Privy Council Appeal No. 119 *of* 1916.

Kandukuri Veera Basavaraju Pantulu and Others - - - - - - - *Appellants,*

v.

Kandukuri Balasurya Prasada Rao Pantulu and Another - - - - - - *Respondents.*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 11TH JULY, 1918.

Present at the Hearing:

LORD SUMNER.
LORD PHILLIMORE.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* MR. AMEER ALI.]

This appeal arises out of a suit brought by the plaintiff, Bassavaraju, on the 22nd December, 1909, in the Court of the District Judge of Ganjam, in the Madras Presidency, for possession of considerable landed property by virtue of his right as the nearest reversioner by adoption to one Vishwanadha Row, the last male owner. And the question for determination by this Board is whether the adoption under which he claims title is valid under the Hindu law. Vishwanadha died in 1880, and since his death the properties were held by his widow, Mahalakshmamna, for a Hindu widow's estate until her decease in 1908, when the defendants, who are admittedly the grandsons of Vishwanadha's paternal grand-uncle and who, on failure of the adoption alleged by the plaintiff, would be entitled as the nearest reversioners, took possession of the same, and their possession was confirmed by the revenue authorities, before whom the question now in dispute was first litigated.

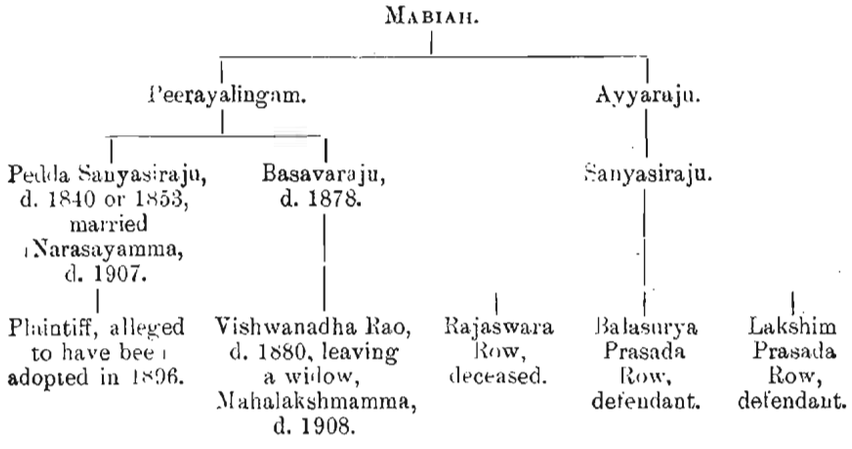
The plaintiffs' claim is based on the allegation that Bassavaraju, the father of Vishwanadha, and one Pedda

Sanyasiraju were two brothers, and that Pedda predeceased Bassavaraju, leaving a widow named Narasayamma, who in 1896 adopted him as a son to her husband. He is, thus, he asserts, nearer in degree as the paternal uncle's son to Vishwanadha and has, therefore, a title superior to that of the defendants to the succession to his estate.

(1) 12 Moore's Indian Appeals, p. 397.

The *Ramnad Case* (1) established the proposition that, under the Dravadian branch of the Mitakshara law, in the absence of authority from her deceased husband a widow may adopt a son with the assent of his male agnates in the Dravada country, where such law is in force. The plaintiff, accordingly, placed his adoption on two grounds—first that Narasayamma had direct authority from her husband to adopt a son to him; and secondly that his own adoption was made with the authority of the husband's kindred.

After the institution of the suit other parties, who had acquired interest in the properties in dispute from the plaintiff or from his guardian, were joined as co-plaintiffs; it is, however, unnecessary to refer to them in this judgment. The following pedigree will explain the exact relationship of the contesting parties :—



The defendants challenged both the power of the widow to make any adoption and the validity of the assent or authority with which it was alleged to have been made. They contended that under the circumstances, which will be detailed later, Narasayamma had no power to make an adoption to her deceased husband, and that in any event the assent of the Sapindas, on which its validity was conditioned, was not legally sufficient. The District Judge before whom the case came for trial in the first instance, in an able judgment in which he examined the facts as well as the law applicable to those facts with considerable care, came to a conclusion wholly adverse to the plaintiff. He held in substance that the plaintiff had failed to establish the alleged authority from the husband to the adopting widow, and that the consent of the sapindas on which the claim was rested was not sufficient. The learned Judge further held that Peeraya and his two sons Pedda and Bassavaraju formed a joint undivided Hindu family; that Pedda died in the lifetime of his father somewhere before 1842; that on his death his interest in

the joint family property vested by right of survivorship in Peeraya and Bassavaraju ; and that he left no separate property to which his widow could succeed and hold separately. He held that in this condition of the joint family the power and capacity of his widow to make any adoption to him came to an end when the joint family property vested in Vishwanadha's widow. He accordingly dismissed the plaintiffs' suit. The High Court of Madras on the plaintiffs' appeal did not consider it necessary to enter upon a consideration of this latter branch of the learned Judge's decision relating to Narasayamma's power to make the adoption. They, however, concurred with the First Court in its other findings, and in agreement with the Trial Judge held that the sapindas' assent was not sufficient in law to validate the adoption in question, and dismissed the appeal.

The plaintiffs have now appealed to His Majesty in Council, and it has been strenuously urged on his behalf that the Lower Courts have wrongly applied the law to the present case. As the Trial Judge has in his judgment fully set out the facts, their Lordships are relieved of the necessity of stating them in any detail. They propose, therefore, to refer only to some salient points in the history of this family. It appears that Peerayalingam, the grandfather of Vishwanadha, died in 1846, leaving him surviving his widow Veyamma, who was the owner in her own right of the greater part of the property which forms the subject-matter of this litigation. The plaintiffs allege that Pedda died in 1853, whilst the defendants place his death so far back as 1840. As already stated, the Trial Judge has found on the evidence that the latter date represents approximately the real date of his death. The finding is that he died some years before his father's death in 1846. Veyamma died in 1855, when the entire family estate vested in Bassavaraju, the surviving son of Peeraya. He died in 1878, leaving a son Vishwanadha, who survived him only two years. On his death his widow succeeded to the estate, and held it as a Hindu widow until 1908. Narasayamma, the widow of the predeceased co-parcener, had become, on the death of her husband, entitled to maintenance, which she received from the estate until her death in 1907. Peerayalingam, the grandfather of Vishwanadha, had a brother named Ayyaraju ; his son was also called Sanyasiraju and the present defendants are the sons of Sanyasi. At the time of the alleged adoption this Sanyasi, who might be conveniently called Sanyasi II, was alive. Upon this state of facts the two questions of law which the High Court had to determine were exactly the two which the District Judge has discussed and decided. First (and this went to the very root of the plaintiffs' title), whether Narasayamma had, under the circumstances of Peerayalingam's family, any power in 1896 surviving in her to make the adoption ; secondly, if she had, whether the assent that is put forward is sufficient. As already observed, the High Court have abstained from expressing an opinion on the first point.

Assuming that Narasayamma had, when she purported to adopt the plaintiff Bassavaraju, the power to make the adoption, the question arises whether that power was validly exercised. In the absence of authority from the husband, the valid exercise of the power by a Hindu widow in the Dravada country is conditioned on the assent of her husband's sapindas. In the present case the claim is rested on the assent of seven kinsmen. The District Judge has, for convenience of reference and examination, divided the agnatic relations of Vishwanadha living at the time of the alleged adoption into five groups in the order of propinquity. In the first group are included Sanyasaraju (the defendants' father) and the defendants. Sanyasaraju died in 1899; it has been found that his assent was not asked for nor given. In the second group are included three persons whose consent is said to be contained in a paper Exhibit B. Both Courts have held their signatures to be forgeries. To group 3 belong plaintiff Bassavaraju's father, his paternal uncle, and a witness of the name of Ayyappa Raju. These three have certainly given their assent to the adoption.

To group 4 belonged a man named Borayya Bhusana, since deceased, who is alleged to have conveyed his assent in a letter addressed to the widow. This letter contains a general approval of her intention to make an adoption, but does not evince a consent to any specific adoption. There are several men in the remotest group who do not seem to have been approached and do not enter into the consideration of the case. The question then is whether, in the absence of authority from the husband and of the consent of the nearest sapinda, the assent of remote sapindas is sufficient to validate the exercise of the widow's power? None of the decided cases deal with the concrete question under consideration. The decision in the *Ramnad Case*, which forms the principal authority on the validity of an adoption with the consent or authority of the husband's sapindas, declares in general terms the class of kinsmen among whom the consent should be sought; and the generality of the expressions has in some instances given rise to doubts. But a close examination of the judgment shows clearly to their Lordships' mind what the Board intended to indicate. Dealing first with the case of a joint and undivided family, joint in food, worship, and estate, the Board observed as follows:—

"The question who are the kinsmen whose assent will supply the want of positive authority from the deceased husband is the first to suggest itself. Where the husband's family is in the normal condition of a Hindoo family—*i.e.* undivided—that question is of comparatively easy solution. In such a case the widow, under the law of all the schools which admit this disputed power of adoption, takes no interest in her husband's share of the joint estate, except a right to maintenance. And though the father of the husband, if alive, might, as the head of the family and the natural guardian of the widow, be competent by his sole assent to authorise an adoption by her, yet, if there be no father, the consent of all the brothers who, in default of adoption, would take

the husband's share would probably be required, since it would be unjust to allow the widow to defeat their interest by introducing a new co-parcener against their will."

There the widow had acquired some property which was held by her husband separately from the other members of the family, which is not the case in the present instance, as Pedda left no separate property. Dealing with the case of a widow so situated, Sir James Colvile went on to say :—

"Where, however, as in the present case, the widow has taken by inheritance the separate estate of her husband, there is greater difficulty in laying down a rule. The power to adopt when not actually given by the husband can only be exercised when a foundation for it is laid in the otherwise neglected observance of religious duty, as understood by Hindoos. Their Lordships do not think there is any ground for saying that the consent of every kinsman, however remote, is essential. The assent of kinsmen seems to be required by reason of the presumed incapacity of women for independence rather than the necessity of procuring the consent of all those whose possible and reversionary interest in the estate would be defeated by the adoption. In such a case, therefore, their Lordships think that the consent of the father-in-law, to whom the law points as the natural guardian and 'venerable protector' of the widow, would be sufficient. It is not easy to lay down an inflexible rule for the case in which no father-in-law is in existence. Every such case must depend upon the circumstances of the family. All that can be said is that there should be such evidence of the assent of kinsmen as suffices to show that the act is done by the widow in the proper and bona fide performance of a religious duty, and neither capriciously nor from a corrupt motive."

(1) L.R. 4 I.A. 1.

The decision in the *Ramnad Case* was followed and explained in *Raja Vallanki* v. *Venkata Rama* (1), which established the following propositions : That the requisite authority in the case of an undivided family is to be sought by the widow within that family; that it is in the members of that family that she must presumably find such counsellors and protectors as the law makes requisite for her ; and that she cannot at her will travel out of that undivided family and obtain the authorisation required from separated and remote kinsmen of her husband. This being the position of a widow in an undivided family, what are the conditions imposed on her if her husband happens to die in a state of separation from his kindred ? Division does not affect her personal dependence or give her an independent status to alter by her own authority the succession to the estate which she takes as the widow of her husband. She is still dependent for counsel and protection upon the nearest sapindas of her husband, who are the most closely united to him by ties of blood, or, to use the language of Hindu lawyers, by "community of corporal particles." The father of the deceased, if still alive, continues to be her "natural guardian and venerable protector." He has furthermore a direct interest in the protection of the estate, for in case of her death without leaving her surviving a daughter or the mother of her deceased husband

he has a right to the reversion. His authorisation is therefore essentially requisite to the validity of an adoption by her to her husband. If there is no father the divided brothers take his place by virtue of the tie of blood as her husband's nearest sapindas; they become her natural guardians and the protectors of her interests. They also have an interest in the protection of the inheritance. In the absence, then, of the father the assent of the divided brothers is equally requisite for the validity of the widow's adoption. If a majority assent and one refuses, his objection may be discounted. But the absence of their consent. or in case there is only one, of his consent, cannot be made good by the authorisation of distant relatives remotely connected whose interest in the well-being of the widow or the spiritual welfare of the deceased, or in the protection of the estate, is of minute character, and whose assent is more likely to be influenced by improper motives. In this connection it seems desirable to bear in mind the following observations of the Board in *Raghunada Deo* v. *Brojo Kishoro Deo* (1):—

(1) 1 L.R. 3 I.A. 154.

"But it is impossible not to see that there are grave social objections to making the succession of property—and it may be in the case of collateral succession, as in the present instance, the rights of parties in actual possession—dependent on the caprice of a woman, subject to all the pernicious influences which interested advisers are too apt in India to exert over women possessed of, or capable of exercising dominion over, property. It seems, therefore, to be the duty of the Courts to keep the power strictly within the limits which the law has assigned to it."

It is true that in the judgment of this Board in the *Ramnad Case* some expressions are used which might imply that the question of reversionary interest forms only a secondary consideration in determining what Sapindas' assent is primarily requisite, but the remarks that follow as to the right of co-parceners in an undivided family to consider the expediency of introducing a new co-parcener, coupled with the observations of the Board in the subsequent case (1) show clearly that rights to property cannot be left out of consideration in the determination of the question.

(1) L.R. 4 I.A., pp. 1, 14.

In the latter case the Board observe as follows:—

"There should be such proof of assent on the part of the Sapindas as should be sufficient to support the inference that the adoption was made by the widow not from capricious or corrupt motives, in order to defeat the interest of this or that Sapinda, but upon a fair consideration of what may be called a family council of the expediency of substituting an heir by adoption to the deceased husband."

And an eminent Hindu lawyer, dealing with the question whose consent is requisite to the validation of an adoption when the husband is separate, remarks that an adoption is more a temporal than a spiritual institution, there being no spiritual reason for adoption if the deceased left a fraternal nephew; and that the requisites of a valid adoption are all temporal;

therefore, the spiritual consideration should not be allowed to influence the judgment regarding the secular essential. And he then goes on to add—

"Some light is thrown on the point by the decisions relating to alienations by widows with the assent of the next heir." (1)

(1) Golap Chandra Shastri on the Hindu Law of Adoption.

The reasons which make the assent of divided brothers a requisite condition apply *mutatis mutandis* to the case of the nearest Sapindas other than brothers. In the present case Sanyasaraju II was unquestionably the nearest Sapinda to Pedda at the time of Narasayamma's adoption. He was also unquestionably nearest to Vishwanadha. The case for the plaintiff is that in 1882 he had given his consent to Narasayamma making an adoption, which was repeated in 1894. The Trial Judge who heard the evidence found as a fact that both allegations were false; and the High Court agree in that view. The concurrent finding of the two Courts on this point is not open to question on this appeal. Their Lordships consider, even if it were open to discussion, the reasons given by the District Judge for disbelieving the story to be conclusive.

It was argued at the bar that no application was made for the assent of Sanyasaraju II because it was known that he would refuse. This, in their Lordships' opinion, is a futile reason for not applying for his assent.

In their Lordships' opinion this suit must fail on the second ground on which the Trial Judge decided the case, viz., that Narasayamma did not obtain the requisite assent necessary for the valid exercise of that power. Their Lordships express no disapproval of the decision of the District Judge on the first point, but, like the High Court, do not find it necessary to decide it.

Their Lordships will accordingly humbly advise His Majesty that the decree of the High Court dismissing the suit should be affirmed and the appeal should be dismissed with costs.

In the Privy Council.

KANDUKURI VEERA BASAVARAJU PANTULU AND OTHERS

v.

KANDUKURI BALASURYA PRASADA RAO PANTULU AND ANOTHER.

DELIVERED BY MR. AMEER ALI.

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1918.