(1869) 03 CAL CK 0023

Calcutta High Court

Case No: Special Appeal No. 2153 of 1868

Srimati Krishna Sundari Dasi		APPELLANT
	Vs	
Srinarayan Mitter		RESPONDENT

Date of Decision: March 5, 1869

Judgement

Norman, J.

We see no necessity to go into the question, whether or not a Sudra can be adopted without the performance of religious ceremonies, namely the offering of burnt sacrifice, &c. The contention of the special appellant is that, by the execution of two deeds, the one purporting to be a gift, and the other, an acceptance of the child by the several parties respectively executing the deeds, there was a valid giving and receiving of the child, so as to make him the adopted son of the person who, by these deeds, appears to have accepted him as a son. We think there is no foundation for the argument of the special appellant; it appears to us that the giving and receiving of a son in order to constitute a valid adoption, must be an actual giving and actual receiving of the child. By the grounds of special appeal filed, the appellant does not suggest that there has been any actual giving and taking of the child, but only a constructive giving and taking by the execution of the deeds. We think, that, assuming the facts relied upon, as regards such giving and receiving to be established, it is not shown that there was in this case any valid adoption. The change of name, supposed to be evidenced by the deeds, is not a sufficient overt act to show that the child was given and received. This case resembles in many aspects the case of Siddessory Dossee v. Doorga Churn Sett (2 I.J., N.S., 22).

2. There was then no adoption. The natural father of the child now refuses to carry out his intention to give his child for the purpose of adoption. But the deeds are capable of being at any time used by him or his son to prove that there was an adoption. Under such circumstances, it is clear that the plaintiff has a right to come to the Court to ask for relief, and pray to have the deeds declared void. We interfere for the protection of her right to her husband''s property over which those deeds would cast a cloud, which it is necessary, for the plaintiff''s security, to remove. The appeal is dismissed with costs.