Thangathanni Vs. Ramu Mudali

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Court : Chennai

Decided On : Jul-26-1882

Reported in : (1882)ILR5Mad358

Judge : Innes, Officiating C.J. and ;Muttusami Ayyar, J.

Appellant : Thangathanni

Respondent : Ramu Mudali

Judgement :

Innes, Officiating C.J. and Muttusami Ayyar, J.

1. This is an appeal from the order of remand made by the District Court of South Tanjore on the 25th August 1880. The suit, which was remanded, had been instituted in the Subordinate Court of that district by a minor, Ramu Mudali, through his next friend and natural father Sundra Mudali. His case was that one Ayyatorai Mudali, whose property he claimed by right of adoption, had died without male issue, leaving him surviving two widows, Thangathanni, the defendant, appellant in this Court, and another since deceased; that some days prior to his death Ayyatorai had authorised his wives to make an adoption for him; and that, after his death, the appellant and her co-widow adopted him, the respondent, according to Hindu Law and usage. The defendant (appellant) denied the adoption as well as her power toad opt. Issues were framed as to the factum of adoption and as to the authority to adopt; but it appeared at the trial from the witnesses

examined by the plaintiff that the adoption was made after Ayyatorai Mudali died, and before his corpse was removed, and whilst the appellant and the other widow were under pollution. The parties to this suit are Sudras, and as the period of pollution arising from the death of a near relative is, according to Hindu Law and custom, sixteen days, there can be no doubt that, upon the respondent's own showing, the appellant was under pollution when she received him in adoption. Adverting to this effect of the evidence, the Subordinate Judge proceeded to consider the question whether an adoption made under pollution was valid, and, as he was of opinion that it was not, dismissed the suit without recording a distinct finding either as to the factum of the adoption or as to the widow's authority to adopt. , In support of his conclusion, he relied on the decision of the Privy Council in Ramalinga Pillai v. Sadasiva Pillai 9 M.I.A. 511 and added that the evidence in this case showed that the adoption was made for the purpose of offering funeral oblations to Ayyatorai Mudali, and that it is stated in Smritis and Puranas that adoption is a religious ceremony, and that no religious ceremony, can be performed with efficacy whilst the person performing it is under pollution. On appeal, the District Judge held that the decision relied on by the Subordinate Judge was not conclusive, and that whatever benefit Hindus might think in a spiritual point of view they derive from the observance of ceremonies in connection with adoption, for civil purposes they had no efficacy, and referred, in support of his opinion, to Singama v. Ramanuja Charlu 4 M.H.C.R. 165 and Sootrugun Sutputty v. Sabitra Dye 2 Kna 290 and to Grady's Hindu Law, Page 61). In this view the District Judge considered that the fact of the adoption having been made whilst the appellant was under pollution was immaterial and remanded the suit for disposal on its merits. Appellant contends again in this Court that no valid adoption can be made even among Sudras without ceremonies.

2. As to the effect of impurity arising from death upon adoption, there is no-decided case in point. Although the question was raised in 1834 in Sootrugun Sidputty v. Sabitra Dye, the Privy Council did not decide it, their decision being in substance that the adoption then impugned was not proved to have been made when the party making it was under pollution. There is, however, no doubt that, according to Hindu usage, impurity arising from death creates a disability as regards the performance of religious ceremonies, and it becomes, therefore,

necessary to consider whether ceremonies are indispensable in the case of adoption among Sudras.

3. The decision of the Privy Council in Indromoni Chowdhrani v. Behari Lall Mullick L.R. 7 IndAp 24 is a distinct authority for the proposition that among. Sudras in Bengal no ceremonies are necessary in addition to the giving and taking a child in adoption.

4. After referring to the 56th Sloka of the 5th Section of the Datta Mimamsa, which establishes the filial relation of adopted sons as well on the proper performance of ceremonies as on gift and acceptance, and after noticing the contention that though a Sudra is incompetent to perform the Datta-homam for himself owing to his incapacity to repeat the prescribed texts of the Vedas. he is bound to perform it through the intervention of a Brahman priest, the Judicial Committee arrived at the conclusion that the weight of authority was in favour of the proposition that no ceremonies were necessary. In this case the authorities and the decisions in this Presidency were also considered, and the decision of this Court in Singama v. Ramanuja Charlu was in effect adopted by the Privy Council as applicable at all events to Sudras. We may also observe that the Full Bench of the Calcutta High Court drew attention when the case was before it to Slokas 26 and 27 of the 2nd Section of Datta Mimamsa. Therein a dispensation in favour of Sudras as to the prescribed prayers is established, and it is declared that the adoption in their case would be valid, though without prayers, like the acceptance of any chattel. The course of decisions in this Presidency has been to treat the prescribed ceremonies as a mere matter of form. In the case reported in 2 Strange's Hindu Law, 87, the pandits described the ceremonies usually observed among Brahmans on the occasion of an adoption and added, with reference to Sudras, that no homam need be performed. Both Colebrooke and Ellis considered that ceremonial adoption was not necessary among Sudras. It can only be urged, therefore, on behalf of the appellant that since the employment of a Brahman priest is recognized in Datta Mimamsa, Section 5, Sloka 29, and in Datta Chandrika, Section 2, Sloka 14, and since a priest is usually employed to perform homam with the recitation of puranic texts, the invalidity arising in the case of Brahmans from the omission of Datta-homam under Sloka 56, Section 5 of the Datta Mimamsa,

and Sloka 18, Section 2 of the Datta Chandrika, must also be taken to extend by analogy to the omission of oblations to fire through a Brahman priest in the case of Sudras. This contention, however, has been overruled by the Judicial Committee and the dispensation specially mentioned in Datta Mimamsa, Section II, Sloka 26, favours the view of Jagannada that the ceremonies are observed as productive of moral merit only. In the case already cited the Lords of the Judicial Committee say that though the use of ceremonies on the occasion of an adoption among Sudras is general, yet to hold that their omission invalidates the adoption would mischievously strengthen the meshes of the ceremonial law and tend to encourage suits to impeach bond fide adoptions.' In Mahashoya Shosinath Ghose v. Srimati Krishna Soondari Dasi L.R. 7 IndAp 256 they account for this general use of ceremonies among Sudras and observe that the system of adoption seems to have been borrowed by the Sudras from the twice-born classes, whom in practice, as appears by several of the cases, they imitate as much as they can, adopting those purely ceremonial and religious services which it is now decided are not essential to them in addition to the giving and taking in adoption.' On these grounds we think we are precluded from adopting the argument by analogy in the absence of an express text declaring that the oblation to fire or Datta-homam through the intervention of a Brahman priest is of the essence of an adoption among Sudras. The result is that this appeal fails and must be dismissed with costs.