

(1913) 01 MAD CK 0002
In the Madras High Court

Avula Guruvaya and Others

APPELLANT

Vs

Avula Venkanna and Others

RESPONDENT

Date of Decision : 06-01-1913

Acts Referred:

Citation : 18 Ind. Cas. 212

Hon'ble Judges : Arnold White, C.J;Tyabji, J

Bench : Division Bench

Judgement

Arnold White, C.J.—It is conceded, on behalf of the appellant, that, unless it is established that Subrayudu and Padmanabham were

brothers, the plaintiff's case that they are the nearest reversionary heirs of the 1st defendant's husband fails. The Subordinate Judge has found that

these two were not brothers, but the sons of two brothers. On the evidence, I am not prepared to say that this finding is wrong.

2. The question remains, are the plaintiffs entitled, in this suit, to set up the alternative case that, assuming they are not the nearest reversionary

heirs, they can ask to have the adoption set aside?

3. It is well settled that, in certain circumstances, a reversionary heir, who is not the nearest reversionary heir, is entitled to impeach the validity of

an adoption. The law was laid down by the Privy Council in Rani Anand Kunwar v. Court of Wards 6 C.K 764 ; 8 C.L.R. 381; 8 I.A. 14.

4. If the nearest reversionary heir refuses, without sufficient cause, to institute proceedings, or, if he has precluded himself, by his own act or

conduct, from suing or has colluded with the widow or concurred in the act alleged to be wrongful, the next presumptive reversioner would be

entitled to sue; see Kooer Goolab Singh v. Rao Kuran Singh 14 M.L.A. 376. In

such a case, upon appellant stating the circumstances under which the more distant reversionary heir claims to sue, the Court must exercise a judicial discretion in determining whether the remote reversioner is entitled to sue, and would probably require the near reversioner to be made a party to the suit. See too *Gurulingaswami v. Ramalakshamma* 18 M.K 53; 4 M.L.J. 237. The respondent has not contended that the law is otherwise. The question we have to determine is, ought we to give the plaintiffs an opportunity in this suit to show, if they can, that, on the assumption that they are not the nearest reversioners, the adoption is bad.

5. The case set up in the plaint is that the plaintiffs are the nearest reversionary heirs of the 1st defendant's husband. There is no allegation that, in the view they are not the nearest reversionary heirs, the circumstances in which the adoption was made were such that the plaintiffs would be entitled to impeach its validity. In the defence, it is denied that the plaintiffs are the nearest reversionary heirs, and it is alleged that another branch of the family are the heirs.

6. Two issues were framed, (1) whether the plaintiffs are the nearest reversionary heirs, and, if not, whether the suit is maintainable, (2) whether the adoption is valid.

7. The words of the first issue may be wide enough to cover the two alternative cases, but I feel no doubt that when the issues were framed and when the parties went to trial, the only case on which the plaintiffs intended to ask for relief was as the nearest reversionary heirs. The parties agreed that, if necessary, the evidence relating to adoption should be taken after disposal of the 1st issue. If the 1st issue was intended to cover the two alternative cases, evidence as to the validity of the adoption would have been necessary whether the plaintiffs did or did not establish that they were the nearest reversionary heirs

8. It is clear that the observation of the learned Judge, "If the relationship set up in the plaint is not proved, the plaintiff's suit must be dismissed, was made with reference to the particular suit and was not intended for a suggestion that, in no circumstances, could an adoption be impeached by reversioners who were not the nearest reversioners.

9. At a very late stage in the Court below, after the evidence had been closed and the plaintiff's Vakil had addressed the Court, he asked for leave

to amend his plaint by adding a paragraph which set up the case that, even if they were not the nearest reversionary heirs, the plaintiffs were

entitled to sue. The plaintiffs did not apply for leave to amend when they were put on notice by the written statement that the defendants contended

that certain parties other than the plaintiffs were the nearest reversionary heirs. Apparently, it was only when they realized that they were not likely

to succeed on the case as set up in the plaint that they asked for leave to amend. In these circumstances, I am not prepared to say that the Judge

was wrong in declining to give leave to amend the plaint. The amendment would have altered the character of the suit and would probably have

required that the parties who, according to the appellant's contention, were the next reversioners should be added as defendants. See Rani Anand

Kunwar v. Court of Wards 6 C.P 764; 8 C.L.R. 381; 8 I.A. 14.

10. In the Privy Council case to which I have referred, their Lordships declined to give effect to the contention similar to that raised in this case on

the ground that there was no issue and no finding with reference to it.

11. The present case is, of course, distinguishable since there was an application for leave to amend and the point taken in the grounds of appeal to

us, but for the reasons I have stated, I am not prepared to interfere with the judicial discretion exercised by the Judge in refusing leave to amend.

12. If the Judge was right in refusing leave to amend, it follows that this appeal should be dismissed.

13. I think the appeal fails and should be dismissed with costs.

Tayabji, J.

14. I agree that this appeal should be dismissed with costs.

15. There are two questions involved in this appeal. The first is a question of fact, on which the plaintiffs based their suit in the lower Court, viz.,

whether the plaintiffs are the nearest reversioners. The learned Subordinate Judge has found that the plaintiffs are not the nearest reversioners and,

on that ground, has dismissed the suit. He has given ample reason for disbelieving the evidence adduced on behalf of the plaintiff on the point. I

quite agree with the learned Chief Judge that we have not been shown sufficient reasons for disregarding this finding. It was urged before us by the

learned Pleader for the appellants that the judgment in Original Suit No. 503 of 1905 on the file of the Court of the District Munsif of Tenali

corroborated the evidence of the plaintiff in the present suit and that this was a reason why the Subordinate Judge's finding should be dismissed.

But we have no materials to judge what is the exact effect to be given to the proceeding in that suit. All we have on record is the judgment and the

learned Pleader for the appellants could only throw out some conjectures and speculations as to what might possibly be the effect of the previous

proceedings and that, possibly, they might be inconsistent with the statements of the 1st defendant in the present suit. But the 1st defendant in the

present suit did not appear in Original Suit No. 503 of 1905 and cannot be bound by the contention of the other defendants in it.

16. The second question involved in the appeal is, whether if the plaintiffs are not the next reversioners, they can still maintain a suit of the nature in

question. It was suggested, in the course of the arguments, that a right to bring a declaratory suit u/s 42 of the Specific Relief Act is not restricted to

the nearest reversioner. It is true that some remarks of their Lordships of the Privy Council in *Rani Anand Kunwar v. Court of Wards* 6 C.P 764 ;

8 C.L.R. 381; 8 I.A. 14 referred to by the learned Chief Justice, if taken by themselves, may indicate that these may be circumstances in which

any person, who has any interest at all in establishing or dis-establishing an adoption, may, in the exercise of judicial discretion, be permitted to

bring a declaratory suit of this nature. But such circumstances, as are referred to by their Lordships of the Privy Council in that case, must be

proved before the more distant reversioners can be permitted to bring such a suit and the plaintiffs have not proved any such circumstances. Their

case was not that the reversioners were precluded by any improper act, but that they were themselves the nearest reversioners.

17. The lower Court did not permit the plaintiffs to raise the question whether the suit could be maintained on the ground that the nearest

reversioners were precluded from maintaining the suit. It was urged before us that either no amendment of the plaint was necessary in order to

enable the plaintiffs to raise this question involved if the present amendment was included in the first issue, or, if that was not so included and an

amendment was necessary, that the learned Subordinate Judge should have given leave to amend the plaint for which an application was made,

assuming that the question of the maintainability of the suit arising under the 1st issue was settled in the Court. I do not see how the plaintiffs can

succeed in their contention. For, if the first issue involved the question of the maintainability of the suit by the plaintiffs, notwithstanding that it might be held that they were not the nearest reversioners, it follows that it was the duty of the plaintiffs to advance evidence proving those facts which are necessary in order to entitle them to a finding in their favour on that issue, in other words, they should have proved either collusion or fraud or other circumstances precluding the prior reversioners from bringing such a suit. But there is nothing whatever in the evidence adduced by the plaintiffs to establish those facts and it is clear that if what appellants contend as regards the meaning to be given to the second part of the first issue is accepted, it must be taken that the plaintiffs had an opportunity of proving such collusion or fraud as would entitle them to maintain the suit, and yet they produced absolutely no evidence on the point. If, on the other hand, the 1st issue did not include the question involved in the amendment, for which leave was asked, in other words, if the amendment was necessary before that question could be raised, then I entirely agree that the Subordinate Judge exercised his discretion rightly in not granting leave to amend. As pointed out by the learned Chief Justice, the amendment would have altered the nature of the suit and might have required the addition of fresh parties to the suit and it could not have been entertained, considering the very late stage at which it was made. It was contended, in support of the argument, that the plaintiffs could not, at any earlier stage, raise the question about the nearest reversioners being precluded from filing a suit inasmuch as they never knew what the defence was going to be. Whenever fraud, or misrepresentation or collusion is relied upon, it must be clearly pleaded and proved, and if the plaintiffs did not know that the nearest reversioners had purported to authorise the adoption, what basis could they have had for alleging that the authority was fraudulently or collusively obtained?

18. For these reasons and for the reasons mentioned by the learned Chief Justice, I think that this appeal should be dismissed with costs.