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. करणांकिताः तत: दणाकरणांकिताः परित्रसिताः विनिताः विनितानांकिताः।

IV, p. 40

Extracting these passages the DC (p.4) states...
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 Bhattakarimasha it is pounded 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 and created. The adopted son inherits the whole estate even of the adopter provided that the latter has no other real son. According to Manu,
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. sota other than that of the adopter himself.\footnote{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 natural son except in a few specified instances, which have been clearly and carefully noted and defined.' Some of such cases have been described in the sequel hereafter.\footnote{6} A few instances have also been mentioned in the case \textit{Nasindas v. Bouchoo}, 40 B. 270; 14 H.L. 185.


\footnote{6} 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-davada, while the others treat him as adavada-bandhava or abandhu-davada. 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 Dattakemaditta and the Dattarakandrika 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-davada by his own virtue. This is clearly apparent from the text of

8. ... तत्त्व ैव गृहंतस्य जीर्षकम् व प्रियेनान्त्योदितयक्ष्यु ।

DD. 42.

तदापि गृहंतस्य जीर्षकम् व प्रियेनान्त्योदितयक्ष्यु ।

DD. p.153.

तत्त्व केवलि गृहंतस्य जीर्षकम् व प्रियेनान्त्योदितयक्ष्यु ।

DD. pp. 42-43.
Menu (lx. 158) in point. When Vasistha and others, in their passages on the procedure of adoption, lay down that the intending adopter should call together his bhandhu (bandhunabaya) 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 bhandhava 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 bhandhu-davada, abandhu-davada and adavada-bandhava. But the Dattaka-sandrika, 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-davada represents a person who inherits,
besides the father, to his _sapinda_ kinsmen, while _abandhu-dayadha_ 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 _bandhu_ of the _dattaka_ 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. _sasotra-sapindas_ and _bhinnagotra-sapindas_). In accordance with that has been explained in the last chapter in connection with _sapinda_ relationship, _sasotra-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

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9. _पितृपुत्र ब्राह्मणवं मुर्तिविनाशित दासार्थम् दु:सारद्वयं पितृसारं
  दाक्षिण्याय दुःसारद्वयं पितृसारं_ | आदित्यम् जाते ब्राह्मणः
  _पितृपुत्रि: मुर्तिविनाशित पितृसारं येषाऽकार्याणि_।

_LC_, p. 43.
and as an heir to the ancestral property in which his predeceased adoptive father had caparcrinary 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.

**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

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10. *सन्तोषयः प्रागादिने वेष्य प्राप्तयां धनं जन्तुत्तमाः।
अनेकाष्ठं ताकाँत्वं तथा इति गर्भतात्त्वां धारणं प्राप्तिः।
* LCS, 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.

Illustration: A person GF has two real sons $F_1$ and $F_2$. $F_1$ adopts a son $S$ and later dies. The grandfather GF dies leaving $F_2$ and the grandson by adoption, $S$. Now, at the time of the petition of the ancestral property, $S$ will get a share which an adopted son receives in partition with the real son. On default of $F_2$, he succeeds to the whole estate.

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

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11. पत्रांश: पृष्ठांशत्वविपुरुषाद्वितीया राजापत्निः जन्माये तत्तपसनाथाये दोषिकांतत्तमाये तदद्वशे एकमस्वद्योगतिः।

EC, 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.*

(b) On the Property of the Natural Father

It has been seen in section (a) and (b) of the last chapter (VII) that the authors both of the *Bottakacandrika* and the *Bottakomimansa* rely upon the texts of *Menu* 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 *Menu* states that the son-given does not take the estate of his begetter. All that the text of the *Chandrika* 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. पाण्डुरुपम पितामहवानीश्च अस्तित्वात्त्येष जनपदं
याग्यमात्मति यर्दीकायव सायं। संय सिस्ति प्रयोजने रक्तमात्सुव्यक्ति।

13. See *ib. 2 of Ch. VII, p. 217*. 
is extinguished. The interpretation of danad (t) as danadarbhyun 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 on 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.\(^\text{14}\) 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 copartner\(^\text{15}\) or by inheritance\(^\text{16}\)


or by partition in his natural family. 17 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. 18

As has been pointed out also in the last chapter, it may be noted from the cases cited in ins. 14 and 18 here that the Bombay High Court has delivered conflicting judgments 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. 479, '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

17. Rulia Ram v. Sotham, (1930), L. 470;
18. Lattatraya v. Govind, 40 Bom. 29; 18 Bom., L. 2, 259,
    followed in Bai Kesarkai v. Shirmantsi, 34 Bom.,
    L. 2, 1332; 56 Bom. 619; Manikbai v. Gokuldas, 49,
    Bom. 520.
the latter." F.V. Kane points out the fallacy in the construction of the text of Menu (II. 14?) by the Bombay High Court and relying on the two rules of Himaśeṣa on the construction of texts, he concludes that 'taking of property (rikthaḥarana) must have reference to the future bringing out and not the undoing of rikthaḥarana which had already taken place long before.'

The Calcutta High Court observed in Shyamcharan Chattopadhyaya v. Srīcharan (56 Cal. 1335) "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 Rao (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 Dayabhaga law in force in Bengal, a son has no vested coparcenery 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 *Mīmāṃsaka*, 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 *Jattakacakandrika* makes a further provision while treating of the *dvvamavavara* son. According to him, even where the son is not adopted in the *dvvamavavara* 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.²

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. 

According to Vasistha and Baudhayana, 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 Katyayana, he participates in the third share and this discrepancy has been explained away by the author of the *Battakaśandrika* by the adopted son being endowed 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 endowed with virtues (for, this is now the *Battakaśandrika* interprets *vēthādrīta* in the text), the two are held to partake of equal shares of the
father's whole estate. The Dattakamimamsa 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 Vrddha-gautama cited above as referring to the Sudras where such son inherits equally with the after-born aurasa, and does not interpret yathajata in the fashion as done by the Dattakamimamsa. 26 The courts in Madras and Bengal following the Dattakacandrika apply this rule to the adopted and aurasa sons amongst the Sudras 27.

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24. अन्तः कुटिलसूत्र -
   दत्तक कालिको अद्यतनकेष्यास्य नाभिः
   पितृशिवर्णो उपेन्द्रय गंगार्जनो तस्सि
   तदार्जनान्तरतः निरुपवर्गमुनिभो निर्देशायेट्


26. अन्तः कुठुम् कपालिकान्नम् । उपेन्द्रवर्ज्ञात्मकम् सण वैर्यायाम् ।
   K.C. p. 47.

27. Ferrazu v. Subbarayudu, 44 N. 656;
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.\textsuperscript{28} It is perhaps because the adopted son is only a substitute for the *aurasa* and, hence, he has no ceremonial superiority.\textsuperscript{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 to a share proper as legally ordained for him\textsuperscript{30} or only to maintenance as conceded by Brhaspati.\textsuperscript{31}

\textsuperscript{28} द्वपरविवाहजननः को राजहर्षकायं न द्वो ज्येष्ठायेव सिद्धः:।
\textsuperscript{30} Ṛṣiṇ्य: शर्यवातिः हुन राजहर्षकः कदाचित्वात् पुस्तकः पूर्वकः पौर्वे सम्बन्धः

\textsuperscript{29} नातेश्वरः। गौरवे पुनर्द्विन्यासे तेषु ज्येष्ठूऽ न किले

\textsuperscript{31} न यथा शर्यवातिः

\textsuperscript{28} For the text of Devala, vide fn. 30.

\textsuperscript{29} तत्रयोऽर्जुन्यानाहुः कर्माणां नापूर्वमेवः।

\textsuperscript{30} तत्रयोऽर्जुन्यानाहुः।

\textsuperscript{31} तत्रयोऽर्जुन्यानाहुः।
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 Dattakamisena and the Dattakacandrika from an excerpt purported to have been extracted from the Kalika Purana ruling that a king must not invest in the empire the Kastra and other sons, if an aurasa son exist. The author of the Dattakacandrika makes it clear that this text does not prohibit the share proper of the Kastra, the datta 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

31. तत्स्वरूपः पुरुषः विद्युतम् जीवनः प्रचुः।

कृष्णस्वरूपः। यावः प्रदथः प्रोदनः। ॥

PG, p. 33.

32. न हिर्मे ज्ञानानां राज्य नान्मेत्तराधिकारम्।

निवार्यं यथा खण्डिन्तदारो। तत्र धतिः।

विनात्-- ज्ञानानाऽहि राज्य नामिनिज्ञानं।

IM, 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.  

iii. When the Rode 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 acceded to both by the Dattakaminasa and the Dattakacandrika.  

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33. ... परम्परा न विकसित परम्परीदात्र पारंपरी नां का बालां।।श्रीमती परम्परा नां का बालां।। रखने उक्ती परम्परा नां का बालां।।

34. अपेक्षित कर्ता परम्परीदात्र विकारिण गि न परम्परापत्रिक पदिम परम्परी।। विकारिण गि न परम्परापत्रिक पदिम परम्परा।। विकारिण गि प्रथम राजनीतिक विकारिण गि न परम्परापत्रिक पदिम परम्परा।। विकारिण गि प्रथम राजनीतिक विकारिण गि न परम्परापत्रिक पदिम परम्परा।। विकारिण गि प्रथम राजनीतिक विकारिण गि न परम्परापत्रिक पदिम परम्परा।।

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DC, p. 17.  
के आय ।। दु: भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का भरस्तिसिद्धि परस्परं का
Under the 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

35. न (भूमची) काले ‘सभी पूरी बातें... सुना?’

36. नातकोऽसुध्दारूपित नातकोऽसुध्दारूपित निर्देशनः।

v. वदि यदि यदि वदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि यदि


DM, p. 52.

DM, pp. 104-106.
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 surviving son or one by his wife, viz., the bastard, alone, who are also free from such defects, are ordered 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. 37

37. --- भिन्न अन्नकर्मार्थाय वाच जन यावाय अन्नमण्डलिः साक्षादिविशिष्टे

--- भिन्न अन्नकर्मार्थाय वाच जन यावाय अन्नमण्डलिः साक्षादिविशिष्टे

38. यो विशेष्यवक्तः प्रकारः भजाति नां गीतं विस्मयप्रकारः शब्दं अपि पालितं

कन्याधिकारिणां तेन विनायकानां अवतिष्ठति नावत्तेन न भजाति.

कन्याधिकारिणां तेन विनायकानां अवतिष्ठति नावति तदात्तरे.

38. ---
vi. A special rule governing succession by the adopted son amongst the Sudras obtains. If the partition takes place during the life-time of the father, he shares equally with the surasa 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 dyvamasyavama

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 dyvamasyavama. 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 dyvamasyavama. Since such a practice is not recognised in the present age, a son adopted in the dyvamasyavama form

39. ... जापेलोदागिनापोरिन का विप्रलाय-प्रतारः।
ए तु िुिा न संप्रदायः। कथा इसे नलकारात्मक वाक्यं। कथि नि स्वयम्।

DC, p. 46.

40. क्या व जान्निगुण त्रीड़ा गोरेस्तर सुमात, समान्य, कथि दक्षतः
द्रामुण्डो तत्ततार्यां थानी लापि।

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 *dvyanuvayana* 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 *dvyanuvayana* 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 *Battakaandrika*, 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. ---- येण सिलक्रूपयुक्तश्चर्गमण्डित्य वै जातिसूचींगौरः || दमः फः १९३ ||
one had been given away in adoption. In both instances he is entitled to succeed to his appropriate share in both the families.

On the right of the dvayamasyayana 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 (tadgaugad-dhanarapatvam), 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.

The interpretation of this passage as given in the Sankarivakhyya by Harulakara, that

(said by one as)

(vide his edition, p. 5) is wrong and the one given above only is right on account of unity of port and construction with the preceding passage treating of the similar subject, viz. the dvayamasyayana of kastriya form. The passage reads as -

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(vide his edition, p. 5) is wrong and the one given above only is right on account of unity of port and construction with the preceding passage treating of the similar subject, viz. the dvayamasyayana of kastriya form. The passage reads as -
(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. \( \text{No. IX. 142} \).
45. \text{Vaidyanath v. Savithri, 41 N. 75; 33 M.L.J. 307.}
46. \text{Krishnamurthi v. Krishnamurthi, 50 N. 508; 25 M.L.J. 345.}
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 Raghavacharier, 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.'

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48. ibid., p. 173.