who appears for the appellant contended that the 2nd defendant cannot be regarded as the daughter's son of Pandi Aiyangar, because he cannot be regarded as the son of Kothai Ammal. He contends that because Kothai Ammal died in 1900 and the adoption was made in 1910 Alwar cannot be regarded as the son of Kothai Ammal. His contention is that where a boy is adopted by a male, only the wife who was then in existence and who took part in the act of adoption along with her husband can be regarded as the mother. Therefore in the case of an adoption by a widower the adopted boy has no mother. Neither the pre-deceased wife (nor, if there were more, any one of them) nor any wife whom he marries subsequent to the adoption can be the mother of the adopted boy. This is the primary argument. He develops this primary argument by pointing out some difficulties if the opposite view is adopted. He puts the question, - if the opposite view is upheld which of the pre-deceased wives when there were many should be regarded as the mother? and similarly which of the subsequently married wives if there are more than one should be regarded as the mother? In my opinion the difficulties in working out the details of the opposite view are not strictly relevant though they may be used in support of an argument showing its inconvenience. Those difficulties do not arise in the present case, for Doraiswami Aiyangar had married only one wife. In my opinion therefore the appellant must succeed on the strength of his primary argument, namely, only the wife that actually participates in the adoption can be regarded as the mother and the difficulties in the acceptance of the opposite view need not at this stage be referred to. If the main argument be found to be correct, without adverting to these difficulties the appellant succeeds. But if the main argument cannot be upheld, the further possible difficulties in a case of plurality of wives do not arise in this case. I will therefore proceed to consider what I describe as the main argument of the appellant. He concedes that when a widow adopts, the adoption enures to the benefit of the deceased husband. But he argues this analogy does not apply when a widower adopts and the adoption by the widower does not enure to the benefit of the deceased wife. The reason for this distinction according to him is that whereas the theory of the Hindu Law and the Hindu Social System is that the husband even after his death survives in his wife, there is no such theory that the wife when she dies survives in her husband and therefore only the wife of the adopter who actually participates can be the mother. Now, the object of adoption is to have a substitute for a natural born son. Accordingly the theory of Hindu lawyers has always been that apart from the fiction of the adoption itself the adopted son should be as complete a

substitute for the natural born son in all respects as one can possibly make. Vide 20 CWN 702 (Privy Council) . In other respects, except for the fact of his birth, he should occupy the position of a natural born son; there should be nothing extraordinarily peculiar or unnatural about him. One of the most inevitable features about every human being is that he must have two parents, i.e., a father and a mother. Similarly every adopted son should have an adoptive father and an adoptive mother and if there is no difficulty in pointing to an adoptive mother of the boy, one ought to do so unless there is something in the texts of the decisions compelling us to hold that only the person who actually participated in the adoption can be regarded as the mother. As already mentioned, the decision in Sundaramma v. Venkatasubba Ayyar I.L.R.(1926) M. 941 : M.L.J. 545 of Phillips and Madhavan Nair, JJ., is against the appellant. But the appellant attacks the correctness of that judgment on the ground that the learned Judges have not given full weight to the verse in the Dattaka Mimamsa, Section 6, verse 50, have not properly construed the passage, and have given undue weight to Section 1, verse 22 of the same book. I will first refer to the former passage because this furnishes the main ground of the appellant's argument. The verse runs thus: "The forefathers of the adoptive mother only are also the maternal grandsires of sons given etc...." Here the original for the word "adoptive mother" is "Prathigrahithriyamatha". Now the etymological meaning of the word "Prathigraha" is undoubtedly taking or receiving. As all adoptions begin with a taking or a receiving, once the adopted boy becomes a member of the adopting family, the members of the family may be described as adoptive father, adoptive mother, adoptive grandfather and so on and all these may be described as Prathigrahithru father, Prathigrahithri mother and so on, such expressions being merely one method of describing the adoptive father and adoptive mother and not necessarily involving that the particular relation is the person who has taken. At present I only indicate that the etymological meaning may not be the strict construction of the term. We have to see therefore whether the phrase in the verse of Dattaka Mimamsa should be taken in the etymological sense or generally in the sense of an adoptive mother. Now it is noteworthy that this text whenever it has been translated has always been translated with the word "adoptive mother" and not "receiving mother". The first translation was by Mr. D. Sutherland who translates it in that way. His translation is to be found in Stokes' Hindu Law books. In Uma Sunker Moitra v. Kali Komul Mozumdar I.L.R.(1880) C. 256 Mitter, J., delivered the leading judgment. At page 260 he discusses verses 50 to 53 of Dattaka Mimamsa. Section 6, v. 53 refers to the theory underlying the adoption, namely, that there must be a substitute for the legitimate son. Then referring to vv. 51 and 52 it was pointed out that the author says there is no difference between the adopted and the legitimate son in respect of his relationship to his adoptive father's family etc. At page 261 finally Mitter, J., gives Mr. Sutherland's translation of v. 50 without any amendment of the translation as the learned Judge has previously done in the case of v. 53. But apart from the translation of the particular verse, one may perhaps look at the context in which the passage occurs. The author was discussing the effects of an

adoption. In the previous verses he was referring to other kinds of affiliation, such as Dvayamushyana and Krittrima, etc. and he refers to the adoption strictly so-called as Sudha Dattoka, i.e., absolute adoption, and is contrasting the effects of the other kinds of affiliation with the strict kind of adoption and he points out that the adopted boy is completely severed from his natural family. The object of the verses is to say that he is a perfect substitute for a legitimate son, that he has nothing more to do with his natural family and he becomes related to all the members of the adopting family as if he were born there. The text clearly shows that the phrase "Prathigrahithriyamatha" was used in the sense of an adoptive mother and not in its etymological sense. The decision in *Uma Sunker Moitro v. Kali Komul Mozumdar* I.L.R.(1880) C. 256 which established the right of the adopted son to succeed to the other relations of the adoptive mother was affirmed by the Privy Council in (1883) L.R. 10 I.A. 138 (Privy Council). In Bhattacharya's Hindu Law, Vol. I, page 357 this verse of Dattaka Mimamsa was quoted and after translating thus "only the forefathers of the mother that accepts in adoption are also the maternal grandsires of the son adopted and the rest" the learned author observes: "In the above passage, the word *eva* (only) is meant to exclude the paternal ancestors of the natural mother." Who the ancestors are we have to find otherwise, not certainly by the use of the word "Prathigrahithri" in this verse. If a wife of the adopter and her father can be regarded as adoptive mother and adoptive maternal grandfather, they are the only mother and maternal grandfather. That is what the verse says and the natural mother and natural maternal grandfather should be entirely forgotten. Simply because the verse uses the word "Prathigrahithri" in attempting to say so, i.e., in attempting to exclude the natural ancestors, we are not to infer that the receiving mother only can be the adoptive mother and no other. But there is another way of approaching the question and of testing whether the word "Prathigrahithri" must be regarded as used in its etymological sense. Even where the adoptive father is referred to in Dattaka Mimamsa he is referred to as "Prathigrahithri" and one may argue that as it is not always a male that takes the boy in adoption because a widow can also adopt, the word "Prathigrahithri" is not used in its etymological sense but used in a general sense of an adoptive father. But the appellant objects to this inference that according to the doctrine of Dattaka Mimamsa a widow cannot adopt at all and it is by reason of other texts accepted by custom and judicial decisions that the widow can adopt in Southern India and in some other provinces. In fact, the strict view of the Dattaka Mimamsa is still followed in Mithila. I therefore turn to the Dattaka Chandrika to see if I can get a similar argument from that work. There also in Section 3, verse 17 the adopted son is referred to as the Sudha Dattaka, absolute adopted son, in contrast to other forms of affiliation and it was said that he offers oblations to the father and the other ancestors of the adoptive mother only. This passage corresponds to Section 6, verse 50 of the Dattaka Mimamsa and uses the same word "Prathigrahithriyamatha. But it cannot be said of the Chandrika that an adoption by a widow is prohibited. In Section 1, verse 31, Dattaka Chandrika expressly quotes the text of Vasishta:

Let not a woman either give or receive a son unless with the assent of her husband.

4. In verse 32 he proceeds to say that where there is no prohibition the assent is implied and for this purpose he relies on the text of Yajnavalkya. This text of Yajnavalkya and this interpretation by the Dattaka Chandrika are accepted in Bombay, among the Nambudris of Southern India and so on. Vide Vasudevan v. The Secretary of State for India I.L.R.(1887) Mad. 157. Anyhow it is clear that Dattaka Chandrika expressly contemplates adoption by a widow and it always refers to an adoptive father by describing him as prathigrahithri. It is clear that the word is not used in its etymological sense but in a general sense. Vide verses 14 to 17 of Section 3. The learned Advocate-General then argues that the Privy Council have decided the case in 3 CWN 730 (Privy Council) in the way they did because of the word " Prathigrahithri" in the texts. I will now examine this contention. First, I take up the judgment of the High Court in Annapurni Nachiar v. Collector of Tinnevely I.L.R.(1895) Mad. 227 : 5 M.L.J. 121. Best, J., says:

It is difficult to understand why he should have no discretion in selecting one of his wives to join with him in making an adoption during his lifetime.

5. Again at page 282:

The fact, that adoptions under the Hindu Law are for the benefit of the man and can be made independently of any wife, does not appear to be a circumstance from which it can be inferred that the man is not at liberty to select one of several wives to be the receiving mother of the boy to be adopted.

6. At page 283 Shephard, J., says:

It was conceded by Mr. Bhashyam Aiyangar, that the act of adoption inasmuch as it concerns the husband may be performed independently of his wife. Her consent is unnecessary. Nevertheless she, if she is the only wife, undoubtedly comes to be regarded as mother of the adopted son, and her parents come to be regarded as his maternal grandparents. (Dattaka Mimamsa, Section 6, verse 50.) To those parents of the adoptive mother he presents oblations. Generally, his position in the family is assimilated to that of a natural born son. In the case supposed, that of an adoptive father with one wife, the law itself designates the adoptive mother and no difficulty arises.

7. The whole of this passage is against the appellant's contention. The use of the word "nevertheless" shows that even where the wife has not consented she becomes the mother of the adopted son and the following sentence of the learned Judge shows she becomes the mother not because she participates which is, ex hypothesi, not the case but the law designates her and the law does it because he has got to be assimilated to the natural born son. The learned Judge then proceeds to discuss the cases of several wives. He then refers to the case of Kasheeshuree Debia v. Greesh Chunder Lahoree (1864) W.R. Sup. Vol. 71. The judgment in that case shows that the ground of the decision was that

Kali Kant adopted the boy as son of the second wife Mon Mohini. At page 286 the learned Judge says:

There is no inconsistency between the recognised principles of the law with regard to adoption and the position that one of several wives may be selected as the adoptive mother. The maintenance of this position does not militate against, but is rather in consonance with the principle that the adoption is made solely for the benefit of the husband.... It cannot be denied that a Hindu having two wives may confer on any one of them an authority to take a child in adoption after his death, nor can it be doubted that the selected widow would alone and to the exclusion of her co-widows have discretion in the matter. (2, Strange's Hindu Law, page 91.)

8. Finally at page 287 the learned Judge says:

Because a certain mode of designating the adoptive mother fails, it does not follow that no other exists.

9. And he states his conclusion as follows:

It is sufficient to hold that where the husband has associated one wife with him in adopting a child, that wife is to be deemed mother of the child.

10. I think all the quotations I have made from the judgments show that the basis of the High Court's judgment in favour of the successful widow in that case is not that she actually received the boy but that the husband had associated her with himself in the act of adoption and in that manner selected her out of his wives for becoming the adoptive mother. Now when we examine the decision of the Privy Council in 3 CWN 730 (Privy Council) the same point emerges. The facts and authorities being mentioned up to page 8, the deciding passage is to be found at page 9:

Again it seems not to be doubted that a man may authorise a single one of several wives to adopt after his death, or that she would on adoption stand in the place of the natural mother

thus agreeing with Shephard, J., who relies on the same analogy. Then we have

If he can do that, it would be very capricious to deny him the power of selecting a single wife to join with him in his lifetime in adopting a boy, with the same effect on her relations with that boy.... It certainly is a reasonable law that the head of a family should be able to take action likely to prevent disputes between his widows relative to adoption and the consequences of it. To unite one wife with himself is one way.

11. Here again it is clear that the ratio decidendi of the judgment of the Privy Council is not that the respondent was the receiving mother but that she was associated by the husband. There is no reference to the word "Prathigrahithri" in the texts nor any reliance on that word as a reason for the conclusion. No doubt, it happens to be an accident that where the husband associates the wife with

himself in the act of adoption, probably there might be some receiving by the wife also. But this is a pure accident. This is clear from the fact that in the whole ceremonial relating to adoption which is elaborately described in Baudhayana Smrithi (the whole of this part of the Smrithi being referred to by Mr. Mayne at length in the argument before the Privy Council which is fully reported in 3 CWN 730 (Privy Council) we do not find any part allotted to the wife in the ceremony. Vide 9 M. L. J. pages 212 and 213. In my opinion, nothing can be clearer for showing that the word " Prathigrahithri" in the texts is used merely in the sense of adoptive mother. In the course of the argument at page 240 in 3 CWN 730 (Privy Council) Mr. Jardine who appeared for the respondent happened to mention that the etymological meaning of the word translated by Mr. Sutherland as adopting mother was receiving mother. Lord Hobhouse immediately remarked:

I do not know whether there is any essential difference between the two.

12. Mr. Jardine then said:

I do not wish to press it unduly.

13. All this shows that it is not on that word but on the fact of association that the decision turned. In my opinion the decision of the Privy Council is only an authority for saying that where there are more than one wife, the fact of a wife being associated may be made a ground for choosing that wife out of the several wives; and Phillips, J., was right in saying at page 946 in Sundaramma v. Venkatasubba Ayyar I.L.R.(1926) Mad. 941 : 51 M.L.J. 545 that there appears to be no authority for the position that the wife does not become the adoptive mother unless she actually receives the boy. This is not the conclusion of either the High Court or the Privy Council in deciding the Uttumalai case. The Advocate-General relies on a decision in Gunamani Dasi v. Debi Prosanna Roy Chowdry 23 C.W.N. 1038 . The judgment of Shamsul Huda, J., clearly shows that the wife was living at the time of the adoption and therefore he held that she must be regarded as the adoptive mother. I do not think this decision helps the appellant.

14. Lastly, the Advocate-General relies on Sarkar's Law of Adoption and Hindu Law. At page 200 of his Law of Adoption, Sarkar observes:

When the adopter is a widower it might be said that his deceased wife's ancestors will be the maternal ancestors of the adopted son.

15. But while repeating the same statement at page 419 d, he seems not to quite agree with the view at page 419 e. In his Hindu Law at page 249, 6th Edition (page 234, 5th Edition), he again repeats the statement "it might be that the deceased wife of the adopter will be the adoptive mother, and her relations, the maternal relations of the adopted son." But at page 250 he discusses the question whether a wife who is living and has not consented becomes a mother. He seems to be inclined not to accept the view that she becomes the adoptive mother. It is to be noted that this has nothing to do with the case of a widower. Whatever may be the views of Mr. Sarkar Sastri, these views have all been

considered in *Sundaramma v. Venkatasubba Ayyar* I.L.R.(1926) Mad. 941 : 51 M.L.J. 545 and I think Phillips, J., was justified in saying that to some extent they were contradictory. As against this I may refer to Justice Banerjee's *Law of Marriage and Sridhana*, page 371, 3rd Edition:

An adopted son may become affiliated to a woman either by being taken in adoption by her husband in association with her, or by being taken by the husband alone, the child nevertheless becoming a child of the wife according to the reason stated in the *Dattaka Mimamsa* in the passage quoted above or by being taken by the husband etc.

16. The passage of *Dattaka* in the above is Section 1, verse 22. The learned author then says:

In the first two cases, the adopted son would, of course, be regarded as a son of the woman. But in the last case the question arises whether the adopted son is to be regarded as a son of the woman herself or merely as the son of a co-wife.

17. Thus there is not the slightest doubt as to what the opinion of Banerji, J., on this matter is and how he would construe *Dattaka Mimamsa* 1.22. The learned Advocate-General would have it that the meaning of *Dattaka Mimamsa* 1.22 is that the adopted boy becomes the son of the wife though she did not participate in the adoption only in a general loose sense, i.e., in the same sense as the son by one wife may be said to be the son of a co-wife. Whatever may be the exact meaning of the text, it has always been applied for holding that non-assenting wife or deceased wife would be the mother of the boy adopted by the husband alone. I have considered all the arguments of the learned Advocate-General. There is one matter which I wanted to keep to the last. He relied on what purports to be an article in 9 M.L.J. 229 *Annapurni Nachiar v. Collector of Tinnevely*. This article was cited before Phillips and Madhavan Nair, JJ. and was considered by them. Phillips, J., was of opinion that this article concedes the case of a single wife. The reference to a passage from Justice Banerjee's *Law of Marriage and Sridhana*, page 242, supports the learned Judge's statement. But apart from all this, I am bound to make one observation which was not known to Phillips, J. It is conceded on all hands that the author of this article was Mr. V. Bhashyam Aiyangar, afterwards a Judge of this Court. The article appears in the same volume which reports the *Uttumalai* case. The expressions in the article such as "opposite side," "our contention," etc., show that this was probably the memorandum of Mr. Bhashyam Aiyangar prepared for the use of his counsel in arguing the *Uttumalai* case before the Privy Council and not a discussion of an abstract question of law by a jurist. I have given every weight to the argument of such an eminent lawyer as Sir V. Bhashyam Aiyangar. But in the circumstances stated, I am not able to give a higher weight than that, nor certainly the weight due to the opinion of a great jurist which undoubtedly he was but not in this article. I am of opinion that the judgment of Phillips and Madhavan Nair, JJ., in *Sundaramma v. Venkatasubba Ayyar* I.L.R.(1926) Mad. 941 : 51 M.L.J. 545 is correct and that the appeal ought to be dismissed with costs.

Anantakrishna Aiyar, J.

18. I agree. Pandi Aiyangar alias Thirumalayappa Aiyangar died in 1890 leaving behind him his widow Pichai Ammal and his daughter Kothai Ammal. Kothai Ammal was married to Duraiswami Aiyangar. Kothai Ammal died in 1900 and Pichai Ammal in 1923. Kothai Ammal was the only wife of Duraiswami, he not having married anybody else either before or after Kothai Animal's death. In 1910 Duraiswami adopted Alwar. On the death of Pichai Ammal (the widow of Thirumalayappa) in 1923, the reversionary heirs of Pandi alias Thirumalayappa claimed to redeem a mortgage created by Thirumalayappa. Alwar, the adopted son of Duraiswami, claimed that he was the heir of Thirumalayappa's property and that the plaintiffs - the reversionary heirs of Thirumalayappa - had no right to the estate of Thirumalayappa, which, according to Alwar's contention, vested in Alwar on the death of Thirumalayappa's widow in 1923. Alwar's contention was that when he was adopted by Duraiswami in 1910 he (Alwar) became the adopted son of Duraiswami's only wife Kothai Ammal - deceased - and that, as the daughter's son of Thirumalayappa, he (Alwar) was entitled to succeed to Thirumalayappa's estate in preference to Thirumalayappa's divided distant agnates. Both the Lower Courts upheld Alwar's claim, and in the second appeal preferred by the plaintiffs the question for decision is whether on adoption of Alwar by Duraiswami, Alwar became the adopted son of Kothai Ammal also.

19. This exact question was considered by Phillips and Madhavan Nair, JJ., in the case reported in *Sundaramma v. Venkatasubba Ayyar* I.L.R.(1926) Mad. 941 : 51 M.L.J. 545 and the learned Judges upheld the contentions of the adopted son, holding that the adopted son of a Hindu, whose only wife had died before the adoption became the son of that wife so as to inherit as such to the relations in her father's family. It is argued on behalf of the plaintiffs (appellants) that that decision requires re-consideration and that is the only point for decision in this second appeal.

20. After hearing the arguments of the learned Advocate-General who appeared for the appellants before us, I have come to the conclusion that the view taken in *Sundaramma v. Venkatasubba Ayyar* I.L.R.(1926) Mad. 941 : 51 M.L.J. 545 is correct.

21. Though the rights of an adopted son to succeed to the lineal heirs of the adoptive father were recognised early, in course of time his rights to succeed to the collateral heirs of the adoptive father as well as the collateral heirs of the adoptive mother, though disputed at one time, have now been firmly established. The Privy Council in 20 CWN 702 (Privy Council) agreed with the statement of Hindu Law made by Romesh Chunder Mitter in *Uma Sunker Moitro v. Kali Komul Mozumdar* I.L.R.(1880) Cal. 256 (F.B.) to the following effect:

According to Hindu Law, an adopted son occupies the same position, and has the same rights and privileges in the family of the adopter as the legitimate son, except in a few specified instances, which have been clearly and carefully noted

and defined by writers on the subject of adoption. The theory of adoption depends upon the principle of a complete severance of the child adopted from the family in which he is born, both in respect to the paternal and the maternal line, and his complete substitution into the adopter's family, as if he were born in it.

22. The decision in *Uma Sunker Moitro v. Kali Komul Mozumdar* I.L.R.(1880) Cal. 256 (F.B.) was affirmed by the Privy Council in (1883) L.R. 10 I.A. 138 (Privy Council) .

23. The learned Advocate-General did not dispute the above general proposition; but he argued that it is only that wife of the adopter who is alive at the time of the adoption and who actually receives the boy in adoption that could be said to be "the receiving mother" of the adopted son, and, consequently, "the adoptive mother" of the adopted son, and that it is only with reference to the properties of the relations of such adoptive mother that the adopted son succeeds; and he laid great emphasis on the expression "Prathigrahitriyamatha" occurring in *Dattaka Mimamsa*, Part VI, verse 50. He argued that the expression has not been properly translated in some of the earlier translations and decisions, and that the expression meant "the receiving mother". He drew attention to the fact that in the present case *Kothai Ammal* had died in 1900, i.e., ten years prior to the adoption of *Alwar* by her husband *Duraiswami*; that she could not therefore associate herself with her husband in the act of *Alwar*'s adoption, and could not receive the adopted son at the time of the adoption. It was argued, therefore, that *Kothai Ammal* could not be the adoptive mother of *Alwar*, and consequently *Alwar* could have no rights to *Kothai Ammal*'s father's (*Thirumalayappa*'s) properties on the death of *Thirumalayappa*'s widow--*Pichai Ammal*. Certain decisions were also relied on in support of these arguments.

24. It was admitted (and it could not be disputed at this time) that the adoption of *Alwar* by *Duraiswami* was quite valid under Hindu Law, as it has been settled that a Hindu widower having no sons could make a valid adoption. In fact, it has been decided that a Hindu bachelor could make a valid adoption. See *Rungama v. Atchama* and *Atchama v. Ramanadha* (1846) 4 M.I.A. 1 *Annapurna Nachiar v. Collector of Tinnevely* I.L.R.(1895) mad. 227 : 5 M.L.J. 121 *Chandrasekharudu v. Bramhanna* (1869) 4 M.H.C.R. 270 and *Tulshi Ram v. Behari Lal* I.L.R.(1889) All. 358. If the adoption of *Alwar* by *Duraiswami* was valid, then *Alwar* must be taken to have all the rights which an aurasa son of *Duraiswami* would have.

25. That would follow from the decision of the Privy Council, already quoted, 20 CWN 702 (Privy Council) . It has also been decided that a Hindu who has no son is entitled to make an adoption without associating his wife in the act of adoption; and even when his wife is against the adoption, a Hindu husband without a son is entitled to make an adoption. As observed by *Mayne*, in his *Hindu Law*, " adoption is a religious act which a Hindu is entitled to perform, and the text of *Baudhayana* describing the ceremonies relating to adoption makes it clear that the wife has really no necessary part at all in the functions. Without

associating his wife and even against her wishes, a Hindu could perform the ceremony of adoption and make a valid adoption". This is also not disputed; but it is argued that though the adoption of Alwar would be valid, Alwar should be taken to have only his adoptive father (Duraiswami) and relations on his (adoptive father's) side, but no adoptive mother, and consequently no relations on the adoptive mother's side. Here again, it is admitted that, on a valid adoption being made, the adopted son is cut off from all relationship with his natural parents both on his natural father's side and on his natural mother's side, and that his relationship is thereafter only with reference to his adoptive father's and his adoptive mother's sides. But it was pressed before us by the learned Advocate-General that it does not follow an adopted son should have an adoptive mother necessarily. He instanced the case of a bachelor making an adoption, in which case he pertinently pointed out that the adopted son, while losing all relationship on his natural father's and mother's sides, gets instead only relationship on his adoptive father's side, and that he has no adoptive mother, nor relations on the adoptive mother's side. This proposition in the case of a bachelor making an adoption not being controvertible, he asked why any surprise should be expressed for want of an adoptive mother when adoption is made by a widower. He further reinforced his argument by mentioning the case of a Hindu having plurality of wives living but making an adoption only in conjunction with one of them, in which case that particular wife only is the adoptive mother, and the remaining wives of the adoptive father are only step-mothers of the adopted son : 3 CWN 730 (Privy Council) (Uttumalai case). He also put the case of a widower making an adoption after - say - two of his wives had died in succession, and asked which of the deceased wives should be taken to be the adoptive mother of the boy. He also instanced the case of a widower or bachelor marrying plurality of wives after adoption, and asked which wife should be taken to be the mother of such an adopted boy. He also relied on certain observations of the Privy Council, 3 CWN 730 (Privy Council) 18 CWN 554 (Privy Council) *Gunamani Dasi v. Debi Prosanna Roy Chowdry* 23 C.W.N. 1038 *Debiprosanna Roy Chowdhry v. Harendra Nath Ghose* I.L.R.(1910) Cal. 863 *Narain Dat v. Gopal Das* (1915) 33 I.C. 361 and *Veeranna v. Sayamma* I.L.R. (1928) Mad. 398 : 56 M.L.R. 401. He very strongly relied on the statements contained in Sarkar Sastri's book on Adoption and also on Dattaka Mimamsa.

26. An unsigned article in 9 M.L.J. 229 (Jour.) by a very learned and erudite lawyer of this Presidency was also read in extenso as supporting the arguments advanced by the learned Advocate-General.

27. On the side of the respondent, his learned advocate argued that when once the validity of Alwar's adoption was conceded, Alwar's connection with the relations of his natural father and natural mother ceased, and Alwar became connected with the relations of Duraiswami, his adoptive father and Kothai Ammal (Duraiswami's only wife); that whatever apparent difficulties there might exist in cases where the adoptive father had several wives, no such difficulty could exist when the adoptive father had only one wife. It was argued that the

expression "Prathigrahitriyamatha" occurring in Dattaka Mimamsa does not really mean "receiving mother" in the sense of the woman who actually received the boy in adoption; that the expression in its context only means "adoptive mother" (whatever the literal meaning of the expression might be); that the context shows that the contrast there drawn between the relations on the side of the natural father and natural mother of the boy with the relations on the side of the adoptive father and adoptive mother; that the text only declared that the adopted son lost his relationship with the kindred of his natural father and natural mother and instead got the relationship through the adoptive father and the adoptive mother, and while losing his connection in the family in which he was born he got relationship in the family into which he was adopted; that "receiving by the wife" of the adopter was not necessary according to Hindu Law; that an adopter's wife has no place in the performance of any religious ceremonies or in accepting the boy in adoption; that a Hindu husband could ignore his wife in making an adoption and could make a valid adoption by himself alone and even against the wishes of his wife; that decisions have held that even in the case of plurality of wives, the test for finding out the adoptive mother of the boy is not to see which of the wives actually received the boy in adoption but to ascertain the intentions of the husband as to which wife should be associated with him in the adoption and who should be the adoptive mother; that the expression "Prathigrahitru" has also been used in relation to the deceased husband to whom his widow makes an adoption, thus making it clear that the expression does not mean that the husband "received" the boy in adoption, since, in the case put, he was dead at the time and adoption was made after his death by his widow. It was also argued that in cases of plurality of wives, if a husband should make an adoption without expressing any intention as to which of his wives should be the adoptive mother, there are certain principles which would enable the Court to decide which wife should be the adoptive mother, in case all the wives could not be the mothers of the adopted son, having regard to the observations of the Privy Council in the Medur case, 18 CWN 554 (Privy Council) It was finally argued that whatever difficulties might exist in the other cases put by the learned Advocate-General, there could not be any doubt or difficulty in a case like the present when the widower had only one wife. It was also stated that, according to the nature of things, a boy should have both the father and the mother, and that an adopted son also should have an adoptive father and also, if possible, an adoptive mother. Because an adopted son could not have an adoptive mother in the case of an adoption by a bachelor, and there would be an anomaly in that respect, it was argued that the anomaly should not be carried further to the case of a widower who had only one wife.

28. It is now necessary to examine the arguments carefully.

29. The strongest argument advanced on behalf of the appellants is based on the expression "Prathigrahitriyamatha" - literally, "receiving mother" - used in Dattaka Mimamsa, Section 6, placitum 50, and Dattaka Chandrika, Section 3, placitum 17. I proceed to quote the same.

Section 6, pl. 50. - The forefathers of the (prathigrahitriyamatha) 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 son). Setlur's translation.

30. In Dattaka Chandrika, Section 3, placitum 17:

But the absolutely adopted son presents oblations to the father and the other ancestors of prathigrahitriyamatha - (literally, receiving mother) only.

31. Emphasis is laid on the expression "prathigrahitriyamatha", literally receiving mother. But the text shows that what the author is there discussing is that, after an absolute adoption (Sudda Dattaka - not Dvayamushyana adoption), the relationship of the adopted son with the relations of his natural father and natural mother ceases, and, after adoption, his relationship is only with the relations of his adoptive mother. The word "eva" clearly brings out the antithesis between the two sets of relations discussed therein. This remark applies to Section 6, placitum 50, and Section 3, placitum 17, quoted above. The context also shows that the authors are not there considering what acts should be done by the wife of the adopter to bring about the result of her being the adoptive mother of the boy. It is nowhere laid down, so far as our attention was drawn, that the wife of the adopter should actually receive the boy in order to validate the adoption. In fact, Section 1, placitum 22 of Dattaka Mimamsa is clear, that an adoption is complete by the very act of adoption by the husband. It is there specifically stated that by virtue of the superiority of the husband, by his mere act of adoption the filiation is complete. The argument is put thus "if the case stands thus, then, the assent of the wife is requisite for the husband also; for the purpose would be the same. This, if alleged, is wrong, for in consequence of the superiority of the husband, by his mere act of adoption, the filiation of the adopted as son of the wife is complete, in the same manner as her property in any other thing accepted by the husband". Mayne's Hindu Law, Section 150, mentions Vasishta's text and also the texts of Saunaka and Baudhayana, containing the rituals of adoption. When an adoption is made by the husband, it is not necessary, to give validity to the adoption, that his wife or any of his wives should be present or should take part in the adoption. Adoption is primarily a religious ceremony performed with a view to save the parent from the hell called puth. No doubt very important legal consequences also follow on adoption. No part is - by the texts - assigned to the wife when the adoption is made by the husband, though in practice a man generally associates himself with his wife or some one of his wives when making an adoption. It is not right to say that non-association of a wife with the husband when the husband makes the adoption would invalidate the adoption. In fact, Dattaka Mimamsa, Section 1, placitum 22 would seem to make the matter absolutely clear, that the husband could make the adoption without associating his wife with him in the act, or even against her will.

32. If that be so, the meaning to be attached to the expression

"prathigrahitriyamatha" in placitum 50 and placitum 17 referred to, is, not its literal meaning of "receiving mother" but "adopted mother". In fact, that (adopted mother) is the rendering given by many learned translators of this expression. This would be made clear when it is noted that even with reference to an adoption made by a widow to her husband, the husband is spoken of as "Prathigrahitru". See Dattaka Mimamsa, Section 6, placitum 49. "The sakha or peculiar branch of the Vedas is that of the adopter only (Prathigrahitru Reva)". It may be stated that Dattaka Mimamsa does not permit adoption by a widow, but similar expressions are used in Dattaka Chandrika also, which permits adoption by a widow, and the husband to whom adoption is made by a widow is called "Prathigrahitru".

33. The inference sought to be drawn from the use of the word "Prathigrahitriyamatha" by the learned Advocate-General is, in my opinion, not warranted. The expression seems only to mean "adoptive mother" and not the woman who actually "received" the boy.

34. The decision of the Privy Council in the 3 CWN 730 (Privy Council) does not support the extreme contention urged on behalf of the appellants that the expression in question means only the "receiving mother". The Privy Council does not give that meaning to the expression in that judgment. On the other hand, what they say is that various modes were open to the husband to indicate which of his wives was to be the adoptive mother of the boy, and they state that "to unite one wife with himself in adoption is one way". Their Lordships do not say that it is only by receiving the boy at the ceremony of adoption that the particular wife of the adopter could become adoptive mother. In fact, they approve of the decision of the Bengal High Court in the case reported in *Kasheeshuree Debia v. Greesh Chunder Lahoree* (1864) W.R. Sup. Vol. 71 where it was held that "the husband by the will and various acts was proved to have adopted Saroda as the son of his second wife Mon Mohini and that consequently the plaintiff's claim as mother of the adopted son was invalid". The test proposed before us of "receiving" the boy was not laid down as the only test to be applied, either in *Kasheeshuree Debia v. Greesh Chunder Lahoree* (1864) W.R. Sup. 71 or the 3 CWN 730 (Privy Council) .

35. It was open to the husband to indicate which of his wives was to be the adoptive mother; that particular wife need not necessarily have been present at the ceremony; for various reasons she might not have been able to be present at the function. Nor is it necessary for her to actually receive the boy at the time to become his adoptive mother. Of course if a husband actually joins one wife with him, to the exclusion of others, in the actual act of adoption, then that is certainly one mode of indicating the adoptive mother; but certainly there could be other modes of bringing about that result, as is clear from the decision of the Privy Council.

36. No doubt, Sarkar Sastri in his book on Adoption seems to support the view put forward by the learned Advocate-General, though there are other passages in

his book which would seem to indicate the other way. But on the particular question before us two other learned authors have held views contrary to that of Sarkar Sastri. See Bhattacharya's Hindu Law, Second Edition, p. 151 (3rd Ed., Vol. I, p. 357), where the learned author remarks as follows:

There is no text to render the consent of the wife absolutely necessary for the validity of an adoption made by a male. The sanction of the husband makes the son adopted by a female the son of the husband also.

37. Dattaka Mimamsa, Section 1, placita 21 and 22.

38. But in the case of an adoption by the husband, the child taken becomes, by his act, the son of his wife also, except when the ceremony is performed in conjunction with another wife. Nanda Pandita says :

"The forefathers of the mother that accepts in adoption are also the only maternal grandsires of sons given and the rest." Dattaka Mimamsa, section 6, placitum 50.

39. In this passage, the word *eva* (only) is meant to exclude the paternal ancestors of the natural mother. But it can be taken also to exclude the paternal ancestors of the adoptive mother's co-wives.

40. Dr. Gooroodass Banerjee also seems to take the same view as Bhattacharya. See pages 129 and 356 of the second edition of Justice Banerjee's Hindu Law of Marriage and Stridhana, and at page 371 of the 3rd edition:

An adopted son may become affiliated to a woman either by being taken in adoption by her husband in association with her; or by being taken by the husband alone, the child nevertheless becoming a child of the wife according to the reasons stated in the Dattaka Mimamsa in the passage quoted above, section 1, placitum 22.

41. The decision of this Court in the Uttumalai case I.L.R.(1895) Mad. 277 : M.L.J. 121 which was confirmed by the Privy Council in 3 CWN 730 (Privy Council) also supports the respondent's contention. Justice Best says as follows in the course of his judgment at page 281:

The rule enunciated in Dattaka Mimamsa VI, v. 50, and Dattaka Chandrika III, v. 17, to the effect that the "forefathers of the adoptive mother only are also the maternal grandsires of the sons given" differentiates between the adoptive and natural mothers, and not between an adoptive mother who actually joins in the ceremony of adoption and her co-wives.

42. Justice Shephard in the course of his judgment in the same case observes at page 283 as follows:

It was conceded by Mr. Bhashyam Aiyangar, and there can be no doubt that the act of adoption inasmuch as it concerns the husband alone may be performed independently of his wife. Her consent is unnecessary. Nevertheless she, if she is

the only wife, undoubtedly comes to be regarded as mother of the adopted son, and her parents come to be regarded as his maternal grandparents. (Dattaka Mimamsa, Section VI, v. 50.) To those parents of the adoptive mother he presents oblations. Generally, his position in the family is assimilated to that of a natural born son. In the case supposed, that of an adoptive father with one wife, the law itself designates the adoptive mother and no difficulty arises.

43. These observations help the respondent's contention. With reference to the use of the expression "adopted mother" in the texts, this is what Justice Shephard says:

The expression "adoptive mother" used in the verses cited above from Dattaka Chandrika and Dattaka Mimamsa is not used in reference to the case of several mothers; and evidently no distinction is intended to be drawn between the wife who has taken part in receiving the child and any other wife.

44. Again at page 287 the learned Judge says:

The institution of adoption requires that the son adopted should be deemed the son of the person who has taken him. It is only consistent with this theory that the wife of the adoptive father, if there happen to be one, should also be deemed the mother of the boy. But in the case of several wives, the theory does not require that they all should be deemed to be his mothers.... We are invited to consider the case in which a husband has made an adoption independently of both his wives and to answer the question which would then arise. The case is not one which is likely to happen, and it seems to me sufficient to say that, because a certain mode of designating the adoptive mother fails, it does not follow that no other exists.

45. Because an adopted son could not have an adoptive mother in the case of adoption by a bachelor, it does not follow that he should have no adoptive mother when a widower who married only once makes an adoption. From what has been said above, it would seem that the only wife of the adopter would be the mother of the adopted son rather than the adopted son should not have any mother in his adopted family. The argument based on the translation "receiving mother", is, to say the least, inconclusive, and whatever assistance might be derived from the circumstance that one of several wives joined with the adopter in the actual act of adoption, or received the boy in adoption, in deciding which of several co-wives should be taken to be the mother of the adopted son in such cases, no such difficulty arises in a case like the present, namely, the adoption by a widower who married only once. In the case of plurality of wives, several tests have been indicated to find out the intention of the husband as to which of the wives should be the mother of the adopted son. In the absence of any indication by the husband himself just as, associating one wife with him in the act of adoption, or otherwise declaring who is to be the mother, it may be that the senior most wife - Dharmapathni - might be held to be the mother. If some wives be dead but others living, other circumstances might have to be considered. We

have not to decide those cases on the present occasion. But the circumstance that there may be difficulties in other cases is no ground by itself for holding that in a case like the one before us, the adopted son should have no adoptive mother at all.

46. Then it was said that adoption itself is a fiction, opposed to facts and nature, and that the respondent's arguments would introduce "a fiction on a fiction". I am unable to agree with this contention. The question is "What exactly is the fiction with reference to an adoption, its exact extent and incidence"? While the exact extent of the fiction has to be considered in such cases, I do not see how "a fiction on a fiction" is introduced here.

47. As regards the cases quoted, no case dissenting from the decision of this Court reported in *Sundaramma v. Venkatasubba Ayyar* I.L.R.(1923) Mad. 941 : 51 M.L.J. 545 has been cited to us.

48. In *Gunamani Dasi v. Debt Prosanna Roy Chowdry* 23 C.W.N. 1038 Justice Shamsul Huda observed at p. 1041 as follows:

It is not necessary in this case to consider the effect of an adoption by a husband alone without the concurrence of any of his wives. I feel no doubt that in this case the adoption was both by Durga Das and Gunamani. At the time of the adoption Annapurna's mother was dead but Gunamani was alive and it is only natural to suppose that she did take part in the adoption.

49. On those facts, no exception could be taken to that decision.

50. *Narain Dat v. Gopal Das* (1915) 33 I.C. 361 refers to a case where the wife of the adopter did not consent to the adoption, and the question was whether she could be taken to be the adoptive mother of the boy. It was admitted that the adoption was valid. The question is not discussed whether any consent on the part of the adopter's wife is necessary at all in law, to validate an adoption. The case before us is not the case of a wife who objected to the adoption, and it is not necessary to say more about that case.

51. Cases might arise where a person having married only once, he and his wife were anxious to have a particular boy adopted, and before effect could be given to the same, the wife died. The husband, to give effect, so to speak, to the last wishes of his wife, and also from pious motives, makes an adoption. There does not seem to be anything against the position that, in those circumstances, she should be taken to be the mother of the adopted son. I may state that in my experience I have come across instances (rare no doubt) in which a woman in the position of Kothai Animal in the present case has been treated as the adoptive mother, and transactions entered into on that basis. I am not, of course, saying that that should be taken by itself in any way to be conclusive of the question of law that has to be decided in the present case.

52. The article in 9 M.L.J. 229 (Jour.) *Annapurni Nachiar v. Collector of Tinnevely* by one who signed as "Jurisprudence" but whose identity is well known and who

was a very learned and acute lawyer and afterwards a Judge of this High Court, was read in extenso by the learned Advocate-General, as explaining his line of argument in this case. The weight due to the opinion on a legal question of this kind, of such a learned lawyer, would undoubtedly be very great; but it is very probable that the Madras Law Journal only published in the form of an article, "a memorandum of arguments" prepared by that learned lawyer for use of respondent's counsel in England in connection with the hearing of the Uttumalai Privy Council case, 3 CWN 730 (Privy Council) . The article itself contains ample indications of the occasion for preparing it. The expressions "the opposite view," "our contention," "the question now at issue," etc., would seem to indicate the purpose for which the memorandum of arguments was prepared. The Privy Council gave its decision in July, 1899, and the memorandum was evidently published as an article in the Madras Law Journal in its issue of July, 1899, for the learning it discloses, after the decision of the case by the Privy Council. Moreover, the article does not bear the name of the writer. These circumstances have to be kept in view in giving due weight to the positions taken up in the article. So far as theoretical arguments are concerned, weight should undoubtedly be attached to the considerations mentioned in the article. But one should not forget that there are no clear indications therein that they represent the real opinion of the learned writer on the points dealt with in the memorandum.

53. I made these remarks because the article in 9 M.L.J. 229 (Jour.) Annapurni Nachiar v. Collector of Tinnevely was read to us in extenso as representing arguments which the learned Advocate-General wanted to advance himself in support of his position in the present case, and the article has also been referred to in the judgment in Sundaramma v. Venkatasubba Ayyar I.L.R.(1926) Mad. 941 : 51 M.L.J. 545.

54. Even in this article it is stated at p. 231 as follows:

If he had an only wife and she did not join in the adoption, she, no doubt, would, notwithstanding that she did not join in the act of adoption, become the mother of the adopted son and entitled to succeed as such (vide Dattaka Mimamsa, Section 1, verse 22).

55. This is contrary to the decision in Narain Dat v. Gopal Das (1915) 33 I.C. 361. So far as the point for the decision in the present case is concerned, it would seem that the view expressed therein is in favour of the present respondent's contention in the case before us, and Justice Phillips took it to be so. The article is concerned mainly with cases where there are plurality of wives, and directly with a case where the adopter associated himself with one of his wives in the act of adoption as was the case in the Uttumalai case.

56. Having regard to the decisions of Courts, an adopted son should be treated, as much as possible, as similar to a natural born son so far as the family in which he is adopted is concerned (subject to such distinctions with reference to

quantum of share, etc., specified in Hindu Law texts), and the adopted son's right to succeed both lineally and collaterally with reference to his adoptive father's and mother's lines are concerned have been established; the difficulty to find an adoptive mother when a bachelor makes an adoption does not present itself in the case of an adoption made by a widower who married only once. Having regard to the position of a Hindu wife with reference to an adoption by her husband, it is clear that her consent is not necessary to validate the adoption, and even in spite of her express dissent an adoption by the husband would be perfectly valid. The main arguments advanced by the appellants, based upon the meaning of the expression "Prathigrahitriyamatha" that "receiving mother" only would be the mother of the adopted son, is not, in my opinion, tenable. The context in the texts as well as other portions where the same expression occurs in the books make it reasonably clear that before the wife of an adopter could become the adoptive mother of the boy, it is not necessary that she should in fact have joined with the husband and received the boy in adoption. Whatever difficulties might arise in cases of plurality of wives, and whatever might be the tests that will have to be applied to solve the question in such cases, it seems to me that the solution is comparatively easy, and, more or less a natural one, in the present case. Two learned Judges of this Court (Phillips and Madhavan Nair, JJ.) have decided this very question in favour of the respondent's contention, and I am not satisfied from the arguments advanced before us by the learned Advocate-General that the decision of these two learned Judges is open to question.

57. In my opinion, the decision in *Sundaramma v. Venkatasubba Ayyar* I.L.R. (1926) Mad. 941 : 51 M.L.J. 545 lays down the law correctly, and the second appeal should be dismissed with costs.

Cornish, J.

58. I agree. The appellant's case mainly rests upon the construction put by Gopal Chander Sarkar Sastri on the words in Nanda Pandita's *Dattaka Mimamsa* translated "adoptive mother". If that foundation is not a sound one, I think that the appellant's case must fail. Admitting that the words "adoptive mother" may equally be rendered "adopting mother", or, more literally, "receiving mother", it is a wide jump therefrom to the conclusion that a wife who has not joined with her husband in the adoption cannot be deemed to be the adoptive mother of the boy, with the consequence that he has no maternal ancestors in his adoptive family. Sarkar himself puts forward his view rather as a theory than as a definite opinion. In his *Tagore Lectures on the Law of Adoption* he says (p. 214):

Although Nanda Pandita appears to intimate that a boy so adopted (i.e., by the husband alone) becomes also a Son to the wife, yet it must not be supposed that a son adopted without the concurrence, or against the will, of the wife acquires all the rights of a son to her.... In order that affiliation may be complete, it appears to be necessary that the wife should join in adopting a son.

59. This view, be it noted, is not stated to be in conformity with any custom or practice governing adoption or the adopted son's rights; and no case is cited in support of it. In *Uma Sunker Moitro v. Kali Komul Mozumdar* I.L.R.(1880) Cal. 256 (F.B.) Mitter, J., delivering the judgment of a Full Bench, concludes his examination of the passages in *Nanda Pandita* by observing:

The author here, quite irrespective of the chapter and verse of the Rishis whom he quotes, supports his position on general grounds, and says that there is no difference between an adopted son and a legitimate son in respect of his relationship to his adoptive "father's family, etc" which words, evidently, according to the author, indicate his (the adopted son's) relationship to the ancestors of the adoptive mother.

60. The position accepted by the Full Bench, without any qualification depending on the wife's concurrence in an adoption made by her husband, was that adoption affiliates the adopted boy as completely as if he had been born in his adoptive family. It is settled, too, that an adoption by the husband without his wife's consent or concurrence is valid. See *Mayne's Hindu Law*, 9th Edn., p. 146, and the judgment of Shephard, J., in *Annapurni Nachiar v. Collector of Tinnevely* I.L.R.(1895) Mad. 277 : 5 M.L.J. 121. In these circumstances, it must, I think, be said of Sarkar's view that, while it provides Counsel with valuable material for an argument, it is not shown to be so founded on principle or practice as would justify a Court in accepting it as law. If affiliation is independent of the wife's consent to the adoption there seems no more reason for saying that relationship does not exist between the adopted son and the deceased wife of his adoptive father when the adopter is a widower than for denying relationship between the adopted son and any other deceased member of his adoptive family. It is true that only one wife of the adoptive father can fill the position of mother of the adopted son: 18 CWN 554 (Privy Council) . And a difficulty might possibly arise where the adoptive father has married two wives, and both have died before the adoption, in deciding which of them was the mother and which the step-mother of the adopted son. But the present case is not complicated by any question of that sort.