

PRIVY COUNCIL

Madana Mohana Ananga Bheema Deo

Vs.

Purushotthama Ranga Bheema Deo

P.C.A. No. 122 of 1916

(Viscount Haldane, CJ, Lords Dunedin Sumner, Sir John Edge And Mr. Ameer Ali.
JJ)

26.4.1918

JUDGMENT

Viscount Haldane CJ.

1. This is an appeal from a decree of the High Court of Judicature at Madras which affirmed a decree of the District Judge of Ganjam. The main question to be decided relates to the validity of the appellant's adoption.

2. The suit is concerned with an impartible *Zamindari* in the district of Ganjam called Chinnakimidi or Pratapgiri. In 1868 the holder of the *zamindari* was the Raja Adikonda Deo, who was a member of a joint Hindu family subject to the Mitakshara law. The following pedigree shows the relationship of the parties to the suit to each other:-

Before his death in 1868 Adikonda Deo, the then Raja, gave to his widow, who was at that time enceinte a written authority to adopt in the following terms:-

"As I know that my end, consequent upon the expiration of the terms fixed by fate, is approaching, I do hereby declare that in case you, who are at present pregnant, be delivered of a male issue, the said child alone shall inherit my *talook* as well as all my property both moveable and immoveable. Becoming the owner of moveable and immoveable properties, till he arrives at the proper age you will look after him; or if a daughter be the result of your present pregnancy, you, adopting a son, who may be in your opinion worthy of the throne, and making him owner of the *talook*, etc, shall, pending the attainment of the said boy's majority, take care of him. This agreement is executed with my free will."

3. On the death of Adikonda, his brother, Raghunadha Deo, took possession of the *zamindari*. The widow gave birth to a daughter, and acting on the authority, adopted to her husband a boy, Brojo Kishore Deo, in 1870. The adopted son instituted a suit to recover the *zamindari* from Raghunadha Deo, and this suit was decided in his favour by this Board in 1876. Having recovered possession of the *zamindari*, Brojo Kishore Deo held it until his death in 1906. He left a widow, Ratnamala, but no son. Possession of the *zamindari* was then taken by Vaishnava Deo, who died later in the same year, and was succeeded in the possession by the deceased respondent, Purushottama Deo.

4. In 1907 the widow of Adikonda Deo purported to make a second adoption to her husband, under the terms of the authority already set out, by adopting the present appellant. The latter as plaintiff subsequently instituted the present suit to recover the *Zamindari*.

5. Several issues were framed, but that on which the result of the appeal must in any view turn is whether the adoption was legal. For, if this question be answered in the negative, other issues which were raised before the Courts below do not arise, and the root is cut from the appellant's case.

6. It is not in dispute that the *zamindari* was impartible and descended by the rule of primogeniture to a single heir. When Brojo Kishore was adopted, he succeeded as though he had been the actual son of Adikonda, and, as this Board decided in 1876 with reference to this very succession in *Pratapa Raghunada Deo v. Brojo Kishore Patta Deo*¹ he became entitled to oust Raghunadha, whose right to enter was only temporary, operating merely to prevent the ownership from being in abeyance pending any such succession to his elder brother as the adoption brought about. But when Brojo Kishore succeeded he became himself the full owner, from whom heirship must be traced instead of as earlier from Adikonda. The widow of the latter was therefore in a different position when she endeavored to effect the second adoption from that which she occupied on the former occasion. She could on that occasion, by exercising the power conferred on her, establish a direct succession to the estate of her husband Adikonda, which related back to his death. On the second occasion the ownership which had become vested in Brojo Kishore had intervened, and it was only to his estate that she could possibly establish a succession. The learned Judges in the Courts below have all agreed in holding that any authority she could originally be taken to have received to make a second adoption had become inoperative by reason of the changed circumstances, and their Lordships are of opinion that the conclusion so come

to was right.

7. The Hindu Law no doubt recognizes the validity of an authority given to a Hindu widow by her deceased husband to make a second, or even a third or fourth adoption on failure of the previous adoption to attain the object for which the power is given, viz., the perpetuation of the deceased's line to discharge the obligations that rest on a pious Hindu. When the authority to make successive adoptions is alleged, two questions arise: (1) whether it was in fact given; (2), and if so given, did it still exist in the widow when the subsequent adoption was made.

8. In the present case their Lordships do not consider it necessary to decide whether the document before them can be construed as by its terms enabling a second adoption to be made. For the vital question here is whether after the adoption of Brojo Kishore Deo the power still survived in the widow of Adikonda Deo.

9. When and under what circumstances the authority ceases to be exercisable has been considered in a number of cases both by this Board and the Courts in India. The High Court at Bombay took the view that the power must be looked on as extinguished under analogous circumstances in the case of *Ramakrishna Ramchandra v. Shamrao Yeshwant*² where Chandavarkar, J., delivering the judgment of the Full Bench, examines the authorities closely. He interprets earlier decisions of the Judicial Committee as having established conclusively that, quite apart from any question of construction, there is a limit imposed by law to the period within which a widow can exercise a power of adoption conferred on her, and that when that limit is reached the power is at an end. That limit may arise from circumstances such as those already referred to. The authorities on which he founds are the judgment of this Board as delivered by Lord Kings down in *Bhoobun Maye Dibia v. Ram-Kishore Acharjee*³ and the subsequent judgments in *Padma Kamari Debi v. Court of Wards*⁴ and *Thayammal v. Venkata Rama*⁵

10. Their Lordships are in agreement with the principle laid down in the judgment of the Full Court of Bombay as delivered by the learned Judge, and they are of opinion that on the facts of the present case, the principle must be taken as applying so as to have brought the authority to adopt conferred on Adikonda's widow to an end when Brojo Kishore, the son she originally adopted, died after attaining full legal capacity to continue the line either by the birth of a natural-born son or by the adoption to him of a son by his own widow. That widow was not a party to the suit, and, whether or not she had power to adopt Brojo Kishore, it has not been established against her that she had

no such power. Their Lordships think it right to draw attention to his circumstance, but they do not desire to be understood as saying that even in its absence the succession of Brojo Kishore and his dying after attaining full legal capacity to continue the line would not in themselves have been sufficient to bring the limiting principle into operation, and so to have so determined the authority of Adikonda's widow, who was not the widow of the last owner, and could not adopt a son to him. This conclusion is in their opinion in no way in conflict with the previous decision of this Board as to the succession to this zamindari. There the title of Adikonda's widow to displace Raghunadha's succession was recognised. But Raghunadha's succession was of a character only provisional, and subject to defeasance by the emergence of a male heir to Adikonda.

11. Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

Appeal dismissed.

Cases Referred.

1. [1876] 1 Mad. 69 : 3 I.A.154 : 11 Jur. 188 : 3 Sar. 583 : 25 W.R. 29 : 3 Suther. 263 (P.C.),
2. [1902] 26 Bom. 526 : 4 Bom. L. R. 315 (F.B.)
3. [1865] 10 M. I.A. 279 : 3 W.R.15 : 2 Sar.111 : 1 Suther. 574 (P.C.)
4. [1881] 8 Cal. 302 : 8 I.A.229 : 4 Sar. 285 : 6 Jur. 148 (P.C.)
5. [1887] 10 Mad. 205 : 14 I.A.67 : 5 Sar. 10 : 11 Jur. 271 (P.C.)