

(1952) 10 MAD CK 0024

In the Madras High Court

Case No : Appeal No. 467 of 1948

Brahmanandam Ramamma alias Ramalakshamma

APPELLANT

Vs

Rupakula Venkata Lakshminarasimham and Others

RESPONDENT

Date of Decision : 10-10-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Registration Act, 1908 — Section 17

Citation : AIR 1953 Mad 676 : (1953) 66 LW 502

Hon'ble Judges : Subba Rao, J; Ramaswami, J

Bench : Division Bench

Advocate : N. Subramaniam, for the Appellant; P. Somasundaram, P. Suryanarayana, P. Satyanarayana Raju and P. Ramchandra Raju, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, J.—This is an appeal preferred against the decree and judgment of the learned Subordinate Judge of Tenali in Original Suit No. 4 of 1947.

2. The facts are:-- In Valiveru village of Tenali Taluk there was a karnam by name R. Sitaramaiah. His family consisted of himself and his wife Mahalakshamma and two daughters An-napurnamma and the present plaintiff Ramaamma. Both these daughters were married and the son of that Annapurnamma is Kavutha Sambayya who was the plaintiff in O. S. No. 16 of 1916 on the file of the Temporary Sub-Court, Guntur. The plaintiff's husband is Brahmandam Venkatappayya who as a matter of fact has been living with this Sitaramaiah for some years before his death and assisting him in his karnam's job. This Sitaramaiah had no male issue.

3. In September 1907 this Sitaramaiah became seriously unwell and he executed on 12-9-1907 the following Will:

"Will executed on 12-9-1907 in favour of Mahalakshamma, wife of Rupakula

Sitaramaiah. Brahmin, Inamdar residing at Valiveru, Tenali, Sub-District, Guntur District by Rupakula Sita-ramaiah, one of Punnayya Garu, Brahmin, Inamdar and Kamam, residing in Valiveru village As you are my wife, as we have no male issues excepting female issue & as I who have been very ill for the last five days and afraid that I will not survive you should keep in possession after my death the entire movable and immovable properties specified in the schedule here-under. ,

In order to perpetuate our family you should bring and adopt a boy, where you will feel convenient, from among the persons of our gotra as would be accepted by gastras, transfer my Karnam's list in his name and have the work conducted through a gumastah until his minority ceased.

You should safeguard all the movable and immovable properties owned by me till the minority of the adopted boy ceases, without alienating them in any manner and deliver the said entire property to him after his minority ceased.

If you and the adopted boy should feel impossible to live together, you should enjoy till your death 3 acres of land out of P. No. 87C for your maintenance without powers to sell, gift mortgage, etc. You should discharge the debt due by me to others.

This is the will executed with consent". This will has been signed by Sitaramaiah and attested by no less than 8 persons and written by G. Subramanya Sastri.

4. On 21-9-1907 viz. nine days after executing the will this Sitaramaiah died and the activities of his widow are chronicled in Exs. A-3 to A-7. Ex. A-3 is an Arji sent by the widow Mahalakshamma a few days after the death of her husband & even before the execution of Ex. B-3, wherein she stated that the present plaintiff's husband Venkatappayya had been brought into the family to help her husband in his duties as karnam even 7 or 8 years before his death and that he got sufficient training and that he may be permitted to function in the karnam's duties till she gets her adopted son within 7 or 8 days and till the list is granted in his favour. Ex. A-7 is a report to the Deputy Collector by the Tahsildar in pursuance of Ex. A-3 reporting the death of Sitaramaiah on 21-9-1907 and that his widow presented the above petition that she would adopt a boy in 7 or 8 days and on 13-3-1908 she had filed another petition that she intended to adopt the 1st defendant and requesting that his name might be registered as heir and that her son-in-law (Venkatappayya plaintiff's husband might be appointed as his deputy but that On 15-12-1908 she filed a petition denying the above and requesting to register the name of the boy that she may thereafter adopt, and that she had mentioned therein that Mallayya had filed a civil suit for the validation of the adoption of the 1st defendant. Ex. A-4 is another Arji by the widow dated 8-12-1908 wherein she claimed that she was given authority to adopt under the will of her husband dated 12-9-1907 and that he died on 21-9-1907 but still she could not take any boy in adoption due to customary objections, that she should not do so till she went to her mother's house after

one year of the husband's death, and that she had already sent the Arji as per Ex. A-3 on which Venkatappayya was so appointed, and that in the interval when she went to her mother's house and returned the said Venkatappayya had secreted paddy turmeric, a pair of bulls etc. as well as the salary upto date besides Rs. 800/- worth of her movable property and refused to account for them and that he had also set up the adoption of the 1st defendant and also forwarded some applications with her signatures for adding the minor as list-holder in collusion with the 1st defendant's natural father by taking 2 acres worth Rs. 14000/- from him and got a suit filed by him for declaration in the District Court, after having handed over the original of the will to him, and had also secreted several of her documents; but that she never adopted the 1st defendant and requiring that the said Venkatappayya may be removed from Karnam's duties. The next in date is Ex. A-5 of 1909, which is a statement given by the widow Mahalakshamma to the Tahsildar to the enquiry following Ex. A-4 wherein she stated that Venkatappayya got several forged documents and petitions into being and that she was contemplating the adoption of some suitable boy and that the will executed by her husband is in the custody of Venkatappayya, who is not returning it to her. Ex. A. 6 is another such report dated 30-8-1909 in which she had set up the adoption of one Sivaramakrishnayya on Ashadha Bahula 12 and that the 1st defendant was not adopted by her and that her brother Konduru "Sriramulu may be appointed as deputy conditionally, and that if he was not so accepted as not qualified, the assistant Karnam Daita Sesha-yya may be appointed.

5. There were two litigations concerning the adoptions by this Mahalakshamma. O. S. No. 76 of 1908, Sub Court, Guntur and re-numbered as O. S. No. 62 of 1910 on the file of the Temporary Sub Court, Guntur, was filed by the present first defendant who was then a minor and was represented by his natural father and next friend Mallayya. It was a suit for a declaration that this Venkata Lakshminarasimham was the legally adopted son of the late R. Sitaramaiah and for recovery of possession of the properties concerned in that suit with mesne profits," The sole defendant was Mahalakshamma, the widow of Sitararnaiah. The scope of the contentions between the parties is indicated by the following issues framed:

1. Whether the plaintiff is the validly adopted son of the defendant?
2. Whether the suit has been properly valued?
3. Whether the suit is bad for want of a prayer as to the defendant's maintenance?

The contention of Mahalakshamma before the learned Subordinate Judge was that it was quite true that her husband had executed the original of the will, copy of which is Ex. B-I reproduced above, and that he had also given her authority to adopt therein but that she did not adopt this Venkata Lakshminarasimham as alleged and that this adoption has been concocted by her son-in-law

Venkatappayya, the husband of this plaintiff, for ulterior object of his own. In fact during the course of the trial, as seen from the judgment of the learned Subordinate Judge, this Mahalakshamma ever set up a trial (sic) adoption of an elder brother of this Venkata Lakshminarasimhan and stated that as this elder boy was found to be dull and not suitable for adoption the idea was discarded. In the suit however she was discreetly silent about her adopting T. Sivaramakrishnayya on 14-7-1909 which had been mentioned by her in the Arji to the Tahsildar, mentioned above. In other words, this Mahalakshamma had a straight fight and severely contested fight with this first defendant on the question whether she adopted him or not. The learned Subordinate Judge came to the conclusion:

"I have given the case my best and most anxious consideration and I feel that I cannot come to any other conclusion than that the minor plaintiff was in fact adopted by the defendant some time after the date of Ex. A-(i. e., Ex. B1 here). I find the issue accordingly for the minor plaintiff".

There were appeals therefrom to the High Court and these appeals are A. S. Nos. 12 and 13 of 1913 and they were disposed of by Sir John Wallis C. J. and Coutts Trotter, J. The learned Chief Justice dismissed the appeals observing among other things:

"The Subordinate Judge has found that the adoption is proved and I see no reason to differ from his conclusion. It is admitted that Sitaramaiah the last male owner left a will in which he enjoined on his widow to make an adoption".

The learned Chief Justice then proceeded to examine the relevant documents via Exs. A-3 to A-7 which have been referred to above and held:

"On the whole it seems to me that the documentary evidence and the respectable evidence of the revenue Inspector sufficiently prove the adoption and the conclusion I have come to is that the Judgment of the Subordinate Judge should be confirmed and the appeal dismissed with costs".

In this Coutts-Trotter, J. agreed and stated: "I agree for the same reasons. I think this is a perfectly hopeless appeal. These four documents are not only damaging to the appellant's case but wholly inconsistent with any other conclusion than that the adoption had taken place somewhere in the month of November 1907. I agree that the appeal should be dismissed with costs". Thus ended the first round of litigation.

6. We have Just mentioned before that Sitaramaiah had two daughters and that one daughter was Annapurnamma ALIAS Punnamma. This Punnamma's minor son Kavutha Sambayya filed O. S. No. 102 of 1915 and re-numbered as O. S. No 16 of 1916, on the file of the Temporary Sub Court, Guntur, represented by his paternal uncle and next friend Kavutha Lakshmayya. In this suit this Sambayya impleaded his grandmother Mahalakshma as the first defendant, his own mother as the second defendant, his aunt the present" plaintiff as the third defendant

and an infant boy of hers as the fourth defendant and the adopted son Venkata Lakshminarasimham, the present first defendant, as the fifth defendant and the other person who is said to have been adopted by Mahalakshamma on 14-7-1909 and which she did not set up in the prior suit as the sixth defendant. We may at once eliminate this sixth defendant by pointing out that nobody worried about this adoption including himself and under issue 4 the learned Subordinate Judge who disposed of that suit stated: "In this suit no evidence had been let in to prove the alleged adoption of the 6th defendant and I find on this Issue that his adoption is not proved".

Thus, It will be seen that the real contest was once again between Sambayya and this first defendant because the grandmother Mahalakshamma never accepted this adoption of the first defendant as having been made and the mother and the aunt of this Sambayya did not dispute that position. On the other hand, both the daughters of Mahalakshamma as well as Mahalakshamma only stood to gain by denying the adoption. The scope of that suit is indicated by the following issues framed in the case:

- "1. Whether the document attacked in the plaint as not genuine and valid is genuine and if so whether it is a will? and if not will, whether the 5th defendant's adoption is true in fact and valid in law?
2. Whether the suit is not maintainable on the ground that remoter reversioners, the plaintiff and the 4th defendant should be held to have been duly represented by the 1st defendant in O. S. No. 62 of 1910 on the file of this Court?
- .3. Whether this suit to set aside the 5th defendant's adoption is time-barred?
4. Whether the 6th defendant's adoption is true and valid?
5. To what relief, if any, is the plaintiff entitled?
6. Does not the judgment in O. S. No. 62 of 1910 bar plaintiffs' present suit for the reasons urged in plaintiff's reply statement dated 22-8-1916

That suit was for a declaration that the will reproduced above was not true and valid and secondly that the adoptions set up were false and invalid and that if they were left unchallenged they would throw a cloud over the body in "reversion and that therefore a declaration was sought for. The learned Subordinate Judge found on the evidence on record that the will was genuine and that it was executed by late Sita-ramaiah. Then as regards the prayer for a declaration he found that the suit should be dismissed on two grounds viz. limitation and "res judicata". On the question of limitation the learned Subordinate Judge found that the suit should have been filed within six years of plaintiff's knowledge of the adoption and not having been filed so, it was barred under Article 118 of the Limitation Act.

On the question of "res judicata" he came to the conclusion that there was a "bona fide" and serious contest between Mahalakshamma representing the

estate and the adopted son and that there was neither fraud nor collusion between herself and the adopted son and that therefore the entire body of reversioners was bound by the decision in O. S. No. 62 of 1910. The learned Subordinate Judge repelled the grounds which were put forward before him for making out that Mahalakshmmamma did not so represent the estate as to bind later reversioners by putting forward two pleas viz. that in the appeal In the High Court Mahalakshmmamma did not seriously press the contention that the fifth defendant's adoption even if true was Invalid because in making the adoption she had taken a bribe in that she got the natural father of the adopted boy to gift two acres of land to her second son-in-law Brahmandum Venkatappayya, the husband of the present plaintiff, as a condition for the 1st defendant (Mahalakshmmamma) adopting the fifth defendant; and secondly that Mahalakshmmamma did not contend that the will of her husband was only an authority to adopt and registrable is and that therefore any adoption made thereunder is invalid. The learned Subordinate Judge has cited a number of decisions viz. --"Vellankl "Venkatakrishna Rao v. Venkata Rama Lakshmi", 1 Mad 174 (A), -- "Mahabelshwar v. Durga-ftai", 22 Bom 199 (B), -- "Ramachandra v. Mulji Nanabhai", 22 Bom 558 (C), -- "Bhasba Rabidat Singh v. Indar Kunwar", 16 Cal 556 (D) and -- "Murugappa Chetti v. Nagappa Chetti", 29 Mad 161 (E) and to which we can add the decisions of -- Vanka Lakshminarayana Sastri Vs. Mangalappalli Sundaramayya and Others, and--"Govinda v. Shenfad", reported in AIR 1952 Nag 199 (G) and -- "Narayan v. Gopal Rao", AIR 1922 Bom 382 (H) for holding that where the widow had proper authority to adopt and the adoption was otherwise proper the motives of the widow in making the adoption are not relevant and the fact that she accepted a consideration for giving the boy or getting the boy would not affect the adoption and the courts should not be astute to defeat adoptions on such grounds. In fact courts have gone to the extent of laying down that the fact that an adoption was made maliciously or spitefully to defeat the claims of reversioners or to spite adoptee's daughters and not on account of any consideration for the spiritual welfare of the husband would not make the adoption invalid if it was otherwise valid.

-- "Bhim Rao v. Punjab Rao", 158 Ind Cas 1042 (I), -- Kandaswamy Goundar Vs. Chinnammal and Others, . The Validity of an adoption in other words must be judged intrinsically on its own merits and not with reference to considerations extraneous to it. -- Panyam and Another Vs. Avadhanam Rama Lakshmmamma and Another, .

In regard to the second ground that in O. S. No. 62 of 1910 the first defendant could not and did not impeach the validity of the first defendant's authority to adopt given In Ex. 1 ,(Ex. B-I here) this was repelled by the learned Subordinate Judge on two grounds. On the one hand the position of law at that time was doubtful. It was by no means clear at that time that this question could be raised. In -- Lakshmi v. Subramanya", 12 Mad 490 (L) in a well considered judgment two Judges of the Madras High Court held that a document similar to Ex. I (Ex. B-I) containing a provision for life for a widow's maintenance in case of

disputes with the adopted son was a will. Subsequently in --"Santhana Sooramma v. santhana Mangayya", 18 Ind Cas 1006 (M) a similar document was held not to be a will. But in this case of 1913 there was no reference to the prior case in --"Lakshmi v. Subramanya", (L) and there was no discussion as to how a disposition of maintenance for life by a testator did not amount to a testamentary disposition. Therefore it was a very doubtful legal question at that time and this Mahalakshmmamma could not legitimately be expected to raise such a plea. Secondly, as a fact she fought tooth and nail this Venkata Lakshminarasimham and asserted that notwithstanding any authority to adopt which might have been given by her husband, she did not adopt him at all. The learned Subordinate Judge in these circumstances held that the fact that the validity of the authority to adopt given by Ex. 1 was not questioned in that suit would not affect the "bona fides" or fairness of the 1st defendant's contest of that suit. Therefore, he held that the suit of K. Sambayya was barred by "res judicata" by reason of the decision in O. S. No. 62 of 1910. Then on that conclusion the learned advocate appearing for Sambayya had contended that it was no doubt true that a declaration could not be granted in those circumstances so far as Venkata Lakshmi-narasimham was concerned. But it was pressed that in the possible contingency of this Venkata Lakshminarasimham dying and Mahalakshmmamma trying to make a fresh adoption on the strength of the authority given by Ex; I, a declaration of the nature sought for by the plaintiff therein would be necessary for him. The learned Subordinate Judge has gone into this question whether Ex. 1 is a will or only an authority to adopt and came to the conclusion for reasons which will be discussed later that Ex. 1 (Ex. B here) is not a will but only an authority to adopt. On this conclusion he logically pursued up the adoption set up by Venkata Lakshminarasimham and denied by this Sambayya and came to the conclusion that the adoption was true but that inasmuch as Ex. I (Ex. B. 1) was not "a will but an authority to adopt, it should have been registered and not having been registered the adoption made thereunder was invalid. The learned Subordinate Judge wound up his judgment by stating: "In my finding on issue I, I have already held that Ex. 1 is not a will and is not valid to confer a valid authority for adoption, if, however, plaintiff has needed to question Ex. I. he may rely on this finding and I do not think in view of a remote possible contingency that the declaration asked for in paragraph 10, clause (b) of the plaint about Ex. I should be given, in the result, plaintiff's suit is dismissed. Plaintiff to pay the contesting 5th defendant's costs". This completed the second round of litigation.

7. There is no dispute that subsequently the first defendant Venkata Lakshminarasimham has out of the patrimony devolving from Sitara-maiah kept 1-9 acres in item 2, 27 cents in item 6, 3 cents in D. No. 104 of the A schedule and alienated the rest of the properties in favour of defendants 2 to 28 herein. In this connection we may point out that these defendants have made these purchases knowing full "well the complications and in fact have had indemnity bonds executed by this first defendant. Those defendants state that they made

no enquiries before purchasing the properties. But this point is only of importance if we find in favour of the plaintiff regarding the will and the adoption. Inasmuch as we are confirming the findings of the lower Court regarding the will and adoption and "res-judicata", we need not pursue these points further and leave the matter as they have been found by the learned Subordinate Judge.

8. It is in these circumstances that Rama-lakshamma daughter of Mahalakshamma and wife of Brahmandam Venkatappayya has filed this suit in the pauper form to recover possession of the plaint schedule property from the obstruction of 29 defendants and for recovery of Rs. 4500 towards past mesne profits on the footing that the will Ex. B-I is neither true nor valid, that the alleged adoption of the first defendant is false and invalid, that the mother Mahalakshamma did not represent the estate and that on the other hand colluded with the opposite party and that the decision in O. S. 62 of 1910 is not binding on the body of reversioners, that the alienations made by the first defendant are fraudulent and not supported by consideration and not binding upon this plaintiff, that she is entitled to recover possession of the properties and the mesne profits asked for and that the suit is in time, the widow Mahalakshamma having died on 9-8-1934.

9. The scope of the present suit is indicated by the following issues framed: "

1. Whether the plaintiff is the nearest reversioner of late Sitharamaiah and whether she is entitled to sue?

2. Whether the will dated 12-9-1907 alleged to have been executed by late Sitaramaiah is, true and valid?

2.A Whether the plaintiff & her husband had also acted upon the same and are estopped to question it?

3. Whether the 1st defendant is the validly adopted son of Sitaramaiah and whether the plaintiff is estopped to question the adoption as her family derived benefit of 2 acres?

4. Whether the decisions in O. S. 62 of 1910. and O. S. 16 of 1916 on the file of the Sub. Court, Guntur operate as "res judicata"?

5. Whether the plaint A schedule is correct?

6. Which items are in the enjoyment of which of the defendants?

7. To what mesne profits, if any, is the plaintiff entitled and from which of the defendants?

8. Whether the defendants are "bona fide" purchasers for value?

9. To what equities are the defendants 4 to 7, 11, 20 and 22 entitled for improvements, effected by them?

10. Whether the suit is in time?

11. To what relief?"

The learned Subordinate Judge found the tiff to be the nearest reversioner of the Sitaramaiah and entitled to sue, that the dated 12-9-1907 was true and valid, that the first defendant is the validly adopted son of Sitaramaiah and that the decisions in O. S. 62 of 1910 and O. S. 16 of 1916 on the file of the Sub Court, Guntur operated as "res judicata". It is unnecessary to refer to the findings on the other issuer because they are not relevant if we confirm the finding of the learned Subordinate Judge dismissing the suit on these grounds.

10. The learned advocate for the appellant raised before us also the self-same three points. via. that the document dated 12-9-1907 is only an authority to adopt, secondly, that the first defendant was not adopted as a fact by Mahalakshamma and thirdly, that the decisions in O. S. 62 of 1910 and 16 of 1916 do not operate as, "res judicata" for the present suit. We shall deal with them "seriatim".

11. Point I:-- The contention that the document Ex. B-I reproduced above is not a will is put forward on the ground that it is only an authority to adopt and in addition makes no posthumous disposition of property. The word "will" in Section 17 of the Indian Registration Act has to be construed in the light of the definition thereof in Section 3(57) of the General Clauses Act, 1897, as including a codicil and every writing making a voluntary posthumous disposition of property: -- "Jagannadha v. Kunja Bihari", AIR 1919 Mad 447 (N). The question whether there is an intention to create a disposition of property posthumously is one of fact depending upon the construction of the particular document; -- "Subbamma v. Papayya", AIR 1625 Mad 748 (O). The intention of the testator has to be gathered primarily from the language of the will. But at the same time it must be recognised that documents in the vernacular are often expressed in loose and inaccurate language and thus sometimes a meaning more extended or more restricted than the literal meaning may have to be given to particular words in vernacular documents provided the context justifies doing so: -- AIR 1930 242 (Privy Council) . The will must be read as a whole to ascertain the intention of the testator and where the intention is clearly expressed by unambiguous words in certain clauses, other words in other clauses repugnant to them may be discarded: -- Kanhya Lal Missir Vs. Mt. Hira Bibi and Others, . In construing the will of a Hindu it is not improper to take into consideration what are known to be the ordinary notions & wishes of Hindus with respect to the devolution of property. The predilections of the class to which the testator belongs may be kept in view: -- Sasanka Bhusan Chowdhury Vs. Gopi Ballav Mondal and Others, . Bearing these principles in mind we must examine whether this Ex. B-I though re-vokable and taking effect only on the death of Sitaramaiah, in addition contained a posthumous disposition of property because a document which, notwithstanding it is named a will, is really an authority to adopt must be registered u/s 40 of the Indian Registration Act: -- "Bheema Deo v. Behari Deo",

AIR 1922 PC 162. in this case such posthumous disposition of property is clearly found. The testator gives to Mahalakshmmamma during her life time specific I property of 3 acres for her maintenance and this certainly amounts to a testamentary disposition. We need not refer to the other indicia of a will See -- AIR 1931 109 (Privy Council) and -- Ignatia Brito and Others Vs. T.P. Rego and Others, for some of the tests found in Ex. B1 viz. that it comes into effect after the death of the testator and Maha-laksmamma is appointed as the executrix and that she is given the power to discharge the debts and take a boy in adoption and making him the office-holder and get the duties done by a deputy till the boy attains majority, etc. The last portion of will wound up with the phrase "Sammathina . Virayinahi Ichina Vilu". There is also authority for the position that a document of this nature would constitute a will.

In the earliest decision in -- "Bhoobun Moyee Debia v. Ram Kishore", 10 Moo Ind App 279 (V) the document was not considered to be a will because it was only a deed of permission to adopt and registered in the life time of its maker and it did not contain any words of devise and did not show that the maker of the deed had any intention to dispose of his estate by it. The present is not one such case. In 12 Mad 490 (L) where a Hindu on taking a son in adoption executed a settlement "as to what should be done by my adopted son and my wife after my lifetime", providing that On an event which happened, the wife should enjoy certain land for life in lieu of maintenance and there was a suit by the widow of the executant against the adopted son for possession of the land, it was held that the instrument was a will. The instant case falls within the terms of this decision. In 18 Ind Cas 1006 (M) it was held that where a document gives power to a widow to adopt and contains also provision that in case of dispute between the widow and the boy the widow should take a life-interest in the property and that it should go to the adopted son after her death, authority to adopt which requires registration for it is not a testamentary disposition but is an authority to adopt which requires registration for its validity. This case no doubt is very similar to the case on hand. But we are unable to accept it as an authority binding on us for two reasons viz. that it does not refer to the previous Bench decision cited above and secondly, there is no discussion or reasoning as to how a disposition of maintenance for life by a testator did not amount to a testamentary disposition. The judgment consists of nothing more than a single sentence that the learned Judges agreed with the Subordinate Judge that the instrument Ex. II was not a will and that they were dismissing the second appeal with costis. In -- Somasundara Mudali v. Duraiswami Mudaliar", 27 Mad 30 (W) the will ran as follows: "The last will left by me Somasundara Mudaliar. as I am now in my last moments, I do hereby give you, Vanji Anni, my wife to understand as follows:

I have given you authority to adopt somasundaram, second son of Vaiyapuri Mudaliar Avargal, my brother-in-law and Village Munsif of Kumbakonam Town, and to have my obsequies and all other ceremonies performed by him. I have further hereby given you authority to put into his possession all the properties which I got under the decree in Suit No. 50 of 1899 on the file of the Subordinate

Court of Kumbakonam. If you are not willing to adopt the said Somasunda-ram, you shall adopt anybody you please and put the properties into his possession. You shall, put also all the immovable properties, etc. I have in addition, into the possession of the adopted son".

It will be noticed that it contained no dispositive words as in the present case; and the document was held to be not a will. In the last decision cited by the learned advocate for the appellant viz. -- AIR 1922 P. C. 162 (S) the will consisted of no more than the following:

"I have consented to your adopting a son at your pleasure and conducting the management of the estate in the best manner. None of my heirs shall have cause to raise disputes, touching this matter. This will has been executed by my consent".

It will be noticed that this will contains no dispositive words and therefore the present case does not fall within the ambit of this decision. Therefore, we agree with the lower Court that this will is not a mere authority to adopt requiring registration and that the adoption made-thereunder is a valid adoption.

12. Point 2: On this conclusion we have to examine whether the alleged adoption did take place and this is established by the following circumstances. D. W. 1 speaks to his being adopted and he is corroborated by D. W. 2. The depositions of the attestors of the will who spoke also to the factum of adoption examined in the-previous suits viz. Ex. B 4 (in the first suit) and Exs. B 8, B 9 and B-10 (in the second suit) have been marked by consent of parties in this suit. These depositions fully prove the adoption. Then we have the Arji Ex. A-3 which has been referred to already in which Mahalaksmamma has-clearly admitted having adopted this first defendant. Finally, we have the findings in both the prior suits showing that the adoption alleged had been proved satisfactorily. Therefore, we hold that there can be no doubt that the 1st defendant has been adopted by Mahalakshmmamma under the authority to adopt given by her Husband in November 1907.

13. Point 3: The point regarding "res judi-cata" revolves round the question whether Mahalakshmmamma represented the estate, in such a manner as to bind the reversioners, in O. S. 62 of 1910 by putting up a "bona fide" and serious contest. If the answer is in the affirmative, then that decision would certainly constitute "res judicata". If the answer is in the negative, it, would certainly not constitute "res judicata". These legal positions are so very free from contest that no citation is necessary. In this case,, there cannot be the slightest doubt that Maha-lakshmmamma did put forward a "bona fide" and: serious contest and fully represented the estate. She fought tooth and nail this first defendant und denied the adoption. If she failed, it was not for want of any diligence on her part but on account of the overwhelming evidence to the contrary. The point taken now also is that this Mahalakshmmamma should have pressed in that litigation the two points now taken viz. that the will Ex. B-I is only an authority to adopt requiring

registration and that therefore even if she did adopt it was an invalid adoption and secondly, that inasmuch as Mallayya had given two acres of land to her son-in-law Brahmandam Venkata-ppayya for not opposing the adoption, there was a corrupt motive and this also should have been pressed for invalidating the adoption. So far as the first point is concerned, the position of law was not so clear that Mahalakshamma could have put forward seriously this contention and secondly she went one better and denied the adoption itself in all manner of ways known to her. Then in regard to the second point, she would not have succeeded even if she had pressed this point. As a matter of fact this Mahalakshamma put forward this transaction and pointed out how Venkatappayya concocted the whole story of adoption by reason of his having got 2 acres from Mallayya and that he was fathering the adoption upon her which was wholly untrue. Therefore, there was a "bona fide" and full contest between Mahalakshamma and this first defendant and by reason of Mahalakshamma having represented the estate, this decision in O. S. 62 of 1910 is certainly binding on the reversioners. Therefore, the decision in O. S. 62 of 1910 constitutes "res judicata". That the decision in O. S. 62 of 1910 constitutes "res judicata" has been affirmed in the subsequent litigation and the learned Subordinate Judge has dismissed the suit on that ground though he has gone also into the question of limitation and has given a declaration in the circumstances set out by us above. Point 3 also fails.

14. In the result, we affirm the decree and Judgment of the lower Court and "dismiss this appeal with costs one set. The plaintiff- appellant must pay the court-fee due to the Government on the appeal memorandum.