

(1951) 07 KAR CK 0005

Mysore High Court

Case No: Second Appeal No. 37 of 1948-49

Nanjegowda

APPELLANT

Vs

Channamma and  
Another

RESPONDENT

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Date of Decision: July 18, 1951

Citation: AIR 1952 Kar 40 : (1951) ILR (Kar) 530

Hon'ble Judges: Vasudevamurthy, J; Mallappa, J

Bench: Division Bench

Advocate: R.V. Sreenivasaiah, for the Appellant; M.P. Somasekhara Rao, for the Respondent

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### Judgement

Vasudevamurthy, J.

The Plaintiff, who is the widow of one Marigowda, sued for a declaration that the plaint schedule properties belong to her and are in her possession and for a permanent injunction to restrain defendants 1 and 2 from interfering with her possession. She claims to have succeeded to those properties as heir to her husband. Defendant 1 claimed to have been adopted by the deceased Marigowda about 8 years before the suit which would be somewhere in 1938 and as such the adopted son was a nearer heir of the deceased. As such heir he is said to have sold the suit properties to defendant 2. The learned Munsiff of Holenarasipur before whom the suit was filed held that the adoption relied on by defendant 1 was true and valid and dismissed the suit. On appeal, the Subordinate Judge of Hassan reversed that decision. He held that the alleged adoption did not take place and was not true. He also held that as the said adoption was said to have taken place after defendant 1 was married it was invalid in law. He therefore, decreed the plaintiff's suit. Defendant 2 has preferred this second appeal.

2. It is not disputed that defendant 1 was a married man when this adoption is stated to have taken place. In fact in Ex. I which is a registered hypothecation deed dated 25-4-1938 admittedly executed by Marigowda and defendant 1, the latter is

described as Marigowda's younger brother Dyave Gowda's son and the purpose of the loan is given out as the marriage of the latter. Defendant 1 himself has admitted that it was 2 or 3 months after his marriage that he was given in adoption by his natural parents to Marigowda. In "10 MysCCR 711", it has been held that among sudras, to which community the parties in this case belong, the circumstance that the boy who was adopted was already married was a bar to a valid adoption in spite of the fact that he was at the time of adoption a widower. It is now settled in all the Provinces except Bombay that in the case of three regenerate classes the adoption of a person is valid if made before upanayanam and if he belongs to the sudra caste before marriage though in Western India, however a man belonging to any of the four castes may be adopted at any age though he may have been married and has children; see Myne's Hindu Law, 1950 Edition, page 235. In Mysore it has been held in "2 MysLJ 157, that the course of thought and tenets of Hindu Law followed in Mysore are more akin to those of the Madras school than any other. In that case the High Court was called upon to consider about the necessity for a widow to seek the consent of her husband's sapindas in order to make a valid adoption which has been recognized by the Madras School. In this matter their Lordships preferred to follow the Madras School of thought. In AIR 1936 18 (Privy Council) " and Muthuswami Thever v. Chidambara Thever, 1948 2 Mad LJ 468: AIR 1949 PC 18 , which were appeals from Madras, the Privy Council were dealing with cases of adoption by sudras and while doing so they have laid down that even among sudras the adoption of a person after his marriage is altogether invalid. In Muthuswami Thever v. Chidambara Thever, 1948 2 Mad LJ 468: AIR 1949 PC 18 , their Lordships observed: "According to the Dattaka Chandrika, which is regarded as authoritative in the Province of Madras, marriage concludes the period within which a sudra may be adopted." In this view of the law which has been recognized and acted upon in Mysore iron the date of the decision in "10 Mys CCR 711", the alleged adoption of defendant 1 by Marigowda would be invalid even if true; and it is unnecessary to go into the question whether he was as a matter of fact adopted at all.

3. in the result the judgment and decree of the Subordinate Judge are confirmed and this appeal is dismissed with costs (Advocate's fee Rs. 30/-).

4. Appeal dismissed.