
(1958) 09 AP CK 0019
In the Andhra Pradesh High Court
Case No : Appeal No. 686 of 1954

Rajulapati Somiah and Others

APPELLANT

Vs

Rajulapati Rattamma and Another

RESPONDENT

Date of Decision : 22-09-1958

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 14(1), 15

Citation : AIR 1959 AP 244

Hon'ble Judges : Muni Kanniah, J; Bhimasankaram, J

Bench : Division Bench

Advocate : A. Sambasiva Rao and Nagabhushanam, for the Appellant; M. Seshagiri Rao, M. Sitarama Rao and M. Venkata Subba Rao, for the Respondent

Final Decision : Dismissed

Judgement

Bhimasankaram, J.—This appeal arises out of a suit for setting aside an adoption instituted by the appellants. The three of them are brothers and sons of one Lakshmiah older brother of Ramaswamy, the deceased husband of Rattamma, the 1st defendant. The 2nd defendant is the boy adopted by Rattamma. He is the son of Rajamma, daughter of Rattamma and Ramaswami. Rajamma was married to Ramayya a brother of Rattamma. The plaintiffs' case is that the alleged adoption of the 2nd defendant by Rattamma on 5-6-1950 is neither true in fact nor valid in law. While maintaining that the adoption set up did not at all take place, they contend that, assuming that it did, it is invalid for the reason that their consent thereto --they being the nearest sapindas-- was not obtained.

The defendants, on the other hand, assert that the adoption is true; they also maintain that the adoption is valid in spite of the fact that the plaintiffs withheld their consent to the adoption. Their case is that as the plaintiffs improperly refused to assent to the adoption, the widow obtained the approval of Sapindas next in rank particularly of one of two agnates nearest in relationship to her husband, the other, too having improperly withheld his assent. It is not denied that Venkayya and Kotayya are the reversioners next in degree. The defendants

case is that Kotayya having improperly declined to receive a registered notice sought to be served on him seeking his consent, the widow approached his brother Venkayya and obtained his consent. She also claims to have obtained the consent of some remoter reversioners. The trial Court held that the adoption was true as well as valid.

2. When this appeal came on for hearing, an objection was taken on behalf of the respondents to the consideration of the merits of the appeal based upon the provisions of the Hindu Succession Act (XXX of 1956). Reliance was placed upon Ss. 14 and 15 of that Act. We shall read the sections in so far as they are material for our present purposes :

"14. Property of a female Hindu to be her absolute property (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

EXPLANATION : In this Sub-section, "property" includes both moveable and Immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as Stridhana immediately before the commencement of this Act.

(2) Nothing contained in Sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a Civil Court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

15. General rules of succession in the case of female Hindus (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16 :

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother. (2) Notwithstanding anything contained in Sub-section (1) :

(a) X X X X (b) Any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not

upon the other heirs referred to in Sub-section (1) in the order specified there in, but upon the heirs of the husband."

The argument on behalf of the respondents is put thus ; As a result of these provisions, the class of persons known as reversioners under Hindu law is abolished. All property inherited by a female Hindu is her absolute property and after her death, the property goes u/s 15 to her Own heirs, although where it is inherited from her husband, her heirs will be the heirs of her husband.

That being so, a suit to set aside an adoption made by a Hindu female, will not be maintainable after the coming into force of the Act, because the adoption affects her own property, which can no longer be treated as the estate of her husband. The widow does not act as a representative of such an estate and there are no reversionary rights therein; and hence there are no persons described as reversioners.

The position of the widow making the adoption would not in any way be different from that of any male making an adoption to himself. Declaratory suits in relation to an alienation or adoption by a reversioner rested on the proposition that the widow is a limited owner who, in the normal course, is to pass on the inheritance to her husband's reversioners subject to her power to alienate it for necessity, to make an adoption or to relinquish her estate ;is a whole to the nearest reversioner.

Even, though the suit out of which the appeal arises was commenced before the coming into force of the Act, as the Act has destroyed the conception altogether of a reversion as understood by the Hindu law, the suit should be dismissed as not maintainable.

3. It seems to us desirable before we proceed to consider this argument to state what, in our view is the effect of the provisions above-cited. It must be observed that Sub-section (1) of Section 14 refers only to "property possessed by a female Hindu," although it does not matter whether it was acquired before or after the commencement of the Act.

Sub-section (2) however excludes property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil Court or under an award where the terms of the gift, will or other instrument or the decree, order Or award prescribe a restricted estate in such property; that is to say, in these cases, the female Hindu may continue to own the property as a limited owner.

To such property in her hands the old law must be presumed to continue to apply, unless there is something in Section 15 to preclude such application. But in our reading of Section 15 however there is nothing in it which" has the effect of excluding the applicability of the old rules not only to such property but to property acquired by a Hindu woman before the commencement of the Act but of which she has irrevocably lost possession.

Section 15 applies only to "the property of a female Hindu dying intestate" and if it happens to be the property inherited by her different courses of devolution are prescribed according as the property is inherited from her husband or her father-in-law on the one hand or is inherited from her father or mother.

It is perfectly clear that where she has a restricted estate in any property such as is referred to in Sub-section (2) of Section 14, that property cannot be said to be her property at the time of her death. Section 15 therefore cannot apply to it and the property either reverts to the donor or the testator or follows any other mode of devolution prescribed by the gift, will, instrument, decree, order or award.

Then again, where a Hindu woman alienates before the commencement of the Act, the whole or any part of the property which she has inherited and conveyed possession thereof to the transferee, the alienated property also cannot be properly described as the property of a female Hindu within the meaning of Section 15, because property possession of which she cannot recover cannot be called her property.

The Act does not purport to affect property which has irrevocably passed out of her possession. Take again, a case of an adoption made by a Hindu widow before the commencement of the Act which turns out to be invalid. Its invalidity may be due to the non-existence of certain facts which the law requires, should be conditions precedent to the validity of an adoption such as for instance, an authority from a husband and consent of the nearest sapindas.

If the widow should have represented as in the case in *Dharam Kunwar v. Balwant Singh* ILR 34 All, 393 to the adoptee or his father that she had such authority when she had none and brought about a change in the position of the adoptee as result of such a representation, she may be personally estopped from questioning the validity of the adoption and part at least of the property in her possession (excluding the part she might be entitled to under the Hindu Women's Rights to Property Act) must be deemed to have gone into the possession of the adoptee.

The property which must be deemed in law to have gone into the possession of the adoptee cannot devolve as the property of the widow when she dies whatever may happen to the property to which she herself may be entitled under the Hindu Women's Right to Property Act.

As regards the property which, so far as she was concerned must be deemed to have passed out of her possession, one would think that it continues! to be part of the estate of her deceased husband and it would be open, even under the law as it is to-day to the reversioners of her husband to claim! it on the ground that the adoption made by her was invalid and the widow did not obtain absolute estate u/s 14 in the property in the possession of the adoptee.

If the adoption is on the other hand, absolutely invalid, i.e., for instance, where no DATTAHOMA was performed in a case where it should be, the widow must in

law be supposed to be in possession of the whole of the estate of her husband despite the invalid adoption. To such a case Section 14 would apply in the first instance and at the time of her death. Section 15. A similar rule would conceivably apply to a surrender.

If the limited owner is precluded from resiling from the surrender, then the property which she had inherited cannot be said to be possessed by her either in the sense that she is in actual) possession or in the wider sense that she has a right to possession. In such cases, Section 14 may not apply at all, the position being different, if the surrender is one which she herself can successfully impugn.

4. We may also consider a case of a property inherited by a female out of which a third party has gone into possession adversely to her. If he has been in such possession long enough to debar the widow from recovering the property. Section 14 may not avail to enlarge her estate because she is not possessed of the property. There is no indication in the Act that the right of the heirs of her husband at the time of been death, which the Hindu few has always recognised, is to be lost. To emphasise this point reference may be made to Sub-Section (1) of Section 4 of the Act which enacts as follows :

"1. Save as otherwise expressly provided in this Act:--

(a) any text, rule or interpretation of a Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act." In the light of the foregoing discussion, we shall consider some of the cases to which our attention has been drawn which have pronounced upon the effect of these sections. One of the earliest cases is the case of the Andhra High Court and is a judgment of their Lordships Viswanatha Sastry arid Satyanarayana Raju JJ. reported in *Venkayamma v. Veerayya* 1956 ALT 1045: ((S) AIR 1957 A P280).

In that case, the widow and the mother of one Sambayya sold certain properties which formed part of his estate and in the sale deeds they asserted that they became absolutely entitled to the properties sold under a will of Sambayya. There were three suits filed by the reversioner to set aside the alienations and in them he impeached their truth and validity.

The trial Court held that the will was not proved to be valid and that therefore it followed that Sambayya's widow inherited his properties as his heir at law. As the sales could not be supported on the ground of necessity, they were set aside and the alienees came on appeal to the High Court. It was argued before the learned Judges that the suits should be dismissed as not maintainable by reason of Section 14 of the Hindu Succession Act. In repelling the contention, their Lordships made the following observations:

"Though Section 14 of the Act is retrospective in so far as it enlarges a Hindu Woman's limited estate into an absolute estate even in respect of property inherited or held by her as a limited owner before this Act came into force, its operation is confined to property in the possession of the female when the Act came into force. The word "possessed" in Section 14 refers to possession on the date when the Act came into force. Of course, the possession referred to in Section 14 need not be actual physical possession or personal occupation of the property by the Hindu female, but may be possession in law The word "possessed" is used in Section 14 in a broad sense and in the context "possession" means "the state of owning or having in one's hands or power". It includes possession by receipt of rents and profits. Even if a trespasser is in possession of land belonging to a female owner on the date when the Act came into force, the female owner might conceivably be regarded as being in possession of the land, if the trespasser had not perfected his title by adverse possession before the Act came into force. It is not however necessary for us to express an opinion on this point. Where, however, before the Act came into force, the female owner had sold away the property in which she had only a limited interest and put the vendee in possession, she should in no sense be regarded as "possessed" of the property when the Act came into force. The object of the Act was to confer a benefit on Hindu females by enlarging their limited interest in property inherited or held by them into an absolute estate, with retrospective effect, if they were in possession of the property when the Act came into force and therefore in a position to take advantage of its beneficent provisions. The Act was not intended to benefit alienees who, with eyes open purchased property from female limited owners without any justifying necessity before the Act came into force and at a time when the female vendors had only the limited interest of a Hindu woman A Hindu female limited owner who, before the coming into force of the Act, had sold property inherited by her retains no right to or interest in the property on the date of the coming into force of the Act. Section 14 merely enlarges her limited interest into an absolute estate in the property held by her when the Act came into force and does not enlarge the rights of a purchaser of her limited interest before the Act came into force. The rule of "interest feeding the estoppel" enacted in Section, 43 of the Transfer of Property Act on which reliance was placed for the appellant, would not avail the vendees because the female vendor does not get an absolute estate u/s 14 of the Act in property of which she was not in possession at the date when the Act came into force."

The view contained in the above passage seems to us to be right. We may however remark that the observation that the word "possessed" in Section 14 refers to possession on the date when the Act came into force is not correct. The property may go into possession either on the date of the Act or on any date subsequent thereto. But possession there must be of property whenever acquired before the Section could apply.

5. The next in chronological order is the case reported in *Ram Ayodhya Missir v.*

Raghunath Missir, AIR 1957 Pat 480. The appeal before the learned Judges arose out of a suit instituted by a reversioner for a declaration that a sale deed executed by a Hindu widow was not binding upon him. The plaintiff succeeded in both the courts below on the merits and the case came on a second appeal to the High Court.

It was Urged before the learned Judges that "the plaintiff has no right to institute a suit in view of the provisions of Sections 14 and 15 of the Hindu Succession Act, 1956 (XXX of 1956)". The learned Judges upheld that contention and ruled that as a result of the Sections "the plaintiff in the present case is no more a reversioner and that the estate" of Mosammat Parkalo Kuer is not a limited estate but an absolute estate and that the plaintiff has no vested interest in the property nor has he a right of reversion or any kind of Spes Successionis". The learned Judges remarked that Section 14 was retrospective in operation. We find ourselves unable to agree with this view.

Section 14 does not, in our opinion, affect all property acquired by a Hindu female; it must be possessed by her. Nor does Section 15 provide for devolution of all property obtained by her. Section 14 does not, in particular, affect property already alienated by the limited owner or property against which a third party had acquired a title indefeasible by her. In regard to such property, the At makes no provision and therefore the old law must be held to continue to be in force.

6. The next case is that reported in Ramchandra Sitaram and Others Vs. Sakharam and Others, . In that case, a Hindu widow remarried in 1945 and therefore had forfeited her interest in her husband's property under the Hindu Widows' Remarriage Act XV of 1950. The question before the Court was whether by virtue of the operation of Section 14, the remarried widow could claim absolute rights in her first husband's property. Their Lordships held that she could not and observed as follows;

"Mr. Mangalmurti stated that the word "possessed" used in Section 14 meant "inherited" or "obtained" We are unable to accept that contention. The Legislature appears advisedly to have used the expression "possessed" as qualifying the property of a Hindu female and we will not be justified, having regard to the context, in substituting the word "possessed" in Section 14 by "inherited" or "succeeded to" or "obtained". Indisputably the Act has a limited retrospective operation. On the commencement of the Act property possessed by a Hindu female is by the operation of the Act to be regarded as of her absolute ownership even if her title in its inception was restricted. But Section 14 applies to property possessed by a-Hindu female when the Act commences, or thereafter. If before the commencement of the Act, the property is transferred it is not in law possessed by her and Section 14 will have no application to that property. That is clear from the use of the expression "shall be held by her as full owner". In any event, there is nothing in Section 14 which revives the estate of a limited owner determined before the commencement of the Act by death, actual or civil."

Dealing with the expression of opinion in (S) Ram Ayodhya Missir and Others Vs. Raghunath Missir and Others, they remarked thus:

"We express no opinion on the correctness of the ultimate decision in that case; we think it however necessary to observe that by the retrospective operation given to Section 14(1) the limited estate of a Hindu female is undoubtedly enlarged, but only in property possessed by her a} the date when the Act commences, and that Section does not modify the rules relating to inheritance, nor does it extinguish the reversionary rights of heirs of the last full owner, when the estate of the limited owner is not enlarged. Again, there is nothing in the Act which extinguishes rights vested in interest in B person before the date on which the Act commenced."

They also referred to a decision in Dhirajkunwar Vs. Lakhan Singh, in which it was observed that by the scheme of the Hindu Succession Act the reversionary rights which were recognised by the Hindu law stood abrogated and that since the widow's estate was abolished by the Hindu Succession Act, it necessarily followed that the right of a reversioner, which was a mere spes -successionis, could not since the enactment of the Act be enforced.

The learned Judges of the Bombay High Court observed that this was simply followed in the Patna case and remarked that they were unable to find any provision in the Act which had the effect of abrogating either expressly or by necessary implication the rights of reversioners in cases where succession had opened before the commencement of the Act. They then remarked thus:

"If by the Hindu Succession Act the estate of a Hindu female in property not possessed by her is not regarded as enlarged into an absolute estate, it will be difficult to hold that the right of the reversioner to the property of the last full owner on the determination of the limited estate is still extinguished."

7. The next case to which we have been referred is that reported in B. Hanuman Prasad and Others Vs. Mst. Indrawati and Others, . The learned Judges were dealing with facts similar to those dealt with in the Patna case. But they expressed the view that

"though the alienation by a Hindu widow made before the passing of the Act is still vulnerable, the widow continues to be estopped from challenging its validity."

According to them, there are no more reversioners within the meaning of the Hindu law by virtue of the enactment of Section 15. They proceeded to say :

"Since there will be no reversioners after the passing of the Act, nobody can get a decree as a reversioner now. Even those persons who could have obtained a decree before the passing of the Act that an alienation made before the passing of the Act was invalid cannot now get a declaration to that effect because they have lost the status by virtue of which they could get itThe Hindu Succession Act makes no provision for an alienation made without legal necessity by a widow before it came into force. Therefore no decree for a declaration about

the invalidity of an alienation can be granted after it came into force Even where the reversioner has obtained a declaratory decree before the Act came into force, the decree cannot be maintained in appeal after the Act because the declaration that the alienation would not be binding on him on the death of the widow is rendered futile by the Act. So long as there were reversioners, such a declaration could usefully be granted by a Court. Now, that there are no reversioners at all, there is no question of the alienation, however illegal it might be, not being binding on reversioners. The declaration has lost all meaning now."

With due deference, this view does not commend itself to us. It is wrong, in our opinion, to say that Section 15 has altogether wiped out of existence the class of persons known as reversioners under the Hindu law. Of course, they do not exist and cannot in respect of "the property of a female Hindu dying intestate."

But if there is property inherited by a female Hindu of which she has lost possession (not only in the sense of actual possession but also in the sense of the right to possession). Section 14 does not operate upon such property, and that property retains the same legal character after the commencement of the Act as it had before. In relation to such property, the old rules stand because they are neither expressly nor even by necessary implication abrogated.

8. In *Marudakkal v. Arumugha Goundar*, 1958 I M LJ 101 : (AIR 1958 Mad 255), it was held that where prior to the commencement of the Hindu Succession Act XXX of 1956) a limited owner in possession of her husband's estate had alienated certain items of properties and the alienee was in possession of those items on the date of the coming into force of the said Act, and the reversioner to the estate of the last male owner filed a suit for a declaration that the alienation will not bind the reversioner and obtained a decree to that effect an objection on appeal to the maintainability of the suit based upon Section 14 of the Act could not be sustained. Subrahmanyam, J., who delivered the judgment of the Bench stated the position thus ;

"Section 14(1) of the Hindu Succession Act does not deal with property which was not in the possession of or which was not held, by the Hindu women at the time of the commencement of the Act. Therefore, the ground of subsequent acquisition at title is not available for enlargement of the title previously acquired It is argued that Section 14(1) abolishes the system of reversioners and that therefore, after the commencement of the Hindu Succession Act, no suit by a Hindu reversioner for a declaration regarding an alienation by the limited owner can be maintained, What Section 14(1) states is that property possessed by a female Hindu shall be held by her as full owner and not as a limited owner. In relation to such property she becomes a fresh stock of descent and therefore there can be no question of reversion to the estate of the last male holder. Reversion gets abolished as a consequence of the estate being enlarged to full ownership. Therefore unless the alienee's interest also gets enlarged to full ownership by the operation of Section 14(1), it would not be correct to speak of reversion in relation to such alienated property getting

abolished."

Ultimately they expressed agreement with the view contained in 1956 A LT 1045: AIR 1957 AP 280) and dissented from those in Ram Ayodhya Missir and Others Vs. Raghunath Missir and Others,

9. The last of the decisions to which reference need be made is the one reported in Sansir Patelin and Another Vs. Satyabati Naikani and Another, . There their Lordships agreed with the view taken by the Andhra High Court in 1956 A LT 1045 : AIR 1957 AP 280) (supra) though they doubted whether Viswanatha Sastry, J,, did not give too wide a meaning to the word "possessed when he had observed that it might include the possession of a trespasser. The learned Judges expressed disagreement with the views taken by the Patna High Court in (S) Ram Ayodhya Missir and Others Vs. Raghunath Missir and Others, and that of the Madhya Pradesh High Court which followed it. The learned Judges pointed out that where a widow before the commencement of the Act parted with some items of the property inherited by her, "the transferee could not have obtained a greater interest than what the widow had at the time, and as the provisions of the Act do not apply to such a case, the old law regarding the rights of a reversioner must remain intact; they pointed out that Section 4 pf Hindu Succession Act abrogated the rules of Hindu Law only in so far as they were inconsistent with the provisions of the Act.

They remarked further that Section 15 of the Act must be read along with the provisions of Section 14 and does not covet property which had been transferred before the Act came into force. It is unnecessary to refer to other cases; but we may note that the Kerala, the Calcutta and the Punjab High Courts take the same view as that taken by the Andhra High Court.

10. We must however refer to another case Of the Andhra High Court a decision of their Lordships Subba Rao, C. J., as ha then was and Qamar Hasan, J., in Karri Venkamma Vs. Karri Venkatareddi and Another, . In that case, the widow set up a will of her husband whereunder she was given an absolute estate in his property. The truth and validity of the will was contested by the reversioners in a declaratory suit filed by them. The suit was decided against the widow and she came up on appeal to this Court.

Their Lordships pointed out that if the suit had been filed after the coming into force of the Hindu Succession Act, it would not have been maintainable because there would be no reversioner in regard to a property of which the widow became an absolute owner by virtue of Section 14(1). They then observed that the proper course in the case before them would be to dismiss the suit of the reversioner as the widow would be entitled to an absolute estate whether with or without the will. That decision, we have no doubt, is correct.

11. Coming now to the present case which was instituted before the Act came into force and which attacks the validity of an adoption made by a widow, what is the position? If the present suit had been filed after the coining into force of the

Succession Act, we are inclined to think that it would not have been maintainable. The Hindu female making an adoption after the passing of the Act would be exactly in the same position, as we have pointed out, as a Hindu male.

The very basis of the right of a reversioner to institute a declaratory suit questioning the adoption made by a Hindu woman is her position as a limited heir. She could not affect the true course of devolution of her husband's property after her death by any act that is not permitted or sanctioned by Hindu Law.

She could do so only by a valid adoption or surrender. If any act of hers threw a cloud upon the true course of inheritance, the presumptive reversioner could maintain a suit questioning her act. But when there is no longer what under the Hindu Law before the passing of the Succession Act was described as the estate of the last male-owner, then, it follows that there can be no person interested in protecting it.

As we have stated above, there may be a case of illegal adoption, the effect of which may be so far as she is concerned, deprivation of her possession of the estate at least in part. In regard to that part of the estate which goes out of her possession. Section 14 may not apply as Section 4 of the Act only abrogates those rules of a Hindu law as are inconsistent with the provisions of the Act.

It must follow that in such a case there would be a reversioner in respect of the estate which passed out of the hands of the widow. The position would be exactly the same as in the case of an alienation effected by her before the coming into force of the Act. Such a suit might continue to be maintainable even after the passing of the Act because the reversionary right as such in property not covered by Section 19 is not affected.

12. In the present case, if the consent obtained; by the widow is adequate in law to support the adoption, then the suit must fail on the merits. If, on the other hand, the adoption was invalid altogether because the Hindu law does not recognise the validity of an adoption made by the widow without either the permission of her husband or without the consent after his death of his nearest Sapindas, then in law, the widow must be deemed to be in possession of her husband's estate because there would be, in that case, no legal vesting of the property in the adoptee.

In this view, Section 14(1) would apply to the property and it being absolute property in her hands there is no question of any reversion and the suit would not be maintainable. We, therefore, think that there is considerable force in the preliminary objection and this appeal might well be disposed of on the ground that whether the adoption is valid or invalid, the reversioner must fail.

13. We have however been taken in detail into the evidence in the case and on a careful examination we have reached the conclusion that even on the merits, the appellants must fail.

14. It can hardly be doubted that the adoption was true. It is inconceivable why

a non-existing-adoption should have been set up by the widow. It is not as if an adoption cannot be made at any time hereafter. In a case where the widow or the alleged adoptee is no longer alive, the question would be-one of ascertainment of a fact relating to the past in regard to which a false case might well be set up,

But where, as in the present case, the adoptee is-only three years old if the adoption has not taken place, there is no point in the widow saying it was, because if it was not true in fact, it could be made a fact by her act at any time even after the institution of the suit. The factum of adoption however in the-present case is supported, as the lower court points-out, by a considerable body of oral and documentary evidence.

The plaintiffs were served on. 16-3-1950 with a notice by the widow wherein the 1st defendant sought their consent to the adoption. The plaintiffs refused to give their consent by a reply dated 24-3-1950. Thereupon, the 1st defendant issued a notice Ex. B.-4 on 27-4-1950 to Kotiah, though Kotiah denies having refused the notice, and the notice bears an endorsement of refusal.

There is no reason to suppose that the widow would not have sent a notice to Kotiah when she is-admitted to have sent a notice to his brother Venkayya, who, as already stated, gave his consent Ex. B-5"-dated 24-4-1950, is a consent-deed executed by Venkayya and Mastan in her favour. Then there is-Ex. B-6 which is a printed Invitation card, one of the many issued in connection with the ceremony. It is dated 30-5-1950 and addressed to one R. An-janeyulu. It bears a postal seat

Then there is Ex. B-8 dated 5-6-1950 which is a photograph taken at the time of the adoption ceremony. D. W. 7 is the photographer who took the photograph and proves it. There, there is Ex. B-7 dated the same date as the photograph which is described as "a paper which recites that the 1st defendant adopted the 2nd defendant".

This is signed by several persons stated to have been present on the occasion. There is also the evidence of D. W. 2 who is the purohit who officiated at the function. Besides this, there is the oral evidence of D. Ws. 5 and 6. D. W. 5 is a resident of the village and belongs to a different community from that of the parties and D. W. 6, is a relation. This evidence establishes beyond the shadow of doubt that the adoption did in fact take place.

15. The next question is whether the consent: of Venkayya is sufficient to validate the adoption. The rule of law is settled that it is the duty of the widow to seek the consent of the Sapindas nearest in degree to her husband. It is equally well settled that if they refuse their consent improperly, the consent of the reversioners next in rank may support the adoption. It is not disputed that in the present case Kotayya and Venkayya are the reversioners next in rank to the plaintiffs. The refusal of the plaintiffs was clearly improper.

They pretended that the notice served upon them was not the act of the widow

herself but was the act of Ramayya, her brother, and that therefore there was no proper request to them for consent. Then they said" that there was no necessity for such an adoption 40 years after the death of their uncle, They also asserted that their aunt was not in a state in adopt a boy. We have no doubt that even before this registered notice, the plaintiffs were approached for their consent and the refusal contained in Ex. B-2 was indubitably improper.

16. The question therefore, now is whether the consent of Venkayya out of the brothers Kotayya and Venkayya would serve to validate the adoption. It is true that in some cases it has been loosely stated that the consent required is that of a substantial majority of agnates nearest in relationship to the last male owner. But the phrase "a substantial majority" -- though it is one borrowed from one of the earlier decisions of the Privy Council -- seems to have been incautiously used having regard to the later decision of the Privy Council in the Pittapur case (Krishna Ram v. Venkata Kuinara Mahipathi Surya Rao AIR 1935 PC 190} where it was held that though it was necessary for the widow to seek the consent of all the nearest sapindas, where there are only two sapindas and one of them improperly refused the consent of the other would be sufficient. In the present case, therefore, it must follow that the consent of Venkayya following upon the improper refusal of the plaintiffs and of Kotiah must be held to be sufficient to enable the widow to make the adoption. On this point also we concur in the result reached by the trial Judge.

17. This appeal therefore, fails and is dismissed with costs.