

(1960) 11 AP CK 0006
In the Andhra Pradesh High Court
Case No : Appeal No. 261 of 1956

Voleti Venkata Rama Rao

APPELLANT

Vs

Kasapragada Bhaskararao and Others

RESPONDENT

Date of Decision : 29-11-1960

Acts Referred:

Evidence Act, 1872 — Section 114, 90
Registration Act, 1908 — Section 60(2)

Citation : AIR 1962 AP 29

Hon'ble Judges : Seshacha Lapati, J; Satyanarayana Raju, J

Bench : Division Bench

Advocate : Shankarasastri, T. Veerabhadrayya and B. Ramabharadevudu, for the Appellant; M. Suryanarayana, N. Bapiraju, K.V. Rangachari, General, Y. Suryanarayana, E. Venkatesam, M. Adinarayana Raju, P. Somasundram, P. Suryanarayana, T.V. Narasimhamurthy, Ramakrishnarao, M. Bhujanga Rao and P. Sitaramaraju, for the Respondent

Judgement

Satyanarayana Raju, J.

(1) This appeal is against the judgement and decree of the court of the Subordinate Judge, Amalapuram, in O. S. No. 44 of 1953, and relates to the succession to the immovable properties of late Kesapragada Bhaskararao, a Brahmin Karnam, who died on the 29th November, 1903, without issue, but leaving a widow.

(2) The suit was instituted on the 15th April 1953, by Voleti Venkata Ramarao, the adopted son of the step-sister of Bhaskara Rao for the recovery of possession of the properties mentioned in the plaint A and B schedules and for future profits.

(3) The following genealogical table will be useful in explaining the relationship of the parties to this litigation:

KESAPRAGADE VENKANNA

Perraju China Subbarayudu

Venkayya Veeraju=Mahalakshma Ramayya Perraju Gopalam Subbarao
(died) (died) (died) (died)

Vedamma (1st wife) Kantamma (2nd wife) (died in 1940)

Kamma (wife of Bhaskararao (1st male-holder)

China Venkatarao (died on 29-11-1903) Seshamma (died on 2-10-1952)
died in 1945)

Venkataramarao (Plff). Rajeswararao (alleged adopted son) (died in 1950)

Bhaskararao (alleged adopted son) (1st defendant).

The case of the contesting defendants is that pursuant to an authority conferred by the late Bhaskararao in a document executed by him on the day of his death, Seshamma, his widow, adopted one Rajeswararao, her sister's son. In or about May, 1904. Rajeswararao died in 1950. It is said that adopted the present 1st defendant. Seshamma died on the 2nd October, 1952.

(4) The plaintiff contended that the late Bhaskara Rao had made no will; that Seshamma did not in fact, adopt Rajeswararao; and that even if the adoption was true, it was invalid inasmuch as Seshamma had not attained the age of discretion on the date of the alleged adoption.

(5) After a consideration of the voluminous oral and documentary evidence adduced by the parties, the trial court found against the plaintiff on all these points and dismissed the suit. In this appeal the plaintiff challenges the correctness of the findings reached by the lower court.

(6) The substantial questions arising for determination in this appeal are:-

1. Whether the will is true, valid and binding on the plaintiff?
2. Whether the adoption of the late Rajeswararao by Seshamma is true and whether the said adoption is valid?

We will now consider these questions seriatim.

(7) The first of the questions is whether the will, said to have been executed on the 29th November, 1903, by Bhaskararao is or is not a genning will. Its provisions are substantially these: After his death, his widow, Seshamma, should adopt a boy of her choice whenever desired by her, for the perpetuation of his family line and for enjoying as his Karta after his lifetime all his movable and

immovable properties. By the second clause of the will it was provided that in case any misunderstandings arose between his wife, the boy to be adopted by his and his mother, all the movable and immovable properties, lands and the house possessed by him, should be divided into four equal shares by metes and bounds and three such shares should be enjoyed by his wife and the adopted son and the fourth share by his mother freely throughout her lifetime as she pleased and after her lifetime, the share enjoyed by her should pass either to his adopted son, or to his wife, if his wife had not adopted anybody by that time

Clause 3 of the will provides that out of his property four acres of land should be separated and given to his sister Kamappa, after his lifetime. Clause 4 provided that his wife, Seshamma should continue to pay the maintenance amounts to his junior maternal aunt and father's step mother as was being done by him till then. Clause 5 provided for the payment of taxes by the respective individuals on their respective lands.

(8) Clause 6 reads:

"It is also provided that the outstandings due by me shall be discharged from the said immovable property belonging to me. It is provided that in addition to the said four acres to be given out of their inam land to my sister, Voleti Kamappa, as mentioned in the said third paragraph, another four acres of Inam land shall be added and given so that she shall be in enjoyment of Ac. 8.00 cents (either acres) of "Dampa" Inam land, in all as she pleases and that she will get the same separated after my lifetime. The said Kamappa herself shall pay the taxes payable on this to the Government, get it entered in names and be in enjoyment of it. Till my wife attains majority, my mother will be her guardian. All the above terms shall take effect after my lifetime".

(9) The document was signed by Bhaskararao and was attested by eleven witnesses, five of whom belonged to the Kesapragada family. The scribe of the document was Vakkalanka Bhaskararao. The will was presented for registration on the 4th December 1903, by Kesapragada Kantamma, the mother of the deceased and guardian of Seshamma. It was published in the District Gazette and in the village to the effect that if there were any persons objecting to the registration of the will, they should appear on the date of the enquiry with evidence and documents.

(10) Kesapragada China Subbarayudu, the paternal grand uncle of Bhaskararao, filed a petition on the 15th January 1904, contending the Bhaskararao did not execute the will prior to his death. The registration officer duly made an enquiry at which the presentant and the objector were represented by their respective counsel. Seven out of the 11 attesting witnesses and the scribe were examined at the enquiry. Five attesting witnesses had seen the testator sign the document, and three of them stated at the enquiry by the registration officer that they were asked by the testator to attest the will. China Subbarayudu, who objected to the registration of the will, cross-examined the witnesses. Though several

adjourments were granted to him to produce his witnesses, he eventually did not produce any evidence. On a consideration of the evidence adduced before him and all the circumstances of the case, the registration officer felt satisfied that the testator executed the will while he was in a sound disposing state of mind. He made the following endorsement on the document: (1) that he was satisfied that in accordance with the evidence of the witnesses who had signed the document, that the testator executed the will; (2) that the testator died subsequently; (3) that the person who presented the will for registration was empowered to present it as per S. 40 of the Registration Act.

(11) Pursuant to the authority conferred on her by this will, Seshamma adopted Rajeswararao, her sister's son, in or about May 1904. We shall presently consider the evidence bearing on the factum of adoption; but before doing so, it is necessary to deal with the evidence bearing on the truth of the will.

(12) We have already mentioned the fact that Bhaskararao was during his lifetime holding the office of karnam of the village of Annampalli. After his adoption, Rajeswararao was registered as the office-holder. China Subbarayudu preferred objections to the appointment of Rajeswararao as the karnam before the Sub-Collector, Godavari. The Sub-Collector rejected the objections of China Subbarayudu and confirmed the appointment of Rajeswararao. On the 7th November, 1906, China Subbarayudu as father and guardian of his minor son, Venkata Surya Gopalam filed a summary suit before the Sub-Collector, Godavari for setting aside the said order of appointment.

While the summary suit was pending, China Subbarayudu and his undivided sons, Ramayya, Perraju, Venkata Surya Gopala, and Venkata Subbarao executed a release deed Ex. B.6 dated the 25th March 1907, in favour of Rajeswararao and his adoptive mother, Seshamma, represented by their guardian, Kantamma. Under this registered deed of release, China Subbarayudu and his sons gave up their contention that the will was not genuine and agreed that the adoption of Rajeswararao made by Seshamma was valid. Rajeswararao and his adoptive mother, Seshamma, represented by their guardian, Kantamma, on the same day executed A.-7 conveying absolutely in favour of China Subbarayudu and his sons land of an extent of Ac. 16-29 cents described in the schedule appended to the deed.

(13) It may be mentioned here that under the will executed by Bhaskararao, an extent of 8 acres of wet land was bequeathed to the plaintiff's adoptive mother, Kamappa executed a deed of settlement, Ex. B. 3 in favour of the plaintiff's three sons and daughter, three of whom, being minors, were represented by their father, the plaintiff. Under this document, Kamappa settled the vested remainder in an extent of Ac. 12-50 cents, including the 8 acres of land bequeathed to her by her step brother under the disputed will.

(14) All the attesting witnesses and the scribe of the will are now dead. The defendants, however, examined Mamidipalli Lakshminarayana Charanulu as D. W.

2, who, was 76 years old at the time he gave evidence. One of the attestors of the will, Mamidipalli Ramayya, was his paternal uncle. He identified Kantamma before the Registrar at the time of registration. He stated that he was present when the will was executed by the late Bhaskararao and that the executant was in a sound disposing state of mind at the time. D. W. 3 is another witness examined by the contesting defendants. He was also 76 years old on the date of his deposition. He stated that he and Bhaskararao were classmates in the village school, that Bhaskararao executed a will, that his father attested the will and that at the time of its registration, Bhaskararao was in a sound state of mind. While according to D. W. 2, the will was written at about 4 or 5 p.m., D. W. 3 stated that it was executed at about 10 in the morning.

(15) It is contended by Mr. Sankara Sastri that the evidence of D. Ws. 2 and 3 should not have been accepted, that both of them were interested--D. W. 2 being the brother of the 15th defendant and D. W. 3 being a defendant (73rd defendant) -- and that both of them had not attested the will. It is stated that there are material discrepancies and gross divergence between their versions. The discrepancies are of an immaterial character which might be ascribed to the lapse of memory on the part of those witnesses. They were giving evidence after the lapse of over half a century. The fact remains that D. W. 2 was aged about 27 years on the date of the will and he played a prominent part in the registration of the document. D. Ws. 2nd 3 gave straightforward evidence and the learned trial judge has no hesitation in accepting their testimony.

(16) Learned counsel for the plaintiff relied upon the non-production of the will as a strong suspicious circumstance against its truth. It was also urged that there being no proof that the original had been destroyed or lost, secondary evidence of its contents could not be adduced. It may be remembered that Ex. B. 9, the registration copy of the will, was obtained as early as 14th December 1906, though the other certified copy, Ex. B. 1, was obtained in 1954. We find that Ex. B. 9 was marked by consent. Assuming that it is open to the plaintiff to raise this objection, even though the document was marked by consent, we have the evidence of D. W. 2 who stated that the original will was lost even by the time of the adoption. It may be noted that the challenge about the due execution of the will is made after the death of Rajeswararao and his adoptive mother Seshamma. Kanthamma is no more. Therefore, all the persons who were connected with the document are no longer available. The 1st defendant is a minor. The challenge from the reversioner, Subbarayudu, was settled in 1907 by the execution of Ex. B. 6, and Ex. A-7, its counterpart, and possibly there was no further apprehension that the will would be assailed at a further date

It is, however, urged that there is a recital in Ex. A-11, dated 17th November, 1911, that all the records were handed over by Kantamma to her daughter-in-law; but it is worthy of note that there is no specific mention of the original will having been delivered to Seshamma. There is credible evidence that the original was lost. In the circumstances, we are of opinion that it was within the

competence of the trial Judge to receive Ex. B. 9 in evidence. We may also observe that there was no motive in withholding the original of the will.

(17) It was then contended that the 1st defendant ought to have produced in evidence the depositions of those attestors and the scribe of the will who were examined before the registration officer.

(18) Under Sec. 40(1), the testator, or after his death any person claiming as executor or otherwise under a will may present it to any Registrar or Sub-Registrar for registration. Sec. 40(1) provides that a will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other document. Under sub-s. 2 of S. 41, a will or authority to adopt presented for registration by any other person entitled to present it shall be registered if the registering officer is satisfied (a) that the will or authority was executed by the testator or donor as the case may be; (b) that the testator or donor is dead; and (c) that the person presenting the will or authority is under Sec. 40, entitled to present the same.

(19) As already noted, the endorsement on Ex. B-1 made by the registration officer is in the terms of Sec. 40(2). Under Sec. 60, the certificate of registration is to be endorsed after the provisions of Secs. 34, 35, 58 and 59 have been complied with. Sub-s. (2) of Sec. 60 provides that such certificate shall, and shall then be admissible for the purpose of proving that the document has been duly registered in the manner provided by the Act, and that the facts mentioned in the endorsements referred to in Sec. 59 have occurred as therein mentioned. The fact that a document has endorsed on it a certificate of registration is prima-facie evidence that the requirements of the Act have been complied with, and after such endorsement, the burden of proving any act or omission which would invalidate the registration rests on the person who challenges the registration. while it is, no doubt, true that mere registration is not in itself proof of the due execution of a document, the certificate endorsed by the registration officer on the document is admissible to prove that the executant was of sound mind.

(20) There is, as a matter of law, a presumption that the registration proceedings are regular and are honestly carried out. As pointed out by their Lordships of the Privy Council in *Munnalal v. Mt. Kashibai*, AIR 1947 PC 15 a party setting up a will is required to prove that the testator was of sound disposing mind when he made his will but, in the absence of any evidence as to the state of the testator's mind, proof that he had executed a will rational in character in the presence of witnesses must lead to a presumption that he had was of sound mind and understood what he was about. This presumption can be justified under the express provisions of Sec. 90, since a will cannot be said to be duly executed by a person who was not competent to execute it; and the presumption can be fortified under the more general provisions of Sec. 114, since it is likely that a man who performs a solemn and rational act in the presence of witnesses is sane and understands what he is about.

(21) There is no evidence whatsoever that Bhaskararao was not in a perfectly normal state. The contention that there is no presumption that the testator, when he made the will, was of sound disposing mind, if accepted, would render it impossible, in most cases, to prove ancient documents.

(22) It is then urged that while Bhaskararao normally signed his name along with his surname, his purported signature in the will does not contain the surname. This point was specifically raised before the registration officer almost immediately after the execution of the document. Letters were filed by the mother of the testator before the Sub- registrar which did not contain Bhaskararao's signature with the surname and the Sub Register was satisfied that Bhaskararao was in habit of signing his name without the surname.

(23) It is then said that a will is a formal document and the surname would not normally be omitted. For from this being a suspicious circumstance, it invests the document with an impress of truth because if the document had been fabricated, the persons responsible would have certainly seen to it that the signature bore the surname as well.

(24) The further comment made is that China Subbarayudu was not invited to attest the will. From a narration of the facts already made, it is clear that China Subbarayudu even if he were invited would not have attested the will because it would have adversely affected his interests. Subbarayudu not having been invited to attest the will is a most natural circumstance.

(25) We may state that the mother-in-law Kantamma, a propounder of the will whereunder her daughter-in-law was authorised to adopt. This is an important circumstance bearing on the genuineness of the will. The dispositions under the will are reasonable, natural and proper in their terms. The testator provided for the continuance of the maintenance of the persons who were till then being maintained by him. He provided that his mother should have a life interest in a 1/4th of his estate. What is more, the testator gave 8 acres to his stepsister the adoptive mother of the plaintiff.

(26) It has been pointed out by the Privy Council in *Jagrani Kunwar v. Durga Prasad* ILR 36 All 93 that in the case of a will reasonable, natural and proper in its terms, it is not in accordance with sound rules of construction to apply to it those canons which demand a rigorous scrutiny of documents of which, the opposite can be said, namely, that they are unnatural, unreasonable or tinged with impropriety.

(27) *Ex facie* the will was duly executed and properly attested. The agnatic relations of Bhaskararao agreed to the will, and five of his blood relations actually attested it. The execution of this Will is not only not improbable but also probable. As has been pointed out by Lord Watson in *Chotey Narain Singh v. Ratan Koer*, ILR 22 Cal 519, in order to prevail against such evidence as has been adduced in the case, an improbability must be clear and cogent and it must approach very nearly to, if does not altogether, constitute, an impossibility.

(28) On a consideration of the evidence and the material circumstances of the case, we are satisfied that the will was duly executed by Bhaskararao when he was in a sound disposing state of mind and that it is valid and binding.

(29) The next of the questions which arises for decision is with regard to the factum and validity of the adoption of Rajeswararao. It is difficult to contend that no adoption was in fact made. It was an adoption perfectly suitable in all respects and it was acted upon for a long period of nearly fifty years. When there is lapse of such a long period of time between the adoption and its being questioned. That apart, we have fortunately in this case the evidence of a witness who says that he saw the performance of the ceremony of adoption. The witness examined in support of the factum of adoption is D. W. 2. The age of this witness is given as 76 years. He is a resident of the village of Annampalli where the parties live. At the material time he lived in a house of Bhaskararao. He is a purohit of the family and well-versed in the Vedas. He stated that he officiated at the time of the adoption of Rajeswararao which, according to him, was performed in the month of Vysakah in the year Krodhi. He spoke to the fact of the father of the boy having given him in adoption and to Seshamma having received the boy, and he also stated that the ceremony of Dattahomam was duly performed. The testimony of this witness was unreservedly accepted by the lower court and we think, rightly.

Apart from the evidence of this witness, there is the fact that the adoption of Bhaskararao was acquiesced in and recognised for a number of years by Seshamma who made the adoption. There is also long course of recognition on the part of persons who would be expected to know the fact and who are best acquainted with the circumstances. All this gives rise to the inference that the conditions relating to the adoption were fulfilled. We are in agreement with the conclusion reached by the court below that the adoption was in fact made.

(30) The fact that there was an adoption and that the requisite ceremonies were performed having been found in the affirmative, we will now address ourselves to the question as to the validity of the adoption. The ground on which the validity of the adoption has been sought to be attacked is that at the time of the adoption, Seshamma, the widow of Bhaskararao, was only about 10 or 11 years old, and, therefore, not capable of forming a proper judgement about the act of adoption with regard to her own interests and the estate. On the evidence adduced before him, the learned trial judge has come to the conclusion that Seshamma was at the time of the adoption about 14 years of age and was capable of forming a proper judgement about the act of adoption.

(31) We have no precise evidence as to the age of Seshamma at the time of the adoption. In Ex. A-2, an extract from the register of deaths, the date of Seshamma death is shown as the 2nd October, 1952, and her age then as 62 years. If this was her correct age in 1952, she should have been born in the year 1890, which means that she was aged about 14 years, at the time of the adoption, which was in May 1904. The plaintiff, however, relied upon certain

documents, to which a reference may now be made. In Ex. A-7, dated 25th March, 1907, which is a registration extract of the conveyance executed by Rajeswararao and his adoptive mother, Seshamma, in favour of Chinna Subbarayudu and his undivided sons, both Rajeswararao and Seshamma were described as minors, represented by their guardian Kantamma, mother of Bhaskararao. Ex. B-5, dated 2nd May, 1907, which is a deed of mortgage, contains a similar description .

In Ex. B-110, a deed of sale dated 25th April 1909, the vendors, Rajeswararao and his adoptive mother Seshamma, were both shown as minors represented by guardian, Kantamma, mother of Bhaskararao. This description of Rajeswararao and Seshamma, both as minors by their guardian Kantamma, is found in Ex. B-7, dated 1st November, 1911; Ex. B-22 dated 15th November, 1911; Ex. A-11 the release deed dated 17th November 1911; as also in the sale deed, Ex. A-12, of the same date. We may, however, note that a contrary description appears from Ex. B-138, which is a registered lease deed, dated 9th August 1910. This was executed by Seshamma as the guardian of her minor adopted son, Rajeswararao. If the recital in this document is to be accepted as correct, she was a major, that is, she must have completed the age of 18 years even in 1910; whereas the other documents, already referred to, show her as a minor even in 1911. In the plaint the age of Seshamma at about the time of the adoption was given as 10 years; and in the written statements, she was shown as being 15 to 16 years of age at the time of the adoption.

From the evidence of D. W. 2 it would appear that Bhaskara Rao was married in or about 189 when he was about 17 or 18 years old, and Seshamma was then said to be aged 11 or 12 years D. W. 2 deposed that Seshamma joined her husband about 7 or 8 month after her marriage and that she was living with her husband till his death in 1903. In cross-examination D. W. 2 stated that Seshamma was present at the time of the execution of the will and that she was then aged 13 or 14 years. This statement of D. W. 2 would fix the age of Seshamma at best at about 15 years at the time of the adoption. D. W. 3 has stated that Bhaskara Rao married Seshamma when she was 12 or 13 years old and that she joined her husband six months after the marriage and lived with him till he died in November 1903. According to D. W. 3, Bhaskararao died 4 years after his marriage, which would mean that Seshamma must have been aged about 16 or 17 years at the time of the adoption. D. W. 3, when cross-examined, stated that at the time of the marriage, Bhaskararao was aged about 14 or 15 years and that he does not know if Seshamma had attained puberty by the date of the marriage. D. w. 5 has stated that when he was married in 1912, Seshamma was aged about 28 years. His evidence would fix her age at about 17 years in or about 1903. Seshamma must have been undoubtedly a minor as she was under the age of 18 on the date of the adoption, if minority is to be determined with reference to the India Majority Act (IX of 1875).

(32) Section 2 of that Act, however, contained exceptions. The section enacts:

"Nothing herein contained shall affect--(a) the capacity of any person to act in the following matters (Namely)marriage, dower, divorce and adoption".

(33) In respect of adoption, therefore, the capacity of a person to act is not to be determined with reference to the age of majority fixed by the India Majority Act.

(34) In a recent decision *Aravamudha Iyengar*, formerly a minor since declared major and his guardian discharged Vs. *Ramaswami Bhattar* and Another, Division Bench of the Madras High Court, consisting of *Satyanarayana Rao* and *Rajagopalan JJ.* have held that where the adoption is made by a widow either under the authority of her husband or after obtaining the assent of sapindas, the act can be done and the authority can be given only if the person had attained majority and that in such a case, the test of mere ceremonial competence as well as the test of leaving the decision as to the capacity of the person to be decided on the facts of each case, cannot be accepted.

(35) In the above decision, the facts were these: One *Kuppa Bhattar* had a son, *Krishana Bhattar*, and a daughter, *Ponnammal*. *Krishan Bhattar* was married to *Rukmini Ammal*. He was born on the 3rd December, 1887, but died on the 6th June 1901. On the date when he died, he executed what purports to be a will but what was in fact an authority to adopt. On the 22nd March, 1940, *Rukmini Ammal* adopted the 1st defendant purporting to act on the authority conferred on her by her husband under the said document. The trial judge found that the factum of adoption was established and that *Krishna Bhattar* executed that will with full knowledge of its contents and that it was genuine. He, however, declared the adoption was established and that *Krishna Bhattar* was a minor and was not competent to confer an authority to adopt on his widow. The question which arose for consideration by the High Court was whether the authority conferred by *Krishna Bhattar*, a boy below 14 years of age at the time, was valid. It was held that as the authority to adopt was given by a boy when he was below 14 years of age, it was invalid and that the adoption by his widow in pursuance of the authority was also invalid.

(36) From an analysis of the facts of the case, it is manifest that *Krishna Bhattar* was below 14 years of age when he gave the authority to adopt to his wife , *Rukmmi Ammal*. After the death of *Krishna Bhattar*, there was an attempt to settle the dispute between the then reversioner and *Rukmini Ammal*. The parties entered into an unregistered family settlement deed though subsequently the terms of that settlement were not carried into effect and the settlement did not become effective . *Rukmini Ammal* adopted the 1st defendant purporting to act under the authority conferred by her husband under the terms of the will executed by him on the date on which he died.

It is, therefore, clear that on the date of the adoption *Rukmini Ammal* was a major. She was 40 years of age. The only question therefore, that arose for consideration in the case before the learned Judges of the Division Bench was whether the authority of *Krishna Bhattar*, a boy below 14 years of age, at the

time was valid. This again was answered in the negative. But after a review of the Hindu Law comes to an end on the completion of the sixteenth year and that the rule would apply to males and females, to the act of adoption as well as to an authority empowering the widow to make an adoption, and that if the person is below the age of majority recognised and established by Hindu Law, the adoption will be invalid.

(37) The learned Advocate for the appellant has strongly relied upon this decision for the contention that the adoption made by Seshamma, who had not completed her 16th year of age on the date of the respondents has, however contended that the principle of the decision must be restricted to the case of a male giving an authority to his wife to make an adoption and cannot be extended to the case of a female making the adoption pursuant to the power given by her husband. Counsel for both sides have stated that they were not in a position to cite any particular text on the Smrithis or commentaries or other sources of Hindu Law imposing a disqualification on a female, less than 16 years of age, for making an adoption in pursuance of an express power given by her husband. The extension of the embargo to females, it is contended, can only be by way of analogy. In this connection reliance was placed upon the decision of House of Lords in *Quinn v. Leatham*, (1901) AC 495 at p. 506 where Lord Halsbury observed as follows:

".....there are two observations of a general character which I wish to make and one is to repeat which I have very often said before that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it."

(38) After a careful consideration of the decision in *Aravamudha Iyengar*, formerly a minor since declared major and his guardian discharged Vs. *Ramaswami Bhattar and Another*, we are unable to say that the contention of the learned counsel for the respondent is ill-founded especially as an earlier Bench decision of the Madras High Court in *Abayambal Ammal Vs. T. K. Rajarathna Ayyar and Others*, (to which reference will be made later), which is directly in point, does not seem to have been brought to the notice of the learned Judges.

(39) The learned trial judge had held that Bhaskararao directed his wife to adopt her sister's son and that, therefore, the decision of the Calcutta High Court in *Mondakini Dasi v. Adinath Dey*, ILR 18 Cal 69 would be really in point. In that decision the person who gave the authority to adopt was a man of full age but the person who exercised that authority that is the widow, was a minor within the meaning of the Indian Majority Act. In fact, she was about eleven of twelve years old. In upholding the adoption, the learned Judges laid emphasis on the fact that the boy taken in adoption was definitely named in the authority given

by the husband as the person to be adopted and that therefore the minority of the widow, who exercised the authority, could not affect the legality of the adoption. The learned Judges cited with approval the decision in Macnaghten's Precedents of Hindu Law, in which the Pandit's opinion was to the effect that the adoption by the widow, in pursuance of the express permission of her husband, was a perfectly valid adoption.

(40) Learned counsel for the respondents urged that the instant case falls within the scope of the principle laid down in ILR 18 Cal 69. But the lower court found on a review of the evidence of D. Ws. 2 and 3, that contemporaneously with the execution of the original of Ex. B. 1, Bhaskararao gave an oral direction to his wife to adopt her sister's son, Rajeswararao. We find, however, that the will itself does not contain any such direction. Apart from the admissibility or otherwise of the oral evidence, which seeks to add to the terms of the will, we find that if in fact, Bhaskararao gave such a direction, it would have been specifically mentioned in the will itself. On a consideration of the probabilities, it seems to us that no such direction was given by the husband in fact specified the boy to be adopted and it was therefore, held that there was nothing further to be done by the widow which required the exercise of her judgment but she had only to carry out her husband's wishes by making the adoption. This decision was noticed by the learned Judge who decided the Madras case in Aravamudha Iyengar, formerly a minor since declared major and his guardian discharged Vs. Ramaswami Bhattar and Another, , and we find that they did not dissent from the view taken in the Calcutta case, for they observed that the Calcutta decision.

"May perhaps be supported on the ground that, though the widow making the adoption was only eleven or twelve years old, no exercise of discretion on her part was required in the circumstances of the case."

(41) Now in a case decided by another Division Bench of the Madras High Court, consisting of Coutts-Trotter C. J., and Srinivasa Aiyangar J., in Abayambal Ammal Vs. T. K. Rajarathna Ayyar and Others, , the validity of an adoption was attacked on the ground that at the time of the adoption the adoptive mother was only about 12 1/2 years old and, therefore not capable of forming a proper judgment about the act of adoption with regard to her own interests and the estate. As in this case, there also the adoption was made (questioned?) after a long lapse of time. It was found that the adoptive mother, though about 12 1/2 years old at the time of the adoption, was a person fairly well educated even at that time and capable of forming an opinion with regard to the intended act, and that the adoption had been practically acquiesced in and treated as valid from that time and everybody concerned had agreed in treating the adoption as valid. It was also found that there was no evidence let in on behalf of the appellants to show that the girl when making the adoption was not qualified to do the act.

The learned Judges held that having regard to the circumstance that the adoption came to be questioned after so many years it was impossible to expect anything more than the kind of evidence that had been let in on behalf of the

plaintiff. It was further observed that girls of 12, at least many of them, were precocious and having regard to the evidence adduced, it was impossible to say that it had not been satisfactorily established that the girl was incapable of taking the boy in adoption, and that as regards the boy himself that was taken in adoption he was her younger brother and the evidence was that he was chosen by the girl herself. On these facts the learned Judge held that the adoption, he was valid. This decision was not brought to the notice of the learned Judges who decided the case in *Aravamudha Iyengar, formerly a minor since declared major and his guardian discharged Vs. Ramaswami Bhattar and Another*, .

(42) As has been already stated, in the present case, there is no precise evidence as to the age of Seshamma at the date of the adoption. Some of the documents show her as a minor in 1911. A registered lease deed executed in favour of the adopted son on 1910 however shows her as having been a major even in that year. Evidence has been adduced that she was married in 1898 when she was 11 or 12 years old. There is also evidence that she was leading a conjugal life. If she was leading a married life, it is impossible to conclude that she was only 11 or 12 years old. For a long number of years Rajeswararao was recognised by every member of the family as the adopted son of Bhaskararao. He was registered as Karnam . It is admitted by the plaintiff himself that Rajeswararao was the karnam till his death. We find that under Ex. B. 12, dated 19th November 1937, the plaintiff's mother, Kamamma herself obtained a sale deed from Rajeswararao wherein he was described as the adopted son of Bhaskararao.

(43) In *Rajendro Nath v. Jogendro Nath*, 14 Moo Ind App 67 (PC), the Judicial Committee has to deal with the validity of a will under which an adoption was made and acquiesced in by the family for twenty seven years, when a suit was brought by one of the testator's heirs claiming the estate on the ground that the adoption was invalid. Their Lordships held that, although the defendant was bound to prove his title as adopted son, every allowance for the absence of evidence to prove such fact was to be favourably entertained, and that the case was analogous to that in which the legitimacy of a person in possession had been acquiesced in for a considerable time and afterwards impeached by a party who had the right to question the legitimacy, where the defendant, in order to defend his status is allowed to invoke against the claimant every presumption which arises from long recognition of his family, and that the case of a Hindu, long recognised as an adopted son, raised even a stronger presumption in favour of the validity of his adoption, arising from the possibility of the loss of his rights in his own family by being adopted in another family.

(44) In another case, AIR 1925 201 (Privy Council) the authority of a widow to make an adoption, which was in fact made 42 years before suit, was questioned by a reversionary heir, and their Lordships, after referring to a variety of

considerations, -- the transfer of the adopted son from his natural home to his adopted home; his recognition after inquiry, by the legal authorities; proceedings in which the plaintiff himself had acknowledged the adopted boy's right; the dilatoriness of the plaintiff in preferring his claim-- expressed of the view that the burden resting upon any litigant who disputed such a claim was indeed of the heaviest order.

(45) In the present case, in numerous transaction and over a long period of time, Rajeswararao was treated as an adopted son, and having regard to the long lapse of time between the adoption and its being questioned, a strong presumption must be made in favour of the validity of Rajeswararao's adoption. There is no positive proof adduced by the plaintiff with regard to the precise age of Seshamma when the adoption took place. He could have proved that fact beyond all doubt by the production of a certified copy of her date of birth, and the plaintiff made no attempt to do so. There is no explanation by the plaintiff for the long inaction on his part in questioning the status of Rajeswararao as the adopted son.

It is no doubt, true that the Hindu Law of Inheritance (Amendment) Act (II of 1929) altered the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate, and it was only pursuant to that Act, that the plaintiff's mother, a step-sister of the late Bhaskararao, became entitled to rank in the order of succession next after a father's father and before a father's brother. The plaintiff's mother died in 1945. For a period of about 15 years, therefore, the plaintiff's mother who could have questioned the status of Rajeswararao as the adopted son, did not do so. Even after his mother's death, the plaintiff did not choose to question the adoption for about eight years. The explanation offered by him is that he wanted to claim the properties by him is eight years. To explanation offered by him is that he wanted to claim the properties after the death of Seshamma, the widow of Bhaskararao, which event happened in 1952. Having regard to all the circumstances of the case, it is pretty evident that the long delay, not satisfactorily explained. In the plaintiff's preferring this claim itself raises a strong presumption in favour of the validity of the adoption.

(46) For all the above reasons, this appeal must fail and is dismissed with costs.

(47) Appeal dismissed.