

(1943) 01 MAD CK 0035
In the Madras High Court

Kamjula Subbarama Reddi and Another	APPELLANT
Vs	
Mangamuri Subba Reddi and Others	RESPONDENT

Date of Decision : 11-01-1943

Acts Referred:

Citation : AIR 1943 Mad 332 : (1943) ILR (Mad) 462 : (1943) 56 LW 185

Hon'ble Judges : Leach, C.J

Bench : Division Bench

Judgement

Leach, C.J.—The broad question in this appeal is whether the judgment of the Privy Council in Venkatapayya v. Venkata Ranga Rao AIR 1929 P.C. 24 has stated a rule different from that stated in Amba v. Sbrinivasa Kamathi AIR 1922 P.C. 135 with regard to the presentation of documents for registration under the Registration Act, 1908. Before discussing these judgments and the judgments in the other cases quoted in the course of the arguments, we will state the relevant facts. One Rami Reddi died on 12th December 1913. He was survived by his widow, Subbamma, who was then a minor. By a will executed on the day before his death, Rami Reddi bequeathed to her two-thirds of his estate and one-third to his sister's son who is defendant 4 in this suit. The will was registered on 20th January 1914 having been presented for registration by Venkatasubba Reddi, the father of Subbamma. Subbamma died in the year 1934, leaving a will dated 20th June 1934. By this will she left to her brothers (defendants 1 to 3, who are the appellants) the whole of her properties. The suit was filed by respondent 1. He is the son of Rami Reddi's brother, Linga Reddi. When Rami Reddi died, respondent 1 was only five years of age and was the only surviving agnate of Rami Reddi. Respondent 1 claimed to be entitled to the properties left by Rami Reddi on the ground that the will executed by him was not a genuine document. It purported to be attested by four witnesses. Three of these persons were dead when the suit was heard and the fourth was not called to give evidence. The only witness who was called to prove the will was the writer, but he was not an attesting witness. In these circumstances the District Munsif held that the appellants had not proved the will and consequently decreed the suit. The District Munsif was

under the impression that the law then, as now, requires the will of a Hindu to be attested. The District Judge concurred in this opinion.

2. The appellants appealed to this Court. The appeal was heard by Somayya J., who rightly held that the law in 1913 did not require a will of a Hindu to be attested and that, therefore, the decisions of the lower Courts had proceeded on a wrong basis. The learned Judge remanded the case to the District Judge to be decided in the light of his judgment. The appellants asked to be allowed on the remand to put in evidence, under the provisions of Section 33, Evidence Act, the depositions of three of the attesting witnesses recorded by the Sub. Registrar when the will was registered. Somayya J. held that they were not entitled to do this. He considered that he was bound by the decision of this Court in *Narayana Reddi v. Audilaksbmi Ammal* AIR 1928 Mad. 537 which was based on the judgment of the Judicial Committee in *Amba v. Sbrinivasa Kamathi* AIR 1922 P.C. 135 and that the decision of the Board in the later case in *Venkatapayya v. Venkata Ranga Rao* AIR 1929 P.C. 24 had stopped short of laying down a different rule. Section 32, Registration Act, requires documents presented for registration to be presented, (a) by a person executing or, claiming under it or (b) the representative or assign of such person or (c) by an agent duly authorized by power of attorney executed and authenticated in the manner required by Section 33. Section 2 (10) states that the word "representative" includes the guardian of a minor. Part 8 of the Act deals with the presenting of wills and authorities to adopt. There are two sections in this part-Sections 40 and 41. Section 40 (1) says that the testator, or after his death, a person claiming as executor or otherwise under a will, may present it for registration. Sub-section (2) says that the donor, or after his death, the donor of an authority to adopt, or the adoptive son, may present it. Sub-section (1) of Section 41 states that a will or an authority to adopt, presented for registration may be registered in the same manner as any other document, and Sub-section (2) says:

A will or authority to adopt presented for registration by any other person entitled to present it shall be registered if the registering officer is satisfied: (a) that the will or authority was executed by the testator or donor, as the case may be; (b) that the testator or donor is dead; and (c) that the person presenting the will or authority is, u/s 40, entitled to present the same.

3. In *Amba v. Sbrinivasa Kamathi* AIR 1922 P.C. 135 the facts were these: One Krishna Kamathi executed deeds of gift in favour of his daughter-in-law. The deeds were presented for registration by the natural father of the donor who was a minor. The question was whether the registration was lawful. The Privy Council held that it was not. Delivering the judgment of the Board Lord Atkinson said:

Their Lordships are clearly of opinion that as the appellant was not only a minor, but a married woman, her father had ceased to be her natural guardian, and had never been appointed her legal guardian, and was not, therefore, her assignee or representative within the meaning of Section 3, Registration Act, 1877. He was not an executant of the said deeds or either of them; neither was, within the

meaning of Section 34 of that Act, the representative, assign or agent duly authorized on the behalf of Krishna Kamathi, deceased, the only executant. The presentation by him of the two deeds for registration was in direct conflict with the express provisions of this Section 34. The deeds were consequently never legally registered. The registration of them which was procured was illegal, invalid and a nullity.

4. In considering these observations, it must be remembered that the donor's husband was alive and was in law her guardian. The judgment of the Privy Council in Venkatapayya v. Venkata Ranga Rao AIR 1929 P.C. 24 was in an appeal from a judgment of this Court Venkatapayya v. Venkata Ranga Rao AIR 1920 Mad 763. There a husband by will gave authority to his widow to adopt. She exercised the authority and subsequently the natural father of the minor presented the will for registration. This Court held that the presentation was lawful. The decision was upheld by the Privy Council in Venkatapayya v. Venkata Ranga Rao AIR 1929 P.C. 24 and in delivering the judgment of the Board Lord Phillimore made these observations:

Then given the principals, Section 32 introduces certain agents who can take the place of principals, and one of these agents is the representative of a person claiming under the document. Now the word representative is defined in Section 3 (the corresponding section in the Registration Act of 1877 to Section 2 of the present Act) as including the guardian of a minor. Here the person presenting describes himself as being the natural father and guardian. It is said that when adoption has once taken place, the adopted child is removed wholly out of his natural family and that his natural father has no longer a legal relation to him. This may be taken to be the case; but what is to happen when a child of tender years, as was the case here, is actually residing with his natural father, and has no appointed guardian. When one remembers that the definition of representative does not make it equal to guardian, but says that it includes guardian, might it not well be said that in these circumstances and in the absence of any legally appointed guardian, the natural father was the representative?

5. After observing that it was not necessary to decide this question Lord Phillimore proceeded to say:

It appears that as so often happens, the adoption was of a child of the same family, and that if the child be taken as having entered into his adoptive father's family, the natural father was nevertheless the nearest male agnate, and the proper person to be appointed guardian, and the proper person to act as natural guardian in the absence of any judicial appointment. If there were any doubt upon these facts, it might further be observed that, by Section 41, the Registrar is made the judge whether the person presenting the authority is entitled to present it, and though objection was raised on behalf of the appellant to the registration on the ground that it was out of time, no similar objection was raised as to the propriety of the person presenting.

6. This judgment goes to the full length suggested by the appellants. The report shows that the decision of the Board in *Amba v. Sbrinivasa Kamathi* AIR 1922 P.C. 135 was discussed in the course of the arguments; and although the question asked in the first of the passages quoted was not answered there is indication that the Judicial Committee were inclined to an affirmative answer. The second passage quoted however is the more important. It is to the effect that where the natural father is the nearest male agnate and the proper person to be appointed the guardian of the minor and the proper person to act as the natural guardian in the absence of a judicial appointment he is a representative within the meaning of Section 32 and entitled to present the document for registration. Their Lordships also indicate that the Registrar is the judge of whether the person presenting the document is entitled to do so.

7. We consider that the present case is governed by the decision in *Venkatapayya v. Venkata Ranga Rao* AIR 1929 P.C. 24. Here as there, there was no legal guardian. There, the father was the nearest male agnate, and here there was no male agnate capable of being appointed guardian, but the proper person to be appointed the legal guardian and the proper person to act as the natural guardian in the absence of a judicial appointment was the father of Subbamma, who presented the will for registration. Moreover, no objection to the presentation was taken before the Registrar. It appears to us that the factors which weighed with the Privy Council in *Venkatapayya v. Venkata Ranga Rao* AIR 1929 P.C. 24 are present here. The important distinction between that case and *Amba v. Sbrinivasa Kamathi* AIR 1922 P.C. 135 is that in the latter case there was a lawful guardian and the presentation was not made by him. For the reason given, we hold that the registration of the will of Rami Reddi was lawful and that the District Judge, when he comes to consider the case further, must take into consideration the depositions which were recorded before the Registrar at the inquiry u/s 41, Registration Act. The appellants have succeeded and are entitled to their costs against respondent 1.