(1880) 06 CAL CK 0013

Calcutta High Court

Case No: None

Uma Sunker Moitro		APPELLANT
	Vs	
Kali Komul Mozumdar and Others		RESPONDENT

Date of Decision: June 21, 1880

Citation: (1881) ILR (Cal) 256

Hon'ble Judges: Richard Garth, C.J; Tottenham, J; Morris, J; Mitter, J; Jackson, J

Bench: Full Bench

Judgement

Mitter, J.

I think that the question referred to us should be answered in the affirmative. An adopted son, according to Hindu law, takes by inheritance from the relatives of his adoptive mother in the same way as a legitimate son.

2. According to Hindu law, an adopted son occupies the same position, and has the same rights and privileges in the [260] 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.

3. Nanda Pandita, in the Dattaka Mimansa, Section VI, paras. 50, 51 and 52, after laying down that the ancestors of the adoptive mother are the maternal ancestors of the adopted son, on the authority of certain Eishis mentioned therein, in para. 53, supports that opinion thus upon general grounds:

4. "And this even is proper. The adopted son, as substitute for the 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. For without difference relation to the father

and the other sires of the adopter obtains. "The original of this passage is more clear upon this point. A more faithful translation of it would be as follows:-"For without difference relation to the father''s family, &c., obtains." The author here, quite irrespective of the chapter and verse of the Eishis whom he quotes in paras. 51 and 52, 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, &c.," which words, evidently, according to the author, indicate his (the adopted son''s) relationship to the ancestors of the adoptive mother.

5. The cases in which there is a difference are all accurately defined both in the Dattaka Chandrika and the Dattaka Mimansa. It would not have been necessary to define accurately the points of difference, if in all other respects the position of an adopted son had not been exactly similar to that of a legitimate son.

6. Apart from the general ground, there is a clear and express text in the Dattaka Mimansa, which is cited below, [261] showing that a child, after(sic)adoption, is not only completely severed from his own father''s family, but also from his own maternal grandfather''s family; and that he, by substitution, becomes connected with his adoptive father and mother''s family, as if they were his natural parents: "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)"-Dattaka Mimansa, Section VI, page 50.

7. This case is governed by the authorities of the Bengal school, and it is now settled that the law of inheritance in this school is based substantially upon the theory of spiritual benefits-see the Full Bench case of Guru Gobind Shaha Mandal v. Anand Lal. Ghose Mozumdar (5 B. L. R. 15).

8. There is abundant authority, both in the Dattaka Chandrika and the Dattaka Mimansa, to establish that an adopted son confers on the father of the adoptive mother the same spiritual benefit which a legitimate son does. Speaking of the Parvana rite (the rite which is chiefly taken into consideration on the question of spiritual benefit), the author of the Dattaka Chandrika, in para. 17, Section III, says:-"But the absolutely adopted son presents oblations to the father and the other ancestors of his adoptive mother only."

9. On this subject the author of the Dattaka Mimansa says:-"As for what is said by Hemadri, that the precept enjoining the performance of a funeral repast, in honour of the maternal grandfather, refers to the natural maternal grandfather ; that is inaccurate, for it is at variance with the passage-''of him who has given away his son, the obsequies fail.'' Nor is the capacity of the maternal grandsires as givers wanting, for by reason of their affording their assent to the gift (as appears from this passage, having ''convened his kindred, &c.'') they also are parties to the same. Besides, by this passage-''the funeral cake follows the family and estate''-the family

and estate are declared to be the cause of performing the funeral repast; and the estate of the maternal grandfather also, like that of the father, lapses [262} from the son given. His incapacity to perform a funeral repast in honour of his original maternal grandfather is properly declared "-Dattaka Mimansa, Section VI, p. 51. "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'' "-Dattaka Mimansa, Section VI, para. 52.

10. It is, therefore, clear that the adopted son confers the same spiritual benefit upon the relatives of his adoptive mother as a legitimate son does, and that he is cut off from the inheritance of the relatives of his original mother. That being so, it would accord with the dictates of natural justice, as well as with the principles upon which the law of inheritance in the Bengal school is based, to hold, that an adopted son succeeds to the property of the relatives of his adoptive mother in the same way as a legitimate son.

11. In para. 51, Section VI of the Dattaka Mimansa quoted above, Nanda Pandita, citing the text of Menu-"the funeral cake follows the family and estate,"says,-"that the family and estate are declared to be the cause of performing the funeral repast"; and he argues from it "that the estate of the maternal grandfather also, like that of the father, lapses from the son given." Exactly the same process of reasoning leads to the conclusion that the adopted son, losing his right of inheritance in the family of his original father and maternal grandfather, acquires similar rights in the family of his adoptive father and maternal grandfather, because the family estate is declared to be the cause of performing the funeral repast. The adopted son is, as shown above, bound to perform the funeral repast in honour of the manes of his adoptive mother''s ancestors. Therefore, the cause of this obligation, viz., the right to inherit their estate, must follow.

12. In the Dattaka Chandrika, the right of the adopted son to take by inheritance from the relatives of his adoptive mother is declared in clear words. After referring to certain contradictory texts of the ancient Rishis upon this subject, the author proceeds to reconcile them thus:

13. [263] "In the same manner the doctrine of one holy saint, that the son given is an heir to kinsmen, and that of another, that he is not such heir, are to be reconciled by referring to the distinction of his being endued with good qualities or otherwise. By reason of succeeding to the estate of sapinda kinsmen, as well as to that of the father, he is (argued by the one to be) heir to kinsmen: and on account of the particle ''only'' in the phrase '' of the father only ''(occurring in the passage subjoined) from inheriting merely of the father he is (argued by the other not to be) such heir. Of these the first six are heirs to kinsmen: the other six of the father only "-Dattaka Chandrika, Section V, para. 22. "And thus (the objection of) variation from the son given being enumerated higher and lower in the order of inheritance, and

so forth by different holy saints respectively, is obviated by the distinction as to his qualities, good and bad "-Ibid para. 23. "Therefore by the same relationship of brother and so forth, in virtue of which the real legitimate son would succeed to the estate of a brother or other kinsmen, where such son may not exist, (the adopted son) takes the whole estate even"-Ibid, para. 24. The words " other kinsmen" in para. 24 clearly indicate sapinda kinsmen, because in para. 22 the author expressly says, that, "by reason of succeeding to the estate of sapinda kinsmen, as well as to that of the father, he is (argued by the one to be) heir to kinsmen."

14. Now, if the brother of the adoptive mother be a sapinda kinsman of the adopted son, then there cannot be any doubt that, according to this express authority, the latter inherits to the estate of the former.

15. According to the author of the Dayabhaga, the leading authority in the Bengal school, there cannot be any doubt that a maternal uncle is a sapinda of his sister''s son. This is clearly laid down in para. 19, Section VI of Chap. XI of the Dayabhaga. The translation of this passage, as made by Mr. Colebrooke, with great deference to him, seems to be strictly accurate. The correct rendering of this passage is as follows:-"Therefore a kinsman, whether sprung from the family (of the deceased), though of different male descent, as his own daughter''s son or his father''s daughter''s son, or sprung from a [264] different family, as his maternal uncle or the like, being allied by a common funeral cake (pind) on account of their presenting offerings to three ancestors in the paternal and the maternal family of the deceased owner, is a sapinda."

16. Therefore, as a legitimate son, being a sapinda of his maternal uncle, takes by inheritance from the latter, so does an adopted son inherit the estate of his maternal uncle by adoption, under the express words of para. 24 cited above.

17. But it has been contended on behalf of the respondent, that though the author of the Dayabhaga has, by an extension of the definition of the word sapinda, included in that class persons sprung from a different family and connected by & common pind, yet, according to its ordinary signification, as understood by the majority of the Hindu lawyers, it is limited to agnates or persons connected with the deceased through an unbroken line of male descent. It is true that many Hindu lawyers use the word sapinda in this restricted sense, and it seems to me that the whole strength of the case on behalf of the respondent lies in this contention. We have, therefore, to determine in what sense the word sapinda is used both in the Dattaka Chandrika as well as in the Dattaka Mimansa.

18. In Section I, para. 1, the author of the Dattaka Chandrika, after laying down, on the authority of Sanuka, "that the adoption of a son by any Brahmin must be made from among sapindas," says in para. 11, "that, by the use of the word sapinda in its general sense, it is meant from such, both of the same or different family." Similarly, in the Dattaka Mimansa (Section XI, para. 3) the same text of Sanuka being cited, the

following observation is made:-"From amongst sapindas," that is, amongst such kinsmen extending to the seventh degree inclusive; and the term being used in its general sense, it follows-from among such kinsmen belonging to the same or a different general family (gotra)-Dattaka Mimansa, Section XI, para. 3.

19. These passages leave no room for doubt that both the Dattaka Chandrika and the Dattaka Mimansa held that, according to the general sense of the term sapinda, it would include both agnates and cognates related by a common oblation.

20. [265] It is clear, therefore, that, according to the authority of both these treatises on the law of adoption, which treatises have been always accepted throughout India as conclusive on questions relating to it, an adopted son takes by inheritance from the relatives of his adoptive mother.

21. The learned pleaders on behalf of the respondent relied upon the authority of the Dayabhaga, and on a certain gloss of Kulluka Bhatta on a particular passage of Menu, defining the rights of an adopted son. Exactly the same contention was raised before a Division Bench of this Court in the ease of Puddo Kumaree Debee v. Juggut Kishore Acharjee (I. L. R. Cal. 615), where a somewhat similar question was under consideration. In my judgment in that case I have fully given my reasons for overruling it. It is, therefore, unnecessary here to repeat the same grounds.

22. Therefore it is clear to me, that, upon the original works on Hindu Law, the weight of authority preponderates in favour of the contention that an adopted son succeeds to the estate of the relatives of the adoptive mother in the same way as a legitimate son.

23. Of the European text-writers, the opinion of Sir T. Strange and Mr. Sutherland are in favour of the adopted son''s right. In Macnaghten''s Hindu Law, page 78, Vol. I, the contrary view is expressed on the authority of the case of Gunga Mya v. Kishen Kishore Chowdhry (3 Sel. Rep. 128). But this decision, as I shall presently show, is not any authority upon the point under consideration.

24. There are very few decided cases bearing upon the question referred to us. The earliest case upon the subject is to be found in Macnaghten''s Hindu Law, Vol. II, page 88. The decision there was in favour of the right of the adopted son. In a footnote to that case, Mr. Macnaghten apparently approved of the Pundit''s opinion upon which the decision was based.

25. The case of Gunga Mya v. Kishen Kishore Chowdhry (3 Sel. Rep. 128), upon which the opinion of Mr. Macnaghten referred to above is based, is, as already stated, not a decision in point. There one of two brothers died, leaving him surviving a widow and a daughter. In respect of his share the daughter, after the death [266] of the widow, sued the surviving brother, who set up a gift made by the widow in accordance with an alleged direction left by the deceased. The daughter also alleged (most unnecessarily for the purposes of that case), that she had received from her

husband authority to adopt, which she had not till then exercised. One of the questions referred to the Pundit was, whether, after the death of the daughter, her adopted son, should she leave one, would succeed to the property of her father. The Pundit answered this question in the negative. But as, it did not actually arise in that case, and as the right of the daughter to succeed to her father''s estate was unquestionable, the Court, on finding alleged gift not established, passed a decree in her favour without expressing any opinion on the question of the adopted son''s right. Mr. Macnaghten was, therefore, mistaken in supposing that this case decided that an adopted son cannot succeed to the estate of his adoptive mother''s relatives.

26. In Gunga Pershad Roy v. Brijessuree Chowdhrain (1859 S. D. A. 1091) the converse of the case before us arose. The question in that case was, whether the brother''s son of the adoptive mother could succeed to the property left by his father''s sister''s adopted son. Upon the Pundit''s opinion taken in that ease, it was decided that be could. The case of Gunga Mya (3 Sel. Rep. 128) seems to have been cited, but it was considered to be not in point.

27. Then comes the case of Morun Moee Debeah v. Bejoy Krishto Gossamee (W. R., Sp. No., 121), upon which the respondent''s pleaders strongly rely. There the very question, referred to us distinctly arose, and was decided against the right of the adopted son. The texts of the Dattaka Chandrika and the Dattaka Mimansa, extracted above, were not cited. The learned Judges were of opinion that the case of Gunga Pershad Roy (1859 S. D. A. 1091) was not in point, and based their decisions mainly upon the authority of Gunga Mya v. Kishen Kishore Ghowdhry (3 Sel. Rep. 128). This latter decision, as already shown, is not an authority upon the point, and it seems to me that although, in Gunga Pershad Roy v. Brijessuree Ghow-[267]dhrain (1859 S.D.A. 1091), the converse question arose, that case virtually decided the point now under our consideration. If A is established to be the maternal grandfather of B, it follows as a matter of course that B is related to A as his daughter''s son. The case of Gunga Pershad Roy v. Brijessuree Chowdhrain (1859 S. D. A. 1091) in effect established that an adopted son is related to the relatives of his adoptive mother as a son actually born of her. If the relationship is established, the rights and privileges which the law of inheritance attaches to it follow as a matter of course. The learned Judges in the case of Morun Moee Debeah v. Bejoy Krishto Gossamee (W. R., S. P. No., 121), (I say with due deference to their opinion), were wrong, both in relying upon Gunga Mya v. Kishen Kishore Ghowdhry (3 Sel. R. E. P. 128) in support of their decision, as well as in distinguishing the case of Gunga Pershad Roy v. Brijessuree Chowdhrain (1859 S. D. A. . 1091) from the one under their consideration. The Madras High Court, in the case of Chinnarama Kristna Ayyar v. Minatchi Ammal (7 Mad. H. C. R. 245) followed the ruling in Morun Moee Debeah v. Bejoy Krishto Gossamee (W. R. Sp. No. 121), although the learned Judges who decided that case were of opinion that that ruling was opposed to the law as laid down in the Dattaka Mimansa. On the other hand, a Full Bench of the Allahabad High Court, in the recent case of Sham Kuar v. Gaya Din (I. L. R. All. 255), refused to follow it, and laid down

the law in favour of the adopted son''s rights. These are all the cases upon the point referred to us, and it seems to me that the weight of authority preponderates in favour of the proposition that an adopted son, according to the true interpretation of the Hindu Law prevailing in Bengal, takes by inheritance from the relatives of his adoptive mother.

28. The judgments of the lower Courts will, therefore, be reversed, and the plaintiff will be entitled to the share which he claims in the property mentioned in the plaint, with costs in all the Courts.

Richard Garth, C.J.

29. I think that the weight of authority is strongly in favour of the views expressed by my brother, MITTER, in his learned and exhaustive judgment; and I have great satisfaction in answering the question referred to us in conformity with what appears to me the manifest justice of the case.

Jackson, Morris, and Tottenham, JJ.

30. We concur.