Privy Council Appeal No. 5 of 1944

C. S. Nataraja Pillai (now deceased) and another - - *Appellants*

v.

C. S. Subbaraya Chettiar - - - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 22ND NOVEMBER, 1949

Present at the Hearing:

LORD GREENE
LORD OAKSEY
SIR JOHN BEAUMONT

[*Delivered by* LORD GREENE]

This is a re-hearing of an appeal by the appellants from a decree dated the 15th November, 1938, of the High Court of Madras in its Appellate Civil Jurisdiction dismissing the appellants' appeal from a decree dated the 1st December, 1936, of the High Court in its Original Civil Jurisdiction. The present appeal was dismissed by Order in Council dated the 22nd June, 1948, which gave effect to the humble advice given in the judgment of the Board delivered on the 17th June, 1948. The appellants subsequently presented a Petition asking that the Order in Council should be recalled and leave be granted for the appeal to be re-heard, alleging in support of the Petition that their Lordships in coming to their conclusions had been misled with regard to a certain matter to which reference will presently be made. The Prayer of the Petition was granted and this re-hearing was ordered.

In the suit out of which the appeal arises the respondent (plaintiff) obtained a declaration that he was entitled to the property in suit as the adopted son of a Hindu widow named Vasavambal with consequential relief. The claim had been opposed by the appellants (defendants) on the ground that they were entitled to the property either by a gift *inter vivos* or by a gift by will. On the original hearing of this appeal the Board was of opinion that the claim of title put forward by the appellants could not be maintained and no attempt to support it was made on the present re-hearing. But counsel for the appellants then argued that the appellants were in possession and could only be displaced if the respondent could make out a title, which they claimed he had failed to do. The Board rejected the argument that the defendants were in possession and as their claim of title failed their appeal necessarily failed with it. The appeal was accordingly dismissed. The reasons given in support of the Petition for a re-hearing were that their Lordships were misled by certain statements appearing in the record from which it appeared to them that a receiver and not the appellants was in possession at the date of the commencement of the suit; and that on a true view of the facts the appellants were entitled to set up the plea of possession.

Their Lordships do not propose to examine further the question who was in truth in possession at the date when the suit was instituted. Clearly if the appellants were not in possession they could have no *locus standi* to appeal, their claim based on title having admittedly failed. Their Lordships will assume (as was held by the trial judge—Record, p. 40, l. 4), that the appellants were in possession and were therefore competent to maintain an appeal. On this footing it becomes necessary for the Board to examine again in this appeal the title by adoption wnich formed the basis of the respondent's claim. The Board on the original hearing stated, " No doubt it is true that it was for the respondent to make out to the satisfaction of the Court that he had a title which would warrant an order for delivery of possession to him. That he succeeded in doing." The effect of the failure of the appellants to make good their claim based on title and the Board's decision that the appellants were not in possession made it unnecessary for the Board to examine what was the fundamental question in the case, namely, the validity of the adoption relied on by the respondent which had been established in the lower Courts. It is now necessary for the Board to consider whether the Courts in India were correct in holding that the adoption was valid.

Vasavambal was the widow of Calve Sadasiva Chettiar (hereinafter called " the deceased "), to whom the property in suit, which is situated in British India, had belonged. He and after his death his widow were admittedly domiciled in Pondicherry in French India and their personal law was governed by the law there in force. He died in the year 1891 without issue, and in the year 1906 Vasavambal made an adoption of the respondent, then aged three years. It is the respondent's case that this adoption was an adoption of himself both to the deceased and to Vasavambal herself. Having regard to what took place in relation to certain earlier litigation and a compromise made in connection therewith, the respondent no longer claims title as the adopted son of the deceased. He bases his case entirely on his alleged position as the adopted son of Vasavambal herself, who had become the owner of the property in suit in circumstances which it is now not necessary to explain. The adoption, he claims, was effective under the law applicable viz. French law in force in Pondicherry and it had moreover been held to be effective by the French Courts.

Both divisions of the High Court of Madras held that the adoption was effective and that the respondent was entitled to the property in suit.

Before their Lordships it was argued that the view taken by the High Court on the appeal was erroneous on three main grounds, viz. (1) that the Court accepted the deed of adoption executed by Vasavambal as proving the fact of adoption, whereas evidence should have been given that the acts necessary for a valid adoption, in particular the physical giving and acceptance of the adoptive child, were performed ; (2) that on its true construction the deed of adoption was only dealing with an adoption to the deceased and not with an adoption to Vasavambal as well ; (3) that under the law of British India it was not competent to a widow to adopt to herself ; (4) that the judges of the High Court erred in treating themselves as bound to accept a declaration of the French Courts that the respondent had been validly adopted by Vasavambal.

The first of these grounds can be dealt with quite shortly. It is, their Lordships think, based on a misapprehension. The Courts in India were not relying on the mere production of the deed as establishing the factum of adoption. There were, in their Lordships' view, a number of circumstances in the contemporaneous and subsequent behaviour of the parties from which the performance of the necessary acts could be and was properly inferred, particularly in dealing with events which had taken place as long ago as 1906. Reliance was placed by the appellants on evidence which had been given by Vasavambal herself (who died in the year 1922) in an earlier suit in which she had denied the fact of adoption. But their Lordships agree with the view which had been taken as to this evidence in earlier suits in which attempts had been

made to rely upon it. The denial there made is inconsistent with all the previous declarations and actions of Vasavambal in which she had consistently asserted the validity of the adoption. It was pointed out by Pandalai J. in his judgment in one of the earlier suits (C.S. No. 591 of 1928) that " her attempts to repudiate her solemn acts have been characterised in no uncertain terms by all Courts who have dealt with it ". Their Lordships have no difficulty in treating this evidence as completely unreliable.

(2) The interpretation of the deed of adoption is not, in their Lordships' opinion, free from doubt. It must they think be construed as a document executed in contemplation of the law of Vasavambal's domicile, viz., the French law obtaining in Pondicherry under which adoption by a widow is permissible and not in contemplation of the law of British India under which it is not permissible. The deed contains the statement that Vasavambal is making the adoption not merely on account of the salvation of the soul of the deceased but also " on account of the salvation of my own soul ", an expression which appears to their Lordships to point strongly to an intention to adopt to herself as well as to her deceased husband and they think that the deed should be so construed. The reference later in the deed to the boy as " my adopted son ", although it would no doubt be accurate as applied to the status of the boy as being adopted to the deceased, is nevertheless consistent with the view that he was also being adopted to Vasavambal herself. The French Courts have treated this deed as effecting an adoption to Vasavambal and it was homologated as such by the justice of the peace at Pondicherry on the 18th January, 1908. The effect to be given to the judgments of the French Courts will be more conveniently dealt with under head (4).

(3) It is not in dispute that a Hindu widow whose personal law is that of British India cannot adopt to herself. But in this case it is conceded that the personal law of Vasavambal was Hindu law as obtaining in French India. In the appeal to the High Court it was also conceded that " under French law a Hindu widow can adopt a son to herself and that if she does her adopted son succeeds to her estate ". This concession was in their Lordships' opinion properly made. Vasavambal was domiciled in Pondicherry and her capacity to adopt a son to herself and the status of the child so adopted as her adoptive son were matters to be determined in accordance with the law of her domicile, i.e., French law.

(4) The High Court on appeal was of opinion that it was bound to accept the declaration of the French Courts in Pondicherry, affirmed by the Court of Cassation in Paris, that the respondent was adopted by Vasavambal. This decision of the High Court was based on the view, not that the declaration of status was a judgment in rem, but that, being analogous to such a judgment, it ought to be accepted as binding by the comity of nations. It is argued that as the judgment of the French Courts does not fall within Section 41 of the Indian Evidence Act it is not admissible at all.

It is true that the judgment in question was given in proceedings to which the present appellants were not parties, their application to intervene therein having been rejected. But in spite of this their Lordships are of opinion that it is admissible under Section 13 of the Indian Evidence Act. The weight to be given to it must depend on all the circumstances although their Lordships do not accept the view held, apparently, by the High Court that it must be followed. The judgment decides two matters, namely, first that the adoption was one which could validly be made under French law and, secondly, that it was made in such manner as French law required for its validity, one of the requisites being the delivery and acceptance of the child as in the law of British India. The concession above referred to, quite apart from the French judgment, concludes the first of these matters. That the delivery and acceptance of the child is properly to be inferred in all the circumstances has been stated earlier in this judgment. All that is left to be extracted from the

French judgment is therefore that in all other respects as required by French law the proper procedure of adoption was followed and also that in treating the adoption as an adoption, not only to the deceased, but to Vasavambal herself, the French Courts construed the deed as having that effect. Their Lordships are of opinion that the French judgment, although the appellants were not parties to it, ought in the circumstances to be given great weight in all the matters with which it dealt. It is cogent evidence of the French law itself. It is a judgment of the Court of the domicile in relation to the validity of the adoption both in law and as regards the facts necessary to its validity in Pondicherry. The subject matter of the judgment was that now in issue and the French Courts were unanimous. Leaving aside for a moment the question of the construction of the deed there is no reliable evidence to the contrary on any of these matters and their Lordships are of opinion that the French judgment ought to be regarded as strong and uncontradicted evidence.

With regard to the construction of the deed the French Courts were in their Lordships' opinion *prima facie* the proper Courts to construe it. Their Lordships do not go so far as to say that if the French Courts had placed upon it some construction which (apart from some definite principle of French law) it was in the view of the Board incapable of bearing, the Board would be bound to follow it. But here the construction adopted by the French Courts is one which in their Lordships' opinion is the preferable one.

In the circumstances their Lordships are satisfied that the adoption was a valid adoption of the respondent by French law both in law and in fact. In consequence, as was admitted in the High Court on appeal, he succeeded to the estate of Vasavambal.

Lastly it is argued that in order to succeed to immovable property in British India an adopted child must have been validly adopted in accordance with the municipal law of British India: and that adoption by a widow not being recognised by that law it could not be relied on in a claim to such property. Their Lordships do not accept this argument. The personal status of the respondent as the heir of Vasavambal falls to be ascertained by reference to French law and for the reasons already given his status has been established. Their Lordships have not been referred to any authority to the effect that some principle vaguely analogous to that which for special reasons governed in English law, i.e., that an heir to succeed to English real estate must have been born in wedlock, has the effect of disentitling the respondent from claiming as the adopted son by the law governing his status; and they can see no reason in principle why a person who, by the law of his domicile and thus (as is admitted) by the law applicable in British India, must be regarded as the adopted son of the owner of immovable property in India should be regarded as incapable of succeeding thereto any more than he would be incapable of succeeding to movables.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed.

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AND ANOTHER

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DELIVERED BY LORD GREENE

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