-Dr. Ajay Nathani

Precedents on adoption

Adoption.-Acquiescence.-Adoption by Hindu widow under the authority of her husband.-Adopting of son accepted by every member of family.-Challenge to validity of adoption after 50 years on the ground that the widow was minor.-Burden lies very heavy on the claimant.-Strongest presumption arise in favour of validity of adoption. The presumption in this case is very heavy considering that all the parties to the adoption and all those who could have given evidence in favour of its validity have passed away. The appellant has not rebutted this presumption and has not shown that Seshamma did not attain the age of discretion in May 1904 and was not competent to make the adoption. The courts below rightly found in favour of the factum and validity of the adoption.*Voleti Venkata Ramarao v. Kesaparagada Bhaskararao and others*, AIR 1969 SC 1359: 1969 (2) SCJ 79: 1969 MLJ (SC) 105: 1970(1) SCR 301: 1969(2) SCC 79

Adoption.-Authority of Hindu widow.-Presumption of.-Local law of Mysore.-The local Act of 1933 providing for presumption of authority adopt in Hindu widow or the senior most widow where number of widows succeed.-The presumption can only be rebutted by direct or circumstantial evidence. In the absence of an express prohibition in writing, by the husband, his widow, or, where he had left more widows that one, the senior most of them shall be presumed to have his authority to make an adoption.' Ordinarily this presumption can be rebutted by establishing that the husband had expressly prohibited her from making an adoption. Such a prohibition could be established either by direct evidence or by circumstantial evidence. *Eramma and others v. Muddappa,* AIR 1966 SC 1137: 1966(2) SCWR 233.

Adoption.-Authority of Hindu widow.-Adoption of child by widow after death of her husband.-Act silent about such adoption.-Shastric Law gives express authority by husband to widow to adopt.-No evidence to show that husband had authorised widow to adopt.-Adoption invalid.

There is in fact a deed of adoption. Exhibit 116 brought before the learned trail

Judge corroborated such a state of affairs. The deed also was registered and by reason of registration and other available evidence on record, to exception can be taken to the observations of the learned trial Judge that there is overwhelming evidence on record to prove the factum of adoption. There is existing evidence on record as regards the adoption ceremony. But the issue herein does not pertain to the validity and legality of the adoption in terms of the registered deed in favour of the plaintiff by Radhabai and it is on this score that strong reliance was placed on Section 8 of the Hindu Adoptions and Maintenance Act and it is on this count the provision of the Act (Section 8) would not have any application since the widow has undoubtedly a right to adopt the child for herself but in the event the child was to be adopted to the husband the statute is otherwise silent and thus the law as it stood prior to the enactment of the legislation as regards the adoptions would have to be taken recourse to for proper appreciation. The Sahastric Law provides an express authority by the husband to the widow to adopt a child in the contextual facts there is not an iota of evidence in regard thereto as such adoption has been stated to be not legal and valid by both the Courts below and we do also feel it inclined to accept the same. *Rajendra Kumar vs. Kalyan (dead) by LRs,* AIR 2000 SC 3335 : 2000(3) Mad LJ 170 : 2000(2) Hindu LR 353 : 2000(4) Pat LJR 210 : 2000(8) SCC 99 : 2000(2) Marri LJ 491 : 2000(3) Cur C 274

Adoption.-Authority of Hindu widow.-Adoption of son by widow after death of her husband.-Findings in previous suit that widow was not living as member of HUF of her father-in-law and was entitled only to maintenance.-Would operate as *res judicata* in subsequent suit for possession by adopted son.

Where the plaintiff in a suit for possession of properties claimed that he was adopted in the year 1967 by a widow after death of her husband and that her husband, *i.e.* his his adoptive father was also adopted to her father-in-law, the findings in previous suit before date of his adoption to which the widow was party, to the effect that adoption of defendant in that suit to her father-in-law and not of her husband was proved and that she was not living as a member of HUF of her father-in-law and was entitled to maintenance, would operate as *res judicata*, because the plaintiff in subsequent suit could only claim by succession to his mother who would have become full owner of property under Hindu Succession Act and not independently

as a coparcener of his father on the basis of a legal fiction. Moreover by virtue of Section 12 of the Act of 1956, the plaintiff would not have any right only on the basis that he was adopted son of widow's husband because he could not have divested his mother of her full ownership even by virtue of his adoption. *Rajendra Kumar vs. Kalyan (dead) by LRs,* AIR 2000 SC 3335 : 2000(3) Mad LJ 170 : 2000(2) Hindu LR 353 : 2000(4) Pat LJR 210 : 2000(8) SCC 99 : 2000(2) Marri LJ 491 : 2000(3) Cur C 274

Adoption.-Authority of Hindu widow.-Deceased leaving behind two widows.-Adoption of child by one Hindu Widow.-Need not consult or take consent of co-widow.-Adoption legal and valid.

When the parliament resolved to provide for and insist upon the obtaining of the consent of all of them, unless they or any one of them suffered any of the enumerated infirmities rendering such consent unnecessary, the conscious and positive as well as deliberate omission to provide for a female Hindu seeking or obtaining any such consent from a co or junior widow is a definite pointer to indicate that the legislative intent and determination was not to impose any such clog on the power specifically conferred upon the female Hindu may be for the obvious reason that under the scheme of the Act the Hindu female has been enabled and empowered to adopt not only to herself but also to her husband, and in tune with the changed and modern concept of equality of women and their capabilities to decide independently statutorily recognized and the very reason for insisting upon such authority or consent from the husband or the sapindas under the old Hindu Law having lost its basis and thereby ceased to be of any relevance or valid purpose whatsoever. In such circumstances, acceding to the submission to read into Section 8 the stipulation in the proviso to Section 7 with the Explanation therein would amount to legislation by Court on the lines as to what is wholly impermissible for courts, dehors any justification or necessity for such a provision. *Vijayalakshmamma (Smt.) vs. B.T. Shankar,* AIR 2001 SC 1424 : 2001(4) SCC 558 : 2001(4) JT 290

Adoption.-Authority of husband.- Consent of sapindas.-Necessity of.- Persons competent to grant consent .-Interpretation of law relating to adoption as applicable in Madras. The very fact that consent is given by a sapinda implied that

the adoption is considered desirable and is being resorted to by the widow for spiritual and religious considerations and not out of caprice. Every sapinda knows that, as soon as an adoption is made, spiritual benefit will accrue to the deceased husband and that the existence of the adopted son will perpetuate his line. Such consciousness is implied in giving the consent. It is only when the consent is being refused by a sapinda that it becomes relevant to see whether the refusal was justified on the ground that the adoption was not being made with such objects. The requirement for consent of a sapinda for adoption by a widow who has not obtained the consent of her husband in his lifetime was laid down because Hindu law considers a woman incapable of independent judgment and proceeds on the basis that a woman is likely to be easily misled by undesirable advisers. This aspect, in our opinion, has considerable bearing on the question whether a widow making an adoption must or need not obtain the consent of another senior woman in the family who in herself a widow. The advice of a person incapable of independent judgment would hardly ensure that the adoption to be made by a widow is proper and justified. On the principles thus recognised in Hindu law, it would be justified to hold that a Hindu widow, even if she happens to be the nearest sapinda to the widow seeking to make the adoption, would not be a competent advisor and, consequently, there can be no requirement that her consent must be obtained for validating the adoption. The principles clearly point to the conclusion that the consent must be obtained from the nearest male sapinda.*Tahsil Naidu and another v. Kulla Naidu and others*, AIR 1970 SC 1673: 1970 (2) SCJ 744: 1969(3) SCC 658: 1970(2) SCR 499

Adoption.-Authority of husband.- Necessity of.-Ceremonies of adoption carried on with recital.-It was under the authority of husband.-The conduct of adoption has not bearing on the question whether such authority was in fact given.-Adoption held to be invalid. The requirement of the Banaras School of Hindu Law that an adoption cannot be made by a Hindu widow without the authority of her deceased husband. It is quite possible we would even say, quite certain.-that the appellant went through the ceremonies of adoption under the impression that what she was accomplishing was a valid act of adoption and in these circumstances, to conclude from the factum of adoption that authority must

have been conferred upon her by Kedar Nath to adopt a son would be a long jump in the argument which we cannot take. The subsequent conduct of the appellant has no bearing at all on the decision of the question whether authority was given by Kedar Nath to the appellant to make an adoption. The High Court was in the circumstances clearly wrong in taking the view that the adoption of the third respondent was valid and binding. *Smt. Shanti Bai v. Smt. Miggo Devi and others,* AIR 1980 SC 2008: 1980(4) SCC 462

Adoption.-Burden of proof.-A person who claims succession of property by alleging adoption must prove such adoption.-The general presumption about a Hindu family that it has joint.-A person claiming partition and seeking relief on this basis must prove factum of partition.`The general principle undoubtedly is that a Hindu family is presumed to be joint unless the contrary is proved, but where it is admitted that one of the coparceners did separate himself from the other members of the joint family and had his share in the joint property partitioned off for him, there is no presumption that the rest of the coparceners continued to be joint. There is no presumption on the other side too that because one member of the family separated himself, there has been separation with regard to all. It would be a question of fact to be determined in each case upon the evidence relating to the intention of the parties whether there was a separation amongst the other coparceners or that they remained united. The burden would undoubtedly lie on the party who asserts the existence of a particular state of things on the basis of which he claims relief. *A. Raghavamma and another v. A. Chenchamma and another,* AIR 1964 SC 136: 1964(1) SCA 593: 1964(2) SCR 933

Adoption.-Right of adoptive parent.-Disposal of property by Will.-Letter written by natural father to adoptive father does not reflect any agreement.-It could be termed as unilateral offer giving child in adoption.-Letter signed by number of persons, but not signed by adoptive father.-Nothing to indicate that letter was a covenant or contract restricting powers of adoptive father or mother to dispose of property either by transfer or by Will.-Term of letter that after death of adoptive father or mother, adoptive son alone would have full right over moveable and immovable property belonging to them and entitled to receive property.-Letter reflect that there was no restraint on adoptive father to

execute Will. *Chiranjilal Srilal Goenka (dead) by LRs vs. Jasjit Singh and others,* AIR 2001 SC 266: 2001(1) SCC 486 : 2000(S3) JT 418 : 2001(1) Arbi LR 1 : 2001(1) Civ CR 438

Adoption.-Valid adoption.-Eviction petition.-Plea that appellant was adopted daughter of deceased tenant.-No document of adoption produced and not an iota of evidence to show that any ceremony of adoption was performed and appellant was actually handed over in adoption.-Mere production of joint bank account not a proof of adoption.-Adoption not proved.-Suit for eviction decreed and affirmed by appellant Court.-Appeal dismissed.# *Nilima Mukherjee vs. Kanta Bhushan Ghosh,* AIR 2001 SC 2725 : 2001(6) SCC 660 : 2001(6) JT 486:

Adoption.-Burden of proof.-Acquiescence.-Effect of.-Long recognition of adopted son by all relatives .-Inability to produce evidence as the adoption took place over 54 years prior to institution of suit.-Effect of. The ceremonies of giving and taking are absolutely necessary in all cases, these ceremonies must be accompanied by the actual delivery of child; symbolical or constructive delivery by the mere parol expression of intention on the part of the giver and the taker without the presence of the body is not sufficient. Nor are deeds of gift and acceptance executed and registered in anticipation of the intended adoption nor acknowledgment, sufficient by themselves to constitute legal adoption, in the absence of actual gift and acceptance accompanied by actual delivery; a formal ceremony being essential for that purpose. There is no doubt that the burden of proving satisfactorily that he was given by his natural father and received by Gopal Das as his adoptive son is on Shyam Behari Lal. But as observed by the Judicial Committee of the Privy Council in *Rajendro Nath Holdar v. Jogendro Nath Banerjee*, 1870-72 14 Moo Ind App 67 (PC) that although the person who pleads that he had been adopted is bound to prove his title as adopted son, as a fact yet from the long period during which he had been received as an adopted son, every allowance for the absence of evidence to prove such fact was to be favourably entertained. In the case of a Hindu, long recognition as an adopted son, raised even stronger presumption in favour of the validity of his adoption, arising from the possibility of the loss of his rights in his own family by being adopted in another family. In the case of an ancient adoption showing that the body was treated for a long time as the adopted

son at a time when there was no controversy is sufficient to prove the adoption although evidence of actual giving and taking is not forthcoming. *L. Debi Prasad (dead) by L.Rs. v. Smt. Tribeni Devi and others,* AIR 1970 SC 1286: 1970 (1) SCC 677: 1971(1) SCR 101

Adoption.-Consent of relatives.-Necessity of.-Local customs.-The husband authorising the wife to make adoption after his death.-Necessity of consent husband's sapindas would not arise. The evidence of the plaintiff's own witnesses justify the conclusion that in his life time Annirudhalalji authorised Mahalakshmi Bahuji Maharaj to make an adoption after his death.-though at the same time indicating his preference for one particular boy. The necessity of consent of the husband's sapindas would arise.-if the Madras School of Mitakshara law was applicable.-only where there was no authority from the husband. *Goswami Shree Vallabhalalji v. Goswamini Shree Mahalaxmi Bahuji Maharaj and another,* AIR 1962 SC 356: 64 Bom LR 433: 1962(3) SCR 641

Adoption.-Custom of Dravidas.- Consent of sapindas.-Necessity of.-The discretion of Hindu widow for adoption is absolute and she cannot be compelled to do so.-The power to adopt is exercised by widow as a representative of her husband and, therefore, consent of sapindas is a protection against misuse of this power. Hindu widow in making an adoption exercises a power which she alone can exercise, though her competency is conditioned by other limitations. Whether she was authorized by her husband to take a boy in adoption or whether she obtained the assent of the sapindas, her discretion to make an adoption, or not to make it, is absolute and uncontrolled. She is not bound to make an adoption and she cannot be compelled to do so. But if she chooses to take a boy in adoption there is an essential distinction between the scope of the authority given by her husband and that of the assent given by the sapindas. As the widow acts only as a delegate or representative of her husband, her discretion in making an adoption is strictly conditioned by the terms of the authority conferred on her. But in the absence of any specific authorizaion by her husband, her power to take a boy in adoption is coterminus with that of her husband, subject only to the assent of the sapindas. To put it differently, the power to adopt is that of the widow as the representative of her husband and the requirement of assent of the sapindas

is only a protection against the misuse of it. It is not, therefore, right to equate the authority of a husband with the assent of the sapindas. If this distinction is borne in mind, it will be clear that in essence the adoption is an act of the widow and the role of the sapindas is only that of advisers. The validity of an adoption has to be judged by spiritual rather than temporal considerations and that devolution of property is only of secondary importance.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 defeated by the adoption. 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. *V.T.S. Chandrasekhara Mudaliar v. Kulandaivelu Mudaliar and others*, AIR 1963 SC 185: 1963(2) SCR 440.**Adoption.- Custom of Dravidas.- Consent of sapindas.-Necessity of belief in Hindu scriptures and rituals.-The consent to adoption is not a religious act.-Non-belief in rituals or dogmas does not remove such person from being Hindu.-A person born Hindu remains Hindu till he adopts another religion.- Consent of such sapindas is valid.** The act of giving consent is not a religious act; it is the act of a guardian or protector of a widow, who is authorized to advise the widow who is presumed to be incompetent to form an independent opinion. His non-belief in Hindu scriptures cannot in any way detract from his capacity to perform the said act. The fact that he does not believe in such things does not make him any the less a Hindu. The non-belief in rituals or even in some dogmas does not *ipso facto* remove him from the fold of Hinduism. He was born a Hindu and continues to be one till he takes to another religion. But what is necessary is, being a Hindu, whether he was in a position to appreciate the question referred to him and give suitable answer to it. After going through his evidence, we have no doubt that this defendant had applied his mind to the question before him. Whatever may be his personal predilections or views on Hindu religion and its rituals, he is a Hindu and he discharged his duty as a guardian of the widow in the matter of giving his consent. In the circumstances of the case, his consent was sufficient to validate the adoption.*V.T.S. Chandrasekhara Mudaliar v. Kulandaivelu Mudaliar and others,* AIR

1963 SC 185: 1963(2) SCR 440.**Adoption.-Custom of Dravidas.- Consent of sapindas.-Scope of powers of kinsmen.-The power is in the nature of fiduciary duty and should not be exercised in personal interest on the basis of independent and objective judgement of adoption.**The scope of the exercise of the power depends (1) on the nature of the power, and (2) on the object for which it is exercised. The nature of the power being fiduciary in character, it is implicit to it that it shall not be exercised so as to further the personal interests of the sapindas. The law does not countenance a conflict between duty and interest and if there is any such conflict, the duty is always made to prevail over the interest. It would be negation of the fiduciary duty, were we to hold that a sapinda could refuse to give his consent on the ground that the members of his branch or those of his brother's would be deprived of their inheritance. If that was the object of the refusal, it could not make any difference in the legal results, however the intention was camouflaged. Suppose a sapinda gives his consent on the condition that a member of his branch only should be adopted. In effect and substance he introduces his personal interests in the matter of his assent, with a view to secure the properties to his branch. It would only be a matter of degree should he extend the choice of the widow to the divided branches of his family comprehending a large group of sapindas, for even in that case the sapinda seeks to enforce his choice on the widow on extraneous considerations. In giving or withholding his consent in his capacity as guardian or the protector of the widow, the sapinda should form an honest and independent judgment on the advisability or otherwise of the proposed adoption with reference to the widow's branch of the family. The sapinda should bring to bear on impartial and judicial mind on the problem presented to him and should not be swerved by extraneous and irrelevant considerations. He shall ask himself two questions, *viz.,* (i) whether the proposed adoption would achieve the object for which it was intended, and (ii) whether the boy selected was duly qualified. We have already noticed that the object of the adoption is two-fold: (1) 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. The sapinda should first answer the question whether the proposed adoption would achieve the said purpose. If the widow's power to take a boy in adoption was not exhausted there would hardly be an occasion when a

sapinda could object to the widow taking a boy in adoption, for every valid adoption would invariably be in discharge of a religious duty. But it is also permissible for a sapinda to take objection in the matter of selection of the boy on the ground that he is not duly qualified for being adopted; he may rely upon mandatory prohibitory rules laid down by shastras and recognized by courts in regard to the selection of a particular boy. *V.T.S. Chandrasekhara Mudaliar v. Kulandaivelu Mudaliar and others,* AIR 1963 SC 185: 1963(2) SCR 440.

Adoption.-Effect of.-Hindu widow adopting a son after the death of the husband.-The adopted son becomes coparcener.-The daughter and the legal heirs of widows stand divested from claiming the property. The case of an adopted son's claiming to divest the heir of a collateral, who died before the adoption took place, of the property inherited from the collateral, is different from the case of his claiming the property which originally belonged to the adoptive father but had devolved on a collateral and, after the death of the collateral, which took place before the adoption, devolved on a heir of the collateral. In the former case, the claim is to the property of the collateral, while in the latter case it is to the property of the adoptive father, which, by force of circumstances, had passed through the hands of a collateral.In the present case, Krishnabai owned the property as full owner on the death of her father Narasappagouda, according to the Hindu law in the area in which the property in suit lay. But her title was defeasible on Tungabai, widow of Bandegouda, adopting a son to her husband, Vasappa and, after him, his sons, inherited this property of Krishnabai and thus the appellants claimed under Krishnabai. Their such claim is therefore defeasible on the adoption of a son by Tungabai. The fact that Krishnabai inherited the property of her father absolutely, does not affect this question of title being defeated on the adoption of a son by Tungabai. The character of the property does not change, as suggested for the appellants, from coparcenary property to self acquired property of Krishnabai so long as Tungabai, the widow of the family, exists, and is capable of adopting a son, who becomes a coparcener. Krishnamurthi Vasudeorao Deshpande and another v. Dhruwaraj, AIR 1962 SC 59: 64 Bom. LR 165: 1961(2) Mad. LJ (SC) 152: 1961 MPLJ 1114: 1962(2) SCR 813.

Adoption.-Essential requisite.- Physical act of giving and taking is essential

requisite which is satisfied only on actual delivery and acceptance of the child. For a valid adoption, the physical act of giving and taking is an essential requisite, a ceremony imperative in all adoptions, whatever the caste. And the requisite is satisfied in its essence only by the actual delivery and acceptance of the boy, even though there exist an expression of consent or an executed deed of adoption. *Madhusudan Das v. Smt. Narayani Bai and others,* AIR 1983 SC 114: 1983(1) SCC 35: 1983(1) SCR 851: 1982(2) Scale 1083: 1983 MPLJ 313: 1983 Mah.L.J. 402

Adoption.-Estoppel by conduct.- Application of rule. The documents do not support the plea that the appellant had been led to alter his position through a belief in any misrepresentation made by the respondent Chaltibai as to his having been adopted by Lakshminarayan. And he cannot be allowed to set up a case different to his case in the written statement nor can he be allowed to prove his title as an adopted son, on such different case. The correct rule of estoppel applicable in the case of adoption is that it does not confer status. It shuts out the mouth of certain persons if they try to deny the adoption, but where both parties are equally conversant with the true state of facts this doctrine has no application. *Kishori Lal v. Mt. Chaltibai,* AIR 1959 SC 504: 1959 SCJ 560: 1959 Supp (1) SCR 733

Adoption.-Jain custom.-Consent of husband.-Right of Jain widow to adopt without authority of husband repeatedly recognised in judicial decisions.-The custom found generally applicable to Jains all over India except Jains domicile in Madras and Punjab.-Adoption by Hindu widow, affirmed. *R.B.S.S. Munnalal and others v. S.S. Rajkumar and others,* AIR 1962 SC 1493: 1962 Nag LJ 521: 1962 Sup. (3) SCR 418**Adoption.-Jain custom.-Effect of.-Act of adoption is a purely secular matter in respect of Jains.** So far as Jains are concerned the ordinary Hindu law is to be applied to them in the absence of proof of special customs and usages varying that law. It is true that Jains do not believe that a son either natural or adopted confers any spiritual benefit on the father, and so adoption amongst Jains is a purely secular matter, but, with regard to the rights of an adopted son, unless a contrary custom or usage is established the ordinary Hindu law would apply. *Shuganchand v. Prakash Chand and others,* AIR 1967 SC 506

Adoption.-Joint adoption.- Permissibility.-The concept of joint adoption by husband and wife is not entirely unknown in as much as the adoption by

husband is joint by the wife as adoptive mother of the adopted child. *N. Kasturi v. D. Ponnammal and others,* AIR 1961 SC 1302: 1961(2) SCA 560: 1961(3) SCR 955

Adoption.-Pregnancy.-Effect.-Ex- istence of son in embryo of co-widow does not invalidate adoption. The main object of adoption is to secure spiritual benefit to the adopter, though its secondary object is to secure an heir to perpetuate the adopter's name. Such being the significance of adoption, its validity shall not be made to depend upon the contingencies that may or may not happen. It is suggested that an adoption cannot be made unless there is certainty of not getting a son and that if the wife is pregnant, there is a likelihood of the adopter begetting a son and, therefore, the adoption made is void. The texts cited do not support the said proposition. Its acceptance will lead to anomalies. When a son in his mother's womb is equated with a son in existence, *vis-a-vis* his right to set aside an alienation or to reopen a partition, the argument proceeds, the father cannot validly adopt, as from the date of conception the son must be deemed to be in existence. But there is an essential distinction between an alienation, partition and inheritance on the one hand and adoption on the other; his right to set aside an alienation hinges on his secular right to secure his share in the property belonging to the family, as he has a right by birth in the joint family property and transactions effected by the father in excess of his power when he was in the embryo are voidable at his instance; but, in the case of adoption, it secures mainly spiritual benefit to the father and the power to adopt is conferred on him to achieve that object. The doctrine evolved wholly for a secular purpose would be inappropriate to a case of adoption. We should be very reluctant to extend it to adoption, as it would lead to many anomalies and in some events defeat the object of the conferment of the power itself. The scope of the power must be reasonably construed so as to enable the donee of the power to discharge his religious duty. We, therefore, hold that the existence of a son in embryo does not invalidate an adoption. *Guramma Bhratar Chanbasappa Deshmukh and others v. Mallappa Chanbasappa and another,* AIR 1964 SC 510: 66 Bom LR 284: 1964 MPLJ 133: 1964(4) SCR 497**Adoption.-Principle of relation back of date of adoption to the date of death of adopted father.- Application of principle where adoptee is to succeed estate of a person other than adopted father.** The fiction that an adoption relates back to the date of the death of the adoptive father applies only

when the claim of the adoptive son relates to the estate of the adoptive father. But where the succession to the property of a person other than the adoptive further is involved, the principle applicable is not the rule of relation back but the rule that inheritance once vested cannot be divested. The rights of an adoptd son cannot be more than that of his adoptive father. If the plaintiff's adoptive father was alive in 1933 when the partition took place, he could not have obtained anything more than 1/3rd share in the family properties. It passed our comprehension how the plaintiff could acquire a greater right than his adoptive father could have had if he had been alive on the date of partition and that he could have got if he had been adopted prior to that date. In our judgment the plaintiff's claim for a half share in the family properties is unsustainable. Govind Hanumantha Rao Desai v. Nagappa, AIR 1972 SC 1401: 1972(1) SCC 515: 1972(3) SCR 200

Adoption.-Procedure.-Necessity of formal ceremony.-Act of giving and taking of child if necessary for valid adoption. Under the Hindu Law, whether among the regenerate caste or among Sudras, there cannot be a valid adoption unless the adoptive boy is transferred from one family to anther and that can be done only by the ceremony of giving and taking. The object of the corporeal giving and receiving in adoption is obviously to secure due publicity. To achieve this object it is essential to have a formal ceremony. No particular form is prescribed for the ceremony, but the law requires that the natural parent shall handover the adoptive boy and the adoptive parent shall receive him. The nature of the ceremony may vary depending upon the circumstances of each case. But a ceremony there shall be, and giving and taking shall be part of it. The exigencies of the situation arising out of diverse circumstances necessitated the introduction of the doctrine of delegation; and, therefore, the parents, after exercising their volition to give and take the boy in adoption, army both or either of them delegation, may both or either of them delegate the physical act of handing over the boy or receiving him, as the case may be, to a third party. *Lakshman Singh Kothari v. Smt. Rup Kanwar,* AIR 1961 SC 1378: 1961 (2) KerLR 156: 1962(1) SCR 477

Adoption.-Proof of.-Absence of registered document.-No evidence of change of name or the fact that the adopted was living with adopted mother.-Need for Court to satisfy its conscience.-In the absence of evidence, the adoption

rightly held to have not been proved. In the case of an adoption which is not supported by a registered document or any other evidence of a clinching nature if there exist suspicious circumstances, the same must be explained to the satisfaction of the conscience of the Court by the party contending that there was such an adoption. Such is the position as an adoption would divert the normal and natural course of succession. Experience of life shows that just as there have been spurious claims about execution of a will, there have been spurious claims about adoption having taken place. And the Court has therefore to be aware of the risk involved in upholding the claim of adoption if there are circumstances which arouse the suspicion of the Court and the conscience of the Court is not satisfied that the evidence preferred to support such an adoption is beyond reproach. *Rahasa Pandiani (dead) by LRs. and others v. Gokulananda Panda and others,* AIR 1987 SC 962: 1987(2) SCC 338: 1987(1) Scale 452: 1987(1) J.T. 507: 1987 Rajdhani LR 185**Adoption.-Proof of.-Performance of funeral rites.-No inference can be drawn from such mere performance unless the fact of adoption is itself not proved.** The mere fact of performance of these funeral rites does not necessarily support an adoption. The performance of these rites frequently varies according to the circumstances of each case and the view and usage of different families. The evidence led by the appellant himself shows that in the absence of the son, junior relations like a younger brother or a younger nephew peforms the obsequial ceremonies. The performance of funeral rites will not sustain an adoption unless it clearly appears that the adoption itself was performed under circumstances as would render it perfectly valid. *Kishori Lal v. Mt. Chaltibai,* AIR 1959 SC 504: 1959 SCJ 560: 1959 Supp (1) SCR 733

Adoption.-Putrika Putra.-Banaras School of Mitakshra Law.-Validity of custom.-The custom found to have become obsolete long before the succession in question.-Succession claimed on the basis of the custom not maintainable. All the digests, lectures and treatises support the view that the practice of appointing a daughter as a putrika and of treating her son as putrika putra had become obsolete several centuries ago.When a person had two or more daughters, the appointment of one of them would give her primacy over the wife and the other daughters (not so appointed) and her son (appointed daughter's son) would succeed to the exclusion of

the wife and other daughters and their sons and also to the exclusion of his own uterine brothers (i.e. the other sons of the appointed daughter). Whereas in the case of plurality of sons all sons would succeed equally in the case of appointment of a daughter, other daughters and their sons alongwith the wife would get excluded. It is probably to prevent this kind of inequality which would arise among the daughters and daughter's sons, the practice of appointing a single daughter as a putrika to raise an issue must have been abandoned when people were satistified that their religious feelings were satisfied by the statement of Manu that all sons of daughters whether appointed or not had the right to offer oblations and their filial yearnings were satisfied by the promotion of daughter's sons in the order of succession next only to the son as the wife and daughters had been interposed only as limited holders. We hold that the practice of appointing a daughter as a putrika to beget a son who would become the putrika putra had become obsolete long before the lifetime of Raja Dhrub Singh. It follows that the appellants who claim the estate on the above basis cannot succeed. *Shyam Sunder Prasad Singh and others v. State of Bihar and others,* AIR 1981 SC 178: 1980 Supp SCC 720: 1981(1) SCR 1

Adoption.-Right of adopted son to re-open partition.-Principle of. The propositions that emerge are that: (i) A widow's adoption cannot be stultified by an anterior partition of the joint family and the adopted son can claim a share as if he were begotten and alive when the adoptive father breathed his last; (ii) Nevertheless, the factum of partition is not wiped out by the later adoption; (iii) Any disposition testamentary or inter vivos, lawfully made antecedent to the adoption is immune to challenge by the adopted son; (iv) lawful alienation, in this context, means not necessarily for a family necessity but alienation made competently in accordance with law; (v) A widow's power of alienation is limited and if.-and only if.-the conditions set by the Hindu Law are fulfilled will the alienation bind a subsequently adopted son. So also alienation by the Karta of an undivided Hindu family or transfer by a coparcener governed by the Banaras school; (vi) Once partitioned validly, the share of a member of a Mitakshara Hindu family in which his own issue have no right by birth can be transferred by him at his will and such transfers, be they by will, gift or sale, bind the adopted son who comes later on the scene. Of course, the position of a void or voidable transfer by such a sharer may stand on a

separate footing. *Shripad Gajanan Suthankar v. Dattaram Kashinath Suthankar,* AIR 1974 SC 878: 1974(2) SCJ 162: 1974(2) SCC 156: 1974(3) SCR 474**Adoption.-Right of Hindu widow.- The power to adopt come to an end with interposition of another widow of son or grandson as the power vest in the widow to continue the family line.** (1) That the interposition of a grandson, or the son's widow, competent to continue the line by adoption brings the mother's power of adoption to an end; (2) That the power to adopt does not depend upon any question of vesting or divesting of property; and (3) That a mother's authority to adopt is not extinguished by the mere fact that her son had attained ceremonial competence. It is too late in the day to say that there are no limitations of any kind on the widow's power to adopt excepting those that limit the power of her husband to adopt, i.e. that she cannot adopt in the presence of a son, grandson or great grandson. Hindu Law generally and in particular in matters of inheritance, alienation and adoption gives to the widow powers of a limited character. *Gurunath v. Kamalabai and others,* AIR 1955 SC 206: 1955 All LJ 461: 57 Bom LR 694: 1955(1) SCR 1135**Adoption.-Right of Hindu widow.-Validity of adoption.-No specific authority given by husband.-Adoption made by widow with the consent of sapindas, is valid.-The widow's motive for adoption is irrelevant.** When there is express authority by the husband or when consent of the sapindas has been properly obtained the motive of the widow is irrelevant.The motive of the widow in making an adoption is irrelevant for the purpose of validating the adoption. Consequently, the refusal of the consent by sapindas on the ground that the motive of the widow is improper would amount to improperly withholding the consent. *G. Appaswami Chettiar and another v. R. Sarangapani Chettiar and others,* AIR 1978 SC 1051: 1978(3) SCC 55: 1978(3) SCR 520: 1978 LS (AP) 38

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Adoption.-Validity of.-Mental ability of adopter.-Doubts about mental capacity at the time of adoption.-Deed of adoption held to be invalid. *Madan Lal v. Mst. Gopi and another,* AIR 1980 SC 1754: 1980(4) SCC 255: 1981(1) SCR 594

Hindu Law.-Adoption.-Acquisition.-Adoption by Hindu widow under the authority of her husband.-Adopting of son accepted by every member of family.-Challenge to validity of adoption after 50 years on the ground that the widow was minor.--Burden lies very heavy on the claimant.-Strongest presumption arise in favour of validity of adoption. The presumption in this case is very heavy considering that all the parties to the adoption and all those who could have given evidence in favour of its validity have passed away. The appel-lant has not rebutted this presumption and has not shown that Seshamma did not attain the age of discretion in May 1904 and was not competent to make the adoption. The courts below rightly found in favour of the factum and validity of the adoption. *Voleti Venkata Ramarao v. Kesaparagada Bhaskararao and others,* AIR 1969 SC 1359: 1969 (2) SCJ 79: 1969 MLJ (SC) 105: 1970(1) SCR 301: 1969(2) SCC 79

Hindu Law.-Adoption.-Authority of Hindu widow.-Presumption of.-Local law of

Mysore.-The local Act of 1933 providing for presumption of authority adopt in Hindu widow or the senior most widow where number of widows succeed.-The pre-sumption can only be rebutted by direct or circumstantial evidence. In the absence of an express prohibition in writing, by the husband, his widow, or, where he had left more widows that one, the senior most of them shall be presumed to have his authority to make an adoption.Ordinarily this presumption can be rebutted by establishing that the husband had expressly prohibited her from making an adoption. Such a prohibition could be established either by direct evidence or by circumstantial evidence. *Eramma and others v. Muddappa,* AIR 1966 SC 1137: 1966(2) SCWR 233.

Hindu Law.-Adoption.-Authority of husband.-Consent of sapindas.-Necessity of.-Persons competent to grant consent.-Interpretation of law relating to adoption as applicable in Madras. The very fact that consent is given by a sapinda implied that the adoption is considered desirable and is being resorted to by the widow for spiritual and religious considerations and not out of caprice. Every sapinda knows that, as soon as an adoption is made, spiritual benefit will accrue to the deceased husband and that the existence of the adopted son will perpetuate his line. Such consciousness is implied in giving the consent. It is only when the consent is being refused by a sapinda that it becomes relevant to see whether the refusal was justified on the ground that the adoption was not being made with such objects. The requirement for consent of a sapinda for adoption by a widow who has not obtained the consent of her husband in his lifetime was laid down because Hindu law considers a woman incapable of independent judgment and proceeds on the basis that a woman is likely to be easily misled by undesirable advisers. This aspect, in our opinion, has considerable bearing on the question whether a widow making an adoption must or need not obtain the consent of another senior woman in the family who in herself a widow. The advice of a person incapable of independent judgment would hardly ensure that the adoption to be made by a widow is proper and justified. On the principles thus recognised in Hindu law, it would be justified to hold that a Hindu widow, even if she happens to be the nearest sapinda to the widow seeking to make the adoption, would not be a competent advisor and, consequently, there can be no requirement that her consent must be

obtained for validating the adoption. The principles clearly point to the conclusion that the consent must be obtained from the nearest male sapinda. *Tahsil Naidu and another v. Kulla Naidu and others,* AIR 1970 SC 1673: 1970 (2) SCJ 744: 1969(3) SCC 658: 1970(2) SCR 499

Hindu Law.-Adoption.-Authority of husband.-Necessity of.-Ceremonies of adoption carried on with recital.-It was under the authority of husband.-The conduct of adoption has not bearing on the question whether such authority was in fact given.-Adoption held to be invalid. The requirement of the Banaras School of Hindu Law that an adoption cannot be made by a Hindu widow without the authority of her deceased husband. It is quite possible we would even say, quite certain.-that the appellant went through the ceremonies of adoption under the impression that what she was accomplishing was a valid act of adoption and in these circumstances, to conclude from the factum of adoption that authority must have been conferred upon her by Kedar Nath to adopt a son would be a long jump in the argument which we cannot take. The subsequent conduct of the appellant has no bearing at all on the decision of the question whether authority was given by Kedar Nath to the appellant to make an adoption. The High Court was in the circumstances clearly wrong in taking the view that the adoption of the third respondent was valid and binding. *Smt. Shanti Bai v. Smt. Miggo Devi and others,* AIR 1980 SC 2008: 1980(4) SCC 462

Hindu Law.-Adoption.-Burden of proof.-A person who claims succession of property by alleging adoption must prove such adoption.-The general presumption about a Hindu family that it has joint.-A person claiming partition and seeking relief on this basis must prove factum of partition. `The general principle undoubtedly is that a Hindu family is presumed to be joint unless the contrary is proved, but where it is admitted that one of the coparceners did separate himself from the other members of the joint family and had his share in the joint property partitioned off for him, there is no presumption that the rest of the coparceners continued to be joint. There is no presumption on the other side too that because one member of the family separated himself, there has been separation with regard to all. It would be a question of fact to be determined in each case upon the evidence relating to the intention of the parties whether there was a separation

amongst the other coparceners or that they remained united. The burden would undoubtedly lie on the party who asserts the existence of a particular state of things on the basis of which he claims relief. *A. Raghavamma and another v. A. Chenchamma and another,* AIR 1964 SC 136: 1964(1) SCA 593: 1964(2) SCR 933

Hindu Law.-Adoption.-Burden of proof.-Acquiescence.-Effect of.-Long recognition of adopted son by all relatives.-Inability to produce evidence as the adoption took place over 54 years prior to institution of suit.-Effect of. The ceremonies of giving and taking are absolutely necessary in all cases, these ceremonies must be accompanied by the actual delivery of child; symbolical or constructive delivery by the mere parol expression of intention on the part of the giver and the taker without the presence of the body is not sufficient. Nor are deeds of gift and acceptance executed and registered in anticipation of the intended adoption nor acknowledgment, sufficient by themselves to constitute legal adoption, in the absence of actual gift and acceptance accompanied by actual delivery; a formal ceremony being essential for that purpose. There is no doubt that the burden of proving satisfactorily that he was given by his natural father and received by Gopal Das as his adoptive son is on Shyam Behari Lal. But as observed by the Judicial Committee of the Privy Council in *Rajendro Nath Holdar v. Jogendro Nath Banerjee*, 1870-72 14 Moo Ind App 67 (PC) that although the person who pleads that he had been adopted is bound to prove his title as adopted son, as a fact yet from the long period during which he had been received as an adopted son, every allowance for the absence of evidence to prove such fact was to be favourably entertained. In the case of a Hindu, long recognition as an adopted son, raised even stronger presumption in favour of the validity of his adoption, arising from the possibility of the loss of his rights in his own family by being adopted in another family. In the case of an ancient adoption showing that the body was treated for a long time as the adopted son at a time when there was no controversy is sufficient to prove the adoption although evidence of actual giving and taking is not forthcoming. *L. Debi Prasad (dead) by L.Rs. v. Smt. Tribeni Devi and others,* AIR 1970 SC 1286: 1970 (1) SCC 677: 1971(1) SCR 101

Hindu Law.-Adoption.-Burden of proof.-Effect on succession.-A person who seeks to displace natural succession must discharge the burden of proving the

factum of adoption and its validity. *Madhusudan Das v. Smt. Narayani Bai and others,* AIR 1983 SC 114: 1983(1) SCC 35: 1983(1) SCr 851: 1982(2) Scale 1083: 1983 MPLJ 313: 1983 Mah.L.J. 402

Hindu Law.-Adoption.-Claim to property.-Application of doctrine of relation back.-The relation back likely to lead to unjust result if applied to the property inherited from collateral and therefore shall be limited in application. The principle of relation back applies only when the claim made by the adopted son relates to the estate of his adoptive father. This estate may be definite and ascertained as when he is the sole and absolute owner of the properties, or it may be fluctuating as when he is a member of a joint Hindu family, in which the interest of the coparceners is liable to increase by death or decrease by birth. In either case, it is the interest of the adoptive father which the adopted son is declared entitled to take as on the date of his death. It is not in consonance with the principle well-established in Indian jurisprudence, and that the relation back of the right of an adopted son is only `quoad' the estate of the adoptive father. Moreover, the law as laid down therein leads to results which are highly inconvenient. When an adoption is made by a widow of either a coparceners or a separated member, then the right of the adopted son to claim properties as on the date of the death of the adoptive father by reason of the theory of relation back is subject to the limitation that alienations made prior to the date of adoption are binding in him, if they were for purposes binding on the state. Thus, transferee from limited owners, whether they be widows or coparceners in a joint family, are amply protected. But no such safeguard exists in respect of property inherited from a collateral, because if the adopted son is entitled on the theory of relation back to divest that property, the position of the mesne holder would be that of an owner possessing a title defeasible on adoption, and the result of such adoption must be to extinguish that title and that of all persons claiming under him. The alienees from him would have no protection, as there could be no question of supporting the alienations on the ground of necessity or benefit. And if the adoption takes place long after the succession to the collateral had opened.-in this case it was 41 years, thereafter.-and the property might have meanwhile changed hands several times, the title of the purchasers would be liable to be disturbed quite a long time after the alienations. We must hesitate to subscribe

to a view of the law which leads to consequences so inconvenient. The claim of the appellant to divest a vested estate rests on a legal fiction, and legal fictions should not be extended so as to lead to unjust results. *Srinivas Krishnarao Kango v. Narayan Devji Kango and others,* AIR 1954 SC 379: 57 Bom LR 678: 1954 SCA 878: 1954 SCJ 408: 1955(1) SCR 1

Hindu Law.-Adoption.-Consent of husband.-Proof of.-Reliance on the consent given by way of a statement made by husband allegedly in the presence of his lawyer and recorded in writing.-Rejection of such evidence on account of the improbability and lack of corroboration.-The adoption without consent is invalid. The trial Judge pointed out that as lawyers were present when Rai Pratap Chand is alleged to have given authority to his widow and as it was also suggested that that fact should be recorded, it was unbelievable, if the statements were true, that written authority would not have been prepared then and there. The High Court did not content itself with accepting the opinion of the trial Judge but discussed the evidence de novo and rejected it. The High Court pointed out that Rai Pratap Chand was only 30 years old at the time of his death and his wife was 25 years old and he could not have abandoned the hope of having an issue. Evidence shows that the writing was put off because it was not thought that Rai Pratap Chand was dying. The High Court also pointed out that Rani Gomti Bibi executed between November 24, 1901 and August 19, 1904 four documents making different endow- ments. In none of these documents, she mentioned that she had been asked by her husband to make them.

Hindu Law.-Adoption.-Consent of relatives.-Necessity of.-Local customs.-The husband authorising the wife to make adoption after his death.-Necessity of consent husband's sapindas would not arise. The evidence of the plaintiff's own witnesses justify the conclusion that in his life time Annirudhalalji authorised Mahalakshmi Bahuji Maharaj to make an adoption after his death.-though at the same time indicating his preference for one particular boy. The necessity of consent of the husband's sapindas would arise.-if the Madras School of Mitakshara law was applicable.-only where there was no authority from the husband. *Goswami Shree Vallabhalalji v. Goswamini Shree Mahalaxmi Bahuji Maharaj and another,* AIR 1962 SC 356: 64 BomLR 433: 1962(3) SCR 641

Hindu Law.-Adoption.-Custom of Dravidas.-Consent of sapindas.-Necessity of.-The discretion of Hindu widow for adoption is absolute and she cannot be compelled to do so.-The power to adopt is exercised by widow as a representative of her husband and, therefore, consent of sapindas is a protection against misuse of this power. Hindu widow in making an adoption exercises a power which she alone can exercise, though her competency is conditioned by other limitations. Whether she was authorized by her husband to take a boy in adoption or whether she obtained the assent of the sapin-das, her discretion to make an adoption, or not to make it, is absolute and uncontrolled. She is not bound to make an adoption and she cannot be compelled to do so. But if she chooses to take a boy in adoption there is an essential distinction between the scope of the authority given by her husband and that of the assent given by the sapindas. As the widow acts only as a dele-gate or representative of her husband, her discretion in making an adoption is strictly conditioned by the terms of the authority conferred on her. But in the absence of any specific authorizaion by her husband, her power to take a boy in adoption is coterminus with that of her husband, subject only to the assent of the sapindas. To put it differently, the power to adopt is that of the widow as the representative of her husband and the require-ment of assent of the sapindas is only a protection against the misuse of it. It is not, therefore, right to equate the authority of a husband with the assent of the sapindas. If this distinction is borne in mind, it will be clear that in essence the adoption is an act of the widow and the role of the sapindas is only that of advisers. The validity of an adoption has to be judged by spiritual rather than temporal considerations and that devolution of property is only of secondary importance. 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 defeated by the adoption. 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 mo-tive. *V.T.S. Chandrasekhara Mudaliar v. Kulandaivelu Mudaliar and others,* AIR 1963 SC 185: 1963(2) SCR 440.

Hindu Law.-Adoption.-Custom of Dravidas.-Consent of sapindas.-Necessity of

belief in Hindu scriptures and rituals.-The consent to adoption is not a religious act.-Non-belief in rituals or dogmas does not remove such person from being Hindu.-A person born Hindu remains Hindu till he adopts another religion.-Consent of such sapindas is valid. The act of giving consent is not a religious act; it is the act of a guardian or protector of a widow, who is authorized to advise the widow who is presumed to be incompetent to form an independent opinion. His non-belief in Hindu scriptures cannot in any way detract from his capacity to perform the said act. The fact that he does not believe in such things does not make him any the less a Hindu. The non-belief in rituals or even in some dogmas does not *ipso facto* remove him from the fold of Hinduism. He was born a Hindu and continues to be one till he takes to another religion. But what is necessary is, being a Hindu, whether he was in a position to appreciate the question referred to him and give suitable answer to it. After going through his evidence, we have no doubt that this defendant had applied his mind to the question before him. Whatever may be his personal predilections or views on Hindu religion and its rituals, he is a Hindu and he discharged his duty as a guardian of the widow in the matter of giving his consent. In the circumstances of the case, his consent was sufficient to validate the adoption. *V.T.S. Chandrasekhara Mudaliar v. Kulandaivelu Mudaliar and others,* AIR 1963 SC 185: 1963(2) SCR 440.

Hindu Law.-Adoption.-Custom.-Adoption of wife's sister's husband .-No custom barring adoption.-Adoption is not inconsistent with the object of adoption.-Adoption up-held. It will be helpful to consider in this connection first the objects of Goda adoption. These objects have been mentioned by plaintiff's own witness Chandrashankar Laxmishankar Upadhyaya who appeals to have a fair amount of knowledge of Goda Dattaka adoptions, to be three-fold. The primary object was mentioned by him to be that "a person going in "Goda" adoption can perform "seva" (worship) etc., of the Thakorji (idol) and that tradition of "sewa" (worship etc.,) can be continued". The second object mentioned by him is "that after the death of the person taking in adoption, the person going in adoption can perform his "shraddha" ceremonies etc." The third object according to him is "to continue the line of the person taking in adoption". Other witnesses who have given evidence on this point have said more or less the same thing. It is obvious that if the above be the objects

of Goda adoption it must be implicit in the nature of Goda adoption that anybody who would be incapable of accomplishing any of these objects would be ineligible for adoption. Unfortunately however for the plaintiff's case his witnesses were unable to quote any authority except their own ipse dixit for this proposition that the adoptee would be incapable of performing the Sradh of his adoptive father or adoptive maternal grand father. On the materials on the record we are also satisfied that there is no custom barring the adoption of the wife's sister's husband in Goda Dattak form.*Goswami Shree Vallabhalalji v. Goswamini Shree Mahalaxmi Bahuji Maharaj and another,* AIR 1962 SC 356: 64 Bom LR 433: 1962(3) SCR 641

Hindu Law.-Adoption.-Custom.-Jats of Amritsar district.-Effect of customary adoption on succession. A customary adoption in the Punjab is ordinarily no more than a mere appointment of an heir creating a personal relationship between the adoptive father and the appointed heir only. There is no tie of kinship between the appointed heir and the collaterals of the adoptive father. The appointed heir does not acquire the right to succeed collaterally in the adoptive fa-ther's family. The status of the appointed heirs is thus materi-ally different from that of a son adopted under the Hindu law. *Kehar Singh and others v. Dewan Singh and others,* AIR 1966 SC 1555: 1966(2) SCJ 363: 1966(3) SCR 393

Hindu Law.-Adoption.-Custom.-Rules of.-Compliance of mandatory rules is necessary.-The question whether a customary rule is mandatory or directory depends upon the characteristics relating to custom. Whether a particular rule recorded in the `Riwaj-i-am' is mandatory on directory must depend on what is the essential characteristic of the custom. Under the Hindu law adoption is primarily a religious act intended to confer spiritual benefit on the adopto and some of the rules have, therefore, been held to be mandatory and compliance with them regarded as a condition of the validity of the adoption. On the other hand, under the Customary Law in the Punjab, adoption is secular in character, the object being to appoint an heir and the rules relating to ceremonies and to preferences in selection have to be held to be directory and adoptions made in disregard of them are not invalid. *Hem Singh and another v. Harnam Singh and another,* AIR 1954 SC 581: 1954 SCJ 566: 1955(1) SCR 44

Hindu Law.-Adoption.-Custom.-The adoptee retaining his interest in the

erstwhile family for the purpose of succession.-Custom proved by production of agreement.-Succession in accordance with the custom, affirmed. *Controller of Estate Duty, Madras v. M.Ct. Muthiah and another,* AIR 1986 SC 1863: 1986 Supp SCC 375: 1986 (3) SCR 315: 1986(2) Scale_54

Hindu Law.-Adoption.-Custom of Dravidas.-Consent of sapindas.-Scope of powers of kinsmen.-The power is in the nature of fiduciary duty and should not be exercised in personal interest on the basis of independent and objective judgement of adoption. The scope of the exercise of the power depends (1) on the nature of the power, and (2) on the object for which it is exercised. The nature of the power being fiduciary in character, it is implicit to it that it shall not be exercised so as to further the personal interests of the sapindas. The law does not countenance a conflict between duty and interest and if there is any such conflict, the duty is always made to prevail over the interest. It would be negation of the fiduciary duty, were we to hold that a sapinda could refuse to give his consent on the ground that the members of his branch or those of his brother's would be deprived of their inheritance. If that was the object of the refusal, it could not make any difference in the legal results, however the intention was camouflaged. Suppose a sapinda gives his consent on the condition that a member of his branch only should be adopted. In effect and substance he introduces his personal interests in the matter of his assent, with a view to secure the properties to his branch. It would only be a matter of degree should he extend the choice of the widow to the divided branches of his family comprehending a large group of sapindas, for even in that case the sapinda seeks to enforce his choice on the widow on extraneous considerations. In giving or withholding his consent in his capacity as guardian or the protector of the widow, the sapinda should form an honest and independent judgment on the advisability or otherwise of the proposed adoption with reference to the widow's branch of the family. The sapinda should bring to bear on impartial and judicial mind on the problem presented to him and should not be swerved by extraneous and irrelevant considerations. He shall ask himself two questions, *viz.,* (i) whether the proposed adoption would achieve the object for which it was intended, and (ii) whether the boy selected was duly qualified. We have already noticed that the object of the adoption is two-fold: (1) 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. The sapinda should first answer the question whether the proposed adoption would achieve the said purpose. If the widow's power to take a boy in adoption was not exhausted there would hardly be an occasion when a sapinda could object to the widow taking a boy in adoption, for every valid adoption would invariably be in discharge of a religious duty. But it is also permissible for a sapinda to take objection in the matter of selection of the boy on the ground that he is not duly qualified for being adopted; he may rely upon mandatory prohibitory rules laid down by shastras and recognized by courts in regard to the selection of a particular boy. *V.T.S. Chandrasekhara Mudaliar v. Kulandaivelu Mudaliar and others,* AIR 1963 SC 185: 1963(2) SCR 440.

Hindu Law.-Adoption.-Effect of.-Hindu widow adopting a son after the death of the husband.-The adopted son becomes coparcener.-The daughter and the legal heirs of widows stand divested from claiming the property. The case of an adopted son's claiming to divest the heir of a collateral, who died before the adoption took place, of the property inherited from the collateral, is different from the case of his claiming the property which originally belonged to the adoptive father but had devolved on a collateral and, after the death of the collateral, which took place before the adoption, devolved on a heir of the collateral. In the former case, the claim is to the property of the collateral, while in the latter case it is to the property of the adoptive father, which, by force of circumstances, had passed through the hands of a collateral. In the present case, Krishnabai owned the property as full owner on the death of her father Narasappagouda, according to the Hindu law in the area in which the property in suit lay. But her title was defeasible on Tungabai, widow of Bandegouda, adopting a son to her husband, Vasappa and, after him, his sons, inherited this property of Krishnabai and thus the appellants claimed under Krishnabai. Their such claim is therefore defeasible on the adoption of a son by Tungabai. The fact that Krishnabai inherited the property of her father absolutely, does not affect this question of title being defeated on the adoption of a son by Tungabai. The character of the property does not change, as suggested for the appellants, from coparcenary property to self acquired property of Krishnabai so long as Tungabai, the widow of the family, exists, and is capable of adopting a son,

who becomes a coparcener. *Krishnamurthi Vasudeorao Deshpande and another v. Dhruwaraj,* AIR 1962 SC 59: 64 Bom. LR 165: 1961(2) Mad. LJ (SC) 152: 1961 MPLJ 1114: 1962(2) SCR 813.

Hindu Law.-Adoption.-Essential requisite.-Physical act of giving and taking is essential requisite which is satisfied only on actual delivery and acceptance of the child. For a valid adoption, the physical act of giving and taking is an essential requisite, a ceremony imperative in all adoptions, whatever the caste. And the requisite is satisfied in its essence only by the actual delivery and acceptance of the boy, even though there exist an expression of consent or an executed deed of adoption. *Madhusudan Das v. Smt. Narayani Bai and others,* AIR 1983 SC 114: 1983(1) SCC 35: 1983(1) SCr 851: 1982(2) Scale 1083: 1983 MPLJ 313: 1983 Mah.L.J. 402

Hindu Law.-Adoption.-Estoppel by conduct.-Application of rule. The documents do not support the plea that the appellant had been led to alter his position through a belief in any misrepresentation made by the respondent Chaltibai as to his having been adopted by Lakshminarayan. And he cannot be allowed to set up a case different to his case in the written statement nor can he be allowed to prove his title as an adopted son, on such different case. The correct rule of estoppel applicable in the case of adoption is that it does not confer status. It shuts out the mouth of certain persons if they try to deny the adoption, but where both parties are equally conversant with the true state of facts this doctrine has no application.*Kishori Lal v. Mt. Chaltibai,* AIR 1959 SC 504: 1959 SCJ 560: 1959 Supp (1) SCR 733

Hindu Law.-Adoption.-Jain custom.-Consent of husband.-Right of Jain widow to adopt without authority of husband repeatedly recognised in judicial decisions.-The custom found generally applicable to Jains all over India except Jains domicile in Madras and Punjab.-Adoption by Hindu widow, affirmed.*R.B.S.S. Munnalal and others v. S.S. Rajkumar and others,* AIR 1962 SC 1493: 1962 Nag LJ 521: 1962 Sup. (3) SCR 418

Hindu Law.-Adoption.-Jain custom.-Effect of.-Act of adoption is a purely secular matter in respect of Jains. So far as Jains are concerned the ordinary Hindu law is to be applied to them in the absence of proof of special customs and usages varying that law. It is true that Jains do not believe that a son either natural

or adopted confers any spiritual benefit on the father, and so adoption amongst Jains is a purely secular matter, but, with regard to the rights of an adopted son, unless a contrary custom or usage is established the ordinary Hindu law would apply. *Shuganchand v. Prakash Chand and others,* AIR 1967 SC 506

Hindu Law.-Adoption.-Joint adoption.-Permissibility.-The concept of joint adoption by husband and wife is not entirely unknown in as much as the adoption by husband is joint by the wife as adoptive mother of the adopted child. *N. Kasturi v. D. Ponnammal and others,* AIR 1961 SC 1302: 1961(2) SCA 560: 1961(3) SCR_955

Hindu Law.-Adoption.-Pregnancy.-Effect.-Existence of son in embryo of co-widow does not invalidate adoption. The main object of adoption is to secure spiritual benefit to the adopter, though its secondary object is to secure an heir to perpetuate the adopter's name. Such being the significance of adoption, its validity shall not be made to depend upon the contingencies that may or may not happen. It is suggested that an adoption cannot be made unless there is certainty of not getting a son and that if the wife is pregnant, there is a likelihood of the adopter begetting a son and, therefore, the adoption made is void. The texts cited do not support the said proposition. Its acceptance will lead to anomalies. When a son in his mother's womb is equated with a son in existence, *vis-a-vis* his right to set aside an alienation or to reopen a partition, the argument proceeds, the father cannot validly adopt, as from the date of conception the son must be deemed to be in existence. But there is an essential distinction between an alienation, partition and inheritance on the one hand and adoption on the other; his right to set aside an alienation hinges on his secular right to secure his share in the property belonging to the family, as he has a right by birth in the joint family property and transactions effected by the father in excess of his power when he was in the embryo are voidable at his instance; but, in the case of adoption, it secures mainly spiritual benefit to the father and the power to adopt is conferred on him to achieve that object. The doctrine evolved wholly for a secular purpose would be inappropriate to a case of adoption. We should be very reluctant to extend it to adoption, as it would lead to many anomalies and in some events defeat the object of the conferment of the power itself. The scope of the power must be reasonably construed so as to enable the donee of the power to discharge

his religious duty. We, therefore, hold that the existence of a son in embryo does not invalidate an adoption. *Guramma Bhratar Chanbasappa Deshmukh and others v. Mallappa Chanbasappa and another,* AIR 1964 SC 510: 66 Bom LR 284: 1964 MPLJ 133: 1964(4) SCR 497

Hindu Law.-Adoption.-Principle of relation back of date of adoption to the date of death of adopted father.-Application of principle where adoptee is to succeed estate of a person other than adopted father. The fiction that an adoption relates back to the date of the death of the adoptive father applies only when the claim of the adoptive son relates to the estate of the adoptive father. But where the succession to the property of a person other than the adoptive further is involved, the principle applicable is not the rule of relation back but the rule that inheritance once vested cannot be divested. The rights of an adoptd son cannot be more than that of his adoptive father. If the plaintiff's adoptive father was alive in 1933 when the partition took place, he could not have obtained anything more than 1/3rd share in the family properties. It passed our comprehension how the plaintiff could acquire a greater right than his adoptive father could have had if he had been alive on the date of partition and that he could have got if he had been adopted prior to that date. In our judgment the plaintiff's claim for a half share in the family properties is unsustainable. *Govind Hanumantha Rao Desai v. Nagappa,* AIR 1972 SC 1401: 1972(1) SCC 515: 1972(3) SCR 200

Hindu Law.-Adoption.-Procedure.-Necessity of formal ceremony.-Act of giving and taking of child if necessary for valid adoption. Under the Hindu Law, whether among the regenerate caste or among Sudras, there cannot be a valid adoption unless the adoptive boy is transferred from one family to anther and that can be done only by the ceremony of giving and taking. The object of the corporeal giving and receiving in adoption is obviously to secure due publicity. To achieve this object it is essential to have a formal ceremony. No particular form is prescribed for the ceremony, but the law requires that the natural parent shall handover the adoptive boy and the adoptive parent shall receive him. The nature of the ceremony may vary depending upon the circumstances of each case. But a ceremony there shall be, and giving and taking shall be part of it. The exigencies of the situation arising out of diverse circumstances necessitated the introduction of the doctrine of

delegation; and, therefore, the parents, after exercising their volition to give and take the boy in adoption, army both or either of them delegation, may both or either of them delegate the physical act of handing over the boy or receiving him, as the case may be, to a third party. *Lakshman Singh Kothari v. Smt. Rup Kanwar,* AIR 1961 SC 1378: 1961 (2) KerLR 156: 1962(1) SCR 477

Hindu Law.-Adoption.-Proof of.-Absence of registered document.-No evidence of change of name or the fact that the adopted was living with adopted mother.-Need for Court to satisfy its conscience.-In the absence of evidence, the adoption rightly held to have not been proved. In the case of an adoption which is not supported by a registered document or any other evidence of a clinching nature if there exist suspicious circumstances, the same must be explained to the satisfaction of the conscience of the Court by the party contending that there was such an adoption. Such is the position as an adoption would divert the normal and natural course of succession. Experience of life shows that just as there have been spurious claims about execution of a will, there have been spurious claims about adoption having taken place. And the Court has therefore to be aware of the risk involved in upholding the claim of adoption if there are circumstances which arouse the suspicion of the Court and the conscience of the Court is not satisfied that the evidence preferred to support such an adoption is beyond reproach. *Rahasa Pandiani (dead) by LRs. and others v. Gokulananda Panda and others,* AIR 1987 SC 962: 1987(2) SCC 338: 1987(1) Scale 452: 1987(1) JT 507: 1987 Rajdhani LR 185

Hindu Law.-Adoption.-Proof of.-Performance of funeral rites.-No inference can be drawn from such mere performance unless the fact of adoption is itself not proved. The mere fact of performance of these funeral rites does not necessarily support an adoption. The performance of these rites frequently varies according to the circumstances of each case and the view and usage of different families. The evidence led by the appellant himself shows that in the absence of the son, junior relations like a younger brother or a younger nephew peforms the obsequial ceremonies. The performance of funeral rites will not sustain an adoption unless it clearly appears that the adoption itself was performed under circumstances as would render it perfectly valid. *Kishori Lal v. Mt. Chaltibai,* AIR 1959 SC 504: 1959 SCJ 560: 1959 Supp (1) SCR 733

Hindu Law.-Adoption.-Putrika Putra.-Banaras School of Mitakshra Law.-Validity of custom .-The custom found to have become obsolete long before the succession in question.-Succession claimed on the basis of the custom not maintainable. All the digests, lectures and treatises support the view that the practice of appointing a daughter as a putrika and of treating her son as putrika putra had become obsolete several centuries ago.When a person had two or more daughters, the appointment of one of them would give her primacy over the wife and the other daughters (not so appointed) and her son (appointed daughter's son) would succeed to the exclusion of the wife and other daughters and their sons and also to the exclusion of his own uterine brothers (i.e. the other sons of the appointed daughter). Whereas in the case of plurality of sons all sons would succeed equally in the case of appointment of a daughter, other daughters and their sons alongwith the wife would get excluded. It is probably to prevent this kind of inequality which would arise among the daughters and daughter's sons, the practice of appointing a single daughter as a putrika to raise an issue must have been abandoned when people were satistified that their religious feelings were satisfied by the statement of Manu that all sons of daughters whether appointed or not had the right to offer oblations and their filial yearnings were satisfied by the promotion of daughter's sons in the order of succession next only to the son as the wife and daughters had been interposed only as limited holders. We hold that the practice of appointing a daughter as a putrika to beget a son who would become the putrika putra had become obsolete long before the lifetime of Raja Dhrub Singh. It follows that the appellants who claim the estate on the above basis cannot succeed. *Shyam Sunder Prasad Singh and others v. State of Bihar and others,* AIR 1981 SC 178: 1980 Supp SCC 720: 1981(1) SCR 1

Hindu Law.-Adoption.-Right of adopted son to re-open partition.-Principle of. The propositions that emerge are that: (i) A widow's adoption cannot be stultified by an anterior partition of the joint family and the adopted son can claim a share as if he were begotten and alive when the adoptive father breathed his last; (ii) Nevertheless, the factum of partition is not wiped out by the later adoption; (iii) Any disposition testamentary or inter vivos, lawfully made antecedent to the adoption is immune to challenge by the adopted son; (iv) lawful alienation, in this context,

means not necessarily for a family necessity but alienation made competently in accordance with law; (v) A widow's power of alienation is limited and if.-and only if.-the conditions set by the Hindu Law are fulfilled will the alienation bind a subsequently adopted son. So also alienation by the Karta of an undivided Hindu family or transfer by a coparcener governed by the Banaras school; (vi) Once partitioned validly, the share of a member of a Mitakshara Hindu family in which his own issue have no right by birth can be transferred by him at his will and such transfers, be they by will, gift or sale, bind the adopted son who comes later on the scene. Of course, the position of a void or voidable transfer by such a sharer may stand on a separate footing. *Shripad Gajanan Suthankar v. Dattaram Kashinath Suthankar,* AIR 1974 SC 878: 1974(2) SCJ 162: 1974(2) SCC 156: 1974(3) SCR 474

Hindu Law.-Adoption.-Right of Hindu widow.-The power to adopt come to an end with interposition of another widow of son or grandson as the power vest in the widow to continue the family line. (1) That the interposition of a grandson, or the son's widow, competent to continue the line by adoption brings the mother's power of adoption to an end;(2) that the power to adopt does not depend upon any question of vesting or divesting of property; and (3) that a mother's authority to adopt is not extinguished by the mere fact that her son had attained ceremonial competence. It is too late in the day to say that there are no limitations of any kind on the widow's power to adopt excepting those that limit the power of her husband to adopt, i.e. that she cannot adopt in the presence of a son, grandson or great grandson. Hindu Law generally and in particular in matters of inheritance, alienation and adoption gives to the widow powers of a limited character. *Gurunath v. Kamalabai and others,* AIR 1955 SC 206: 1955 All LJ 461: 57 Bom LR 694: 1955(1) SCR 1135

Hindu Law.-Adoption.-Right of Hindu widow.-Validity of adoption.-No specific authority given by husband.-Adoption made by widow with the consent of sapindas, is valid.-The widow's motive for adoption is irrelevant. When there is express authority by the husband or when consent of the sapindas has been properly obtained the motive of the widow is irrelevant.The motive of the widow in making an adoption is irrelevant for the purpose of validating the adoption. Consequently, the refusal of the consent by sapindas on the ground that the motive

of the widow is improper would amount to improperly withholding the consent. *G. Appaswami Chettiar and another v. R. Sarangapani Chettiar and others*, AIR 1978 SC 1051: 1978(3) SCC 55: 1978(3) SCR 520: 1978 LS (AP) 38

Hindu Law.-Adoption.-Validity of.-Mental ability of adopter.-Doubts about mental capacity at the time of adoption.-Deed of adoption held to be invalid. *Madan Lal v. Mst. Gopi and another,* AIR 1980 SC 1754: 1980(4) SCC 255: 1981(1) SCR 594

Hindu Law.-Adoption.-Authority of Hindu widow.-Adoption of child by widow after death of her husband.-Act silent about such adoption.-Shastric Law gives express authority by husband to widow to adopt.-No evidence to show that husband had authorised widow to adopt.-Adoption invalid.

There is in fact a deed of adoption. Exhibit 116 brought before the learned trail Judge corroborated such a state of affairs. The deed also was registered and by reason of registration and other available evidence on record, to exception can be taken to the observations of the learned trial Judge that there is overwhelming evidence on record to prove the factum of adoption. There is existing evidence on record as regards the adoption ceremony. But the issue herein does not pertain to the validity and legality of the adoption in terms of the registered deed in favour of the plaintiff by Radhabai and it is on this score that strong reliance was placed on Section 8 of the Hindu Adoptions and Maintenance Act and it is on this count the provision of the Act (Section 8) would not have any application since the widow has undoubtedly a right to adopt the child for herself but in the event the child was to be adopted to the husband the statute is otherwise silent and thus the law as it stood prior to the enactment of the legislation as regards the adoptions would have to be taken recourse to for proper appreciation. The Sahastric Law provides an express authority by the husband to the widow to adopt a child in the contextual facts there is not an iota of evidence in regard thereto as such adoption has been stated to be not legal and valid by both the Courts below and we do also feel it inclined to accept the same. *Rajendra Kumar vs. Kalyan (dead) by LRs*, AIR 2000 SC 3335 : 2000(3) Mad LJ 170 : 2000(2) Hindu LR 353 : 2000(4) Pat LJR 210 : 2000(8) SCC 99 : 2000(2) Marri LJ 491 : 2000(3) Cur C 274

Hindu Law.-Adoption.-Authority of Hindu widow.-Adoption of son by widow

after death of her husband.-Findings in previous suit that widow was not living as member of HUF of her father-in-law and was entitled only to maintenance.-Would operate as *res judicata* in subsequent suit for possession by adopted son.

Where the plaintiff in a suit for possession of properties claimed that he was adopted in the year 1967 by a widow after death of her husband and that her husband, *i.e.* his his adoptive father was also adopted to her father-in-law, the findings in previous suit before date of his adoption to which the widow was party, to the effect that adoption of defendant in that suit to her father-in-law and not of her husband was proved and that she was not living as a member of HUF of her father-in-law and was entitled to maintenance, would operate as *res judicata*, because the plaintiff in subsequent suit could only claim by succession to his mother who would have become full owner of property under Hindu Succession Act and not independently as a coparcener of his father on the basis of a legal fiction. Moreover by virtue of Section 12 of the Act of 1956, the plaintiff would not have any right only on the basis that he was adopted son of widow's husband because he could not have divested his mother of her full ownership even by virtue of his adoption. *Rajendra Kumar vs. Kalyan (dead) by LRs,* AIR 2000 SC 3335 : 2000(3) Mad LJ 170 : 2000(2) Hindu LR 353 : 2000(4) Pat LJR 210 : 2000(8) SCC 99 : 2000(2) Marri LJ 491 : 2000(3) Cur C 274

Hindu Law.-Adoption.-Authority of Hindu widow.-Deceased leaving behind two widows.-Adoption of child by one Hindu Widow.-Need not consult or take consent of co-widow.-Adoption legal and valid.

When the parliament resolved to provide for and insist upon the obtaining of the consent of all of them, unless they or any one of them suffered any of the enumerated infirmities rendering such consent unnecessary, the conscious and positive as well as deliberate omission to provide for a female Hindu seeking or obtaining any such consent from a co or junior widow is a definite pointer to indicate that the legislative intent and determination was not to impose any such clog on the power specifically conferred upon the female Hindu may be for the obvious reason that under the scheme of the Act the Hindu female has been enabled and empowered to adopt not only to herself but also to her husband, and in tune

with the changed and modern concept of equality of women and their capabilities to decide independently statutorily recognized and the very reason for insisting upon such authority or consent from the husband or the sapindas under the old Hindu Law having lost its basis and thereby ceased to be of any relevance or valid purpose whatsoever. In such circumstances, acceding to the submission to read into Section 8 the stipulation in the proviso to Section 7 with the Explanation therein would amount to legislation by Court on the lines as to what is wholly impermissible for courts, dehors any justification or necessity for such a provision. *Vijayalakshmamma (Smt.) vs. B.T. Shankar,* AIR 2001 SC 1424 : 2001(4) SCC 558 : 2001(4) JT 290

Hindu Law.-Adoption.-Right of adoptive parent.-Disposal of property by Will.-Letter written by natural father to adoptive father does not reflect any agreement.-It could be termed as unilateral offer giving child in adoption.-Letter signed by number of persons, but not signed by adoptive father.-Nothing to indicate that letter was a covenant or contract restricting powers of adoptive father or mother to dispose of property either by transfer or by Will.-Term of letter that after death of adoptive father or mother, adoptive son alone would have full right over moveable and immovable property belonging to them and entitled to receive property.-Letter reflect that there was no restraint on adoptive father to execute Will. *Chiranjilal Srilal Goenka (dead) by LRs vs. Jasjit Singh and others,* AIR 2001 SC 266: 2001(1) SCC 486 : 2000(S3) JT 418 : 2001(1) Arbi LR 1 : 2001(1) Civ CR 438

Hindu Law.-Custom.-Adoption.-Adoption of wife's sister's husband.-No custom barring adoption.-Adoption is not inconsistent with the object of adoption.-Adoption up-held.

It will be helpful to consider in this connection first the objects of Goda adoption. These objects have been mentioned by plaintiff's own witness Chandrashankar Laxmishankar Upadhyaya who appeals to have a fair amount of knowledge of Goda Dattaka adoptions, to be three-fold. The primary object was mentioned by him to be that "a person going in "Goda" adoption can perform "seva" (worship) etc., of the Thakorji (idol) and that tradition of "sewa" (worship etc.,) can be continued". The second object mentioned by him is "that after the death of the person taking in

adoption, the person going in adoption can perform his "shraddha" ceremonies etc." The third object according to him is "to continue the line of the person taking in adoption". Other witnesses who have given evidence on this point have said more or less the same thing. It is obvious that if the above be the objects of Goda adoption it must be implicit in the nature of Goda adoption that anybody who would be incapable of accomplishing any of these objects would be ineligible for adoption.

Unfortunately however for the plaintiff's case his witnesses were unable to quote any authority except their own ipse dixit for this proposition that the adoptee would be incapable of performing the Sradh of his adoptive father or adoptive maternal grand father.

On the materials on the record we are also satisfied that there is no custom barring the adoption of the wife's sister's husband in Goda Dattak form.

Goswami Shree Vallabhalalji v. Goswamini Shree Mahalaxmi Bahuji Maharaj and another, AIR 1962 SC 356: 64 BOMLR 433: 1962(3) SCR 641

Hindu Law.-Custom.-Adoption.-Custom of Dravidas.-Consent of sapindas.-Necessity of.-The discretion of Hindu widow for adoption is absolute and she cannot be compelled to do so.-The power to adopt is exercised by widow as a representative of her husband and, therefore, consent of sapindas is a protection against misuse of this power.

Hindu widow in making an adoption exercises a power which she alone can exercise, though her competency is conditioned by other limitations. Whether she was authorized by her husband to take a boy in adoption or whether she obtained the assent of the sapindas, her discretion to make an adoption, or not to make it, is absolute and uncontrolled. She is not bound to make an adoption and she cannot be compelled to do so. But if she chooses to take a boy in adoption there is an essential distinction between the scope of the authority given by her husband and that of the assent given by the sapindas. As the widow acts only as a delegate or representative of her husband, her discretion in making an adoption is strictly conditioned by the terms of the authority conferred on her. But in the absence of any specific authorizaion by her husband, her power to take a boy in adoption is coterminus with that of her husband, subject only to the assent of the sapindas. To put it differently, the power to adopt is that of the widow as the representative of her

husband and the requirement of assent of the sapindas is only a protection against the misuse of it. It is not, therefore, right to equate the authority of a husband with the assent of the sapindas. If this distinction is borne in mind, it will be clear that in essence the adoption is an act of the widow and the role of the sapindas is only that of advisers.

The validity of an adoption has to be judged by spiritual rather than temporal considerations and that devolution of property is only of secondary importance.

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 defeated by the adoption.

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.]

V.T.S. Chandrasekhara Mudaliar v. Kulandaivelu Mudaliar and others, AIR 1963 SC 185: 1963(2) SCR 440.

Hindu Law.-Custom.-Adoption.-Custom of Dravidas.-Consent of sapindas.-Scope of powers of kinsmen.-The power is in the nature of fiduciary duty and should not be exercised in personal interest on the basis of independent and objective judgement of adoption.

The scope of the exercise of the power depends (1) on the nature of the power, and (2) on the object for which it is exercised. The nature of the power being fiduciary in character, it is implicit to it that it shall not be exercised so as to further the personal interests of the sapindas. The law does not countenance a conflict between duty and interest and if there is any such conflict, the duty is always made to prevail over the interest. It would be negation of the fiduciary duty, were we to hold that a sapinda could refuse to give his consent on the ground that the members of his branch or those of his brother's would be deprived of their inheritance. If that was the object of the refusal, it could not make any difference in the legal results, however the intention was camouflaged. Suppose a sapinda gives his consent on the condition that a member of his branch only should be adopted. In effect and substance he introduces his personal interests in the matter of his assent, with a

view to secure the properties to his branch. It would only be a matter of degree should he extend the choice of the widow to the divided branches of his family comprehending a large group of sapindas, for even in that case the sapinda seeks to enforce his choice on the widow on extraneous considerations. In giving or withholding his consent in his capacity as guardian or the protector of the widow, the sapinda should form an honest and independent judgment on the advisability or otherwise of the proposed adoption with reference to the widow's branch of the family.

The sapinda should bring to bear on impartial and judicial mind on the problem presented to him and should not be swerved by extraneous and irrelevant considerations. He shall ask himself two questions, *viz.,* (i) whether the proposed adoption would achieve the object for which it was intended, and (ii) whether the boy selected was duly qualified. We have already noticed that the object of the adoption is two-fold: (1) 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. The sapinda should first answer the question whether the proposed adoption would achieve the said purpose. If the widow's power to take a boy in adoption was not exhausted there would hardly be an occasion when a sapinda could object to the widow taking a boy in adoption, for every valid adoption would invariably be in discharge of a religious duty. But it is also permissible for a sapinda to take objection in the matter of selection of the boy on the ground that he is not duly qualified for being adopted; he may rely upon mandatory prohibitory rules laid down by shastras and recognized by courts in regard to the selection of a particular boy.

V.T.S. Chandrasekhara Mudaliar v. Kulandaivelu Mudaliar and others, AIR 1963 SC 185: 1963(2) SCR 440.

Hindu Law.-Custom.-Adoption.-Custom of Dravidas.-Consent of sapindas.-Necessity of belief in Hindu scriptures and rituals.-The consent to adoption is not a religious act.-Non-belief in rituals or dogmas does not remove such person from being Hindu.-A person born Hindu remains Hindu till he adopts another religion.-Consent of such sapindas is valid.

The act of giving consent is not a religious act; it is the act of a guardian or protector of a widow, who is authorized to advise the widow who is presumed to be

incompetent to form an independent opinion. His non-belief in Hindu scriptures cannot in any way detract from his capacity to perform the said act.

The fact that he does not believe in such things does not make him any the less a Hindu. The non-belief in rituals or even in some dogmas does not *ipso facto* remove him from the fold of Hinduism. He was born a Hindu and continues to be one till he takes to another religion. But what is necessary is, being a Hindu, whether he was in a position to appreciate the question referred to him and give suitable answer to it. After going through his evidence, we have no doubt that this defendant had applied his mind to the question before him. Whatever may be his personal predilections or views on Hindu religion and its rituals, he is a Hindu and he discharged his duty as a guardian of the widow in the matter of giving his consent. In the circumstances of the case, his consent was sufficient to validate the adoption.

V.T.S. Chandrasekhara Mudaliar v. Kulandaivelu Mudaliar and others, AIR 1963 SC 185: 1963(2) SCR 440.

Hindu Law.-Custom.-Adoption.-Jats of Amritsar district.-Effect of customary adoption on succession.

A customary adoption in the Punjab is ordinarily no more than a mere appointment of an heir creating a personal relationship between the adoptive father and the appointed heir only.

There is no tie of kinship between the appointed heir and the collaterals of the adoptive father. The appointed heir does not acquire the right to succeed collaterally in the adoptive father's family. The status of the appointed heirs is thus materially different from that of a son adopted under the Hindu law.

Kehar Singh and others v. Dewan Singh and others, AIR 1966 SC 1555: 1966(2) SCJ 363: 1966(3) SCR 393

Hindu Law.-Custom.-Adoption.-Rules of.-Compliance of mandatory rules is necessary.-The question whether a customary rule is mandatory or directory depends upon the characteristics relating to custom.

Whether a particular rule recorded in the `Riwaj-i-am' is mandatory on directory must depend on what is the essential characteristic of the custom. Under the Hindu law adoption is primarily a religious act intended to confer spiritual benefit on the adopto and some of the rules have, therefore, been held to be mandatory and

compliance with them regarded as a condition of the validity of the adoption. On the other hand, under the Customary Law in the Punjab, adoption is secular in character, the object being to appoint an heir and the rules relating to ceremonies and to preferences in selection have to be held to be directory and adoptions made in disregard of them are not invalid.

Hem Singh and another v. Harnam Singh and another, AIR 1954 SC 581: 1954 SCJ 566: 1955(1) SCR 44

Hindu Law.-Custom.-Adoption.-The adoptee retaining his interest in the erstwhile family for the purpose of succession.-Custom proved by production of agreement.-Succession in accordance with the custom, affirmed.

Controller of Estate Duty, Madras v. M.Ct. Muthiah and another, AIR 1986 SC 1863: 1986 Supp SCC 375: 1986 (3) SCR 315: 1986(2) Scale 54