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NOTES OF INDIAN CASES

KUSUM KRISHNAJI PANSE *v.* KRISHNAJI ANANT PANSE : I.L.R. 1939 Bom. 396.

In this case, the learned judges have examined the basis and limits of an unmarried daughter's right to maintenance and the expenses for her marriage as against her father under the Hindu Law. They have held that her right to maintenance is a legal right which is only personal against her father during his life-time and that it is conditional on the minor daughter living under his protection and control. They hold that it does not rest on the daughter having any right in the joint family property in the father's hands. They also hold that the father is only under a religious and not a legal duty to meet the expenses of her marriage. When however the father dies, both the right to maintenance and marriage expenses become according to the learned judges a legal right charged on the family properties in the hands of her brothers. In the case under notice, the claim was made by the unmarried daughters who were living away from their father without any reasonable cause and under their maternal grandfather's protection and the learned judges have held that under the circumstances they were not entitled to claim either for their maintenance or marriage expenses against their father.

So far as the right to maintenance is concerned, infant children are entitled to maintenance from their parents under every system of jurisprudence and the Hindu Law is no exception to it. The right of unmarried daughters to be maintained by their father has been recognised under the Hindu Law and referred to in a number of decisions. See *Tulsha* v. *Gopal Rai*[1], *Bai Mangal* v. *Bai Rukhmini*[2],

1. (1884) I.L.R. 6 All. 632.

2. (1898) I.L.R. 23 Bom. 291.

Gudimetla Venkataraju v. *Bollozu Kotayya*[1], *Cherutty* v. *Nagamparambil Raru*[2], *Narainjan Singh* v. *Gurumukh Singh*[3]. The basis of the right was however not fully examined in those cases but was considered by the Madras High Court in *Subbayya* v. *Ananta Ramayya*,[4] where Mr. Justice Ramesam pointed out that it rests on the daughter's right in the joint family property which formerly was a right to claim a share but has since dwindled into a claim for maintenance and a marriage portion. He has also pointed out that Verse 14 of Chapter I, Section VII of the Mitakshara, which has been translated as "Therefore, after the decease of the father, an unmarried daughter participates in the inheritance. But before his demise, she obtains that only, whatever it be, which her father gives ; since there is no special precept respecting this case. Thus all is unexceptionable" is in no way inconsistent with a daughter's present right in the properties, because, even in the case of sons the Mitakshara did not recognise a right to partition of ancestral joint family properties against their father's will in his life-time, except in a very restricted and specified class of cases. Compare *Srinivasa Iyengar* v. *Thiruvengadathaiyengar*,[5] That under the Mitakshara, a son has all along a right in the joint family properties by birth along with his father is one of its cardinal principles. Thus the right in the properties and the absence of a right to partition in the father's life-time against his will are not mutually destructive.

Further, there does not seem to be any principle in law by which a mere personal legal obligation on the part of the father to provide maintenance and marriage expenses for his unmarried daughter could attach itself to the properties in the hands of his sons after his death. In this connection it is interesting to note that even an illegitimate son's right to maintenance out of the joint family properties has been rested by the Privy Council on the proprietary right in the properties, as in the case of widows and disqualified heirs in *Vellaiyappa Chetty* v. *Natarajan*[6], and not merely by reason of the special text without assigning any other reasons for the claim for maintenance.

If the right to maintenance and marriage expenses of an unmarried daughter is only personal against the father and against the family properties only in the hands of her brothers after his death, it is difficult to see how the marriage expenses could have been

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1. (1912) 23 M.L.J. 223. 2. (1939) 1 M.L.J. 683.
3. A.I.R. 1937 Lah. 76.
4. (1928) I.L.R. 53 Mad. 84 : 57 M.L.J. 826 (F.B.).
5. (1912) I.L.R. 38 Mad. 556 : 25 M.L.J. 644.
6. (1931) I.L.R. 55 Mad. 1 : 58 I.A. 402 : 61 M.L.J. 522.

awarded to a brother's daughter as against her uncles as in *Vaikuntam Ammangar* v. *Kallapiran Ayyangar*[1].

Again the fact that there is a personal obligation on the father to maintain his unmarried daughters does not negative their right against the joint family properties. Even in the case of a Hindu wife who has a personal right against her husband for maintenance irrespective of the possession of any properties, she has like a widow a right to a charge for maintenance on the family properties in the hands of the other members of the family. See *Ramabai* v. *Trimbak*,[2] *Rajalakshmi Devi Amma* v. *Naganna Naidu*,[3] and *Gopala Pattar* v. *Parvathi Ammal*[4].

The learned judges have gone further and held that an unmarried daughter's right to maintenance against her father which according to them is only personal is dependent upon her living with him and under his control. It cannot be denied that there are Hindu Law texts, which enjoin on the children obedience to their father. There are means by which a father can under the law resume the custody and control of his minor daughters who are unmarried. It is open to question whether the right of the daughters to maintenance and marriage expenses and their obligation to obey and subject themselves to their father's control are reciprocal as the learned judges have held or are independent of each other. This limitation has not been laid down in any prior decisions, as the learned judges themselves recognise.

Coming to the claim for marriage provision against the father, the learned judges have held that the father's obligation is only religious and not legal though in the hands of his sons it becomes not only a legal obligation but also one attaching to the properties under the text of the Mitakshara above referred to. They refer to *Sundari Ammal* v. *Subramania Iyer*,[5] in support of the proposition that a Hindu father is not under an obligation to marry his daughter. Apart from the fact that this decision has not gone unchallenged, see *Ganga Baksh Singh* v. *Ahbaran Singh*[6], it has only been understood to lay down that a Hindu father is not under a personal obligation to marry his daughter but is only bound with reference to the family assets. *See* Mayne's Hindu Law, 10th Edition, page 190 (foot-note). Otherwise, it is not easy to reconcile *Sundari Ammal* v. *Subramania Iyer*[5], with *Malayandi* v. *Subbaraya*,[7] and the other cases which lay down that

1. (1900) I.L.R. 23 Mad. 512 : 10 M.L.J. 111.
2. (1872) 9 Bom.H.C.R. 283.
3. (1924) 21 L.W. 461 at page 468.
4. A.I.R. 1929 Mad. 47.
5. (1902) I.L.R. 26 Mad. 505.
6. (1916) 19 O.C. 113.
7. (1910) 21 M.L.J. 521.

an alienation by a father to meet the debts incurred for his daughter's marriage is binding on the other members of the family. If the decision of the Madras High Court in *Subbayya* v. *Ananta Ramayya*,[1] is correct, the daughter's right to marriage expenses is based on her right in the family properties in the place of her original right to a share and she can enforce it even against her father and the family properties in his hands. We venture respectfully to submit that the historical considerations of the change of the law in this respect adverted to in *Subbayya* v. *Ananta Ramayya*,[1] have not been given full weight or met by the learned judges in this case. The learned judges have not also referred to any special texts applicable to the Bombay Presidency over-riding the Mitakshara so as to render reasoning and decision in *Subbayya* v. *Ananta Ramayya*,[1] inapplicable to Bombay.

16. (1928) I.L.R. 53 Mad. 84 : 57 M.L.J. 826 (F.B.).

PRAMATHA NATH PRAMANIK *v.* NIRODE CHANDRA GHOSH, I.L.R. (1939) 2 Cal. 394.

This case deals with the admissibility of the copies of assessment orders under the Indian Income-tax Act and the learned judge has held that certified copies of the assessment orders of a partnership are inadmissible in evidence at the instance of one of the partners against the other as showing the share to which each one of them is entitled in the partnership. The objection was based on the terms of S. 54 of the Indian Income-tax Act which enacts in effect that the proceedings before an Income-Tax Officer are confidential and no official can be called to produce any of the documents before the Court. In coming to the conclusion that the certified copies of the assessment orders are inadmissible in evidence, the learned judge has relied on two decisions, one of the Bombay High Court in *Devidatt Ramniranjandas* v. *Shriram Narayandas*[1], and the other of the Rangoon High Court in *Anwar Ali* v. *Tafozal Ahmed*[2], Both these decisions have recently come up for consideration before the Madras High Court in *Pentapathi Venkataramana* v. *Pentapathi Varahalu*[3], and their Lordships Mr. Justice Varadachariar and Mr. Justice Pandrang Row have declined to follow these cases and held that the certified copies are admissible in circumstances almost similar to those in the present case before the Calcutta High Court. The learned judges of the Madras High Court are inclined to take the view that the later portion of cl. (1) of S. 54 of the Indian Income-tax Act really bring out the meaning of the first portion that the documents are confidential, namely that the Income-tax authorities are not permitted to disclose them. Again their observations on the meaning and scope of S. 76 of the Indian Evidence Act on which the learned Judge in the case under notice has largely rested his objection to the admissibility of the certified copies deserve serious consideration. The learned judge in this case recognises that assessment orders and statements recorded by the Income-tax officer are public documents within the meaning of S. 74 of the Indian Evidence Act.. If so, if a person obtains even illegally a copy or certified copy of such a public document, there is no prohibition in the Indian Evidence Act or the Income-tax Act against its admission in evidence. The first portion of S. 76 of the Indian Evidence Act only lays down that certified copies of certain documents may be given. It does not prohibit the granting of copies in other cases, much less does it render such certified copies inadmissible in evidence. There is the further reason given by the learned judges

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1. (1931) I L.R 56 Bom 324 2. (1924) I L R. 2 Rang 391
3 1939 M.W.N. 1028.

in the Madras Case that the records of the Income-tax proceedings of a partnership belong to all the partners and there is no objection to any one of them getting a copy and using it. Any argument merely based on the possible intention of the legislature rendering the document inadmissible apart from the language of S. 54 is to some extent an uncertain ground of decision. The question is so fully considered in the recent Madras Case that when the question comes up in any future case, considerations adverted to by the learned judges in the case will have to be given their full weight. We should add that in the light of the decision in *Pentapathi Venkataramana* v. *Pentapathi Varahalu*[1] it is doubtful whether the decision of the single judge of the Madras High Court in *Noone Varadarajam Chetty* v. *Vutukuri Kanakiah*[2], can be considered to be good law.

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1. (1939) M.W.N. 1028

2. (1939) 1 M.L.J 791.

HAR NARAIN MISRA *v.* KANHAIYA LAL LOHAWALLA, I.L.R. (1939) 2 Cal. 425.

The question in this case was whether where a suit was instituted against a company which had been ordered to be wound up, without the leave of the court, the proceedings, in the suit could be validated by a subsequent leave of the court and the learned judge answered it in the negative.

The prohibition against commencing a suit without the leave of the court in such a case is contained in S.171 of the Indian Companies Act. There are also statutory provisions imposing a similar prohibition in S. 28 of the Provincial Insolvency Act and S. 17 of the Presidency Towns Insolvency Act. In all these cases, the weight of Indian decisions is to the effect that as the statutes prohibit the commencement and not merely continuance of the suit, without the leave of the court, the grant of leave of the court subsequent to the suit being commenced cannot validate the suit and the proceedings in the same. Re : *Steel Construction Co., Ltd.*,[1] *Peoples Bank of Northern India, Ltd., Lahore*, v. *Fateh Chand and Co., and another*[2], *Dawood Mohideen Rowther* v. *Sahabdeen Sahib*[3], *Jehangir Cursetji Mistri* v. *Kastur Pannaji Oswal*[4], *A.K.R.M.M.C.T. Chettiar Firm* v. *S.E. Munne*[5]. The learned judge in the present case under notice has observed that the Bombay High Court has taken a different view. See *Muhammad Haji Essack* v. *Abdul Rahiman*[6] *and Bhimaji Bhobhutmal* v. *Chunilal Jhaverchand*[7]. But since then, the Bombay High Court has expressed the opinion in *Jehangir Cursetji Mistri* v. *Kastur Pannaji Oswal*[4], that a subsequent leave cannot validate the prior suit and followed the decisions in In re *Dwarkadas Tejbhandas*[8], *and Maya Ookeda* v. *Kuverji Kurpal*[9]. It has also been held further that where a decree was obtained in favour of the plaintiff in a suit against a company instituted without leave, the decree would be a nullity and not binding on the liquidator of the company. In the matter of *Allahabad Trading and Banking Corporation, Limited*[10]. the High Court of Allahabad has however held that, as a suit can be brought subsequently with the requisite leave of Court, it is not necessary to dismiss the prior suit commenced without leave, but that the same may be continued after leave is obtained even subsequent to the filing of the suit, treating it as a suit filed after the grant of the leave. *People's Industrial Bank, Limited* v. *Ram Chandra Shukla*[11]. If, however, at the date when the leave is obtained, the suit would be time-barred, the original suit, even according to the Allahabad High Court, cannot be validated. *Firm Sarju Prasad-Bhagwati Prasad Sah* v. *Rajendra Prasad*[12].

As regards the English Law on the point, Sir N.N.Sircar and Mr. Sen in their commentaries on the Indian Companies Act observe at page 464 that the commencement of an action without leave after the winding up would not result in a nullity of the proceedings, but that the defendants' remedy is only to apply for a stay of the pro-

1. (1935) 40 C.W N. 312.
2. A.I.R. 1936 Lah 401.
3. (1937) 2 M.L J 223.
4. A.I.R. 1939 Bom. 344.
5. A.I.R. 1928 Rang. 326.
6. (1916) I.L.R. 41 Bom. 312.
7. (1931) I.L.R. 57 Bom. 623.
8. (1915) I.L.R. 40 Bom. 235.
9. A.I.R. 1932 Bom. 338.
10. (1927) I.L.R. 50 All. 419.
11. (1929) I.L.R. 52 All. 430.
12. A.I.R. 1937 All. 271 : I.L.R. 1937 All. 344.

ceedings. We are not sure that the decisions referred to by the learned authors fully support this conclusion because in the case of *Gray* v. *Raper*[1], the action against the makers of the note had already been pending before the commencement of the order for winding up and therefore there was no question of the commencement of any action after the commencement of the order for winding up and further the executants of the promissory note were held in that case liable personally on the promissory note and no question of the liability of the property of the company was considered. In *Graham* v. *Edge*[2], there was an order for the discontinuance of the action brought without leave against an official liquidator in the winding up and a discontinuance of an action under the English Law seems to correspond to the withdrawal of the action, though the plaintiff could commence another action after satisfying the necessary formalities. Reference may be made in this connection to O. 26, r. 1 of the Rules of the Supreme Court which is to some extent analogous to O. 23, r. 1 of the Civil Procedure Code. In *Hall v. Old Talargoch Lead Mining Company*[3], no relief was asked for against the company beyond what the law allowed or which was inconsistent with the winding up action and the action was not against the company alone but against the company and other persons for the return of the amount by the directors who had by misrepresentation in the prospectus recovered monies from the plaintiff and there was no consideration of the question by the Vice-Chancellor of the effect of the commencement of any action without leave where it was required under the statute. It is not therefore clear that the English Law is in any way different from the Indian Law on the point.

By way of analogy, we may refer to the cases under S. 92 of the Civil Procedure Code where it has been held that the consent in writing of the Advocate-General obtained subsequent to the institution of the suit would not validate the proceedings in such a suit. See *Gopal Dei* v. *Kanno Dei*[4], and *Abdul Rehman* v. *Cassum Ebrahim*[5]. Reference may also be made in this connection to the provisions of S. 18 of the Religious Endowments Act of 1863.

In cases, however, where there is no such statutory prohibition, as in suits against receivers without the leave of the court which appointed the receiver, it has been held that the proceedings in such suits are not without jurisdiction and can be validated by the leave of court subsequently granted. See *Ammukutti* v. *Manavikraman*[6], *Jagana Sanyasiah* v. *Atchanna Naidu*[7], *Kalyanasundaram Iyer* v. *Narasimha Aiyangar*[8], *Jabbar Ali Sardar* v. *Monmohan Pandey*[9], and *Jamsedji F. Shroff* v. *Husseinbhai Ahmedbhai*[10].

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1. L.R. (1866) 1 C.P.C. 694.
2. (1888) 20 Q.B.D 538.
3. (1876) 3 Ch. D. 749.
4. (1903) I.L.R. 26 All. 162.
5. (1911) I.L.R. 36 Bom. 168.
6. (1920) I.L.R. 43 Mad. 793.
7. (1921) 42 M.L.J. 339.
8. (1922) 44 M.L.J. 427.
9. (1928) I.L.R. 55 Cal. 1216.
10. (1919) 22 Bom.L.R. 319.

CHIMANRAM MOTILAL *v.* JAYANTILAL CHHAGANLAL, I.L.R. (1939) Bom. 616.

This case brings out clearly one of the essentials of the existence of a partnership in law. When the question arises whether in any particular case, there is a partnership in law, it has to be decided under S. 6 of the Indian Partnership Act by having regard to the real relation between the parties as shown by all relevant facts taken together. One of the relevant essentials is what is laid down in S. 4 of the Act that the business should be carried on by all or any of them acting for all. This mutual agency on the part of the partners has been recognised as one of the requisites for the existence of a partnership. Reference may be made in this connection to *Janki Nath Paul* v. *Dhokar Mall Kedar Buxi*, where a bench of the Patna High Court has noticed this as a necessary requisite for a partnership. The case under notice has considered the matter more fully. This requirement was not specifically laid down in the definition of partnership in S. 239 of the Indian Contract Act, though it was recognised as essential and it has been expressly incorporated in the definition of the term in S. 4 of the Indian Partnership Act. A fuller discussion of the point will be found in Mr. N. Rajagopalachariar's Law of Partnership, pp. 37 and 38. It must however be noticed that this mutual agency may be restricted or provided against under the provisions of S. 20 of the Act, which corresponds to S. 251 of the Indian Contract Act. But this is an exception which really proves the general rule, as pointed out at p. 38 of the book referred to above.

DATTATRAYA CHANDRAYA BACHUWAR *v.* K. L. BAWACHIKAR, I.L.R. (1940) Bom. 1.

The question considered in this case is whether a second appeal lies against an appellate decision given on application made under Ss. 53 and 54 of the Provincial Insolvency Act, 1920. The learned judges in the case under notice have answered the question in the negative.

The point becomes arguable by reason of the wide language used by the legislature in S. 4 of the Act which empowers the Insolvency Court to decide all questions whether of title or of priority or of any nature whatsoever, and whether involving matters of law or fact which may arise in any case of insolvency coming within the cognizance of the Court or which the Court may deem it expedient or necessary to decide for the purpose of doing

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1. A.I.R. 1935 Pat. 376.

complete justice or make a complete distribution of property in any such case. These are words of the widest amplitude and it cannot be said that setting aside a voluntary alienation or a fraudulent preference by the insolvent will not fall within the ambit of the section. S. 4 also enacts that it is subject to the provisions of this Act and there is nothing contrary to its terms in S. 53 or 54 of the Act which may be said to qualify the provisions of S. 4. It is therefore open to argument that all orders under Ss. 53 and 54 are also decisions under S. 4 of the Act for which a right of second appeal is provided under the second proviso to sub-S. (1) of S. 75 of the Provincial Insolvency Act. While there is a considerable plausibility in this argument, it cannot be doubted that it will render the other parts of S. 75 as to appealability and the finality of the decisions of the first appellate Court under the section wholly meaningless. Further, it is a well-known rule of statutory interpretation that a special rule will exclude the operation of the general rule. These are the considerations which made the learned judges to hold that no second appeal lies in cases falling under S. 53 or 54 of the Act and they follow the decision of the Madras High Court in *Alagirisubba Naik* v. *Official Receiver of Tinnevelly*[1], where the learned judges considered the question for the first time and came to a similar conclusion. The same view was taken by the Madras High Court in later decisions in *Ramasami Nayakar* v. *Venkatasami Nayakar*[2] and *John A. David* v. *A. L. A. Alagappa Chettiar*[3]. It may be mentioned in this connection that a single judge of the Bombay High Court applied the *ejusdem generis* rule in construing S. 4 of the Act, a view which on this point is contrary to the one taken by the Madras High Court in *Alagirisubba Naik* v. *Official Receiver of Tinnevelly*[1] referred to above and followed in the decision under notice.

[End of Vol. I]

1. (1931) 61 M.L.J. 820: I.L.R. 54 Mad. 989.
2. (1932) 65 M.L.J. 298. 3. A.I.R. 1935 Mad. 432.

IRAPPA LOKAPPA VASTRAD *v.* RACHAYYA MADIWALAYYA, I.L.R. (1940) Bom. 42.

This decision raises an interesting question in the Hindu Law of adoption. There were two brothers who were members of an undivided Hindu family governed by the Mitakshara Law. The elder brother died leaving behind him a widow. The other brother subsequently entered into a partition of the joint family properties with his own son. Then the widow of the deceased elder brother adopted a son to her husband and the question was whether the adopted son could claim a half share in the properties which belonged to the joint family composed originally of the two brothers. The learned judges have held that the adoption was valid, but that the adopted son could not claim a share in the properties which once belonged to the joint family.

This somewhat curious result has been laid down as following from the Full Bench decision of the Bombay High Court in *Balu Sakharam* v. *Lahoo Sambhaji*[1]. In that case, the majority of the judges in the Full Bench held that where on the death of the last surviving coparcener, the family property vests in the heir of such coparcener and subsequently the widow of another coparcener adopts, the adoption would be valid but it would not vest the property in the adopted son to the exclusion of such heir and would not divest such heir of the property already vested in him. Mr. Rangnekar, J., who was the dissenting judge in that case held that the adoption itself was invalid on the property passing by inheritance to the last coparcener's widow and that therefore there was no question of divestment. He further held that if the adoption was valid, the adopted son would divest the property already vested in the heir. This view of Rangnekar, J., was substantially what was held in an earlier decision of the Bombay High Court in *Chandra* v. *Gojarabai*[2]. After the decision of the Privy Council in *Amarendra Mansingh* v. *Sanatan Singh*[3], it can no longer be said that by reason of any possible divestment of property whether from a surviving coparcener or an heir an adoption is invalid, because their Lordships have pointed out that unless there is a son's son or a son's widow who could perpetuate the deceased person's line as in *Bhoobun Mayee Debia's case*[4], *Padmakumari Debi* v. *Court of Wards*[5] and *Ramachandra* v. *Shamrao*[6], a Hindu widow could adopt to her husband. Judged by this test which is based on spiritual benefit, there can be no objection to a Hindu widow adopting when the last surviving collateral coparcener has died

1. I.L.R. (1937) Bom. 508: 39 Bom.L.R. 382 (F.B.).
2. (1890) I.L.R. 14 Bom. 463.
3. (1933) 65 M.L.J. 203: L.R. 60 I.A. 242: I.L.R. 12 Pat. 642 (P.C.).
4. (1865) 10 M.I.A. 279.
5. (1881) L.R. 8 I.A. 229: I.L.R. 8 Cal. 302 (P.C.).
6. (1902) I.L.R. 26 Bom. 526 (F.B.).

leaving behind him his heir who takes by inheritance from him. Once the adoption has been held to be valid, it would seem to follow that the adopted son would as regards legal rights to the property be in the same position as an *aurasa* son except in respect of properties which had been validly alienated by the limited owner or heir prior to his adoption. But the majority of the learned judges in the Full Bench case in Bombay held that this would be the result only if the property continued in the hands of the coparceners but not if on the death of the last surviving coparcener it passed by inheritance. There is no warrant for it in the latest decisions of the Privy Council. Indeed the cases themselves were those of strict inheritance and not of survivorship or succession in a joint family. The property in *Amarendra Mansingh* v. *Sanatan Singh*[1] was in the hands of the deceased son as a separate impartible estate and not a joint impartible estate; otherwise it would be impossible to see how the estate could have gone to the mother who however was excluded by custom and the property was therefore inherited by a collateral coparcener. The learned Editor of the 10th Edition of Mayne's Hindu Law at pages 237 and 238 and also at page 268 has pointed out how the view of the majority of the judges in *Balu Sakharam* v. *Lahoo Sambhaji*[2], is based upon a misunderstanding of the decisions of the Privy Council in *Amarendra Mansingh* v. *Sanatan Singh*[1] and *Vijayasingji Chhatrasingji* v. *Shivsangji*[3]. The view of the Full Bench in *Balu Sakharam* v. *Lahoo Sambhaji*[2], to the effect that the adoption would be valid but would not divest the properties in the hands of the heir has not found favour with the learned editors of Mulla's Hindu Law, 9th Edition at page 537. The view of the Full Bench of the Bombay High Court has not been followed by the Nagpur High Court in *Mst. Draupadi* v. *Vikram Krishna*[4]. The learned judges have held after an examination of the Hindu Law on the point that in such a case the adoption would be valid and that the adopted son would divest the properties in the hands of the heir of the last coparcener.

As regards the effect of partition among the members of the coparcenery, the application of the principle of *Chandra* v. *Gojarabai*[5], to such a case as regards the validity of the adoption was doubted by the Madras High Court in *Panyam* v. *Ramalakshmamma*[6]. See also *Madana Mohana* v. *Purushothama*[7]. In

1. (1933) 65 M.L.J. 203: L.R. 60 I.A. 242: I.L.R. 12 Pat. 642 (P.C.).
2. I.L.R. (1937) Bom. 508: 39 Bom.L.R. 382 (F.B.).
3. (1935) 68 M.L.J. 701: L.R. 62 I.A. 161: I.L.R. 59 Bom. 360 (P.C.).
4. I.L.R. (1939) Nag. 88: A.I.R. 1938 Nag. 423.
5. (1890) I.L.R. 14 Bom. 463.
6. (1931) 62 M.L.J. 187: I.L.R. 55 Mad. 581 at 590.
7. (1914) 27 M.L.J. 306: I.L.R. 38 Mad. 1105 at 1118.

the Bombay High Court, a distinction has been drawn between cases where the partition took place between the branch of the family to which the widow belonged and another branch in which case a son adopted by the widow would take his father's share in that branch, as in *Chanbasappa* v. *Huchappa*[1] and the cases where the partition is between members of the branch to which the widow herself belonged. The case under notice falls under the latter category and it has been held by the learned judges that the adoption would not divest the estate in the hands of the separated members. If the view put forward in the latest edition of Mayne's Hindu Law and *Mst. Draupadi* v. *Vikram Krishna*[2] is correct, the decision under notice will be unsound equally with the view of the Full Bench in *Balu Sakharam* v. *Lahoo Sambhaji*[3].

The points noticed above will lose much of their practical importance after the coming into force of the Hindu Women's Rights to Property Act of 1937 under which a Hindu widow in a joint family will take her husband's share and there will therefore be no divestment of third person's rights. The adopted son will presumably take the adoptive father's share along with the widow under the Act.

[END OF VOLUME]

1. (1938) 40 Bom.L.R. 1185.
2. I.L.R. (1939) Nag. 88: A.I.R. 1938 Nag. 423.
3. I.L.R. (1937) Bom. 508: 39 Bom.L.R. 382 (F.B.).