CHAPTER VIII

Rights of the Adopted Son Over Property
CHAPTER VIII
RIGHTS OF THE ADOPTED SON OVER PROPERTY

(a) On the Property of the Adopter

While treating of the evolution of the adopted son in Chapter IV, it was seen that sons of some twelve descriptions were evolved and admitted into kinship by the ancient Indian society. But, in the present times, besides the real son, none except the adopted one, is recognised, while the rest have gradually disappeared. Thus, the only substitute recognised for the real son, is the one given in adoption and various other sons who intervened between the real and the adopted in the passages of the old jurispanditas have now ceased to have any legal meaning. Their injunctions about these regarding inheritance and the like, especially, the texts which held each succeeding less worthy son on default of each preceding more worthy as competent

1. क्षेत्र, "बालकाः".... नः... ह्यति इह-पतितक्रणाः "पणे रक्षारेणा..." ह्यति व शेषकेन इगान्ततिनिति गार्ह्विशारदायेनेतः नमुनाः।

DM, p. 40
Extracting these passages the DC (p.4) states क्षेत्र, "समर्थक-प्रतिनिधिः नियोजिता"।
to perform obsequies and inherit the estate have become redundant.  
For, as the law stands now, none save the adopted son is entitled to inherit to the estate of a man on default of the real son.

In the excerpt from Candrika, extracted by the Dattakamiyamāma it is pronounced that by the mere act of adoption, the filial relation of the son-given with the adopter is established and his proprietary rights in the latter's estate and connection to his gotra are created. The adopted son inherits the whole estate even of the adopter provided that the latter has no other real son.

According to Manu,

2. न भावः पुरुषः स्त्रिया कृत्या ज्ञातः ज्ञत्या जनन्यो यो य उद्वर्।।
   क्रापायते प्रकोहिं कति पितारि तदन ।
   नारदेनस (DC, p. 33)
   .. पुरुषोऽत्थानवात् उत्तरार्कितं इत्यचित्रितमात्माय।।
   DC, p. 38.
Yājñavalkya and others also have passages giving similar import.

3. लोको युध्यति जातिः सत्वसम्म प्रतिक्रियास्यविधेन्य यस व लाल्ल क्रमः
   च म नम्मति ... हेतु तत्प्रेक्षाकाेरः।।
   DM, pp. 163-164.

4. नारदाविवस्तोऽधुम्भिन्दा शोरसाध्यत्रि दोषयुक्तविद्वानां नस्त्रां विकृतिरस्य
   कृतिमकाभिषगः।।
   DC, p. 42.
क्रमः प्रतिरोधायेन सहस्त्राश्चानुक्रमिकानाकृतिरस्य
   DM, p. 154;
तदालावहं (तदालावस) अन्तराय तु सहितः।।
the adopted son, who is adorned with every virtue, does inherit to the estate of his adopter, though he may have been taken from a general family, i.e., *gotra* other than that of the adopter himself.⁵

Raghavachariar reports the views of the writers on the subject of adoption that, 'an adopted son occupies the same position and has the same rights and privileges in the family of the adopter as the son except in a few specified instances, which have been clearly and carefully noted and defined.'⁶ Some of such cases have been described in the sequel here in after.⁷ A few instances have also been mentioned in the case *Nagindas v. Bechoo*, 40 B. 270; 14 A.L.J. 185.

5. उपवन्तः सुणे: गरेऽपूज्यं गुदेन्द्रम।


7. *Infra*, section (c).
A disagreement may be noticed amongst various legal writers regarding the higher or lower share being allotted to the adopted son when he co-exists with the real one. Again, the adopted son has been described by some of them as bandhu-dāvāda, while the others treat him as adāvāda-bāndhava or abandhu-dāvāda. This apparent discrepancy in the legal status of the adopted son in the hierarchy of succession to his adoptive father, which should in fact, be traced to the various stages in the course of his evolution, has been explained away both by the Dattākāśāmāmā and the Dattākāśāmānārika by reason of his being endowed with or devoid of virtues. This, however, may not entirely be an exercise in futility; in any case, by the time these works were being written, the adopted son had already entered the scheme of kinship as a bandhu-dāvāda by his own virtue. This is clearly apparent from the text of

8. ... तथा देवनारायणवनस्ते तुलीयांण्डलानांस्वादिरत्युक्तयुपार्जनिकाः

This is clearly apparent from the text of

DC, p. 42.

लद्यम गृहशासन अरोपस्व व निरूपितम्भो वैदिकम्।

DC, p. 153.

तथा केनापि पुनः परस्पर वन्याग्राह्यमप्रमेयम वापि पालक्ष्यमुक्तम्।

DC, pp. 42-43.

अर्थाविन्नाकनेऽवार्तनस्याय।

गृहाविन्नाविन्नाकनेऽवार्तनस्याय।
Manu (IX, 158) in point. When Vasiṣṭha and others, in their passages on the procedure of adoption, lay down that the intending adopter should call together his bhāndhus (bandhūnāhūva) on the occasion of the ceremony of adoption, it could not merely be for the sake of bearing witness to the act, which could even otherwise be done by those not related as such, rather it was indeed intended, in particular, to seek their concurrence in admitting him into his kinship as their bandhu or bāndhava, i.e., kindred, who would, for all intents and purposes, be treated as his real son; of course, in the absence of such a one. It most patently implies that they agreed to treat him as their kinsman who would inherit to them, obviously, in his own turn after exhausting the whole series of successive heirs entitled to inherit to such kinsmen before him.

Various constructions have been put on the terms bhāndhu-dāvāda, abandhu-dāvāda and adāvāda-bāndhava. But the Dattakacandrika, apparently taking the last two terms as equivalent, and taking its cue from the use of the particle 'only' in the text of Devala, conclusively establishes that the term bandhu-dāvāda represents a person who inherits,
besides the father, to his sapinda kinsmen, while abandhu-dāvāda is the one who succeeds to the estate of his father only and not the kinsmen. In accordance with the two descriptions of sapinda relationship, the bandhus of the dattake may also be of two descriptions, viz., the sapinda kinsmen belonging to the same gotra and those who do not belong to the same gotra (i.e., srotra-sapindas and bhinnagotra-sapindas). In accordance with what has been explained in the last chapter in connection with sapinda relationship, srotra-sapinda bandhus represent seven degrees of agnatic kindred on the father's side and the bhinnagotra sapinda bandhus, the kindred agnates on the mother's side as extending to the third or fifth degree. Thus, it may be concluded that the adopted son inherits not only lineally as well as collaterally, but also ex-parte paterna and ex-parte materna.

By way of an explanation, the Dattakacandrika refers to some two instances where the rights of the adopted son are determined as a collateral successor
and as an heir to the ancestral property in which his predeceased adoptive father had coparcenary rights. A real legitimate son succeeds to his brothers and other kinsmen, who die without leaving an heir. An adopted son also succeeds to such deceased in virtue of his bearing the same relationship of a brother and the like as does the real one. He is entitled to receive his share proper as far as possible. 10

Illustration: A person F adopts a son AS and a real son S is subsequently born who dies without leaving an heir in his line. AS succeeds to S by reason of his being connected to him as a brother.

It is ruled that a grandson is entitled to the appropriate share of his own father. Accordingly, it may be argued that a grandson by adoption shares equally with his uncle, since his adoptive father, being the real legitimate son of the grandfather, was entitled to share equally with such uncle (who is the adopter's real brother). But the author of the

10. शेषमार्गाधि प्राचारिन्य से सेव प्रागुतवादिना संवेदनायजसी- कारिच ताहनेर नान रवसलकारि प्राचारिग्रस्य कारापस्यि सदस्य कारिच सबस्यि।

DC, p. 43.
Dattakacandrika objects to this deduction, since an anomaly would result that whereas a son who himself is an adopted one, gets the fourth of a share, a grandson who is of the same character, shares equally. Thus, he propounds that where a person is survived by another of his real son, the grandson by adoption, whose father has predeceased, will be entitled to the share proper of an adopted son. He will not share equally with his uncle. However, in the absence of such son, he succeeds to the entire estate.\(^{11}\)

**Illustration:** A person GF has two real sons \(\bar{F}_1\) and \(\bar{F}_2\). \(\bar{F}_1\) adopts a son \(\bar{S}\) and later dies. The grandfather GF dies leaving \(\bar{F}_2\) and the grandson by adoption, \(\bar{S}\). Now, at the time of the partition of the ancestral property, \(\bar{S}\) will get a share which an adopted son receives in partition with the real son. On default of \(\bar{F}_2\), he succeeds to the whole estate.

To obviate an anomalous situation, the Dattakacandrika makes an amendment and restates the

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11. ऐसे उदाहरण: पुत्रां नातवति नित्य दापित्रस्य शत्रुपास्यपि पुत्रवेदिका अतिरिक्तत्व तदर्थार्थाः प्रस्तुतपीत।

DC, p. 43.
rule as, 'A person is entitled only to the share proper of his father, which would have been legally ordained for the latter, if the father were of the same character as he himself. The same mode of succession must be applied in the case of an adopted son of a grandson. 12

(b) On the Property of the Natural Father

It has been seen in sections (a) and (b) of the last chapter (VII) that the authors both of the Dattakâmâsâsâ and the Dattakacandrika rely upon the texts of Manu and the Chandrika to state that on adoption, the filial relation of the son-given with the natural father is extinguished and is established with the adopter. The text of Manu states that the son-given does not take the estate of his begetter. All that the text of the Chandrika 13 states is that from the mere act of giving results the extinction of filial relation. Consequently, the proprietary right of the son-given in the property of the giver

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12. रूपाङ्कुरण्यां विद्यमालिकां शा न्यायिनस्यः वैव स्वपिपुः
यौगिकांजति यथाक्षमेव साधुः। एवं रीति: प्रवीणेऽप्यस्मात्वात्वचितः
DC, p.43.

is extinguished. The interpretation of danad (t) as danadarshva taken to imply 'from the time of giving' instead of 'from the act of giving' will better reveal the mind of the author of the Chandrika. This, in effect, means that the son-given will not have any claim over the estate of his begetter after he has been given away. In other words, after his adoption in another family, the son-given will not look back to make any claim to the property of his natural father which he has already quit. It must be marked that the reference is to the property only of the father and of none else. The courts have, therefore, held the view that the adoption will not divest the adopted son of the property which he has acquired himself, or inherited from his maternal grandfather or which has already become vested in him on partition of the ancestral family property. The Calcutta and Madras High Courts have held that the son-given will not forfeit the property which has already become vested in him prior to his adoption as a sole surviving coparender or by inheritance.

15. Venkata Narasimha v. Rangayya, 20 Mad. 437; 16 MLJ 178
or by partition in his natural family. On the contrary, the Bombay High Court decisions have held that he will forfeit, on his adoption, the property which has already become vested in him as the sole surviving coparcener.

As has been pointed out also in the last chapter, it may be noted from the cases cited in fns. 14 and 18 here that the Bombay High Court has delivered conflicting judgements in that while it holds the property taken as a sole surviving coparcener as forfeited after adoption, it allows him to take with him the property received by him on partition of the family property. The High Court observes in its decision in 40 Bom. 429, 'The gotra and riktha are inextricably joined together in a dvandva compound and it would follow logically as well as grammatically that the adopted son must lose both together and cannot lose the former and keep


the latter.* P.V. Kane points out the fallacy in the construction of the text of Manu (IX. 142) by the Bombay High Court and relying on the two rules of Mīmāṃsā on the construction of texts, he concludes that 'taking of property (rīkthaharana) must have reference to the future bringing out and not the undoing of rīkthaharana which had already taken place long before.' 19

The Calcutta High Court observed in Shyamcharan Chattopadhyaya v. Sricharan (56 Cal. 1135) 'It is difficult to imagine how a person, by reason of his being adopted subsequent to his father's death, can be deprived of property, which at the time of his adoption, was his own'. The Court also approvingly quotes the observations of the learned Judges of the Madras High Court in the case of Venkata Narasimha Appa Raw (29 Mad. 437). The learned Judges said: "We do not think that there is anything in these passages which necessarily carries with it the idea that the adopted son is divested of property which is his own absolutely at the time of adoption. The more correct view seems to be that by the adoption

the filial relationship, as the author of the Chandrika says, is extinguished in one family and is created in the other family, and that, thereafter, the person adopted cannot claim or take any property by virtue of the extinguished filial relationship therein. The fact that under the Dāyabhāga law in force in Bengal, a son has no vested coparcenary interest with his father in ancestral property and that his interest in the ancestral property of the father only accrues on the father's death rather favours the view that Mimamsāga, when adopting the interpretation of the Chandrika, had in mind the loss of rights that might accrue after the date of adoption rather than right to property which had already vested."

It will be further interesting to note that the author of the Dattakacandrika makes a further provision while treating of the dvvāmuṣvāvana son. According to him, even where the son is not adopted in the dvvāmuṣvāvana form under an express agreement that he shall be son unto both the adoptive and the natural fathers, he will inherit also to his natural father, provided the latter has no other son.
(c) The Cases in which the Adopted Son is not entitled to Full Rights of the Natural Born Son

It has been stated that an adopted son has the status of a real son in the adoptive family but when in competition with the natural son, he is relegated to a secondary position. Below are noted a few cases in which an adopted son is dismissed to a lower status and is deprived of the full rights to which, in general, he is entitled.

1. Real Son Born After Adoption

The question of competition between the real and the adopted sons arises only when the adoption precedes the birth of a natural son. As no adoption can be validly made while a real legitimate son exists, the son affiliated under such circumstances will have no right over the estate of the adopter. Should a son be adopted while a real legitimate son exists, each of them will be entitled to succeed to his own natural father by obvious inherent right.21

21. शास्त्रीय अनुसूचित अवधि --- नागरिकविवाहिताः
तत्समानसंगतियों तत्तदाता न योग्यो तस्मिन्त्वम्.

कत्योर्ध्वे परिवर्तनस्य अथाः
ब्रतस्य शास्त्रीय अवधि न तत्तदाता तत्तदाता

DC, p.48.

DC, p.48.

DC, p.48.

DC, p.48.
According to Vasistha and Baudhāyana, should an aurasa son be born subsequent to the adoption of a son, the adopted son will partake only of a fourth share. He is not entitled to inherit equally with the aurasa. But according to Devala and Kātyāyana, he participates in the third share and this discrepancy has been explained away by the author of the Dattakacandrika by the adopted son being endued with excellent virtues or by his belonging to the class of the adopter.

According to a text ascribed to Vṛddha-gautama, if an aurasa son is born after the adoption of one who is endued with virtues (for, this is how the Dattakamāma interprets vathālata in the text), the two are held to partake of equal shares of the

22. या एवं स्वरूपं उत्पातः प्रेमवाने सम्मततांति बालकाचारण:।

23. दैवकान्त्यायम् के पुत्रियांश्च स्मार्तिकर्त्त्वशुपुष्पमिथिवन्यायां वाच्य।
father's whole estate. The Dattakamīmāṃsā holds that this is so when the adopted son is adorned with virtues and the aurasa is devoid of the same.²⁴ 'Devala's text is followed by the Bengal school while Vasistha's is adopted by the Mitaksara though the same is interpreted differently in different provinces.'²⁵ The Dattakacandrika takes the text of Vṛddha-gautama cited above as referring to the Sudras where such son inherits equally with the after-born aurasa, and does not interpret vathālata in the fashion as done by the Dattakamīmāṃsā.²⁶ The courts in Madras and Bengal following the Dattakacandrika apply this rule to the adopted and aurasa sons amongst the Sudras.²⁷

²⁴. यद्य व्रजसिद्धम्—

दत्तक ॐ यथातः कः निनिद्धीरसो वाचुः।

पितृविषयं सवः प्रकृता न विनिद्धीरसौ। पद्धियते।

वाचुः गुणानले वैरसुवर्त्य च मिनिद्धीरसौ युक्तमियते। [DM, p. 153.]


26. अताः ‘दत्तक—समभागीनाः’ वित्तपि कस्म शुद्धविधय यथा

वाचुः गुणान। [DC, p. 47.]

27. Perrazu v. Subbarayudu, 44 M. 656;

11. **Right of Primogeniture**

According to a text of Devala, should an *aurasa* son be born subsequent to the adoption of a son, the latter has no right of primogeniture, and so, does not receive the share of an elder brother, notwithstanding his seniority from age.\(^{28}\) It is perhaps because the adopted son is only a substitute for the *aurasa* and, hence, he has no ceremonial superiority.\(^{29}\) The *aurasa* son, inspite of the fact that he is born later, enjoys the whole estate, while the adopted son is entitled to only a share proper as legally ordained for him\(^{30}\) or only to maintenance as conceded by Brhaspati.\(^{31}\)

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28. दयपरिष्कारे नन्दर मो सौरसाज्ञाति न दये ज्येष्ठार्ज्ञाति तथायः।

For the text of Devala, vide fn. 30.

29. पिषुः विपीडिकरणानां दः मीहुःकरे कर्मणं पुरुषस्वतं वैदिकं सत्यार्यं नातिनागाः। ‘औरेष्व पुरुषस्वतं वेणुः ज्येष्ठूः न जितहे’

हति देवाके स्वसूक्तस्बालियानागाः।

सत्यार्यं स्तोत्राश्च राज्यं नातिनागां जैत्यां। पिषुः निःसं शाबादि व न सा श्रीमणाः खार्दिकाः।

DM, p. 124.

30. तथापि जन्मानि स्तवद्विश्चतिपियं जगन्नाः।

---- हति ब्रह्मपुराणाश्चिनावु

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DM, p. 42.

31. तत्र बुधपति।
The rule of Brhaspati may be considered as referring to the case where the property is an impartible estate. This inference is in line with the conclusion reached by the Dattakamimamsa and the Dattacakandrika from an excerpt purported to have been extracted from the Kalikapurana ruling that a king must not invest in the empire the Ksetraja and other sons, if an aurasa son exist. The author of the Dattacakandrika makes it clear that this text does not prohibit the share proper of the ksetraja, the dattaka and other sons which is otherwise ordained by the general law; it merely bars their accession to the empire, if any of the secondary sons co-exist with the aurasa. The adopted or any other legally recognised secondary son, in this instance, will not be entitled to equal participation with the

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32. एक स्वास्थ्य: पुष: सिंहस्थ क्षु: प्रभृः।
शैलाणांस्वाग्म्याय: प्रक्षपाद्य प्रजीवनayo।

DC, p. 38.

32. न अचार्योऽस्मातः राज्य राजस्वतिप्रजीवेऽः।
पुरुषां ला न-संस्कृति-समारोहिः कथा विविधः।
हति— लोकार्थे नाभिज्ञेऽवर्ज्ञो राज्य नानाकाभ्येऽः।

DM, p. 124
aurasa. In any case, only the real legitimate son will accede to the empire (or by implication any other impartible estate), if such a son exist.33

iii. When no Mode of Adoption is Followed

Should one be adopted without observing the rules of procedure ordained, the adoption may be treated as invalid, since in that case, his filial relation with the adopter is not produced. He is not held entitled to receive the wealth of his adopter, though assets sufficient to solemnize his marriage are accorded to both by the Dattakāmaṁadakā and the Dattakacandrika.34

33. .. परवरण व सत्यार्थो लोकाणां नानांशतिः तथागुरुणायां।
किन्तु किसः परिशुल्कतय जित्साधि कर्तवे न जानानि- 
पिंजरः। किन्तु किन्न च पत्रस्य के ज्ञानार्थ। किविन्न किना तत्तथा 
पुज्यतुत्त्वादि।

34. परिशुल्किते किन्न परिशुल्कतय फिकान्पार्न कर्तवे न जानानि- 
पिंजरः। किन्तु किसः पत्रस्य के ज्ञानार्थ। किविन्न किना तत्सा 
पुज्यतुत्त्वादि।

धूमलिङ्गाय पास परिशुल्कितं किविन्न ज्ञानार्थाय न 
पत्रस्याधिक विकालशि कायः।

धूमलिङ्गाय पास परिशुल्कितं किविन्न ज्ञानार्थाय न 
पत्रस्याधिक विकालशि कायः।

तथा विमात्र दिपित किसः परिशुल्कितं ज्ञानार्थायां न 
पत्रस्याधिक विकालशि कायः।

तथा विमात्र दिपित किसः परिशुल्कितं ज्ञानार्थायां न 
पत्रस्याधिक विकालशि कायः।

किन्तु तामर्कितति तथा किसः परिशुल्कितं ज्ञानार्थायां न 
पत्रस्याधिक विकालशि कायः।

किन्तु तामर्कितति तथा किसः परिशुल्कितं ज्ञानार्थायां न 
पत्रस्याधिक विकालशि कायः।

तथा परिशुल्कितं किसः परिशुल्कितं ज्ञानार्थायां न 
पत्रस्याधिक विकालशि कायः।

तथा परिशुल्कितं किसः परिशुल्कितं ज्ञानार्थायां न 
पत्रस्याधिक विकालशि कायः।
Under the m statutes of adoption of today, though the *dattahoma* is not essential, the basic conditions of procedure must be adhered to.

Where a son duly adopted and the one adopted without observance of form, co-exist, only the former is entitled to receive the wealth and not the latter.35

iv. Not of the Same Class

An adopted son, who is unequal in class, is not only excluded from participation in the whole estate of the adopter, but he is also not entitled to receive a share even of his estate.36 The

35. श (इंग्रैं) यथ- ‘तव मू जारै’... अंशा।

... तथा कु वे यातानिधित्यागारणीते अति ग्रां । यातानिधित्यागारण्य अवथाय। विधानस्थाये गुहलयां पादवः ग्राहः।

36. एकाहारीविज्ञानिक्या नारायणगिरीस्वरूप- यदि याद नाभातिया शापितः चिन्तनातः ।

अपानाः न तं कु माणाचार्याः पां निष्णूः।

उत यत्व गौतमः एव यदः ग्राहः... पां निष्णू ह व्यासान- जातियांग्रानात् निषेधणितः।

'यदि स्याह... त्वमेव स। जन्म ग्रहायो लक्ष्म्यप्रेयता वा जाति वैदिकायु शुभोत्तियो विधिनासी त्यथा। अंशी अनते। ज्ञानाियायामिति भवन भवन्यायानि स्वयं ववकारः व इतिहासनानि सति काव्यायणमेवादि।

*DM, p. 161-162.*

*DM, p. 164-166.*
religious efficacy of such a son governs his right to succession. As he is beneficial only in a small degree, he receives only maintenance from the person who succeeds to him. 37

v. Adopted son of a disqualified heir
Blind, lame and the other sons afflicted with other physical or mental disabilities, are not entitled to inherit the wealth and since his son or one by his wife, viz., the ksetra, alone, who are also free from such defects, are ordained to partake of their paternal grandfather's estate, it is deduced that his adopted son and the rest have no right to succeed to such estate. The adopted son receives only maintenance. 38

--- विभक्ति विश्रामजनकां पापवर्ति विकाराधानार्थम् नायकेन्द्रियांकिम् ।
ब्रह्मेष्ठिकांग्यायिनिः श्रेयस्य नानाविनासोऽवैधिनी।
--- 'श्री रामसंन्यासु व रूपं भूषणपैलं' श्री।

LC, pp. 6-7.

--- नामानुः पुनःनामां जनानाम नागर्गिन्य सदोक्तं दौरान्यां विश्वास व नारायणां विश्वास नारायणां विश्वास नारायणां विश्वास नारायणां विश्वास नारायणां विश्वास नारायणां विश्वास नारायणां विश्वास नारायणां विश्वास नारायणां विश्वास नारायणां विश्वास नारायणां विश्वास नारायणां

LC, p. 68.
vi. A special rule governing succession by the adopted son amongst the Śūdras obtains. If the partition takes place during the life-time of the father, he shares equally with the āuraśa son and if the father be dead at the time of the partition, he takes the moiety of the share of such son. 39

(d) Rights of Dvīmūsavyāvāna

A son affiliated with an express stipulation that he shall be a son to both the adoptive as well as the natural father, is characterised as the dvyāmusavyāvāna. 40 A son of the wife, viz., the ksetra or the one begotten by a sonless man on the wife of a sonless man was also called dvyāmusvyāvāna. Since such a practice is not recognised in the present age, a son adopted in the dvyāmusvyāvāna form

39. ... अँ विकालेश्वरोप्येकोहस्तन्त्य च दिनदान... तत्त्वज्ञान न वेदांश्च तद्यथार्थः।

40. वास्तव क वणमेतिष्ठति तत्त्वज्ञानास्य दिनदानः द्वाराधिकारावर्गोपन्यासणाम्।

DC, p. 46.

DC, p. 19.
alone is treated of here. The text of Manu, 'the son-given must not partake of the family and property of the giver' is applicable only to the absolutely adopted son, but the absolute dvramusavaya adopted son participates in the families of both, the fathers and, by inference, in their wealth also. 41

According to the general rule an adopted son is a dvramusavayana where the father has no other son and the adopter takes him under an express agreement that he shall belong to both. However, according to the author of the Dattakacandrika, even when there is no such agreement on the part of the adopter, but the father remains sonless or dies sonless without leaving such heir, he will be treated as son of both of them. He will again be treated as such if such an agreement exist, although the giver has another real son who was, evidently, born after the first

41. ---- ये तु मित्य पीविन्यायत्राय दत्तकचाँड्रिकायाम् गौतमशू |  DNM, p. 193.
one had been given away in adoption. In both these instances he is entitled to succeed to his appropriate share in both the families.

On the right of the *dvāmaṣṭiṇāyana dattaka* over the property of his adoptive and natural fathers, the *Dattakacandrika* expressly ordains that he takes the whole estate of both if they have no other male issue. But if a real son is born to the natural father subsequent to such adoption, he takes half of the share of a legitimate son (*tadāurāgaṁ-dhaharatvān*), where as, if such issue be subsequently born to the adopter, he takes the moiety of a share which is prescribed by law for an adopted son exclusively related to his adoptive father.

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42. श्रीश्री: विद्वानजानकान्याक वृत्तापातान्ये व तांवेद विशालिन्येः-अत्यं अवे व विद्वानजानकान्येः।

The interpretation of this passage as given in the *Sṅkarjavākyabhā* by Marulakara, that

(vid his edition, p. 5c) is wrong and the one given above only is right on account of unity of import and construction with the preceding passage treating of the similar subject, viz., the *dvāmaṣṭiṇāyana* of *kaṭrajā* form. The passage reads as -

43. *DC*, p. 47.
(e) The Doctrine of Relation back

A reference has been made to the fiction of adoption deduced from the text of *Menu* on the rights of the son-given in the adoptive and natural families. According to the fiction, adoption was treated as operating as the adopted son's civil death in the natural family and a new birth in the adoptive family. It was further extended unwarrantedly to treat the adoptee as having been born in the adoptive family from the time of his actual birth. In some cases, his rights were related back to the death of the husband of the adopting widow. But such rights were limited to the alienations and dispositions invalidly made and he was considered competent to set aside only such unauthorised transactions made by her after her husband's death. He could not invalidate transfers validly made by the husband or made by the adopting widow under an instrument of authority from her husband, which also empowers her to make an adoption. The argument that the power to adopt in

44. *MS IX.* 142.
a widow amounted to her being pregnant and that the adopted son had all the rights of a posthumous son was rejected by the Privy Council. According to Raghavachariar, the doctrine of relation back has two exceptions: 'the first, that it does not apply to the case of succession to a collateral's property and the second, that it does not divest a person who has taken the property not by intestate succession but by transfer *inter vivos* or by will of the father or other preferential heir who had taken the estate in the meantime.'
