

(1948) 02 BOM CK 0007
In the Bombay High Court

Raja Mahadeva Royal Y.B.

APPELLANT

Vs

Raja Virabasavachikka Royal

RESPONDENT

Date of Decision : 03-02-1948

Acts Referred:

Citation : (1948) 50 BOMLR 638

Hon'ble Judges : Normand, J;Madhavan Nair, J;Du Pareq, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Madhavan Nair, J.—This is a consolidated appeal and cross-appeal, from a decree of the High Court of Judicature at Madras dated November 1,1940, affirming a decree of the Subordinate Judge of Chittoor dated November 4, 1935.

2. The plaintiff is the appellant before the Board; defendant No. 2 is respondent No. 1, hereinafter called the respondent. He is the main contesting respondent and he has filed the cross-appeal,

3. The dispute in the appeal is concerned with the succession to the impartible estate of Punganur, known as the Punganur Zemindari, situated in the Chittoor district of the province of Madras. Succession to the Zemindari is regulated by the rule of lineal primogeniture and it devolves on the senior male member nearest to the last holder by right of survivorship. The estate is subject to the Madras Impartible Estates Act (Act II of 1904).

4. The last holder of the Zemindari, Raja Sambasadasiva, died in 1923, without leaving any male issue. As the paternal uncle of the late zemindar, the appellant claimed the estate as the nearest heir. This claim was resisted by the respondent, the son of the late zemindar's natural brother, on the ground that he had been validly adopted to the late zemindar by his senior widow and he was thus the rightful successor.

5. Before stating in detail the contentions of the parties, it will be useful to notice

the pedigree [on p. 639] of the family subsequent to the year 1897, which will show the relationship of the parties concerned in this appeal.

6. Raja Sankara Royal, the Zemindar of Punganur, who died in 1897, left three sons, Raja Vira Basava Chikka Royal, Kumara Chikka Royal and Mahadeva Royal, the appellant.

7. On the death of Raja Sankara Royal, the eldest son, Raja Vira Basava succeeded to the Zemindari.

8. Raja Vira Basava died on October 21, 1911, leaving two sons, the late Raja and his brother Raja Somasekhara Chikka Royal, defendant No. 1, and the natural father of the respondent.

9. On the death of Raja Vira Basava, the late Raja succeeded to the Zemindari. As stated before, he died without leaving any male issue, but he left him surviving two widows, Rani Virammanni and Rani Nanjamanni, impleaded as defendants Nos. 8 and 4, a daughter, and his brother (defendant No. 1).

10. On December 3, 1923, Rani Virammanni, the senior widow of the late Raja, adopted the respondent.

Raja Sankara Royal (died 1897). |
| | | Raja Vira Basava Chikka Royal Kumara Chikka Royal Mahadeva Royal died 20-10-1911. died 20-3-1930 (Plaintiff?Appellant.) |
| : Raja Sanibasadasiva Royal Somasekhara Royal (adopted (1918) to (died 19-11-23) married Javalagiri Raja (1st defendant) (a) Rani Virammanni (defendant 3). (died 1932) (b) Rani Nanjamraanni (defendant 4). | | | Virabasava Chikka Royal Daughter. | 2nd defendant (respondent No. 1) Daughter adopted (8-12-23) by Rani Virammanni (the Senior widow of the last Zemindar). 11. Kumara Chikka Royal, the second son of Raja Sankara Royal, died on March 26, 1930; and the appellant, his brother, instituted the suit out of which this appeal arises on October 16, 1931.

12. Raja Somasekhara died in 1932, soon after the institution of the suit. He had not filed any written statement.

13. The appellant alleged that Somasekhara Royal had been validly adopted in 1913 to Venkata Mahipal, the Javalagiri Zemindar by his widow Umabai; that he thus ceased to be a member of the Punganur family, and that on the death of Kumara Chikka Royal on March 26, 1930, he, as the paternal uncle of the late Zemindar, was his nearest heir. The appellant admitted the factum of the respondent's adoption to the late Zemindar by his widow, but contended that it was invalid in law for want of her husband's authority, and the consent of the nearest sapindas. The Zemindar of Javalagiri and his wife Umabai were closely connected with the Punganur family.

14. The respondent pleaded that the alleged adoption of his father to the

Javalagiri Zemindar was neither true in fact, nor valid in law ; that his own adoption by the senior widow of the late Zemindar was made with her husband's authority and with the consent of the nearest sapindas, and that he was, therefore, the proper person entitled to succeed to the estate.

15. The questions for decision in this appeal relate to the validity of two adoptions, viz. (1) the adoption of Raja Somasekhara Royal to the Javalagiri Zemindar, and (2) the adoption of the respondent by the senior widow of the late Raja.

16. In order to succeed, the appellant will have to prove that Raja Somasekhara was validly adopted to the Javalagiri Zemindar, and that the adoption of the respondent is invalid. An adoption to be valid should have been either authorised by the widow's late husband or consented to by his nearest sapindas. In the present case Umabai claimed that express authority to adopt had been given to her by her husband. To prove that Raja Somasekhara was validly adopted, the appellant will have to establish (1) the factum of the adoption, and also, (2) the validity of that adoption. If he fails to establish that Somasekhara was adopted, or if he was adopted, that the adoption was valid, then his suit would have to be dismissed, because in the circumstances, Raja Somasekhara would remain a member of the Punganur family and the respondent, being the son of the only brother of the late Raja, would be the nearest heir. It would be only if the appellant succeeded in proving that Raja Somasekhara was validly adopted, that the question of the adoption of the respondent would necessarily arise for decision.

17. Voluminous evidence, oral and documentary, was adduced by both parties in support of their respective cases; and the learned Judges of the Courts in India dealt with both the adoptions in the long judgments delivered by them.

18. The Subordinate Judge held that Raja Somasekhara had been validly adopted to the Javalagiri Zemindar and thus ceased to be a member of the Punganur family; he also-held that, though the adoption of the respondent was not validated by the consent of sapindas, as they who had given consent were not the nearest sapindas, the adoption was valid, because of the oral authority given by the late Raja to make the adoption. In the result, he held that the respondent was by reason of his adoption the rightful heir entitled to succeed to the Zemindari and dismissed the suit with costs.

19. Against the Subordinate Judge's decision, an appeal was filed by the appellant; and a memorandum of cross-objections was filed by the respondent in regard to those findings of the Subordinate Judge which were against him.

20. The High Court held, agreeing with the trial Court, that Raja Somasekhara had been adopted to the Zemindar of Javalagiri by his widow Umabai; but held, differing from it, that the appellant had not proved that Umabai had the authority of her husband to adopt, and that, therefore, the adoption was invalid. As regards the adoption of the respondent, the High Court held, differing from the

trial Court, that the oral authority given by the late Raja, to his widow to adopt was not established. It held, agreeing with the trial Court that the requisite consent of the nearest sapindas was not obtained. The adoption of the respondent was, therefore, held invalid. As a result of its findings the High Court held that the respondent, as a brother's son, was a nearer heir than the appellant and dismissed the appeal. As regards costs, the learned Judges observed that " in the peculiar circumstances of this case when the plaintiff has succeeded on almost every point except the last one (the validity of Raja Somasekhara's adoption) and the defendant's evidence has been held to be untrue, we will leave the parties to bear their own costs throughout both in the appeal and in cross-objections.

21. The appellant has preferred the present appeal against the decree of the High Court and the respondent has by special leave filed the cross-appeal against the order as to costs passed by the High Court.

22. The Courts in India having concurrently held that Somasekhara had been adopted by Umabai, the learned Counsel for the appellant proceeded to argue that the adoption had been authorised by her husband Raja Venkata Mahipal, and was, therefore, valid. It will be remembered that on this point the High Court, differing from the trial Court, held against the appellant. In support of his case, oral evidence was given by the appellant that a deed of authority had been given to Umabai by her husband to make the adoption. In her deposition before the Talukdar on February 26, 1906, she said "... the deceased has given permission. He has also written and given a document. I shall file them in the enquiry." She did not file it then, or at the time of the enquiry. It was never produced by her when she had opportunities to do so. She herself did not go into the witness box to support the appellant's case. The High Court has for valid reasons "found it impossible to hold on the oral evidence that Venkata Mahipal had authorised Umabai to adopt." Their Lordships agree with this conclusion.

23. Turning to the documentary evidence, the learned Counsel for the appellant relied, amongst other evidence, on the assertions of her authority to adopt made by Umabai on various occasions, the adoption deed, and particularly on certain documents, exhibits JJJ, KKK, LLL and MMM, which were held inadmissible in evidence by the High Court, but had been accepted by the trial Court. The admissibility of these documents formed the main theme of the arguments of Sir Herbert Cunliffe which were to the effect that if these had been admitted in evidence, it would have been shown conclusively that Umabai had authority given to her by her husband to adopt.

24. It will be advantageous now to state a few facts relevant to the arguments urged before the Board. Venkata Mahipal, the Zemindar of Javalagiri, died on November 13, 1904. As he died childless, the Zemindari of Javalagiri being an abiyah (Arabic word meaning gift) form of jagir was attached by the government of the Nizam of Hyderabad in whose territory it was situated. It had to be renewed and confirmed at each time of succession. Directly after the death of

her husband, Umabai made various applications to the government of the Nizam demanding its release, and also made depositions before officers holding enquiry relating to succession, asserting in all of them that her husband before his death had given her authority to adopt. On October 2, 1918, she made an application to the Nizam's government for permission to adopt Somasekhara in accordance with her husband's "desire." The permission asked for was not granted on the ground that the "enquiry" was sub judice, but Umabai left Hyderabad, went to Bangalore, and there formally adopted Somasekhara on October 19, 1913, and this was followed by the execution of an adoption deed. Having regard to the arguments addressed to their Lordships, it is not necessary to proceed further with the facts of the case for the purposes of this appeal.

25. Along with the application dated October 2, 1913, referred to above, Umabai filed five copies of letters marked as exhibits KKK, M, JJJ, LLL and MMM. Out of these, exhibit M was struck off the record as not proved, and the other four were admitted in evidence by the trial Court. As already mentioned, the High Court rejected them. Their Lordships will now consider whether these documents are admissible in evidence. ;:

26. These documents are copies of translations of what purport to be the original letters written to Raja Vira Basava by Venkata Mahipal (exhibits JJJ and KKK), by Vishalakshamma, his grandmother (exhibit LLL), and by Umabai (exhibit MMM). Their contents are summarised in paragraph 44 of the Subordinate Judge's judgment. In her application, Umabai stated, referring to these documents (see paragraph 24) " Copies of letters referred to above are herewith submitted and originals will be filed when ordered." There is no proof that they, were produced at the Hyderabad enquiry or that Umabai was called upon to produce them at any time. No attempt seems to have been made to produce the originals of these letters. Except the reference made by Umabai in her application, there is nothing on record to show that the originals ever existed; Mr. Subba Row, the learned junior counsel for the appellant, argued that the appellant's case is that the originals have been destroyed, but this again has not been proved. The documents in question had on them the following certificate from the Resident of Hyderabad:?

Certified that this document is a public document of the Hyderabad State duly certified by the officer having the legal custody of the original.

Having regard to the fact that Umabai had filed only copies in Hyderabad, the word "original" in the certificates can only refer to the copies filed and not to the original documents. As the learned Judges of the High Court observe, " The copies (which were produced at the trial of the case) of the copies (which were produced in Hyderabad) can possibly have no better value than the original copies produced in Hyderabad on account of the Resident's certificate." The High Court rejected these documents " as there is no satisfactory evidence on the record that the copies now tendered were either correct copies of the originals or that the originals off these documents ever existed.

27. Before the trial Court, the admissibility of these documents seems to have been objected to on the ground that there is no proof of the correctness or genuineness of the translations (missing the real point that these were only copies of copies and not originals) and this objection was got over by holding that " the translations in question must be deemed to be public documents and hence, certified copies are admissible without further proof of the original translations." The Subordinate Judge felt that the question was not free from difficulty, and he admitted them more on the ground that he thought in matters of doubt as regards the admissibility of evidence he must be governed by the " famous dictum of Lord Mansfield that it is safer to admit a document the legality and the admissibility of which is in question rather than to shut it out from the evidence." This line of argument pressed before the trial Court was not pursued before the Board. It was stated in the course of his arguments by Mr. Subba Row that if the objection to the admissibility of the documents as now presented had been taken before the trial Court, the appellant would have taken further steps to get them admitted, but it is the appellant's responsibility to support his case by evidence which is legally admissible. Further, this specific point was taken by the respondent as ground number 4 in his memorandum of objections, and no request seems to have been made in the High Court for any indulgence. Even if the originals had been in the Hyderabad Courts the handwriting in which the originals had; been written would have still to be proved. The documents being merely copies of copies, the originals not having been satisfactorily accounted for, their Lordships agree with the High Court that exhibits JJJ, KKK, LLL and MMM are inadmissible in evidence and must be rejected.

28. The documents being inadmissible, it is needless to consider the question how-far, if admitted, they would affect the decision of the case.

29. The other evidence relied on, such as the assertions of her authority to adopt made by Umabai, and her course of conduct which can only be described as equivocal, is not sufficient in their Lordships' view to establish the validity of the adoption; for it is quite conceivable that notwithstanding the absence of authority to adopt, assertions that it does exist might well be made by an unscrupulous person, and the actual adoption also might be carried out with success. It is true that Umabai made the first assertion of her authority within a fortnight after her husband's death and went on making the assertion again and again, but she made no effective endeavour to support it except by carrying out the adoption. Having regard to the probabilities of the case, their Lordships think that when she actually adopted Somasekhara, she must have known that she had not any legal authority to adopt. Though the ceremony of adoption was carried out, the fact was not brought to the notice of the authorities at Hyderabad for about four years. In 1923, i.e., about ten years after Somasekhara's adoption, Umabai made two applications to the Hyderabad government for permission to adopt another boy. As she has not been examined, it is difficult to understand why she took this step which amounted to a repudiation of Somasekhara's adoption. As observed by Lord Buckmaster in (1929) L.R. 57 I.A. 14 (Privy Council) a " very

grave and serious onus?rests upon any person who seeks to displace the natural succession of property by alleging an adoption. In such a case the proof requires strict and almost severe scrutiny..." Judged by this test, their Lordships are not satisfied that the evidence which has been brought to their notice is sufficient to establish that Umabai had the authority of her husband to adopt. Somasekhara's adoption being found to be invalid, the appeal fails, and the question whether the respondent's adoption by Rani Virammanni was valid or not does not arise for consideration, As being the only brother's son of the late Raja, the respondent is his nearest heir, and as such is entitled to succeed to the Zemindari.

30. For the above reasons, their Lordships will humbly advise His Majesty that the appeal should be dismissed with costs.

31. The cross-appeal filed by the respondent relates only to the order as to costs passed by the High Court. The learned Judges have given sufficient reasons in support of the order which they have made. Their Lordships will humbly advise His Majesty that this appeal also should be dismissed but without costs.