

**(1903) 02 MAD CK 0003**  
**In the Madras High Court**

|                                                   |            |
|---------------------------------------------------|------------|
| Somasundara Mudaly by his Guardian, Salakshi Anne | APPELLANT  |
| Vs                                                |            |
| Duraisami Mudaliar                                | RESPONDENT |

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**Date of Decision :** 13-02-1903

**Acts Referred:**

Registration Act, 1908 — Section 17, 49

**Citation :** (1904) ILR (Mad) 30 : (1903) 13 MLJ 283

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**Judgement**

1. The appellant (1st defendant) alleges that the adoption was made under an authority to adopt given in the so-called will, Exhibit 1. This

document is in no sense a will, i.e., a testamentary disposition of property (Vide Section 3, Act V of 1881). It is an authority to adopt and nothing

else and the direction therein given to put the adopted son into possession of the property cannot be construed as a devise of the property. It is

simply a statement of the consequences that should legally follow on the adoption. Musmmat Bhoobun Moyce Debia v. Ram Kishore Acharjee

Chowdhry 10 M.I.A. 279

2. The authority to adopt being in writing and not contained in a will, its registration is compulsory, and, unless registered, it is inoperative to confer

such authority (Sections 17 and 49, Indian Registration Act 111 of 1877). We may add that there is no evidence except Exhibit I to prove that

authority was given, assuming that such evidence could be adduced. 1/2an assumption that is doubtful, the question depending on whether the word

grant"" in Section 91 of the Indian Evidence Act means a grant of property only or refers to other grants also. There being therefore no evidence

that any authority to adopt was given, the adoption, if it took place, was invalid.

3. We therefore dismiss the appeal with costs.