

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1025	Press
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195-196	
Dated	12 - 6 - 19 1863

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
12th June 1863.*

No. 195. Read the following letter from CLEMENT DALE, Esq., Government Pleader, Madras, to J. D. SIM, Esq., Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 3rd June 1863, No. 60 :—

SIR,

In continuation of the letter I had the honor of addressing to you, under the date and number noted in the margin, I do myself the honor of enclosing for the information of the Honorable the Governor in Council, a copy of questions put to the Pandit of the High Court in Regular Appeal Suit, No. 49 of 1861, and of his answers thereto, dated the 21st of March 1863.

Regular Appeal No. 49 of 1861.

Question.

A has six wives and adopts B and dies. It is not apparent that any one of the wives of A stands specially as adoptive mother of B. B dies leaving a widow C. One of A's widows, viz., D, survives. Would she succeed as mother of B on the death of C ?

Answer.

As none of the widows stand specially as adoptive mother of B, D succeeds C as mother of her (C's) husband.

Authority.

Mitacshara.—"The property of a woman dying without issue goes, in the first place, to her husband; and then, on his failure, to his nearest kinsmen (sapindas) allied by funeral oblations."

"The wife, and the daughters also, both parents, brothers likewise, &c., &c."—*Menu*. "The wealth goes to the sapinda kinsmen, &c."—*Sinrutichendrika*. The text of Catyana ("what has been given by relatives goes, upon their failure, to the husband") relates to the separate property of a woman, married otherwise than in the five forms mentioned. Accordingly the same sage says, "the woman's peculiar property acquired from her parents, in Ausura and other marriages, shall, on failure of her issue, go to the mother and father." Acquired from her parents, (that is, acquired by gift from her parents on failure of her issue) in default of issue of the woman married in the forms of Ausura, &c. The word "issue" is illustrative of heirs from daughter's son to son's son. *Yama*—"What has been given to a woman in Ausura and other marriages, vests in her father, if she dies childless, what has been given, that is, the gift by her father. Hence, no inconsistency exists. Thus, it must be understood that the woman's peculiar property given by her paternal or maternal uncle, or other relatives in Ausura and other marriages, goes back to her paternal uncle, &c., if they be alive. If they be dead, it goes to her husband."

If A made the adoption in conjunction with one of his wives, E, who thus stood specially as adoptive mother of B, would D in such case succeed F, and all the other wives being dead ?

D would succeed even in such case, the father alone and not the mother being the principal party in respect of adoption.

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Authority.

Duttaka Mimansa of Nunda Pundita.

"If the case is thus, the assent of the wife is requisite for the husband also; for the purpose (of such sanction) would be the same; [as that of the husband to the adoption by the wife]. This (if alleged) is wrong; for in consequence of the superiority of the husband, by his mere act of adoption, the filiation of the adopted, as son of the wife, is complete in the same manner as her property in any other thing accepted by the husband."

Menu. If among all the wives of the same husband one brings forth a male child Menu has declared them all, by means of that son, to be mothers of male issue.

Brihaspati.—"This rule applies to all the wives of the same husband."

Where a person such as A having a plurality of wives makes an adoption, is it necessary that any one of the wives should be distinguished at the time of the adoption as specially the adoptive mother of the boy taken in adoption, or do all the wives stand indiscriminately towards him as mothers?

In cases of adoption, the father alone and not the mother is the principal person. The wife whose presence is legally needed at the performance of Duttahomum, is the wife senior for the time being but not any of the other wives. The son adopted does not thereby, however, become affiliated only to herself. It is not therefore necessary at the time of adoption, to distinguish any wife as specially the adoptive mother of the boy taken in adoption. All the wives stand indiscriminately towards him, as mothers, because all of them are equally the wives of his adoptive father, and none of them has closer consanguinity to him, than the other.

The above authorities apply to this also.

Can a widow make an adoption with the authorization of her relatives not having had authority from her husband, or must such authorization come from her husband's heirs?

The authorization must come from the relatives not of the widow, but of her husband (such as her father-in-law, mother-in-law, &c.), who are heirs to the property, and guardians to her, and her venerable protectors.

Authority.

Calyanana.—"Let the childless widow, preserving unsullied the bed of her lord, and abiding with her venerable protector, enjoy, with moderation, the property until her death. After her, let the heirs take it."

Narada.—"When the husband is deceased, his kin are the guardians of his childless widow. In the disposal of the property, and care of herself as well as in her maintenance, they have full power. But if the husband's family be extinct, or contain no male, or be helpless, the kin of her own father are the

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guardians of the widow, if there be no relations of her husband within the degree of a sapinda."

Prjapaty.—"Let the childless widow give or accept a son with the assent of the father, brethren, &c., else, she will fall into the infernal regions."

Vasista.—"Let not a woman either give or accept a son unless with the assent of her husband or venerable protectors."

Where the deceased adoptive father has more widows than one, is the consent of all the widows necessary to an adoption made by the adopted son's widow or will the authorization of one of the said widows, being the senior widow, suffice?

The authorization of the senior widow, the heiress to the property would suffice; but as she is by reason of her sex dependent upon or subject to the control of her husband's kin, her authorization must receive the concurrence of the male dayadies the ultimate heirs.

The foregoing authorities apply to this answer alike.

26th March 1863.

Strange's Manual of the Hindoo Law, pages 73 and 61.

(Signed) C. GOPALA SASTRY,

Junior Pundit High Court.

(True Copy.)

9th May 1863.

(Signed) THOMAS WILKINS,

Acting Deputy Registrar.

To J. R. Boyson, Esq., Government Solicitor.

No. 196.

ORDER THEREON, 12th June 1863, No. 1,025.

Ordered to be communicated to the Board of Revenue in continuation of the Proceedings of Government, dated 15th May 1863, No. 844.

(Signed) J. D. SIM,

Secretary to Government.

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the consent of all the widows necessary to an adoption made by the adopted son's widow or with the authorization of one of the said widows, leaving the Senior widow sufficient?

would suffice but as she is by reason of her sex dependant upon or subject to the control of her husband's kin, her authorization must receive the concurrence of the male Dayadies the ultimate heirs.

28 March 1863

The foregoing authorities apply to this answer
alike

Strangers Manual of the Hindoo Law Pages
73 and 61.

Per C. Gopalasastry
Junior Pundit High Court

(True Copy)

/s/ Thomas Wilkins

As Dy Registrar

9th May 1863.

To: Mr. Bopen Esq
Government Solicitor

N^o 60

From Clement Dale Esquire Government Pleader Madras
To J. D. Sim Esquire Secretary to Government

Madras 3^d June 1863

Sir,

In continuation of the letter I had the
honor of addressing to you under the date
29 April 1863 N^o 37 and number noted in the margin, I do
myself the honor of enclosing for the information of
The Honorable The Governor in Council a copy of
Questions put to the Pundit of the High Court
in Regular Appeal Suit N^o 49 of 1861 and of his
answers thereto dated the 21st of March 1863.

Shew the honor to be

Sir,

Your Most Obedient Servant
Clement Dale
Government Pleader

In N^o 1

in a letter from Govt Pleader
to Secretary of Govt under date
the 3^d June 1863 - c. 60

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Recd 1813
of the
from Government
Secretary
Date 3rd June 1863
Recd 3rd June 1863

Ms. A. 9. 2. 1. 182
(with the enclosure)

Enclosure Copy of
from the Board of the
in 1813
this enclosure
2nd June 1863
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Ms. A. 9. 2. 1. 182

Ms. A. 9. 2. 1. 182

Ms. A. 9. 2. 1. 182

communicated to the Board
Enclosure in connection
the Board of the
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from the Board of the
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1863 No. 10 of the