
(1941) 09 MAD CK 0010
In the Madras High Court

Vasi Reddi Venkayya

APPELLANT

Vs

Gopu Sreeramulu and Others

RESPONDENT

Date of Decision : 01-09-1941

Acts Referred:

Citation : AIR 1941 Mad 935 : (1942) ILR (Mad) 163 : (1941) 54 LW 583 : (1941) 2 MLJ 798

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The only question involved in this appeal is whether an adoption by a Hindu widow of a son to her

deceased husband is valid when the authority to adopt has been given by the nearest sapinda and expressed in general terms. In other words, must

the sapinda consent to the adoption of a particular person in order to make the adoption valid? The first plaintiff in the suit out of which this appeal

arises was adopted on the 7th May, 1920, by Venkamma, the widow of one Sivaramayya. No authority had been given by Sivaramayya to his

widow, but she informed the nearest sapinda of her intention to adopt and sought his consent. The sapinda gave his consent in writing, the

operative portion of the document being in these words:

You shall therefore, whenever you like, bring and adopt duly a boy whom you like according to Shastras. This is the deed of authority to adopt

executed and delivered by me wholeheartedly.

The first plaintiff sued as the adopted son and asked for a declaration that certain alienations were not binding on him. The second plaintiff, who is

the appellant, claimed a half share in the properties in suit by reason of a deed

of assignment executed in his "favour by the first plaintiff. The defendants challenged the validity of the first plaintiff's adoption on the ground that the sapinda's consent was invalid because it was couched in general terms and this plea was accepted by the trial Judge, the District Munsif of Bezwada, and by the Subordinate Judge of Bezwada on appeal. The result was that the suit was dismissed. The appellant then appealed to this Court and the appeal has been placed before a Full Bench because certain judgments of this Court which have bearing are in conflict.

2. In *Kamesam v. Butchammd* (1914) 1 L.W. 511 Wallis and Sadasiva Aiyar JJ., held that an authority to adopt given by sapindas was not invalid because it was expressed generally and empowered the widow "to adopt any boy at any time she liked". The words in quotation marks are from the judgment. The exact words of the authority given in that case are not quoted in the report, but we have examined the deed authorising the adoption and find that the second paragraph reads as follows:

As your son Jogi Ramachandrudu died unmarried, and as you have asked me that permission should be granted for adopting for the increase and perpetuity of the family permission is granted through this approving your request. Therefore, this is the deed of permission executed heartily that adopting the boy you like whenever you like, the increase and perpetuity of the family should be accomplished.

The Court had no hesitation in holding that a document so expressed conferred a valid authority on the widow. In disputing the correctness of this decision the contesting respondents rely on observations made in the judgments in *Suryanarayana and Others Vs. Venkatarama alias Kannepally*

Ramavadhaunlu and Another, , Veera Basavaraju v. Balasurya Prosada Rao 1914 M.W.N. 502, and *Anne Brahmayya v. Chelasami Rattayya* (1924) 20 L.W. 503.

3. The first of these cases was decided by Subrahmania Aiyar and Davies, JJ. There the sapindas had signed a document assenting to the adoption by the widow of any boy at any time, but she did not make an adoption until nine years later and during the interval the circumstances had materially changed. It was not necessary for the purpose of deciding that case for the Court to express an opinion on whether a general power given to a widow to adopt was valid or whether the fact that the circumstances

had materially changed in the course of the nine years made any difference, because the Court found that the widow had received authority from her deceased husband. The judgment in *Suryanarayana and Others Vs. Venkatarama alias Kannepally Ramavadhaunlu and Another*, , was considered by Wallis and Sadasiva Aiyar, JJ., in *Kamesam v. Butchamma* (1914) 1 L.W. 511. They did not think that Subrahmania Aiyar and Davies, JJ., intended to say that a general authority cannot be availed of by the widow when she adopts almost immediately after the authority has been given. The learned Judges who decided *Suryanarayana v. Venkataramana*¹ may not have intended to say that a general authority to adopt is void in all cases, but their remarks were considered to amount to this by White, C.J., and Oldfield, J., in *Veera Basavaraju v. Balasurya Prosada Rao* 1914 M.W.N. 502 In that case White, C.J., and Oldfield, J., said:

But on the evidence available and the terms of Ex. R-I, we must hold that it at the highest authorised the adoption of any boy at any time and therefore was useless, vide *Suryanarayana and Others Vs. Venkatarama alias Kannepally Ramavadhaunlu and Another*, , and that, as the learned District Judge opines, it expresses only a general willingness to consider the making of an adoption favourably, the necessary final consent, to a specific adoption being reserved, until details are available.

It was not necessary for the decision of *Veera Basavaraju v. Balasurya Prosada Rao* 1914 M.W.N. 502 for the learned Judges to make these observations and therefore they must also be regarded as obiter, but at the same time they are in direct conflict with the decision in *Kamesam v. Butchamma* (1914) 1 L.W. 511. *Anne Brahmayya v. Rattayyat* (1924) 20 L.W. 503, was decided by Ramesam, J., who held that the sapinda must indicate the person to be adopted and the authority to adopt must be used within a short period.

4. We are of the opinion that the law was correctly stated in *Kamesam v. Butchamma* (1914) 1 L.W. 511 and that the judgments in *Suryanarayana and Others Vs. Venkatarama alias Kannepally Ramavadhaunlu and Another*, , *Veera Basavaraju v. Balasurya Prosada Rao* 1914 M.W.N. 502 and *Anne Brahmayya v. Rdttayyd* (1924) 20 L.W. 503 should be disregarded, when the authority has been exercised within a

reasonable period and the circumstances have not changed materially. We do not wish to be understood to imply that if the authority is not

exercised quickly it ceases to be valid. That question does not arise here and the effect of the lapse of years and the change of circumstances must

be decided when the question does arise. In the present case the adoption took place within five months of the receipt of the sapinda's letter and it

is not suggested that the circumstances had changed. It cannot be disputed, nor has any attempt been made to dispute it, that a husband can give to

his wife a general authority to adopt. When she has received authority from her husband the widow is at liberty to adopt whomever she likes as a

son to her deceased husband. The sapindas take the place of the husband when he has died without giving authority to his widow. Why should

they not also leave the choice entirely to the widow? There is nothing in the ancient texts to indicate that they cannot and we can see no justification

whatsoever for the opinion that the sapindas must name the boy to be adopted. Of course if the sapindas only give their consent conditional on the

widow adopting a named person that will be a different matter. To ignore such a condition would mean acting beyond the scope of the authority.

5. It has been said in the course of the arguments that a passage in the judgment of the Privy Council in (1918) L.R. 45 I.A. 265 (Privy Council)

supports the opinion expressed in Suryanarayana and Others Vs. Venkatarama alias Kannepally Ramavadhaunlu and Another, . In the case before

the Privy Council the widow had made an adoption with the consent of remote sapindas without having asked for the consent of the nearest

sapindas and it was held that the adoption in the circumstances was invalid. There were five grades of sapindas and one member of the fourth

grade had given his assent in a letter addressed to the widow. In describing this letter Mr. Ameer Ali, who delivered the judgment of the Board

observed:

This letter contains a general approval of her intention to make an adoption, but does not evince a consent to any specific adoption.

It is this passage which it is said indicates approval of the opinion expressed in Suryanarayana and Others Vs. Venkatarama alias Kannepally

Ramavadhaunlu and Another, .

When the whole of the paragraph from which this statement has been extracted

is read it is obvious that their Lordships were merely describing the letter and were not intending to lay down any principle. If there should be any doubt whether this is so it can be set at rest by reference to the judgment of the Judicial Committee in 24 CWN 905 (Privy Council) where Viscount Cave said (page 659 of the report):

Apart from the absence of the necessary assent, other objections to the adoption were put forward on behalf of the respondents. It was said (1)

that an authority given by sapindas to adopt ""any boy at any time"" is invalid, (see Suryanarayana and Others Vs. Venkatarama alias Kannepally

Ramavadhaunlu and Another, that an authority given by sapindas in. 1901 could not validly be executed in 1908 when several of the signatories

were dead and the opinion of others might have altered; and (3) that an authority to adopt asked and given for religious motives and in order to

keep up the line of succession to Seshadri was not properly exercised by the adoption of Krishnayya on the terms that he should give up to the

adopting widow or to her relatives the greater part of her late husband's estates. These questions, although raised in the Courts below, were not

the subject of decision there; and their Lordships accordingly refrain from expressing any opinion upon them.

Nothing could be clearer than this and it is not suggested that the question has arisen before the Judicial Committee since.

6. We hold that the authority given to the widow in this case was a valid authority and that the first plaintiff was lawfully adopted by Venkamma to

her late husband. It is accepted by all parties that on this finding the appeal must succeed to the extent of a half share in the properties described in

entries Nos. 8, 9, 10 and 11 in the schedule to the plaint and that the suit must be remanded to the trial Court to decide the questions if any, which

are consequential on this decision. If any such questions arise the trial Court will pass a final decree when it has decided them. The appellant is

entitled to his costs in this Court and before the Subordinate Judge. The costs in the trial Court will be decided by the District Munsif when he

passes the final decree.