Venkata Vs. Subhadra

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SooperKanoon Citation : sooperkanoon.com/778556

Court : Chennai

Decided On : Jul-28-1884

Reported in : (1883)ILR7Mad548

Judge : Charles A. Turner, Kt., C.J. and ;Muttusami Ayyar, J.

Appellant : Venkata

Respondent : Subhadra

Judgement :

1. The appellant, Pisapati Venkatacharyulu, is a vaishnava brahman and he has an only daughter who has no male issue. The respondent, Subhadracahryulu, is his paternal uncle's son's son, and the respondent's maternal grandmother and the appellant's mother were daughters of two half-brothers. The respondent's mother died when he was very young, and in 1875 his father gave him to the appellant, who desired to adopt him. The appellant brought away the respondent from his father's house and kept him under his own protection. In 1876 the respondent's father died, but the respondent continued to live in the appellant's house and under his protection. In 1880 the appellant executed a will and mentioned in it his intention to adopt the respondent and to perform his upanayanam on an early-auspicious day. Shortly after the execution of the will the appellant performed the homam prescribed for adoption, adopted the respondent, and invested him with the sacrificial thread. Both lived together as father and son until the 7th January 1881, when the will was registered. Shortly after, the appellant wanted to see the

respondent married and chose a girl for the purpose. The respondent's natural elder brother selected a girl from a rich family, instigated the respondent to leave the appellant's house, and got him married. The respondent was then, and is still, a minor. On the 15th July 1881 the appellant brought this suit to obtain a declaration that the adoption is bad in law, and alleged that, at the datta homam, it was the respondent's brother that gave the respondent in adoption, and that one brother was not competent to give away another in adoption. He asserted also that by reason of the relationship between him and the respondent's mother, he could not lawfully marry her when she was a maiden; that the adoption was invalid on this ground too, and that he discovered these defects only after he registered his will. The Subordinate Judge held that, by his own conduct, the appellant was estopped from impugning the adoption; that a marriage between the appellant and the respondent's mother in her maiden state would not be incestuous according to the usage obtaining in the Telugu country, and that the death of the respondent's father prior to the adoption was immaterial inasmuch as the father gave the son in 1875 for the purpose of adoption. It is argued on appeal that the adoption is invalid for the two reasons already mentioned, and that the appellant is entitled to a decree declaring that the adoption is invalid though it was his own act. According to the usage obtaining both in the Telugu and Tamil country, a marriage between a maternal uncle and his niece is not incestuous, although in the Tamil country it is not a highly approved marriage.

2. Ayahi Indra pathibhir ilitebhir Yajnam idam

No bhagadheyan jushava trptam juhur

Matulasyeva yosha bhagaste

Paitrsh vasreyi vapam iva.

Indra! come by easy path to this sacrifice.

Accept my offering, the seasoned Vapa (meat) which is thy due as (one's) maternal uncle's or paternal aunt's daughter (is his).

In Vaithyanatha Dikshatam, page 98, this usage is mentioned, and a text of Brahaspati is cited as saying that, in the South, a maternal uncle's daughter is accepted in marriage. The sruti mentioned in the margin is also cited from the Rigveda in support of the usage. Even according to the texts of Menu and Yajnyavalkya, which mention five degrees as prohibited degrees on the mother's side, the respondent's mother would be beyond the fifth degree and stand in the position of a maternal uncle's or aunt's granddaughter who is clearly eligible for marriage. Accordingly Menu says, by way of indicating the furthest limit of the prohibited degrees on the mother's side, the paternal aunt's daughter, maternal aunt's daughter, and maternal uncle's daughter are not eligible for marriage.

3. This objection, then, to the adoption cannot be supported either by the local law or by the general law of the Mitakshara, if the computation of the number of degrees be made to the common ancestor.

4. It is then urged that, until the datta homam was performed in 1880, there was no actual adoption, though there was an intention to adopt from 1875; and that as the respondent's father died in 1876, there was no valid gift at the time of the adoption; that although the respondent's brother gave him away in 1880, he was not competent to do so, and that the adoption is invalid because there was no gift from a person competent to give at the time of the adoption. Although it was held in this presidency that datta homam is not of the essence of adoption--Singamma v. Ramanujacharlu 4 M.H.C.R. 165--we are inclined to think that it is essential among brahmans and to agree with the High Court at Calcutta in this respect. In this case, however, the appellant does not deny that the datta homam was performed in 1880, and the question, whether it is essential to a valid adoption or only a meritorious act which, however commendable, is not indispensable, as observed by Jaganatha and by this Court, does not arise. The substantial question is whether a gift made by the natural father and accepted by the adoptive father in view to adoption being made at a future time can validate the adoption, if it is made after the death of the natural father and if the elder brother acts in the place of the father at the time of the adoption and during the performance of the datta homam.

5. Viewing adoption barely as a civil transaction, gift and acceptance from and by persons competent to give and take would make it complete, if the adopted boy were transferred from one family to the other. In the view that datta homam is essential among brahmans, the civil transaction is not perfect unless it is invested with the character of a religious rite. But from the very nature of the thing, the agreement to give and to take must precede the religious rite, and the interval of time between the two is immaterial. We do not see, therefore, why a prior gift and acceptance should not be perfected by a valid religious rite performed on a subsequent occasion. It may be that the gift might be validly revoked during the interval, but when it remains unrevoked, the subsequent rite, when performed, relates back to the prior agreement. In this case, the respondent was actually delivered by his father to the appellant, and the nature of the transaction was an actual gift and acceptance subject to a condition subsequent. Unless the presence of the natural father during datta homam is indispensable or his previous authorization to give is inoperative, there is no reason for saying that the datta homam is inefficacious. The gift by the brother in this case during the datta homam was not an act of his own mere motion as a brother, but it was an act ancillary to perfect, by a religious rite, what the father had done.

6. We are not prepared to hold that the absence of the natural father at the time of performing the datta homam would invalidate an adoption which is otherwise valid, and, affirming the decree of the Subordinate Judge, dismiss this appeal with costs.