

(1945) 11 MAD CK 0004
In the Madras High Court

Suryadevara Annapurnamma

APPELLANT

Vs

Guntta Manikyamma and Others

RESPONDENT

Date of Decision : 26-11-1945

Acts Referred:

Citation : AIR 1946 Mad 308 : (1946) ILR (Mad) 755 : (1946) 59 LW 98 :
(1946) 1 MLJ 108

Hon'ble Judges : Leach, C.J

Bench : Division Bench

Judgement

Leach, C.J.—This appeal arises out of a suit filed by a daughter against her mother for a declaration that an adoption made by her mother

was invalid because the adoption took place while she was living an unchaste life. The mother, defendant 1 in the suit, is the widow of one

Somabrah mam, who died in the year 1911. He was also survived by a son. The son died two years after his father's death. The deceased left an

estate of some 71/2 acres of land and Rs. 2000, moneys which he had lent out. His widow improved the estate and at the time of the suit it had

increased considerably in value. The daughter was married to one Venkatramayya. She and her husband lived with defendant 1, as also did

defendant 1's a mother. The daughter has a son and it is quite clear that this suit is the result of the mother refusing to adopt her grandson. In 1937

the plaintiff and her husband quarrelled with defendant 1 with regard to the properties of the estate, They went so far as to turn defendant 1 out of

her own house. This resulted in defendant 1 filing a suit for an injunction restraining them from interfering with her rights. She obtained a decree and

by reason of it she regained possession of the house. In consequence, her daughter and her son-in-law had to live elsewhere. It was in 1942, that it

was suggested that defendant 1 should adopt her grandson. She refused to do this, but on 14th October 1942, with the consent of the nearest

sapinda, she adopted the son of defendant 8, who died during the pendency of the suit. Defendant 3 is a sagotra. When it became clear that

defendant 1 intended to adopt defendant 3's son, the plaintiff caused a letter to be written to her mother in which she accused her of immorality.

This letter did not affect defendant 1's decision to adopt the son of defendant 3 and the adoption duly took place. The parties being Sudras, a

religious ceremony was not necessary.

2. On 10th November 1942, that is, within a month of the adoption, the daughter filed a suit. Her case was that her mother had for a long time had

immoral relations with defendant 3 and that in consequence of her unchastity she was debarred under Hindu law from adopting a son to her

deceased husband. In her charge of immorality against her mother, she was supported by her maternal grandmother, her husband and. her

maternal uncle. The Subordinate Judge considered that in view of this evidence he was compelled to hold that defendant 1 had lived an unchaste

life; but he went on to hold that her intimacy with defendant 3 had ceased twelve months before the adoption and, relying on the judgment of this

Court in Behara Viyyamma v suryaprakasa Rao AIR 1942 Mad. 379, he held that the adoption was valid. The plaintiff has appealed. We are not

convinced that the Subordinate Judge was right in holding that it had been proved that defendant 1 had had immoral relations with defendant 3. If

this had been the case, it is surprising that her daughter should have lived with her until 1937 and more surprising that defendant 1's mother should

have continued to live with her there after. The evidence is that defendant 1's mother remained in her house until a short time before the adoption.

Defendant 1 is a woman of 55 years of age and it is noteworthy that no attempt was ever made to excommunicate her from the caste. What is

even more important, there was no suggestion that she was leading an immoral life till the month of August 1942 when it became apparent that

defendant 1 was not going to fall in with the wishes of her daughter and the daughter's husband regarding the adoption of their son.

3. Even if defendant 1 had had illicit intercourse with defendant 3, it is quite manifest that it must have ceased some months at any rate before the

adoption took place. Defendant 3 was taken ill a year before the adoption and for several months was a patient in a nursing home. There is no

suggestion that defendant 1 had had any other paramour. We agree with the Subordinate Judge that defendant 1 was not living an immoral life at

the time of the adoption. The adoption having taken place with the consent of the nearest sapinda, it must be held to be lawful. But even if there

had been immoral relations between defendants 1 and 3 and these relations had continued right up to the time of the adoption, we consider that the

adoption would still be lawful. In *Thangathanni v. Ramu Mundali* 5 Mad. 358, a Bench of this Court held that amongst Sudras no religious

ceremonies are essential for adoption and that an adoption by a Sudra widow under pollution is not invalid. In *Ramanath Mulchand Vs. Gajanan*

Pandurang Limaye, , the Bombay High Court expressly held that a Sudra woman, although living an unchaste life, could make a valid adoption

because no religious ceremony was involved. In *Ramu Bala v. Jana Dala* AIR 1942 Bom. 12, the Bombay High Court held that a Hindu widow of

a regenerate class could make an adoption while she was living in unchastity when the adopted son was of the same gotra as his adoptive father,

because here again no religious ceremony was necessary. We agree that where no religious ceremony had to be performed there is no rule of the

Hindu law which prevents a widow who possesses lawful authority adopting a son to her deceased husband when she is unchaste. If the adoption

involved a religious ceremony, the position would be different because unchastity must be placed on the same footing as pollution.

4. In delivering the judgment in *Behara Viyyamma v. Suryaprakasa Rao* AIR 1942 Mad. 379 expressed the opinion that it might be taken that a

Hindu widow cannot lawfully adopt in the circumstances like those set out in the report of *Sayamlal v. Saudamini* Dal 5 Beng. L.R. 362 but I

added that it was not necessary to consider to what length the Hindu law goes in this respect because it was quite clear that it had not been proved

in *Behara Viyyamma v. Suryaprakasa Rao* AIR 1942 Mad. 379 that the widow was unchaste at the time of the adoption. It is perhaps necessary to

say something further about the judgment in *Sayamlal v. Saudamini* Dal 5 Beng. L.R. 362. There a Hindu widow was living in concubinage and

purported to receive a son in adoption while in a state of pregnancy resulting from the concubinage. She was a Brahmin. The report does not

disclose whether the boy she purported to adopt belonged to the same gotra, but the judgment indicates that ceremonies were necessary. The case was decided by Norman J., who held that under the particular circumstances she could not make an adoption. The judgment in Behara Viyyamma v. suryaprakasa Rao AIR 1942 Mad. 379 did not purport to go beyond that decision and the observations there must be confined to a case where the facts are identical with those in Sayamlal v. Saudamini Dal 5 Beng. L.R. 362. We hold that the alleged immorality of defendant 1 has not been proved, that in any event she was not living an unchaste life at the time of the adoption, and that even if she were, she being a Sudra and no ceremony being necessary, she could under Hindu law make a lawful adoption. It was said in the lower Court that the consent of the nearest sapinda was purchased, but the Subordinate Judge refused to accept this plea and it has not been pressed before us. The appeal fails and is dismissed with costs in favour of respondents 1 and 2.