

AIR 1932 Mad 227

Madras High Court

Case No: None

Panyam and Another

APPELLANT

Vs

Avadhanam Rama
Lakshmamma and
Another

RESPONDENT

Date of Decision: Oct. 22, 1931

Citation: AIR 1932 Mad 227

Hon'ble Judges: Venkatasubba Rao, J

Bench: Division Bench

Judgement

Venkatasubba Rao, J.

This appeal raises an important question relating to the law of adoption not covered by any direct authority. The

plaintiffs are the reversioners to the estate of one Bhaskarayya. He died leaving him surviving his widow, Chidambaramma, and his only daughter,

Ramalakshmamma defendant 1. After the death of his widow, Bhaskarayya's properties devolved on defendant 1. It is stated in the plaint that

soon after the latter's marriage, more than 40 years ago, she became a widow, while still under age. In the year 1922, defendant 2, a distant

agnatic relation of her father, was taken by her in adoption. The plaintiffs attack the adoption as being invalid and pray for a declaration that their

reversionary right is not affected by it.

2. For understanding the objection taken to the adoption, we must turn to the pedigree, which sets forth her husband's relations, although the last

full owner of the estate in question was her father and not her husband.

3. The pedigree is as follows:

Venkataramana (died)

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Venkatachalamiah Sivaramiah Ramakrishniah Ramasubbiah Rameswaramiah

| and wife (died) wife during suit (died) wife

| (died) 1st defendant (wife died) Subbamma.

||||

| Sundaram | Venkataramudu

| (taken in | (taken in

| adoption) | adoption

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Venkataramana Sundaram (given Ramachandrudu Venkataramudu (given

in adoption.) in adoption.)

4. Ramakrishnayya the husband of defendant 1, died about 1892 when the family was joint. But there was subsequently a partition among the

members of the family. It is admitted that the adoption was made after that partition and the contention advanced for the plaintiffs is, that with the

extinction of the joint family, the widow's power to adopt came to an end and became incapable of execution. It is worthy of note that before

making the adoption, she obtained the consent of all her husband's agnates. But it is argued for the plaintiffs, that the power having once come to

an end it cannot be subsequently revived by consent. The lower Court, holding that the widow's power did not become extinguished and that the

adoption was therefore valid, dismissed the suit.

5. The question argued before us is; What is the proper limit to the exercise of the widow's power? According to the plaintiffs, the limit is reached

when the adoption divests an estate vested in a third party. Thus the widow of a separated husband can adopt either when she takes his estate

from him immediately or as heiress of her son who surviving his father dies subsequently. In these two cases, the adoption cannot divest any estate

other than that vested in the adopting widow herself and this is said to be the reason for the adoption being treated as valid. Applying this rule, if on

the son's death, his estate vests in his widow or his son, the original widow's power comes to an end; and on the principle that what is gone

cannot be revived, she is forbidden to adopt, even though she succeeds to the estate on the death of the son's nearer heir. So much then for an

adoption to a separate Hindu.

6. Now turning to the case of a joint family, the widow of a deceased member can adopt, provided the family is still joint when the adoption is

made; for what is defeated by the adoption is not an absolute estate, the vesting in the survivors being only provisional. On this principle, it is

argued that if the coparcenary becomes extinct, either because the surviving members have come to a partition, or because the joint property has

passed by succession from the last survivor to his heirs, the power to adopt becomes exhausted and is incapable of execution.

7. These rules Mr. Somayya, the plaintiffs' learned Counsel, contends, are deducible from the decisions on the subject. The adoption in question, if

allowed, would defeat the estate taken by the survivor absolutely on partition. On that ground it is impeached as being invalid.

8. The test then of the principle defining the limit, which Mr. Somayya deduces from the numerous cases referred to by him in his lucid and

exhaustive argument depends upon whether the adoption divests or not the estate vested in a third party. Whether a Hindu dies leaving a son or

not, or whether he had no son ever born to him at all (as in the present case), is if this be the true test, an irrelevant consideration. According to

Mr. Kodandaramayya, the defendant's learned advocate, the decisive factor is not, whether some estate is or is not divested, but whether the

adoption being in essence a religious act, the spiritual purposes of a son have been satisfied. He contends, that if the effect of invalidating an

adoption would be to deprive a Hindu father of the services of a competent son the result would be repugnant to the spirit of the Hindu law. The

test of the limiting principle, according to him, is that laid down by the Full Bench in the judgment of Chandavarkar, J., in Ramakrishna v. Shama

Rao [1902] 26 Bom. 526 namely:

Where a Hindu dies, leaving a widow and a son, and that son himself dies leaving a natural son or adopted son or leaving no son but his own

widow to continue the line by means of adoption, the power of the former widow is extinguished and can never afterwards be revived.

9. Both sides have relied upon the decisions of the Privy Council, and the question is; What is the correct test that is deducible from them? There

are two cases decided by the Board relating to the same estate, which throw a good deal of light on the point. Let us take the following pedigree:

Chandramani Deo

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|||

Adikonda Deo Raghunadha Rao Lokhana Deo

(died 1868; (dead) (dead)

married | |

Kundana Devi Vaishnava Deo Brajaraj Deo

(alive) (died) 18th September 1906.

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Brojo Deo first Plaintiff-Appellant Purushothama Kunjabihari

Adopted son (died whose adoption defendant- (defendant-

3rd September 1906 is in question respondent respondent)

married Ratnamala (deceased)

(alive)

10. On the death of Adikonda, a member of a Hindu joint family, his brother Raghunatha took possession of the zamindari. Kundana Devi, acting

on her husband's authority, adopted Brojo Deo. The adopted son filed a suit to recover the zamindari from Raghunatha and the Privy Council,

holding his adoption valid, uphold his claim. These are the facts of *Virada Pratapa Raghunadha v. Brojo Kishore* [1876] 1 Mad. 69, (the first

Chinnakimedi case). Then certain further events happened and the same estate came up again before the Privy Council. Brojo, the adopted son,

recovered possession and died about 30 years afterwards leaving his widow Ratnamala but no son. Possession of the zamindari was then taken by

Vaishnava Deo who was in his turn succeeded by his son Purushotama. The widow of Adikonda purported to make a second adoption to her

husband by adopting the person shown as the plaintiff in the pedigree. The latter thereupon claiming the zamindari filed a suit for recovering it. The

Judicial Committee, holding that the adoption was bad, dismissed the suit. These are the facts of *Madana Mohana v. Purushothama* A.I.R.1918

P.C.74 (the second Chinnakimedi case). Do these decisions support the theory put forward by Mr. Somayya? On both the occasions, the

adopting widow belonged to a joint family. Her first adoption was held good, but the second bad. Mr. Somayya suggests that in the first case the

family being a joint one, the vesting of the joint family property was only provisional and that therefore the adoption was upheld. This contention is

obviously wrong, for although the family was joint, the zarnindari being an impartible one, was held in severalty and not in co-parcenary. On

Adikonda's death, it did not pass to the surviving members, but to a single heir, Raghunatha. His succession was no doubt in a sense provisional as

stated by the Judicial Committee, but it was not provisional in the sense that a co-parcener's share is liable by fluctuation to increase or diminish.

The point to note is, that the adoption was bold valid in spite of the fact that Raghunatha was thereby divested. Now, turning to the second case,

was the adoption by Kundana Devi held invalid on the ground that it would divest Purushothama? This succession, like that of his predecessor,

Raghunatha, was in a sense provisional, for it was ""subject to defeasance by the emergence of a male heir"" to the last full owner, who however was

not Adikonda but Brojo Deo. In other words, if the adoption had been made by Ratnamala, on the very grounds stated by the Privy Council, it

would have been upheld (granting it was otherwise valid). That this is the effect of the decision is shown by the judgments of Sir John Wallis, C. J.,

and Seshagiri Aiyar, J., in Jagannadha Gajapati v. Kunja Bihari Deo [1919] 49 I.C.929, (the third Chinnakimedi case). Mr. Somayya says that the

first Chinnakimedi case was understood as validating an adoption made by the widow of an unseparated Hindu, on the ground of the vesting of the

coparcenary property being provisional although, in the case itself, there was no reference to the existence of any partible property. If that be so, in

the second Chinnakimedi case also, the adoption should have been held valid; But he suggests that this case is generally regarded as having

established a new principle. He is constrained to put forward this argument, as otherwise, his theory, that the divesting rule furnishes the limiting

principle, must fall to the ground. If, on the other hand, the principle contended for by Mr. Kodandaramayya is accepted, these two decisions

become perfectly reconcilable. What distinguishes the first from the second case is, that in the latter, Brojo died

after attaining full legal capacity to continue the line either by the birth or a natural son or by the adoption to him of a son by his own widow.

11. It must not be forgotten that in the passage immediately preceding these words, their Lordships expressly affirm and approve the principle

enunciated by Chandavarkar, J., in Ramakrishna, v. Shama Rao [1902] 26 Bom. 526. These words therefore mean neither more nor less than the

passage already quoted by us from Chandavarkar, J's. judgment.

12. Madana Mohan v. Purushothama A.I.R.1918 P.C.74, (the second Chinnakimedi case) bears a close resemblance to Bhoobun Moyee v. Ram

Kishore [1865] 10 M.I.A. 279, which is referred to and followed in the previous case. Gaur Kishore died leaving Bhavani Kishore, his only son,

and his widow Chandraboli. On Bhavani Kishore's death leaving Bhoobun Moyee as his widow, Chandraboli purported to take in adoption Ram

Kishore. The Judicial Committee held that adoption bad. The only difference (and that is immaterial) between this and Madana Mohan v.

Purushothama A.I.R.1918 P.C.74, is, that whereas in the first case, the son (Bhavani Kishore) was a natural son, in the second, he (Brojo Deo)

was an adopted son. In both the cases, as we have pointed out the adoption was declared invalid. We have examined the grounds of the decision

in the second case. Let us now turn to the first. Their Lordships refer to ""all the spiritual purposes of a son"" which would, in a certain event, have

been satisfied and to "" all the religious services, which a son could perform for a father."" The true test therefore of the principle defining the limit, is

to be sought not in the rule of divesting or otherwise of an estate, but in the rule that requires the continuance of a person to perform all the requisite

religious services. The line must be drawn somewhere in applying this principle and it must be taken as established, that the limit is reached on the

happening of the event mentioned in the judgment of Chandavarkar, J.

13. In some decisions of the Judicial Committee, such as, *Bhoobun Moyee v. Ram Kishore* [1865] 10 M.I.A. 279, already cited, and *Venkata*

Krishna Rao v. Venkatarama Lakshmi Narasayya [1876] 1 Mad.174, there are no doubt observations advertent to the divesting rule; but the

principle of divesting must not be taken as having furnished the ground of decision, but the divesting or otherwise of the estate must be understood

as having been referred to as the result of the adoption being held either good or bad. That their Lordships always laid stress on the religious

aspect of the act of adoption appears from several cases. In the *Ramnad case*, *Collector of Madura v. Ramalinga Sethupathy* 1867 12 M.I.A.897,

their Lordships describe it as a meritorious act and refer to the existence of a direct line competent to the full performance of religious duties"" and

to the

religious obligation to adopt a son in order to complete or fulfil defective religious rites.

14. The following observations of their Lordships in the *Chinnakimedi case*, *Sri Raghunatha v. Sri Brojo Kishore* [1876] 1 Mad.69, are pertinent to

the matter in hand:

They may however observe that a distinction which is founded on the nature of property seems to belong to the law of property, and to militate

against the principle which *Holloway, J.*, has himself strenuously insisted upon elsewhere, (1), viz., that the validity of an adoption is to be

determined by spiritual rather than temporal consideration; that the substitution of a son of the deceased for spiritual reasons is the essence of the

thing, and the consequent devolution of property a mere accessory to it.

15. It is unnecessary to refer to the more recent Privy Council cases beyond stating that in *Pratap Singh v. Agar Singhji Raisinghji* AIR 1918 P.C.

192, the principle laid down in *Bhoobun Broyee v. Ram Kishore* [1865] 10 M.I.A. 279, and *Madana Mohan v. Purushothama* AIR 1918 P.C.

74, has been reaffirmed. Incidentally, it may be remarked that in that case *Pratap Singh Shivsingh v. Agarsinghji Raisingji* A.I.R.1918 P.C.192, the

fact that the adoption would detract from the plaintiff's right, did not stand in the way of the adoption being held valid, on the ground that the

power had not become exhausted. The result then of this examination of the Privy Council cases is that when properly understood, they do not

bear out Mr. Somayya's contention. See the judgments of Reilly, J., in Sukhdevdoss Ramprasad Vs. Mt. Choti Bai and Others, , of Oldfield, J., in

Venkataramier v. Gopalan [1918] 49 I.C. 48, and of Kumaraswami Sastri, J., in Maharaja of Kolhapur Vs. S. Sundaram Ayyar and Others, .

16. Mr. Somayya has referred us to numerous decisions of the Indian Courts, where the adoption by a widow was held invalid, although the result

of so holding would be that her deceased husband would never have had any male issue to continue his line. As typical of these cases may be

mentioned Adivi Suryaprakasa Rao v. Nidamarthy Gangaraju [1910] 33 Mad. 228, Chandra v. Gojara Bai [1890] 14 Bom. 463, and Sri

Dharneedar v. Chinto [1896] 20 Bom. 250. There are cases, where the widow's deceased husband was an unseparated Hindu, but by the time

she made the adoption, the joint property had passed by succession from the last survivor to his heirs. The reason for holding the adoption invalid

was, that when the estate vested in the heir, the power of the widow came to an end. Whether these decisions, though in conflict with the principle

affirmed by the Judicial Committee, will, so far as they go, be followed or not on the ground of stare decisis, is a point on which we need express

no opinion; but there is no warrant for extending the rule beyond the facts of those cases. As we have said, those facts are, that the coparcenary

became extinct by the death of the last survivor and his property thereupon devolved on his heir. The facts in the present case are different. The

coparcenary became extinct not in that manner, but by the survivors having come to a partition of the joint family property. We are not prepared to

hold that in such a case the widow's power comes to an end. There is no reported decision on the actual point raised in the appeal. But the

opinion of Mr. Sarkar Sastry supports the plaintiff's contention. According to that learned author:

the power of adoption cannot be exercised after a partition of the family property takes place,

and this view is based on grounds of supposed convenience. Says Sarkar Sastry;

To reopen the partition for giving a share to the adopted son, would lead to great difficulties, for one of the cosharers might alienate his share to a

purchaser for valuable consideration without notice.

17. But he goes on to observe that the point is not free from difficulty and refers to some conflict, which he supposes to exist between the two

Privy Council decisions, Bhoobun Moyee's case (5) and the first Chinnakimedi case. Sarkar's Hindu Law of Adoption 1891 edition pp. 253 and

254. In Krishna v. Sami [1886] 9 Mad. 64 (F.B.), a Full Bench of five Judges deduces from the Hindu law a principle which is the exact opposite

of that stated by Mr. Sarkar Sastry. The following passage contains the relevant observation:

Again, let C have died before partition, leaving a widow and having given her power to adopt which she does not exercise till after a partition has

been made by B, D and E. When she exercises her power we apprehend that the adopted son would be entitled to call upon his uncles to make

over to him a portion of the wealth equal to that which would have been taken by his father: Sri Virada Pratapa Raghunatha v. Sri Brozo Kishore

[1876] 1 Mad. 69.

18. If those observations were not merely obiter, the case would have been a direct authority in favour of the respondents.

19. We shall now examine the matter on principle. What does the statement, that when the rights acquired by third parties are defeated, the

widow's power comes to an end imply? That the object of assigning a limit to the widow's power is to safeguard the rights of such third parties. If

this be the true view to take, why should it be held that the adoption is bad when the adopting widow [as in Ram Krishna v. Sama Rao [1902] 26

Bom.526], is the very person whose estate is thereby defeated? Again, why should the adoption be held invalid not only as against the person

whom it divests, but even as against [as held in *Pudma Coomari Debt v. Court of Wards* [1882] 8 Cal. 302 and *Thayammal v. Venkalarama*

Ayyar [1887]10 Mad.205 distant reversioners? Mr. Somayya's answer is that the power having come to an end, cannot be revived. This is

merely arguing in a circle. Why should it bo hold at all on his theory that the power came to an end? The object being the safeguarding of other

peoples right (as his argument assumes), it would be sufficient for achieving that end, to hold that the power is in abeyance ready to revive on the

removal of the obstruction. If, on the other hand, the test of the limiting principle is what we have stated above, it stands to reason that when once

the spiritual purposes are satisfied, the power to adopt finally and for over comes to an end.

20. Again, the validity of an adoption must be judged intrinsically on its own merits, and not with reference to considerations extraneous to it. The

facts of the present case which are somewhat unusual serve forcibly to illustrate the incongruity of the position taken up by the plaintiff's. The suit

relates to the estate not of the adopting widow's husband but of her father. The plaintiffs are not interested in the rights which are said to be

defeated, nor are the husband's agnates interested in the estate which the plaintiffs represent. The adoption in this case having been made with the

consent of those agnates, no question of the safeguarding of their rights can arise. The test suggested by the plaintiffs is altogether unsatisfactory

and cannot furnish the true criterion.

21. Mr. Somayya advances an alternative contention. Ho puts his case thus; Rameswaramayya died after the partition and the properties allotted

to him vested on his death in his widow Subbamma. The argument is, that whether or not the widow's power became extinct on the partition, it

came to an end, at any rate, on Subbamma succeeding to her husband. The plaint proceeds on an altogether different assumption. It is stated in

para. 3 that the joint family consisted only of four brothers the name of Rameswaramayya being omitted. Then the plaint goes on to say, that

Ramakrishnayya (defendant 1's husband) died first and then Sivaramiah and that the two remaining brothers (Venkatachalamiah and

Ramasubbiah) entered into a partition. There is thus no mention of Rameswaramayya. Nor have the defendants alleged in their written statement

that he also was a party to the partition. The parties thus when they went to trial, entirely ignored Rameswaramayya. But the alternative contention

not only assumes that he was a party to the partition, but that, on his death, his property vested in his widow. Even the lower Court's judgment

does not contain any reference to this argument. But the plaintiffs point to some statements made by the defence witnesses, which we are asked to

treat as admissions. We do not think that a point of this importance, not raised in the pleadings and not referred to in the lower Court's judgment,

should be allowed to be raised.

22. In the result, we hold that the adoption by defendant 1 is valid and confirming the decision of the lower Court, dismiss the appeal with costs.

The memorandum of objections is allowed with costs.