(1868) 09 CAL CK 0004

Calcutta High Court

Case No: Regular Appeal No. 75 of 1868

Raja Upendra Lal Roy		APPELLANT
	Vs	
Srimati Rani Prasannamayi		RESPONDENT

Date of Decision: Sept. 9, 1868

Judgement

Mitter, J.

We are of opinion that the Judge below was wrong in dismissing this suit on the ground that the plaintiff was a minor. Instead of dismissing the suit upon such a ground, the Judge ought to have, in our opinion, allowed the suit to stand over, pending the appointment of a guardian or next friend to conduct it on behalf of the plaintiff. It is unnecessary for us, however, to say any thing further on this point. It is admitted on all sides that the plaintiff is now a major, and as the case is, otherwise, ripe for decision, we will proceed at once to try it on the merits. We think that the plaintiff has succeeded in showing that he was adopted by the late Raja Nanda Lal Roy; but it is unnecessary for us to enter into the evidence bearing on this point. It appears that the plaintiff was the only son of his natural father, and as the adoption of an only son is contrary to the Hindu Law, the title set up by the plaintiff must necessarily fail. That the adoption of an only son is prohibited by the Hindu Shastras, is beyond all controversy. The two leading authorities on the subject, namely the Dattaka Mimansa and the Dattaka Chandrika, are unanimous in declaring that such an adoption should never be made:--

By no man having an only son (eka-putra), is the gift of a son to be ever made (Dattaka Mimansa, sec. 4, v. 1).

He who has an only son, or one having an only son, the gift of that son must never be made. For as Vasishtha declares, "an only son let no man give." Therefore, a prohibition against acceptance is established by the text in question. Accordingly Vasishtha says, "let no man give or accept, &c." (Dattaka Mimansa see. 4, v. 3).

To this he subjoins a reason. "For he is destined to continue the line of his ancestors." His being intended for lineage being thus ordained: in the gift of an only

son, the offence of extinction of lineage is implied. Now, this is incurred by the giver, and the receiver also.'' (Ibid, v. 4).

By no man having an only son, is the gift of a son ever to be made.'' (Dattaka Chandrika, sec. 1, v. 29).

2. The passages cited above are sufficient to show that the adoption of an only son is forbidden by the Hindu Law. It has been said, that the prohibition contained in these passages amounts to nothing more than a mere religious injunction, and that the violation of such an injunction cannot invalidate the adoption, after it has once taken place. We are of opinion that this contention is not sound. It is to be remembered that the institution of adoption, as it exists among the Hindus, is essentially a religious institution. It originated chiefly, if not wholly, from motives of religion; and an act of adoption is to all intents and purposes a religious act, but one of such a nature that its religious and temporal aspects are wholly inseparable. "By a man destitute of male issue only," says Menu, "must the substitute for a son of some one description always be anxiously adopted, for the sake of the funeral cake, water, and solemn rites "(Dattaka Chandrika, sec. 1, v. 3). It is clear, therefore, that the subject of adoption is inseparable from the Hindu religion itself, and all distinction between religious and legal injunctions must be necessarily inapplicable to it. Suppose, for instance, that a son has been adopted by a childless widow without the permission of her husband, the prohibition against such an adoption is contained in the following passage:
Let not a woman either give or receive a son in adoption, unless with the assent of her husband" (Dattaka Chandrika, sec. 1, v. 7). Can it be said that such an adoption would be valid in law? It will be observed that the language employed in the preceding text is precisely similar to that employed in the text prohibiting the adoption of an only son; and it would be difficult to suggest a reason why an adoption invalidated in the one case for temporal purposes, upon considerations arising out of the religious view of the matter, should not be equally invalidated in the other case upon similar grounds. One of the essential requisites of a valid adoption is that the gift should be made by a competent person, and the Hindu Law distinctly says that the father of an only son has no such absolute dominion over that son as to make him the subject of a sale or gift. (See Dattaka Mimansa, sec. 4, v. 5). Such a gift, therefore, would be as much invalid as a gift made by the mother of the child, without the consent of the father. It is to be borne in mind that the prohibition in question is applicable to the giver as well as to the receiver, and both parties are threatened with the offence of "extinction of lineage," in case of violation. Now the perpetuation of lineage is the chief object of adoption under the Hindu Law; and if the adoptive father incurs the offence of "extinction of lineage," by adopting a child who is the only son of his father, the object of the adoption necessarily fails. It is true that the doctrine of factum valet is to a certain extent recognized by the lawyers of the Bengal School; but if we were to extend the

application of this doctrine to the law of adoption, every adoption, when it has once taken place, will be, as a matter of course, good and valid, however grossly the injunctions of the Hindu Shastras might have been violated by the parties concerned in it. The case of Chinna Gaundan v. Kumara Gaundan (1 Mad. H. C. R., 54), is no doubt in favour of the appellant, but for the reasons stated above, we are unable to concur with the learned Judges who decided that case. On the other hand we find two cases in our presidency which are directly in favour of the view we have taken, and what is of still greater importance, both these cases have been cited with approbation by Sir William Macnaghten himself. The first case is reported in page 178, volume 2, of his work on the Hindu Law, and the second is to be found in page 179 of the same volume. We may also observe that the learned translator of the Dattaka Chandrika and the Dattaka Mimansa is of the same opinion.

For the foregoing reasons, we are of opinion that the plaintiff''s suit must be dismissed, but without costs. The late Raja had, in point of fact, adopted the plaintiff; and if the title set up by the plaintiff has failed, it is for no fault of his.