PRIVY COUNCIL

Ghanta China Ramasubbayya

Vs.

Moparthi Chenchuramayya, Minor

P.C.A.No.2 of 1944
(Lords Thankerton, Uthwatt Du Parcq, Sir Madhavan Nair and Sir John Beaumont JJ.)

16.04.1947

JUDGMENT

SIR MADHAVAN NAIR J.

1. This is an appeal from a judgment and decree of the High Court of Judicature at Madras, dated 22.4.1941, which reversed a judgment and decree of the Court of the Subordinate Judge of Bapatla, dated 31.1.1939. The plaintiffs are the appellants before the Board. The appeal arises out of a suit to set aside an adoption. The following genealogical table shows the relationship of the persons concerned in the appeal :

2. The parties are governed by the Mitakshara School of Hindu law as administered in the Andhra country, in the Madras Presidency. Moparthi Venkayya, their common ancestor, had two sons, Perayya and Pitchayya. Pitchayya was divided from Perayya. The respondents are the descendants of Perayya while the appellants are the descendants of Pitchayya. Pitchayya, who had three wives, died in 1884, leaving surviving him a widow Pullamma and a daughter by his first wife, Punnamma (predeceased) who has two sons-the appellants before the Board. On 22.8.1937, Pullamma adopted Chenchuramayya (defendant 3, respondent 1). Her husband band had not given her power to adopt. Before the adoption she had obtained consent to the adoption of all her husband's nearest agnates namely, Rangayya (defendant 1, respondent 2), Ramasubbayya (defendant 4, respondent 4), and Perayya, since deceased. On 12.4.1937, Pullamma executed a will which recited that Chenchuramayya was her adopted son and bequeathed to him all her own property (stridhan) and the property which passed to her on her husband's death. No question arises in this appeal with respect to the will which has been found to be valid. On 19.6.1937, Pullamma died.

3. On 14.7.1937, the appellants instituted the suit out of which this appeal arises claiming the properties as the next reversioner's, alleging that the adoption of respondent 1 was not true and that, even if true, it was invalid as their consent to the adoption had not been obtained before it was made. The contesting defendant denied these allegations and stated that the adoption is valid as it was made by Pullamma after obtaining the permission of her husband's nearest agnates.

4. The Subordinate Judge found that the adoption of respondent 1 was not proved to have been made; that even if true, it was not valid as it was not made *bona fide* but to spite the appellants and divert the succession from them; and that the assent of the appellants which was necessary to make it valid had not been obtained. The learned Judges of the High Court held that the adoption was proved. As regards the validity of the adoption, they held it was valid as it was conceded before them that in view of the decision of the Full Bench of the High Court in ILR (1940) Mad 465,1 an adoption to which the consent of the agnatic relations alone has been obtained is valid. In that case it was held that:

> "In the Madras Presidency, where a Hindu dies leaving a widow, divided agnates, and daughter's sons, without giving his widow power to adopt and the widow makes an adoption, it is valid if she has obtained the consent of the divided agnates: she is not bound to consult daughters' sons as well though they may be of age." Their Lordships may state that as the findings of the Courts below regarding the alleged assent of the appellants were indefinite and not clear and the evidence in the case made it doubtful whether the appellants were even consulted, the appeal was argued on the assumption that it was held by the High Court that relying on the Full Bench decision to make the adoption valid it was not necessary to consult, the daughter's sons (appellants) provided the adoption was otherwise valid.

5. Two questions arise for determination in this appeal: (1) whether, in fact, respondent 1 was adopted as a son to Pitchayya by his widow Pullamma; and (2) if the adoption, in fact, took place, whether according to the Mitakshara School of Hindu law as administered in the Andhra country an adoption made by a Hindu widow with the consent of her husband's nearest agnates is rendered invalid if she has not consulted her daughter's sons before the adoption was made; or in other words, to make the adoption valid is it necessary that the daughter's sons should be consulted? The first question is one of fact; the second is one of law and involves the argument that the Full Bench decision of the Madras High Court above referred to is incorrect.

Their Lordships will deal with the above questions in order.

6. Question 1. In support of the alleged adoption, evidence of various persons who witnessed the ceremony has been adduced by the respondents. That evidence shows that the boy was "given" in "adoption" by his parents and was "received" by Pullamma. The Purohit who took part in the function speaks to the ceremonial part of it. D. W. 11, the Karnam, a responsible village official, attended the ceremony. His evidence has not been accepted by the Subordinate Judge because the father of the boy (D. W. 1) who with his wife gave him in adoption happens to be the Village Munsiff of the place. This is not sufficient to show that the witness is incapable of giving disinterested evidence. The strongest piece of evidence in support of the adoption is the photograph (Ex. VIII-a) that was taken of the ceremony on 22.3.1937-the day of the adoption. Pullamma and many of the witnesses of the ceremony are seen in it. The fact that Perayya, one of the agnates who gave consent to the adoption, is not in the photograph does not necessarily detract from its value. Exhibit IX, dated 21.3.1937, the letter written by D. W. 3, the photographer, saying that the sum of Rs. 2 sent by defendant 1, has been received and that he would be going to defendant 1's village on the next day-the day when the adoption took place -strongly supports the case of the respondents that the photograph was taken on the day of the ceremony, though the letter does not refer to the purpose of the visit or the taking of the photograph.

7. The evidence given by the appellants is unsubstantial and of no real value. Some of the witnesses say that there was no adoption because if there was a ceremony they would have received invitations and they received none. The inference does not necessarily follow that there was no adoption. No positive evidence that the adoption did not take place has been given on the side of the appellants.

8. The evidence, taken as a whole, supports the conclusion arrived at by the learned Judges of the High Court. In this connection the corroborative value of the will executed by Pullamma which contains a recital as regards the factum of adoption cannot be overlooked. This recital reinforces the conclusion which their Lordships have come to on the evidence as regards the adoption. In their Lordships' view the factum of adoption has been satisfactorily established.

9. Question No. 2. The second question for decision is whether to render the adoption valid, the appellants (the daughter's sons) should have been consulted. The learned counsel's contention that they should have been consulted is directly opposed, as

already stated, to the decision of the Full Bench in ILR (1940) Mad. 4541 which he submits has been wrongly decided. According to the Madras School of Hindu law, a widow may adopt, in the absence of authority from her husband, (1) if she obtains the consent of his sapindas where the husband was separate at the time of his death, and (2) where he was joint, if she obtains the consent of his undivided coparceners. In the present case-as already stated- Pullamma's husband died separated from his brother Perayya. The appellants are bhinna (literally, split or cut as under)- gotra sapindas or cognates related to the deceased through a female, as distinguished from the gotraja, sapindas, who are agnates connected with the deceased through an unbroken line of male descent. The appellants though sapindas are relations of a different gotra (family) and are included udder the term bhandus in the Mitakshara.

10. The learned counsel urges that, (1) the present question did not arise for decision in any of the Privy Council cases which developed what may be called the doctrine of assent by the sapindas; (2) the terms used by the Board in expounding the doctrine such as "kindred", "kinsmen", "sapindas", "family"-all would include the daughter's son also, in their connotation, and that, in choosing the proper person to give advice and consent to the widow the giving of which forms the basis of the doctrine, the tests should be, in a case like the present, (a) who is the person whose interest in the property of the deceased is more affected by the adoption, and (b) who confers more spiritual benefit to the deceased by performing the funeral rites? Judged by these tests the learned counsel submits it will be found that the appellants, as daughter's sons, have a better claim to be consulted than respondents 2, 4 and the deceased Perayya who are but remote relations. He also relies very strongly on the opinion of Ramesam J., in AIR 1925 Madras 67,2 which was dissented from by Jackson J. the other learned Judge who took part in the decision.

11. The origin of the custom of adoption is lost in antiquity. Under the Hindu law it is the "taking of a son" as a substitute for the failure of male issue. Its object is two-fold: (l) to secure the performance of the funeral rites of the person to whom the adoption is made and (2) to preserve the continuance of his lineage. Adoption is always made to the husband and for his benefit. His power of making it is absolute. He can adopt even without consulting his wife, though after adoption the adopted son becomes son to both. The wife can also adopt as by so doing she could confer spiritual benefit on her husband; but her competency to adopt is limited. The well known text of Vasishta on which this limitation is based says: "Nor let a woman give or accept a son unless with the assent of her lord." This rule has been accepted as a binding one by all the schools

of Hindu law, but it has been differently interpreted in different provinces. In the Andhra country (Madras school) with which alone their Lordships are concerned in this case, the maxim is interpreted to mean that in the absence of authority from her deceased husband a widow may adopt with the consent of her husband's sapindas, their consent supplying the want of authority from the husband. According to the Madras school, "the word corresponding to lord (husband) is merely illustrative and means the guardians of the widow for the time being", so that the assent of the "sapindas" who are presumed to be the widow's guardians after her husband's death is sufficient to enable her to make an adoption. The need for consent arises because of the presumed incapacity of women for independence: See the text of Yagnavalkya which states in Ch. 1, v. 85:

> "Let her father protect a maiden; her lord, a married woman; sons in old age; if none of these, other gnatis (kinsmen), she is not fit for independence."

12. It is not suggested that any ancient test of Hindu law exists which has a direct bearing on the precise question which their Lordships have to decide. The answer to it has to be sought for in the reported decisions of the Board which have built up the law in the course of more than half a century as to whose consent a widow should obtain to make a valid adoption in the absence of authority from her husband. The present question never arose in any of the cases that came for decision before the Board. In dealing with the various decisions their Lordships will refer only to those which have a direct bearing on the particular arguments addressed to them by the learned counsel. The leading case which, for the first time, laid down the law as regards the nature and sufficiency of consent is 12 MIA 397.3 In that case, their Lordships, after stating their conclusion:

> "Upon the whole, then, their Lordships are of opinion that there is enough of positive authority to warrant the proposition that according to the law prevalent in the Dravida country, a Hindoo widow, not having her husband's permission may, if duly authorised by his kindred, adopt a son to him",

Dealt with the question as to who should be consulted amongst her husband's kindred for obtaining the required authority first with reference to an undivided family, and then observed as follows with reference to a divided family:

> "Where, however, as in the present case, the widow has taken by inheritance the separate estate of her husband there is greater difficulty in laying down a rule. The power to adopt, when not actually given by the husband, can only be exercised when a foundation for it is laid in the otherwise neglected observance

> of religious duty, as understood by Hindoos. Their Lordships do not think there is any ground for showing that the consent of every kinsman, however remote, is essential. The assent of kinsmen seems to be required by reason of the presumed incapacity of women for independence rather than the necessity of procuring the consent of all those whose possible and reversionary interest in the estate would be divided by the adoption. In such a case, therefore, their Lordships think that the consent of the father-in-law to whom the law points as the natural guardian and 'venerable protector' of the widow would be sufficient. It is not easy to lay down an inflexible rule for the case in which no father-in law is in existence. Every case must depend upon the circumstances of the family. All that can be said is that there should be such evidence of the assent of kinsmen as suffices to show that the act is done by the widow in the proper and *bona fide* performance of a religious duty and neither capriciously nor from a corrupt motive."

13. In the above case, often referred to as the Ramnad case,3 the widow adopted with the consent of a distant agnate-a samanodaka- who was the natural male protector of the widow in the absence of nearer male relations, the mother-in-law and "the other persons who are proved beyond all question to have assented" to the adoption. The Privy Council held that the consent was, in the circumstances, sufficient to legitimate the adoption. As the learned counsel states, the question whether the cognates should be consulted did not arise in the case. The words "kindred" and "kinsmen" and "sapindas" would ordinarily include cognates also; but having regard to the discussion in the judgment it is clear that it was the agnatic relations of the husband alone that were in the contemplation of their Lordships. As they state, the consent of the father-in-law, the venerable protector of the widow, would be sufficient. If he is dead, it would depend on the circumstances of each case who should be consulted, the general rule being :

> "That there should be such evidence of the assent of kinsmen as suffices to show that the act is done by the widow in the proper and *bona fide* performance of a religious duty and neither capriciously nor from a corrupt motive."

14. Other persons, all agnates, are mentioned in the succeeding cases. As regards the evidence of the consent of kinsmen mentioned in the Ramnad case,3 their Lordships after quoting the closing sentences from the above extract beginning with : "It is not easy.....", further observe, in 4 IA 14 at p. 14, as follows :

> "All which this Committee in the former case intended to lay down was that

there should be such proof of assent on the part of the sapindas as would be sufficient to support the inference that the adoption was made by the widow, not from capricious or corrupt motives, or in order to defeat the interest of this or that sapinda, but upon a fair consideration by what may be called a family council, of the expediency of substituting an heir by adoption to the deceased husband."

15. Observe the development of the doctrine and how the terms kindred, kinsmen, "sapindas", were understood by their Lordships in connection with the doctrine; the Ramnad case3 refers to the "assent of the kindred", and this casementions the consideration of the question by the "family council," Whose family can it be, except that of the husband ?-and in his family the appellants have no place. The "sapindas" spoken of as constituting the family council would necessarily exclude a daughter's son (a cognate) as he is not a member of the husband's family. Their Lordships will refer later to the nature of his relationship with his maternal grandfather's family. In relation to the wife, the importance of the husband's family is thus described by the Board in 3 IA 1545 at p. 191:

> "The Hindu wife upon her marriage passes into and becomes a member of that family. It is upon that family that as a widow she has her claim for maintenance. It is in that family that in the strict contemplation of law she ought to reside. It is in the members of that family that she must presumably find such councillors and protectors as the law makes requisite for her."

16. Description cannot be more accurate, or language more emphatic. These observations though made with reference to an undivided family would apply to a divided family as well.

17. A further development of the doctrine is seen in 47 IA 99.6 In that ease the term "family council" which began to raise doubts came to be interpreted. After quoting the passage extracted above from 4 IA 1,4 Viscount Cave who delivered the judgment observed :

> "The reference in the last mentioned case to 'family council' gave rise to some doubt whether, where there were agnatic relations closely related to the deceased, the assent of those standing in a remoter degree was either necessary or sufficient; but this doubt was resolved in the recent case in 45 IA 265,7 where it was held that the absence of consent on the part of the nearest sapindas, cannot be made good by the authorization of distant relatives whose assent is more likely to be influenced by improper motives.....The consent

required is that of a substantial majority of those agnates nearest in relationship who are capable of forming an intelligent and honest judgment on the matter."

18. In the above passage their Lordships would stress the word "agnates" though it must be said that immediately following the passage quoted occurs the statement:

> "It must, however, be added that save in exceptional cases such as mentioned above the consent of the nearest sapindas must be asked." In the context "nearest sapindas" can only mean "nearest agnates."

19. The decision in 45 IA 2657 from the facts of which Viscount Cave derived the general interpretation of the term, "family council" is of great importance in the line of cases which their Lordships are considering. In that case Mr. Amir Ali in delivering the judgment observed at p. 267 that :

> "The Ramnad case3 established the proposition that in the Dravida law branch of the Mitakshara law there in force, in the absence of authority from the deceased husband the widow may adopt a son with the consent of his male agnates."

20. The words "kindred and kinsmen", words of general significance, used in the Ramnad case3 are here interpreted to mean "male agnates," and this interpretation is amply borne out by the facts of that case as already stated. Similar expressions appearing in the other cases should also be similarly interpreted. At p. 272, Mr. Amir Ali observes :

> "The father of the deceased, if still alive, continues to be her natural guardian and venerable protector.... If there is no father, the divided brothers take his place by virtue of the tie of blood as her husband's nearest sapindas; they become her natural guardians and the protectors of her interests."

21. As in the previous case, nearest sapindas in the context can only refer to the agnates. In support of his contention that as the nearest heir, the daughter's son is entitled to be consulted more than the agnatic sapindas, the learned counsel refers to the sentence in the judgment at p. 273 :

> "Some light is thrown on the point by the decisions relating to alienations by the widows with the assent of the next heir." (Golap Chandra Shastri, Hindu Law of Adoption, p. 259.)
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> 22. Their Lordships doubt whether the analogy is useful, for the principle underlying the requirement of consent in the two cases does not appear to be the same and further, an alienation by a widow can be justified by necessity, quite

independently of consent. Immediately preceding the sentence just quoted occurs the paragraph :

> "And an eminent Hindu lawyer (referring to the same author) dealing with the question whose consent is requisite to the validation of an adoption when the husband is separate, remarks that: 'An adoption is more a temporal than a spiritual institution there being no spiritual reason for adoption it the deceased left a fraternal nephew, and that the requisites of valid adoption are all temporal; therefore, a spiritual consideration should not be allowed to influence the judgment regarding the secular essential."

23. There is no indication in the judgment that the Board has definitely adopted this view. The utmost that could be said in favour of the appellants is the statement in the judgment that "rights to property cannot be left out of consideration in the determination of the question" (see p. 273), while the spiritual welfare of the deceased also is referred to in the course of the judgment.

24. That the above secular, view of adoption cannot any longer be maintained appears to be clear from the judgment of the Board in 60 IA 242.8 Their Lordships will refer to this point when they deal with the learned counsel's contention that the adoption is more a temporal than a spiritual institution.

25. The cases thus far examined which form the foundation of the doctrine of assent by the sapindas establish that a Hindu widow in a separated family in the Dravida country subject to the Mitakshara law may adopt in the absence of authority from her deceased husband with the consent of the nearest male agnates (sapindas), they being by virtue of the relationship her most competent advisers. This is reiterated in 69 MLJ 3889 at p. 395, where it is stated :

> " .... the sapindas are to be regarded as a family council 4 IA 14 the natural guardians of the widow and the protectors of her interests 47 IA 996." The reference to the last mentioned decision shows that by sapindas their Lordships mean "male agnates."

26. It would thus appear that in view of the decisions of the Board, with which alone their Lordships are concerned, there being no textual authority on the point-the law having been developed only by those decisions - the argument that the terms "kindred," "kinsmen," "sapindas" occurring in the judgments, should be held to include cognates also does not seem to be admissible. Their Lordships are fully alive to the criticism that in none of those cases the question whether cognates should be

consulted specifically arose for decision; but it is striking that in the elaborate discussions which are of a general character obviously intended to lay down the law as to who should be consulted, no reference is made to cognates in general, or to a daughter's son in particular. It appears to their Lordships that in those judgments the Board intended to use the terms "kindred", "kinsmen", "sapindas", as meaning only "male agnates." No doubt, according to the Mitakshara, "sapindas" would include all blood relations, however distant, as the term means "a person connected by the same pinda or particles of the same body," but this meaning has well-known limitations. Used without any qualification, (as may be seen from these judgments), the term means agnatic relations only, and does not include cognates who belong to a different gotra. Before closing this discussion the following observations in 66 IA 9310 at p. 99, may be noticed:

> "Their Lordships would not be prepared to bold on the authorities that the only kinsmen whose assent need be sought ate the agnates."

27. In relation to its context, this observation does not support the appellants. In that case, there being no agnates of the husband in existence at the time of the adoption whose assent could be sought, a somewhat novel point was taken, the lady had a right to adopt of her own volition." This point was negatived by their Lordships with the above remark which was obviously made to meet the argument that in the circumstances, no consultation was necessary to validate an adoption; for being a woman, a widow is not independent and needs advice.

28. It was next argued that as adoption affects property to which according to the scheme of the Mitakshara Law of Succession, the daughter's son has a right to succeed before the agnates, even before the father and mother of the deceased, and as he is also closer in relationship to the maternal grandfather than his divided agnates, it is essential that he should be consulted to render the adoption valid. The daughter's son occupies a peculiar position in the Hindu Law. His preferential right in the matter of inheritance is to be traced to his original position as Putreeka Putra, the son of an appointed daughter, i.e., a daughter appointed by the father to raise up issue to him. (See Mitaksbara, ch. I S. xi, V. 3) His position past and present, is thus succinctly described in Sir D. P. Mulla's Book on Hindu Law (see p. 40, Edn. 9) :

> "Although the practice of appointing a daughter to raise up issue for her father became obsolete, the daughter's son continued even now to occupy the place (that was assigned to him, in the order of inheritance and even now he takes a place practically next after the male issue, the widow and the daughter being

> simply interposed during their respective lives. The difference in his position under the old law and the present Law is that under the former he became by a fiction a member of his maternal grandfather's family, while under the present Law he is a member of Ma own father's family, but is also regarded as and son's son to his maternal grandfather for purposes of inheritance."

The above extract shows that the position of the daughters' son in the matter of inheritance is exceptional and though he has retained his preferential right to inheritance, he is no longer a member of his maternal grandfather's family, but remains a member of his own father's family; if so, his claim for consultation as a member of the family becomes very attenuated, whatever be the nature of his interest in the property.

29. The daughter's son owes much to Vignaneswara for his place in the scheme of the law of inheritance for, in the subjoined important text of Yagnavalkya which forms the entire basis of the Mitakahara Law of Succession the daughter's son is not expressly mentioned.

> "The wife, and the daughters also, both parents, brothers likewise and their sons, cognates, a pupil and a fellow student: on failure of the first among these, the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue. This rule extends to all persons and classes." Colebrooke, Mit. Ch. ii, Section 1, V. 2.

30. By interpreting the particle "also" in the above text, Vignaneshwara gave the daughter's son a place in the law of inheritance.

> "By the import of panicle "also" (Ss. 1 and 2) the daughter's son succeeds to the estate on failure of daughters. Thus Vishnu says 'if a male leave neither son, nor son's son nor [wife nor female] issue the daughter's son shall take his wealth for in regard to obsequies daughter's sons are considered as son's sons...." Colebrooke, Mit. Ch. ii, Section 2, V. 6.

31. It is interesting to note the remark of Mandlik on the above interpretation by Vignaneshwara. He says :

> "After the word daughter's son in the above text occurs the particle (Chaiva) "also", to give some sense to which Vignaaeswata introduces here, the daughter's son in conformity with a text of Vishnu 'the wealth of him who has neither sons nor grandsons goes to daughter's son, for ....' " Compare Manu. Ch. ix; V. 136. (Mandlik's translation p. 221).

32. By the above ingenious exposition, the famous compiler of the Mitakshara shaped the law into conformity with the needs of the day without appearing to make any change and thus gave the daughter's son his present place in the law of inheritance.

33. Their Lordships may now consider the question whether adoption is more a temporal than a spiritual institution, since admittedly the strongest ground on which the daughter's son can base his claim for consultation is his interest in the property. In 45 IA 2657 Mr. Amir Ali observed at p. 273 as follows :

> "It is true that in the judgment of this Board in the Ramnad case3 some expressions are used which might imply that the question of reversionary interest formed only a secondary consideration in determining what sapindas' assent is primarily requisite, but the remarks that follow as to the right of coparceners in an undivided family to consider the expediency of introducing a new coparcener, coupled with the observations of the Board in the subsequent case 4 IA 14 show clearly that rights to property cannot be left out of consideration in the determination....."

34. This is followed by a reference to the opinion of the eminent Hindu lawyer - Sarcar Shastri already quoted-that an adoption is more a temporal than a spiritual institution. This is the highest level at which the learned counsel for the appellant can put his case with reference to this point. The opinion of the eminent Hindu lawyer is entitled to much weight, but neither that opinion nor that of the Board shows that in determining who should be consulted, the next reversioner's interest in the property is the sole and supreme test. Their Lordships do not desire to labour this point, as in their view the following opinion of the Board delivered by Sir George Lowndes in 60 IA 2428 should be considered to have settled the question finally so far as the Board is concerned. After referring elaborately to the Brabminical doctrine of adoption and chap. 9 of Manu'a Code, Sir George Lowndes who delivered the judgment observed as follows:

> "In their Lordships' opinion it is clear that the foundation of the Brahminical doctrine of adoption is the duty which every Hindu owes to his ancestors to provide for the continuance of the line and the solemnisation of the necessary rites. and it may well be that if this duty has been passed on to a new generation, capable itself of the continuance, the father's duty has been performed and the means provided by him for its fulfilment spent; the "debt" he owed is discharged and it is upon the new generation that the duty is now cast and the burden of the debt is now laid. It can, they, think, hardly be doubted that

> in this doctrine the devolution of property, though recognised as the inherent right of the son, is altogether a secondary consideration. So Sir James Colvile in delivering the judgment of the Board in 3 IA 1545 observes (at p. 192) : "a distinction which is founded on the nature of property seems to belong to the law of property, and to militate against the principle which Holloway J. has himself strenuously insisted upon elsewhere, viz., that the validity of an adoption is to be determined by spiritual rather than temporal considerations; that the substitution of a son of the deceased for spiritual reasons is the essence of the thing, and the consequent devolution of property a mere accessory to it."

35. There cannot be a plainer statement than what is contained in the closing sentences of the above extract. The "substitution of a son of the deceased is the essence of the thing and the consequent devolution of property is a mere accessory to it." This opinion of Holloway, J. was obviously accepted by the Board for the paragraph immediately following the above extract begins with the sentence, "Having regard to this well established doctrine as to the religious efficacy of sonship ..."

36. The next ground argued relates to the "spiritual benefit" which the daughter's son can confer on the maternal grandfather. As regards the relative value of the offerings received from the sons and other male descendants and of the descendants of females, Dr. Sarvadhikhari, in his Tagore Law Lecture, 1880, on "the Hindu Law of Inheritance" says at p. 766 that, "the pindas received from agnate descendants have greater efficacy than the pindas received from cognate descendants."

Further on, at p. 767, he says that,

> "sons are legally bound to perform 'parvana' rites in honour of their paternal ancestors. In the ease of maternal ancestors, the daughter's son should also celebrate these rites as an act of moral obligation although not legally bound to do so. Thus there is a great difference in spiritual value between an act of legal obligation and an act of moral obligation."

He adds that

> "the pindas to the paternal ancestors are the principal oblations in a parvana sraddha and those given to maternal ancestors ate thus only secondary pindas"

And there is difference in the spiritual benefit between these respective pindas. See also, Mayne on Hindu Law (Edn. 10, pp. 605,606) where after referring to Dr. Sarvadhikhari's views, it is stated that,

> "it would be more correct to say that the sons are tinder a religious obligation to

perform them (the sraddhaa) and that their failure would entail sin. It is wholly optional with the daughter's son who would incur no sin to his failure to perform the sraddha, but he would earn merit if he did it."

37. Though there are certain texts which say that a daughter's son should perform sraddhaa for the maternal grandfather, their Lordships think that the more weighty view as regards the relative value of his duties in the matter of sraddhas is as stated above. In the circumstances, it cannot be said that the daughter's son's claim that he bestows more spiritual benefit to his maternal grandfather has been made out, when it is doubtful whether his claims are even as good as those of the sons and other agnate descendants If "the substitution of a son of the deceased is the essence of the thing and the consequent devolution of the property is a mere accessory to it" then it is difficult to agree with the appellants' learned counsel that the claims of the daughter's sons should be held to be the determining factor in the matter of consultation.

38. The decision relied on by the learned counsel for the appellant in support of his contention is AIR 1925 Madras 67,2 where Ramesam, J. held that in a case where the daughter's son is the next heir and is a major and other, wise competent to advise he ought to be consulted by the adopting widow. As already remarked,

Jackson, J., the other learned Judge, differed from this view. In the course of this judgment their Lordships have generally dealt with the main reasoning in Ramesam J.'s judgment. They will only add that the question did not directly arise for decision in the case and the appeal was disposed of on the ground that the assent of the sapindas was invalid-a point on which both the learned Judges agreed. The opinion of Ramesam, J. was approved by Spencer and Venkata Subba Rao, JJ. in 49 Mad. 65211where they held that in the absence of agnate reversioner's, a Hindu widow can in Southern India adopt with the consent of the nearest cognate reversioner - a point with which their Lordships are not concerned in this appeal. The present question did not arise for decision in that case also. The above decisions as well as those in which, when the question directly arose for decision, the con. tentions now put forward were overruled (see 48 Mad. 876,12 57 Mad. 41113), have all been carefully considered in the Pull Bench decision of the High Court, in ILR (1940) Mad. 454.1 In their Lordship's view the question under discussion has been correctly decided in that case. Question 2 must accordingly be decided against the appellants.

39. For the reasons given above, their Lordships are satisfied that the failure to consult the daughter's sons does not in this case render the adoption invalid. The appeal fails, and their Lordships will humbly advise His Majesty that it should be dismissed. The

appellants will pay the costs of the appeal.

Appeal dismissed.