

(1923) 02 MAD CK 0037
In the Madras High Court

Parthasarathy Reddiar

APPELLANT

Vs

Kandaswami Mudaliar and Others

RESPONDENT

Date of Decision : 12-02-1923

Acts Referred:

Citation : 73 Ind. Cas. 954 : (1923) 18 LW 156

Hon'ble Judges : Walter Schwabe, C.J.; Coutts-Trotter, J

Bench : Division Bench

Judgement

Walter Schwabe, C.J.—In this case a widow who had a son who attained the age of x8 and subsequently died unmarried, adopted the appellant who was the son of her daughter. The first question that arisen is, whether such an adoption with the consent of her deceased husband or with the consent of the sapindas is legal. This question came before this Court a short time ago in Tripuramla v. Venkataratnam 72 Ind. Cas. 278 : 44 M.L.J. 349 : 46 M. 433, and Wallace, J., and I decided that it was legal. I see no reason for departing from that judgment.

2. The consent of the sapindas, one Kumara-swami Mudali, whose consent was necessary, it is alleged in this case, was obtained by a promise given by the mother of the adopted boy to pay him a sum of Rs. 200. The onus of establishing that was strongly on the respondents. I am not satisfied that he was bribed at all, from which it follows, in my view, that the onus was not discharged.

3. Another interesting point was raised, namely, whether if the promise of payment—was made in connection with obtaining that consent that fact is conclusive to prevent the adoption being good. It would be very strong evidence that the consent was obtained corruptly, but it is not clear on the authorities that the mere fact of the promise of payment standing alone would be conclusive. In this case the adoption of this particular boy was obviously reasonable. He was the grandson of the deceased through a daughter. I think it is enough to say in this case that the point does not directly arise; but I would add that I should want to be satisfied that there was something more than a promise of payment relied upon. The respondent in this case is the adopted son of Kumaraswami

Mudali, whose consent it is alleged, was corruptly given and the question arises whether the respondent who claims through Kumaraswami Mudali is estopped from denying the fact that his adoptive father did consent. The first point as to that is whether the mere fact that the adopted son has changed his status by entering into the new family is sufficient to bring that principle of estoppel into operation. On the view I take of the facts of this case, it is unnecessary now to express any opinion on that interesting and somewhat difficult point. But a further question of estoppel also arises. It is a principle of law adopted from the Roman Law that no one alleging his own wrong is to be heard; *Nemo allegans suam turpitudinem est audiendus*. That principle is applied in England and is to be found clearly stated in the case of *Doe v. Roberts* (1819) 2 B. & Ald. 368 : 106 B.R. 401 20 R.R. 477 and that that principle is applied in this country is clear from the recent decision of this Court by Wallis, C.J., and Coutts Trotter, J., in *Voddina Kamayya v. Gudisa Mamayya* 43 Ind. Cas. 352 : 33 M.L.J. 484 and it is also very clearly stated by Jenkins, C.J., in *Stdlingappa v. Hiras* 31 B. 405 : 9 Bom. L.R. 542 and it comes to this:... that where it is necessary for a party who wishes to establish a certain state of things, in order to do so, to set up his own wrong doing, he will not be allowed to do so. In this matter, the respondent, who merely takes from the late wrong-doer Kumaraswami Mudali, can be in no better position than Kumaraswami Mudali himself and, applying that principle, it is quite impossible for him to set up that the consent that his adoptive father gave was obtained from him by a promise of corrupt payment. In the view I take of this part of the case, it is unnecessary for me to consider the question; whether the subsequent release given by Kumaraswami of an rights he might have possessed was a valid release or not.

4. Appeal No. 120 of 1921 must be allowed and the suit dismissed with costs throughout. Appeals Nos. 118 and 119 will be allowed with costs here and below.

Courtts-Trotter, J.

5. I am of the same opinion and only add a few words because we are differing from the learned Trial Judge among other things, on a question of fact. The question is, whether there was evidence before the learned Judge on which he ought to have come to the conclusion that the reasonable inference from the facts was that Kumaraswami was influenced by corrupt motives to give his consent as a sapinda to the adoption, Looking the facts as found, it appears to me that they cannot reasonably give rise the more than at best a suspicion, and having regard to the dates, namely, that the consent was in July 1909 and the alleged promise of payment was in the following October, it seems quite consistent with the facts to hold that Kumaraswami having given his consent from perfectly proper motives, afterwards thought that he could make something out of it. Therefore, I agree with my Lord that, on the facts as we know them, the question of corruption in the exercise of the choice and discretion by Kumaraswami as to giving his consent as a sapinda does not arise.

6. There are certain points of great interest argued in this case, but I do not

think that they are necessary for our decision and I do not propose to discuss them. I respectfully agree with the decision of my Lord and my brother Wallace, J., to which reference has been made.

7. The only other thing about which I wish to say a few words is, with regard to the question of estoppel. I do not think that the learned Trial Judge had a fair opportunity of dealing with that question, because he says in his judgment, at p. 24, "the question of estoppel raised by the 1st defendant which is the subject-matter of Issue No. 3 had not been pressed, and the issue must be found for the plaintiff."

8. I take that to mean not that the learned Judge decided that question, but that his attention was not fairly drawn to it so as to enable him to deal with it. That I take to be the doctrine of estoppel proper with which my Lord has dealt. But I do not see that there was even mention made to the learned Judge of another ground of defence which is perhaps the strongest that we have to deal with, namely, that based on the maxim *nemo allegans suam turptudinem est audiendus*. That maxim belongs to Civil Law and is taken from the Institutes; it re-appears in the Common Law in England for example in the two cases to which my Lord has referred to *Doe v. Roberts* 1819) 2 B. & Ald. 368 : 106 B.R. 401 20 R.R. 477 and *Prole v. Wiggins* (1836) 3 Bing. 230 : 3 Scott 601 : 2 Hodges 204 : 6 L.J. C.P. 2 : E.R. 398 43 R.R. 621. The question is whether in this Court that salutary principle of law is to be applied. There is authority both in this Court in the case to which any Lord has referred and in *Bombay Sidlingappa v. Hirasa* 31 B. 405 : 9 Bom. L.R. 542 for applying such maxim and I am entirely in concurrence with the view that we should refuse to allow the respondent in this case, who can only claim through Kumaraswami, to set up the case that the person through whom he claims had his judgment vitiated by the acceptance of a corrupt consideration.