
(1924) 12 MAD CK 0002
In the Madras High Court

Garimella Annapurnayya

APPELLANT

Vs

Munsunuri Venkatasubrahmanyam and Others

RESPONDENT

Date of Decision : 19-12-1924

Acts Referred:

Citation : AIR 1925 Mad 1285 : 91 Ind. Cas. 742

Hon'ble Judges : Odgers, J; Charles Gordon Spencer, J

Bench : Division Bench

Judgement

Charles Gordon Spencer, J.—The plaintiff sued in this case for a declaration that he was adopted son of the late G. Bhimmayya and that the

gift made by Bhimmayya on 5th June 1906 in favour of his wife Seethamma was invalid and for recovery of the property from the persons in

possession.

2. Original Suit No. 39 of 1908 on the file of the Subordinate Judge of Cocanada was a suit instituted by the natural father of this plaintiff as his

next friend during his minority for the same reliefs as those asked for in the present case. It was compromised by the plaintiff's taking 2 acres, and

a house site and surrendering the rest of his claims. The Court gave leave to the next friend of the plaintiff to enter into this compromise upon the

certificate of his Pleader that the terms were beneficial to the minor. Under that compromise the minor plaintiff gave up his claim to the rest of the

properties of the late Bhimmayya. The Subordinate Judge has held in the present suit on a preliminary issue that the compromise decree in O.S.

No. 39 of 1908 was not vitiated by any fraud, collusion or gross negligence on the part of the plaintiff's next friend (who is the 4th defendant) in

the suit and, therefore, the present suit was not maintainable as the plaintiff was

not entitled in the absence of fraud, collusion or negligence on the part of his next friend, to get the compromise decree set aside and have a fresh decision upon the same points which were at issue in the former case.

3. In appeal it is urged that the Subordinate Judge was in error in not deciding the other issues in the suit, especially issue (7) which was whether

the two cents of land in Konkuduru village, Bikkavole Taluk, belonged to the donor and were really meant to be conveyed in the gift deed or were

nominally inserted in order to give jurisdiction to the Bikkavole Sub-Registrar. The plea of fraud and collusion on the part of the plaintiff's next

friend in the prior suit was given up at the trial. It is now urged that the next friend's failure to plead the invalidity of the gift deed on account of the

fraud upon the Registration Law committed by inserting two cents of land in Konkuduru which did not belong to the donor for the purpose of

getting the document registered in the Bikkavole Sub-Registrar's office was an act of gross negligence which vitiated the whole proceedings and

made the decree not binding on the minor plaintiff. Secondly it is urged that the plaintiff's natural father had in consequence of the adoption lost his

right to represent the minor plaintiff in the former suit and consequently he had no power to compromise the suit on the minor's behalf.

4. On the first point I feel clear that it is not necessary for the purpose of this case to decide issue (7).

5. In order to determine whether the plaintiff's next friend in the former suit was or was not guilty of gross negligence, it is not necessary to decide

whether the gift in favour of the plaintiff's adoptive mother was really invalid by being registered in a Registration Office which had no jurisdiction

over the properties gifted. The real issue that had to be decided was whether the plaintiff's next friend acted bona fide in consenting to take 2 acres

of land and a house site instead of continuing the litigation and attempting to get more by pleading that the gift deed was altogether invalidated by

collusion between the donor and the donee in the matter of registration. At the time when the compromise was entered into (3rd September 1909)

the decision of the Privy Council of 1914 in *Harendra Lal Roy Chowdhury v. Hari Dasi Debi* 23 Ind. Cas. 637 : (1914) M.W.N. 462 : 18

C.W.N. 817 : 19 C.L.J. 484 : 16 Bom. L.R. 400 : 12 A.L.J. 774 to the effect that a

collusive act of including a small portion of land not belonging to the mortgagor in a mortgage-deed which was to be registered was a fraud upon the Registration Law had not then been pronounced. The law as laid down by this Court in *Veerappa Chetty v. Kadiresan Chetty* 24 M.L.J. 664 : which was decided on 2nd April 1913 was to the effect that the wrong acceptance of a document for registration in an office of a Sub-Registrar within, whose sub-district, no portion of the property concerned was situate was not to be regarded as rendering the registration invalid. Earlier decisions of 1879 and 1881 of other High Courts in *Sheo Shunkur Sahoy v. Hirdey Narain Sahu* 5 C.L.R. 194 : 3 Ind. Dec. 17 and *Har Sahai v. Chunni Kuar* (1881) A.W.N. 105 : 6 Ind. Jur 379 were to a similar effect. The minor's next friend would have been justified in 1908 or 1909 in assuming that what this Court decided afterwards in 1913 was good law on the point of a defect in the registration of documents or at any rate he cannot be accused of negligence in not knowing the law better and in failing to take this point which was not an obvious one and even if he had raised it, the suit might have ended in a compromise on the same terms from considerations of what would be a fair settlement. The plaintiff's next friend, therefore, cannot be charged with neglect for not putting in the foreground that plea in defeasance of the right of the plaintiff's adoptive mother and if he was not negligent in this respect, the decree is binding on the plaintiff as *res judicata* and the present suit will not lie. It is not now alleged that the plaintiff's next friend was negligent in any other manner.

6. Again the suit, having been brought against the plaintiff's adoptive mother and other defendants who derived a title from her, the adoptive father being already dead, his natural father was the most suitable person to represent his interest as next friend. This principle was established in *Nirvanya v. Nirvanya* 5 Ind. Dec. 243, where it was held that the natural father of a minor was his proper guardian to assert his right as adopted heir against rival claimants and this has been followed in *Keesara Venkatapayya v. Nayani Venkataranga Rao* 59 Ind. Cas. 978 : 38 M.L.J. 149, I am of opinion that the Subordinate Judge's finding on the preliminary issue was correct and in this view it was unnecessary to try the other issues. The suit failed and the appeal also must be dismissed with costs.

Odgers, J.

7. In this case the plaintiff admittedly cannot succeed unless he can show that the compromise decree in O.S. No. 39 of 1908 on the file of the

Court of the Subordinate Judge of Cocanada is not binding on him. His case is that he was informally adopted by his uncle Garimella Bhimmayya

in December 1901 when he was a few weeks old; it was not till 1907 that a registered adoption deed was executed. Meanwhile in 1906 Garimella

Bhimmayya made a gift deed of all the properties in favour of his wife. In 1908 by the suit above mentioned, the natural father of this plaintiff, the

4th defendant in this case brought a suit on plaintiff's, behalf for the recovery of Garimella Bhimmayya's properties after setting aside the deed of

gift. This was compromised on 3rd September 1909 (Ex. II, b) the adoptive father having died in January 1908. By the compromise the plaintiff

got 2 acres of land and a dwelling house. In the present suit he alleges that the gift deed was executed by Garimella Bhimmayya by fraud and

coercion that the gift deed included 2 cents of lands in Konkuduru village which did not belong to Garimella Bhimmayya and which were included

in order to give jurisdiction to Bikkavole Sub-Registry, further, that the natural father had no right to represent the plaintiff in suit O.S. No. 39 of

1908 and that he was fraudulent and negligent in conducting the suit. This issue as to the binding character of the compromise decree and the

representation by the natural father was treated as a preliminary issue by the Subordinate Judge and on his finding against the plaintiff, he dismissed

the suit. Hence the appeal. Two points are argued before us that the natural father ceases to be the natural guardian after adoption. This is so, but

here he was, in my opinion, a fit and proper person to represent the plaintiff. The gift by the adoptive father was in question and the adoptive

mother was the donee under it. It is quite plain that neither of these persons could properly represent the adopted son. Representation for a plaintiff

needs no order of Court. A minor's next friend may be any suitable person, even a natural father *Nirvanya v. Nirvanya* 5 Ind. Dec. 243 and

Keesara Venkatapayya v. Nayani Venkataranga Rao 59 Ind. Cas. 978

8. The important point taken is that the guardian ad litem (natural father) of the plaintiff in O.S. No. 39 of 1908 did not take a point in his plaint on

which he was certain to succeed and there would, therefore, have been no need

for a compromise. The point in question is as to the 2 cents of land in Konkuduru village. It is said that had that point been taken, the gift deed must have been held to be invalid and inoperative. The question was only raised in the present suit after amendment of the plaint: see para. (6) (a) and even then only with reference to the validity of the deed of gift and not with respect to the neglect of the guardian in O.S. No. 39 of 1908 whose alleged fraud, collusion, etc., are set out in para.8 of the plaint.

This is really enough to dispose of the point, especially as the Subordinate Judge remarks that the alleged fraud and collusion were given up before

him. The law is, however, also against the appellant. The older view was that registration in an office in which no portion of the property is situated

did not render the registration invalid *Veerappa Chetty v. Kadiresan Chetty* 20 Ind. Cas. 385 : 24 M.L.J. 664. This was the prevailing view in

1908. It is only since it has been altered *Harendra Lal Roy Chowdhury v. Hari Dasi Debi* 27 M.L.J. 80 : 16 M.L.T. 6 : 18 C.W.N. 817 : 10

C.L.J. 484: 12 A.L.J. 774 : 1 L.W. 1050 : 41 I.A. 110 and even then it must be shown that there was collusion between the parties *Venkata*

Lakshmikantaraju Garu v. Peda Venktata Jagannadharaju Garu 77 Ind. Cas. 464: (1924) M.W.N. 125: A.I.R (1924) (M.) 281 and *Biswanath*

Prasad v. Chandra Narayan Chowdhury 63 Ind. Cas. 770 : 48 I.A. 127.

9. I do not think a guardian can be charged with gross negligence in that he did not foresee that the law would change. Even if this is to be imputed

to him as I have stated the charge is limited to a certain, state of facts not proved to exist here. It is a question of fact whether a guardian is justified

in entering into a compromise *Baboo Lekraj Roy v. Baboo Mahtab Chand* 14 M.I.A. 393.

10. Here we have the permission of the Court which considered the circumstances.

11. A further point was raised about the house, Schedule B, sold to the natural father by the adoptive mother (Ex. C) it is said at a nominal price

and as a bribe to induce him as guardian to enter into the compromise. The price was Rs. 700 the value put on the house by the plaintiff in his

present plaint. It was valued at Rs. 400 in the plaint in O.S. No. 39 of 1908, (Ex. B) and in the decree. The value is now really double. The

Subordinate Judge finds that the house was purchased for consideration and it

could not be rented. There is, therefore, nothing wrong about that.

12. The appeal fails and is dismissed with costs.