

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Shivabasava kom Amingavda v. Sangappa bin Amingavda, from the High Court of Judicature at Bombay; delivered the 29th July 1904.*

---

Present at the Hearing :

LORD DAVEY.

LORD ROBERTSON.

SIR ARTHUR WILSON.

[*Delivered by Sir Arthur Wilson.*]

This is an Appeal from two decisions, one interlocutory and the other final, of the High Court of Bombay. The suit disposed of by those judgments was originally brought in the Court of the Subordinate Judge of Bagalkote, and was one of a very peculiar character, being brought by a widow against her adopted son, adopted by herself, for the purpose of negating, or getting rid of the effects of, her adoption.

The story told in the plaint was that no adoption of any kind had in fact taken place, but that the Plaintiff was induced by the fraud and duress of the Defendant's natural father, and of her own Wat-Mukhtyar, to pretend to Government that she had adopted the Defendant, and to execute what she called "a hollow deed of adoption," which acknowledged the adoption to have been made nine days before the date of the deed. She prayed for a declaration that the Defendant is not her properly and legally adopted son, for a declaration that the ceremony of

adoption did not take place, and if the Defendant should contend that the ceremony of adoption did take place, for a declaration that it is ineffectual and invalid by reason of fraud. The written statement affirmed the adoption, and traversed the allegations of fraud. The issues raised so far as now material, were (2) Does she (Plaintiff) prove that the deed of adoption and other documents in support of it were obtained from her by fraud or other unlawful means? (3) Does she prove that the alleged adoption is false? and (4) Is the adoption invalid on any ground?

The Subordinate Judge held that the ceremony of adoption had taken place with all necessary formalities. He arrived at certain other findings now superseded, and in the result he decreed that the adoption was proved, that at present the adoption was limited in its effect to the Watan property, and that as to all other property it would take effect after Plaintiff's death.

From that Decree both parties appealed to the Court of the Assistant Judge of Bijapur. The learned Judge in that Court stated the issues, as formulated before him, thus: (1) Was there a real adoption? (2) if so, is it binding on the Plaintiff? (3) to what relief, if any, is Plaintiff entitled? He stated that the fact of the adoption was no longer disputed and the charges of fraud were abandoned. He found the first of the above three issues in the negative. On the second he did not formally find. On the third he found that the Plaintiff was entitled to a declaration that the adoption was not real and is invalid. He decided the case in favour of the Plaintiff, resting his conclusion upon reasoning which is not altogether easy to follow, holding that, though the adoption was made in fact, and the charges of fraud were unfounded, the adoption ceremony was a mere farce, and of

no binding effect. His Decree cancelled the adoption.

The Defendant took the case on second appeal to the High Court of Bombay. Such second appeal can lie only (Sections 584 and 585 of the Civil Procedure Code) on the ground of (a) the decision being contrary to some specified law or usage having the force of law; (b) the decision having failed to determine some material issue of law or usage having the force of law; (c) a substantial error or defect in the procedure as prescribed by this Code or any other law, which may possibly have produced error or defect in the decision of the case upon the merits.

The learned Judges of the High Court held that under this Section, if the Lower Appellate Court had made a new case for the parties not warranted by the pleadings and evidence, they had jurisdiction to interfere and to reverse its Decree upon that ground, and they considered that this error or defect in procedure had occurred in the present case. They held further that they had jurisdiction to reverse the decision of the Lower Appellate Court if its decision were without evidence to support its finding, and they considered that this was so.

In accordance with these views the High Court set aside the finding of the Assistant Judge that the adoption was not real, and restored that of the First Court, and remanded the case to the Lower Appellate Court to find upon the issue whether the adoption was binding upon the Plaintiff. On this remand the Lower Appellate Court found the issue in the affirmative, and when that finding was returned to the High Court that Court by its final Decree dismissed the suit.

Against these decisions of the High Court the present Appeal has been brought. The substantial contention urged before their Lordships

has been that the High Court had no jurisdiction under Section 584 to interfere with the finding of the Lower Appellate Court. Their Lordships agree with the learned Judges of the High Court. They think the Lower Appellate Court did dispose of the suit upon a case not raised by the parties, and to which the evidence had not been directed, and that this was a substantial error or defect of procedure within the meaning of Section 584. They also agree with the High Court in thinking that there was no evidence before the Lower Appellate Court upon which that Court could properly arrive at the conclusion of fact at which it did arrive. In *Anangamanjari Chowdhrani v. Tripura Soodari Chowdhrani* (14 I.A. 101, at page 110) the rule was laid down in the following terms:--

“It was, in the opinion of their Lordships, “within their jurisdiction” (that is to say, within the jurisdiction of the Judges of Second Appeal) “to dismiss the case, if they were “satisfied that there was, as an English lawyer “would express it, no evidence to go to the “jury, because that would not raise a question “of fact such as arises upon the issue itself, “but a question of law for the consideration “of the Judge.” The same rule was laid down in *Mussummat Durga Choudhrain v. Jawahir Singh Choudhri* (17 I.A. 122, at page 127), where the rule is treated from the negative point of view. “Where there is no error or “defect in the procedure, the finding of the “First Appellate Court upon a question of fact “is final, if that Court had before it evidence “proper for its consideration in support of the “finding.”

Some minor objections to the final decision of the High Court were raised in argument. As to these it is sufficient to say that they are all points covered by the findings of the Courts in

India or which might and ought to have been raised in those Courts.

Their Lordships will humbly advise His Majesty that this Appeal should be dismissed. The Appellant will pay the costs.

---

