

(1934) 12 MAD CK 0022
In the Madras High Court

Ravella Mangamma

APPELLANT

Vs

Bollepalli Ramanamma and Others

RESPONDENT

Date of Decision : 21-12-1934

Acts Referred:

Citation : (1935) 42 LW 805 : (1935) 69 MLJ 602

Hon'ble Judges : Pandrang Row, J

Bench : Division Bench

Judgement

1. The questions raised by this appeal are two viz.,

(1) Whether the alleged adoption said to have been made by one Subbamma of the third defendant was made at all.

(2) Whether, if made, it was made without authority;

2. The evidence of the fact of adoption is weak but I am not prepared to differ from the trial Judge's finding that there was an adoption, bearing in

mind that the registered deed of authority (Ex. I) probabilizes the story of adoption, it being improbable that the gnatis and the widow would have

gone to the trouble of registering a deed of authority and then stopped short without effecting the adoption which need only involve a very simple

ceremony involving no expense. It is true that the story told of the adoption describes an elaborate ceremonial adoption, with Brahmins chanting

mantrams, and drummers and pipers performing, a form of adoption neither necessary nor usual in the case of Sudras, and I view with suspicion

the whole story but my suspicion does not go so far as to prepare me to disagree with the trial Judge's finding of fact on this point.

3. There remains however, the question of authority. That there was a deed of authority cannot be, and is not, disputed. It was registered in 1911.

The ground of attack is that the gnatis did not give a bona fide authority for the purpose of getting a boy adopted to the deceased - (Subbamma's

husband) so that there might be someone to perform the ceremonies for the deceased and protect the inheritance. It is said that the widow and the

gnatis entered into this arrangement simply to enable the widow to divide her deceased husband's property amongst various relations and that the

case falls within the class of case of which Venkamma v. Subrahmaniam (1906) 34 I.A. 22 : ILR 30 Mad. 50 : 17 M.L.J. 114 is an example.

4. Before I examine that line of attack it is necessary to put on one side another ground urged by the appellant. It is said that at the time of the deed

of adoption there was living a son born to the daughter of the deceased husband of Subbamma. That daughter was the child by a first wife. At the

time of the adoption it is said that son had reached the age of fifteen, i.e., had had his fifteenth birthday and therefore was in the view of the Hindu

Law, of age. The Majority Act does not affect the capacity of a person to "act in the following matters (namely)...adoption", and this exception, it

is said, excludes from the operation of the Majority Act the power to authorize an adoption that being an act relating to adoption and therefore an

act in adoption.

5. It is further said: that Ramesam, J. held in Anne Brahmayya v. Chelasami Rattayya (1924) 20 L.W. 503 that a daughter's son, though not an

agnate, should be consulted when he is the nearest male heir. The whole ground of that opinion was that the term "sapindas" is not co-extensive

with the term "agnates" but includes a daughter's son who is the nearest in the line of succession (though it includes no other class of cognate). It, of

course, is a point that only arises where no authority has been given by the husband. Its reason is to be found in the facts (1) that a daughter's son

can himself safeguard the spiritual welfare of the deceased (so that adoption becomes from that angle unnecessary), and, (2) being the next in

succession, is the person most directly concerned with the preservation of the estate (which is the remaining proper person for the adoption). This

opinion of Ramesam, J. was not concurred in by Jackson, J., in the same case, who followed Viswasundara Row v. Somasundara Rao ILR

(1920) 43 Mad. 876, where Oldfield and Phillips, JJ. held the contrary. It is difficult however to see where the reasoning, underlying Ramesam,

J.'s conclusion breaks down and the ground, upon which he distinguishes in *Viswasundara Row v. Somasundara Rao* ILR (1920) 43 Mad. 876

is, if I may say, so, strong. His view was preferred to that of *Viswasundara Row v. Somasundara Rao* ILR (1920) 43 Mad. 876 in *Kesar Singh v.*

Secretary of State for India (1926) ILR 49 Mad. 652 M.L.J. 16. where the texts were again fully considered and the opinion expressed by

Ramesam, J. agreed with. That later case is, it is true, concerned with circumstances where there are no agnates. It decides, simply, that in such a

case the nearest cognate reversioners can authorize the adoption. But the reasoning points to the conclusion that where there are agnates, but so

remote that the daughter's son is the nearest male heir, such daughter's son should be consulted.:

6. I do not however consider it desirable or necessary to express any definite opinion on this point for two reasons; (1) according to the opinion of

the Judicial Committee in *Kristnayya v. Lakshmipathi* (1920) 47 I.A. 99 : ILR 43 Mad. 650 : 39 M.L.J. 70 a substantial majority of those

consulted suffices and (2) the evidence of age is so uncertain in this case that it is impossible to say that the plaintiff has proved that the daughter's

son had reached the age of majority even according to Hindu Law and even assuming (an assumption by no means clear) that the giving of

authority to adopt, as distinct from adopting, is an act "in adoption". It is true that the learned trial Judge in paragraph 30 says "when the adoption

took place (the daughter's son) must have been 15 years old" but, that statement is not a finding but a deduction from various dates spoken to by

the plaintiff. In paragraph 33 he says:

I am not prepared to hold on the evidence that (the daughter's son) was a major on the date of adoption.

7. It would seem that the learned Judge had in mind 18 as the age of majority for he adds "I have, shown that plaintiff's own evidence does not

support such a theory". But it is clear that this point (that the age of majority is 15 for this purpose) was never taken before the learned Judge. His

judgment is a very careful one. On the question of whether a daughter's son should be consulted he goes fully into the authorities. There is no

mention, however, of the majority Act, or the point whether this falls within the class of acts excepted from the provisions of that Act. Had that

been argued, he would undoubtedly have examined the weight of the Plaintiff's evidence as to age. He merely states what that evidence put at its

highest amounts to. Having concluded that, at best, it shows the boy to have been 15, he does not go on to determine whether that, was really his

age. Having in mind 18 as the age, it was unnecessary to scrutinize the plaintiff's evidence. If, however, 15 had been the critical age it would have

been necessary to examine carefully the evidence in support of the conclusion that he was fifteen and the evidence will not stand this scrutiny. In my

opinion therefore it is not established that the daughter's son was at the material state, of age - even assuming that the age of majority for this

purpose is 15, an assumption which, I repeat, I regard as dubious.

8. That leads me to the main question. Was the adoption bona fide or corrupt and capricious?

9. The story disclosed in Ex. I I regard as incredible. It represents the agnates as saying, twenty years after the death of the adopting widow's

husband, that shortly before his death he called them together; pointed out that his wife was pregnant; that the child might be a girl. He then asked

them to be so kind, if one of them should be blessed with a son to give that boy in adoption so that ""my line may be perpetuated"". In argument

before us it is not suggested that that amounts to authority. It is even said it does not represent a present wish for a son to be adopted if the child in

the event prove to be a daughter, but is merely a statement made to satisfy a grieving Wife and having no purpose beyond that.

10. The reason why the counsel was driven to such an argument is to be found in the fact that" at the time in question the dying man's eldest

daughter had a son and it is simply incredible that if the dying man was mainly, or at all, concerned with the perpetuation of his line he should not

have made mention of his grandsonn but should have left the matter with the expression of a hope, that the agnates, none of whom had a son,

should, if and when any had a son, give that son. There is no suggestion that the grandson was unsuitable, or that the grandson or his parents were

on terms of enmity with the dying man. The omission to mention him casts a grave doubt over the story set out in the deed of authority.

11. But if the matter stopped there I should feel a difficulty in arriving at the serious conclusion that this adoption was corrupt and capricious. But

when the result is looked at it so strengthens the view that the adoption was really intended to enable the widow to dispose of the property, that I

feel no other conclusion is consonant with all the facts.

12. At the time of this adoption the ancestral estate amounted to approximately 51 acres. The adopting mother was in charge from 1911 to 1918

when the adopted boy became of age. During that time the natural father and another male relation appear to have lived in the house of the

adopting family. Either before or very shortly after majority had been reached one finds the property had been disposed of as follows:

13. 5.15 acres had gone to the natural father; 15-25 acres was given to the daughter of the adopting mother; 17-5 acres had gone to the brother

of the adopting mother; 7-0 acres had been disposed of to the adoptive mother's sister's husband's sons. All these alienations appear to have

been for no-consideration except the first which was a sale for Rs. 600. The subject-matter of that sale was shortly afterwards refold by the

natural father for presumably the proper price, viz., Rs. 2,000. As a result of these alienations all that was left within a few months of the boy's

attaining "" majority was 7 acres.

14. I am prepared to assume that all these alienations were made by the son though there is much evidence to the effect they were made before

1918 by the mother. It is said if that assumption is made it is straining suspicion to find a conspiracy in 1911, which only had an effect in 1918.

Having regard however to the extremely dubious nature of the evidence as to adoption and to the fact that during the intervening years at least two

of the male relations including the natural father were living at the adopting family house and most probably on the income from the family lands I

have arrived at the conclusion that from the very beginning the agnates benefited and when the boy came of age he could easily have been made to

effect these alienations the alternative being that the fact of his adoption would have been denied. Earlier open alienations by the mother would

have been difficult, for, the daughter's son, the nearest reversioner; was alive. It is urged in favour of the probability that he was bona fide adopted,

that the adopting mother was his foster mother he having been born in her house and having lived there ever since. But there is nothing in that

when it is remembered that he was born in that house because his parents lived

there. He had been there ever since because his parents had lived there ever since.

15. The law cannot be more tersely, or, I think, accurately expressed than in the sentence of the judgment of Madhavan Nair, J., reported in

Kandaswami Goundar v. Chinnammal (1933) 37 L.W. 729 at 730:

If the consent of the sapinda was obtained under the circumstances which show that he gave the consent with a view to benefit himself, or if the

facts show that the widow was making the adoption to defeat the interest of this or that sapinda, and not to promote the spiritual welfare of her

husband then the motives of the parties are said to be "corrupt and capricious" and the adoption will be invalid for that reason.

16. Adopting that statement I conclude on the circumstances here present that the motives of the parties were corrupt and capricious and the

adoption is invalid.

17. So far as defendants 5, 6, 17, 19 to 21 and 23 to 25 are concerned the appeal has not been pressed and so far as these defendants are

concerned, the appeal must fail and the, appellant will have to pay the costs of these defendants. Against the other defendants the appeal succeeds

and the appellant will have her costs of this appeal and in the Court below the Government will be paid court-fee in Court below on the, plaint and

the costs and court-fees being proportionate among the unsuccessful defendants according to their interest in the plaint properties.

Pandrang Row, J.

18. I agree entirely with my learned brother that there are considerable doubts in this case as to the actual factum of adoption, and that even

assuming the adoption did take place in fact it was made from corrupt motives and is therefore invalid. I wish however to add a few words on

another aspect of the case which has been briefly referred to in the judgment of my learned brother.

19. The present case seems to be more or less on all fours with 11 CWN 345 (Privy Council) . In widow. adopting the of husband deceased by

authority previous a was there that suit in pleadings as well adopt to deed both stated it cases ILR (1903) 26 Mad. 627 : 13 M.L.J. 239 , the deed

of authority ran in the following terms:

Both during his lifetime as well as at the time of his death, he felt sorry for his having had no issue and had expressed his opinion by telling you and myself and other gnatis that a boy should be adopted for him and the family be perpetuated. In pursuance of that authority you have also sought authority from me, a Sannihitha Gnathi, for adopting a boy to your said husband. So I also agree out of my free will to your adopting, etc.

20. In the present case the deed of authority, Ex. I, runs as follows:

You were in the state of pregnancy at the time of the death of your husband, Kotapathi Anandam. He then told us and others, ""My wife is pregnant. If no son be born, and, if any one of you be blessed with a son, please give one such boy in adoption to my wife, and let my line be perpetuated."" Having said so, he died. In accordance with his wishes, you, immediately on the birth of a son to Venkiah, amongst us, having now approached us, the nearest gnatis and expressed to us, in the presence of, the undermentioned witnesses, a desire that you would adopt the said Venkataramiah and thereby keep up the line, we, as now desired by you, and as expressed to us by your husband at the time of his death, have hereby accorded to you permission to adopt Venkiah's son, Venkataramiah.

21. In *Subramanyam v. Venkamma* ILR (1903) ILR 26 Mad. 627 : it was held that the authority given by the reversioner did not constitute an independent assent of the kind contemplated by the Hindu law. In that case also as in this the natural father of the adopted boy gave evidence in support of the alleged authority of the deceased, and the alleged authority was disbelieved. In the present case also the story of the alleged authority by the deceased Anandam must be disbelieved. This aspect of the case has not received adequate consideration at the hands of the learned Subordinate Judge and he has not recorded any definite finding as to whether this alleged authority by Anandam was true. The case of the adopted son, third defendant, as set forth in the written statement was rested not merely on the authority given by the reversioners in 1911 but also on the fact that Anandam himself had left instructions before his death in 1891 that his wife Subbamma should adopt a boy in the event of a son not being born to him, and further instructed the executants of the authority to give one of their sons in adoption to him in the said event. There can be no doubt therefore that in this case the adoption was based not merely on the

authority or assent of the reversioners but also on the alleged authority given by the husband before his death. The authority is spoken to only by two witnesses, namely, the natural father of the adopted boy, Venkayya, D.W. 1 and an Archaka D.W. 3. The latter's evidence is, we think, of very little value. He is a man of very low status and it is difficult to believe that he could have been present at the time when the deceased died, an event which took place nearly 36 years before he was examined as a witness, when admittedly he was not a permanent resident of the village in which Anandam died. According to him he had migrated to that village shortly before. As regards D.W. 1, according to him he could have been only 14 years old at the time when the alleged authority is said to have been given. After an interval of 35 or 36 years he is prepared to come forward and swear that he remembers accurately the authority given by the deceased Anandam. It is most improbable that Anandam would have given such authority when he had a grandson by his daughter living and had every reason to expect other grandsons by the other daughter, the plaintiff. In fact it would appear as if the plaintiff herself was either pregnant or had just given birth to a child at the time of Anandam's death. In any case, I have no doubt this story of the alleged authority by Anandam is a pure invention and that it was never given. It was not mentioned at any time till 20 years after, and that too only in the deed of authority executed by the reversioners. Their Lordships of the Privy Council have held in a case of this kind that the failure of the alleged adopted son to prove the authority of the father enters deeply into the question whether the consent of the reversioners is sufficient. The consent of the reversioners purports itself to be based on the authority given by the deceased, and it is therefore clear that their consent was given, "not in the exercise of an independent judgment on the expediency of the proposed adoption, but rather as the ratification of what must now be taken to be the non-existent authority of the deceased husband." On this ground also, even apart from the undoubted fact that the adoption was itself a mere device to defeat the inheritance between the widow and her relations and also the natural father of the boy proposed to be adopted, the adoption must be declared to be invalid. The plaintiff's allegation in her plaint that this adoption was the result of a conspiracy between the widow and her

relations as well as the reversioners appears to be perfectly true. I agree to the order of my learned brother.