
(1926) 08 MAD CK 0077
In the Madras High Court

Kanyadhara Tatayya

APPELLANT

Vs

Kanyadhara Raghavayya and Another

RESPONDENT

Date of Decision : 04-08-1926

Acts Referred:

Citation : AIR 1927 Mad 406

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—This second appeal arises out of a dispute between two rival adopted sons. The 1st defendant K. Ramayya had and has no children. It is the case of the 2nd defendant Tatayya who is the wife's sister's son of Ramayya that he was adopted in 1911 or 1912 by Ramayya. It is also now found that Ramayya adopted his brother's son Ragavayya the plaintiff in the present suit, in November 1919. It is obvious that, if the 2nd defendant was adopted in 1911 or 1912 the reason for the second adoption in 1919 was that for some reason the 1st defendant wanted to throw the first adoption overboard and create a rival adopted son. It is said his wife's relations, set up the adoption of the plaintiff in 1919. The 2nd defendant filed a suit on the 25th October 1920, against Ramayya to establish his adoption and to recover his share of the property.

2. The plaint in that suit is now filed as Ex. F. The object of the suit was primarily the establishing of 2nd defendant's adoption. The relief for partition was a merely incidental and consequential one. The father Ramayya filed a written statement in which he denied Tatayya's adoption, set up by the adoption of Raghavayya, his brother's son and prayed that the suit might be dismissed with costs. The whole of the family properties was the subject of that suit. In so defending Ramayya was attempting to safeguard not only his own interests but those of Raghavayya whom he put forward as his properly adopted son. One might go further and say that in asking that the suit to be dismissed with costs, he was really fighting the battle of the really adopted son according to him rather than his own. The one issue that was framed in the case was "Is the plaintiff's

adoption true," the plaintiff there being Tattayya. If Tattayya's adoption is true, Raghavayya's adoption in 1919 is void and useless; but Raghavayya's adoption will stand if Tattayya's was false; so that that issue really raised the question which of the two rival adoptions ought to stand.

3. Both parties applied by Ex. III to refer that suit to three arbitrators who were vakils. The arbitrators passed their award, Ex. IV, dated 10th September 1921, in which they found that the adoption of Tattayya was true, but that making this adoption, the father expected Tattayya to come and live with him and to marry his sister's daughter and to help the father in the cultivation of the land. They found the adopted boy has failed to fulfil these expectations of the father. He married another girl and did not reside with the adopted father. On these grounds they gave an award for only 1/3rd of the suit property and some costs. The award was made a decree of Court. The present suit is filed on 3rd December 1921, that is, within three months after the award; and whatever the truth may be, one thing is very obvious viz., that the suit is instituted by the father as the result of his defeat in the former suit and is an attempt to get over the effect of that award.

4. In the present suit both the lower Courts have found that Tattayya's adoption was not probable so that we have got the result before us; as the result of one litigation between the 1st defendant and Tattayya it was found that Tattayya was the adopted son of Ramayya and as the result of another litigation, the present one, it is found that Tattayya was not the adopted son of Ramayya and both these results are obtained by decrees of Courts. Obviously there is something anomalous in this state of things. It seems to me that the first point that arises in the present litigation for decision by the Courts is, How far does the decree in the former suit bind the plaintiff? If this point is decided against the plaintiff, the question of fact as to whether Tattayya was validly adopted does not arise. The object of the rule of res judicata is to prevent such enquiries. The Munsif discussed this in paragraph 16 of his judgment and found that the present plaintiff was not bound by the result of the former suit. Incidentally he observes:

It is, no doubt, true as deposed by 1st defendant himself that plaintiff knew of O. S. No. 136 of 1920 and appeared to have been going to Baptla in connexion with it and also instructed the 1st defendant's pleader in it.

5. This finding of the District Munsif is completely supported by the deposition of the 1st defendant as P. W. No. 10 which runs as follows:

In the suit in the Baptla Court also the plaintiff financed. In the Court my pleader was Mr. D. Hanumantha, Rao. Plaintiff engaged him. Plaintiff was attending that Court at every hearing of the suit. Plaintiff and my witnesses stayed there. After the petition for arbitration was filed I did not again go to my Baptla pleader. I did not remember what the panchayatdars decided. I did not go to Baptla to my pleader after the panchayatdars gave their award. Plaintiff himself was going to my pleader.

6. It is obvious that the present plaintiff conducted that suit much more vigorously than his father. In my opinion the true principle to apply in cases of this kind was enunciated so early as *Kunjan Chetti v. Sidda Pillai* [1899] 22 Mad. 461 Their Lordships Subramania Iyer and Benson, JJ., say:

It is not clear what the District Judge means by stating that the sons were not effectively represented.

7. The question how far the sons are bound by a decree against the father in cases like the present must be decided with reference to the particular facts of the case; if the father is manager and the question in issue is one which equally affects him and the other members of the family and if the suit is properly defended the adjudication will bind all the persons interested along with the father for the reason that in that case it must be presumed that the father represents the interests of all: *Jogendra Deb Roy Kut v. Funindra Deb Roy Kut* [1871] 14 M. I. A. 367 If the sons are of full age and are aware of their litigation and take no steps to be brought on the record but acquiesce in the conduct of the litigation by the father, the case will be still stronger and they will be clearly bound by the decision.

8. The present case is still stronger because not only, in this case is the son of full age and aware of the litigation and takes no steps to be brought on the record and acquiesces in the litigation, but actually conducts the litigation of the father. Mr. Raghva Rao appearing for the respondents contended that the former judgment must be regarded as having been wholly set aside not only as against the plaintiff but also as between the 1st and 2nd defendants and for this position he relies on a decision in *Venkata Rao v. Tuljaram Roy* A. I. R. 1922 P. C. 69 In my opinion that case has nothing to do with the facts of this case. In that case a father and son, a minor, were both parties to the first litigation. The father purported to compromise it and a compromise decree was passed. By the compromise decree he relinquished the claim under certain decrees. Later on, the son after attaining majority filed a suit for a declaration that the compromise of the father was not binding on him and when the case went to the Privy Council he succeeded, i. e., the compromise was set aside and the Privy Council held in the later case that the effect of the earlier decision setting aside the compromise was that the compromise was inoperative as to the whole family, and not merely as to the minor.

9. I do not think we have got anything like similar facts in this case. The question whether the son was effectively represented in the former suit is really a question of law provided all the facts are known. Mr. Raghava Rao suggested I should call for a finding from the District Judge on the facts. But it seems to me all the facts are either admitted, conceded or found and, therefore, the only thing that remains is to draw a legal inference whether on the facts the son must be regarded as properly represented in the former suit. I am of opinion that the decree in O. S. No. 136 of 1920 is binding on the present plaintiff as well as on the 1st defendant. Therefore, the suit should be dismissed with costs against the

2nd defendant and the finding as to the validity of plaintiff's adoption is set at large as having been unnecessarily gone into by the Court below. But this does not mean that the whole suit should be dismissed. In the Courts below the plaintiff obtained a decree for half of the property. The 1st defendant has not appealed against that decree. He has been supporting the plaintiff throughout. He appears before me by the same vakil as the plaintiff. He does not urge that the plaintiff's suit should be dismissed as against him; and, if he does not urge it, I do not see why the whole of the plaintiff's suit should be dismissed. The decree, therefore, that plaintiff should get half the property will stand but this will be only against the 1st defendant.

10. As it is admitted before me by all parties that the property has never been divided by metes and bounds, the plaintiff's decree for half the property will not affect the 2nd defendant's right to a third under the award and can operate only to the diminution of the remaining two-thirds held by the 1st defendant under the award. The result of this modification of the lower Court's decree is that the plaintiff gets half the suit property, 1st defendant gets one-sixth and the 2nd defendant gets one-third. I may also add that even if my view that the former decree is binding on the plaintiff is not correct and the proper view to take is that the former decree continues to be binding as between 1st and 2nd defendants while not binding on the plaintiff the decree to be passed will be exactly the same which has been arrived at otherwise, namely, that the plaintiff should get a decree for half out of the 1st defendant's two-thirds leaving the 2nd defendant's one-third unaffected. Either way the same result is arrived at.

11. So long as the plaintiff gets a decree for half the suit property which is all that he has sued for, I do not think it lies in his mouth to say that the half which he gets should not be to the detriment of the 1st defendant but should somehow be detrimental to the 2nd defendant. He has got a decree for what he has asked for and he can have nothing to complain. Similarly the 2nd defendant cannot complain and say that the plaintiff should get no decree, the one-third he got by the former decree is sufficient and he is not concerned any more with what became of the other two-thirds. The only man aggrieved by the form of the decree I am giving is the 1st defendant. Instead of having two-thirds or half in his hand which would have been the case if he had only one adopted son, he would have got only a sixth; but for this result he had to thank himself. First he submitted to an arbitration relating to the first adoption and became bound by the award and decree; meanwhile he makes a second adoption to get rid of the first and submits to a second decree for half of the property. The result of the two decrees each of which is binding and to each of which he is a party is that he loses in each case; and I do not see any reason why he should complain. The decrees of the Courts below will be modified as indicated above.

12. As the appellant has succeeded in second appeal plaintiff will pay the costs of the 2nd defendant throughout to be estimated on his one-third.