Privy Council Appeals Nos. 18 *and* 19 *of* 1919.

Arumilli Perrazu and others - - - - - *Appellants*

v.

Arumilli Subbarayadu and others - - - - - *Respondents.*

Arumilli Ramanna and others - - - - - *Appellants*

v.

Arumilli Subbarayadu and others - - - - - *Respondents.*

(*Consolidated Appeals.*)

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 5TH MAY, 1921.

Present at the hearing :

LORD BUCKMASTER.
LORD DUNEDIN.
LORD SHAW.
SIR JOHN EDGE.

[*Delivered by* SIR JOHN EDGE.]

These appeals raise a question of great and far-reaching importance with regard to the rights of succession in the Presidency of Madras, but this is associated with a series of relatively unimportant matters relating to questions of accounts that have arisen in these circumstances.

The first plaintiff in the suit, who is the first respondent to each appeal, was the manager for many years of a joint family estate which appears greatly to have prospered under his care. Distrust, however, arose, and was apparently well justified, as to his dealing with certain portions of the estate, and elaborate enquiries were set on foot outside the courts for the purpose of ascertaining

what the true position was. This first respondent—uneasy, it is asserted, as to the prospect of proceedings being brought against him as the result of these enquiries—instituted proceedings himself, to which the appellants were parties, alleging that they also had been in custody of part of the joint family estate, and asking for accounts and consequential relief, to which demand among other answers, a claim was put forward that the plaintiff should render an account of the joint family properties and his management from 1898 onwards. The questions associated with these claims have been before the Subordinate Judge and before the High Court. Both these Courts refused the claim for the general account and decided the various questions in issue that were raised on the accounts. Apart from the dispute as to the rights of succession, the claim for the general account and the following items only are the subject of these consolidated appeals: First, the appellants say that the plaintiff should pay interest at 9 per cent. on the moneys misapplied in accordance with the direction of the Subordinate Judge, this direction being overruled by the High Court, who reduced it to 6 per cent.; secondly, they assert that the High Court was wrong in deciding that certain items of Schedule B and Schedule C of the Supplemental Schedule B were the joint property of the family; and finally they assert that the High Court was wrong in excluding from the items on which interest was payable a sum of Rs. 7,000, which was the subject of a promissory note held by the plaintiff.

With regard to the claim for the general account, this has been refused by both Courts. The High Court based their decision upon the ground that all the items in respect of which the plaintiff was alleged to have been guilty of misconduct had been investigated and set out in the schedules which were before the consideration of the learned Judge, who had dealt with them item by item as appeared in his judgment. They continue in these words:—

> "What more could be done, even if we direct general accounts, it is difficult to see."

Their Lordships are entirely in agreement with this view. The learned Subordinate Judge himself stated that it appeared that all possible items of collection by the first plaintiff had been proved as far as possible by the indefatigable energy of the defendants 1 and 3. He also added that he thought delay was a good reason for refusing the claim. Their Lordships think that the High Court rightly interpreted the judgment of the Subordinate Judge, and that in substance, if not in actual words, both Courts have decided that in effect the account asked for has already been taken and that it would be a needless prolongation of litigation and waste of cost if a further account were ordered. This conclusion is the one at which their Lordships have themselves arrived, and they therefore think that upon this point the appeal must fail.

With regard to the interest, the matter can be briefly dealt

with. The High Court have considered that 6 per cent. simple interest is sufficient. It would require very special and unusual circumstances to induce this Board to vary such a decision, which rests upon discretion, even though in this matter the view of the High Court differed from that of the Subordinate Judge as to the way in which that discretion should be exercised. But they may add that if the matter were one upon which an independent judgment was required, they think that the judgment of the High Court was correct.

As to the items claimed by some of the defendants as separate property this depends upon evidence and the Courts have differed as to its effect. Their Lordships think that the judgment of the High Court is correct as to its interpretation. The first defendant asserts that the property was bought with moneys belonging to his wife, and he accounts for these moneys by stating :—

> "My mother-in-law gave property to my wife just before her death. My wife told me of her gift of property to her. I was not present at the time."

And this is supported by the evidence of the defendant's brother-in-law, whose evidence is in these terms :—

> "My sister sold away her husband's properties to which she succeeded. No ; she obtained 4 acres from her husband's family for maintenance. She also purchased 10 acres. Subsequently she sold away all the 14 acres of land."

The wife was not examined to support the claim. It appears that the learned Subordinate Judge based his judgment upon the view that there was nothing improbable in the defendant's wife having inherited the amount necessary for the purchase of the property. That would be a potent reason if there were substantial evidence to show that such inheritance had in fact been acquired. In their Lordships' opinion such evidence is not forthcoming, and they think upon this point also the judgment of the High Court is correct, though it is liable to be misunderstood from the form of the judgment, which suggests as a reason that the first defendant's story was contradicted by one of his own witnesses whose evidence was inadmissible. This would apparently leave the first defendant's story unchallenged, but in truth his account was never sufficiently substantiated, and for this reason that claim fails.

With regard to the last matter of the Rs. 7,000, it is extremely difficult to extract the reasons why the High Court dealt with this sum differently from other amounts which appear in the same account, though in fact it was added as an additional item. There is, however, nothing to show their Lordships that it was so dealt with by the first plaintiff as to render him liable to account for anything more than the actuali nterest that he received upon it ; but to this extent he is accountable.

Their Lordships desire once more to repeat the warning they have often given against attempting to apply without qualification in India the rules applicable to strict accounts between trustees and *cestuis que* trusts that exist in this country, because in truth there are a number of fiduciary relationships in India to which these rules

cannot in their entirety apply. This does not mean that breach of established duty should be less severely dealt with in India than in this country, but that there are fiduciary relationships which do not involve all the duties which are imposed upon trustees here. The office of manager of a joint family estate affords an illustration of this difference. In the absence of proof of direct misappropriation or fraudulent and improper conversion of the moneys to the personal use of the manager, he is liable to account for what he received and not for what he ought to or might have received if the moneys had been profitably dealt with. Their Lordships cannot find in this case anything to render the first respondant liable beyond the extent to which they have referred. On this point also, except to the extent above mentioned, the appellants fail.

The next question which it is necessary to consider is that which is raised by the second of these two consolidated appeals in which the defendants Arumilli Ramanna and his three sons, Arumilli Ragavudu, Arumilli Venkataratnan and Arumilli Subbarayadu are the appellants, and the plaintiffs are the respondents. The parties are Sudras and belong to a family of Sudras, of the Presidency of Madras, which in general is governed by the law of the Mitakshara. Arumilli Ramanna was, as has been concurrently found by the courts below, adopted by the plaintiff, Subbarayadu, as his son when that plaintiff was childless. Ramanna was by birth a son of Venkiah, who was a brother of that plaintiff. After Ramanna had been adopted that plaintiff's sons, Ramamurti and Periah, who are respectively the second and third plaintiffs, were born, and the question to be considered in the second of these two appeals is whether in the Sudra caste in the Presidency of Madras an adopted son on partition of the family property shares equally with a son of his adoptive father born subsequently to his adoption. The question is an important one, and is by no means an easy one for this Board to decide. The question depends on a text of the Dattaka Chandrika and on the authority to be allowed in the Presidency of Madras to that text.

So far as ancient texts and recognised Sanskrit commentaries on Hindu law are concerned, the earliest authority for the proposition that amongst Sudras an adopted son, on a partition of the property of the joint family, shares equally with a legitimate son of the adoptive father, born subsequently to the adoption, is that of the Dattaka Chandrika. In Section V of the Dattaka Chandrika ("Hindu Law Books" edited by Whitley Stokes, 1865) which deals with "the succession by inheritance of adopted sons lineally and collaterally," the commentator, after referring to rights of members of a Hindu joint family generally to share in a partition of the family property, said :—

"29. The mode, however, of partition between the son of the wife, the son given, and the rest and the legitimate son, which has been propounded in what preceded, does not apply to the Çudra tribe."

After some further observations, the commentator further said :—

" 32. Accordingly, the text subjoined must be construed as referring merely to Cúdras. ' A son given being thus adopted, if by any chance, a legitimate son should be born let them be equal partakers of the father's estate.' So also in the following text, the equal participation of all lawfully begotten Cúdras having been first propounded, the succession to equal shares of the other sons likewise is subsequently declared by the sentence (' if there be an hundred sons ') occurring therein. ' For a Cúdra is ordained a wife, of his own class and no other. Those begotten on her shall have equal shares ; if there be an hundred sons (the same mode of partition shall obtain).' If the sentence in question be referred to the real legitimate son only, the position contained in it being obtained from what preceded, its repetition would be unmeaning."

For those statements as to the right amongst Sudras of the adopted son to share equally on partition with the subsequently born legitimate son of the adoptive father, the author of the Dattaka Chandrika did not state who his authority was. He quoted a text from Vriddha Gautama to the effect than an adopted son and an after-born son share equally, which is not accepted by the Courts in India or by the followers of the Mitakshara or by the followers of the Daya Bhaga as a correct statement of the law applicable to all Hindus, and drew his inference that it was applicable to Sudras from texts which do not propound any such proposition, and, so far as their Lordships understand them, do not suggest the conclusion expressed on this subject by that commentator.

The Dattaka Chandrika has been treated by the Board as a high authority. As early as 1846 Lord Kingsdown, then Mr. Pemberton Leigh, in delivering the judgment of the Board in *Rangama* v. *Atchama and others* (4 Moore, I.A., at p. 97), in reference to the Dattaka Chandrika and the Dattaka Mimamsa, said :—" They are written on the particular subject of adoption ; they enjoy, as we understand, the highest reputation throughout India."

In *The Collector of Madura* v. *Mootoo Ramalinga Sathupathy* (12 Moore, I.A., at p. 437), which was an appeal from the High Court at Madras, Sir James Colvile, in delivering the judgment of the Board, referring to the Dattaka Mimamsa and the Dattaka Chandrika, said :—" Again, of the Dattaka Mimansa of Nanda Pandita, and the Dattaka Chandrika of Davanda Bhatta, two Treatises on the particular subject of adoption, Sir William Macnaghten says that they are respected all over India ; but that when they differ the doctrine of the latter is adhered to in Bengal and by the southern Jurists, while the former is held to be the infallible guide in the Province of Mithila and Benares."

It has since then been ascertained that Davanda Bhatta was not the author of the Dattaka Chandrika. Sir James Colvile, in

the passage above quoted, was referring to the authority of the work itself.

In *Sri Balusu Gurulingaswami* v. *Sri Balusu Rumalakshmamma* (26 I.A. at p. 131), which was an appeal from the High Court at Madras, Lord Hobhouse in delivering the judgment of a Board consisting of himself, Lord Macnaghten and Sir Richard Couch, said : " The date of the Dattaka Chandrika is not certain ; but it is at all events very much later than the Smritis, and it stands only on the footing of a work by a learned man. Messrs. West & Bühler in their valuble work on Hindu law, 3rd ed., p. 11, speak thus: 'The Dattaka Mimamsa and the Dattaka Chandrika, the latter less than the former, are supplementary authorities on the law of adoption. Their opinions, however, are not considered of so great importance but that they may be set aside on general grounds in case they are opposed to the doctrines of the Vyarahava Mayukha or the Dharmasindhu and Nirnayasindhu.' This is spoken with special reference to Bombay and Western India. But both works have had a high place in the estimation of Hindu lawyers in all parts of India, and having had the advantage of being translated into English at a comparatively early period, have increased their authority during the British rule. Their Lordships cannot concur with Knox, J., in saying that their authority is open to examination, explanation, criticism, adoption, or rejection like any scientific treatises on European jurisprudence. Such treatment would not allow for the effect which long acceptance of written opinions has upon social customs, and it would probably disturb recognised law and settled arrange, ments. But, so far as saying that caution is required in accepting their glosses where they deviate from or add to the Smritis, their Lordships are prepared to concur with the learned Judge. "

In *Bhagwan Singh* v. *Bhagwan Singh* (26 I.A. 153, at p. 161), which was an appeal from the High Court at Allahabad, Lord Hobhouse in delivering the judgment of a Board consisting of himself, Lord Macnaghten, Lord Morris and Sir Richard Couch, in referring to the Dattaka Mimamsa and the Dattaka Chandrika said : " If there were anything to show that in the Benares School of Law these works had been excluded or rejected, that would have to be considered. But their authority has been affirmed as part of the general Hindu law, founded on Smritis as the source from whence all Schools of Hindu Law derive their precepts. In Doctor Jolly's Tagore Lecture of 1883, that learned writer says : 'The Dattaka Mimamsa and Dattaka Chandrika have furnished almost exclusively the scanty basis on which the modern law of adoption has been based.' Both works have been received in courts of law, including this Board, as high authority. Lord Kingsdown's words in *Rangama* v. *Atchama* (*supra*) have already been quoted and those of Sir James Colvile in the case reported in 12 Moo., I.A. As has been said, Sir James Colvile quotes with assent the opinion of Sir William Macnaghten, that both works are respected all over India, that when they differ the Chandrika is adhered to in Bengal and by the Southern jurists

while the Mimamsa is held to be an infallible guide in the Provinces of Mithila and Benares. To call it infallible is too strong an expression, and the estimates of Sutherland, and of West and Bühler, seem nearer the true mark: but it is clear that both works must be accepted as bearing high authority for so long a time that they have become embedded in the general law."

There can be no doubt that the Dattaka Chandrika has been for long and still is accepted in the Presidency of Madras as a treatise on adoption of the highest authority. It is not primarily a work dealing with rights of inheritance or with rights of coparcenary in property acquired by birth or adoption, but it does necessarily deal with such subjects as the occasion requires. It is not known who was the author of the Dattaka Chandrika, and the doubt as to its authorship makes it impossible to fix with any certainty the date when it was written, but it is believed to be an earlier work than the Dattaka Mimamsa, which was written by Nanda Pandita, who is known to have lived about 300 years ago. When the Dattaka Chandrika was first accepted in Southern India as an authority on the law of adoption, it would probably be impossible now to ascertain. It, however, appears to their Lordships that it does not necessarily follow from the fact that the Dattaka Chandrika has been long accepted in Southern India as a high authority on the law of adoption that comments and propositions, apparently then novel, contained in it, if not based upon ancient texts which can with some certainty be identified, have been accepted by the Hindus of Southern India as part of the Hindu law. It thus becomes necessary to ascertain, if possible, whether the rule propounded for the first time, it is believed, in paragraphs 29 and 32 of Section 5 of the Dattaka Chandrika, which have been quoted above, ever was accepted and acted upon by the Hindus of the Presidency of Madras as Hindu law.

Mr. W. Macnaghten in his "Principles and Precedents of Hindu Law," which was published at Calcutta in 1829 and is a recognised authority on Hindu law, said at p. 70 of Volume 1: "Where a legitimate son is born subsequently to the adoption, he and the son adopted inherit together, but the adopted son takes one-third, according to the law of Bengal, and one-fourth, according to the doctrine of other Schools." In a note to that passage, Macnaghten stated: "It is laid down in the *Dattacachandrica* that in the case of *Sudras*, if a legitimate son be subsequently born, he is entitled to an equal share only with the adopted son, and this rule prevails accordingly in the Southern Provinces."

It has been suggested, in reference to his note which has been quoted, that Mr. William Macnaghten, when he wrote his book, had no special knowledge of the law affecting Sudras in the Presidency of Madras, but even if that suggestion is well founded, it cannot be suggested that Sir Thomas Strange, when he wrote his well-known book on Hindu law, which was published in 1830, did not know what was the then accepted law in the Presidency of Madras as to the rights of an adopted son amongst Sudras.

Sir Thomas Strange had been Chief Justice of Nova Scotia ; he commenced his judicial experience in India in 1798, when he was appointed Recorder of Madras, and become a celebrated Indian jurist. He was Chief Justice of the Supreme Court at Madras from 1800 until 1817. At page 99 of Volume 1 of his " Hindu Law " in reference to the right of inheriting on the death of a Hindu father, Sir Thomas Strange stated :—" Among Sudras, in the same event (the death of the father), the after-born son and the adopted son share equally the paternal estate." That statement was doubtless based on the text of the Dattaka Chandrika which has been quoted. Sir Thomas Strange knew that according to Hindu law as applicable to the twice-born classes, the share to which an adopted son would be entitled on partition would be less than the share of the legitimate son born to the adoptive father subsequently to the adoption, and he would not have stated that amongst Sudras those sons would take equal shares if from his judicial experience in Madras he had any doubt that the rule propounded in the Dattaka Chandrika had not been accepted and acted upon in the Presidency of Madras.

The earliest reported case in the Presidency of Madras, so far as their Lordships are aware, in which this question as to the right amongst Sudras of the adopted son to share equally in the property of a joint family with the subsequently born legitimate son of the adoptive father was mentioned, came on appeal before the High Court at Madras in 1883. In that case (*Raja and another* v. *Subbaraya*, I.L.R., 7 Mad., 253), the plaintiff sued for partition and to recover from the defendant one-half of certain movable and immovable properties on the ground that he was an adopted son of the deceased undivided brother of the deceased father of the defendant The parties were Sudras, and the defendant contended that the plaintiff was entitled to one-fifth only of the estate, and that he, the defendant, was entitled to four-fifths under the Hindu law. In that case Turner, C.J., and Muttuswami Ayyar, J., on appeal, delivered the following judgment :—

" There is no valid ground for the contention that if the adoption be proved the plaintiff should take but a fifth share. By representation the adopted son takes the share which his adoptive father would be entitled to take on partition. With all deference to the authority of the High Court of Calcutta in *Raghubanund Doss* v. *Sadhu Churn Doss*, we doubt whether the passage in Dattaka Chandrika, Section 5, paragraph 25, even with the addition suggested, has been correctly interpreted. If there be such a special rule, as is suggested, it is not applicable at all events to Sudras, among whom the adopted son is declared entitled to take an equal share with a legitimate son who is born subsequently to the adoption. We agree with the Judge that the plaintiff would take his father's share, a moiety, if he were really adopted."

It has been objected, and correctly, that the dictum in that

case that amongst Sudras an adopted son is entitled to take an equal share on partition with a legitimate son born subsequently to the adoption, was not necessary to the decision of the appeal then before the Madras Court, and that the opinion on that subject expressed by Turner, C.J., and Muttuswami Ayyar, J., must be regarded as *obiter*. Nevertheless it was the opinion of the then Chief Justice of Madras, who was an able and careful lawyer, and of Mr. Justice Mattuswami Ayyar, who was a member of a Brahmin family of the Madras Presidency, and who earned for himself the well-deserved reputation of being one of the most accomplished and reliable lawyers in India in cases involving a knowledge of Hindu law. That opinion of those learned judges, although strictly it was an *obiter dictum*, was deserving of respect, and was probably expressed in answer to some argument of counsel in the case. If the rule propounded in the Dattaka Chandrika that amongst Sudras the adopted son and the subsequently born legitimate son shared equally had been seriously questioned in the Presidency of Madras, it is impossible to believe that Mr. Justice Mattuswami Ayyar should in 1883 not have been aware that the rule had not been accepted and acted upon in that Presidency as correct.

The next reported case relating to Sudras in the Madras Presidency, of which their Lordships are aware in which the rule in question here of the Dattaka Chandrika was considered, is that of *Karuturi Gopalam* v. *Karuturi Venkataraghavulu* (I.L.R. 40, Mad. 632, 20, M.J.L. 710), which came on appeal before the High Court at Madras in 1915. In that case the parties were Sudras, and the plaintiff, who was the respondent to the appeal, had been adopted in 1898 by one Venkana, a Sudra, who died in 1902 leaving him surviving the plaintiff, the first defendant, who was the legitimate son of Venkana, born to him subsequently to the adoption of the plaintiff, and his widow, who was the natural mother of the first defendant, and was the second defendant. During the minority of the plaintiff and the first defendant, the widow managed the estate. The plaintiff attained majority in 1907, and brought the suit in 1910 for partition and delivery to him of half of the family estate, alleged mismanagement of the estate by the widow and misappropriation by her of portions of the estate for the benefit of the first defendant, and claimed an account. The first defendant, through his mother as his guardian, pleaded, amongst other things which are not material to the question to be considered here, that the plaintiff, as an adopted son, was entitled only to a fifth share of the estate, and that he, the first defendant, was entitled to the remaining four-fifths. The suit was tried by A. Sambamurti Ayyar, a Hindu, the then Subordinate Judge of Rajahmundry, who decreed to the plaintiff a half share in all the family properties, and finding that there had been malversation of the estate by the second defendant for the benefit of the first defendant, made a decree for restitution.

It is to be observed that the learned Hindu Subordinate Judge, who tried that suit in or after 1911, must have believed

that in the Presidency of Madras the rule of the Dattaka Chandrika, that amongst Sudras an adopted son was entitled to share equally on a partition with the subsequently born legitimate son of the adoptive father, was the rule to be applied in the Presidency of Madras in cases in which the parties were Sudras. The appeal from that decree of the Subordinate Judge of Rajahmundry came before Wallis, C.J., and Seshagiri Ayyar, J. Seshagiri Ayyar, J., wrote the judgment, with which Wallis, C.J., concurred. The learned Judges of the High Court held that they were not bound by the opinion on the question of the right amongst Sudras of an adopted son to share equally with the subsequently born son of the adoptive father in the property of the joint family which had been expressed by Turner, C.J., and Muttuswami Ayyar in *Raja* v. *Subbaraya* on the ground that the opinion was *obiter* and on the ground that the attention of those learned Judges had not been drawn to the case of *Ayyaru Muppanar* v. *Niladatchi Ammal*, and having considered some ancient texts and the Mitakshara came to the conclusion that the rule propounded on this subject in the Dattaka Chandrika was not binding upon them and that the dictum based on the authority of the Dattaka Chandrika should not be followed.

As the reference in the judgment of Seshagiri Ayyar, J., in *Karuturi Gopalam* v. *Karuturi Venkataragharulu* to the decision in *Ayyaru Muppanar* v. *Niladatchi Ammal* (1 Mad. H.C.R., 45) suggests that if that decision had been brought, in 1883, to the attention of Turner, C.J., and Muttuswami Ayyar, J., in *Raja* v. *Subbaraya* they would not have expressed the opinion that amongst Sudras the adopted son is entitled to take an equal share with a legitimate son who is born subsequently to the adoption, it is necessary to consider that case. The case of *Ayyaru Muppanar* v. *Niladatchi Ammal* came on appeal to the High Court at Madras in 1862.

The parties to the suit were Hindus, but it does not appear whether the parties were Sudras; all that is stated is that "the parties were of a class not strictly bound by the requirements of the Hindu law." Probably they were Sudras. The plaintiff had brought his suit for one-fourth of the estate of Ayyaru Muppanar, deceased; the defendant, a minor appearing through his mother as guardian, was a son of Ayyaru Muppanar, born after the adoption. The main questions considered were whether the adoption had in fact been made; whether if made it was a valid adoption; whether a son, adopted or begotten, could claim maintenance until put in possession of his share of the ancestral estate; and whether as against an adopted son suing for his share of the ancestral estate the law of limitation does not begin to run until the allotment of such share has been demanded and refused. The question as to whether the adopted son was entitled to more than one-fourth share does not appear to have been raised or considered. Strange and Frere, JJ., considered Chapter I, Section XI, paragraph 24, of the Mitakshara and decided that the estate should be divided into five portions of

which the begotten son should have four and the adopted son one. The Dattaka Chandrika was not so far as appears alluded to. Even if it be assumed that the parties were Sudras their Lordships are unable to regard that case as an authority on the question which was before the High Court at Madras in *Karuturi Gopalam* v. *Karuturi Venkataraghavulu*, and which has to be considered in this appeal.

In the present case, the subject of this appeal, the suit was brought in the District Court of Godavari on the 26th November, 1909; it was transferred to the Court of the Subordinate Judge of Rajahmundry. The Subordinate Judge who tried the suit was A. Sambamurti Ayyar, and he delivered his judgment in it on the 13th December, 1913. There were six issues framed, but the material question so far as the second of these appeals is concerned relates to the share to which the adopted son and through him his sons were entitled on partition of the family property. The plaintiffs were Arumilli Subbarayadu and his two minor naturally-born sons. The defendants 1, 2, and 3 were sons of Venkiah who had been the only brother of the plaintiff Arumilli Subbarayadu; defendant 5 was a son to defendant 1; defendant 6 was a son of defendant 2; defendant 4, was the adopted son of the plaintiff Arumilli Subbarayadu, but was described in the plaint as a son of Venkiah, and defendants 7, 8 and 9 were the minor sons of defendant 4. The other defendants are immaterial so far as the second of these two consolidated appeals is concerned. In the plaint the adoption by the plaintiff Arumilli Subbarayadu of Arumilli Ramanna, defendant 4, was ignored, and it was alleged in the plaint that the "plaintiffs are entitled to a half-share in the entire family property and the defendants 1 to 9 are entitled to a half-share." In the written statement of the defendants 1, 2, 3, 5 and 6 it was alleged that the plaintiff Arumilli Subbarayadu had adopted the defendant 4, A. Ramanna, as his son in 1896. In the written statement of the defendants 4, 7, 8 and 9, who are the appellants in the second of these consolidated appeals, it was alleged that the plaintiff Arumilli Subbarayadu had adopted the defendant 4, Arumilli Ramanna, in 1896 and that as an adopted son he was entitled to an equal share along with the plaintiffs.

The fact and the validity of the adoption were disputed, but the subordinate Judge, on the clearest evidence, found that the adoption was proved and was valid, and having so found that issue he in the thirtieth paragraph of his judgment recorded his finding as to the share in the family property which the defendant 4 as an adopted son in the Sudra family was entitled to, thus:—

"30. As regards the share to which the fourth defendant should be entitled according to law, there is practically no dispute. The parties belong to the Sudra caste and the law is clear that amongst the Sudras the adopted son shares equally with the subsequent born Aurasa sons (see I.L.R., VII Madras, p. 253 and XVIII Madras, pp. 422 and 435). Thus, the first plaintiff's branch consisting of plaintiffs 1 to 3 and the fourth defendant will have to divide amongst themselves a half share of the family

property and the fourth defendant's share therein would, therefore, be one-eighth of the whole property. This is my finding on issue I (*a*)."

It may be mentioned that their Lordships have been unable to ascertain what was the case which the Subordinate Judge referred to as reported in "XVIII Madras, pp. 422 and 435." That judgment of the Subordinate Judge was delivered on the 13th December, 1913, and it is to be noticed that up to that date the plaintiffs do not appear to have contended that amongst Sudras an adopted son was not entitled to share on partition of the family property equally with the legitimate sons of the adoptive father born subsequently to the adoption. They apparently raised that point for the first time in their memorandum of appeal to the High Court on the 24th March, 1914. The judgment of the High Court appears to have been delivered on the 13th October, 1916. Their Lordships do not know when the appeal to the High Court in *Karuturi Gopalam* v. *Karuturi Venkataragharulu* was presented, but the appeal to the High Court in that case was heard in August and September, 1915. That was an appeal from a decree of the same Subordinate Judge.

The learned Judges, Ayling and Srinivasa Aiyangar, JJ., who heard the appeal to the High Court in this present suit, briefly dealt with the rights of an adopted son amongst Sudras as follows :—

"As to the share of the adopted son, it has been decided now that the fact of the adopted son being a Sudra does not give him an equal share with the natural-born sons. (*Karuturi Gopalam* v. *Karuturi Venkataragharulu*, 29 M.L.J., p. 710.) The dictum in *Raja* v. *Subbaraya*, I.L.R. 7, M. and L. p. 253, which has been followed by the lower Court has been disapproved in that case. . . . The fourth defendant's share will therefore, be altered to one-thirteenth of one half of the family property."

From the decree of these learned Judges this appeal has been brought.

The inference which their Lordships draw from the materials before them is that the rule of the Dattaka Chandrika that on a partition of the joint family property of a Sudra family an adopted son is entitled to share equally with the legitimate son born to the adoptive father subsequently to the adoption had been accepted and acted upon for at least more than a century in the Presidency of Madras, as the law applicable in such cases to Sudras until the law on that subject was disturbed in 1915 by the decision of the High Court at Madras in *Karuturi Gopalam* v. *Karuturi Venkataragharulu*. It also appears to their Lordships that that rule of the Dattaka Chandrika, although not supported by any ancient text of the Smritis or by the Mitakshara, is not inconsistent so far as Sudras are concerned with the Smritis or the Mitakshara.

What has been said in the preceding paragraph is sufficient to dispose of the second of these consolidated appeals from the High Court at Madras, but as the Dattaka Chandrika is considered

in Bengal as a high authority it will be satisfactory to consider what view has been expressed by the High Court at Calcutta about the rule of the Dattaka Chandrika as to the right of an adopted son in a Sudra family to share equally on a partition of the joint family property with a legitimate son of the adoptive father born subsequently to the adoption. The latest case of which their Lordships are aware in which the subject was discussed in the High Court at Calcutta was that of *Asita Mohon Ghosh Moulik* v. *Nirode Mohon Ghosh Moulik* (20 Cal. W.N. 901), which came on appeal before Chaudhuri and Newbould, JJ., from a decree of the 30th March, 1912, of Babu Kunja Behary Gupta, Additional Subordinate Judge of Birbum, who, having found that the parties were Sudras, held that the adopted son was entitled to share equally with the after-born natural son. The learned Judges of the High Court say: "Clear authority for the proposition (the right of a Sudra's adopted son to share equally with the after-born legitimate son) is to be found in the Dattaka Chandrika (*see* V. secs. 29 to 32). The Dattaka Chandrika is a work of undoubted authority in Bengal . . . In *Baranannud Madhuti* v. *Krishna Charan Patnaik* (14 Cal. L.J. 183) a Bench of this Court accepted the law as laid down in the Dattaka Chandrika on this point . . . There are no other decided cases exactly on the point (in the High Court at Calcutta). We feel bound to attach great weight to the fact that those decisions have remained unchallenged for over thirty years." The learned Judges then considered some texts of Manu, Yajnavalkya and the Mitakshara, and some other commentaries and concluded as follows: "Having regard to the above we cannot say that the Dattaka Chandrika has in any way deviated from the Smritis." The judgment is a long one as it also dealt with several other matters which do not affect the question here.

The result is that interest actually received on the sum of Rs. 7,000 must be allowed, and to this extent the decree must be varied, but subject thereto the first appeal must be dismissed. The slight alteration does not deprive the respondents, who appeared, their right to the costs.

The second appeal (No. 19 of 1919) must be allowed. The decree of the High Court must be set aside with costs so far as it varied the declaration in the decree of the Court of the Subordinate Judge as to the shares to which the parties are entitled, which last-mentioned decree must to that extent be affirmed and restored.

The appellants in the first appeal will pay the costs of the first three respondents who alone appeared, and the respondents in the second appeal will pay the appellants' costs of that appeal.

Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

ARUMILLI PERRAZU AND OTHERS

v.

ARUMILLI SUBBARAYADU AND OTHERS.

ARUMILLI RAMANNA AND OTHERS

v.

ARUMILLI SUBBARAYADU AND OTHERS.

(*Consolidated Appeals.*)

DELIVERED BY SIR JOHN EDGE.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.

1921.