

(1952) 12 MAD CK 0022
In the Madras High Court
Case No : Appeal No. 524 of 1949

Sure Subba Rao and Another	Vs	APPELLANT
Sure Venkata Satyanarayana and Another		RESPONDENT

Date of Decision : 10-12-1952

Acts Referred:

Registration Act, 1908 — Section 17, 17(3)

Citation : AIR 1953 Mad 755 : (1953) 66 LW 1111 : (1953) 2 MLJ 97

Hon'ble Judges : Subba Rao, J;Ramaswami, J

Bench : Division Bench

Advocate : G. Venkatarama Sastry, for the Appellant; P. Somasundaram and P. Suryanarayana, for the Respondent

Final Decision : Dismissed

Judgement

Subba Rao, J.—This appeal raises the question of the factum and validity of the adoption of the first defendant by the second defendant. The parties are Valsyas by caste. In or about 1912 Venkayya, the last maleholder died possessed of a large estate more particularly described in schedules A, B and C appended to the plaint. As he had no issue, his wife Ademma, the second defendant inherited his properties. On 10-2-1947 she is said to have taken the first defendant in adoption to her deceased husband. The plaintiff who is the nearest "reversioner along with the third defendant, being Venkayya's brother's son, filed O.S. No. 90 of 1947 on the file of the Court of the Subordinate Judge, Guntur, for a declaration that the adoption of the first defendant by the second defendant was not true, valid and binding on the reversioners to the estate of Venkayya. He questioned the factum of adoption and pleaded that even if it had taken place, it was invalid on the ground that the consent of the next reversioners was not taken.

The first defendant is the alleged adopted son. The second defendant is Ademma, the widow of Venkayya. The third defendant is the son of Venkayya's brother, Guruvayya. The third defendant supported the plaintiff in so far as he

questioned the factum and validity of the adoption. Defendants 1 and 2 supported the adopting. They also questioned the correctness of the schedules attached to the plaint. The following issues were framed:

" 1. Is the adoption of the first defendant by the second defendant true and valid?

2. Are the stipulations in the compromise in O.S. No. 30 of 1917 under which second defendant could adopt not valid and binding on second defendant?

3. Even so is she bound by them after the death of the third defendant's lather; if not is the refusal by the plaintiff and third defendant to consent to adoption by her proper?

4. Are the schedules correct?

5. To what relief is plaintiff entitled? The learned Subordinate Judge found on issues 1 to 3 in favour of defendants 1 and 2. In the result he dismissed the suit with costs. The plaintiff and the third defendant have preferred the aforesaid appeal.

2. The first question in the appeal is whether the alleged adoption was true. (His Lordship considered the evidence on the point and concluded:) We therefore hold that the second defendant took the first defendant in adoption on 10-2-1947 after going through the necessary formalities.

3. The next question is whether the adoption, oven if true, is valid. Learned counsel for the appellants contended that the adoption was invalid as the consent of the nearest "sapindas" -- the plaintiff and the third defendant -- was not taken. He would also argue that even if for one reason or other they could be ignored the consent given by the other "sapindas" would not be legal consent within the meaning of the decided cases. At this stage it may be convenient to notice the law on the subject as it would facilitate the application of accepted principles to the facts of this case. The necessity for the consent of the "sapindas" in the case of an adoption by a widow whose husband died divided was laid down by the Judicial Committee in the Rarnnad case -- "Collector of Madura v. Moottoo Ramalinga", 12 Moo Ind App 397 (A), as follows:

"In such a case, therefore, their Lordships think, that the consent of the father-in-law, to whom the law points as the natural guardian and venerable protector of the widow, would be sufficient. It is not easy to lay down an inflexible rule for the case in which no father-in-law is in existence. Every such case must depend upon the circumstances of the family. All that can be said is, that there should be such evidence of the assent of Kinsmen as suffices to show, that the act is done by the widow in the proper and "bona fide" performance of a religious duty, and neither capriciously nor from a corrupt motive."

Their Lordships stated the reason for the rule in the following terms:

"The assent of the kinsmen seems to be required by reason of the presumed incapacity of women for independence, rather than the necessity of procuring the

consent of all those whose possible and reversionary interest in the estate would be defeated by the adoption."

It will therefore be seen that the reason for the rule is not the possible deprivation of the proprietary interests of the reversioner but the state of perpetual tutelage of women under Hindu law. The consent of the kinsmen was considered to be a sufficient guarantee against any capricious action on the part of the widow in taking a boy in adoption. In -- "*Vellanki Venkatakrishna Rao v. Venkatarama Lakshmi*", 1 Mad 174 (B), the Judicial Committee proceeded to elaborate on the scope of the consent of "sapindas". Their Lordships observed:

"All that which this Committee in the former case -- 12 Moo Ind App 397 (A)", intended to lay down was, that there would be such proof of assent on the part of the "sapindas" as should be sufficient to support the inference that the adoption was made by the widow, not from capricious or corrupt motives, or in order to defeat the interest of this or that "sapinda", but upon a fair consideration, by what may be called a family council, of the expediency of substituting an heir by adoption to the deceased husband."

4. This judgment introduces a new concept of a "family council which in its turn gave rise to doubts and conflicts. The concept of a family council has been explained by Mr. Ameer Ali in -- "*Veerabasavaraju v. Balasuryaprasada Rao*", AIR 1918 PC 97 (C), as follows:

"Division does not affect her personal dependence or give her an independent status to alter by her own authority the succession to the estate which she takes as the widow of her husband. She is still dependant for counsel and protection upon the nearest "sapindas" of her husband, who are the most closely united to him by ties of blood, or, to use the language of Hindu lawyers by "community of corporal particles". The father of the deceased, if still alive, continues to be her "natural guardian and venerable protector." He has furthermore a direct interest in the protection of the estate, for in case of her death without leaving her surviving a daughter or the mother of her deceased husband, he has a right to the reversion. His authorisation is, therefore, essentially requisite to the validity of an adoption by her to her husband.

If there is no father the divided brothers take his place by virtue of the tie of blood as her husband's nearest "sapindas"; they become her natural guardians and the protectors of her interests. They also have an interest in the protection of the inheritance, in the absence, then, of the father the assent of the divided brothers is equally requisite for the validity of the widow's adoption. If a majority assent and one refuses, his objection may be discounted. But the absence of their consent or in case there is only one, of his consent, cannot be made good by the authorisation of distant relatives remotely connected whose interest in the well being of the widow or the spiritual welfare of the deceased, or in the protection of the estate is of minute character, and whose assent is more likely to be influenced by improper motives."

5. The aforesaid passage indicates that his Lordship laid equal emphasis on the protection of the estate as on the spiritual welfare of the deceased. Indeed his Lordship made his meaning clearer when he said at a later stage, "that rights to property cannot be left out of consideration in the determination of the question." But what is relevant for the present purpose is that this decision seems to indicate that the consent of the remoter relative is not a substitute for the consent of nearer "sapindas". But this does not consider the further question, namely, what would be the position if the nearer "sapindas" refuse to give the consent on improper grounds. That question fell to be considered in -- "Krishnayya v. Lakshmipathi", AIR 1920 PC 4 (D).

There one Narajamma made an adoption on 20th February 1907, with the alleged assent of her husband's "sapindas". At the time of the adoption there were five next reversioners, but the adoption was admittedly made with the assent of only one of them and some of the remoter "sapindas". Both the courts in India had concurrently found that the widow never applied to the remaining four next reversioners for their assent, and had consequently held that the adoption in question was invalid. At page 4, Viscount Cave dealing with the observations of Mr. Ameer Ali in -- AIR 1918 PC 97 (C)" made the following observations:

"The reference in the last mentioned case to a "family council" gave rise to some doubt whether, where there were agnatic relations closely related to the deceased the assent of those standing in a remoter degree was either necessary or sufficient, but this doubt was resolved in the recent case of -- "Veerabasavaraju v. Balasuryaprasada Rao", (C) where it was held that the absence of consent on the part of the nearest "sapindas" cannot be made good by the authorisation of distant relatives whose assent is more likely to be influenced by improper motives. This does not mean that the consent of a near "sapinda" who is incapable of forming a judgment on the matter, such as a minor or a lunatic, is either sufficient or necessary; nor does it exclude the view that where a near relative is clearly proved to be actuated by correct or malicious motives his dissent may be disregarded. Nor does it contemplate cases where the nearest "sapinda" happens to be in a distant country, and it is impossible without great difficulty to obtain his consent, or where he is convict or suffering a term of imprisonment. The consent required is that of a substantial majority of these agnates nearest in relationship who are capable of forming an intelligent and honest judgment on the matter. It must however be added that, save in exceptional cases such as those mentioned above, the consent of the nearest "sapindas" must be asked, and if it is not asked it is no excuse to say that they would certainly have refused."

6. The Judicial Committee restated with approval the following extract from -- Sri Virada Pratapa Raghunanda Deo v. Brojo Kishore", 1 Mad 69 (E):

"But it is impossible not to see that there are grave social objections to making the succession of property--and it may be in the case of collateral succession, as

in the present instance, the rights of parties in actual possession--dependent on the caprice of a woman, subject to all the pernicious influences which interested advisers are apt in India to exert over women possessed of or capable of exercising dominion over, property. It seems, therefore, to be the duty of the courts to keep the power strictly within the limits which the law has assigned to it."

7. In the aforesaid extracts the Judicial Committee explained the scope of the passage in --AIR 1918 PC 97 (C)" which without the commentary may appear to lay down an implacable rule of law that a widow cannot look up to the consent of a remoter "sapinda" even if the nearer one is not in a position to give consent or refused to give consent for malicious motives. Madhavan Nair and Jackson JJ. considered the scope of this rule in -- (Popuri) Murahari Brahma Sastri and Another Vs. Chilikuri Sumitramma and Others, . There a Hindu widow took a boy in adoption. She did not get the consent of her deceased husband's daughter, one of the two nearest "sapindas" and two of the four remoter "sapindas". She did not call a family council to consider the propriety of the adoption. It was found that one of the nearest "sapindas" capriciously withheld his consent. On the evidence the learned Judges found that the consent obtained by her of a majority of her deceased husband's kinsmen would support the adoption. It was argued that the consent of the "sapindas" should be sought in accordance to the degree of propinquity to the last maleholder. Madhavan Nair J. repelled that argument with the following observations at page 194:

"It is no doubt obligatory on the part of the widow to consult the nearest "sapindas" but if their consent is capriciously withheld it is not necessary that a family council should be held to consider the propriety of the adoption, or that the reversioners should be consulted in the order of their degree of relationship to the deceased husband, or that even that all the reversioners should be consulted."

8. After citing the relevant passages from the judgment of the Judicial Committee which we have already extracted above, the learned Judges proceeded to state:

"These passages which form the basis of the law on the point, read together, do not make it obligatory that a family council of the agnates should be called by the widow to consider the propriety of the adoption or even that all the reversioners should be consulted before the adoption is made. The nearest "sapindas" of course should be consulted; but when it becomes necessary to consult the reversioners all that is wanted is that there should be such evidence of consent as would show that the widow in making the adoption is not acting improperly or capriciously or from a corrupt motive. This would be proved no doubt by showing that the opinion of a substantial majority of the reversioners is in favour of the adoption; but it does not mean that each and every reversioner should be consulted or that if one or two are omitted from consultation the adoption would be necessarily Invalid."

9. This decision was cited with approval by the Judicial Committee in -- AIR 1947 124 (Privy Council) . An exhaustive and, if we may say so, an instructive treatment of the subject is found in the Judgment of Satyanarayana Rao and Viswanatha Bastri JJ. in -- Venneti Sundara Rama Rao Vs. Chamarti Satyanarayanamurthi being minor by natural father and guardian, Chamarti Bulli Venkatarao and Another, . The question there was whether in the case of an undivided family a widow can travel outside the family and seek the consent of the divided "sapindas" when the only coparcener improperly refused and withheld his assent for the valid act of adoption. The learned Judges held that she could do so. They traced the law on the subject and restated the principle governing the doctrine of the consent of "sapindas". The following relevant portion of the head note brings out clearly their conclusion: "It is well settled in Southern India that a widow in the absence of an authority from the husband, can make a valid adoption with the assent of her husband's sapindas. The proof of assent on the part of the sapindas was required to establish the inference that the adoption was made by the widow without any capricious or corrupt motive, or with a view to defeat the interests of this or that sapinda. It is not necessary to obtain the consent of all the nearest sapindas; it is enough if they are all consulted. The duty of the widow to ask for the consent of the nearest, sapindas as far as possible is imperative. In matters of adoption devolution of property is of secondary importance and the validity of the adoption is to be judged and determined by spiritual rather than by temporal considerations." The doctrine of consent in adoption had not its origin in any specific Hindu law texts. A remote connection may be discovered in the state of the perpetual tutelage assigned to women by Hindu law expressed so tersely and clearly in the well-known text of Yajnavalkya in Chapter 1, verse 85: "Let her father protect a maiden; her husband a married woman; sons in old age; if none of these other Gnatīs (kinsmen). She is not fit for independence."

Gradually and imperceptibly the Judicial Committee and the High Courts have developed a doctrine of consent affording a suitable substitute in the absence of an express authority by the husband. This doctrine is built upon three principles:

1. The adoption of a son to deceased husband by a widow is a meritorious act conducive to spiritual welfare.
2. The consent of the "sapindas" is a guarantee against the widow abusing her position and acting with capricious or corrupt motives.
3. The validity of the consent depends upon qualitative and quantitative test laid down by decisions.

But the real difficulty lies not so much in formulating the tests but in applying them to different situations. The words used in various decisions such as kindred, "sapindas", competent advisers, family council etc., have given rise to doubts and difficulties till the Judicial Committee finally and definitely explained the scope of the doctrine in --AIR 1920 PC 4 (D)". The general principle is that the

_____ | _____ | | | | | | | | | | | | | | | | | |
 Venkata Subbayya Ramayya Gurunadham Swami Gopayya | Subbayya Naga-
 Appayya | | | Guravayya | bhushanam | | _____|_____
 _____|_____ | | | | | | | | | | | | | | | | | |
 | | | Venkayya Kotayya China Ramayya Venkata Koti Guru- Anjaneyalu
 Sitaramulu Panduranga | | | nadham (adopted to (minor) Rao (minor) | |
 Venkata Kotayya some other family) | | _____
 _____| | _____|_____
 _____| | _____|_____
 _____ Peda Venkatarasu Venkayya | | | | |
 _____|_____ Venkayya Krishnayya Subbayya | | | | |
 _____|_____ Guruvayya Ramayya Lakshmi- Venkayya | | | | |
 narasimham wife Ademmma | Subbayya Ramayya | | | (A. 2) | | | Subba Rao |
 _____|_____ Venkatanarasu (Plaintiff)
 Appayya | | | | | (D.3) | (Ad. son) Guruvayya Raghavalu Venkata Chinna
 Ramayya | | _____|_____ | subbiah Venkata- | | | | | Punnayya
 subbayya | | Lakshiminarasu Radha Peetayya Pullayya | _____|_____
 | _____| | Satyanarana | | | | | | Guravayya | | | | | | |
 _____ Gurunatham Pullarao Nageshwara Ramulu Venka- Radha- | | Rao
 teshwarlu krishna Subbayya Hanumayya murthy | _____|
 _____| | | | | Guravayya Perayya
 Satyanarayana Venkateswarlu

From the genealogy, it will be seen that the common ancestor is one Sura Chemman Setti. He had six sons, Ramayya, Appayya and Venkatachalam by his first wife, Venkayya, Krishnayya and Subbayya by his second wife. The last maleholder belongs to Venkatachalam's branch. The "sapindas" with a circle round their names were either present at the adoption or gave their consent in writing. Persons with an "X" mark against their names were either minor or not consulted. The rest of the persons indicated in the genealogy were all dead, we have three generations of "sapindas", Pitchayya of Ramayya's branch and Punnayya of Venkayya's branch belong to the generation of the deceased Venkayya. Both of them have since died; but at the time of the adoption they were over 90 years of age and their eye sight was not good.

Pitchayya's son Ramayya and Punnayya's son Satyanarayana were examined as D. Ws. 4 and 5. They deposed that their fathers gave the consent for the adoption, that they were present at the time of the adoption and that they did not sign either the adoption deed or the authority giving consent as they were not in a position to do so. But the learned counsel for the appellants relied upon the evidence of D. W. 1, the second defendant, in support of his contention that she did not ask their consent for the adoption. But a perusal of the evidence of D. W. 1 discloses that Pitchayya and Punnayya were present at the time of the adoption and when she said that she did not ask their consent, she meant only that she did not ask them to sign the authority giving consent to the adoption. It should not be forgotten that the second defendant was an illiterate woman of

seventy years and the cross-examination shows that despite her age and illiteracy she stood the test of cross-examination fairly well.

The evidence of D. Ws. 4 and 5 to the effect that their fathers gave consent is therefore reconcilable with the evidence of the old woman D. W. 1. The second generation consists of "sapindas" in all the branches. Taking the first branch in the above pedigree, i.e., Ramayya's branch, Subbayya and Ramayya the sons of Pitchayya, are alive. D. W. 4, Ramayya, gave his consent in writing. D. W. 1 says that his brother, Subbayya attended the adoption. In the branch of Appayya, Narasimham did not give his consent, nor did he attend the function whereas Nagabhushanani and Kotilingam signed both Exs. B. 11 and B. 16. Appayya's third son, Venkataratnam's sons were not consulted, but the evidence of P. W. 1 and D. W. 3 shows that Anjaneyalu, the second son of Venkataratnam was adopted to a different family and that Sitaramulu and Panduranga Rao, the other two sons were minors.

It will therefore be seen that in Appayya's branch, out of six "sapindas" available for consultation two of them, Nagabhushanani and Kotilingam were consulted. The rest were either minors or adopted to different families, Coming to Venkatachalam's branch, i.e., the branch of Venkayya, Venkatanarasu (3rd defendant) and Subba Rao (plaintiff) did not give their consent. They are the nearest reversioners to Venkayya. If they were not consulted, the adoption would be invalid. The defendant's contention is that they were consulted but for ulterior motives they refused to take the notices. It will be necessary to trace the history of the disputes between the widow and these two reversioners and their fathers to ascertain which version is true.

In 1917 Guruvayya, the father of the third defendant, and Ramayva, the father of the plaintiff instituted O. s. No. 12 of 1917 on the file of the court of the Temporary Subordinate Judge, Guntur, against Ademma for removing her from the management of the estate and for the appointment of a receiver. Allegations of waste were made against her. In the written statement Ademma pleaded that the suit was

"the result of ill-feeling consequent on the refusal of the defendant to adopt one of the boys, of the plaintiffs and trying to adopt a distant "gnati"."

This suit was transferred to the court of the Additional temporary Subordinate Judge, Guntur, and numbered as O.S. No. 30 of 1917. Guruvayya and Ramayya filed also O.S. No. 87 of 1917 for setting aside a sale deed executed by her on 10-8-1916 in respect of a small extent of land for a sum of Rs. 90. O.S. No. 87 of 1917 was decreed on 1-2-1918. On 22-2-1919 the parties entered Into-compromise in O.S. No. 30 of 1917 and Ex. B. 1 was the petition filed under Order 23, Rule 1, C. P. C. By the time the compromise was filed Ramayya the father of Subba Bao died. Under the compromise, the alienation made by her, which was the subject-matter of O.S. No. 87 of 1917 was declared valid. Guruvayya was put in possession of 7 acres 30 cents to be enjoyed by him

absolutely towards costs alleged to have been incurred by him. The compromise also recorded an agreement between the parties in respect of the rights, of the widow to take a boy in adoption. The relevant portion read:

"That in case the defendant takes a boy in adoption to her husband at any time, that is if she is willing to take boy in adoption, she shall take in adoption only these persons, that is, either the "first plaintiff"s son, that or the second plaintiff"s son, that she shall not take any other boy in adoption, that in case the first plaintiff consents to another boy being taken in adoption she should obtain permission in writing and then take a boy in adoption."

The decree, Ex. A 3, followed the compromise. Nothing happened till the year 1940. Meanwhile Guruvayya also died. On 25th July 1940 the third defendant issued the notice Ex. A. 9 to the second defendant Ademma. It appears from that letter that the second defendant was contemplating to take the present plaintiff"s second son Venkateswaralu in adoption. She must have asked the third defendant to give his consent. In Ex. A. 9 the third defendant stated that in view of the compromise decree she had no power to take any boy in adoption, much less Venkateswarlu. This notice was based upon an interpretation of the compromise decree. As under the compromise decree she agreed to take in adoption the son of either Guruvayya or Ramayya and that in default, an outsider only on a written consent given by Guruvayya and that as Guruvayya was no more it is said that the power conferred on her to take a boy in adoption was exhausted.

A similar notice bearing the same date was given by the third defendant to the plaintiff, Ex. B. 2. Presumably, because of the obstruction caused by the third defendant she slept over the matter for another three years. In 1943, she issued notices to the third defendant and the plaintiff seeking to take a boy in adoption and mentioning that she would like to take plaintiff"s son Venkateswarlu in adoption. In this notice she expressed her surprise that the third defendant who was married and had children wanted to be taken in adoption. Learned counsel for the appellants commented upon this statement as based upon as misapprehension, of the contents of Ex. A. 9. Literally understood it would be so; but what the old lady meant was that she was anxious to take a boy in adoption and that if the terms of the compromise were insisted upon, she could only take the third defendant in adoption and that he could not expect her to take a father of children in adoption.

Be it as it may, this statement is not of much relevance. What is important is that in 1943 she asked both the brothers, i.e., the plaintiff and the third defendant, to give their consent for her taking a boy in adoption. Ex. B. 4 dated 11th May 1943 was a similar letter written by her seeking the consent of D. W. 7. Ex. B. 21 series were postal acknowledgments of letters written on her behalf to the other reversioners. Ex. B. 22 dated 23rd May 1943 was the reply given by the third defendant to the second defendant. In that letter the third defendant stated that the second defendant told him that she would take his son in adoption and he

consented but Subba Rao refused to give consent unless his son was taken in adoption.

He insinuated that there was a "lopayakari" arrangement between the second defendant's brothers and the plaintiff. He expressed his view that the contemplated adoption was not intended to be for the salvation of her husband and that it was also inconsistent with the terms of the compromise decree. It would be seen from Ex. B. 22 that the third defendant refused to give his consent mainly on two grounds (1) that there was an arrangement for dividing the properties and (2) she had no power to adopt in view of the express terms of the compromise decree. But neither of those reasons was tenable. The alleged arrangement was not proved; the widow could not have legally contracted herself out of a power to take a boy in adoption. Further, the condition obtaining in the year 1919 when the compromise was entered into had completely changed in the year 1943 and therefore her agreement not to take a boy in adoption without the consent of Guruvayya would no longer hold good. In our view, this refusal was actuated by an improper motive, namely, that his son was not agreed to be taken in adoption by her. Again for two years, presumably because of the internecine disputes between the brothers, no adoption had taken place. But in the year 1945 the second defendant again issued a notice dated 7-5-1945 to the plaintiff and the third defendant requesting their permission for her adopting Ramulu, the eldest son of the plaintiff. Ex. B. 5 dated 15-5-1945 was the reply given by the third defendant to the 2nd defendant. He again reiterated therein his objections based upon the compromise decree. He also pointed out that there was a collusion between her and Subba Rao. Ex. A. 12 dated 17-5-1945 was a similar notice issued by him to the plaintiff, Ex. B. 6 dated 17-5-1945 was registered notice issued by the plaintiff to the second defendant. The relevant portion of the notice is:

"Now, you wish to take a boy in adoption for bringing about salvation to your husband Venkayya and perpetuate the family according to the Hindu Dharma sastras, intend to take in adoption my son eldest son Ramulu out of my three sons and as the aforesaid went on and as you have requested me to grant you permission to take a boy in adoption, I have given you permission to take a boy, in adoption."

The plaintiff by this letter gave her therefore permission to take a boy in adoption, though the occasion for the permission was that she intended to take his son Ramulu in adoption. The permission was general in terms and it was not strictly confined to the boy in question. But for one reason or other, she did not take the boy Ramulu in adoption. There are conflicting versions why Ramulu was not taken in adoption. The second defendant states in her evidence that she intended to take the boy in adoption and she was keeping the boy in her house for ten months, but thereafter owing to some quarrels between her and his mother the boy was taken back, whereas the plaintiff says that the adoption did not take place as the lady insisted upon Ramulu giving her half the property. P.

W. 1 admits that he did not tell this fact to his pleader at the time of drafting the plaint and that he did not give any notice to the second defendant when she sent away her son. The second defendant also denies it.

Except the statements of the plaintiff, there is nothing in the record to show that any such proposal was put forward by the second defendant. We are not satisfied that the dropping of the idea of taking Ramulu in adoption was due to any such, proposal on her part. It was likely that because of some disputes between the ladies Ramulu was taken away by his father for the subsequent conduct on the part of the second defendant showed that she was anxious to take Ramulu in adoption. After taking away the boy Ramulu from her house, the plaintiff celebrated his "upanayanam" on 17-6-1946, and performed his marriage on 19-6-1946. Ex. A. 15 is the printed invitation for the "upanayanam" and the marriage. Before the "upanayanam" was celebrated, the second defendant issued a registered notice, Ex. B. 7 dated 14-6-1946 to the plaintiff seeking his consent for taking a boy in adoption. It was also mentioned therein that if no reply was given within a week after the receipt of the letter she would deem it that he had consented for her taking a proper boy in adoption and perpetuate the family.

A similar notice bearing the same date was issued to the third defendant. Ex. B. 8, Ex. B. 9 and Ex. B. 10 dated 14-6-1946 are the postal receipts showing that registered letters were addressed to the plaintiff and the third defendant (His Lordship considered the evidence and concluded:) We therefore hold on a consideration of the evidence that Exs. B. 7 and B. 8 were issued by the 2nd defendant to the plaintiff and the third defendant and knowing their contents they refused to receive them.

11.-12. So far as the two nearest reversioners are concerned, the position therefore is this: the third defendant had taken a consistent attitude throughout from the year 1943 that the power of the widow to take a boy in adoption was confined to the compromise decree in O.S. No. 30 of 1917 and that power was exhausted, and finally he improperly refused to receive notice knowing fully it contained a request for his consent to adopt. In his previous letters he gave another reason, for his refusal to give the consent, namely, that there was some kind of arrangement between the 2nd defendant's brothers and the boy intended to be taken in adoption. He had failed to establish that fact.

It is therefore clear that his previous attitude and his refusal to receive the notice clearly establish that he improperly refused to give his consent. The plaintiff gave his consent for the 2nd defendant taking a boy in adoption in general terms under Ex. B. 6 dated 17-5-1945 though the occasion for giving the same was an attempt on the part of the widow to take his son Ramulu in adoption. Apart from that, we have also found that he refused to take the notice though the contents of the notice were explained to him by D. W. 10. His conduct also amounted to a refusal to discharge his duty towards the widow. In the circumstances, the widow was entitled to go to the remoter reversioners for their advice and consent.

13. In Venkayya's branch, Subbayya is D. W. 8. He is one of the signatories to Ex. B. 11. Satyanarayana is D. W. 5. He is the son of Punnayya. He is also one of the signatories of Ex. B. 11. Both of them gave their consent to the adoption. No member of Krishnayya's or Subbayya's branch is alive.

14. Now coming to the present generation, they consist of young men and minors. In Ramayya's branch Venkata Kotayya and Chinna Ramayya attended the adoption ceremony. The 3rd defendant's sons are minors. Among the plaintiff's sons, except Ramulu the other two are minors. Lakshminarasu and Eadha, grandsons of Lakshminarasimham, the brother of Gumvayya, are also minors. It is in evidence that they and their mother were present at the time of the adoption. In Venkayya's branch Satyanarayana is the first defendant. His brothers are all young men. It will therefore be seen that even among those youngsters, some of them who are not minors were present at the adoption ceremony.

Learned counsel for the appellants contended that Ramulu who was a major should have been consulted. But in the circumstances the non-consultation of Ramulu cannot vitiate the adoption for it is not the law that if the nearest "sapindas" refused their consent the widow should consult the other "sapindas" in the order of the degree of relationship to her deceased husband. Further, Ramulu is the son of Subba Rao and he is living with him as a member of his family. He was the boy whom the widow intended to take in adoption, but his father for one reason or other refused to give him. In the circumstances when the plaintiff refused to give his consent, if the widow did not seek the consent of this young man, though a major at the time, in our view it would not affect the validity of the adoption.

15. Now taking an overall picture, it is clear that the widow first approached the nearest "sapindas"; but they had improperly refused to receive the notices and give her the requisite consent. She therefore took the consent of the remoter reversioners from the different branches of the family including the two eldest members of the family, Pitchayya and Punnayya. Having regard to the circumstances of the case we cannot hold that the persons who gave the consent were not competent advisers to the widow. Their advice satisfied the test laid down in the decided cases, namely, the consent required is that of a substantial majority of those agnates nearest in relationship who are capable of forming an intelligent and honest judgment on the matter and the assent must be such as to show that the act was done by the widow in the proper and "bona fide" performance of a religious duty and neither capriciously nor from a corrupt motive. We therefore agree with the court below that the adoption made by the widow with the consent of the "sapindas" was valid.

16. Learned counsel for the appellants then contended that the authority embodied in Ex. B. 11 is inadmissible in evidence as it was not registered. In support of this contention reliance is made on Section 17(3) of the Registration Act. It reads:

"Authorities to adopt a son, executed after the first day of January 1872 and not conferred by a will shall also be registered."

This objection was not raised in the court below. We are not therefore justified in allowing the appellants to raise this point before us. Further, even if Ex. B. 11 is excluded, there is clear evidence on record by the signatories of the document to establish that they all gave consent for the adoption. We cannot also accept the contention as sound. There is an essential distinction in Hindu law between an authority conferred by the husband on a widow to take a boy in adoption and a consent given to her by the "sapindas" after his death. In the case of a husband he confers a power or authority upon the widow to take a boy in adoption, whereas in the case of "sapindas", their assent is required for the purpose of establishing that the act is done by the widow in the proper and "bona fide" performance of a religious duty and neither capriciously nor from a corrupt motive. Therefore it is not correct to describe the assent given by the "sapindas" as an authority conferred by them on the widow to take a boy in adoption. Section 17(3) of the Registration Act in our view should be confined only to authorities conferred upon a widow by her husband. Exhibit B. 11 being only a record of the consent given by the "sapindas" does not require registration.

17. In the result the appeal fails and is dismissed with costs.