

(1935) 10 BOM CK 0006
In the Bombay High Court

Raja Somasekhara Royal

APPELLANT

Vs

Raja Sugutur Mahadeva Royal

RESPONDENT

Date of Decision : 28-10-1935

Acts Referred:

Citation : (1936) 38 BOMLR 317 : (1936) 43 LW 105

Hon'ble Judges : Thankerton, J; John Wallis, J; George Rankin, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Thankerton, J.—In the present appeal the appellants are members of the family of the Panganur Zamindar. On his death during this suit they have been substituted for him and now represent the impartible estate. They are defendants in a suit brought by respondent No. 1, who is a member of the same family being the third son of a predecessor in the ownership of the impartible estate. He is seeking to recover certain allowances or sums, in the first place, in the form of maintenance at the rate of Rs. 100 a month, and, secondly, at the rate of Rs. 125 a month in lieu of certain lands which were given to him, whether for maintenance or not, under the will of his father. The only ground of defence which is raised by this appeal is to the effect that in the year 1907 the plaintiff, the respondent, was adopted by a lady in the Bombay Presidency, both parties being Lingayats. The Panganur family are resident in the Madras Presidency and the ground of defence is that having, been adopted by this lady in North Kanara in the Bombay Presidency, he thereby ceased to be a member of the Panganur family and loses any right or claim to the moneys or allowances in question. North Kanara was transferred for administrative purposes to the Presidency of Bombay in the year 1861 and the appellants' defence has been unsuccessful in both the Courts below. They had another unsuccessful defence, that of a special custom among the Lingayat community to which they belonged, which permitted a married man, as respondent No. 1 was at the time of the adoption, to be adopted. It is conceded by the appellants, as it rightly must be conceded, that

according to the law of the Madras Presidency, which would apply to the residents there, the adoption of a married man would be invalid and that this law applied to North Kanara while it remained part of the Madras presidency.

2. The High Court have decided against the appellants on the ground that the mere transfer of the North Kanara district to the Bombay Presidency for administrative purposes would not be sufficient to affect the personal law of residents in North Kanara unless and until it was shown in the case of any resident there that he had intended to change and had in fact changed his personal law. Mr. Dunne, for the appellants, quite frankly found great difficulty in controverting that proposition and if that proposition is sound, then it seems to their Lordships that it necessarily follows that the adoption of the plaintiff was invalid, neither the lady who adopted him nor he himself being capable of carrying out between them the adoption of a married man. It has been suggested that the fact that he was a Lingayat might possibly make some difference, but the ordinary Hindu law is presumed to apply to Lingayats, except in so far as it is shown that they have superseded it by their customs, and in the absence of proof of any special custom among the Lingayats, there can be no ground for a successful argument in that direction.

3. Their Lordships are unable to find any ground for sustaining this appeal or disturbing the conclusion at which the High Court has arrived, and they will humbly advise His Majesty that the appeal should be dismissed with costs to the first respondent, who alone appeared.