

**(1910) 08 MAD CK 0023**  
**In the Madras High Court**

Rajagopala Reddi

APPELLANT

Vs

Nathu Govinda Reddi and Others

RESPONDENT

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**Date of Decision :** 16-08-1910

**Acts Referred:**

**Citation :** (1911) 21 MLJ 445

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**Judgement**

1. This is a suit by a reversioner to the estate of one Ramaswami Reddi (deceased) for a declaration that an alleged adoption by Ramaswamy's

widow (the 2nd defendant) of the 1st defendant is invalid. In his plaint the plaintiff alleges that Ramaswami 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 Ramaswami, 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 Ramaswami. 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 is 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 No. 1 and 2 relied on Asharfi Kunwar v Rupchand I. L. R. (1908) A. 197 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 the question was concluded by authority. In *Brojo Kishore Doss Dassee v. Srinath Bose* (1868) 9 W.R.C.R. 463 there are some general observations by 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 person, to prove the illegitimacy. The person 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 of *Brojo Kishore Dassee v. Srinath Bose* (1868) 9 W.R.C.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 heirs. In *Hur Dial Nag v. Roy Krishto Bhoomick* (1875) 24 W.R. 107 the judges do not appear to have drawn the distinction referred to in *Asharfi Kunwar v. Rup Chand I. L. R.* (1908) A. 197. 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 *Tarinicharan Chowdhry v. Saroda Sundari Dasi* (1869) 3 B.L.R. 145 the learned judges, referring to *Brojo Kishore Dassee v. Sreenath Bose* (1868) 9 W.R.C.R. 463 observe that in that case the plaintiff asked for a declaration during the lifetime 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 Dassee v. Srinath Bose* (1868) 9 W.R.C.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. Sarodha Sundari Dassi* (1869) 3 B.L.R. 145 merely point out that the case of *Brojo Kishore Dassi v. Sreenath Bose* (1868) 9 W.R.C.R. 463 was distinguishable from

the case before the Calcutta court. In AMIR ALI & WOODROFFE'S Law of Evidence, 4th edn., p. 549, the learned authors, without any

discussion of the question, say that if plaintiff sues as reversionary heir during the lifetime 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 Dassi v. Sreenath Bose (1868) 9 W.R.C.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 I. L. R. (1903) C. 999 Sale J. deals 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 I. L. R. (1901)

A. 405 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 (1871) 14 M.I.A. 67 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 Ramaswami Reddi died unexpectedly before the arrival of his wife's relations from Reddiyur, and 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 lifetime, and had, therefore, nothing to lose by delay, provided it did not exceed the limitation period.

8. The appeal is dismissed with costs.