
(1910) 08 MAD CK 0040
In the Madras High Court

Raja Gopala Reddy

APPELLANT

Vs

Nathu Govinda Reddy and Others

RESPONDENT

Date of Decision : 16-08-1910

Acts Referred:

Citation : 9 Ind. Cas. 342

Hon'ble Judges : Arnold White, C.J.; Ayling, J

Bench : Division Bench

Judgement

1. This is a suit by a reversioner to the estate of one Ramasamy Reddy (deceased) for a declaration that an alleged adoption by Ramasamy's widow (the 2nd defendant) of the 1st defendant is invalid. In his plaint the plaintiff alleges that Ramasamy died leaving him surviving his mother, the 3rd defendant (a widow), his widow (the 2nd defendant, and no issue male or female. He further alleges that the 3rd defendant is the nearest reversioner to the estate of the deceased Ramasamy, and that he (the plaintiff) is next in grade to her. These allegations are not denied in the written statements of the 1st and 2nd defendants. The 1st defendant admits that the plaintiff is a dayadi of the deceased Ramasamy. The 3rd defendant does not defend the suit.

2. The first question for consideration is whether the District Judge was right in holding that the onus of establishing the adoption lay on the defence. It is common ground that the plaintiff is entitled to sue for a declaration and that he is not entitled to immediate possession.

3. The learned Vakil for defendants Nos. 1 and 2 relied on Asharfi Kunwar v. Rup Chand 30 A. 197 : 1903 A.W.N. 79 : 5 A.L.J. 200; where it was held that where the plaintiff asks for a declaration that an alleged adoption is invalid, but cannot claim immediate possession by reason of the intervention of a widow's estate, the burden is on him to make out a prima facie case that the adoption is invalid. The learned Judges in that case were of opinion that this question was concluded by authority. In Brojo Kishore Dasee v. Sreenath Bose 9 W.R. 463 there are some general observations of Sir Barnes Peacock which support the view taken by the

Allahabad High Court. The learned Judge observed: The plaintiff asks in this regular suit to have it declared that Radhanath's adoption is invalid. It appears to us that the onus rested upon him, as it does upon any one who asks for a decree declaring the illegitimacy of another parson, to prove the illegitimacy. The parson who asks a Court to declare that a thing is invalid is bound to prove that it is so. The Act which enables the Court to make a declaratory decree does not enable the Court to call upon a man to prove his title at the instance of one who asks to have a declaratory decree that he is not entitled." In this case *Brojo Kishore Dasee v. Sreennth Bone* 9 W.R. 463 not only was there no admission of the plaintiff's reversionary interest, but the Court held, that, if the adoption were set aside, other parties were the presumptive reversionary heirs. In *Hur Dial Nag v. Roy Krishto Bhoomick* 24 W.R. 107 the Judges do not appear to have drawn the distinction referred to in *Asharfi Kunwar v. Rup Chand* 30 A. 197 : 1903 A.W.N. 79 : 5 A.L.J. 200. The suit was for possession of property on the ground that an alleged adoption was invalid and it was held that it was too late to contend that the burden of proof of the adoption did not lie on the defendant. In *Tarini Charan Chowdhry v. Saroda Sundari Dasi* 3 B.L.R. 145 : 11 W.R. 468 the learned Judges referring to *Brojo Kishore Dasee v. Sreenath Bose* 9 W.R. 463 observe that in that case the plaintiff asked for a declaration during the life-time of the widow, that an adoption made by her was invalid, and the rule laid down by the Court was, that when a plaintiff sues for a declaration that an adoption is invalid, he is bound to prove the invalidity, because in such a case he does not ask for possession. But, so far as we can see, the learned Judges in *Brojo Kishore Dasee v. Sreenath Bose* 9 W.R. 463 do not distinguish at any rate, in so many words between a case where a plaintiff only asks for a declaration and where he asks for possession. And the learned Judges in *Tarini Charan Chowdhry v. Saroda Sundari Dassi* 3 B.L.R. 145 : 11 W.R. 468 merely point out that the case of *Brojo Kishore Dasee v. Sreenath Bose* 9 W.R. 463 was distinguishable from the case before the Calcutta Court. In *Amir Ali and Woodroffe's Law of Evidence*, 4th Edition, page 549, the learned authors, without any discussion of the question, say that if a plaintiff sues as reversionary heir during the life-time of the widow for a declaration that an adoption is invalid, the onus is on him to prove the invalidity, and they cite *Brojo Kishore Dasee v. Sreenath Base* 9 W.R. 463 and the case on which we have commented. (The reference in the footnote to 8 W.R., is a printer's-error).

4. In *Kusum Kumari Roy v. Satya Ranjan Das* 30 C. 999 : 7 C.W.N. 784 Sale, J., dealt with the case on the assumption that there was no dispute between the parties as to the fact of adoption. The plaintiff set up the incapacity of the alleged adopted son and the learned Judge held it was for the plaintiff to establish this as a question of law, not a question of fact. We think this case is distinguishable from the case before us where there was an issue as to the factum of adoption and the plaintiff's case was that no authority to, adopt had in fact been given.

5. We think the District Judge was right in his view that the principle of the decision of the Privy Council in *Sukh Dei v. Kedar Nath* 28 A. 405 : 5 C.W.N.

895 : 3 Bom. L.R. 704 with regard to the onus of proof applied to the present case. The law allows a reversioner who does not and cannot claim immediate possession to sue for a declaration that a transaction which would bar his reversionary interest is invalid. It is well settled that if he were entitled to claim, and did claim immediate possession the onus would be on the party who relies on the transaction to establish its validity. We cannot see on what principle the fact that a widow's estate intervenes between the reversioner and his right to immediate possession and that this being so the plaintiff can only ask for a declaration should alter the burden of proof. The fact that the interest of a presumptive reversioner, who is not entitled to possession, is merely a spes successionis which may or may not be a right of possession when the inheritance falls in, as it seems to us, is no good ground for the distinction. We do not think there is anything in the judgment of the Privy Council in *Rajendra Nath Haldar v. Jogendra Nath Banerjee* 14 M.I.A. 67 : 7 B.L.R. 216 : 15 W.R. 48 which is inconsistent with the view we have indicated.

6. We do not desire to decide anything which is not necessary for the purpose of this particular case. All we say is that where, as here, the parties who rely on the adoption admit the interest of the party who impeaches the adoption as presumptive reversionary heir, the onus, in our opinion, is on the party who relies on the adoption to establish it, notwithstanding the fact that a widow's estate intervenes between the presumptive reversionary heir and his right to possession.

7. Turning to the facts of the present case we see no reason to differ from the decision of the learned District Judge who has found against the alleged authority to adopt. The oral evidence in support of the authority, as well as the probabilities of the case, have been fully dealt with in the judgment. The evidence of the defendant's witnesses who support the authority is not entitled to much weight, and the District Judge is probably right in his view that Ramasamy Reddy died unexpectedly before the arrival of his wife's relations from Reddiyar, and that: the whole story of his giving her in their presence authority to adopt is a subsequent invention. The absence of any reference to such authority in the petition, Exhibit B, which bears date of the 14th December 1891 is very significant; and so is the extraordinary delay of over nine years in carrying the alleged authority into effect. The widow's minority had expired long before this. On the other hand, the plaintiff's delay in bringing the present suit is explained by the depletion of his resources owing to the previous litigation, and to the fact that, in any case, he cannot recover possession of the property during the 2nd defendant's life-time, and had, therefore, nothing to lose by delay, provided it did not exceed the limitation period.

8. The appeal is dismissed with costs.